

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4701 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

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Anju Pathak, wife of Hari Shankar Pathak, residents of Mauza - Jagir Mohalla,
Ward No. 31, P.S. Town Begusarai, Sub - Division and District - Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. Murlidhar Singh, Son of Late Ram Karan Singh
3. Rajesh Kumar @ Indra Mani Kumar, Son of Murlidhar Singh
Both Residents of Mauza - Jagir Mohalla, Ward No. 31, P.S. Town Begusarai, Sub-
Division and District - Begusarai

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Kumar Jha, Advocate.
For the opposite party No.2: Mr. P.N. Shahi, Sr. Advocate
Mr. Sanjeet Kumar Singh and Shivam, Advocates
For the State : Dr. Rabindra Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 24-07-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order passed in DB No. 672 dated 10.12.2014 passed by the learned Sub Divisional Magistrate, Begusarai, by which the learned Magistrate has permitted the opposite party Nos. 2 and 3 to construct their house over the disputed land in question with reference to case No. 604 of 2014.

Heard learned counsel for the petitioner, learned counsel for the opposite party No. 2 and learned counsel for the State.

Learned counsel for the petitioner has submitted that earlier also proceeding under Section 144 Cr. P.C. was initiated between the parties for the same property which was finally disposed



off by learned Magistrate by order dated 6.11.2014 passed in Case No. 604 of 2014 by which learned Magistrate has restrained to make construction over 7' x 2" wide common *Rasta*. It has further been submitted that opposite party No. 2 has started construction, then a petition was filed before the learned Magistrate by the petitioner. The learned Magistrate has by the impugned order allowed the opposite party No. 2 to proceed with the construction of the house on the land in question. It has further been submitted that learned Magistrate has no jurisdiction to pass such order in Proceeding under Section 144 Cr. P.C. A Title Suit No. 202 of 2015 is pending between the parties.

Learned counsel for the opposite party No. 2 has submitted that the impugned order was passed by the learned Magistrate after obtaining report from Anchal Amin.

This Court after looking into the impugned order finds that Magistrate can only pass order in a Proceeding under Section 144 Cr. P.C. for maintaining peace if there is apprehension of breach of peace between the parties. Section 144 (4) Cr. P.C. clearly speaks that any order passed by the court under Section 144 Cr. P.C., will lose its force after lapse of sixty days. In the instant case, from the impugned order it appears that learned Magistrate has allowed the opposite party No. 2 to proceed with the construction of the house in question. It further appears that in the earlier order passed in Case No. 604 of 2014 the learned Magistrate has restrained both parties from making



any construction over the land in question.

This Court does not express any opinion with regard to first order which is not under challenge at present. The impugned order passed by the court below is without jurisdiction of the learned Magistrate. Title Suit is already pending between the parties. The competent civil Court is already *in seisin* of the matter with regard to the dispute between the parties. Therefore, any order passed by the competent civil court will be binding upon both the parties.

In such circumstances, the Magistrate has exceeded his jurisdiction in giving permission to opposite party No. 2 to proceed with the construction of building by the impugned order.

Therefore, the impugned order passed in DB No. 672 dated 10.12.2014 passed by the learned Sub Divisional Magistrate, Begusarai, with reference to case No. 604 of 2014 is hereby set aside.

This Criminal Miscellaneous application is accordingly allowed. The observation made in this order will not in any manner affect any legal right of the parties in the pending Title Suit No. 202 of 2015 between the parties.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	27/07/2018
Transmission Date	27/07/2018

