

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.317 of 2015

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

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1. Hisabi Yadav
 2. Suresh Yadav
 3. Ramesh Yadav All Sons of Late Harischandra Yadav
 4. Chandan Yadav S/o Hisabi Yadav All are residents of village -
Gidariya Baidyanathpur, Ward No. 6, P.S. - Araria R.S., District
- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar .
2. Kamini Devi W/o Mishrilal Yadav
3. Most. Sulekha Devi W/o Late Suren Yadav
4. Kanchan Devi W/o Narayan Yadav, All are daughters of Late Harischandra
Yadv All are residents of village - Gidariya Baidyanathpur, Ward No. 6, P.S. -
Araria R.S., District - Araria.

... .. Respondent/s

Appearance :

For the Petitioners : Mr. Shashi Nath Jha, Advocate.
For the Respondents : Mr. Suresh Pd. Singh (APP)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 05-03-2018 The petitioners have challenged the notice/order dated 23.01.2015 passed by the Sub-Divisional Officer, Araria in Case No. 80M/2015 whereby a proceeding under Section 145 Cr.P.C. has been initiated and the petitioners have been issued notice to show cause before the learned Executive Court.

By order dated 16.03.2017 passed by a Bench of this Court, the further proceedings in Case No. 80M of 2015 has been stayed.

A perusal of the application preferred by the opposite parties no. 2 to 4 before the learned Executive



Magistrate would reveal that there is a dwelling house standing over a plot of land and contiguous to the aforesaid plot of land, there is a piece of land which is in dispute, measuring about 1 Acre and 30 Decimals. The details of the Khata Number and Khesra Number and specific area has been stated in the application. Paragraph-5 of the aforesaid application clearly reveals that with respect to the land appurtenant to the dwelling house, there is a dispute and consequently there is an apprehension of breach of peace which could occur at any time because of the rival claims over the possession/title of the land referred to above. On the basis of the aforesaid petition, notice was issued to the petitioners vide order dated 18.02.2015.

Mr. Shashi Nath Jha, learned counsel for the petitioners has submitted that the very initiation of the proceedings under Section 145 Cr.P.C. is unwarranted and is not in accordance with law. In support of his contention he has primarily raised two points:

(1). He has submitted that admittedly there is a dwelling house about which reference has been made in the application filed by the opposite parties no. 2 to 5. He, therefore, submits that proceedings under Section 145 Cr.P.C. cannot be initiated with respect to a dwelling house as it falls outside the



scope of a proceeding under Section 145 Cr.P.C. which is only meant for emergency situation and for apprehension of breach of peace. In support of the aforesaid contention, Mr. Jha has referred to a judgment delivered by a Bench of this Court in Dilip Poddar Vs. State of Bihar Amod Kumar and Ors. 2001 (3) PLJR 471. In the aforesaid case, the only area of dispute was a dwelling house. As such, a Bench of this Court referred to above held that under Section 145 Cr.P.C. possession cannot be decided with respect to a dwelling house.

The aforesaid decision would not be of any avail to the learned counsel for the petitioners as in the present case, the dispute is over a large plot of land contiguous to the dwelling house over which there are rival claims of possession and title.

(II). It was next contended by Mr. Jha that in the absence of any specifications having been provided by the applicant before the Magistrate, the petitioners would have been at a complete loss to answer to the show cause notice issued by the Magistrate.

This Court, on seeing the application seeking initiation of a proceeding under Section 145 Cr.P.C. by the opposite parties find that the details of the Khata Number, Khesra Number and the area of land falling in such Khata has



clearly been stated. The reference of the dwelling house over a part of the aforesaid land further specifies and identifies the land in question which is under dispute.

Lastly, it has been submitted that the petitioners are in possession of the dwelling house as well as the land referred to in the application and the opposite parties are step sisters of the petitioners and they do not have any right, title over the said land. They had never been in possession of the said land and in case of any dispute over title, the only option available to them is to approach the competent civil court for declaration/delineation of their title, if at all they have one.

The aforesaid arguments do not impress this Court for the simple reason that the dispute primarily, as this Court understands, is with respect to possession over the area of land which has been specified and indicated in the application filed before the learned Executive Magistrate. True it is that a dwelling house cannot be the subject matter of discussion in a proceeding under Section 145 Cr.P.C. but the same embargo does not apply to a broad plot of land appurtenant to such dwelling house.

Learned counsel appearing for the opposite party no. 2 however has pointed out that with respect to the land in



question, a Title Suit was brought by the petitioners before the competent civil court and the same has been dismissed under the provision of Order 7, Rule 11 of the CPC.

In any view of the matter, the Magistrate ought to continue with the proceedings under Section 145 Cr.P.C. as he only would be responsible for any breach of peace if it takes place because of the rival claims over the said plot of land.

This Court therefore directs for revival of the proceedings under Section 145 Cr.P.C. but it would only be limited to the land in question about which details have already been provided. The learned Executive Magistrate after hearing the parties would pass an order in accordance with law without unnecessarily delaying the same.

The present petition is disposed of with the aforesaid observation.

(Ashutosh Kumar, J)

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