

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.234 of 2015

Arising Out of PS. Case No.- Year- Thana- District- West Champaran

- =====
1. Madan Mohan Mishra son of Late Bal Kanhai Mishra
 2. Ramesh Kumar Mishra son of Madan Mohan Mishra, Both are residents of village- Gaura, P.S.- Sanichari, District- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
 2. Umakant Mishra son of late Raghunandan Mishra
 3. Lal Babu Mishra son of late Bishwanath Mishra
 4. Manager Mishra son of late Bishwanath Mishra
 5. Suresh Mishra son of late Bishwanath Mishra
 6. Balister Mishra son of late Bishwanath Mishra
- 2 to 6 are residents of village- Gaura, P.S.- Sanichari, District- West Champaran

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Bashishtha Narayan Mishra
		Mr. Brij Kishor Mishra
For the Respondent/s	:	Mr. Shyam Kumar Singh(APP)
For Private Respondents	:	Mr. Bimlesh Kumar Pandey

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 27-07-2017

Heard learned Counsel for the petitioners, learned Counsel appearing on behalf of the private respondents and learned Additional Public Prosecutor representing the State of Bihar.

2. The petitioner is aggrieved by an order, dated 29.01.2015, passed by learned Additional Sessions Judge II,



West Champaran, at Bettiah, in Criminal Revision No. 264 of 2013, whereby he has set aside the order, dated 13.11.2013, passed by learned Sub Divisional Magistrate, Bettiah Sadar, in Case No. 2409M/12. By the impugned order, learned Court below has directed for dropping the entire proceeding going on under Section 145 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') between the parties.

3. The said order, dated 29.01.2015, is being assailed on the ground that learned Additional Sessions Judge II, West Champaran, at Bettiah, has entertained an application against an interlocutory order, which is not permissible in view of specific provision, under Section 397(2) of the Code.

4. This is not in dispute that the Magistrate had made an order, under Section 145 (1) of the Code on 23.01.2013, by converting a proceeding pending before him under Section 144 of the Code. On 08.02.2013, an application, under Section 146 of the Code, to attach the land in dispute and to appoint a receiver was filed by the petitioner. The Sub Divisional Magistrate passed an order, under Section 146 (1) of the Code, on 13.11.2013, which was assailed, under Section 397 of the Code, giving rise to Criminal Revision No. 264 of 2013, which came to be allowed by the impugned order, dated



29.01.2015.

5. Learned Counsel appearing on behalf of the petitioner has reiterated his submission that there being bar under Section 397 (2) of the Code, the learned Court below ought not to have entertained revision application against an order, which was interlocutory in nature. He has also submitted that in the facts and circumstances of the case, the learned Court below ought not to have dropped the entire proceeding, under Section 145 of the Code, pending before the Magistrate, on the logic that a suit with respect to the same matter was pending as on the date of passing of the order, under Section 146 (1) of the Code.

6. Learned Counsel appearing on behalf of the private respondents, on the other hand, has relied to decisions of this Court, in the cases of **Ram Bihari Rai v. The State of Bihar and Others**, reported in **2013 (4) PLJR 49** and **Pramod Shankar Prasad Verma v. The State of Bihar and Another**, reported in **2007 (2) PLJR 110**, in order to contend that since the suit was pending, it was beyond the jurisdiction of the Magistrate to have proceeded under Section 146 of the Code and, therefore, entire proceeding before the Magistrate, being irregular, has been held to be so, by the learned Additional



Sessions Judge II, West Champaran, at Bettiah, by the impugned order.

7. I am satisfied with the submissions made on behalf of the petitioner that the learned Court below ought not to have entertained criminal revision application filed against an order, which is, admittedly, an interlocutory order.

8. On the basis of the judgments, relied on by learned Counsel for the private respondents, it cannot be said that the proceeding pending before the Sub Divisional Magistrate, under Section 145 of the Code, itself was completely irregular. The proceeding was initiated under Section 144 of the Code on 05.11.2012. The said proceeding was thereafter converted into a proceeding under Section 145 of the Code on 23.01.2013. The application, under Section 146(1) of the Code was made on 08.02.2013. The private respondents, it appears, thereafter filed a suit, four months thereafter on 20.06.2013. Only because the private respondents filed a suit on 20.06.2013, subsequent to filing of application under Section 146 of the Code, the entire proceeding initiated under Section 145 of the Code cannot be said to be irregular.

9. In my view, the learned Court below has taken an erroneous view. The impugned order requires interference.



10. Accordingly, this application is allowed and the impugned order, dated 29.01.2015, passed by learned Additional Sessions Judge II, West Champaran, at Bettiah, in Criminal Revision No. 264 of 2013, is set aside.

11. Before parting with the present judgment and order, I direct the Sub Divisional Magistrate, Bettiah Sadar, to consider the application under the provisions of Section 146 (1) of the Code and pass appropriate order, if he is satisfied that there is no longer any likelihood of breach of breach with regard to the subject of the dispute.

12. Needless to say that any order passed in exercise of power under Section 146 of the Code is subject to any order to be passed by a civil court of competent jurisdiction, which is evident on reading of the said provision.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28-07-2017
Transmission Date	28-07-2017

