

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47852 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

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Satan Paswan Son of Bhutan Paswan Resident of village- Daharia, P.S.- Chhatapur,
District- Supaul.

.... Petitioner

Versus

1. The State of Bihar
2. Hari Sutihar son of Late Jhafar Sutihar Resident of village- Daharia, P.S.-
Chhatapur, District- Supaul.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. madhav Jha, Advocate

For the Opposite Party/s : Mr. Amrit Abhijat, Advocate
Mr. Manoj Kr. Gupta, Advocate
Mr. Upendra Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 13-12-2017

Heard learned counsel for the parties.

The petitioner is aggrieved by order dated 12.09.2014, passed by the learned Sessions Judge, Saharsa in Criminal Revision No. 111/2014, by which the learned Sessions Judge has rejected the revision application on the ground of limitation itself and thereby the impugned order dated 10.02.2014 passed by the Executive Magistrate, Triveniganj (Supaul) in Misc. Case No. 259/2014 under Section 145 Cr.P.C. has not been interfered with.

Learned counsel for the petitioner submits that there was a delay of a two months and ten days in filing of the revision application and the petitioner had given reasons for the delay by filing an appropriate application for condonation



of delay, but the learned Sessions Judge has dismissed the revision application on the ground of limitation alone and thereby deprived the petitioner from getting substantial justice.

Learned counsel further submits that the order passed by the Executive Magistrate, Triveniganj (Supaul), which is Annexure-1 to the present application, is *per se* illegal and not sustainable in the eye of law because while deciding the proceeding under Section 145 Cr.P.C. The Executive Magistrate has not only held that the first party was in possession of the land right from the date of the purchase but has also gone to the extent of holding the right of the first party as respect title and possession.

Learned counsel submits that in a proceeding under Section 145 Cr.P.C. the Executive Magistrate is not justified in deciding the right of a party as respect the possession. The Executive Magistrate had to only decide as to whether any and which of the parties was, at the date of the order made by him under sub-section (1) of Section 145, in possession of the subject of dispute. By declaring right of possession and then title too, he has definitely transgressed his jurisdiction.

Learned counsel representing the first party, who is Opposite Party No. 2 in the present case, fairly accepts the



legal position in this regard and has submitted that although the Executive Magistrate has passed a well reasoned order but in the last part of the order he has transgressed his jurisdiction in recording the right of possession and the title in favour of the first party.

In view of a fair stand taken on behalf of the Opposite Party No. 2, this Court has no problem in coming to a conclusion that the impugned orders passed by the learned Sessions Judge, Triveniganj (Supaul) dismissing the revision application on the ground of Limitation is not just and proper in the present case. The order dated 10.02.2014 passed by the Executive Magistrate, Supaul apparently suffers from jurisdictional error. The impugned orders are, therefore, set aside.

The Executive Magistrate, Triveniganj (Supaul) shall pass a fresh order in Misc. Case No. 259/2014 after giving due opportunity of hearing to both the parties.

With the aforesaid observation and direction, this application is allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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