

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42999 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- VAISHALI(HAJIPUR)

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1. Nanhu Rai Late Bhaggu Rai R/O, Vill.-Mohanpur, P.S.-Raghopur, Dist.-Vaishali
 2. Gulab Rai Nakhu Rai R/O, Vill.-Mohanpur, P.S.-Raghopur, Dist.-Vaishali
 3. Kailu Rai Nakhu Rai R/O, Vill.-Mohanpur, P.S.-Raghopur, Dist.-Vaishali
 4. Laxman Rai Gulab Rai R/O, Vill.-Mohanpur, P.S.-Raghopur, Dist.-Vaishali

.... Petitioner/s

Versus

1. The State Of Bihar
2. Nakeshwar Rai Late Mithu Rai R/O, Vill.-Pakri Naya Tola, P.S.-Badupur At Present Vill.-Mohanpur, P.S.-Raghopur, Dist.-Vaishali
3. Shamsheer Rai Late Mithu Rai R/O, Vill.-Pakri Naya Tola, P.S.-Badupur At Present Vill.-Mohanpur, P.S.-Raghopur, Dist.-Vaishali
4. Vijay Mahto S.H.O. Raghopur P.S.-Hajipur

.... Opposite Party/s

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Appearance :

For the Petitioners : Mr. Rajeev Ranjan Sinha, Advocate
Mr. Rinki Kumari, Adv.
For the Opposite Parties : Mr. Alok Kumar Sinha, Sr. Advocate
Mr. Bhola Kumar,
Mr. Ashish Sinha,
Mr. Ujjawal Kumar Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 21-11-2017

Heard learned counsel for the petitioners, the State and learned counsel appearing for opposite party No. 2 .

This application has been filed for quashing the order dated 29-11-2011 passed by Sub Divisional Magistrate, Hajipur in Case No. M1337 of 2011 by which, on the basis of police report proceeding was initiated under Section 144 of the Cr.P.C. against both the parties as well as orders dated 24-01-2012 by which the proceeding was converted u/S 145 of the Cr.P.C..



3. It has been submitted that for the same piece of land civil litigation is pending between the parties. Second Appeal No. 281 of 1994 is still pending between the parties in which order dated 09-04-1997 has been passed directing both parties to maintain status quo. Counsel for petitioners has submitted that the aforesaid order of Hon'ble Court was brought to the notice of the learned Executive Magistrate in a proceeding u/S 145 of the Cr.P.C. by filing show cause but still the learned Magistrate has converted the proceeding u/S 144 of the Cr.P.C. into 145 of the Cr.P.C. vide order dated 24-01-2012 which is wholly illegal.

Counsel for opposite party No. 2 has appeared and admitted that civil litigation is pending between the parties. .Second Appeal No. 281 of 1994 is pending in this court between the parties for the same piece of land. He has further submitted that the court below will only decide the possession in the proceeding u/S 145 of the Cr.P.C.

The lower court record has been received in this case.

From the lower court record, it appears that initially, a proceeding u/S 144 of the Cr.P.C. was initiated by learned Executive Magistrate on the basis of a petition filed by the member of Ist party (opposite party No. 2) before the learned Magistrate by order dated 29-11-2011. Prior to that civil litigation was already pending between the parties in the civil court.

The petitioners have filed T.S. No. 43 of 1988 before the



Munssif-I, Hajipur, Vaishali in which, the opposite party No. 2 was defendant. The suit filed by the petitioner was dismissed. Thereafter, petitioner preferred Title Appeal No. 10 of 1991/30 of 1992 against the judgment and decree passed by the learned Munsif-I, Hajipur in Title Suit No. 43 of 1988. Title Appeal was allowed by judgment dated 12-05-1994. The appellate court also declared the possession of the petitioners over the disputed land by the aforesaid judgment. Thereafter, the opposite party No. 2 has filed Second Appeal in this Hon'ble Court vide Second Appeal No. 281 of 1994 which is still pending. In the aforesaid second appeal, this Hon'ble Court vide order dated 09-04-1997 directed both parties to maintain status quo till disposal of the appeal.

During pendency of the aforesaid civil litigation, including the Second Appeal No. 281 of 1994 which is still pending in this Hon'ble Court, the court below has converted the proceeding u/S 144 of the Cr.P.C. into proceeding u/S 145 of the Cr.P.C. vide order dated 24-01-2012. The petitioner being second party in the court below, has brought to the notice of the court about pending civil litigation between the parties in the show cause filed in proceeding u/S 144 of the Cr.P.C. but still the learned Magistrate has converted the proceeding u/S 144 Cr.P.C. into a proceeding u/S 145 of the Cr.P.C. by order dated 24-01-2012.

It is well settled that when civil litigation is pending between the parties in the civil court, in that situation, the



continuance of proceeding u/S 144 of the Cr.P.C. or 145 of the Cr. P. C. in the Executive Court will only amount to multiplicity of the proceeding. No fruitful purpose will be served by allowing such proceeding to continue when the civil suits are already pending between the parties for adjudication of the right, title and possession over the property.

In such circumstances, this court is of the view that the impugned order dated 29-11-2011 passed by Sub Divisional Magistrate, Hajipur in Case No. M1337 of 2011 u/S 144 Cr.P.C. as well as order dated 24-01-2012 by which the proceeding was converted into proceeding u/S 145 Cr.p.C. are not in accordance with law and the same are accordingly set aside.

This Cr. Misc. Application is **allowed**.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01-12-2017
Transmission Date	01-12-2017

