

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4317 of 2016

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

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1. KUMUD SINGH @ KUMUD RANJAN, son of Krishnandan Prasad Prabhakar, (Brijnandan Singh wrongly stated), resident of Saichak, Magadh Colony, Police Station- Beur, District- Patna.
 2. Malti Kumari, wife of Krishnandan Prasad Prabhakar, resident of Saichak, Magadh Colony, Police Station- Beur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar,
2. Neelam Devi, wife of Mithilesh Kumar, resident of Beur, Mitramandal Magadh Colony, Saichak, Police Station- Beur, District- Patna.
3. Keshav Prasad Singh, Indian Attalika Cooperative Housing Construction Committee Limited, New Road, Buddha Colony, Police Station- Buddha Colony, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Advocate
For the Opposite Party/s : Mrs. Veena Rani Prasad, APP
Mr. Rabindra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 16.11.2015 passed by the Sub-Divisional Magistrate, Sadar, Patna, in a proceeding under Section 144 Cr. P. C. with reference to Case No.1482-M of 2015.

2. It has been submitted on behalf of the petitioners that the learned Sub-Divisional Judicial Magistrate, Sadar, Patna, has passed the impugned order on the basis of judgment delivered in Title Suit No.21 of 2008 in which the petitioners were not even the



parties. It has further been submitted that any judgment passed by the Civil Court is not executable by the Sub-Divisional Magistrate in a proceeding under Section 144 Cr. P. C.

3. Heard learned counsel for the Petitioner and the State as well as counsel for the Opposite Party No2.

4. Learned APP has submitted that the order has been passed relying on the judgment passed in Title Suit No.21 of 2008.

5. It is admitted position that with respect to property in dispute for which proceeding under Section 144 Cr. P. C. was initiated both the parties have appeared and filed show cause. They have also filed documents.

6. The learned Magistrate has mentioned in the impugned order that on the basis of the judgment in Title Suit No.21 of 2008, claim of members of the first party with respect to suit property is correct and, accordingly, dropped the proceeding.

7. It is relevant to mention that the learned Magistrate is not entitled to decide any title or possession of any party in a proceeding under Section 144 Cr. P. C. Section 144 Cr. P.C. gives power to issue order in immediate and urgent cases of nuisance or apprehended danger. Section 144(2) Cr. P.C. lays down specifically “that an order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due



time of a notice upon the person against whom the order is directed, be passed *ex parte*.” But, in the instant case, from the impugned order itself, it appears that both the parties have appeared and adduced their evidence and also filed the documents.

8. In view of such, this Court is of the view that the learned Sub-Divisional Magistrate, Sadar, Patna, has committed illegality in declaring the claim of member of the first party and holding that the claim of the member of first party on the disputed land appears to be correct. Such observation, in view of this Court, is beyond jurisdiction and illegal.

9. Therefore, order dated 16.11.2015 passed by the Sub-Divisional Magistrate, Patna, in a proceeding under Section 144 Cr. P. C. with reference to Case No.1482-M of 2015, is hereby set aside.

10. This application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18-05-2017
Transmission Date	18-05-2017

