

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43089 of 2019

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

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Lal Babu Yadav, son of Ram Ashre Yadav Resident of Mohalla-Pakdi, Police Station-Ara Nawada, District-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Sub-Divisional Magistrate, Sadar Ara, District-Bhojpur
3. The Executive Magistrate, Sadar, Ara.
4. Ras Bihari Sharma @ Bhurji 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. Maitin, Advocate
For the Opposite Party/s : Mr. Aslam Ansari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 06-08-2019

Heard Mr. T.N. Maitin, learned senior advocate
for the petitioner and Mr. Aslam Ansari, learned APP for
the State.

2. The petitioner, who is the second party in
the proceeding has challenged the order dated
16.05.2019 passed by the learned Executive Magistrate,
Sadar, Ara in Case No. 212 of 2017 whereby the
petition preferred on his behalf under Section 145(5) of
the Code of Criminal Procedure for dropping the



proceeding as there is no apprehension of breach of peace, has been rejected.

3. From the perusal of the order impugned, it appears that the police report indicates that with respect to possession over the concerned plot of land, there is a possibility of disturbance and breach of law and order. Considering the aforesaid fact, the concerned plot of land had been attached under Section 146(1) of the Code of Criminal Procedure and a receiver also had been appointed.

4. Mr. Maitin, learned senior advocate for the petitioner has submitted that the Magistrate concerned ought to have looked into the fact that the possession over the aforesaid plot of land is being claimed by him on the basis of a sale deed whereas the claim of possession of the first party/O.P. No. 4 in the present proceeding is on the basis of only an agreement to sale and there is nothing on record to indicate that there was any transfer of possession in favour of the first



party/O.P. No. 4.

5. The police report, the factum of attachment of the property in question and appointment of receiver presuppose that there is a dispute with respect to possession. Whether the claim of possession over the plot of land is being staked on a document which does not have force of law is not an issue which is to be decided by the learned Magistrate. The issue with respect to possession is still pending consideration which ought to be decided.

6. The learned Magistrate has rightly rejected the petition under Section 145(5) of the Code of Criminal Procedure, preferred by the petitioner.

7. The order impugned therefore is not liable to be interfered with.

8. All that this Court can direct in the aforesaid circumstances is to conclude the proceedings as expeditiously as possible without any further delay as the property has been attached and a receiver has been



appointed, which property has been purchased by the petitioner by virtue of a registered sale deed.

10. The petition stands disposed off accordingly.

Shageer/-

(Ashutosh Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08/08/2019
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