IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32201 of 2011

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Pankaj Kumar S/o Arjun Prasad R/o Mohalla - Kanhaimal, P.S. Hajipur Town, District - Vaishali

... ... Petitioner

Versus

1. The State of Bihar
2. Ganesh Prasad Sahu, S/o Late Ram Sewak Prasad R/o Mohalla - Chauhatta Chhipi Tola, P.S. Hajipur Town, District - Vaishali

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Abhimanyu Vatsa, Advocate
		Mr. Rakesh Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For O.P. No.2	:	Mr. Shrinandan Prasad Singh, Advocate
		Mr. Naresh Nandan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date : 16-08-2018

The petitioner has preferred this quashing application for setting aside the order dated 23.05.2011 passed by SDM Hajipur in Case No. M- 548 of 2011 thereby converting a proceeding earlier initiated under Section 144 Cr.P.C. into a proceeding under Section 145 Cr.P.C.with respect to the land in question mentioned in the impugned order.

2. The contention of the learned counsel for the petitioner is that the petitioner, the second party in the court below, had constructed a residential house on the land in question much prior to the initiation of the proceeding under Section 144 Cr.P.C. On initiation of the proceeding under Section 144 Cr.P.C., a report was called for from the police and the police report is explicit in

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recording the fact of existence of a residential house of the petitioner over the land though there is a dispute between both sides relating to title of the land so recommended for a proceeding under Section 107 Cr.P.C. for maintaining peace as well as law and order.

3. The learned SDM overlooking the police report regarding existence of a residential house converted the pending proceeding into proceeding under Section 145 Cr.P.C. overlooking settled principle of law that on residential house a proceeding under Section 145 Cr.P.C. cannot be initiated. Moreover, a title suit earlier filed by the other side is still sub-judice.

4. Contrary to this the learned counsel appearing on behalf of the O.P. No. 2 submits that a proceeding under Section 145 Cr.P.C. may be initiated even with respect to residential house but concedes that a title suit filed by the O.P. No. 2 being plaintiff is still sub-judice before the competent court of civil jurisdiction.

5. Having considered rival contentions of both sides and on perusal of the record the court finds that the SDM overlooking substance of the police report revealing existence of a residential building over the land in question a proceeding pending under Section 144 Cr.P.C. was converted into a proceeding under Section 145 Cr.P.C. A proceeding under Section 145 Cr.P.C. can be initiated only for coming to a finding relating to actual possession of the land or water or the boundaries of land; but not against the residential

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house. It is settled principle of law that a proceeding under Section 145Cr.P.C. cannot be initiated on the land where already there is a residential house or any structure exits as well as a title suit for examining possession of title is pending before a competent court of civil jurisdiction, so conversion of the earlier proceeding into a proceeding under Section 145 is bad in law. It is well settled law that if there is a dispute with regard to the title or right to possession between the parties and the matter is already sub-judice before the civil court and question of possession and title is being examined in such situation a parallel proceeding under Section 145 Cr.P.C. is not permissible. The parties may approach the civil court seeking injunction or appointment of receiver. So the impugned order of initiating a proceeding under Section 145 Cr.P.C. is hereby quashed.

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

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.08.2018
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