

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.29900 of 2014**

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

=====

1. Ramesh Mahto Son of Late Saheb Mahto R/o village Dewaria, P.S. Ravilganj,  
District Saran at Chapra

.... .... Petitioner/s

Versus

1. The State of Bihar  
2. Raja Ram Mahto Son of Jamadar Mahto R/o village Dewaria, P.S. Ravilganj,  
District Saran at Chapra

.... .... Opposite Party/s

=====

**Appearance :**

For the Petitioner/s : Mr. Nawal Kishore Singh

For the Opposite Party/s : Mr. Humayu Ahmad Khan, APP

=====

**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**  
**ORAL JUDGMENT**  
**Date: 05-07-2017**

This is an application under Section 482 of the Code of Criminal Procedure praying therein to quash the order dated 14.09.2012 passed by the learned Sub-Divisional Magistrate, Sadar, Chapra in Case No. M-277 of 2012. The Sub-Divisional Magistrate finding bona fide land dispute between the parties had converted the proceeding under Section 144 Cr.P.C. into the proceeding under Section 145 Cr.P.C.

2. Heard the learned counsel for the petitioner and the learned APP for the State.



3. The facts in brief is that a proceeding under Section 144 Cr.P.C. was initiated on the written report of the Opposite Party No. 2 submitted before S.H.O., Rivilganj Police Station. The concerned Police submitted a report on the basis of which the Sub-Divisional Magistrate initiated a proceeding under Section 144 Cr.P.C., which in due course was converted into proceeding under Section 145 Cr. P.C.

4. The learned counsel for the petitioner submits that from the impugned order itself, it appears that there is bona fide land dispute between the parties. The petitioner had purchased the land in question from Ram Ugrah Singh and others in the name of his wife, namely, Chandrawati Devi. The father of the Opposite Party No. 2 filed a pre-emption case No. 25 of 2011-12 under Section 16(3) of the Bihar Land Reforms Act before D.C.L.R. Chhapra. The petitioner also filed Miscellaneous Case No. 57 of 2011 with respect to the said land praying therein to demarcate the land. The Opposite Party No. 2 admittedly was not the owner of the land as his father had filed a pre-emption case exercising his right of pre-emption. The learned counsel for the petitioner further submits that the said pre-emption case has been dismissed and against the said order, no appeal has been filed before the appellant authority. The Sub-



Divisional Magistrate had / has no jurisdiction to decide the possession party in view of the admitted fact that the land was purchased by this petitioner in the name of his wife. He further submits that the said case is still pending before the court below and till the date not a single witness has been examined. The Opposite Party No. 2 would get title only in the event of execution of sale deed after succeeding in pre-emption case and so, the impugned order converting the proceeding under Section 145 Cr.P.C. is not sustainable in law and is fit to be quashed.

5. The learned A.P.P. for the State opposed the submissions.

6. On perusal of the impugned order, I find that the learned Sub-Divisional Magistrate has converted the proceeding into the proceeding under Section 145 Cr. P.C. observing that there is bona fide land dispute between the parties. The dispute between the parties relates to pre-emption right, which has been exercised by the Opposite Party No. 2. The land was admitted in possession of the wife of the petitioner which she acquired by virtue of the registered sale deed.

7. In view of the discussions made above, the impugned order dated 14.09.2012 is not sustainable in law and accordingly,



quashed and this Criminal Miscellaneous Application is allowed.

(Sanjay Kumar, J)

ajaypd./-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 07.07.2017 |
| Transmission Date | 07.07.2017 |

