

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11551 of 2021**

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

=====

Kameshwar Prasad S/o Late Damodar Prasad, Resident of Village-Saidanpur,
P.O. and P.S.-Hilsa, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Parmanand Prasad S/o Late Damodar Prasad, Resident of Village-Saidanpur,
P.O. and P.S.-Hilsa, District-Nalanda, Pin-801302.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Dilip Kumar, Adv.

For the Opposite Party/s : Mr. Ramchandra Sahni, APP.

=====

**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT**

Date : 24-11-2022

Heard learned counsel for the petitioner and
learned Additional Public Prosecutor for the State as well as
learned counsel for the Opposite Party No.2.

The present quashing application has been filed for
quashing of the order dated 06.01.2020 passed by Additional
Sessions Judge-II, Hilsa (Nalanda) in Criminal Revision No.12
of 2019 as well as the order dated 02.11.2018 passed in Case
No.382(m) of 2018 by Sub-Divisional Magistrate, Hilsa,
Nalanda.

Learned counsel for the petitioner submits that
petitioner and Opposite Party No.2 are full brother and son of
Late Damodar Prasad. He further submits that Late Damodar

Prasad had 3 sons namely Kameshwar Prasad (petitioner), Parmanand Prasad (Opposite Party No.2) and Shiv Nandan Prasad (he or his heir are not party to the present proceeding). He also submits that a partition took place amongst the sons of Late Damodar Prasad and as per their respective share, lands were mutated in the name of respective brothers and they started coming in separate possession being the absolute owner of their respective shares for a very long period i.e. more than about 30 years. He further submits that in the present proceeding land appertaining to Khata No.410 & 418, plot No.289 & 290, area about 46 dec. and 38 dec. respectively are the subject matter of the dispute. Learned counsel for petitioner annexed Jamabandi no.5/16 as Annexure-1, in which above said plots were recorded in the name of Kameshwar Prasad (petitioner). He also annexed the land possession certificate obtained in the year 2016, in the said certificate also the land in dispute are shown in favour of petitioner. He further submits that there are 3 different Jamabandi's in the name of all 3 brothers, Jamabandi No.45/16 belongs to Opposite Party No.2, Jamabandi No.62/16 belongs Shivnandan Prasad who is now died and at his place his 3 sons are presently enjoying the said property. There is no grievance to the branch of Late Shivnandan Prasad any time. The entire

dispute has arisen only after declaration of construction of a new by-pass road from the Western side of Hilsa. The new by-pass road shall cross through the disputed Plot No.289 & 290, due to which the price and utility of the said plots have been enhanced and only due to this reason a case was filed in the year 2017, in which every details had been given. The present petitioner has filed a case to initiate proceeding under Section 144 of Cr.P.C., in which Court has stopped the proceeding under Section 144 of Cr.P.C. stating therein that the matter is relating to declaration of title which is not within the jurisdiction of this Court. Learned counsel for the petitioner further submits that against the said order the petitioner has preferred revision bearing Revision No.12 of 2019 which was decided by order dated 06.01.2020 affirming the order passed by Sub-Divisional Magistrate, hence the present application.

Learned counsel for the Opposite Party No.2 submits that it is the petitioner who is the greedy person, as per petitioner the said land is recorded in his name in the Jamabandi, land possession certificate was also in his favour, even then he moved proceeding under Section 144 of Cr.P.C. firstly in another case and subsequently in the present proceeding bearing Case No.382(m) of 2018 which was rejected

with observation, petitioner also preferred a revision and subsequently the present quashing application has also been preferred by the same brother i.e. Kameshwar Prasad (petitioner).

Upon the submissions made by the parties and the documents available on record, one question is involved in the present matter that “who is the present aggrieved and who is the person who wants relief, and what is appropriate remedy?”

The answer is that, it is the petitioner who always aggrieved, it is due to this reason, he filed proceeding under Section 144 of Cr.P.C. twice, he went in revision and again in the quashing application, subsequently. He wants that other brothers may not interfere in the legal possession which transpires according to record. There is a consistent finding of the two Courts that matter is relating to title and the Executive Court has no jurisdiction to answer the question of title and, therefore, the only remedy is to move before the Court of competent jurisdiction which is the Civil Court only.

In this view of the matter the present quashing application is hereby dismissed and the order dated 06.01.2020 passed by Additional Sessions Judge-II, Hilsa (Nalanda) in Criminal Revision No.12 of 2019 as well as the order dated

02.11.2018 passed in Case No.382(m) of 2018 by Sub-Divisional Magistrate, Hilsa, Nalanda are hereby affirmed.

(Dr. Anshuman, J.)

ritik/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	