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**(2006) 03 JH CK 0059**  
**In the Jharkhand High Court**  
**Case No : Criminal M.P.No. 111 of 2004**

Krishnadhan Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 07-03-2006

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 482

**Citation :** (2006) 3 JCR 26

**Hon'ble Judges :** Dilip kumar sinha, J

**Bench :** Single Bench

**Advocate :** Kailash Prasad Deo, for the Appellant; APP, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.K. Sinha, J.—The petitioner has preferred this petition u/s 482, Cr PC for quashing of the order impugned dated 3.1.2004 passed in Criminal Revision No. 135/03 by the Sessions Judge, Deoghar whereby and whereunder the order passed by the SDM, Deoghar in Cr. Misc. Case No. 319/03 on 16.9.03 was held illegal and not sustainable under law.

2. From perusal of the order impugned dated 3.1.2004 it is evident that the learned Sessions Judge observed that the petitioner/1st Party Krishnadhan Mishra and the Opposite Party No. 2 Tulsidhan Mishra were the full brothers who jointly succeeded the property of their mother after her death and in the petition filed in the Court below the 1st party Krishnadhan Mishra had clearly stated that both the parties were in joint possession over the land in dispute. The 2nd party/ Opposite Party No. 2 and others of the present petition had not shown their causes but they had claimed exclusive possession over the suit property. It was observed that since both the parties were in joint possession over the suit property and even if this fact is denied by the members of the Opposite Party (2nd party) of the instant case, the same was fully covered by a decision as propounded by this Court in Parasuram Sana's case (supra) wherein under the same circumstances it was held that there was no basis for the Court below for

initiating the proceeding u/s 145, Cr PC. With such observation and the reasons the Revision was allowed by the Sessions Judge, Deoghar setting aside the order of the SDM dated 16.9.2003.

3. A counter-affidavit was filed on behalf of the Opposite Party Nos. 2 to 4 in which it is agreed that the parties have been residing by occupation in different part of the residential house and similarly they were possessing and cultivating scheduled lands without there being any partition thereof. The parties are therefore, co-sharers having unity of possession as it appears prima facie on admission.

4. From perusal of the order passed by the SDM dated 16.9.2003 in Cr Misc case No. 319/03 it is evident that the learned SDM by the order impugned converted the proceeding u/s 144 into one u/s 145 between the parties of the present Cr. Misc. Petition, except the State on the ground that there was a land dispute between the parties since the situation was tensed hence its disposal was not possible by way of proceeding u/s 144, Cr PC and it was imperative to examine the documents on behalf of the parties and record the evidence of the witnesses.

5. It is nowhere mentioned in the order of the S.D.M aforesaid that there was imminent apprehension of breach of peace between the parties over the scheduled land except that the situation was tensed. Both the parties were unanimous that there was unity of possession over the disputed land and there was family arrangement.

6. Under the above situation, taking the considered view it appears that the proceeding u/s 144, Cr PC or its conversion into one u/s 145, Cr. PC will certainly not resolve the land dispute between the parties and hence the order impugned does not call for any interference u/s 482, Cr PC Accordingly this petition is dismissed.

7. However, the parties concerned may agitate the matter before the competent Court of civil jurisdiction for the permanent settlement of the land dispute.