

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3667 of 2017

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

1. Satya Narayan Sahni
2. Baidyanath Sahani,
3. Kishori Sahani All S/o Ramdin Sahni, Resident of Village- Tilak Tajpur, P.S. Runisaidpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bhikhari Sahani, S/o Late of Ramashish Sahani.
3. Suresh Sahani,
4. Ramesh Sahani, Both Sons of Bhikhari Sahani.
5. Sima Devi, Wife of Suresh Sahani, All residents of Village and P.O.- Tilak Tajpur, P.S.- Runnisaidpur, District- Sitamarhi.
6. Ganeshi Sahani,
7. Shivjee Sahani. Both Sons of Late Bhilla Sahani, residents of Village and P.O.- Tilak Tajpur, P.S.- Runnisaidpur, District- Sitamarhi.
8. Hari Sahani, Son of Satya Narain Sahani, Residents of Village and P.O.- Tilak Tajpur, P.S.- Runnisaidpur, District- Sitamarhi.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 17624 of 2017

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

1. Bhikhari Shani, Son of late Ram Ashish Sahni
2. Suresh Sahni
3. Ramesh Sahni Sons of Bhikhari Sahni
4. Seema Devi, Wife of Suresh Sahni Residents of Village and Post Office- Tilak Tajpur, Police Station- Runi Saidpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Satyanarayan Sahni
3. Baidyanath Sahni
4. Kishori Sahni Son of Ram Daun Sahni
5. Ganeshi Sahni
6. Sheoji Sahni Sons of late Bhita Sahni
7. Hari Sahni Son of Satyanarain Sahni Nos 2 to 7 are residents of Village and Post Office Tilak Tajpur, Police station Runi Saidpur, District- Sitamarhi.



... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 3667 of 2017)

For the Petitioner/s : Mr. Prasoon Sinha-Advocate

Mr. Prabhat Kumar-Advocate

For the O.P. : Mr. Najmul Hoda-Advocate

Mr. Santosh Kumar-Advocate

For the State : Mr. Rana Randhir Singh-A.P.P.

(In CRIMINAL MISCELLANEOUS No. 17624 of 2017)

For the Petitioner/s : Mr. Najmul Hoda-Advocate

For the Opposite Party/s : Mr. Ashok Kumar Singh -A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 02-05-2019 Supplementary affidavit has been filed on behalf of
petitioners, taken on the record.

Heard learned counsel for the petitioners as well as
learned counsel for the O.P. No.2 along with learned Additional
Public Prosecutor.

Gone through both the Criminal Miscellaneous.

At an earlier occasion, there was a disclosure at the
end of Opposite Party Nos.2 to 5 (O.P. second set/ first party) in
connection with Cr. Misc. No.3667 of 2017 that Cr. Misc.
No.17624 of 2017 has been filed at their behest for directing the
opposite party (petitioners of Cr. Miscellaneous No.3667 of
2017) to deliver possession as they have been dispossessed
during midst of the proceeding u/s 145 Cr.P.C. irrespective of
order of the Court declaring the land under dispute to be under
their possession, whereupon both the petitions have been
directed to be listed conjointly in order to proper appreciation of



the matter. The most surprising feature, which has been traced out by way of Annexure-4 of Cr. Misc. No.17624 of 2017, Para-2 and for better appreciation, the same is quoted below:-

“YAH KI DWITIYE PAKCH PRAKRIYA KE DAURAN VIVADIT BHUMI ME DO KOTHRI PE TATI PUSH KA GHAR BANAKAR DAKHIL-KABJA KAR LIYA JO DHARA-145 KE UPDHARA-4 DA PRA SA KE ANTARGAT AATA HAI.”

Filing of aforesaid petition after the judgment speaks a lot with regard to genuineness of the assertion made on behalf of opposite second party and further, by such activity, marked question over legality of the finding recorded by the learned lower Court. Had there been proper recourse at the end of the second party/ first party, then in that circumstance, the learned Magistrate would have an opportunity to pass order in accordance with proviso, so prescribed under ***Sub-section-4 of Section 145 Cr.P.C.***, which reads as follows:-

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

.....
4) Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date o(n which the report of a police officer or other information was received by the Magistrate, or after that date and



before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).”

Apart from this, the reason best known to the opposite second party of Cr. Misc. No.3667 of 2017/ petitioner of Cr. Misc. No.17624 of 2017 failed to divulge the exact date on which, dispossession was effected. If aforesaid Annexure-4 is taken together with Para-10 of the petition of Cr. Misc. No.3667 of 2017, referring Exhibit-C, C/1 over possession of the land as claimed became more probable whereupon, the finding recorded by the learned lower Court as well as by the revisional Court come under cloud. Furthermore, restoration of possession is allowed two months precedent to initiation of a proceeding u/s 145 Cr.P.C. On account of deformity having at the end of second party/ petitioner, it became difficult to identify the exact date of dispossession, so the prayer made under Cr. Misc. No.17624 of 2017 could not be granted simultaneously, it also jolt upon the successive finding.

Accordingly, successive orders i.e. order dated 05.09.2016 passed by the learned Sessions Judge, Sitamarhi in Cr. Revision No.85 of 2016 as well as order dated 31.05.2016 passed by the learned S.D.M., Sitamarhi Sadar in a proceeding under Section 145 Cr.P.C. (Bhikhari Sahni and others vs. Satya



Narayan Sahni and others bearing Case No.530 of 2015) are set aside. Consequent thereupon, Cr. Misc. No.3667 of 2017 is allowed. On the other hand, Cr. Misc. No.17624 of 2017 is found devoid of merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

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