

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1764 of 2018

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

=====

Sagar Rai Son of Late Mulchand Rai, resident of Village- Himmatpur, P.S.-
Raghopur, P.O.- Rustampur, District- Vaishali, at present residing in Mohalla-
Nagla, P.S.- Malsalami, P.O. Madhav Mills, District- Patna.
... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration
Department, Govt. of Bihar, Patna
2. The District Magistrate, Vaishali at Hajipur.
3. The Sub-Divisional Magistrate, Hajipur, District- Vaishali.
4. Vasudeo Rai,
5. Singdeo Rai.
6. Jugat Rai.
7. Ram Anuj Rai @ Anuj Rai,
All sons of Late Nagdeo Rai and Residents of Village- Himmatpur,
P.O.- Rustampr, P.S.- Raghopur, District- Vaishali.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ratna Deep Prasad, Advocate
For the Respondent/s : Mr. Md. Nasrul Huda Khan, SC-1

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 07-05-2019

Heard learned counsel for the petitioner and
learned counsel for the State.

2. This application under Articles 226 and 227 of
the Constitution of India has been filed by the petitioner for
quashing the order dated 01.11.2017 passed by the learned Sub-
Divisional Magistrate, Hajipur in Case No.M1/454 of 2017 under
Section 146(1) of the Code of Criminal Procedure (For short
'Cr.P.C.') whereby the land admeasuring two Bigha fifteen Katha
appertaining to Khata No.165 Khesra No.62 has been attached.



3. It is submitted by the learned counsel for the petitioner that father of respondent 2nd set Late Nagdeo Rai has sold the land in dispute to the petitioner and his brother Jalandhar Rai through two sale deeds. Late Nagdeo Rai, the father of respondent 2nd set, executed one sale deed dated 04.07.1974 in favour of the petitioner Sagar Rai in respect of 15 Katha and another sale deed dated 10.01.1972 in respect of 2 Bigha of the disputed plot No.62 appertaining to Khata No.165 in favour of the Parmeshwari Devi, the wife of petitioner's brother Jalandhar Rai. Since the day of execution of the aforesaid two sale deeds, the petitioner and his brother are in peaceful cultivating possession over the land. After the death of aforesaid Nagdeo Rai, his son respondent 2nd set brought one Title Suit No.26 of 2016 before the Court of Munsif-1, Hajipur, Vaishali on 11.04.2016 for declaration that the said sale deeds dated 10.01.1972 and 04.11.1974 are forged and invalid wherein the petitioner along with one Parmeshwari Devi has been made defendants. It is further pleaded that at the instance of respondent no.5 Singhdeo Rai, a proceeding under Section 144 of the Cr.P.C. had been initiated by the learned Sub-Divisional Magistrate, Hajipur against the said Jalandhar Rai and two others as 2nd parties on 10.11.2016, but after considering the police report and the written statement filed by both the parties, the said proceeding was closed on the ground that it involves



question of title which is beyond the jurisdiction of an Executive Magistrate vide order dated 07.01.2017 passed in Case No.M1-239 of 2016. After closure of the proceeding under Section 144 of the Cr.P.C. in Case No.2396 of 2016 itself another proceeding under Section 144 of the Cr.P.C.by the same court was initiated on 02.03.2017 vide Case No.M1-454/17 at the instance of Ramanuj Rai @ Anuj Rai (respondent no.7), the brother of Singhdeo Rai, the first party in earlier Case No.2396 of 2016 and on the police report in case no.2396 of 2016 one Shrawan Rai was made 2nd party. The said Shrawan Rai is son of Jalandhar Rai, who was 2nd party in the earlier case. Subsequently, vide order dated 29.04.2017 the proceeding under Section 144 of the Cr.P.C. was converted into a proceeding under Section 145 of the Cr.P.C.. Thereafter, on the basis of a police report dated 16.09.2017 the learned Sub-Divisional Magistrate has attached the land in dispute under Section 146(1) of the Cr.P.C. vide impugned order dated 01.11.2017 and the Officer-in-charge, Raghapur (Rustampur O.P.) has been appointed as a receiver in the case.

4. It is argued by the learned counsel for the petitioner that the order impugned passed under Section 146(1) of the Cr.P.C. cannot be sustained in view of the fact that the petitioner was not even made a party in the case. It is pleaded that the order impugned is also bad for the reason that for the land in



dispute a title suit bearing Title Suit No.26 of 2016 has been brought by the aforesaid Ramanuj Rai and Singhdeo Rai and their two other brothers before the Court of Munsif-1st, Hajipur, Vaishali wherein the petitioner and his brother's wife have been made parties as defendants for declaration that the sale deeds executed by their father in favour of the petitioner and his brother's wife are forged and be declared to be invalid. It is argued that during pendency of the title suit between the parties for the same subject matter, a proceeding under Section 144, 145 or 146 of the Cr.P.C. should not have been allowed to continue.

5. Despite service of notice, the respondent 2nd set has chosen not to appear in the case either in person or through lawyer.

6. Learned counsel for the State has raised a preliminary objection regarding maintainability of the writ petition. He contended that against an order passed by a Court of Magistrate, which is not interlocutory in nature, the petitioner has a remedy of revision. Instead of availing of statutory remedy provided under the Cr.P.C., the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, which is not proper and justified.

7. On merits, he has submitted that considering the existence of situation of emergency the Executive Magistrate



has passed the order of attachment under Section 146(1) of the Cr.P.C. in order to prevent imminent breach of peace, which cannot be termed to be bad in law.

8. In reply, learned counsel appearing for the petitioner submitted that the writ petition would be maintainable in view of the fact that there is apparent violation of principles of natural justice. Though the petitioner was a necessary party, no notice was ever issued to him prior to the passing of the order of attachment. He has not been made a party in the case. He contended that a writ petition would be maintainable in case of violation of principles of natural justice.

9. Since the petitioner was not made a party in the court below and after hearing the petitioner and the State notices were issued earlier to respondents no.4 to 7, I am not inclined to hold the case to be not maintainable on the ground of availability of alternative remedy.

10. On going through the materials on record, I find that the order impugned under Section 146(1) of the Cr.P.C. has been passed by the learned Sub-Divisional Magistrate, Hajipur on the basis of a police report submitted on 16.09.2017. The police report has been brought on record. It was prepared by one Surendra Rai, Assistant Sub-Inspector of Police, Rustampur O.P., P.S-Raghopur. In his report he has stated that he had made a



physical verification of the disputed land. He was shown Raiyati Khatian by the 1st party. On perusal of Raiyati Khatian, he found that one Ramkhelawan Rai and Muni Rai son of Sahai Rai were the recorded tenant. They were paying rent till 2014. The 2nd Party also produced a Kewala (sale deed). On perusal of the sale deed, it was found that Ramlagan Rai transferred the land in 1994. He also produced land possession certificate issued by the Circle Officer, Raghapur. The 1st party claimed that the sale deed produced by the 2nd Party is not correct. On the basis of the aforesaid report, he opined that there can be breach of peace on the land in dispute.

11. In the opinion of this Court, if that was the only material before the Sub-Divisional Magistrate, there was no occasion for passing the order for attachment of land in dispute. An appointment of a receiver can be made only if there is existence of a situation of emergency necessitating attachment to prevent breach of peace. It is required in law that the court passing the order must record the satisfaction that there exists an emergent situation, which requires attachment of the property. Apprehension of breach of peace alone cannot be a ground for recording satisfaction that there is existence of emergency which requires attachment of property. In order to come to a finding that situation of emergency exists, there must be some materials before the



Magistrate on record. The Magistrate may form such opinion on the basis of the police report or independent agency. However, the police report does not indicate existence of any emergent situation which required attachment of land in dispute.

12. In that view of the matter, the order impugned dated 01.11.2017 passed by the learned Sub-Divisional Magistrate, Hajipur in Case No.M1/454 of 2017 under Section 146(1) of the Cr.P.C. cannot be sustained. It is set aside accordingly.

13. The application stands allowed.

Md. S/-

(Ashwani Kumar Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.05.2019
Transmission Date	12.05.2019

