

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2665 of 2015

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

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1. Arbind Kumar Jha, Son of Brij Nandan Jha
 2. Nilima Jha, W/O Late Arun Kumar Jha, Both residents of village - Titra
Asha Nand, P.S – Sakra, Distt. - Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Pasupati Nath Jha, S/O Late Jaya Nand Jha
3. Shri Nath Jha, Son of Baidya Nath Jha
4. Shiv Chandra Jha
5. Dev Chandra Jha
6. Vinod Jha
7. Salindra Jha
All 4 to 7 are sons of Late Jagarnath Jha
8. Anand Kumar Jha
9. Rajesh Kumar Jha,
Both 8 & 9 are sons of Late Vishwanath Jha,
All are Resident of vill. - Titra, Ashanand, P.S – Sakra, Anchal Muraul,
10.(a) Distt.-Muzaffarpur
(b) Prashant Jha
(c) Prasanna Jha,
Both sons of Late Kalika Nath Jha
11. Kalpana Jha, Widow of Prabhat Jha, pre-deceased son of Late Kalika
12. Nand Jha
All residents of Titra Ashanana, P.S. Sakra, District Muzaffarpur, At
present residing at Nehru Nagar, Patliputra, Town & District Patna
Sachidanand Jha, Son of Late Rama Nand Jha
Most. Shabhagyawati Devi, W/o of Late Achyuta Nand Jha
13. Shyam Nandan Jha
14. Raj Nandan Jha,
Both 13 & 14 are sons of Late Srinandan Jha, All 11 to 14 all are Resident
of vill. - Titra, Asha Nand, P.S – Sakra, Anchal Nuraul, Distt. -
Muzaffarpur

... .. Opposite Party/s



Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Sr. Advocate
For the Opposite Parties : Mr. Nachiketa Jha, Advocate
Mr. Arvind Kumar Jha, Advocate
For the State : Mr. Shyam Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 06-08-2019

Heard learned counsel for the parties.

2. Partition Suit No. 223 of 1987 was brought in the Court of learned Sub-Judge, Muzaffarpur by opposite party no. 13 and 14 herein, namely, Shyam Nandan Jha and Raj Nandan Jha, both sons of Late Srinandan Jha. The suit was against petitioners Pasupati Nath Jha and others. Prayer in the suit was that the suit property (Schedule-I) was already partitioned in the manner described and detailed in Schedule-II of the plaint. Hence, the Court was prayed to declare that Schedule-I property to the plaint was already partitioned by meets and bounds. Alternative, prayer was that if the court comes to the conclusion that Schedule-I property was not partitioned as suggested by the plaintiffs in Schedule-II, the property be partitioned and $\frac{1}{4}$ th share of the plaintiffs be separated. The suit was dismissed for non-prosecution on 15.12.2005.

3. It is not disputed that for the same suit property, a proceeding under Section 145 Cr.P.C. was initiated on the prayer



of the petitioners on 07.02.2008. The parties were almost same who were in the partition suit. On 24.07.2008, the entire land under proceeding measuring 14 acres were attached in exercise of power under Section 146(1) Cr.P.C. and the Circle Officer, Muraul was appointed as Receiver. The order of attachment was challenged before the learned Sessions Judge in a criminal revision petition and thereafter before this High Court in an application under Section 482 Cr.P.C. and, at all levels, the order of attachment was found justified. Thereafter, on a report submitted by the same Circle Officer, Muraul dated 26.10.2012 at Annexure-3, the proceeding under Section 145 Cr.P.C. was dropped in exercise of power under Section 145(5) Cr.P.C., by the impugned order dated 09.01.2013 passed in Misc. Case No. 293 of 2008 on the ground that there is no apprehension of breach of peace.

4. The petitioners challenged the aforesaid order before the learned Sessions Judge, Muzaffarpur in Cr. Revision No. 39 of 2013. The matter was heard by the learned 11th Additional Sessions Judge, Muzaffarpur and by order dated 29th November, 2014, criminal revision was dismissed by giving reference to the pendency of the civil suit and holding that Civil Court is competent to decide possession of the parties.



5. Contention of learned counsel for the petitioners is that once a Receiver was appointed to look after the management of the property under proceeding, there was no question of apprehension of breach of peace because by necessary implication, the parties were restrained from going over that land. The same Receiver submitted a collusive report at Annexure-3 showing possession of the opposite parties on different plots and specifically mentioning that there is no apprehension of breach of peace on any of the plot.

6. Contention is that once the Executive Magistrate decided to attache the property under Section 146 Cr.P.C., he was bound to decide as to which of the parties was in possession on the date of making of the order under sub-section (1) of Section 145 Cr.P.C. Sub-section (1) and (5) of Section 145 Cr.P.C. are relevant for this purpose, hence, the same are being reproduced below:-

“(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their



respective claims as respects the fact of actual possession of the subject of dispute”.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.”

7. Apparently, under sub-section (1) of Section 145 Cr.P.C., the parties were asked to file written statement of the fact regarding their claim of possession on the subject of dispute. Both the parties filed their written statement and put their respective claim of possession. Therefore, the dispute regarding possession was already there. Hence, there was no material before the learned court below under sub-section (5) of Section 145 Cr.P.C. that no “such dispute as aforesaid exist or existed”. If the dispute was continuing, the Magistrate was bound to decide the dispute and could not have dropped the proceeding merely by saying that there is no apprehension of breach of peace which was certainly not there after attachment of the property under proceeding and appointment of Receiver.

8. In this application, under Section 482 Cr.P.C., both orders of both; the Revisional Court as well as the learned



Executive Magistrate; passed in Cr. Revision No. 39 of 2013 on 29.11.2014 and in Misc. No. 293 of 2008 on 09.01.2019 are under challenge.

9. Learned counsel for the opposite parties opposed the prayer of the petitioners, however, could not controvert that the finding of the learned courts below, that since civil suit was pending and issue of possession was to be decided by the Civil Court, was completely erroneous finding and result of error of the record because civil suit was already dismissed for default in the year 2005 itself and the suit was not pending on the dates, the impugned orders were passed. Further both the courts below completely ignored the requirement of sub-section (5) of Section 145 Cr.P.C. that “the dispute must not exist or have existed” on the date of order.

10. After hearing the parties and on careful consideration of the material on the record, I am of the view that the learned Executive Magistrate while dropping the proceeding under sub-section (5) of Section 145 Cr.P.C. ignored the mandate of sub-section (5) of Section 145 Cr.P.C. that there must be satisfaction that no dispute exists between the parties whereas both the parties in their written statement had claimed their possession on the land under proceeding, as such, the dispute was already there. The



learned Executive Magistrate did not give any direction regarding the disposal of income and profit earned from the attached property by the Receiver and simply discharged the Receiver. It also caused prejudice to the parties to the proceeding. Hence, the order of the Executive Magistrate, if allowed to stand, would apparently cause failure of justice. Since the Revisional Court has upheld the illegal order of the Executive Magistrate, the same is also not sustainable in law.

11. In the result, both the orders impugned are hereby quashed and it is directed that the proceeding under Section 145 Cr.P.C. be restored to its original file and the learned Executive Magistrate shall decide as to which of the parties was in possession of the property under proceeding on the date of initiation of the proceeding. The learned Executive Magistrate shall call for accounts from the Receiver and shall pay the same to the party who would be found in possession of the land under the proceeding.

12. The entire exercise must be completed within a period of four months from the date of receipt/production of a copy of this order.



13. The parties shall fully cooperate in disposal of the proceeding before the learned court below, at the earliest and expeditiously.

14. With the aforesaid observation, this application stands allowed.

(Birendra Kumar, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	09.08.2019
Transmission Date	09.08.2019

