

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No. 18740 of 2019**

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

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SHEIKH ANAWARUL @ ANWARUL HAQUE Son of Late Sheikh Yasin Resident of Village - Sheikh Toli Laukhan P.S.- Ghorasahan, Distt.- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sheikh Hashim Son of Late Kitab Resident of Village - Sheikh Toli Laukhan, P.s.- Ghorasahan, Distt.- East Champaran.
3. Shabir Sheikh Son of Sheikh Hashim Resident of Village - Sheikh Toli Laukhan, P.s.- Ghorasahan, Distt.- East Champaran.

... .. Opposite Party/s

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*Code of Criminal Procedure, 1973—Section 145—Revisional Court exceeded its jurisdiction and decided the possession of disputed land in favour of opposite parties—learned Executive Magistrate simply directed both the parties to file their written statement and give evidence and as per the provisions under Section 145 of the Code, question of possession of the parties over the disputed land/property on a particular date was to be decided by the Executive Magistrate only in the matter relating to the apprehension of breach of peace but in his jurisdiction the revisional court wrongly interfered ignoring the provision of Section 397(2) of Code and gave a conclusive finding regarding the possession of the parties over the disputed land which was completely beyond the jurisdiction of the revisional court—illegality in impugned order—impugned order set aside—petition allowed with direction.*

**(Paras 6 and 7)**

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Resident of Village - Sheikh Toli Laukhan P.S.- Ghorasahan, Distt.- East  
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- 1. The State of Bihar
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Laukhan, P.s.- Ghorasahan, Distt.- East Champaran.
- 3. Shabir Sheikh Son of Sheikh Hashim Resident of Village - Sheikh Toli  
Laukhan, P.s.- Ghorasahan, Distt.- East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar, Adv.  
For the State : Mr.Aditya Narayan Singh.1, APP  
For the O.Ps : Mr. Amaresh Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH  
ORAL ORDER

8      27-02-2025                      Heard Mr. Manoj Kumar, learned counsel for the  
  
petitioner, Mr. Aditya Narayan Singh-1, learned APP for the  
  
State and Mr. Amaresh Kumar Sinha, learned counsel for the  
  
opposite parties no. 2 and 3.

2. The instant petition has been filed under section  
482 of the Code of Criminal Procedure (in short the Code)  
challenging the order dated 06.10.2018 passed by the learned  
Additional Sessions Judge-IV, East Champaran, Motihari in Cr.  
Rev. No. 287 of 2017 by which the order dated 07.09.2017  
passed by the S.D.M., Sikarhana under section 145 of the Code  
was set aside.



3. The main grounds taken by the petitioner's counsel to assail the order impugned are that by order dated 07.09.2017 the Executive Magistrate simply observed that there was a bonafide land dispute in between both the parties for which a detailed enquiry was required and, accordingly, by that order both the parties were simply directed to appear and file their written statement and give evidences, so, the said order was completely interlocutory in nature hence as per the provision under section 397(2) of the Code, the revision preferred by the opposite party against that order was not maintainable. It is further submitted that while deciding the legality and propriety of the order dated 07.09.2017 the learned revisional court declared the possession of the opposite parties over the disputed land and dropped the proceeding initiated under section 145 of the Code against both the parties which was not in the domain of the revisional court.

4. On the other hand, learned counsel for the opposite parties no. 2 and 3 submits that the order impugned passed by the revisional court is completely correct as while declaring the possession of the opposite parties over the disputed land, the revisional court took into account the relevant facts including the admission of the petitioner with regard to the opposite



parties's possession over the disputed land and also took into account that a residential house was situated over the disputed land due to which the concerned Executive Magistrate had no power to decide an issue of possession in between the parties under section 145 of the Code and, therefore, by the impugned order, the learned revisional court rightly dropped the proceeding initiated under section 145 of the Code against both the parties and there is no illegality in the same.

5. Heard both the sides and perused the order impugned as well as other relevant materials.

6. This court finds substance in the aforesaid ground taken by the petitioner's counsel as the order dated 07.09.2017 is completely interlocutory in nature by which the learned Executive Magistrate simply directed both the parties to file their written statement and give evidence and as per the provisions under section 145 of the Code, the question of possession of the parties over the disputed land/ property on a particular date was to be decided by the said Executive Magistrate only in the matter relating to the apprehension of breach of peace but in his jurisdiction the revisional court wrongly interfered ignoring the provision of Section 397(2) of Code and gave a conclusive finding regarding the possession of



the parties over the disputed land which was completely beyond the jurisdiction of the revisional court. As such considering the said approach taken by the revisional court, this court finds merit in this petition and finds illegality in the impugned order and, therefore, the impugned order is set aside and the instant petition stands allowed.

7. It will remain open for the Executive Magistrate to resume the proceeding initiated under section 145 of the Code against both the parties if the apprehension of breach of peace exists in the present time due to the disputed land and in this regard, proper decision may be taken by the Executive Magistrate and if he resumes the said proceeding then both the parties will have equal right to place their written statement and evidences.

**(Shailendra Singh, J)**

BKS/-

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