

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

**Criminal Miscellaneous No.7595 of 2017**

Arising Out of P.S.Case No. -5 Year- 2016 Thana -BHOJPUR  
COMPLAINT CASE District- BHOJPUR

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Birendra Singh, son of Late Ramadhar Singh, Resident of Village-  
Chakwath, P.O.- Mahuawan, P.S.- Behiyan, District- Bhojpur.

.... .... Petitioner

Versus

1. The State of Bihar
2. The Sub Divisional Magistrate, Jagdishpur, District- Bhojpur.
3. The Circle Officer, Behiyan Block, Behiyan, District- Bhojpur.
4. Kalabati Devi, Wife of Kamla Singh, Resident of Village-  
Chakwath, P.O.- Mahuawan, P.S.- Behiyan, District- Bhojpur. At  
present Judge Bazar, Pipline, Behiyan, P.O.- Behiyan, P.S.-  
Behiyan, District- Bhojpur.

.... .... Opposite Parties

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**Appearance :**

For the Petitioner : Mr. Anil Kumar, Advocate  
For the Opposite Party No.4 : Mr. Surya Prakash, Advocate  
For the State : Mr. Ajay Kumar Jha, APP

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 27-07-2017**

The petitioner has filed this application under Section 482 of  
the Cr.P.C. for quashing the order dated 13.12.2016 passed by SDM,  
Jagdishpur, Bhojpur in Miscellaneous Case No.05 of 2016 whereby  
and whereunder the petitioner was directed to vacate the house in  
question.

2. Heard and perused the records.



3. It has been submitted that the learned SDM has no jurisdiction to record a find as regards right title or possession of any party in a proceeding initiated for maintaining breach of peace. In the case in hand, the Opposite Party No.4 filed a case on the file of SDM, Jagdishpur in which a report was called for. The learned Magistrate considering the report of the Circle Officer and SHO of Bihiya police station has observed that a land measuring two kathas was purchased by Opposite Party No.4 by virtue of registered sale deed dated 08.08.2003. The said land was the exclusive property of the Opposite Party No.4. The petitioner on the other hand asserts right, title and possession over the said land. According to petitioner, the said land was acquired out of the income of joint family and the house was constructed with the aid of joint fund. He was residing in the said house in the capacity of co-owner. The learned SDM, has thus, committed error in directing the petitioner to vacate the premises so the impugned order is fit to be quashed. The learned APP on the other hand opposed the submissions.

4. On perusal of impugned order as well as documents available on record, I find that the SDM, on the application of Opposite Party No.3 called for a report from the Circle Officer and SHO of concerned police station and after hearing the learned counsel for both the parties has recorded a finding as regards title and



possession of Opposite Party No.4. The SDM has exceeded his jurisdiction in recording finding as regards right and title of the parties. The finding recorded is not sustainable in the eyes of law. The SDM further considering the apprehension and breach of peace between the parties for land dispute has ordered both the parties to maintain peace and in the event of breach of peace, a proceeding under Section 107 of the Cr.P.C. was ordered to be initiated. With this observation, he sent the copy of the order to concerned police station. The order to main peace no doubt is within the jurisdiction of SDM.

5. In view of above facts and observation as regards jurisdiction of SDM, this criminal miscellaneous application is dismissed. The petitioner however is at liberty to get their title, right and interest adjudicated at proper forum as the finding of SDM as regards right and title is beyond his jurisdiction and not binding on the parties.

(Sanjay Kumar, J)

B.Kr./-

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