

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10667 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District- Muzaffarpur

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1. Sajda Khatoon @ Sajda, D/o Late Md. Ekbal Hussain, Resident of Mohalla- Shukla Road, P.S.- Town, P.O.- Ramna, District- Muzaffarpur
 2. Sitara Parveen D/o Hamida Khatoon, Resident of Mohalla- Shukla Road, P.S.- Town, P.O.- Ramna, District- Muzaffarpur
 3. Nilofar Sheikh, D/o Fida Hussain Sheikh, resident of Mohalla- Kambal Sah Mazar, P.S.- Town, P.O.- H.P.O., District- Muzaffarpur

... .. Petitioners

Versus

1. The State of Bihar.
2. Surendra Prasad Singh S/o Faujdar Singh, resident of Mohalla- Rambag Road, P.S.- Mithunpura, Post- Ramna, Anchal Mushari District- Muzaffarpur.
3. Ruchir Agrawal S/o Ramjee Agrawal
4. Rakshita Agrawal D/o Ramjee Agrawal
5. Rina Agrawal W/o Ramjee Agrawal, All resident of Mohalla- Dr. Siddiqui Lane Back of Kanhauli Naka, P.S.- Town, P.O.- Ramna, District- Muzaffarpur
6. Munni Devi W/o Rajkumar Mahto, resident of Mohalla- Gaushala Road, P.S.- Mithanpura, P.O.- Ramna, District- Muzaffarpur
7. Kiran Devi W/o Name Not Known, resident of Mohalla- Rambag Road, P.S.- Mithanpura, P.O.- Ramna, District- Muzaffarpur
8. Ambika Prasad S/o Devki Sah, resident of Mohalla- Kanhauli Naka Road, P.S.- Town, P.O.- Ramna, District- Muzaffarpur

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Dubey
For the Opposite Party/s : Mr.C. Jawahar App

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 20-06-2019 Heard Mr. Ranjan Kumar Dubey, the learned
counsel appearing on behalf of the petitioners.

The petitioners have filed this petition against the
order dated 02.01.2015, passed in Case No.1289 of 2014 by the



Sub-divisional Magistrate, East Muzaffarpur by which the land in question was attached under Section 146(i) of the Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C.).

Mr. Ranjan Kumar Dubey, the learned counsel for the petitioners submits that firstly a proceeding under Section 144 of the Cr.P.C. was initiated at the instance of the first party-opposite party no.2. Opposite party no.2 claimed possession over the land by virtue of a deed of agreement to sell, said to have been executed by opposite party nos.3 to 8. Later on, the proceeding was converted into one under Section 145 of the Cr.P.C. and thereafter opposite party no.2 filed petition for attachment of the property. The petitioners being the second party filed petition that a title suit is also pending in the civil court for declaration of title. The petitioners claim possession over the land by virtue of the sale deed executed by opposite party nos.2 to 8 but the first party on one pretext or the other got the proceeding converted into one under Section 145 of the Cr.P.C. and thereafter on the petition of the first party-opposite party no.2, the property was attached without any material on record to satisfy that there was any emergent situation which may cause serious breach of the peace. For attachment of the property there must exist some serious apprehension of breach of the peace. Mr. Ranjan Kumar Dubey, the learned counsel for the



petitioners further submits that if title suit is pending, the initiation of proceeding under Section 145 of the Cr.P.C. is unwarranted and initiation of such proceeding is fit to be set aside. It is further submitted that the petitioners preferred Cr. Misc. No.54839 of 2016 against the order initiating a proceeding under Section 145 of the Cr.P.C. and when the property was attached the petitioners presented the present petition for quashing of the order. Mr. Ranjan Kumar Dubey citing a judgment reported in 2008 (3) PLJR 604, *Ram Swarup Prasad Vs. The State of Bihar & Ors.* submits that for attachment of the disputed property, a case of emergency must exist. The Magistrate must record its satisfaction that on the prevailing facts there is a strong apprehension of breach of the peace and if the Magistrate is unable to find any party in possession of the property only then the order of attachment should be passed. It is also submitted that the order does not reflect the facts available on record that there was any such situation existing warranting the Executive Magistrate to attach the property under Section 146(i) of the Cr.P.C. The learned counsel further placed his reliance on the judgment of *Nemani Sah & Kiran Devi Vs. State & Another*, reported in 2003 (3) PLJR 660.

From perusal of the order dated 02.01.2015, it is evident that the Sub-divisional Magistrate, East Muzaffarpur on



the petition of the first party found that there is every apprehension of breach of the peace for taking possession of the disputed land and if the property is not attached, there is every likelihood of the apprehension of breach of the peace and to avoid such circumstance the property in dispute was attached. Section 146 of the Cr.P.C. envisages that if the Magistrate at any time after making the order under sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties. *Sine qua non* for initiating of a proceeding under Section 145 of the Cr.P.C. is that there must be existence of the apprehension of breach of the peace. Immediately after initiation of the proceeding under Section 145 on the petition of the first party, the Sub-divisional Magistrate recorded the finding about the existence of the emergent situation causing apprehension of breach of the peace for taking possession of the subject of dispute and on such order for attachment of the property was passed and Receiver was appointed. This Court in an inherent jurisdiction, in my view, should not look into the subjective satisfaction of the Sub-



divisional Magistrate who attached the property on being satisfied that there is every likelihood of the apprehension of breach of the peace for taking possession of the subject of dispute. Facts of the judgment on which the learned counsel for the petitioners places his reliance are quite different but in the present case the Sub-divisional Magistrate has very categorically recorded his satisfaction about the existence of such emergent situation warranting to take action for attachment of the property in order to avoid any breach of the peace.

Having considered the facts aforesaid, I do not find any merit in this case. Accordingly, the quashing petition is dismissed.

However, the finding recorded in this case will not affect in any way the disposal of Cr. Misc. No.54839 of 2016, which is preferred against the order initiating a proceeding under Section 145 of the Cr.P.C.

(Prabhat Kumar Jha, J)

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