

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.948 of 2015

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

1. Bhola Rai
2. Sudama Rai
3. Atma Rai, sons of Ram Babu Rai
4. Sobh Nath Rai, son of Jodha Rai
5. Parsuram Rai,
6. Gauri Rai,
7. Shiv Shankar Rai, sons of Hari Nath Rai
All are resident of village Chakia, P.O. Kotwapati Rampur, P.S. - Doriganj,
District – Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Parsuram Singh, son of Late Abhiram Singh, Resident of Village
Dayalchak, P.O. Kotwapati, Rampur, P.S. - Doriganj, District – Saran at
Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Srivastva
For the Respondent/s : Mr. R.B. Roy Raman (App)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

6 16-08-2018 Heard the parties.

The petitioners (second party before the learned Magistrate) has challenged the order dated 17.08.2015 passed by the learned Executive Magistrate, Bhojpur at Ara in Case No. 262/14/23/2015 whereby the property/land in question has been attached and the Circle Officer, Barhara has been declared the receiver.

Mr. Yogesh Chandra Verma, learned senior counsel appearing for the petitioners has submitted that from the perusal of the order impugned it would *prima*



facie appear that the learned Judicial Magistrate has not taken the pains to decide the issue of possession when he was in seisin of the matter.

Section 146 of the Code of Criminal Procedure permits a learned Magistrate to attach a property in question if he is of the view that the case is one of emergency and that he has decided that none of the parties were then in the possession of the aforesaid land i.e. at the time when proceeding under Section 145 Cr.P.C. was being entertained or if the Magistrate is unable to satisfy himself as to which of the parties was then in possession. Only under such conditions can the property in question be subjected to attachment. The order impugned does not refer to anyone of those conditions. In the absence of the petitioner, the learned Magistrate has held that there is a possibility of affray over the land because of disputed claims to possession and the property in question was attached.

Learned counsel for the petitioner has further stated that pursuant to the order impugned, the land was auctioned on one occasion and thereafter nothing has happened on the aforesaid plot of land. The order impugned therefore is not fit to be sustained in the eyes of law.

After having heard the learned counsel for the parties, this Court is of the view that the order is not sustainable in as much as the learned Magistrate has



abdicated his function of deciding about the possession of the land in question.

Attachment is a serious business and it could not have been resorted to in such a casual and cavalier manner as has been done by the learned Magistrate. If at all the learned Magistrate was not in a position to decide which of the parties was in possession, only then resort had to the provisions of Section 146 Cr.P.C.

The order impugned is therefore set aside.

Since this order was passed wayback in the year 2015, the case is remitted to the court of the learned Executive Magistrate for him to pass a fresh order in accordance with law after according hearing to the parties.

For the aforesaid purpose, the parties shall be noticed and would also be permitted to adduce evidence in support of their contention. Any issue with respect to the territorial jurisdiction of the police shall also be looked into by the learned Magistrate.

With the aforesaid direction/observation the petition is disposed off.

(Ashutosh Kumar, J)

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