

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31743 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUZAFFARPUR

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1. Ganesh Prasad Singh,
 2. Shatrughan Prasad Singh, both son of late Sukh Deo Narayan Singh, resident of village-Bishunpur Saraiya, P.O & P.S.- Deoria, Anchal- Paroo, Distt.- Muzaffarpur, presently residing in Mohalla- Kalambag Road, P.S.- Kazi Mohammadpur, Distt.- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Sri Rabindra Prasad Singh, s/o late Brij Raj Singh, resident of village-Bishunpur Saraiya, P.O & P.S.- Deoria, Anchal- Paroo, Distt.- Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. S. B. K. Mangalam, Advocate

For the Opposite Party No.1: Mr. APP

For the Opposite Party No.2: Mr. Bipin Bihari Singh, Advocate
Mr. Shyama Kant Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 21-08-2018

Although instant case was heard along with Cr. Misc. No.42132 of 2014 and judgment was reserved, but judgment is being delivered separately.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 02.08.2011 passed by 5th Additional Sessions Judge, Muzaffarpur, in Criminal Revision No.70 of 2010 whereby he has dismissed the revision application filed by the petitioners challenging the order dated 23.02.2010 passed by the Executive Magistrate, East,



Muzaffarpur, in Case No.(NIL) of 2010 by which the Magistrate has initiated a proceeding under Section 145 Cr. P. C. between the parties on the ground that there exists apprehension of breach of peace between them.

3. It has been submitted that petitioner No.1, Ganesh Prasad Singh, has died during the pendency of this application.

4. In view of such, this application has become infructuous in so far as it relates to petitioner No.1 and is dismissed as such with respect to Petitioner No.1.

5. Heard counsel for the parties.

6. Counsel for the petitioners submits that petitioner(s) and Opposite Party No.2 are agnates. They own and possess the land situated in Mohalla- Kalambagh Road, P.S.-Kazi Mohammadpur, District- Muzaffarpur, bearing Khata No.608 measuring an area of 0.250 Hectares in different plot numbers. Partition Suit No.218 of 1973 was filed by one Jagdish Narain Singh, one of the agnates of the petitioner(s), for partition of the property of the family including the disputed property situated in Moahalla- Kalambagh Road, P.S.-Kazi Mohammadpur, District-Muzaffarpur, which was decreed vide judgment and decree dated 09.01.2004 and share of the plaintiff of the suit and the grand father of the Opposite Party No.2 was declared to be 1/4th share in the properties as



described in Schedule-1 of the plaint. Xerox copy of the judgment and decree dated 09.01.1984 passed in Partition Suit No.218 of 1973 is annexed as Anneuxe-1. The parties are coming in possession according to the share as described in the aforesaid judgment and decree. Opposite Party No.2 is also coming in possession of the share of the property as per aforesaid judgment and decree.

7. Counsel for the petitioner(s) further submits that Opposite Party No.2 is practicing lawyer in Muzaffarpur Civil Court. The Opposite Party No.2 by suppressing the fact of judgment and decree passed in partition suit has filed a petition in the Court of the Executive Magistrate, East, Muzaffarpur, for initiating a proceeding under Section 145 of the Code of Criminal Procedure with respect to the property as mentioned in the aforesaid petition. The Magistrate without calling for a report from the local Police Station and without registration of a formal case by order dated 23.02.2010 was pleased to initiate proceeding under Section 145 Cr. P. C. and issued direction to the parties to file written statement. Certified copy of the order dated 23.02.2010 passed in Misc. Case No. (NIL) of 2010 is annexed as Anneuxre-3.

8. Counsel for the State as well as Opposite Party No.2 has submitted that there is no illegality in the impugned order.

9. This Court after perusing the impugned order



dated 23.02.2010 passed by the Executive Magistrate finds that the Magistrate on the basis of the petition filed by the Opposite Party No.2 along with *Khatiyar* has straightway initiated proceeding under Section 145 Cr.P.C. holding that there exists apprehension of breach of peace between the parties. It further appears that by subsequent order dated 16.03.2010, the Magistrate has ordered for attachment of property under Section 146(1) Cr. P. C. on the ground that second party has not appeared in spite of service of notice.

10. The petitioner(s) filed Criminal Revision No.70 of 2010 against the aforesaid order before the learned Sessions Judge, Muzaffarpur, which was dismissed by the 5th Additional Sessions Judge, Muzaffarpur, by order dated 02.08.2011.

11. Section 145(1) Cr. P.C. prescribes that *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 of their respective claims as respects the fact of actual possession of the subject of dispute.*



12. In the instant case, from the initial order dated 23.02.2010 passed by the Executive Magistrate, East, Muzaffarpur, it appears that Court below has not given any valid reason for his satisfaction for existence of breach of peace between the parties with regard to possession of land. The learned Magistrate has mentioned in the order as follows:

“Heard the learned Advocate. Perused the petition and Khatiyān. I am fully satisfied that there exists apprehension of breach of peace and dispute between the parties needs to be settled forever.”

13. In this manner, there was no material available before the Executive Magistrate for his satisfaction for existence of apprehension of breach of peace between the parties. It further appears that learned Magistrate by order dated 23.02.2010 directed both parties to file written statement. The learned Magistrate by subsequent order dated 16.03.2010 has ordered for attachment of property under Section 146(1) Cr.P.C. on the ground that second party has not appeared in spite of service of notice.

14. It is admitted position that both parties are agnates. Partition Suit No.218 of 1973 was filed between the parties for partition of the property of family including the disputed property and by judgment and decree dated 09.01.1984, share of the plaintiff of the suit and grandfather of the Opposite Party No.2 was



declared to be 1/4th share in the properties as described in Schedule-1 of the plaint.

15. The Revisional Court in mechanical manner without applying mind after discussing the submissions made on behalf of both sides has dismissed revision application without giving any valid reason for rejecting the same.

16. Therefore, impugned order(s) are not in accordance with law.

17. In view of such, impugned orders dated 23.02.2010 and 16.03.2010 passed by learned Executive Magistrate, East, Muzaffarpur, in Case No.(NIL) of 2010 as well as order dated 02.08.2011 passed by 5th Additional Sessions Judge, Muzaffarpur, in Criminal Revision No.70 of 2010 are hereby quashed.

18. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	18-06-2018
Uploading Date	25-08-2018
Transmission Date	25-08-2018

