

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.841 of 2014

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

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1. Ratichandra Mandal, Son of Late Dhuri Mandal, Resident of Village - Durmatta,
P.S. - Harpur, Distt. - Munger

.... Petitioner

Versus

1. The State of Bihar
2. Raj Kumar Mandal @ Bhikho Mandal, Son of Desho Mandal, Resident of
Village - Durmatta, P.S. - Harpur, Distt. - Munger.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jyoti Ranjan Jha

For the Respondent/s : Mr. Manish Kumar

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 15-03-2017

Heard learned Counsel for the parties concerned.

2. By the order, which is impugned in the present criminal revision application, learned Additional Sessions Judge I, Munger, has held that in exercise of power under Section 147 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), the Sub Divisional Magistrate/Executive Magistrate, Tarapur, Munger, did not have power to decide dispute over right of easement, which can only be decided by a civil court. This is precisely the question involved in the present application raised by the petitioner, in whose favour, the Sub Divisional Magistrate, Tarapur, Munger, had earlier passed an order upholding his right of easement over the disputed land.



3. The facts of the case, briefly said, are thus:

(i) The petitioner had filed an application under Section 107 of the Code in the Court of learned Sub Divisional Magistrate, Tarapur, Munger, for restraining Opposite Party No. 2 from taking any unlawful step in respect of obstruction created by him in connection with the disputed land described as khata no. 125, khesra no. 397, area 4 decimals, which, accordingly to the petitioner, was being used as the only way for his ingress and egress from his house to the main road for a fairly long time and was used as such even by his ancestors.

(ii) On 02.12.2005, the petitioner filed an application before the learned Executive Magistrate, Tarapur, Munger, for converting the said case under Section 107 of the Code to a proceeding under Section 147 of the Code. The Sub Divisional Magistrate, Tarapur, Munger, by an order, dated 16.06.2009, allowed the petition filed by the petitioner under Section 147 of the Code and thereby prohibited the Opposite Party No. 2 from creating any obstruction against the petitioner's right of his user and asked him to abstain from raising any structure on the said land. From the said order, dated 16.06.2009, which has been brought on record by way of Annexure-2 to the present application, it appears that both the parties were heard, who had adduced evidence before the



Court of Sub Divisional Magistrate, Tarapur, Munger, both oral and documentary. The Opposite Party No. 2 took specific stand that he held title and possession over the disputed land and the petitioner did not have any right of easement over the said land.

(iii) It also transpires from the said order that the Sub Divisional Magistrate, Tarapur, Munger, had sought for a report from the Police. In their enquiry report, the Police had mentioned existence of a path over the land in question, which was being attempted to be stopped by raising a wall. The Police had reported apprehension of breach of peace because of the obstruction being raised by the Opposite Party No. 2. In a subsequent report, the Police reported that the said land was being used as path by the petitioner. In its third report also, while requesting initiation of a proceeding under Section 147 of the Code, the Police reported that the disputed land was being used as path.

(iv) On the basis of oral and documentary evidence adduced in the proceeding under Section 147 of the Code, the Sub Divisional Magistrate, Tarapur, Munger, concluded that the disputed land was being used as path by the petitioner and the same had been in use for the said purpose by the petitioner, two months next before initiation of proceedings. After having held thus, the Sub Divisional



Magistrate, Tarapur, Munger, passed the said order, dated 16.06.2009, restraining the Opposite Party No. 2 from causing any obstruction over the disputed land and from making any construction over it.

(v) The Opposite Party No. 2 preferred criminal revision application against the said order, dated 16.06.2009, on the plea that the Court of Sub Divisional Magistrate, Tarapur, Munger, wrongly relied on the Records of Right, which was prepared nearly 100 years ago. He took a plea that character of the land had changed and in that background, learned Sub Divisional Magistrate, Tarapur, Munger, ought to have inspected the spot himself. He raised a plea before the Revisional Court below that the disputed land was subsequently purchased by him, whereafter the land had been in his possession for his exclusive use. The said Criminal Revision No. 232 of 2009, preferred by the Opposite Party No. 2, has been allowed by the impugned order, dated 27.06.2014, holding that the question of right of easement could not have been decided by the Court of Sub Divisional Magistrate, in exercise of power under Section 147 of the Code.

4. Learned Counsel appearing on behalf of the petitioner has submitted that the Revisional Court below has completely missed the provisions of Section 147 of the Code,



which confers upon an Executive Magistrate power to make an order prohibiting any interference with the exercise of right of user of any land, where such right is to be claimed as an easement or otherwise. He has placed reliance on a Division Bench of this Court, in the case of **Chaturgun Turha and Others v. Jamadar Mian (AIR 1961 Pat 374)**, in support of his contention. He has also placed reliance on another decision of this Court, in the case of **Gulam Farid Mian and Another v. Ahmad Bhatihara**, reported in **(1978) BBCJ 196**, to submit that the right of user has to be proved to be existing within three months next before initiation of proceeding under Section 147 of the Code and not from the date of making of the order. He has drawn my attention to the finding recorded by learned Sub Divisional Magistrate, Tarapur, Munger, wherein he has concluded that the right of easement was being exercised by the petitioner, at least, within two months from the date of initiation of the proceeding.

5. Considering the question involved in the present case, it would be apt to take note of the provisions under Section 147 of the Code, which read thus:-

"147. Dispute concerning right of use of land or water.

(1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information,



that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.

Explanation.- The expression "land or water" has the meaning given to it in sub- section (2) of section 145.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order



shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub- section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such a seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub- section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1); and when in any proceedings commenced under sub-section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 145."

6. Upon close scrutiny of Section 147 of the Code, it is easily discernible that if an Executive Magistrate is satisfied from the report of a Police Officer or upon other



information that a dispute exists which is likely to cause breach of peace regarding any alleged right of user including the right of "easement", he can ask the parties concerned to such dispute to attend his Court and to put in written statements, on their respective claims. The mandatory requirement of initiation of a proceeding under Section 147 of the Code is of satisfaction of the Executive Magistrate of existence of a dispute likely to cause breach of peace with respect to the right of user of land within his local limits and of such satisfaction being recorded in writing.

7. Sub-Section (2) of Section 147 of the Code commands the Magistrate to peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence and if possible, decide whether "such right" exists. There should not be any doubt over the expression "such right", which is apparently referable as "right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise", as occurring in sub-Section (1) of Section 147 of the Code.

8. Sub-Section (3) of Section 147 of the Code empowers the Executive Magistrates to make an order, prohibiting any interference with the exercise of such right if it appears to the Magistrate that "such right" exists.



9. At the risk of repetition, I must point out that the expression "such right(s)", occurring in sub-Sections (2) and (3) of Section 147 of the Code essentially refer to "right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise.

10. This leaves no scope of doubt that an Executive Magistrate, acting under Section 147 of the Code, will be well within his jurisdiction to decide whether right of a person claimed as an easement exists or not. Making of an order, under sub-Section (3) of Section 147 of the Code will depend on the decision of the Magistrate on the question of right of user under sub-Section (2) of Section 147 of the Code.

11. It is true that exercise of power under Section 147 of the Code is subject to the proviso. In the present case, there being finding that the right of user existed as on the date of commencement of proceeding, the proviso to Section 147 of the code does not come in way of the petitioner's case.

12. Learned Counsel for the petitioner has rightly relied on the Division Bench decision of this Court, in the case of **Chaturgun Turha** (supra), to buttress his contention that the Executive Magistrate has jurisdiction to decide dispute over right of easement for the purpose of making any restraint order under Section 147 of the Code.



13. It has to be kept in mind, however, that the purpose of conferring such power and jurisdiction upon Executive Magistrates, under Section 147 of the Code and other similar provisions, is only to prevent breach of peace and in a situation where he is satisfied that wrongful act of a person is likely to cause prejudice of peace, he may direct that person to desist from doing such act. Such orders are, undoubtedly, temporary in nature till the rights of the parties are finally adjudicated upon by a competent court. The provisions are essentially not intended to confer any power on the Magistrates to decide disputes relating to respective rights of the parties.

14. The reason assigned in the impugned order by the learned Court below for setting aside the order passed by the Sub Divisional Magistrate, Tarapur, Munger, to the effect that the Sub Divisional Magistrate did not have jurisdiction to decide the dispute of easementary rights in a proceeding under Section 147 of the Code, is unsustainable. The said jurisdiction is there under Section 147 of the Code, as discussed above, but for the limited purpose of making order under sub-Section (3) of Section 147 of the Code.

15. Though, such rights of the parties are yet to be finally decided by the competent court, for the purpose of making an order under sub-Section (3) of Section 147 of the



Code, the Executive Magistrate has the jurisdiction to decide the dispute over right of easement, to prevent breach of peace.

16. Any finding or order passed under Section 147 of the Code is certainly subject to the final decision by the competent court on the dispute between the parties.

17. The impugned order, dated 27.06.2014, passed in Criminal Revision No. 232 of 2009, is accordingly set aside. The matter is remanded back to the Revisional Court below for the purpose of making an order afresh in accordance with law.

18. This application is allowed with the observation and direction, as above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N.A.
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