

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40688 of 2014

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Gonaur Rai Son of Late Methur Rai Resident of Village & P.O.
Sondhoratti, P.S. Goraul, District Vaishali. Petitioner

Versus

1. The State of Bihar
 2. Chandradeep Rai Son of Late Ram Sundra Rai Resident of Village &
P.O. Sondhopatti, P.S. Garaoul District- Vaishali..... Opposite Party
- =====

Appearance :

For the Petitioner : Mr. Ratan Kumar Sinha
Mr. Rajeev Ranjan
For the State : Mr. J. Upadhyay (APP)
For O.P. No. 2 : Mr. Ajay Kumar Jain
Mr. Sunil Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

7 29-11-2017 Heard learned Counsel for the petitioner as well as the
learned Counsel for the State.

Learned Counsel for Opposite party No. 2 is only insisting
for adjournment for filing counter affidavit though sufficient time was
granted to file the counter affidavit but failed to avail the opportunity.

This application is filed for quashing the order dated
14.7.2014 passed in Cr. Revision No. 67 of 2014 by the learned
Sessions Judge, Vaishali, whereby the order dated 26.12.2013 passed
by the Sub Divisional Magistrate, Mahua was not interfered with for
the reason that the application is interlocutory in nature.

The brief fact giving rise to the case is that a miscellaneous
proceeding under Section 145 Cr.P.C. vide Case No. 804 of 2012 was
initiated between both sides; the first party being O.P. No. 2 and the
second party was the present petitioner and on the report of the police
order of attachment of the land in question was passed and SHO
Goraul was appointed receiver of the land in question.



Learned Counsel for the petitioner submits that repeated proceedings under Section 145 Cr.P.C. are being initiated on the land in question. Earlier in the year 1998 a proceeding under Section 145 Cr.P.C. was initiated by Sri Ramanand Rai, uncle of Chandradeep Rai the O.P. No. 2, on the same piece of land having same area of 6 Katha 4 Dhurs and by order dated 21.9.1998 passed in Misc. Case No. 82 of 1998 possession of the land in question was found with Ganauri Rai, the present petitioner. So initiating a fresh proceeding under Section 145 Cr.P.C. between same parties with respect to same land is against the law. It is settled principle of law that repeated proceeding under Section 145 Cr.P.C. cannot be initiated. It is also submitted that on the basis of declaration of possession of land in question in earlier proceeding under Section 145 Cr.P.C. the DCLR has also mutated the name of the petitioner against the land in question by recording his name in Register II of year 2011 and against the mutation order the other side preferred appeal before the Divisional Commissioner, which was also dismissed by order dated 2.9.2014.

Learned Counsel appearing on behalf of O.P. No. 2 submits that to avoid apprehension of breach of peace the impugned order has been passed and there is no illegality in the same.

Having heard both sides it becomes apparent that earlier for the same piece of land a proceeding under Section 145 Cr.P.C. was initiated way back in the year 1998 and the possession of the land in question was found in favour of the petitioner at that point of time thereafter the land was mutated in his name against which the appeal



preferred by other side was dismissed. So instead of filing civil suit for declaration of title of the land in question repeated proceeding under Section 145 Cr.P.C. is not permissible within same party with respect to same land. Therefore attachment of the land in question, as the possession was found in favour of the petitioner in an earlier proceeding is contrary to law. In the case of Ramyash Singh vs. State of Bihar reported in 2002(2) PLJR 248 it is held that repeated proceeding under Section 145 Cr.P.C. within same parties over the same land is not called for once possession of a party has been declared by a Magistrate and such declaration has attained finality, if the party who has lost again disputes the possession of the successful party then administration must take preventive action under Section 144 or under Section 107 of Cr.P.C. against law breakers..

So entire proceedings under Section 145 Cr.P.C. initiated vide Misc. Case No. 804 of 2012/625 of 2013 inclusive of the impugned order dated 26.12.2013 is hereby set aside.

The application stands allowed. Consequence of the order will follow.

(Arun Kumar, J.)

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