

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4886 of 2016

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

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1. ANIRUDH SAH @ ANIRUDH PD.SAH Son of Ramautar Sah, Resident of village- Nayagaon, P.s.- Piparahi, District- Sheohar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Sub-Divisional Officer, Sheohar
3. Sri Narayan Prasad, S/o Late Sukhlal Sah, Resident of village- Nayagaon, P.s.- Piparahi, District- Sheohar
4. Uday Narayan Sah s/o Ramautar Sah
5. Manoj Kumar S/o Anirudh Sah
6. Brahmanand @ Kumar Babu S/o Anirudh Sah
7. Rani Devi W/o Anirudh Sah
8. Renu Devi W/o Uday Narayan Sah Opposite Party No. 4 to 8 Resident of village- Nayagaon, P.S. Piparahi, District- Sheohar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Devendra Kumar

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 18-09-2018

Heard the learned counsel for the petitioner, O.P. No. 2
and the State.

The petitioner has challenged the order dated 24.03.2015 passed by learned District & Sessions Judge, Sheohar in Cr. Rev. No. 34/2014, whereby the court below has affirmed the order dated 06.09.2014 passed by the learned Sub-divisional Officer, Sheohar in Misc. Case No. 236/2014, by which the Sub-divisional Officer, Sheohar has converted the proceeding of Section 144 Cr.P.C.



into Section 145 Cr.P.C. and also for quashing the order dated 06.09.2014 passed by the learned Sub-divisional Officer, Sheohar passed in Misc. Case No. 236/2014.

Learned counsel for the petitioner has submitted that the proceeding has been initiated on the homestead land which is not permissible in law.

Learned counsel for opposite parties has submitted that dispute is with regard to Sahan, which is in front of house of members of first party, which is apparent from para 3 of petition. It is further submitted that Learned Magistrate has converted proceeding under Section 144 Cr.P.C. into Section 145 Cr.P.C. on the ground that dispute with regard to possession cannot be decided in a proceeding under Section 144 Cr.P.C. by order dated 06.09.2014 passed in Misc. Case No. 236/2014. The aforesaid order was challenged by the petitioner before Sessions Judge, Sheohar, which was rejected by order dated 24.03.2015 passed in Cr. Rev. No. 34/2014.

Learned counsel for the petitioner has relied on a judgment dated 08.09.2017 passed in Cr. Misc. No. 5026/2013. He has also relied on a decision passed by this Court in case of ***Dilip Poddar vs. State of Bihar, Amod Kumar & Ors.*** reported in ***2001(3) PLJR 471*** wherein it is held *that question of title cannot be decided by a criminal court. It is beyond the power of the Executive*



Magistrate to decide dispute concerning a residential house.

This Court after perusing para 4 of the petition filed by O.P. No. 3 for initiation of proceeding under Section 144 Cr.P.C. (Annexure-1) finds that it is mentioned therein to initiate proceeding under Section 144 Cr.P.C. with regard to Sahan land (open land) lying in front of house of O.P. No. 2.

Section 145 Cr.P.C. (1) clearly lays down:

145.Procedure where dispute concerning land or water is likely to cause breach of peace.-

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements or their respective claims as respects the fact of actual possession of the subject of dispute.

In this manner, the Executive Magistrate is empowered to initiate proceeding under Section 145 Cr.P.C. on the ground that there is apprehension of breach of peace between the parties with regard to possession of land.



Therefore, this Court does not find any illegality in the impugned order.

This criminal miscellaneous application is accordingly dismissed.

The Executive Magistrate is directed to pass final order in 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 recording evidence of parties in terms of provision as laid down under Section 145(4) of the Cr.P.C.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	08.10.2018
Transmission Date	08.10.2018

