

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32212 of 2016**

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

- =====
1. Mahesh Upadhyay Son of Late Sheobansh Upadhyay Resident of Village - Rani Talab, Ps- Rani Talab, Distt- Patna
 2. Rajandhari Upadhyay Son of Late Jagdish Upadhyay Resident of Village - Rani Talab, Ps- Rani Talab, Distt- Patna

..... Petitioner/s

Versus

1. The State of Bihar
2. Prahalad Upadhyay
3. Lakshman Upadhyay
4. Munna Upadhyay All opposite party no. 2 to 4 are sons of Late Ram Janam Upadhyay
5. Narayan Upadhyay
6. Narendra Upadhyay
7. Ram Raj Upadhyay All opposite party no. 5 to 7 are sons of Late Girja Upadhyay
8. Baban Upadhyay
9. Shiv Nandan Upadhyay Both opposite party no. 8 and 9 are sons of Late Birja Nand Upadhyay @ Brijnandan Upadhyay
10. Raja Ram Upadhyay son of Late Hari Upadhyay
11. Shambhu Upadhyay
12. Ram Bachan Upadhyay Both opposite party no. 11 and 12 are sons of Late Baijnath Upadhyay
13. Sanjay Upadhyay
14. Vijay Upadhyay Both opposite party no. 13 and 14 are sons of Late Ram Pravesh Upadhyay All opposite party no. 2 to 14 are resident of village- Jitan Chhapra, P.O. Rajipur Police Station- Rani Talab District- Patna

..... Opposite Party/s

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Code of Criminal Procedure, 1973—Section 145—an order was passed without deciding the possession of either of the parties, allowing the ‘threat of breach of peace’ to continue—impugned order passed in Criminal Revision quashed and set aside with a direction to pass a fresh order after verifying the facts regarding common ancestor of the parties and also facts of Title Suit that right of the parties had already settled, qua, their title and possession in view of Title Suit which was decided on the basis of compromise, regarding disputed piece of lands any proceedings under Section 145 of the Code may not be initiated and as such aforesaid issues be examined first as preliminary issues before initiating the proceedings—application allowed.

(Paras 4, 5, 9 and 10)

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Appearance :

For the Petitioner/s	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate
	:	Mr. Sanjay Kumar Singh, Advocate
	:	Mr. Shailesh Kumar, Advocate
For OP No. 2 to 14	:	Mr. K.N. Choubey, Sr. Advocate
	:	Mr. Sanjay Kumar Singh, Advocate
	:	Mr. Ambuj Nayan Choubey, Advocate
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT



Date : 01-05-2024

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 09.05.2016 as passed in Criminal Revision No. 407 of 2002 by learned Additional Sessions Judge, Vth, Danapur, where, revision petition filed by opposite parties against order dated 21.05.2002 as passed by learned S.D.M. Paliganj in Case No. 505 (M) of 1999, in a proceeding initiated under Section 145 of the Code of Criminal Procedure (in short Code) declaring possession of the petitioners upon the land in dispute and debarring the opposite parties from going over the said land has been allowed and order dated 21.05.2002 passed by learned S.D.M. Paliganj was set aside.

3. The brief story of prosecution is that one Ayodhya Upadhyay was the ancestor of the petitioners



who had three sons namely Nandkeshwar Upadhyay, Brahmdeo Upadhyay and Narsingh Upadhyay, out of which Brahmdeo Upadhyay and Narsingh Upadhyay died issue less while Nandkeshwar Upadhyay had six sons namely Suryanath Upadhyay, Ram Ekbal Upadhyay, Ram Kripal Upadhyay, Parasnath Upadhyay, Ram Naresh Upadhyay and Dudhnath Upadhyay, out of which Suryanath Upadhyay, Ram Kripal Upadhyay, Ram Naresh Upadhyay and Dudhnath Upadhyay died issue less, while Ram Ekbal Upadhyay had three sons namely Jagdish Upadhyay, Deobansh Upadhyay, Sheobansh Upadhyay and Parasnath Upadhyay had two sons namely Ram Upadhyay and Sham Upadhyay. The petitioner are members of this genealogical table and the land in question are their *khatiyani* and ancestral land, while the opposite parties are neither members of this genealogical table nor in any manner concerned with disputed land in question. But the opposite parties want to grab away the ancestral property of the petitioners.



The genealogical table issued by the Circle Officer, Dulhin Bazar, Patna is the evidence of that.

4. Learned senior counsel Mr. Baxi S.R.P. Sinha, while appearing on behalf of petitioners submitted that impugned order was passed in such a manner as it was passed by the Appellate Court, without deciding the possession of either of the parties, allowing the 'threat of breach of peace' to continue. It is pointed out that the Revisional Court while setting aside the order must have decided the possession of either of the parties. Learned senior counsel further submitted that if Revisional Court was satisfied with the fact that opposite parties/revisionists are from the common ancestor, *qua*, petitioners and also Title Suit No. 44 of 1922, which was passed on the basis of joint compromise vide order dated 17.02.1923 was not considered during the proceeding, despite of the fact that it was pleaded by the opposite parties, matter must be remanded back for consideration of those documents to the Court of learned



SDM to pass fresh order rather than to keep issues hanging open between the parties, qua, their possession, which is the ultimate object of a proceeding under Section 145 of the Cr.P.C.

5. Learned senior counsel Mr. K.N. Chaubey, while appearing for opposite parties submitted that once substantial finding regarding land in dispute has already settled long back through Title Suit No. 44 of 1922, initiation of present proceeding under Section 145 of the Code regarding said piece of land is not permissible as per settled law. It is further submitted that initiation of present proceedings under Section 145 of the Code is purely on imaginary grounds to disturb the possession of opposite parties, which has already been settled through Title Suit No. 44 of 1922. It is submitted Title Suit No. 44 of 1922 clearly shows that both parties are common ancestor of one Haribansh Upadhyay.

6. While concluding the argument learned senior counsel submitted that if matter is remanded to



learned Trial Court, facts to ponder upon are :-

6.1. Examination regarding common ancestor of Haribansh Upadhyay, which is specifically denied on oath by the petitioners and also finding of Title Suit No. 44 of 1922 be taken into consideration, without which just and proper adjudication is not possible. It is further submitted that finding of learned SDM Paliganj, vide order dated 21.05.2002 also appears bad in eyes of law as possession was granted to petitioners by taking note of the fact that lands in dispute are "khatiyani land" of petitioners by ignoring the finding of Title Suit No. 44 of 1922.

7. Be it so, this Court finds force in submission of learned senior counsel appearing for petitioner that by setting aside the order of learned SDM, Paliganj dated 21.05.2002, possession of either of the parties were left open, which is against the object of Section 145 of Code, where matter ought to be remanded back to the learned Trial Court to consider



evidence, which was not taken into consideration, while passing order dated 21.05.2002.

8. It would be apposite to reproduce the Section 145 of the Code which reads as under :-

145. Procedure where dispute concerning land or water is likely to cause breach of peace.— (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of



any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, persue the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in



possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause



the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under section 107.



9. In view of aforesaid factual and legal discussions, impugned order dated 09.05.2016 as passed in Criminal Revision No. 407 of 2002, as passed by learned learned Additional Sessions Judge, Vth, Danapur is hereby quashed and set aside with a direction to learned SDM Paliganj also to pass a fresh order after verifying the facts regarding common ancestor of the parties and also facts of Title Suit No. 44 of 1922. It is made clear that if it appears to learned SDM Paliganj, that right of the parties had already settled,qua, their title and possession in view of Title Suit No. 44 of 1922, which was decided on the basis of compromise vide order dated 17.02.1923, regarding disputed piece of lands any proceedings under Section 145 of the Code may not be initiated and as such aforesaid issues be examined first as preliminary issues before initiating the proceedings, as raised by opposite parties.



10. The application stands allowed, in aforesaid terms.

11. Let a copy of this judgment be sent to learned Trial Court/Revisional Court, immediately, alongwith LCR, if any.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	02.05.2024
Transmission Date	02.05.2024

