

IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM OFFICIAL CHAMBERS VIA VIDEO APPLICATION)

Criminal Writ Jurisdiction Case No.8 of 2020

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

Shailendra Pratap Singh S/o Late Shivnarayan Singh Resident of Village-
Karath, P.O.- Tarari, District- Bhojpur.

... .. Petitioner

Versus

1. The State Of Bihar through District Magistrate Ara, Bhojpur
2. Sub- Divisional Officer, Piro, Bhojpur.
3. Circle Officer, Tarari, Bhojpur.
4. The Superintendent of Police, Ara, Bhojpur.
5. The Deputy Superintendent of Police, Ara Bhojpur.
6. The Officer-in-charge Tarari Police Station, Bhojpur.
7. Rohit Singh S/o Tejnarayan Singh Resident of Village and Post- Karath,
P.S.- Tarari, District- Bhojpur.
8. Avinash Singh S/o Late Tejnarayan Singh Resident of Village and Post-
Karath, P.S.- Tarari, District- Bhojpur.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Rajendra Nath Sinha, Advocate
For the State	:	Ms.Divya Verma, AC to AAG-III
For the Respondent	:	Mr. Sumit Kumar Jha, ADvocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 14-09-2021

The present writ application has been filed by one of the sons of Late Shivnarayan Singh for quashing the order dated 25.11.2019 passed by the Sub-Divisional Officer, Piro (respondent no. 2) by which in exercise of his power under Section 146(1) of the Code of Criminal Procedure the Sub-Divisional Officer has appointed a receiver and direction was issued to the Circle Officer, Tarari, Bhojpur (respondent no. 3).

2. The Contention of learned counsel for the petitioner

is that the private respondent no. 7 filed a fraudulent petition in the court of Sub-Divisional Officer, Piro under Section 144 Cr.P.C. giving rise to case No. 107/2019 by suppressing the material facts relating to the right of the writ petitioner in respect of the plots bearing Chak Khesra No. 97, Khesra No. 190, 50, Khesra No. 156/96, 150/96 under Chak Khata No. 152, 15 and Chak Khata No. 60, Chak Khesra No. 94, 198 and 199 measuring area 86 decimal.

3. Learned counsel submits that private respondent no. 7 & 8 are sons of Late Tejnarayan Singh and both are one farik in joint property. The submission is that the properties mentioned in Annexure '2' were purchased by the income of all the brothers. Being elder among his brothers the father of private respondent no. 7 & 8 was the Karta of the family. The petitioner, further submits that on the basis of personal understanding of Khangi Batwara all brothers were doing cultivation separately and their kitchen without any partition on the basis of metes and bounds is still going on. The order impugned has been assailed on the ground that the same has been passed without any material on the record and even before determination of the rights of the parties.

4. The submission of Mr. Jha, learned counsel

representing respondent no. 7 & 8 have been taken note of by this court in the order dated 13.09.2021. The relevant part of which are being reproduced hereunder:

“..... Mr. Jha, learned counsel representing the respondent nos.7 and 8 submits that in fact the petitioner was not even a party in the 145 Cr.P.C. proceeding before the learned Sub-Divisional Magistrate, Piro. He has objected to the very entertainment of this writ application on the ground that the writ petitioner has no right to intervene in the proceeding by filing a writ application before this Court when he was not a party before the Sub-Divisional Magistrate.

It is submitted that earlier the brothers of this petitioner had filed a partition suit bearing Title Suit No.558/2008 before the Civil Court, Ara for partition of the land in question, however, the said suit was dismissed for default vide order dated 15.05.2012. Against the said order neither the petitioner nor his brothers i.e. uncle of the respondents took any action for restoration of the suit. By filing this writ application, the petitioner now wants to create a cause of action which is not permissible.

Learned counsel further submits that during pendency of the 144 Cr.P.C. proceeding again a partition suit bearing Title Suit No.136/2019 has been filed by the heirs of late Shivnarayan Singh in the learned court below for partition of the disputed land in which the respondents have already appeared. It is lastly submitted that due to intervention of the mother and well wishers of the respondent nos.7 and 8, the dispute between two has been mutually settled. They filed a compromise petition in the 145 Cr.P.C.

proceeding. Annexure-R/3A to the counter affidavit filed on behalf of the respondent no.8 is certified copy of the order-sheet of the 145 Cr.P.C. proceeding...”

5. In course of argument, this Court called upon learned counsel for the petitioner to say as to whether before filing this writ application the petitioner ever approached the Sub-Divisional Officer, Piro to become a party in the proceeding pending before him. Initially, learned counsel for the petitioner submitted that the petitioner has approached but his application was not entertained by the Sub-Divisional Officer but his submissions to this effect are not getting substantiated from the pleadings made in the writ application. No such statement has been made by the petitioner before this Court.

6. This Court has further noticed that the petitioner has brought on record a copy of the plaint of Title Partition Suit No. 136/2019 filed in the court of Sub-Judge, Mokam Piro, Bhojpur. The petitioner is himself plaintiff no. 1. His brother is plaintiff no. 2, mother is plaintiff no. 3 and the two sisters are plaintiff nos. 4 & 5. Respondent no. 7 & 8 of the present writ application have been made defendants in the said suit. The defendants have already appeared in the suit as has been informed to this court by Mr. Jha.

7. In paragraph ‘9’ of the plaint, it is admitted that the

father of writ petitioner had during his life time also filed a partition suit in the court of learned Sub-Judge – 1st, Ara giving rise to Case No. 558/2008 but the said suit was dismissed in default.

8. Having heard learned counsel for the petitioner and learned counsel for the private respondents as also learned counsel for the State, this Court is of the considered opinion that the writ application at the instance of the petitioner cannot be entertained against the impugned order. The petitioner was not a party in the proceeding before the Sub-Divisional Officer, Piro (respondent no. 2). He did not make any application before the respondent no. 2 and as it appears the title partition suit at the instance of the petitioner is pending in the court of learned Sub-Judge since 29.08.2019. Under such circumstances, it would not be appropriate for this court to go into the merit of the contentions raised before this court.

9. This writ application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	15.09.2021
Transmission Date	15.09.2021

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading Judicial Orders Passed During The Pandemic Period.