

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.32611 of 2015**

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

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1. Bulbul Devi wife of Mahendra Pratap Chaudhary  
2. Sudhan Sangahi, son of Chalitar Sangahi  
3. Nilesh Kumar @ Pintu  
4. Chandan Kumar, both sons of Late Banarsi Sangahi, All resident of village- Naya Gaon(Siromani Tola), P.S. Parbatta, District- Khagaria

.... .... Petitioner/s

Versus

1. The State of Bihar  
2. Circle Officer, Parbatta, District- Khagaria  
3. Officer-in-Charge, Parbatta Police Station, District- Khagaria  
4. Binod Kumar Singh, son of Late Brahamdeo Singh  
5. Deonandan Singh, son of Late Upendra Singh  
6. Deepak Kumar Singh, son of Sheo Nandan Singh All resident of village- Naya Gaon(Tinkhunti), P.S. Parbatta, District- Khagaria

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Dronacharya, Adv.  
Mr. Gyanendra Kumar Singh, Adv.  
For the State : Mr. Obaidullah, A.C. to SC-10  
For Opposite Party Nos. 4 to 6 : Mr. Ravi Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 18-01-2018**

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioners for quashing the order dated 28.05.2015 passed by the learned Sub-Divisional Magistrate, Gogri (Khagaria) in Case No. 549 of 2015 by which he has initiated a proceeding under Section 145 of the Cr.P.C. and also attached the land under the proceeding under Section 146(1) of the Cr.P.C. and appointed Anchal Adhikari,



Parbatta as receiver to cut the crops with the help of Officer-in-Charge, Parbatta Police Station to sell it and deposit the sale proceeds in Nazarat of Anchal Parbatta so that after decision over the entitlement, the same may be returned to the rightful claimant.

2. The question for determination before this Court in the present case is relating to validity or otherwise of preliminary order passed by the Sub-Divisional Magistrate under Section 145 of the Cr.P.C. and sustainability of the order of attachment passed under Section 146(1) of the Cr.P.C.

3. The lands under proceeding as per the order dated 28.05.2015 are as under :-

| Mauza | Thana no.       | Tauzi No. | Khata No. | Khesra No. | Area                |
|-------|-----------------|-----------|-----------|------------|---------------------|
|       |                 |           |           |            | Bigha- Katha - Dhur |
| Jagua | <u>365</u><br>2 | 525       | 15        | 135        | 01 – 16 - 16        |
|       |                 |           | 115       | 136        | 01 – 07 - 14        |
|       |                 |           | 106       | 55         | 01 – 19 - 03        |
|       |                 |           | 109       | 56         | 00 – 16 - 05        |
|       |                 |           | 103       | 117        | 01 – 00 - 03        |
|       |                 |           | 127       | 139        | 01 – 17 - 12        |

4. The opposite party nos. 4 to 6 filed Gogri (Khagaria) Case No. 549 of 2015 in which the Anchal Adhikari and the Officer-in-Charge, Parbatta submitted a joint report on 27.05.2015 and, thereafter, the opposite party nos. 4 to 6 filed a petition on the same day that there is a serious apprehension of breach of peace at the hands of the petitioners, who are adamant to forcibly dispossess the



opposite parties from their exclusive land. The opposite parties no. 4 to 6, thus, prayed for initiation of a proceeding under Section 145 of the Cr.P.C. and for attachment of the disputed land and its crops under Section 146(1) of the Cr.P.C.

5. After perusal of the joint report submitted by the Anchal Adhikari and the Officer-in-Charge, Parbatta to the effect that there is apprehension of breach of peace, the impugned order dated 28.05.2015 has been passed.

6. At this stage, it would be relevant to note that earlier a proceeding under Section 144 of the Cr.P.C. was initiated between the same parties for lands of village Jagua over plot nos. 136, 117 and 66 and notices were issued to the parties, who appeared before the Sub-Divisional Magistrate, Gogri and the Sub-Divisional Magistrate, Gogri, vide order dated 07.05.2015, dropped the proceeding in view of the respective show causes filed by the parties from which it reflected that in respect of the land in dispute Title Suit No. 149 of 2014 was pending between the parties. It also appears that on 27.05.2015 itself on the basis of a petition filed by the opposite party no.4, another case, vide Case No. 548 of 2015, was initiated between the parties under Section 145 of the Cr.P.C. and the parties were restrained from going over the disputed land bearing Thana no.365/2, Tauzi No. 525, Khata No. 118, 103 and 90, Khesra No. 136, 117 and



66 of village Jagua and they were asked to file their written statement.

7. On the basis of the aforesaid undisputed facts, Mr. Dronacharya, learned counsel for the petitioners submitted that the private opposite parties have filed Title Suit No. 149 of 2014 in the court of Sub-Judge-I, Khagaria on 11.11.2014 relating to the lands in the proceeding under Section 145 and 146 of the Cr.P.C. in which the question of right, title and possession are involved and in which after notices parties have appeared and an injunction petition under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure has also been filed by the plaintiffs, which is pending for disposal.

8. He submitted that once Title Suit No.149 of 2014 has been filed between the parties and an injunction petition has also been filed in the suit, the Sub-Divisional Magistrate has no jurisdiction to initiate a proceeding under Section 145 or 146 of the Cr.P.C.

9. He further contended that though due to pendency of the Title Suit No. 149 of 2014 between the parties, 144 Cr.P.C. proceeding was dropped on 07.05.2015, vide order as contained in Annexure-2 to the present petition, but within 20 days, two fresh proceedings vide Case Nos. 548 and 549 of 2015 were initiated. He submitted that the impugned order dated 28.05.2015 passed in Case No. 549 of 2015 is patently bad in law and fit to be set aside.

10. Per contra, Mr. Ravi Kumar, learned counsel appearing



for the opposite party nos.4 to 6 submitted that the order impugned passed by the learned Sub-Divisional Magistrate, Gogri does not suffer from any illegality. He submitted that the ambit and scope of the suit and the proceeding under Sections 145 and 146 of the Cr.P.C. are quite distinct. In view of the joint report submitted by the Anchal Adhikari and the Officer-in-Charge, Parbatta, the Sub-Divisional Magistrate came to the conclusion that there was a serious apprehension of breach of peace between the parties and, thus, he rightly initiated the proceeding under Section 145 of the Cr.P.C. and ordered for attachment of property under Section 146(1) of the Cr.P.C.

11. I have heard learned counsel for the parties and perused the record.

12. The issue involved in the present case has already been answered by this Court in *Madan Mishra Vs. Triloki Nath Pandey* [2000(1) PLJR 885] and *Atahaul Haque Vs. Md. Allauddin* [2000(3) PLJR 90]. In the aforesaid cases, this Court has observed that no proceeding under Section 145 of the Cr.P.C. for any portion of the suit land can proceed when a civil suit for title and possession with respect to the disputed land is pending before the civil court. This Court has also observed that it does not matter if the entire disputed land in two proceedings are not identical and some of the parties are



different.

13. In Ram *Sumer Puri Mahant vs State Of U.P. and Ors.*

*[1985 BBCJ 37 (SC)]*, the Supreme Court observed :-

“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court..... parallel proceeding should not be permitted to continue and in the event of a decree of the Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during dependency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.”

14. The Supreme Court further observed :-

“We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under Section 145 of the Code has been initiated and the property in dispute has been attached...”

15. In view of the aforesaid decision of the Supreme Court and the decisions of this Court, I am of the considered opinion that the impugned order dated 28.05.2015 passed by the learned Sub-Divisional Magistrate, Gogri (Khagaria) in Case No. 549 of 2015 and



the proceedings of the said case cannot be sustained.

16. Accordingly, I allow this application and quash the entire proceedings of Case No. 549 of 2015 including the order dated 28.05.2015 passed by the learned Sub-Divisional Magistrate, Gogri (Khagaria). It would be open to either party to move before the court of Sub-Judge-I, Khagaria in Title Suit No.149 of 2014 for appropriate interim orders, if so advised, in the event of dispute relating to possession.

**(Ashwani Kumar Singh, J)**

Pradeep/-

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