

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62484 of 2018

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

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Lal Babu Yadav @ Lalbabu Rai Son of Ram Ashre Yadav, Resident of
Mohalla Pakdi, Police Station- Ara, Nawada, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Sub Divisional Magistrate, Sadar, Ara, District- Bhojpur.
3. Ras Bihari Sharma @ Bhuarji, son of Late Shreenath Sharma, Resident of
Mohalla Mill Road, Nawada Ara, Police Station- Ara Nawada, District-
Bhojpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. T.N. Matin, Sr. Advocate
	:	Mr. Rajeev Kumar Sinha, Adv.
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

Date : 25-09-2019

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with a prayer to quash the order dated 24.08.2018, passed by the learned Sub-Divisional Magistrate, Sadar, Ara in Case No. 212 of 2017, whereby attachment order with respect to lands of the petitioner has been passed.

The brief facts of the case in nutshell is that the O.P. No.3 has filed a petition for initiation of proceeding under Section 144 of the Code of Criminal Procedure in



respect of 2.44 acre land of old Survey Khata No. 523, Plot No. 1185 situated in Mohalla- Pakri in Municipal Corporation, Ward No. 14 in the town of Ara. He further alleged that he entered into an agreement for sale with one Srimati Veena Sinha and his son. According to him, the land in question was recorded in the name of Sheetal Prasad who adopted one Harish Chandra. One Uma Prakash Sinha Bhagina of Late Harish Chandra was looking after his mama, Harish Chandra. Srimati Veena Singh is daughter of said Uma Prakash Sinha and she and her son has executed unregistered agreement for sale on 11.08.2017. He further stated that he requested the petitioner not to claim any right over the land in question but he is not ready to pay heed to the request made by him and there is apprehension of breach of peace.

The contention of the learned counsel for the petitioner is that the grand father of the petitioner had purchased the land in question way back in the year 1932 from the nephew of recorded tenant who was issueless. Thereafter, residential house and shops were constructed over the land in question and the petitioner has been living in the residential house which bears Holding No. 721. The



petitioner is in actual possession of the land in question and to that extent proper Land Possession Certificate has also been granted in his favour by the concerned authority, which is evident from Annexure-9. It is further submitted that the petitioner also filed written statement and rejoinder to the petition under Section 146(1) of the Code of Criminal Procedure but not a single document has been produced by the opposite party No.3 showing his possession over the land in question. Neither any occurrence has taken place with respect to land in question nor any situation is created which attracts the attachment of land under Section 146(1) of the Cr.P.C. Despite the aforesaid fact the case of the petitioner could not be considered by learned S.D.M, Sadar Ara and has erroneously passed the impugned order without considering the materials on record. Therefore, the impugned order dated 24.08.2018, passed by the learned Sub-Divisional Magistrate, Sadar, Ara in Case No. 212 of 2017 being devoid of merit is not sustainable in the eye of law and the same deserves to be quashed.

Learned A.P.P. appearing on behalf of the State has stated that the learned Sub-Divisional Magistrate, Sadar has rightly passed the impugned order taking note of the



apprehended situation over the land in question and the same does not require any interference in exercise of powers under Section 482 Cr.P.C.

From perusal of the materials available on record and the submissions made above, it is evident that the police has submitted investigation report vide Memo No. 2070 of 2018 dated 20.07.2018 from which it appears that occurrence can take place at any point of time with respect to the land in question. Taking note of the situation which may arise and in order to bring peace between both the parties with respect to the land in question, the learned S.D.M., Ara has rightly passed the order of attachment under Section 146(1) of the Cr.P.C. which does not require any interference in exercise of supervisory powers conferred under Section 482 of the Code of Criminal Procedure.

In view of the above, the present application is dismissed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	
CAV DATE	14.05.2019
Uploading Date	27.09.2019
Transmission Date	

