

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41336 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Vaishali

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1. Anil Singh @ Anil Kumar Singh Son of Lated Rajendra Singh Resident of Village- Ismilepur, Police Station- Goraul, District- Vaishali.
 2. Ashok Kumar @ Ashok Singh Son of Late Rajendra Singh Resident of Village- Ismilepur, Police Station- Goraul, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Chandeshwar Prasad Singh @ Chandeshwar Singh Son of Late Ramprit Singh Resident of Village- Ismilepur, Police Station- Goraul, District- Vaishali.
3. Sanjay Singh Son of Chandeshwar Prasad Singh @ Chandeshwar Singh Resident of Village- Ismilepur, Police Station- Goraul, District- Vaishali.
4. Munna Singh Son of Shyamnandan Singh Resident of Village- Ismilepur, Police Station- Goraul, District- Vaishali.
5. Arun Kumar Singh Son of Late Badri Singh Resident of Village- Ismilepur, Police Station- Goraul, District- Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar
For the Opposite Party/s : Mr. Ramchandra Sahni

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 25-07-2019 Heard Mr. Pravin Kumar, learned counsel for

the petitioners and Mr. Bhola Prasad, learned advocate

for the Opposite Parties.

The petitioners have challenged the order dated 03.05.2019 passed by the learned Additional District & Sessions Judge No. VI, Vaishali at Hajipur in Criminal Revision No. 67 of 2019, whereby the order



passed by the learned Sub-Divisional Magistrate, Mahua in connection with Case No. 340 of 2018, converting a proceeding under Section 144 of the Cr.P.C. into one under 145 Cr.P.C. has been set aside on two grounds, namely, that there has not been any recording of satisfaction of the learned Magistrate that a dispute exists between the parties with respect to a plot of land which is capable of giving rise to law and order problem and that a civil suit between the parties with respect to the same plot of land is pending adjudication before the competent Civil Court.

It has been submitted on behalf of the petitioners that assuming but not admitting that a civil suit is pending between the parties, the revisional Court ought to have noticed the petitioners and should not have taken the statement of the opposite parties to be sacrosanct and correct.

It was required to be demonstrated before the learned revisional Court whether the pending civil



suit is with respect to the same plot of land and between the same set of parties.

It has further been submitted that the revisional Court has wrongly stated that there has not been any recording of the subjective satisfaction of the learned Magistrate that law and order problem can arise if the dispute regarding possession is not settled. The order dated 28.01.2019 passed by the learned SDM, Mahua is clear and the Magistrate concerned has recorded it in no unambiguous terms that there is a possibility of breach of law and order because of the pending dispute between the parties regarding possession of that portion of land.

For the reason the petitioners were not noticed and the order of the learned Magistrate was set aside, the revisional order which has been impugned in the present petition is not fit to be sustained in eyes of law and hence is set aside.

The case is remitted to the learned SDM,



Mahua for him to pass necessary orders in accordance with law.

It would be open for the parties to contest the case and if it is found that civil suit / title suit between the parties with respect to the same plot of land under dispute is pending adjudication before the competent Court of law, the Magistrate shall take note of it and shall pass a reasoned order in accordance with law. Needless to state that Section 144 and 145 are emergency provisions and if there is a civil suit pending adjudication before a competent Court of law, a parallel proceeding ought not to be drawn up for deciding the issue of possession.

The petition is allowed with the direction as indicated above.

(Ashutosh Kumar, J)

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