

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1016 of 2017

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

1. Bihari Das
2. Nand Kishor Das,
Both sons of Late Sudami Das, Resident of Village- Mirzafri, Police Station-
Kharik, District- Bhagalpur.
3. Fekni Devi, Daughter of Late Sudami Das, Presently residing in Village-
Kanhaiya Chak, P.S.- Parbatta, District- Khagaria.
4. Rajmani Devi, Wife of Late Kateshwar Das,
5. Arun Das,
6. Barun Das,
Both sons of Late Kateshwar Das,
7. Bina Devi,
8. Rina Devi,
9. Prity Kumari,
All Daughters of Late Kateshwar DAs,
10. Bhim Das, Son of Late Kateshwar Das,
All residents of Village- Mirzafri, Police Station- Kharik, District-
Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Nawal Das,
3. Fanni Das,
4. Yogendra Das,
All sons of Late Fucho Das, residents of Village- Mirzafri, Police Station-
Kharik, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Brajesh Kumar Singh, Advocate
For the Respondent/s	:	Smt. Anita Kumari, A.P.P.
For the O.P. No.2 to 4	:	Mr. Shahid Jawed Advocate Mr. Rananjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

10 18-03-2024 Heard learned counsel for the petitioners and learned
Additional Public Prosecutor for the State.

2. A proceeding under Section 145 of the Cr.P.C. was



disposed of by the learned Executive Magistrate on 30.06.2016. The opposite parties in the said proceeding being aggrieved filed an appeal before the learned Sessions Judge, Naugachia. The case was transferred to the Court of the learned Additional Sessions Judge-1st, Naugachia. The learned Sessions Judge-1st, Naugachia treated the objection filed by the petitioners as an appeal and registered the case of the petitioners as Criminal Appeal No.107 of 2016.

3. The learned advocate for the petitioners have taken the technical issue at the outset that no appeal lies against an order under Section 145 of the Cr.P.C.. The said Criminal Appeal No.107 of 2016 ought to have been registered as a criminal revision, only for this reason, the impugned order is liable to be set aside.

4. The learned advocate on behalf of the opposite parties has agreed to the issue that no appeal lies against an order under Section 145 of the Cr.P.C.. However, it is submitted by him that the learned Executive Magistrate disposed of Misc. Case No.60 of 2007 under Section 145 of the Cr.P.C. vide order dated 30.06.2016 only on the basis of oral evidence and no documentary evidence was considered by the learned Executive Magistrate.



5. Dispute between the parties is in respect of possession of a particular piece of land. A Title Suit is pending between the parties. The Civil Court is the competent Court to decide the title and possession of the parties on the basis of both oral and documentary evidence. Possession cannot be determined by a proceeding under Section 145 of the Cr.P.C. permanently between the parties. When the parties have already taken step by filing title suit before the competent Civil Court, both the parties are adviced to take step in the Civil Suit.

6. With the above order, the order passed in Criminal Appeal No.107 of 2016 on 28.07.2017 is set aside and quashed.

7. Accordingly, the instant revision application is allowed.

(Bibek Chaudhuri, J)

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