

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18677 of 2014

Arising out of P.S. Case No.596 Year 2012 Thana VAISALI COMPLAINT CASE District
VAISHALI (HAJIPUR)

- =====
1. Ram Showarath Mandal Son of Sarjug Mandal
 2. Chandeshwar Mandal Son of Sarjug Mandal
 3. Raj Kishore Mandal Son of Ram Showarath Mandal
 4. Arjun Mandal Son of Ram Showarath Mandal
 5. Ram Sujjan Mandal Son of Ram Showarath Mandal
 6. Ram Chandar Mandal Son of Ram Showarath Mandal
 7. Laxman Mandal Son of Ram Showarath Mandal
- All residents of Village Azizpur Chande, P.S. Patepur, District-Vaishali
..... Petitioners
- Versus
1. The State of Bihar
 2. Ram Police Mandal Son of Sonelal Mandal R/o Village-Azizpur Chande, P.S.
Patepur, District-Vaishali
- Opposite Parties
- =====

Appearance :

For the Petitioners : Mr. Surendra Kumar Singh, Advocate
For the State : Mr. Sanjay Kumar Singh, APP
For O.P. No.2 : Mr. Chandra Mauli Chaurasia, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 19-01-2018

Heard learned counsel for the petitioners, learned APP for the State as well as learned counsel appearing on behalf of opposite party no.2.

2. The petitioners seek quashing of the order dated 14.05.2013, passed by Sub-Divisional Magistrate, Mahua in Case No.596 of 2012 in a proceeding under Section 145 Cr.P.C. and passed the order under Section 146(1) and 146(2) Cr.P.C. and appointed the S.H.O., Patepur Receiver of the land in question.

3. Learned counsel for the petitioners submits that both sides are co-sharers and a proceeding under Section 144 Cr.P.C. was



initiated in the year 2012 later on converted into proceeding under Section 145 Cr.P.C. for deciding the factum of possession but Partition Suit No.297 of 2012, filed by father of opposite party no.2 is still sub-judice in the court of Sub-Judge,V, Vaishali, and after appearing in the said case has filed W.S., so already the civil court of competent jurisdiction is examining the title and possession of the parties and it is settled proposition of law that in such situation proceeding under Section 145 Cr.P.C., a parallel proceeding in the matter, should not be allowed to proceed. In support of his contention, counsel for the petitioners places reliance to the decision of Amresh Tiwari v. Lalta Prasad Dubey & Anr., reported in AIR 2000 SC 1504.

4. Contrary to that the learned counsel appearing on behalf of opposite party no.2 though admitting the pendency of the partition suit involving the same subject matter as in the present proceeding under Section 145 Cr.P.C. submits that in order to avoid the apprehension of breach of peace the proceeding is necessary. He places reliance to the decisions of Sheo Mangal Choudhary & Anr. v. The State of Bihar & Ors., reported in 1991 (2) PLJR 340, Gaya Singh & Ors. v. Doman Singh, reported in 1979 BLJ 348 (F.B.), Baijnath Choubey & Ors. v. Dr. Ram Ekbal Choubey & Ors., reported in 1981 BLJ 470, Mathuralal v. Bhanwarlal & Anr., reported in AIR 1980 SC 242, Deo Kuer & Anr. v. Sheo Prasad Singh & Ors.,



reported in AIR 1966 SC 359, Gaya Singh & Ors. v. Doman Singh, reported in AIR 1979 Pat 246 and Sadharam Bansal v. Pulin Behari Sarkar & Ors., reported in AIR 1984 SC 1471.

5. Having considered the rival submissions and on perusal of the records, the Court finds that it is an admitted position that the subject matter of the dispute of the property regarding possession in a proceeding under Section 145 Cr.P.C. is already sub-judice before the competent court of the civil jurisdiction. The proceeding under Section 145 Cr.P.C. has not been concluded and no final order has been passed till date however it is a settled proposition of law that in such situation when already title and possession of the land in question is being examined by the competent court of civil jurisdiction, a parallel proceeding under Section 145 Cr.P.C. cannot be allowed to proceed for the reason that civil court has the jurisdiction to decide possession and title and its decision is overriding over any order regarding possession passed by a court of Executive Magistrate. Moreover the aggrieved party may approach the civil court seeking injunction in the matter or for appointment of receiver, so the impugned order dated 14.05.2013, passed by Sub-Divisional Magistrate, Mahua in Case No.596 of 2012 is set aside with liberty to the parties, as observed, may approach to the civil court seeking injunction or for appointment of receiver where the partition



suit is pending.

6. With the aforesaid observations, the application stands
allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.02.2018
Transmission Date	17.02.2018

