

IN THE COURT OF SESSIONS JUDGE, CAMP COURT WEST CHAMPARAN AT BAGAHA

**Present :- Anamika T.
Principal Sessions Judge,
Camp Court West Champaran At Bagaha
Dated, 18th March, 2026**

CRIMINAL REVISION No. 11/2026

1. Jayprakash Vishal S/o-Late Sukai Raut
2. Vedprakash Vishal S/o-Late Sukai Raut

Both R/o-Vill-Dumwaliya, Ward No. 05, P.S.-Pathkhauri, Distt-West Champaran

.....**Petitioners/Revisionists**

Versus


1. The State of Bihar

..... **Opposite Party 01st Party**

2. Omprakash S/o-Late Sukai Raut R/o-Vill-Dumwaliya, Ward No. 05, P.S. Pathkhauri, Distt-West Champaran.

.....**Opposite Party 02nd Party**

Counsel for the Petitioners : Shri Indu Bhushan Pandey, Adv.
Counsel for the State of Bihar : Shri Prabhu Prasad, PP I/C

04-04-2026 	1. This criminal revision application is directed against order dated 09-01-2026 passed in Case No. 2483/2025 u/s-106 of B.N.S.S. @ 107 of Cr.P.C. whereby and where under Ld. S.D.M. Bagaha ordered the O.Ps to open the entrance of house within 24 hours of passing of order in presence of C.O. Bagaha-2 and S.H.O. Patkhauri and the share of petitioner be handed over to petitioner. 2. Being aggrieved and dissatisfied with the impugned	
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order passed by the learned S.D.M. Bagaha, the revisionist filed the revision petition stating that the impugned order dated 09.01.2026 passed by Ld. S.D.M. Bagaha is bad in law as well as on fact. The Ld. Court has neither called any report from his agencies nor personally investigated the matter and directly initiated the proceeding u/s-126 of B.N.S.S. The Ld. Court issued notice for appearance of petitioner. The petitioner appeared on 05.01.2026 and prayed for time to prepare show-cause, but the Ld. Court did not grant time and posted the matter for hearing on 06.01.2026. On 07.01.2026, the record was fixed for order and the order was delivered on 09.01.2026. It is further stated that the Ld. Court has not given proper opportunity to the petitioners for filing the show-cause and without hearing the petitioners, the Ld. Court has passed the order against the petitioners. In case of section-126 B.N.S.S. the Ld. Court has no power to pass orders of execution. The impugned order dated 09.01.2026 passed by Ld. Court is illegal and beyond the jurisdiction of the court, hence not maintainable and fit to be set aside.

3. In view of the above, the petitioners/revisionist prayed that this Court be pleased to set aside the impugned order dated 09.01.2026 and direct the learned Court below to proceed with the case.

4. The learned P.P. I/C, Sri Prabhu Prasad for the State has submitted that for meeting the ends of justice,

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proper order may kindly be passed.

5. O.P. No. 2 appeared before the court in person and reiterated that only temporary access has been granted to prevent breach of peace and no irreparable loss will be caused to the revisionists. According to O.P. No. 2 the subjective satisfaction of Ld. S.D.M. Bagaha regarding threat perception and likelihood of breach of peace is clearly borne out from the record. He has further submitted that the prescribed statutory level affixed to the order does not dilute, negate or vitiate the exercise of preventive jurisdiction.

6. The facts of the case in brief are that the disputed land is situated at Mauza Dumwaliya, Khata-03, Khesra-80/689/2 and a permanent house exist on the land bearing Khesra-80/689 which was constructed by Late Sukai Rawat (father of O.P. No. 2 and petitioners/revisionists). Sukai Rawat had executed a Will on 22-03-2021, distributing the property among his three sons. The Will contains signatures of the father, all three sons and witnesses. Each son was given a separate portion and they have been living there with their families. Sukai Rawat died on 18.09.2016. It is further stated that due to his job O.P. No. 2, lived outside for some years and when he returned he found that his brothers (revisionist herein) under conspiracy had locked the main entrance of the house and shifted to a new house. Despite his requests, they are not opening the gate. His belongings are still inside the house and he has no other

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house to live in. There is serious tension between both sides with the possibility of violence, bloodshed and disturbance of peace.

7. Heard both the sides and perused the record including LCR. The applicant (herein O.P. No. 2) filed an application before Ld. S.D.M. Bagaha on 29-12-2025 invoking the power u/s -126 and 163 of B.N.S.S. However, the Ld. S.D.M. Bagaha, by the impugned order has not ascribed the section under which he has passed the order of removal of lock and handing over possession to the revisionist. Section 126 and 163 of B.N.S.S. work in different spheres, as is evident from the bare reading of these provision. For convenience these sections are extracted herein under :

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Section 126 Security for keeping peace in other cases- (1) *When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.*

(2) *Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach*

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of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.

Section 163 Power to issue order in urgent cases of nuisance or apprehended danger- (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 153, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquility, or a riot, or an affray.

(ii) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(iii) An order under this section may be directed to a

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writing the reasons for so doing.

8. The Hon'ble Supreme Court in the case of **Madhu Limaye V. S.D.M., Monghyr** has held as under:

The gist of action under section-144 Cr/P.C. is the urgency of the situation and its efficacy in likelihood of being able to prevent some harmful consequences. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny.

Even in the recent case of **Anuradha Bhasin Vs. Union of India AIR 2020 SC 1308**, the Hon'ble Supreme Court held that : *any order passed u/s-144 Cr.P.C. should be exercised in bonafide and reasonable manner relying on material facts, indicative of application of mind.* In the given facts and circumstances, there is no present danger which was shown for passage of preventive order u/s-163 B.N.S.S. which according to the Hon'ble Apex Court should be in nature of an emergency. The O.P. No. 2 has not stated any facts which warrant an order u/s-163 B.N.S.S. which actually contemplate a situation where orders are required for preventing an emergent situation.

In the present case it is alleged that the revisionists had put a lock on the main gate to exclude the O.P. No. 2 from enjoyment of his share of property. Such ground was not an imminent reason for breaking open the locks. The matter could have been sorted out after hearing the revisionist and inquiring into the facts whether such

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factual matrix existed on the spot. In spite of doing that Ld. S.D.M. Bagaha has gone beyond his powers and passed an order of not only breaking of locks but also restoring share of property to O.P. No. 2.

9. In the case of Lalan Prasad Singh Vs. State of Bihar & Others, Criminal Writ Jurisdiction Case No. 1119 of 2021 dated 7th of April, 2026, the Hon'ble Patna High Court has held that : *For application of provision u/s-107 Cr.P.C. (Corresponding to section-126 B.N.S.S.) there must be allegation of an overt act which may lead to breach of public peace affecting the public at large. Only on account of the fear under which some individuals may be living due to threat being extended by parties does not mean that it would lead to breach of public peace. In the present case the issue was between individuals and no overt act was alleged by which there could have been a situation of breach of public peace and the act was also not affecting the general public at large. Therefore, the invocation of power u/s-126 B.N.S.S. was also not justified in the facts and circumstances of the case.*

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10. The nature of relief that can be provided to the applicant is preventive in nature and is only for the purpose of protection of the possession of the lawful owner. Whereas nothing is indicated in the impugned order as to the grounds on which the Ld. S.D.M. Bagaha has come to the conclusion that the claim of the applicant is proved and the necessity of not inviting the revisionists to place their

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objection on record by them. It is settled law that executive power cannot be used for deciding title and ownership of the properties. These rights can only be settled by Court of competent jurisdiction. The Ld. S.D.M. Bagaha has not recorded as to who was in possession of the said premises just before the said incident of alleged locking of the premises took place. Also there is nothing on record to suggest that the house which was directed to be opened fell to the share of revisionist. Before adjudication of the issue with respect to which house belongs to which party, the direction to break open the locks and handing over the possession of the flat to the revisionist is wholly unsustainable. The Ld. S.D.M. Bagaha has exceeded his jurisdiction and acted beyond the scope of power granted by B.N.S.S. which is only for the purpose of taking preventive action.

11. In view of the above discussion, the impugned order 09-01-2026, passed by Ld. S.D.M. Bagaha is set aside and the matter is remanded back to Ld. S.D.M. Bagaha to pass fresh order in the light of the provisions and the case law discussed herein above, after granting opportunity to both the parties to lead evidence on their behalf. Accordingly, Criminal Revision No. 11/2026 is **allowed**.

Anamika
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(Anamika T.)
Sessions Judge
West Champaran, Camp Court, Bagaha
04.04.2026