
(2003) 07 PAT CK 0033

In the Patna High Court

Case No : Criminal Miscellaneous No. 4828 of 2002

Nemani Sah and Kiran Devi

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

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

Citation : (2003) 3 PLJR 660

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I.P. Singh, J.—Heard learned Counsel for the parties.

2. This application has been filed for quashing the order dated 05.12.2001, passed by the learned Executive Magistrate, Banka in Miscellaneous Case No. 260 of 1997, by which the learned Executive Magistrate has attached the property owned by the Petitioners and also ordered to appoint the Circle Officer as a receiver to the land in dispute under the provision of Section 146(1) of the Code of Criminal Procedure (in short the Code).

3. Perused the order impugned. It appears that the proceeding u/s (sic)4 of the Code was initiated appertaining the land having Plot No. 1392, Khata No. (sic)9 in village-Dhomnion on the application of opposite party No. 2 in the month of April 1997, thereafter, he converted the proceeding u/s 145 of the Code, After two months without any emergency, The Court attached the land in question (sic)er four and a half years u/s 146(1) of the Code vide order dated 5.12.2001. The order impugned does not enclose the situation which warranted the (sic)urt for attaching the land u/s 146(1) of the Code. The order of attachment especially in the view that opposite Party No. 2 filed a Title Suit No. 51 of 1997, which is pending before the Sub-judge, (sic)nka (Annexure-4) and if there was any impelling reason, the opposite parties could have moved before the Civil Court of

remedial measure. The Petitioners have annexed the sale deed which has been executed in the name of Kiran Devi and she is still paying rent for which receipt has to been granted to her. A copy of the (sic) Suit has also been annexed showing that the case was filed appertaining to the (sic) disputed land in the Court for declaration of title.

4. It is well settled that when the civil case is pending in the competent Court, in it a situation criminal proceeding appearing to the same matter cannot be allowed to continue.

5. In above view of the matter, the impugned order dated 05.12.2001, passed to the Executive Magistrate, Banka is hereby quashed and the parties are directed to approach to the competent Court.

6. The petition is, accordingly, allowed.

7. However, if the learned Magistrate is satisfied that there is apprehension of breach of peace, he may pass an appropriate order.