

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, NAWADA

DISTRICT-NAWADA, BIHAR

[CRIMINAL REVISION NO. 33/2025]

[Arising out of order U/s-145 Cr.P.C. dated 17.01.2025 passed by S.D.M.,
Rajauli in Case No.-130/2024]

IN THE MATTER OF:-

Status of the parties

before this Court

Revisionist

1. Vijay Prasad, S/O-Late Hemraj Mahto

R/O Village-Sheopur, P.S.-Parnadabar, District-Nawada

..... Revisionist

Status of the parties

before the Trial Court

Party No.-1st

Vrs.

1. Dinesh Yadav, S/O-Late Lakhan Yadav

2. Mahesh Yadav, S/O- Late Lakhan Yadav

3. Mahendra Yadav, S/O- Brichh Yadav

4. Satyendra Yadav, S/O- Brichh Yadav

5. Jogendra Yadav, S/O- Brichh Yadav

6. Munni Yadav, S/O- Brichh Yadav

7. Ranjeet Yadav, S/O- Late Arjun Yadav

8. Rajendra Yadav, S/O- Nanhu Yadav

9. Madan Yadav, S/O- Late Puna Yadav

10. Sanjay Yadav, S/O- Late Puna Yadav

All R/O Village-Chulhari, P.S.-Parnadabar, District-Nawada

11. State of Bihar

..... Opposite Parties

Counsel for the petitioner:- Shri Ramkrishna Prasad, Ld. Adv.

Counsel for the O.P. No.-1 to 10 :-Shri Manish Kr. Srivastava, Ld. Adv.

Counsel for the opposite party No.-11:- Shri Manoj Kr. Singh, Ld. P.P.

Date of order: 23.04.2026

130/2024
23/04/2026

Present: Ashutosh Kumar Jha
Principal Sessions Judge,
Nawada.

23.04.2026

ORDER

1. The present Revision has been preferred under Section 397/399 of Cr.P.C. impugning order dated 17.01.2025 of S.D.M. Rajauli in Case No.-130/2024, wherein the Ld. Sub-divisional Magistrate, Rajauli converted the proceedings U/S-144 of the Cr.P.C. into U/S-145 of the Cr.P.C. and find the possession over the said disputed land of 2nd Party (O.P. No.-1) as well as to make peace upon the said land.

2. Feeling aggrieved by the aforesaid impugned order, the present revision petition has been preferred by the Revisionists on the grounds as set out in petition. The main contention of the Revisionists is that the order passed by the Ld. court of S.D.M. Rajauli is perverse, erroneous and against the law. The Ld. Court has got no power to declare possession of any party in a proceeding U/S-163 of the BNSS and Ld. Magistrate is empower only to restrain any party to do certain act and impugned order is without jurisdiction and not sustainable, so, Ld. Magistrate has passed the order without considering the document of 1st Party, hence, impugned order dated 17.01.2025 should be set aside.

3. Ld. P.P. stated that there is no illegality in the order so passed by the Ld. S.D.M., Rajauli and the impugned order is as per law.

4. Learned counsel for the revisionist as well as Ld. Counsel for the opposite parties are present. I have heard Ld. P.P., Ld. counsel for the

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revisionist as well as Ld. Counsel for the opposite party. Perused the Trial Court record. Before disposing of this revision, this court adduced herein relevant extract of Section 145 of C.P.C.

145. Procedure where dispute concerning land or water is likely to cause breach of peace. (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

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Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

In *Atahaul Haque Vs. Md. Allauddin* 2000 Cr.LJ 3245 (Patna) and in *Vidyotma Vs. Arjun Prasad* 1996 (2) Crimes 497 (Patna), it was held that the proceeding U/S-145 of the Cr.P.C. are not permissible when litigation involving possession of disputed property between the parties are pending in the civil court. Further, in *Atahaul Haque Vs. Md. Allauddin* 2000 Cr.LJ

3245 (Patna), it was also held that the proceeding U/S-145 of the Cr.P.C. is not permissible when the litigation involving possession of disputed property between the parties are pending in civil court, even if the entire disputed property is not the same or some of the parties are different in the two proceedings. In **Madan Singh Vs. State of Bihar 1991 Cr.LJ 1374 (Patna)**, it was held that the proceeding U/S-145 of the Cr.P.C. where civil suit between the parties regarding dispute as to possession is pending are not maintainable in **Ram Sumer Puri Mahant Vs. State of U.P. AIR 1985 (SC) 472**, it was held where civil suit is pending where question of possession is being examined by the civil court, the parallel proceeding U/S-145 of the Cr.P.C. are not desirable and it should be dropped.

It is clear from the perusal of the order of Ld. S.D.M., Rajauli that the subject matter of the proceeding U/S-145 of Cr.P.C. relates to the land P.S. and Circle-Sirdalla, Distt.-Nawada with regard to the land bearing Khata No.- 2094, Plot No.-1282, 12177, 12173, 12178 and 12182 measuring 0.54, 0.13, 05, 0.10, 11.25 and 7.50 decimal respectively of the land. Further the scheme of Section 145 Cr.P.C. does not confer any power upon the Executive Magistrate to finally adjudicate or declare title or confer rights of possession in the nature of a civil court decree. The jurisdiction is limited to a tentative determination of possession for maintaining law and order, subject always to the decision of a competent civil court. In the present case, the learned S.D.M., Rajauli, while passing the impugned order, has not merely undertaken a summary determination for the purpose of preventing breach of

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peace but has proceeded to declare possession of the disputed land in favour of the second party (O.P. No.-01 herein) in a manner suggestive of final adjudication. Such an exercise clearly travels beyond the scope of jurisdiction vested in an Executive Magistrate under Section 145 Cr.P.C. It is a settled principle of law that an Executive Magistrate cannot assume the role of a civil court and cannot grant declaratory relief regarding possession or title. Any such declaration is without jurisdiction and unsustainable in the eye of law. In view of the above legal position, this Court finds that the learned S.D.M. exceeded his jurisdiction in declaring possession in favour of the second party, rendering the impugned order legally untenable. Hence, the impugned order dated 17.01.2025 in case No.-130/2024 as passed by Ld. S.D.M., Rajauli is improper, unjust in the eyes of the law. Accordingly, the order dated 17.01.2025 is being set aside and the revision is being allowed hereby.

5. Present Revision petition is, accordingly **allowed**, with above observations.

6. Nothing stated herein shall tantamount to have an expression of opinion of the merits of the case.

7. A copy of the order be sent to learned court of S.D.M., Rajauli, along with Trial Court record.

8. File related to Revision petition be consigned to the Record Room.

Dictated and corrected by me.

Ashutosh Kumar Jha
Principal Sessions Judge,
Nawada
23.04.2026

Ashutosh Kumar Jha
(Ashutosh Kumar Jha)
Principal Sessions Judge,
Nawada
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