

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.662 of 2016

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

=====

Lakhpati Singh, Son of Late Ram Swarup Singh @ Bhola Prasad Singh,
Resient of Village P.O. Punaura, P.S. Sitamarhi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ajit Kumar, Son of Hari Shankar Prasad Singh, resident of Village P.O.
Punaura, P.S. Sitamarhi, District- Sitamarhi.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr.Ashok Kumar Singh
For the Respondent/s : Mr. Ram Priya Saran Singh

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 22-07-2019 This application has been filed against the impugned order dated 15.2.2016 passed in Case No. 452 of 1992 under Section 145 of the Criminal Procedure Code by learned Sub-Divisional Magistrate, Sitamarhi by which he has dropped the proceeding on the ground that the dispute relates to partition and possession of the disputed land between the same family.

Case, in short, is that petitioner has filed a petition for initiation of proceeding under Section 145 Cr.P.C. on which both the parties adduced evidence and thereafter learned Magistrate vide impugned order has dropped the proceeding on the ground that the matter relates to partition and as such the court of Sub-Divisional Magistrate is not competent to decide



the same.

The ground for assailing the impugned order is that without closing the evidence of the petitioner he has proceeded with the evidence of opposite party No.2 and for that he has filed an objection petition before the learned Sub-Divisional Magistrate (Annexure-1). It is also submitted that evidence of petitioner is on the record showing the possession of the petitioner but without considering the same the impugned order has been passed.

In this case earlier notice has been issued to opposite party No.2 and it appears that opposite party No.2 has appeared by filing Vakalatnama but none appears on his behalf.

On perusal of the record it appears that an application before the court of Sub-Divisional Magistrate has been filed, which is Annexure-1 objecting taking evidence of 2nd party without closing evidence of the first party, i.e., the petitioner for leading evidence but except that nothing has been brought on the record to show that without closing the evidence of first party the evidence of second party has been recorded. Furthermore, mere perusal of the order impugned it appears that the learned Magistrate has considered the evidence available on the record and found that though in the evidence in chief of first



party has come with the evidence that land in dispute is in his possession but in his cross examination he could not point out as to how much land has come in the share of each party and how much land was sold and also about the possession of the parties over the land and parties have not adduced evidence on the point of possession and considering the same learned Magistrate has dropped the proceeding on the ground that the application for initiation of proceeding under Section 145 Cr.P.C. has been filed in the garb of partition suit for which the court of Sub-Divisional Magistrate is not competent.

I find no illegality or impropriety or error apparent in the impugned order. Accordingly, this application is dismissed.

However, petitioner is always at liberty to move the civil court for such relief.

(Vinod Kumar Sinha, J)

spal/-

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

