

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78232 of 2019

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

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1. SAMSAD ALI @ TUNTUN HASMI Son of Late Noor Hasan @ Noor Hasan Miyan
 2. Haidar Ali Son of Late Noor Hasan @ Noor Hasan Miyan
 3. Ajbullah Miyan Son of Late Usman Miyan @ Usman Gani
- All above three are resident of Village - Achitpur, P.S.- Isuapur, Distt.- Saran

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary., Home Dept. Govt. Of Bihar, Patna
2. Md. Jan Miyan Son of Late Raham Miyan Resident of Village - Achitpur, P.S.- Isuapur, Distt.- Saran
3. Md. Afjal Son of Jan Miyan Resident of Village - Achitpur, P.S.- Isuapur, Distt.- Saran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar, Adv
For the Opposite Party/s : Mr.Abhay Kumar Roy, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 03-12-2019

Heard learned counsel for the parties.

2. The petitioners have challenged in this application under Section 482 Cr.P.C. the order dated 08.08.2019 passed in Cr. Revision No.48 of 2018 whereby the learned Additional Sessions Judge, Saran has refused to interfere with the order dated 02.02.2018 passed by learned Sub Divisional Magistrate, Marhowrah, Chapra in Misc. Case No.896 of 2017 whereby the learned Sub Divisional Magistrate has converted a proceeding under Section 144 Cr.P.C. into a proceeding under Section 145



Cr.P.C. by observing that there is apprehension of breach of peace between the parties for possession over the land under proceeding which was evident from the respective show cause filed by the parties and the learned Sub Divisional Magistrate was of further view that in a proceeding under Section 144 Cr.P.C., the aforesaid issue cannot be looked into.

3. The challenge is on the ground that in a Panchayati the other side admitted the claim of the petitioners on the land under proceeding and they further gave undertaking that in future they would not raise any dispute in respect of that land. The show cause filed by the first party in the proceeding under Section 144 Cr.P.C. who are opposite party herein, (a copy at Annexure-6) would show that the first party is claiming possession over the land under proceeding. The petitioners in their show cause (a copy at Annexure-7) have claimed their title and possession over the land under proceeding. Thus there is dispute of possession between the parties before the learned court below.

4. Learned counsel for the petitioners submits that the petitioners' side had purchased the land under proceeding in the year 1996 whereas the opposite parties have purchased the same in the year 2012.



The respective parties are claiming title of their respective vendors.

5. Section 145 (1) Cr. P.C. reads as follows:

145. Procedure where dispute concerning land or water is likely to cause breach of peace.-(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.

6. Considering the provisions of Section 145 Cr.P.C. which stipulates a detailed enquiry including collection of evidence to ascertain which of the party was in possession on the date of initiation of the proceeding and also considering the fact that the possession over the land under proceeding is disputed one.



I do not find any illegality with the order of the learned Sub
Divisional Magistrate or of the Revisional Court.

7. This application has got no merit. Accordingly, it is
dismissed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.12.2019
Transmission Date	05.12.2019

