

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.63 of 2016

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

Chandrika Rai Son of Late Guru Saran Rai resident of village - Near Bachari
College Piro, P.S. - Piro, District - Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Officer-in-charge, Piro Police Station Bhojpur.
3. Lal Mohar Singh son of Late Ram Ekbal Singh
4. Santosh Kumar Singh son of Late Ramayan Singh, Both are resident of
Udandih, P.S. - Piro, District - Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Maya Shankar Mishra, Adv.
For the Respondent/s : Mr. Ganesh Prasad Singh APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 07-02-2019 This criminal revision application has been filed
against the order dated 13.10.2015 passed by the learned Sub
Divisional Magistrate, Piro, in Case No. 165 of 2015 under
Section 144 Cr.P.C.

The case of the petitioner is that the land in question
bearing survey Khata No.6 survey Khesara No. 17, chak Khata
No.8, Chak Khesara No.3 measuring 24 decimal under mauza
Khorai, in Thana No.102, Police Station and Anchal- Piro, was
purchased in the name of the petitioner vide sale deed dated
13.05.2003 executed by Khatiani Raiyat Tetra Kunwar wife of
late Ram Janam Saj and at that time, the consolidation
proceeding in Bihar was closed and chak was not final in Khorai



mauza and the possession of the aforesaid land was given to the petitioner. Thereafter, the said land was mutated in the name of the petitioner vide Mutation Case No.677/2003-04 and the petitioner is paying rent to the State Government.

Further case of the petitioner is that the petitioner went to the said land and started construction of boundary wall, which was opposed by opposite party nos.3 & 4 and they also damaged the wall constructed by the petitioner and thereafter on the basis of non F.I.R. bearing No.14/2015 dated 30.08.2015 was registered by the police under Section 144 Cr.P.C. and sent to the Sub-Divisional Magistrate, Piro, in which Case No.165/2015 was instituted under Section 144 Cr.P.C.

It further appears that opposite party nos.3 and 4 appeared in the case and filed their show cause denying the allegation of the petitioner and submitted that the petitioner was trying to break the boundary wall from the said land and the wife of opposite party no.4 is paying rent to the State Government. Thereafter, a police report was submitted before the Sub-Divisional Magistrate, Piro, and vide impugned order dated 13.10.2015 making it absolute against opposite party nos. 3 & 4 against which this revision application has been filed.

Submission of learned counsel for the petitioner is



that the learned court below has passed the order dated 13.10.2015 on the basis that chak has become final and after considering the same, dismissed the proceeding under Section 144 Cr.P.C. and it barred the petitioner from construction of the land and also declared the possession of opposite party nos.3 & 4 on the said land. Learned counsel for the petitioner also submitted that he has got an information, which is Annexure-3 of the supplementary affidavit that shows that chak has not become final in that area and without considering the same and without converting the proceeding under Section 144 Cr.P.C. into proceeding under Section 145 Cr.P.C., the learned Magistrate has declared the possession of opposite party nos. 3 & 4, which is quite illegal and not sustainable in the eyes of law.

On the other hand, learned counsel for the opposite party nos. 3 & 4 appeared and submitted that the order has passed under Section 144 Cr.P.C. and at the crux of the order under Section 144 Cr.P.C. is only for two months, as such if the petitioner is aggrieved by the same, moved before the civil court of competent jurisdiction to file the case in his favour.

Having heard both sides and from perusal of the record, it appears that the order has been passed under Section 144 Cr.P.C. declaring the possession of opposite party nos. 3 &



4, which is quite illegal and under Section 144 Cr.P.C. possession cannot be decided and further it appears that learned Magistrate has not considered the facts of the matter that the chak has not been final in that area, but passed the order on that basis. However, order under Section 144 Cr.P.C. has a life only for two months and that has already been expired. In such view of the matter, without interfering into the matter, this revision application is disposed of with a liberty to the petitioner to move before the competent civil court of jurisdiction to get the case decided and the order passed in this case will not any effect on the case, if any, filed by the petitioner.

Accordingly, this revision application is disposed of with above direction.

(Vinod Kumar Sinha, J)

Amjad/-

U		T	
---	--	---	--

