

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.422 of 2018

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

Manoranjana Prasad Sinha S/o Late Mahavir Prasad Singh, Resident of Village
and P.O.- Brahampura, P.S.- Kamtaul, District- Darbhanga.

... .. Petitioner/s

Versus

1. Rajeev Kumar Thakur @ Nunu Boss and Ors S/o Dinesh Thakur.
2. Pallavi Rani, W/o Rajeev Kumar Thakur.
3. Saket Kumar Thakur, S/o Dinesh Thakur. All residents of Village P.O.-
Brahampur, P.S.- Kamtaul, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sahi, Sr. Adv.
	:	Ms. Shally Kumari, Adv.
For the Respondent/s	:	Mr. Uday Prakash Sharma, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 05-02-2019

Heard parties.

This criminal revision application has been filed for quashing the order dated 10.01.2018 passed by Sub Divisional Judicial Magistrate, Darbhanga Sadar, in M.R. No. 1261 of 2011, by which he has dropped the proceeding under Section 145 of Cr.P.C. A proceeding over the disputed land was initiated on the basis of a police report being M.R. No. 2140 of 2010 but for some reasons petitioner could not appear and contest the proceeding and the same was disposed of on 09.02.2010 showing the possession of respondents over the land.

Petitioner on 01.03.2011 filed a petition in the court of SDO, Darbhanga Sadar, that he is in peaceful possession over



the disputed land and opposite parties having no right, title, interest or possession over the disputed land are trying to forcibly dispossess the petitioner on the basis of forged and fabricated sale deed and upon which proceeding being M.R. No. 328 of 2011 under Section 144 of Cr.P.C was initiated and by order dated 11.03.2011 both parties were restrained from going upon the disputed land. Both parties filed their show cause claiming possession over the disputed land.

The claim of petitioner (1st party) is that he executed a sham and inoperative sale deed dated 05.07.1970 for 9 bighas 13 katthas and 7 dhurs of land which included the disputed land in favour of his sister who was ousted from her matrimonial home and was living with the petitioner. On the basis of sham transaction she never came into possession over the disputed land but possession of petitioner continued even thereafter and still continuing.

The disputed land is also subject of ceiling proceeding being Ceiling Case No. 316 of 1976-77 which is still pending for final decision and in said proceeding sale deed as referred above has been declared illegal under the Ceiling Act and same was allotted in the share of petitioner as his unit in the ceiling proceeding. Petitioner had executed two agreements on



24.02.1990 and 14.10.1992 with one Mahendra Sah for establishing brick-kiln. Opposite parties who are the sons from third wife of Ram Naresh Sharma have executed a sale deed dated 20.11.2009 in favour of Opposite parties without having any right, title and possession over the land.

On 13.09.2011 the SDO, Darbhanga Sadar, converted the proceeding into Section 145 Cr.P.C and notices were issued to both the parties and both appeared and filed their show cause and by order dated 13.04.2012 the learned SDO, Darbhanga Sadar, attached the disputed land under Section 146(1) of Cr.P.C and said attachment continued till the passing of order as impugned. The Anchal Adhikari, Jale, was appointed as a Receiver and continued as such till passing of the order as impugned.

It has been submitted on behalf of petitioner that once on the basis of police report and materials available on record before the SDO, Darbhanga Sadar, of apprehension of breach of peace over the disputed land and same being attached under Section 146(1) of Cr. P.C the learned court was bound to give a finding with respect to possession of either of the parties over the land and could not have dropped the proceeding for the reason that the matter remained pending for last six years.



The case of 2nd Party is that they are purchasers from descendants of Rama Devi. Rama Devi (sister of 1st Party) was 1st wife of Ram Naresh Sharma who died in the year 1990 and disputed land is not the ancestral land of 1st Party but same was purchased by his father Ram Naresh Sharma in the name of his 1st wife Rama Devi over which they were coming in peaceful possession having legal title. After death of Ram Naresh Sharma and Rama Devi it came in possession of their descendants who executed a registered sale deed on 20.11.2009 in favour of Pallavi Rani w/o Rajiv Kumar and Saket Kumar after receiving consideration amount. Thereafter, the land has been mutated in favour of purchaser (2nd party) and Jamabandi has been opened in the name of 2nd party. Land possession certificate has been issued by the competent authority in favour of 2nd party in the revisional survey the disputed land is recorded in name of 2nd party. They have valid title and peaceful possession over the disputed land.

After hearing the parties and considering the materials available on record and show cause filed by both the parties, the learned SDO, Darbhanga Sadar, has dropped the proceeding holding that the issue involved in present proceeding raises complex issue of title which cannot be decided under such



proceeding and gave liberty to both the parties to approach the civil court of competent jurisdiction to decide the matter.

Petitioners are aggrieved by this finding of the learned SDO, Darbhanga Sadar, resulting in dropping of present proceeding. It has been submitted that the learned SDO, Darbhanga Sadar, after initiating the proceeding under section 144 of Cr.P.C and thereafter converting the same under Section 145 of Cr.P.C and also appointing Circle Officer, Jale as receiver under section 146(1) of Cr.P.C and pleadings of both parties claiming possession over the land being filed before him. The learned SDO, Darbhanga Sadar, was not justified in dropping the proceeding but ought to have decided the proceeding in favour of either of the parties. The finding of the learned SDO, Darbhanga Sadar, that complex issue of title is involved in this case is also not sustainable as the SDO, Darbhanga Sadar, is required to decide the actual position of either of the parties in a proceeding under Section 145 of Cr.P.C and is not supposed to decide the title of either of the parties. The SDO in order to reach to a decision regarding actual position of the parties has to consider the evidence of parties regarding their possession and can look to satisfy himself with respect to prima facie title of either of the parties but has to decide the actual possession of



the parties. It has been further submitted that when once the learned SDO was satisfied that there was apprehension of breach of peace between the parties and converting the proceeding under Section 145 of Cr.P.C and thereafter also appointing a Receiver under Section 146(1) of Cr.P.C which remains effective till the court decides the actual position of the parties as such the SDO ought to have decided the actual position of either of the parties before withdrawing the order of appointment of Receiver and dropping the proceeding by the order as impugned in the case of **Raj Kumari Devi and Anr vs. The State of Bihar and Ors** reported in **2008(1) PLJR 453**, relevant portion whereof reads as follows:-

“Further on behalf of the petitioner the case reported in AIR 1952 Patna page-234 (Khartar Sao vs. Pradip Singh & Ors.) has been cited to show that in a proceeding u/s 145 Cr.P.C. what the Magistrate has to determine is the fact of actual physical possession from the date of his order under Section 145(1) of the Cr.P.C. and the Magistrate is not entitled to determine the question of title and pass an order on the footing that possession follows title. It has been held therein that absence of clear specification of the subject of dispute is a vital defect, the subject matter of dispute must be ascertained definitely and described clearly in the order.”

After hearing the parties and perusing the order passed by the S.D.O., Darbhanga Sadar as impugned in this petition, this Court finds that there was no occasion for the S.D.O. to



drop the proceeding on the reasoning that the issue involved is complex issue of title whereas in a proceeding under Section 145 of Cr.P.C. he has to decide the actual possession of either of the parties.

For the reasons as stated above, the order passed by S.D.O, Darbhanga Sadar dated 10.01.2018 in M.R. No. 1261 of 2011 passed under Section 145 of Cr.P.C. is not sustainable and accordingly set aside.

The matter is remanded to the S.D.O., Darbhanga Sadar to decide the issue of actual possession over the disputed land, after hearing both the parties in accordance with law at the earliest preferably within six months from date of receipt/production of a copy of this order.

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

