

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Revision No.419 of 2016**

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1. Navin Kumar Sinha @ Navin Kumar @ Navin Kumar.  
2. Sanjay Kumar Sinha.  
Both Sons of Late Dharmnath Srivastava and residents of  
Mohalla-Anwarpur (Gandhi Ashram Marg), P.S.-Hajipur,  
Town-Hajipur, District-Vaishali.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. The Sub-Divisional Magistrate, Hajipur, District-Vaishali.  
.... .... Opposite Party/s 1<sup>st</sup> set  
3. Subodh Kumar Singh, Son of Sri Harakh Singh, resident  
of Mohalla-Anwarpur, Gandhi Ashram, Town-Hajipur, P.S.-  
Hajipur Town, P.O.-Hajipur, District-Vaishali.  
.... .... Opposite Party/s 2<sup>nd</sup> set  
4. Shusil Kumar.  
5. Sudhir Kumar.  
Both Sons of Pandey Dhruvnandan Prasad and residents of  
Mohalla-Gandhi Ashram Marg, Town-Hajipur, P.S.-Hajipur  
Town, P.O.-Hajipur, District-Vaishali.  
.... .... Opposite Party/s 3<sup>rd</sup> set

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**Appearance :**

For the Petitioner/s :Mr. M.N. Parbat, Sr. Adv.  
Mr. Ratna Deep Prasad, Adv.  
For the O.P. No. 3 :Mr. Hamendra Kr. Singh, Sr. Adv.  
For the O.P. Nos. 4 & 5 :Mr. Ratan Kr. Sinha, Adv.  
For the State :Md. Aslam Ansari, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

ORAL ORDER



9 31-07-2018 The petitioners have challenged the order dated 22.12.2015, passed by the learned Executive Magistrate, Hajipur in Case No. M1/966 of 2001 (Trial No. 04 of 2016), wherein the subject R.S. Plot number be changed from 185 to 186.

It may be noted that at the instance of opposite party No. 3, a proceeding under Section 144 of the Code of Criminal Procedure, 1973 (*in short the Cr.P.C.*) was initiated with respect to a plot of land, which was claimed to be a passage, over which encroachment was alleged to be attempted by the petitioners. The aforesaid proceeding was converted into one under Section 147 of the Cr.P.C. and the petitioners were asked to show-cause.

For the disposal of this case, it may not be necessary to refer to the respective case of the parties.

What appears from the arguments advanced on behalf of the parties is that all along the proceedings, the learned Executive Magistrate had been deciding the factum of encroachment on Plot No. 185; but later, it transpired that there was no dispute/encroachment so far as aforesaid Plot No.185 is concerned; rather it was over Plot No. 186.



To briefly recount the facts, the opposite party No. 3 had purchased a plot of land falling under R.S. Plot No. 185 from the sister of the petitioners. At that time, 3 feet wide road was permitted to be used as a passage over the aforesaid plot of land. The passage had actually been given to the sister of the petitioners by her mother at the time of gifting the land to her. The opposite party Nos. 4 and 5 came in possession of a plot of land falling under R.S. Plot No. 186. The petitioners, even today, have their ancestral house over Plot No. 184. Thus, the whole dispute was with respect to the passage. The case of the opposite party No. 3 is that the passage had, hitherto been 12 feet wide.

The perusal of the sale-deed and the map, which has been furnished by one of the parties in the present proceeding before this Court, reflects a 3 feet wide road falls in Plot No. 184, whereas 9 feet wide passage is shown in Plot No. 186. It was, at one point of time, prayed by opposite party No. 3 that because of mistake and inadvertence, the entire proceeding was being carried on as if the dispute was over Plot No. 185. Under such circumstances, it was prayed that the number of subject plot be changed from Plot No. 185 to Plot No.



186, where the dispute actually lay.

In the first instance, the learned Magistrate rejected such a prayer. Later, again, such a prayer was made, which has been allowed by the order impugned.

With the change in the number of the plot, it is but obvious that the nature, ambit and dimension of the dispute, technically, have changed. If the dispute is with respect to any obstruction over a passage of land which falls in Plot No. 186, perforce the Magistrate would be required to take the statement/evidence of opposite party Nos. 4 and 5, whose house is situated over the land falling under Plot No. 186.

Generally speaking, from the perusal of the map, it appears that the dispute is only over a passage falling in Plot No. 186. However, to convert the proceeding with respect to Plot No. 186 from Plot No. 185, it would be absolutely necessary for the Magistrate to allow the parties to the proceeding, *viz.* the petitioner, opposite party No. 3 and opposite party Nos. 4 and 5 to adduce evidence on their behalf.

So far as the change in the number of plot is concerned, the same is upheld, but the matter is remitted to the Court of the learned Magistrate for passing a fresh



final order, only after permitting the parties, referred to above, to adduce evidence in their respective defence.

With the aforesaid observation, the revision petition is disposed of.

**(Ashutosh Kumar, J)**

Praveen-II/-

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