

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1113 of 2018

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

Abhijit Kumar, S/o Late Ashok Kumar @ Ashok Kumar Mehta @ Brahmdeo Mahto, resident of Mohalla- Katra Bazar, Patna City, P.S. Malsalami, District Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. Baidhnath Singh
3. Suresh Singh Both Sons of Late Dashai Singh All resident of Village- Kutubpur, P.S. Bidupur, District- Vaishali.
4. Ravikesh Yadav, S/o Shyam Narayan Yadav, resident of Village- Jivanchak, P.S. Didarganj, District- Patna.
5. Ravindra Kumar S/o Ganga Prasad Singh, resident of Mohalla- Mithapur, P.S. Jakkanpur, District- Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Upendra Prasad, Advocate Mr. Sunil Kumar, Advocate
For the Respondent/s	:	Mr. Gauri Shankar Gupta, A.P.P.
For the O.P Nos. 2 to 5	:	Mr. Rakesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 12-09-2022 Heard learned counsel for the petitioner and learned counsel for the opposite party nos. 2 to 5.

Learned counsel for the petitioner submits that at the instance of the petitioner a proceeding under Section 144 Cr.P.C. was initiated after obtaining Police report. The dispute was with respect to a piece of land over which the rival parties were claiming their possession.

It is submitted that before expiry of 60 days period from the date of initiation of 144 Cr.P.C. proceeding, this



petitioner being the first party filed an application requesting the learned S.D.M., Patna City to convert the proceeding under Section 145 Cr.P.C. It is submitted that instead of considering the said application for purpose of conversion under Section 145 Cr.P.C., the learned S.D.M., Patna City closed the proceeding saying that in this case the dispute is with respect to the legal heirs of Rito Mahto and further that the dispute for partition of the property exist on the basis of legality of the claim made by the legal heirs of said Rito Mahto. He took a view that entire matters required determination of title, therefore, the parties may go for a decision before the competent court of law.

Learned counsel for the petitioner as well as learned counsel for the opposite party nos. 2 to 5 jointly submit that the impugned order is liable to be set aside. It is their common stand that the parties are not before a Civil Court, no suit for partition or declaration of title is pending as regards the property in question.

Learned counsel for the parties submit that in a case where the parties were claiming their possession over the land in question, in exercise of his power under Section 145 Cr.P.C. the learned S.D.M. was not required to decide as to who has the right to possess. He was only required to look into as to who



was in possession of the property on the date of initiation of the proceeding under Section 144 Cr.P.C.

Having regard to the submissions noted hereinabove and the stand of the parties, this Court deems it just and proper to set aside the impugned order dated 20.08.2018 passed by the learned S.D.M., Patna City in Misc. Case No. 388 of 2018. Accordingly, the impugned order is set aside. The matter is remitted to the S.D.M., Patna City for considering the application of the petitioner afresh and proceed in accordance with law.

This writ application stands disposed of accordingly.

This Court expects that an appropriate order shall be passed within a period of three months from the date of communication of this order.

(Rajeev Ranjan Prasad, J)

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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'.

