

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.54 of 2016

Arising Out of PS. Case No.- Year- Thana- District- Lakhisarai

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Krishnadeo Singh Son of late Chhattardhari Singh Resident of Village- Kasar,
Po+P.s -Kadar, District Sheikhpura,

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kamal Kishore Singh son of Late Mathur Singh
3. Diwakar Singh Son of Kamal Kishore Singh
4. Prabhakar Sharma son of Kamal Kishore Singh
5. Dipak Kumar son of Kamal Kishore Singh All Resident of Village-
Nandnama, P.s Ramgarh, Chowk, District Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar

For the Respondent/s : Mr. NITYA NAND TIWARY (APP)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 23-03-2018 A supplementary affidavit has been filed on

behalf of the petitioner.

Let it be taken on record.

The petitioner has challenged the order dated

21.09.2015 passed by the learned District and

Sessions Judge, Lakhisarai in Criminal Revision No.

58 of 2015 whereby the order passed by the learned

S.D.M., Lakhisarai in Case No. 132M of 2015,

converting a proceeding into one under Section 145



Cr.P.C. has been set aside.

The records reveal that a title suit and a probate case was pending between the parties over the same set of land on which there is an apprehension of dispute, dispossession and breach of peace. Learned counsel for the petitioner has submitted that the probate case has already been dismissed. Be that as it may, the Title suit is pending.

By supplementary affidavit, the learned counsel for the petitioner has brought the plaint of the Title Suit referred to above, on record. The title suit has been filed by the wife of the petitioner seeking annulment of the gift deed whereby the land had been gifted to the opposite parties, who are her cousins.

The revisional court, taking into account that there was no necessity for any parallel proceeding to be initiated, set aside the order of the learned



Magistrate, converting a proceeding into one under Section 145 Cr.P.C.

It needs no adumbration that the Chapter X of the Code of Criminal Procedure, 1973 deals with Public Order and Tranquility and the provisions of Sections 144, 145 and 146 are meant for emergency situation with respect to breach of peace over a property. If a civil litigation is pending for the property wherein the question of possession could be involved and could be adjudicated, there would be no justification for proceeding under Section 145 Cr.P.C. True it is that not every pending civil suit would preclude the application of Section 145 Cr.P.C. but in a suit where a party could obtain necessary orders in the form of injunction or appointment of receiver over the disputed property, there would be no justification for continuing with the proceeding under Section 145 Cr.P.C.



Learned counsel for the petitioner has further submitted that despite there being a delay in opposite parties approaching the revisional court, the order was passed without condoning the delay. He has submitted that in such an event the revisional order was without jurisdiction.

The period of limitation has been provided for each litigation and the purpose is only to avoid a party to approach the court at a later point of time which would only put the other side into disadvantageous position because of the passage of time. Nonetheless, it is only a rule of procedure and cannot be permitted to defeat the process of substantive justice.

The condonation petition ought to have been dealt with by the revisional court firsts and then only the order should have been passed; but in the present case it would not be necessary to go into the



aforesaid issue for questioning the correctness of the revisional order.

Considering the fact that a Title Suit is pending and that also by non else but the wife of the petitioner, this Court is not inclined to interfere with the revisional order.

The petition is dismissed.

(Ashutosh Kumar, J)

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