

Surendra Singh and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-12-1995

Judge : B.N. Agrawal, J.

Appeal No. : Criminal Misc. No. 18475 of 1994

Appellant : Surendra Singh and ors.

Respondent : State of Bihar and ors.

Prior history : B.N. Agarwal, J. 1. Heard the parties. 2. This application has been filed for quashing order dated 29.11.1944 whereby proceeding under Section 144 of the Code of Criminal Procedure (hereinafter to be referred to as 'Code') has been initiated and the parties have been restrained from going over the disputed land. 3. According to the petitioners, there was a partition suit in the year 1951, in which decree was passed and the disputed land was allotted to their share. According to the private opp

Judgement :

B.N. Agarwal, J.

1. Heard the parties.

2. This application has been filed for quashing order dated 29.11.1944 whereby proceeding under Section 144 of the Code of Criminal Procedure (hereinafter to

be referred to as 'Code') has been initiated and the parties have been restrained from going over the disputed land.

3. According to the petitioners, there was a partition suit in the year 1951, in which decree was passed and the disputed land was allotted to their share. According to the private opposite parties, they have filed a partition suit in respect of disputed land, which is pending. It appears that earlier also successive proceedings were taken. When the matter was brought to this Court, this Court directed that since the order had lapsed its force, it was not necessary to dispose of the application on merit. This Court further directed that if there is apprehension of breach of peace, it will be open to the learned Magistrate to initiate a proceeding under Section 107 of the Code against the wrong doer. In view of the aforesaid facts, I am of the opinion that the learned Magistrate was not justified in initiating the proceeding under Section 144 of the Code.

4. Accordingly, this application is allowed and the proceeding under Section 144 of the Code is hereby quashed. It is directed that if during the pendency of Partition Suit No. 308 of 1982, pending in the court of Munsif Ist. Hajipur, any material is produced before the learned Magistrate to show that there is an apprehension of breach of peace in respect to the disputed land, he shall not initiate a proceeding under Section 144 of the Code but it will be open to him to initiate a proceeding under Section 107 of the Code against the wrong doer.

5. With the aforesaid direction, this application is disposed of.

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