

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37660 of 2013

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1. Mirza Nasir Beg, Son Of Late Mirza Shamim Beg
2. Mirza Sahir, son of late Mirza Alim Beg
3. Mirza Aslam Beg
4. Mirza Azim Beg
Both sons of late Nayeem Beg, resident of village - Salimpur Shutur Khana, Police
Station Mufassil, District-Munger

.... Petitioner/s

Versus

1. The State of Bihar
2. Mirza Haidar Beg, son of late Mirza Nizam Beg, resident of village Salimpur
Shutur Khana, P.S. Mufassil

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Md. Najmul Hodda, Advocate.
For the Opposite Party/s : Mr. Amitesh Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 06-04-2017

1. The Petitioner seeks quashing of the order dated 22.5.2013
passed by the Executive Magistrate, Sadar, Munger in Cr. Misc. 283M of
2013.

2. Heard learned counsel for the petitioners and State.

3. It has been submitted on behalf of the petitioners that
opposite party No.2 has filed a Title Suit No. 41 of 2013 against the
petitioners for the same disputed plot which is pending in the court of Sub
Judge-I, Munger. It has further been submitted that during pendency of the
aforesaid Title Suit, the attachment order under Section 146 (1) Cr. P.C. has
been passed by the learned Magistrate in a proceeding under Section 145
Cr. P.C. lodged on the basis of application filed by opposite party No. 2. In



fact, initially the proceeding under Section 144 Cr. P.C. was initiated on the basis of application filed by the opposite party No. 2 before the police which was later on converted into 145 Cr. P.C. and, thereafter, the property was attached by the learned Magistrate by the impugned order under Section 146 (1) Cr. P.C. It is mentioned in the impugned order itself by the learned Magistrate that submission was made before him that Title Suit No. 41 of 2013 is pending before the Sub Judge-I Munger and notice has also been issued to the parties but the learned Magistrate has passed order under Section 146 (1) Cr. P.C. on the ground that delay may occur in disposal of the Title Suit.

4. There is settled principle of law that if a Civil Suit is pending between the parties, no parallel proceeding in the Executive court should continue as the same will be mere harassment to the parties and no final adjudication will be possible before the Executive court.

5. The opposite party No. 2 has filed a Title Suit No. 41 of 2013. He has remedy to take proper step in the aforesaid Title Suit by filing a petition under Order 39 Rule 1 CPC in the event there are chances of wastage of the property in dispute. But instead of resorting to such remedy, it appears that opposite party No. 2 filed a petition before the learned Magistrate in a proceeding under Section 145 Cr. P.C. for attachment of the property and the learned Magistrate on the basis of police report, attached the property under Section 146(1) Cr. P.C.

6. In the facts and circumstances of the case, this Court is of the view that the impugned order is not justified in law and suffers from



illegality.

7. Therefore, the impugned order dated 22.5.2013 passed by the learned Executive Magistrate, Sadar, Munger, in Misc. Case No. 283M of 2013, is hereby quashed.

8. The petitioner is given liberty to file necessary petition before the learned Magistrate to drop the proceeding under Section 145 Cr. P.C. as Title Suit No. 41 of 2013 between the parties is already pending before the court of Sub Judge-I, Munger, which shall be disposed of by the learned Magistrate in accordance with law in terms of observation made by this Court above. The opposite party No. 2 is also given liberty to file proper petition under Order 39 Rule 1 CPC before the court below in the event there is danger of wastage of property.

9. This application is accordingly allowed with aforesaid observations.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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