

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.31843 of 2014**

Arising Out of order dt. 14.05.2014 passed by Addl. District & Sessions Judge, Katihar in Cr.  
Revision No. 03/2014, District- Katihar.

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1. Md. Parvej @ Tuntun, S/o Md. Mohim  
2. Bibi Rayesha, W/o Md. Mohim,  
Both Resident of Village Sadalpur Ramaili, P.S. Rautara, District Katihar.  
..... Petitioners

Versus

1. The State of Bihar.  
2. Md. Dularey, S/o Md. Nayeem,  
Resident of Village Sadalpur Ramaili, P.S. Rautara, District Katihar.  
..... Opposite Parties.

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**Appearance:**

For the Petitioner/s : Mr. P.K. Jaipuriyar,  
Mr. Anshuman Jaipuriyar and  
Miss Anukriti Jaipuriyar, Advocates.  
For the Opposite Party-State: Mr. M.N. Jha, A.P.P.  
For the Opp. Party no. 2 : Mr. Bimal Kumar,  
Mr. Birendra Kumar and  
Ms. Maruti Kumari, Advocates.

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**CAV JUDGMENT**

**Date: 06-09-2017**

Heard learned counsel for the parties.

2. The petitioners have invoked inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for setting aside the order dated 14.05.2014 passed by the learned Additional District & Sessions Judge, Katihar in Cr. Revision No. 03/2014 whereby he has refused to interfere with the order dated 14.11.2013 passed by the learned Sub Divisional Magistrate, Katihar initiating a proceeding under Section 145 of the Code of Criminal Procedure over the land in question.

3. The brief facts, for the purpose of deciding the present



case, are in a narrow compass. There is a land measuring an area of 3.12 ½ Acres in Mauza Sadalpur Kala, P.S. Rautara, District Katihar under Sub-registry Office Sadar in the district of Katihar. These petitioners claim that they acquired right, title and interest as also possession over the land by virtue of two sale deeds executed by one Md. Naushad Ahmad, who had acquired the land by virtue of a Hibba (Gift) from Bibi Halima Khatoon and a Ladawinama was executed by the husband of Bibi Halima Khatoon. According to the petitioners, said Md. Naushad Ahmad was the nephew of Bibi Halima Khatoon and by virtue of the said Hibba and Ladawinama he was the original owner in possession of the land in question.

4. The petitioners claim that the opposite party no. 2 raised a dispute just to harass the petitioners and with an ulterior motive. According to the petitioners, there is no apprehension of breach of peace and, if at all, there were any apprehension of breach of peace, a proceeding under Section 107 of the Code of Criminal Procedure could have been initiated by the competent authority.

5. It appears from the record that the case of the opposite party no. 2 is that Bibi Halima Khatoon died issueless leaving behind her Haji Izhar Alam (her husband) and four sons and two daughters of her brother late Md. Yahiya. Therefore, after death of Bibi Halima Khatoon, her husband Haji Izhar Alam as well as the legal heirs of Md. Yahiya became the owner of ½ and ½ share each. Further, her



husband Haji Izhar Alam died leaving behind him two brothers Md. Moin and Md. Naim and one sister Bibi Husna Ara. The  $\frac{1}{2}$  share (1.53 and  $\frac{1}{2}$  acre) land came to Md. Moin, Md. Naim and Bibi Husna Ara. The first party, at whose instance, 144 proceeding was initiated is the son of Md. Naim whereas the second party is the son of Md. Yahiya. According to the opposite party no. 2, the legal heirs of Md. Yahiya had got  $\frac{1}{2}$  share of the dispute land but they transferred the entire disputed land wrongly which led to the present dispute.

6. The learned Sub Divisional Magistrate, Katihar initiated a 144 proceeding vide Case No. 197M/2013 and thereafter, on receipt of the show cause from both the parties, considered the same and passed order initiating a proceeding under Section 145 Cr.P.C. The learned Sub Divisional Magistrate, in his order dated 14.11.2013 by which the proceeding was converted in a proceeding under Section 145 Cr.P.C., has recorded that because of the conflicting claims both the parties are disputing each other's right, title and possession and, hence, this seems to be a case where possession of the land is in dispute, therefore, no decision may be given on this issue without holding an enquiry and examining the witnesses.

7. The order dated 14.11.2013 passed by the Sub Divisional Magistrate in Case No. 197M/2013 was challenged before the learned District and Sessions Judge, Katihar vide Cr. Revision No. 03/2014. The said Cr. Revision came to be heard finally before the



learned Additional District and Sessions Judge, Katihar who, vide his order dated 14.05.2014, refused to interfere with the order of the learned Sub Divisional Magistrate. The order passed in the Cr. Revision would show that the learned Additional District and Sessions Judge –I, Katihar having considered the submissions of the parties and in view of the report of the police held that there was no illegality in the impugned order, hence, there is no scope to interfere with the order for initiation of a proceeding under Section 145 Cr.P.C.

8. Learned counsel for the petitioners while challenging the revisional order as well as the order passed by the Sub Divisional Magistrate has raised an issue on the basis of a copy of the plaint of Title Suit No. 206/2014, filed in the court of the learned Sub Judge-I at Katihar. Learned counsel submits that in view of the pendency of the title suit between the same parties, continuation of the proceeding under Section 145 Cr.P.C. would be bad in the eye of law. The proceeding under Section 145 Cr.P.C. is a parallel proceeding which should not be allowed to run simultaneously with the title suit. According to him, the dispute is a civil dispute and it has wrongly been given a colour of criminal proceeding.

9. On the other hand, the opposite party no. 2 claims that the said Md. Naushad Ahmad had executed sale deeds of the land illegally and in excess of the land which he could have actually been entitled to transfer.



10. Learned counsel representing the opposite party no. 2 has opposed the prayer for setting aside the impugned orders. Learned counsel submits that present application is virtually a second revision in the garb of Section 482 Cr.P.C., hence it is liable to be thrown out at the outset. According to the learned counsel, the proceeding under Section 145 Cr.P.C. was initiated on 14.11.2013 for legal and valid reasons. The petitioners are trying to take possession of the land in question which has given rise to a serious dispute between the parties which is likely to cause a breach of peace and, hence, it is necessary to decide as to who was in possession of the land on the date of initiation of the proceeding under Section 145(1) Cr.P.C. Learned counsel also submits that a perusal of the reliefs prayed in the title suit and the date of filing of the suit need to be closely scrutinized because only by filing the plaint the petitioners cannot take benefit of the same by contending that the 145 proceeding is a parallel proceeding. In the present case, according to the learned counsel for the opposite party no. 2, the plaintiffs, who are the petitioners, are not claiming any declaration of their possession rather in a camouflaged manner a relief has been sought that if the plaintiffs are dispossessed from the suit land by the defendants then the possession of the plaintiffs over the suit land be confirmed by the Court. According to him, the suit has been filed for declaration of right, title and interest over the suit land. There is no prayer for confirmation of possession.



11. I have heard learned counsel for the parties and perused the record. This Court would keep in mind that earlier the petitioners have availed the remedy of revision against the order dated 14.11.2013 passed by the learned Sub Divisional Magistrate for initiation of a proceeding under Section 145 Cr.P.C. It is true that an application under Section 482 Cr.P.C. is not barred but then the Court must examine such an application with all circumspection and care because the petitioners having availed the remedy of revision cannot be allowed to move this Court under Section 482 Cr.P.C. by way of a second revision. If the order passed by the revisional court is perverse and without jurisdiction, then only this Court will interfere exercising its inherent jurisdiction.

12. The contention of the learned counsel for the petitioners that there is a title suit, hence, the 145 Cr.P.C. proceeding be taken as a parallel proceeding and, for that reason, it should be set at naught seems to be misconceive and misplaced. This Court finds that the plaint giving rise to Title Suit No. 206/2014 was affidavited and verified only on 09.07.2014, meaning thereby that about two months after the order having been passed in Cr. Revision No. 03/2014, the title suit has been filed by the present petitioners. Further, the reliefs prayed in the title suit are noted hereunder to show that the plaintiffs – petitioners have filed the suit for declaration of their right, title and interest over the suit land. The relief no. (B) is for



confirmation of possession if the plaintiffs are dispossessed from the suit land. The reliefs, as per the plaint, are as follows:-

“(A) That let it be adjudicated and declare by the court that the plaintiffs have got the right, title, interest over the suit land and the defendant has got no manner of right, title interest or share over the suit land.

(B) That, if the plaintiffs are dispossessed from the suit land by the defendant then the possession of the plaintiff over the suit land be confirmed by the court.

(C) That the cost of the suit be awarded in favour of the plaintiff and against the defendants.

(D) That any other relief or reliefs to which the court thinks proper and fit under the facts and the evidence available on the record be awarded in favour of plaintiffs and against the defendant.”

13. This Court is of the opinion that the 145 Cr.P.C. proceeding cannot be allowed to be closed only because a plaint has been presented with some reliefs prayed for declaration of right, title and interest over the suit land. Apparently, the plaint has been presented almost two months after the order was passed by the revisional court and just before the filing of the present application under Section 482 Cr.P.C. which seems to have been filed on 25.07.2014 only. Thus, on the strength of a plaint which was not even in existence at the time of passing of the order under Section 145 Cr.P.C. and the revisional order, the impugned orders cannot be said to be perverse and / or without jurisdiction. It is not the case of the petitioners that the Civil Suit is for possession or for protection of



possession in which Civil Court has granted any order of injunction or ‘status quo’. The object of Section 145 Cr.P.C. is to maintain law & order and to prevent breach of peace by maintaining one or other of the parties in possession. The scope of enquiry under Section 145 Cr.P.C. is in respect of actual possession without reference to the merits or claim of any of the parties to a right to possess the subject of dispute. In the present case, much before filing of the Civil Suit, proceeding U/S 144 Cr.P.C. was initiated on the basis of a police report because there was a likelihood of breach of peace. The second party – petitioners are claiming possession over the disputed land by virtue of sale-deeds but the first party – opposite party no. 2 is disputing the same. In these circumstances initiation of the proceeding U/S 145 Cr.P.C. by the Executive Magistrate and continuance thereof cannot be held bad in law. In result, the application fails. It is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

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