

(2020) 01 PAT CK 0408

In the Patna High Court

Case No : Criminal Miscellaneous No. 81792 Of 2019

Sudha Singh

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 31-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144

Citation : (2020) 01 PAT CK 0408

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Uma Kant Shukla, Arun & Atul Sharma, Lala Sachindra Kumar, Sanjay Kumar Singh

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

This application has been filed for quashing the order dated 16.11.2019 passed by Sub-Divisional Magistrate, Sadar, Saharsa in Case No. 1240 of 2019 by which the learned Sub-Divisional Magistrate has initiated proceeding under Section 144 of Cr.P.C. on the basis of petition filed by the opposite party no.2. Opposite party no.2 had filed an application before the Officer-in-charge, Saharsa Sadar Police Station with respect to khata no. 22, old khata no. 243, plot no. 4214 measuring 07 katha 02 dhurs and plot no. 4208 measuring 04 katha and plot no. 42145 measuring 01 katha 06 dhurs which is a vacant land and petitioner is trying to forcibly cultivate those lands.

Opposite party no.2 in her petition has stated that on 13.11.2019 at about 10:30 A.M. anti-social elements variously armed at the instance of petitioner started ploughing disputed land by Tractor and when she protested and objected that there is order of injunction on this land, they did not stop and continued to plough the land which is the subject matter of 144 proceeding as well as partition suit which is pending before the Sub-Judge who is in seisin of the matter and has

also passed order of injunction. Previously also, for the same land, there has been proceeding under Section 144 of Cr.P.C. It is submitted on behalf of opposite party no.2 that the proceeding have lapsed due to efflux of time.

It is submitted on behalf of petitioner that when the subject matter is before a Civil Court then the Executive Magistrate has no jurisdiction to initiate any proceeding under Section 144 as learned Sub-Judge has already passed an order of injunction over disputed land and if there is any grievance with respect to possession over disputed land then aggrieved party has to approach the court to get any relief where Title Suit is pending and repeated proceeding under 144 of Cr.P.C. in such circumstances is unwarranted.

Since the proceeding has already lapsed due to efflux of time, no order is required to be passed on this petition. However, it is directed that normally, no further proceeding under section 144 of Cr.P.C. shall be initiated by the Magistrate with respect to said land and parties shall approach the concerned court where Title Suit is pending for redressal of their grievances and said court shall pass necessary order for preservation and protection of subject matter and in case of necessity, shall also provide police protection to the party in whose favour any interim order is passed.

With such observation, this petition is disposed of.