

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5026 of 2013

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

=====

Netlal Rai, Son of Siyalal Rai, Resident of Village- Chainpura, P.S. Pupari,
District- Sitamarhi.

.... Petitioner.

Versus

1. The State of Bihar.
2. Rajesh Kumar @ Prem Shanker Prasad, S/O Sri Saryug Prasad, R/O
Village- Jaitpur, P.S. Pupari, District – Sitamarhi.
- 3(a). Sanjay Rai
- 3(b). Manjay Rai.
4. Bhola Rai, Son of Siyalal Rai.
5. Ramjee Rai, Son of Ram Nandan Rai.
6. Jay Nandan Rai, Son of Saryug Rai.
All resident of Village- Chainpura, P.S. Pupari, District- Sitamarhi.
- 7(a). Jawahar Rai.
- 7(b). Umesh Rai.
- 7(c). Suresh Rai.

.... Opposite Parties.

=====

Appearance :

For the Petitioner	: M/s. Surendra Kishore Thakur and Sanjay Kumar, Advocates.
For the State	: Mr. Ashok Kumar, A.P.P.
For the Opposite Party Nos. 2 to 7(c)	: M/s. Mahendra Thakur and Vijay Kumar, Advocates.

=====

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 08-09-2017

This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 21.01.2013 passed in Criminal Revision No.191 of 2009 by the court of the Additional District and Sessions Judge-II, Sitamarhi, dismissing the aforesaid criminal revision of the petitioner, affirming the order dated 18.09.2009 passed by the Sub Divisional Magistrate, Pupari,



Sitamarhi, in Case No.416 of 1992, declaring the possession in respect to land in dispute over which the house is situated in favour of the first party/opposite party nos.2 to 7(c).

2. Heard learned counsel for the petitioner, learned A.P.P. for the State as also the learned counsel for the opposite party nos.2 to 7(c).

3. Learned counsel for the the member of the second party/revisionist/petitioner submits that, admittedly, over the land in dispute, the residential house is situated but the learned Sub Divisional Magistrate, Pupari, Sitamarhi, illegally declared the possession of the members of the first party/opposite party nos.2 to 7 over the same in a proceeding under Section 145 of the Code of Criminal Procedure vide order dated 18.09.2009 passed in Case No.416 of 1992, which is also affirmed by the Additional District and Sessions Judge-II, Sitamarhi, through the impugned order dated 21.01.2013 passed in Criminal Revision No.191 of 2009 illegally. Learned counsel for the petitioner further submits that in respect to the land over which his house is situated, proceeding under Section 145 of the Code of Criminal Procedure is bad in law and placed reliance on a decision in the case of **Dilip Poddar Vs. State of Bihar, Amod Kumar and ors. {2001(3) PLJR 471}**. Learned counsel for the petitioner also submits that Title Suit No.325 of 2013 filed by the



member of the second party/petitioner against the members of the first party/respondent nos.2 to 7 is also pending for the decision in the court of Sub Judge-I, Sitamarhi.

4. Admittedly, a proceeding under Section 107 of the Code of Criminal Procedure was initiated in respect to the land in dispute, i.e., Plot No.270, area 6.5 decimals of Khata No.905 of village-Jhajhihat, Anchal, Circle-Pupari, District-Sitamarhi, over which the house was situated before the court of the Sub Divisional Magistrate, Pupari, Sitamarhi. The proceeding under Section 107 of the Code of Criminal Procedure was converted under Section 145 of the Code of Criminal Procedure, numbered as Case No.416 of 1992, due to bonafide land in dispute in which the members of the first party/opposite party nos.2 to 7 filed their written statement claiming the said land over which the house was situated on the basis of the Bharna executed by Jagdish Sah, one of the sons of Bholu Sah, who, later on, handed over the possession of the same to the members of the first party/opposite party nos.2 to 7 and executed the sale deed on 09.12.1991 in respect of the same in their favour and since then, the house is in their possession. The member of the second party/revisionist/petitioner also filed his written statement with the contention that the land in question over which the house is situated was in the share of Most. Kusum Kumari Devi, the sister of Jagdish



Sah, who executed the sale deed in respect of the same vide sale deed dated 01.08.1992 in his favour and since then, he is coming in possession.

On perusal of the evidence and the materials, available on the record, the Sub Divisional Judicial Magistrate, Pupari, Sitamarhi, arrived at the conclusion that over the land in dispute, the house is situated and declared the possession of the second party/opposite party nos.2 to 7 vide order dated 18.09.2009 passed in Case No.416 of 1992.

5. The member of the first party/petitioner assailed the aforesaid order by filing Criminal Revision No.191 of 2009, which was dismissed by the Additional District and Sessions Judge-II, Sitamarhi, through the impugned order dated 21.01.2013, affirming the order dated 18.09.2009 passed by the Sub Divisional Magistrate, Pupari, Sitamarhi, in Case No.416 of 1992.

6. It is not in dispute that over the land in dispute, the residential house is situated. In the case of of **Dilip Poddar Vs. State of Bihar, Amod Kumar and ors. {2001(3) PLJR 471}**, a Bench of this Court considered the similar matter and held in paragraphs-4 and 5 as under:

“4.After hearing learned counsel of both the parties and on consideration of all materials it could be found that practically the



fight is in between the parties regarding right of possession and the right to title over the property in question which definitely cannot be decided by a criminal court. The property in question is residential house and it is beyond the power of the Executive Magistrate to decide the possession or otherwise. In that view of the matter, while passing the order of withdrawal of attachment order, the learned Executive Magistrate ought to have passed order dropping the proceeding as contemplated under Section 145 Cr.P.C. directing the parties to seek their grievances before the appropriate court.

5. Considering all aspects of the matter, in my considered view, the proceeding under Section 145 Cr.P.C. over a residential house was misconceived one on the face of it and the same ought to have been brought by the learned Magistrate while withdrawing the order passed under section 146(1) Cr.P.C. Be that as it may, without going into such details I hold that it was a fit case where whole of the proceeding under Section 145 Cr.P.C. ought to have been dropped and it is accordingly dropped. However, any observation made by the Executive Magistrate in respect of possession over the house in question of the parties shall not be binding on any of the parties in any other forum while seeking redressal by the aggrieved party.”

7. Admittedly, over the land in dispute, the house is situated, as such, the right and title in respect to the land in dispute



could only be decided by the competent civil court and the proceeding under Section 145 of the Code of Criminal Procedure, is beyond the power of Executive Magistrate.

8. Accordingly, this application is allowed and the impugned order dated 21.01.2013 passed in Criminal Revision No.191 of 2009 by the court of the Additional District and Sessions Judge-II, Sitamarhi, dismissing the aforesaid criminal revision of the petitioner, affirming the order dated 18.09.2009 passed by the Sub Divisional Magistrate, Pupari, Sitamarhi, in Case No.416 of 1992, and the order dated 18.09.2009 passed in Case No.416 of 1992 by the Sub Divisional Magistrate, Pupari, Sitamarhi, declaring the possession in respect to the house situated over the land in dispute in favour of the first party/opposite party nos.2 to 7(c), are hereby quashed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.09.2017.
Transmission Date	14.09.2017.

