

(1990) 03 PAT CK 0038

In the Patna High Court

Case No : Criminal Miscellaneous No. 1291 of 1986 (R)

Ramdeo Sao

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 22-03-1990

Acts Referred:

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

Citation : (1990) 38 BLJR 1190

Hon'ble Judges : L.P.N. Shahdeo, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.P.N. Shahdeo, J.—In this application, the order dated 2-12-1985 has been challenged by which a proceeding u/s 144 of the Code of Criminal Procedure was converted into a proceeding u/s 145 of the Code of Criminal Procedure, in respect of the disputed land.

2. It was submitted that it is admitted position in this case the opposite party No. 2 had tiled. Title Suit No. 33 of 1979 which is pending before the Additional Subordinate Judge, Daltonganj and, therefore, the conversion of the proceeding, when the title suit in respect of the same land is pending, should be held to be illegal.

3. On the other hand, the learned Counsel appearing on behalf of the opposite party No. 2, Mr. D.K. Sarkar has submitted that he has no instruction but he has not disputed this fact.

4. Heard the counsel for the petitioner, opposite party No. 2 and also the State.

5. It is admitted position in this case that Title Suit No. 33 of 1979 is pending before the Additional Subordinate Judge, Daltonganj, in respect of the disputed land which fact is further corroborated and stated in the impugned order itself, whereby the learned Magistrate, has admitted this position that in respect of the

disputed land a Title Suit is pending before a competent court to thrash out the file and possession and the question of investigation, of possession in these circumstances in a proceeding u/s 145, Cr. P. C. appears to be improper and bad.

6. The claim of the petitioner and the opposite party No. 2 has to be adjudicated and decided in course of their title suit.

7. In this view of the matter, conversion of a proceeding by the impugned order admittedly appears to be invalid.

8. It appears that there was also another Title Suit No. 13 of 1972 as submitted by the learned Counsel, Mr Bhowmik, in respect of the same land which was decided in favour of the present petitioner and thereafter the petitioner has obtained a decree and executed delivery of possession.

9. On admitted fact, it can be reasonably concluded that when in respect of the disputed land, a title suit is pending between the parties therefore, the proceeding u/s 145 of the Code of Criminal Procedure must be held to be bad in law.

10. In the result, for the reasons stated hereinbefore, this application is allowed and the impugned order converting the proceeding into one u/s 145, Cr. P.C. and the proceeding itself are quashed.