

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.48 of 2018

Arising Out of PS. Case No.-632 Year-2017 Thana- BIKRAMGANJ District- Rohtas

Munna Kumar, S/o Late Baleshwar Prasad, R/o Village- Natwar, P.O.+P.S. Natwar , District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ram Das Singh S/o Late Sonbhadra Singh @ Sonbhadra Mahto, R/o Village- Marua, P.S.- Dinar at preset Village- Dinara, P.O.+P.S.- Dinara , District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar
For the Respondent/s	:	Mr. Sri Ashok Kumar Singh 1

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 13-12-2018 This revision application is directed against the order dated 25.09.2017 passed by the Sub Divisional Officer, Bikramganj in case no. 632/2017, whereby and whereunder, he converted a proceeding under Section 144 Cr.P.C. into a proceeding under Section 145 Cr.P.C.

2. Case in short is that one Ram Das Singh, son of Late Sonbhadra Singh filed a petition, whereby, prayer was made for initiation of proceeding under Section 144 Cr.P.C. against the petitioner with respect to the land situated at Mauza Dinara under Khata No. 723, Khesara No. 160/2013, area 7 katha (21.45 decimals) bounded as such north Bikramganj to Mohania Road, South N.H. 30, East Khesra No. 160, West N.H. 30.



3. After enquiry, the Sub Divisional Officer, Bikramganj on the application of opposite party no. 2 sought enquiry report from the Circle Officer and on receiving the same, initiated a proceeding under Section 144 Cr.P.C. against both the parties and sought the explanation from the petitioners vide order dated 02.08.2017. Further, it appears that pursuant to the notice dated 02.08.2017, petitioners filed their show cause along with documents in support of this case stating that petitioner no. 1 had purchased the piece of land in dispute measuring 3 decimals in Khata No. 723, Khesra No. 160/2513, Thana No. 109, through two registered sale deed bearing No. 6,44,19 on 20.01.2015 and 9.6.2015 after paying full consideration money and petitioner no. 2 purchased 19 decimal of land through registered sale deed. On the basis of which, they came into possession over the purchased lands and purchased lands were mutated in their names. However, after revisional survey, the name was deleted and the land lord were entered as Gairmajarua Sarv Sadharan. Against which, a title suit was filed for declaration of possession over the land in question giving rise to Title Suit No. 35 of 2002, which has been decreed on 14.07.2008.

4. Further case of the petitioners is that against the order



dated 14.07.2008, a Title Appeal No. 47 of 2012 was filed, which was dismissed on 21.10.2013 for non prosecution. Further case is that petitioners' vendor filed a rent fixation case before Deputy Collector Land Reform, Bikramganj, giving rise to Rent Fixation Case No. 1/2009-10, which was rejected on 02.08.2010. Against, which Lalan Prasad Choudhary filed a writ in this Court bearing C.W.J.C. No. 9439/2014, which was allowed in his favour vide order dated 17.07.2015 and in pursuance of the order of High Court, Jamabandi was created in favour of Lalan Prasad Choudhary through Rent Fixation Case No. 01/2009-10 on 28.12.2015 and petitioners' names were entered in register – 2.

5. Further case of the petitioners that they started construction of their house on their purchased land, a proceeding under Section 144 Cr.P.C. was initiated before the Sub Divisional Officer, Bikramganj and before the Sub Divisional Officer, Bikramganj, also they brought to his notice of the Sub Divisional Officer, Bikramganj that possession and title have already been decided by the competent civil court and permanent injunction have already been granted in favour of the vendor of petitioner. However, the learned Sub Divisional Officer, Bikramganj instead of dropping the proceeding under



Section 144 Cr.P.C, converted it into a proceeding under Section 145 Cr.P.C., whereunder possession set to be decided subject to final decision of civil court.

6. The aforesaid order of the Sub Divisional Officer, Bikramganj has been challenged by the petitioners on the ground that title has already been decided by the competent civil court through Title Suit No. 35 of 2002 and the appeal preferred against the same, has also been dismissed. Thereafter, the land fixation case has also been decided by the High Court in C.W.J.C. No. C.W.J.C. No. 9439/2014 and as such, it is not open to the Sub Divisional Officer to initiate a proceeding under Section 144 Cr.P.C. and convert the same into a proceeding under Section 145 Cr.P.C. to decide the possession.

7. Learned counsel for the petitioners has also brought on record by filing a supplementary petition that opposite party no. 2 has also filed a title suit bearing Title Suit No. 615/2000 with respect to the same land against the State of Bihar and in spite of the pendency of the title suit, opposite party has moved before the revenue authority for proceeding under Section 144 Cr.P.C., which cannot be challenged under Section 145 Cr.P.C. rather they are free to file injunction petition in Title Suit No. 615/2000. In support of his contention, learned counsel for the



petitioners have relied upon a decision of Hon'ble Apex Court in the case of **Ram Sumer Puri vs. State of U.P.** reported in **AIR 1985 SC 472.**

8. Heard learned counsel for the State as well as opposite party no. 2. Learned counsel for the opposite party no. 2 has fully supported the impugned judgment converting a proceeding under Section 144 Cr.P.C. into a proceeding under Section 145 Cr.P.C. on the ground that description of land in the title suit filed by the vendor of the petitioners is different from the description of land mentioned in proceeding under Section 145 Cr.P.C. and as such, the subject matter is different and Khata No. 723 is a big plot and petitioners have different land with different boundary and this is not subject matter of proceeding under Section 145 Cr.P.C.

9. However, learned counsel for the opposite party no. 2 has failed to answer the query of the court that as to whether he has filed a Title Suit being Title Suit No. 615/2000 with respect to the land in dispute and it is still pending in the court of Sub Judge -I, Sasaram.

10. Considering the facts and circumstances of the case and also the submissions of the parties, it appears that earlier a suit filed by the vendor of the petitioners has been decided in favour



of the said vendor by a decree passed in Title Suit No. 35 of 2002, against which, the appeal being Title Appeal No. 47 of 2012 has also been dismissed and the Rent Fixation Case has also been decided upto the High Court and it further appears that a title suit filed by the opposite party no. 2 is still pending in the court of Sub Judge -I, Sasaram and the Hon'ble Apex Court in the case of **Ram Sumer Puri. vs. State of U.P.** (supra) has held in para -2 of its judgment, which reads as follows:-

“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 in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that 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. 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. We leave it open to either party to move the appellate judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession.

11. Considering the aforesaid facts and circumstances of the case, it is a settled principle of law that when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, there is no justification for initiating a parallel criminal proceeding under [Section 145](#) of the Code.



12. Accordingly, this appeal is allowed. Order dated 25.09.2017 passed by the Sub Divisional Officer, Bikramganj in case no. 632/2017, is set aside.

13. It is made clear that this order will not come in the way of claim of title of opposite party no. 2

(Vinod Kumar Sinha, J)

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