

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.290 of 2021

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

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Bhuneshwar Rai S/o Late Radha Rai, Resident of Village- Bara, Police Station - Behea, District - Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The District Magistrate, Bhojpur At Ara, Bihar
2. Shri Dhiraj Kumar Singh, the then Circle officer, Behea Block within the District of Bhojpur at Ara, Bihar.
3. Shri Arun Kumar, the then Sub-Divisional Magistrate, Jagdishpur, District - Bhojpur at Ara, Bihar
4. Shri Umeshwar Singh, the then Inspector of Police, Behea, Police Station, District - Bhojpur at Ara, Bihar
5. Bachcha Jee Rai S/O Sidhnath Rai, Resident of Village - Bara, P.O. - Bara Kharauni, Police Station - Behea, District - Bhojpur at Ara
6. Rameshwar Rai S/O Late Radha Raman Rai, Resident of Village - Bara, Police Station - Behea, District - Bhojpur at Ara
7. Kameshwar Rai S/O Late Radha Raman Rai, Resident of Village - Bara, Police Station - Behea, District - Bhojpur at Ara

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar, Advocate
For the State	:	Mr. Manoj Kumar, AC to GP-4
For the Resp. No.5	:	Mr. Siddharth Harsh, Advocate
		Mr. Shadwal Harsh, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 14-03-2023

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Respondent No.5.

The present criminal writ petition has been filed for quashing the order dated 08.06.2020 passed by Sub-Divisional Magistrate, Jagdishpur in connection with Case No. 81 of 2020 by which Sub-Divisional Magistrate, Jagdishpur was converted

the proceeding initiated under Section 144 of Cr.P.C. to one under Section 145 of Cr.P.C..

Counsel for the petitioner submits that the petitioner and his two brothers have purchased 1.25 acres of land appertaining to Chak Khata No.57A by virtue of five registered sale deeds. Counsel further submits that a dispute has arisen between the petitioner and the family members of the vendors of the petitioner. A Title Suit No. 197 of 2007 was filed. Present land is the subject matter of the T.S. No. 52 of 2011. Counsel further submits that the said title suit was decreed in favour of the petitioner and his brothers vide judgment and decree dated 23.11.2019 and 30.11.2019 (Annexure-1). Counsel further submits that when title suit is decided in favour of the petitioner, then in no case the proceeding under Section 145 of Cr.P.C. is permissible in the eye of law but ignoring the decision of the title suit, court of Sub-Divisional Magistrate has passed order against them and order for initiation of proceeding under Section 145 of Cr.P.C. has been initiated vide order dated 08.06.2020 passed in Case No. 81 of 2020 which is under challenged.

Counsel for the State and counsel for the opposite party opposed the prayer of petitioner and submit that from Annexure-

1 i.e. judgment and decree, it transpires that the said Title Suit No.52 of 2021 has been instituted for declaration of right title and interest over the suit land. Counsels further submit that a declaratory suit shall not create barred for initiation/continuation of the proceeding under Section 145 of Cr.P.C..

Counsel for the petitioner has placed a judgment reported in **1985 BBCJ 37** in case of **Ram Sumer Puri Mahant vs. State of U.P. & Anr.**, in which it has been held that when title suit has been decided that after decision in the title suit the proceeding under section 145 of Cr.P.C. is barred.

After hearing the parties and going through the documents, it is crystal clear that the said Title Suit No. 52 of 2011 is a declaratory title suit in which no relief for possession has been made whereas proceeding under Section 145 of Cr.P.C. has been initiated to decide the possession of the party, the judgment on which the counsel for the petitioner relied talks about title suit with a relief of granting injunction with possession, therefore, the said judgment has no applicability in the present case. This Court is of the view that from the said Title Suit No. 52 of 2011 only declaration of right title and interest has been decided and not the possession and therefore, proceeding under Section 145 of Cr.P.C. is not barred in the

opinion of this Court and hence, the order dated 08.06.2021 passed in Case No. 81 of 2020 legal and not need of interference at this stage.

Accordingly, the present criminal writ petition is hereby dismissed.

Both the parties are hereby agreed that Section 145 of Cr.P.C. proceeding may be decided within a stipulated period of time, if pending at present.

Court is directed to conclude the proceeding under Section 145 of Cr.P.C. within three months from the date of communication/production of the order, if proceeding not concluded.

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	