

(2023) 11 PAT CK 0015
In the Patna High Court
Case No : Criminal Revision No. 1042 Of 2017

Anirudh Sah @ Anirudh Prasad Sah

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 03-11-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 144, 145, 145(1), 146, 146(1)

Citation : (2023) 11 PAT CK 0015

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Advocate : Anil Kumar, Parmanand Prasad

Final Decision : Allowed

Judgement

1. The present revision application arises out of the order, dated 26.07.2017, passed, in Case No. 236 of 2014, by the Sub Divisional Magistrate, Sheohar, whereby a proceeding, under Section 146 (1) of the Code of Criminal Procedure, for attachment has been initiated and the Circle Officer, Piprahi, has been appointed as receiver of plot no. 8089, having an area of 16 decimals and plot no. 8090, having an area of 14 decimals, situated in village Ambakala Tola, Nayagaon, Police Station Piprahi, in the district of Sheohar.

2. The brief facts, giving rise to the present revision application, is that on 08.07.2014, the Opposite Party No. 2 filed an application in the Court of Sub Divisional Magistrate, Sheohar, for initiation of a proceeding under Section 144 of the Code of Criminal Procedure against the petitioner and his family members, claiming that they have dug a ditch upon plot no. 8088, khesra no. 1620, over which the Opposite Party No. 2 is having possession and has been living peacefully. The area of plot no. 8088, in question is 12.5 decimals. The said case was registered as Case No. 236 of 2014 and notices were issued to the petitioners and others on 10.07.2014. The Opposite Party no. 2, on 11.08.2014, filed a petition, stating therein that adjacent to the disputed land, i.e. plot no. 8088, there is land of the petitioners, bearing plot nos. 8089 and 8090, in which

the petitioners have dug a ditch. Therefore, now, plot nos. 8088 and 8090 became disputed. Accordingly, the Opposite Party No. 2 prayed to convert the proceeding under Section 145 of the Code of Criminal Procedure.

3. The petitioners filed their show cause on 21.08.2014, stating that the correction of wrong entry of 4.5 decimals of land, in plot no. 8088, in the revisional survey has been made in Case No. 09 of 1981 by the Consolidation Officer, Piprahi, and after correction, 4.5 decimals of land came in plot no. 8090 from plot no. 8088, by order, dated 13.11.1981 (Annexure 3). The said land is in the share of the petitioners, as per the partition deed, dated 08.05.1956.

4. After partition, the father of the petitioners purchased plot nos. 8091 and 8439, having an area of 50 decimals in the name of the mother of the petitioners, namely, Ram Badan Devi. Therefore, in the revisional survey, the khatiyani of aforesaid land was made in the name of Ram Badan Devi for 50 decimals of land.

5. On 06.09.2014, the Sub Divisional Magistrate, Sheohar, converted the proceeding from 144 to 145 after arriving at the finding that there is question of possession over the disputed land.

6. The Opposite Party No. 2 filed a petition on 18.11.2014 to include plot no. 8089 and 8090 in the present dispute on the ground that plot nos. 8088, 8089 and 8090 is conjoint and mixed up.

7. On 05.01.2016, the Opposite Party No. 2 filed a petition under Section 146 (1) of the Code of Criminal Procedure for attachment of disputed land and appointment of receiver pertaining to plot nos. 8088, 8089 and 8090. This petition was filed after lapse of two years from the date of conversion of the proceeding from 144 to 145.

8. The Sub Divisional Magistrate, Sheohar, vide memo no. 9, dated 11.01.2016, called for a report from the Station House Officer, Piprahi Police Station and a report thereto was submitted by the Station House Officer on 21.02.2016 (Annexure 9), in which wrong plot no. 8080 was mentioned. Hence, the Sub Divisional Magistrate, Sheohar, vide another letter, dated 05.07.2016, called for a fresh report from the police and the Station House Officer, vide letter no. 1018, dated 17.08.2016 submitted a fresh report stating therein that the dispute with respect to plot nos. 8088, 8089 and 8090 is pending since long between both the parties, who are co-sharers and both of them are claiming their ownership over the land.

9. Vide letter no. 229, dated 13.07.2017, the Sub Divisional Magistrate, Sheohar, directed the Circle Officer to submit his report upon plot nos. 8088, 8089 and 8090, and in turn, the Circle officer, vide letter no. 470, dated 26.07.2017, submitted his report, stating therein that plot no. 8088 is having an area of 12.5 decimals, there are building, trees, paddy crops and vacant land in front of the building, plot no. 8089 is having an area of 16 decimals and there are paddy

crops and trees over the land and plot no. 8090 is having an area of 14 decimals and there is paddy crops over the land, and after receipt of the report by the Circle Officer, Piprahi, the impugned order of attachment and appointment of receiver for plot nos. 8089 and 8090 has been passed by the Sub Divisional Magistrate, Sheohar, on the same date, i.e. on 26.07.2017, which has been impugned in the present revision application.

10. I have heard learned Counsel for the parties concerned.

11. Learned Counsel for the petitioners argued that the proceeding was initiated for plot no. 8088 at the behest of Opposite Party No. 2, which was subsequently converted into proceeding under Section 145 of the Code of Criminal Procedure without hearing the parties and without any evidence. The documents filed by the petitioners have not been considered and the Sub Divisional Magistrate, Sheohar, has failed to consider the fact that 4.5 decimals of land, included in plot no. 8088, belongs to the petitioners and the same is in possession of the father of the petitioner, vide partition deed no. 1071, dated 08.05.1956.

12. He next argues that the reports of the Circle Officer, Piprahi and the Station House Officer, Piprahi Police Station do not mention about any ditch situated in any of the three plots, but even then, the Sub Divisional Magistrate, Sheohar, has passed the impugned order, dated 26.07.2017, without taking into consideration the reports, evidence and documents available on record. In the reports, the Circle Officer and the Station House Officer did not find that the boundary wall of the petitioners/Opposite Party No. 2 has been destroyed due to any ditch and as such, there was no sufficient ground to proceed under Section 144 of the Code of Criminal Procedure. The proceeding, under Section 145 of the Code of Criminal Procedure, was initiated without any enquiry report and there was no emergent situation between the parties.

13. In support of his argument, learned Counsel for the petitioners have placed reliance on a decision of the Supreme Court, in the case of Bhinka and Others v. Charan Singh (AIR 1959 SC 960).

14. Learned Counsel for the State argues that the Sub Divisional Magistrate, Sheohar, has rightly passed the impugned order taking into consideration the emergent situation.

15. Upon hearing learned Counsel for the parties concerned, the facts of the case is encapsulated as follows:

16. Admittedly, a proceeding was initiated under Section 144 of the Code of Criminal procedure at the behest of the Opposite Party No. 2 on 08.07.2014. Both the parties are co-sharers and as per the case of the petitioners, there was a partition, which took place on 08.05.1956, vide deed no. 1071 and since then, father of the petitioners came in possession over his share of land and revisional survey khatiyani was prepared in the name of the petitioners' mother, namely, Ram Badan Devi. It is also the case of the petitioners that due to some mistake,

4.5 decimals of land was entered in plot no. 8088, and after getting the knowledge, the father of the petitioners approached the Consolidation Officer, Piprahi, and thereafter Case No. 09 of 1981 was initiated and necessary correction was made by the Consolidation Officer, Piprahi, and 4.5 decimals of land came in plot no. 8090 from plot no. 8088, vide order, dated 13.11.1981. The reports of the Circle Officer, Piprahi and the Station House Officer, Piprahi Police Station do not depict that there was any ditch dug by the petitioners, for which there was any eminent danger of breach of peace between the parties.

17. Section 146 (1) of the Code of Criminal Procedure envisages that (a) if the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or (b) if he decides that none of the parties was then in such possession as is referred to in section 145, or (c) if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof.

18. From perusal of Section 146 (1) of the Code of Criminal Procedure, it transpires that under three conditions, a Magistrate can pass the order of attachment. The 145 (1) proceeding was initiated by the Magistrate in the present case after conversion on 06.09.2014. At the time of conversion and initiation of the proceeding under Section 145 (1) of the Code of Criminal Procedure, no finding had been recorded by the Magistrate that any emergency exists warranting attachment of the disputed land.

19. Further, from perusal of the impugned order, it appears that no finding has been given by the Magistrate that none of the parties were in possession of the disputed land and/or the Magistrate was unable to satisfy himself as to which of them was in such possession of the subject land.

20. From perusal of the impugned order, it appears that without fulfilling the three conditions, as prescribed under Section 146 (1) of the Code of Criminal Procedure, the Magistrate has passed the order of attachment and appointed the receiver in perfunctory and mechanical manner. The proceeding was initiated under Section 145 (1) in the year 2014; whereas, the impugned order has been passed after a lapse of three years in the year 2017, which itself goes to show that there was no emergent situation prevailing between the parties.

21. In the case of Ashok Kumar v. the State of Uttarakhand and Others, reported in (2013) 3 SCC 366, the Supreme Court has held that Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace.

22. The ingredients necessary for passing an order under Section 145 (1) of the Code of Criminal Procedure would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of

emergency, as contemplated under Section 146, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

23. Upon careful consideration of the facts of the case, materials available on record and the decision of the Supreme Court, in the case of Ashok Kumar (supra), I come to the conclusion that the Sub Divisional Magistrate, Sheohar, while passing the impugned order, has failed to consider the documents adduced, the submission made by the parties or evidence, if any, adduced by them.

24. As held in the case of Ashok Kumar (supra), The Magistrate, under Section 146, must explain the circumstances why he thinks it to be a case of emergency. Further, the ingredients necessary for passing the order of attachment under Section 146 (1) of the Code of Criminal Procedure are missing. Accordingly, and in my considered opinion, the Sub Divisional Magistrate, Sheohar, has wrongly invoked the power under Section 146 (1) of the Code of Criminal Procedure.

25. In the result, the order, dated 26.07.2017, passed, in Case No. 236 of 2014, by the Sub Divisional Magistrate, Sheohar, is hereby quashed.

26. This application is allowed.

27. There shall be no order as to costs.