
(1924) 05 PAT CK 0026

In the Patna High Court

Dhanraj Bhagat and Gaji Bhagat

APPELLANT

Vs

Bharat Narain Singh and Another

RESPONDENT

Date of Decision : 14-05-1924

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144, 145

Citation : AIR 1924 Patna 703

Hon'ble Judges : Adami, J

Bench : Division Bench

Judgement

Adami, J.—This application is directed against an order passed by the Sub-Divisional Officer of Hajipur, u/s 144, Crim. Pro. Code, forbidding the petitioners to interfere with the opposite, party in regard to plots 1024 and 1025.

2. It appears that proceedings had been drawn up u/s 144 between the present petitioners and one Haribar Bhagat and others regarding a plot of about 24 bighas of raiyati land which had newly formed on a diara. These proceedings u/s 144 were converted into proceedings u/s 145, and the parties gave the Court to understand that all they wanted was a demarcation of the plots they respectively claimed. The opposite party in those proceedings stated that they did not claim the 24 bighas which was the subject of the proceedings. Accordingly an amin was directed to go and demarcate the diara lands and he eventually submitted a report which was not agreed to by one of the parties. However that may be, at that stage a petition was put in by the opposite party to the present case to the effect that they were recorded in the settlement askashtkar of plots 1024 and 1025 and they complained that the present petitioners were interfering with their possession. Having received this petition the Sub-Divisional Officer, after consulting the record-of-rights, and finding that in 1892 the grand-father of the present opposite party was recorded in respect of plots 1024 and 1025, issued an order on the petitioners u/s 144 directing them not to interfere with the possession of the opposite party in regard to those plots. It is this order which is now complained against.

3. The order u/s 144 had already lapsed when the application was made to this Court, but in my opinion, in spite of its having lapsed, the case is one, I think, which ought to be taken into consideration by the Court. The opposite party were not parties to the proceedings u/s 145, nor had any report been received from the police as to their possession of the two plots or as to a likelihood of a breach of the peace. The opposite party merely said that their possession was being interfere with. Without issuing any preliminary notice to the present petitioners and without bearing them the learned Sub-Divisional Officer passed the final order u/s 144. In my mind his procedure was totally wrong. It was open to him either to direct that the opposite party should be made parties to the proceedings then pending u/s 145 or a notice should have been issued on the petitioners to show cause. The order u/s 144 has now lapsed and such damage to the petitioners as was caused is now passed except that the fact that the opposite party have been in possession under the order u/s 144 may be to the petitioners" prejudice in further litigation. All I can do is to set aside the order passed u/s 144 and the order is accordingly, set aside.