

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 860 of 2014**

1. Rekhalal S/o Laxmicharan Rai, aged about 65 years, R/o. Vill. Sendari, P.S. & P.O. Dadhi, Tah. Civil & Rev. Distt. Bemetara (C.G.)
2. Jeevanlal S/o . Laxmicharan Rai, aged about 67 years, R/o. Vill. Sendari, P.S. & P.O. Dadhi, Tah. Civil & Rev. Distt. Bemetara (C.G.)
3. Chandrashekhar S/o . Rekhalal, aged about 42 years, R/o. Vill. Sendari, P.S. & P.O. Dadhi, Tah. Civil & Rev. Distt. Bemetara (C.G.)

---- Applicants**Versus**

1. Dharmendra Kumar S/o . D.P. Dhritlahre, aged about 34 years, R/o. Vill. Sendari, P.S. & P.O. Dadhi, Tah. Civil & Rev. Distt. Bemetara (C.G.)
2. State of Chhattisgarh through: P.S. Dadhi, Distt. Bemetara (CG)

---- Respondents

For Applicants	:	Shri Manoj Paranjpe, Advocate
For Respondent 1	:	Shri P. P. Sahu, Advocate
For Respondent 2/State	:	Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****22/07/2016**

The present revision petition has been preferred assailing the order dated 06.09.2014 passed by the Additional Sessions Judge, Bemetara in Criminal Revision No. 60/2012. By the said impugned order dated 06.09.2014, the Revisional Court in a proceeding under Section 145 CrPC has quashed the order dated 02.11.2012 passed by the SDM, Bemetara in MCC No. 270/2003 and ordered for fresh adjudication of the matter after recording the evidence of one of the disputing parties i.e. Rekhlal.

2. While remanding the matter to the Court below, the Revisional Court had observed that while passing the earlier order dated 02.11.2012 the Court below had not taken note of the statement of the witnesses recorded by the Police Authorities at the time of preparation of Stagasha and also the documents attached for initiating a proceeding under Section 145 CrPC.

3. Counsel for the applicant submits that the impugned order of remand for fresh adjudication of the matter is bad in law for the reason that the Revisional Court could have decided the matter after perusing the statement of Dharmendra Kumar i.e. one of the disputing parties who in his statement has categorically stated that he is not in possession of the said property and he has not visited the said property for quite sometime. Therefore, there was no requirement for fresh adjudication of the matter. He further submits that even without the statement of Rekhilal which has not been considered by the Revisional Court, the matter could have been decided only on the basis of the statement of Dharmendra Kumar. Hence, counsel for the applicants prays for setting aside of the impugned order.

4. Counsel appearing for respondent no.1 submits that it is a case where apparently from the order of the Revisional Court itself it clearly reflects that the SDM had decided the entire matter relying upon the statement of Dharmendra Kumar and had not looked into the other aspects and records which were available before the Court below particularly the statement of the witnesses recorded by the police at the time of preparation of Stagasa and also the records which have been adduced by the respondents before the Magistrate as well as the Police Authorities. Hence, prays for dismissal of the present revision petition.

5. From perusal of the records admittedly it reflects that the evidence of Rekhlal though has been recorded in the Court but there is no signature of the Magistrate on the said statement and therefore in the opinion of this Court, the Revisional Court has rightly held that the said deposition of Rekhlal would not have any sanctity in the eye of law. Further, the order dated 02.11.2012 does not reflect that the Magistrate has examined the statements recorded at the time of Stagasa and also the records which have been produced by the respondents to the Police Authorities at the time of investigation.

6. Considering the total facts and circumstances of the case this Court is of the opinion that the Revisional Court has not committed any error of law while sending the matter back to the Court below.

7. However, it is made clear that the Magistrate now shall proceed further to decide the entire matter afresh after recording only the evidence of Rekhlal whose evidence on the earlier occasion was not duly signed by the Magistrate. Thereafter, the Magistrate shall proceed further to decide the matter finally keeping in view the directives given by the Revisional Court vide impugned order dated 06.09.2014.

8. With the aforesaid observation, the present Criminal Revision stands disposed.

Sd/-
(P. Sam Koshy)
JUDGE