

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3448 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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1. Shadhu Sharan Prasad, son of late Ram Chandra Sah,
 2. Ravi Kumar @ Ravi Shankar Kumar Gupta, son of Sadhu Sharan Pd.,
 3. Sandeep Kumar, son of Sadhu Sharan Prasad, all resident of village - Padriya, P.S. Shikarpur, Dist - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Jagdish Prasad, son of late Raghunath Sah, resident of village - Padriya, P.S. - Shikarpur, Dist - West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gauri Shankar Thakur, Advocate
Mr. Bimlesh Kumar Pandey, Advocate

For the Opposite Party/s: Dr. Rabindra Kumar, APP
Mr. Arbind Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date: 14-09-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 27.11.2015 passed by the SDO, Narkatiaganj, West Champaran, in Case No.1852 of 2015 by which he has passed order under Section 146(i) Cr.P.C.

Heard counsel for the parties.

Counsel for the petitioners submits that Opposite Party No.2 has already filed Partition Suit No.241 of 2013, which is pending before the Sub-Judge, Bettiah, West Champaran, between the parties. Opposite Party No.2 has also filed a petition for



injunction in the aforesaid suit, which is pending. Both parties are *pattidaar*. Counsel for the petitioners has relied on the decision of our own High Court in the case of ***Madan Mishra Vs. Triloki Nath Pandey*** reported in ***2000(1) PLJR 885***, wherein, it has been held that when a civil litigation is pending for the property wherein question of possession is involved then there is no justification for initiating a parallel criminal proceeding under Section 145 Cr.P.C. The Hon'ble Supreme Court in the case of ***Amresh Tiwari Vs. Lalta Prasad Dubey*** reported in ***2001(1) PLJR (SC) 135*** has held that if civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be granted by the Civil Court, proceeding under Section 145 Cr.P.C. should not be allowed to continue.

This Court has been informed by the parties that proceeding under Section 145 Cr.P.C. is still pending in the Court below even after passing of order of attachment under Section 146(1) Cr.P.C. (impugned order) dated 27.11.2015 by the SDO, Narkatiaganj.

This Court totally deprecates the action of the learned Magistrate to keep the proceeding pending for three years after passing order of attachment under Section 146(1) Cr.P.C.

This Court, in the interest of justice, directs the Court



below i.e. SDO, Narkatiaganj, to dispose of the proceeding under Section 145 Cr. P.C. within a period of six months from the date of receipt of copy of this order after looking into various decisions of the Court, as stated above, that when a civil litigation is pending for the property wherein question of possession is involved then there is no justification for initiating a parallel criminal proceeding under Section 145 Cr.P.C.

The Magistrate will pass final order in the case after taking evidence of the parties, if so required, and will not allow any party to delay the disposal of the case.

The Magistrate will send compliance report to the District Judge, West Champaran, after passing final order in the proceeding under Section 145 Cr.P.C.

It is observed that any finding given by the Magistrate in the proceeding under Section 145 Cr.P.C. will not have any bearing on the legal rights of the parties in the pending civil suit.

This application is, accordingly, disposed off.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18-09-2018
Transmission Date	18-09-2018

