

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.52212 of 2013

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

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Habibullah, son of Late Ishaque Mian, through Attorney, Hamida Begum @
Hamida Khatoon, wife of Habibullah, resident of village- Piprahia, P.S.- Assaon,
District- Siwan

.... Petitioner.

Versus

1. The State of Bihar.
2. Razia Khatoon, wife of Shafiullah, resident of village- Piprahia, P.S.- Assaon,
District- Siwan.
3. Md. Sakir, son of Nathuni Mian, resident of village- Piprahia, P.S.- Assaon,
District- Siwan

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Raghav Prasad, Advocate.
For the State : Mr. Dashrath Mehta, A.P.P.
For the Opposite Party Nos.2 to 3 : Mr. Chandra Kant, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 01-12-2017

With the consent of the learned counsel for the petitioner
and learned counsel for the opposite party nos.2 and 3, this application
is disposed of at the stage of admission itself.

2. Heard learned counsel for the petitioner, the learned
A.P.P. for the State and also the learned counsel for the opposite party
nos.2 and 3.

3. This application, under Section 482 of the Code of
Criminal Procedure, is directed against the order dated 27.04.2013
passed by the 1st Adhoc Additional Sessions Judge, Siwan, dismissing



the Criminal Revision No.09 of 2013 preferred by the petitioner and others by affirming the order dated 06.12.2012 passed in Case No.M-3384 of 2012 by the Sub Divisional Magistrate, Siwan, in a proceeding under Section 144 of the Code of Criminal Procedure, declaring the possession of the land in dispute in favour of the members of the first party/opposite party nos.2 and 3, in which the opposite party nos.2 and 3, were the members of the first party and the petitioner and others were the members of the second party.

4. Learned counsel for the petitioner submits that it would appear from the provision of Section 144 of the Code of Criminal Procedure that the Sub Divisional Magistrates or the Executive Magistrates, empowered specially by the State Government, may direct any person to abstain from a certain act in respect to the land in his possession and that order would be in force for sixty days but the Sub Divisional Magistrate, Siwan, vide order dated 06.12.2012 passed in Case No.M-3384 of 2012 in a proceeding under Section 144 of the Code of Criminal Procedure declared the possession of the members of the first party/opposite party nos.2 and 3 and the same was affirmed by the 1st Adhoc Additional Sessions Judge, Siwan, vide impugned order dated 27.04.2013 passed in Criminal Revision No.09 of 2013 preferred by the members of the second party including the petitioner, which is illegal and against the provisions of Section 144 of the Code



of Criminal Procedure.

5. Learned counsel for the opposite party nos.2 and 3 submits that the order dated 06.12.2012 passed in Case No.M-No.3384 of 2012 by the Sub Divisional Magistrate, Siwan, in a proceeding under Section 144 of the Code of Criminal Procedure, declaring the possession of the member of the first party/opposite party nos.2 and 3 is upheld through the order dated 27.04.2013 passed by the 1st Adhoc Additional Sessions Judge, Siwan, in Criminal Revision No.09 of 2013. Moreover, the life of span of the order under Section 144 of the Code of Criminal Procedure is only sixty days, which has expired much earlier.

6. On going through the provision of Section 144 of the Code of Criminal Procedure, it is apparent that the Sub Divisional Magistrates or the Executive Magistrates, empowered specially by the State Government, may direct any person to abstain from a certain act in respect to the land in his possession but the possession of the land could not be declared. The proceeding of Section 144 of the Code of Criminal Procedure is preventive in nature. As such, the impugned order dated 27.04.2013 passed by the 1st Adhoc Additional Sessions Judge, Siwan, dismissing the Criminal Revision No.09 of 2013 preferred by the petitioner and others, affirming the order dated 06.12.2012 passed in Case No.M-3384 of 2012 by the Sub Divisional



Magistrate, Siwan, in a proceeding under Section 144 of the Code of Criminal Procedure, declaring the possession of members of the first party/opposite party nos.2 and 3, is illegal and the same is hereby quashed.

7. In the result, this application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.12.2017.
Transmission Date	05.12.2017.

