

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 805 of 2014

1. Smt. Prabha Verma, W/o. Ramesh Verma, Aged about 64 Years Through : Yashwant Dewangan, Niraj Kunj, Infront Of Sai Baba Store, Near 3rd Pole, Hari Nagar Katul Board, P.S. Mohan Nagar, Tah. Durg, Distt. Durg (C.G.)

---- **Petitioner**

Versus

1. Smt. Asha Choubey, W/o. Narendra Choubey, R/o. Sambalpur, P.S. Nandghat, Distt. Bemetara (C.G.) Through: Attorney General Smt. Yashoda Dewangan, W/o. Bharat Lal Dewangan, R/o. Vill. Bodegaon, Tah. & Distt. Durg (C.G.)
2. State of Chhattisgarh Through: The Distt. Magistrate, Distt. Office, Durg (C.G.)

---- **Respondents**

For Petitioner	:	Mr. N.K. Chatterjee, Advocate
For Respondent No.1	:	Mr. Praveen Dhurandhar, Advocate
For Respondent No.2/State	:	Ms. M. Asha, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09/10/2015

1. Challenge in this petition is to the order dated 21.08.2014, passed in Criminal Revision No.196/2013, passed by the 7th Additional Sessions Judge, Durg, whereby the order dated 12.08.2013, passed by the Sub-Divisional Magistrate, Durg, in Criminal Case No. 3292/2012, passed in a petition under Section 145 of Cr.P.C. was affirmed.
2. It is contended on behalf of the petitioner that Smt. Prabha Verma had purchased the land bearing Kh. No.11/31, admeasuring area 2400 sq.ft., situated at Katulboard, P.C. No.15, at Durg. While the

construction was being made over such land, it was objected by the respondent No.1. The counsel would submit that from the date of the purchase, from 24.04.2010, she was in possession of the land and after purchase made, the possession was held by the petitioner. It is further submitted that the land which is claimed by the respondent is bearing Kh. No. 11/34, therefore, necessarily it would be a different land then that of the petitioner and after the purchase made, the demarcation was also carried out in respect of the land Kh.No.11/31 by the petitioner which affirmed the fact that the petitioner is in possession of the land wherein construction is being made. He would further submit that though the dispute was with Smt. Asha Choubey but she was represented by her power of attorney and any statement made on behalf of the power of attorney would not be acceptable, consequently, it cannot be held on the basis of the evidence adduced by the respondent that she was in possession of the land. He therefore, submits that both the Courts below has not appreciated this fact and has come to a wrong finding of fact which necessarily required to be corrected by invoking the jurisdiction of this Court under Section 482 of Cr.P.C. He further submits that therefore, under the facts and circumstances of this case, the petition may be allowed.

3. Per contra, learned counsel appearing on behalf of the respondent No.1 would submit that two Courts below i.e. the Court of S.D.O. And Additional Sessions Judge, after evaluating the facts and the documents came to a definite finding that in respect of the land bearing Kh.No.11/34, the respondent No.1 was in possession after the purchase made. He would further submit that such finding of fact which has been arrived at after appreciation of evidence do not call for any interference. He therefore, submits that order of both the Courts below

is well merited which do not call for any interference.

4. I have heard the learned counsel for the parties, perused the orders and the documents attached with this petition.
5. The dispute is about two lands one is bearing Kh. No.11/34 admeasuring 3000 sq.ft. and another is bearing Kh.No.11/31 admeasuring area 2400 sq.ft.. The petitioner claimed that she is in possession of the land bearing Kh.No.11/31 and is constructing the house over the same, whereas, the respondent No.2 claims that she tried to encroach upon her land which is bearing Kh.No.11/34 admeasuring 3000 sq.ft. Both the lands are situated at Katulboard, Durg.
6. The finding as has been recorded and the documents would show that the respondent No.1, Smt. Asha Choubey purchased the part of the land bearing Kh. No.11/34, admeasuring 3000 sq.ft. 50 x 60 by a registered sale deed dated 22.05.2009. As the finding is arrived at by the Court that before such purchase, a demarcation was carried out in respect of the land bearing Kh.No.11/34, which was marked as Ex.P/7C. The finding further records that demarcation was carried out on an application filed by one person Eknath, and subsequently, the land was sold to Shashi Swami on 25.03.2009 which in turn was sold to Smt. Asha Choubey on 22.05.2009. The finding is recorded that before such demarcation, publication was made by the Revenue Inspector and boundaries of the land was shown on the North, land of others, towards South land of Devcharan and proposed road and towards East others land and towards West road was shown. The same fact was also corroborated by the revenue records of the land i.e. Khasrapanchshala, Ex.C-4, wherein Smt. Asha Choubey was

shown to be in possession. As against this, the petitioner, Smt. Prabha Verma had purchased the land bearing Kh. No.11/31 by sale deed dated 24.04.2000 and the demarcation was also carried out and the report was given on 14.05.2011. The order records that in the cross-examination, the petitioner admitted that before November, 2012, the land was open plot. It further records the admission that according to the sale deed, which was marked as Ex.D/25, the land was shown from North to East 60 feet and from East to West 40 feet. Whereas in the demarcation report which was marked as Ex.D/27, dimension was changed and from North to South it was shown to be 40 feet and from East to West it was shown to be 60 feet. It also records that the petitioner admitted that in the demarcation report, two roads were shown but in the registry, only 25 feet of roads are shown. Consequently, the Court came to a finding that the land shown in the sale deed and the demarcation of the petitioner shows different dimension. The Court further observed that subsequently the said demarcation was canceled and further demarcation was ordered for. Perusal of the order would show that no further demarcation report was placed on record.

7. In the cross-examination, further petitioner admitted the fact that from November, 2012, till the evidence was adduced, she is in possession and had contended that she had acquired the possession, whereby it would lead to draw an inference that on the disputed land, which was bearing No.11/34, the petitioner had encroached upon and started the construction. The perusal of the interim order also fortifies the same. The other contention of the petitioner that evidence was adduced by the power of attorney holder can not be held as a evidence also do not have any force since Smt. Asha Choubey, who has granted the power

of attorney to Yashoda Dewangan was not disputed the same and in any case, if the, holder of the power of attorney is examined, according to the instructions of the executor it can not be made as a subject of dispute.

8. Reading the finding and the documents placed alongwith this petition would go to show that the finding arrived at by the both the Courts below can not be the outcome of material irregularity as the demarcation report which is existing in respect of the disputed plot, which was marked as Ex.P/7C holds the field till date. On the contrary the demarcation report which was filed did not match to the boundaries shown in the sale deed of the petitioner. Though such demarcation report was said to have been annulled and fresh demarcation was ordered for but no document has been placed to show that fresh demarcation has been done in respect of the disputed land.
9. In view of the finding of fact arrived at by both the Courts below, this is not a case where the jurisdiction of this Court under Section 482 of Cr.P.C. can be invoked. Primarily, the finding which is arrived at appears to have been arrived after correct assessment of the evidence and the documents, demarcation report. The petitioner if at all is aggrieved is always has the liberty to file proceeding seeking remedy under civil law.
10. In a result I am not inclined to interfere with the order of the Courts below. Accordingly, the petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge