

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL MISC. PETITION NO. 376 OF 2014**

1. Suresh Kumar, aged about 39 years S/o Shri Badrinarayan Joshi
2. Santosh Kumar, aged about 36 years, S/o Shri Badrinarayan Joshi, both R/o Dak Bangla Ward Dhamtari, Thana and Tehsil Dhamtari, Civil and Revenue District Dhamtari (CG).

----PETITIONERS**Versus**

1. Smt. Kamrunisha aged about 40 years, wife of Shri Ahamad Raza.
2. Ahmad Raza, Aged about 43 years, S/o Mohammad Dauda, Both R/o Amapara Dhamtari, Thana, Tahsil, Dhamtari, Civil and Revenue District Dhamtari (CG).

---- RESPONDENTS

For Petitioners	:	Shri RS Patel, Advocate.
For respondents	:	Shri Akhtar Husain, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****24/06/2016**

1. Challenge in this petition is to the order dated 11.04.2014 passed by the Additional Sessions Judge, Dhamtari, in Criminal Revision No. 17/2013 whereby the court below has dismissed the revision preferred by the petitioners affirming the order passed by the Sub Divisional Magistrate, Dhamtari (SDM) in a proceedings under Section 145 Cr.P.C. in Misc. Criminal Case No. 391/2011.

2. Facts in brief necessary for disposal of this petition is that, on 04.07.2011, the petitioners preferred a petition under Section 145 Cr.P.C. before the SDM, Dhamtari, which was registered as Misc. Criminal Case No.391/2011. In the said application it was contended by the petitioners that the property in dispute specified in the said petition is owned and possessed by both the petitioners and their mother jointly which they had purchased on 21.06.1993 from one Gopimal Panjwani. It was further contended by the petitioners that the respondents have illegally entered upon the land belonging to them and are also trying to raise construction over the said land and when the petitioners tried to intervene, some quarrel took place between them and the respondents were also using abusive language.
3. The petitioners lodged a written complaint to the police authorities, who, on investigation found that the disputed land was sold to the respondents by one Prakash Joshi, who happens to be the brother of the petitioners.
4. The SDM, Dhamtari, after considering the entire facts and circumstances of the case and also after perusal of the record adduced during the course of proceedings found that the respondents were in possession of the disputed land and they have come in possession by virtue of registered sale deed dated 29.03.2011. In addition to the registered sale deed, they were also in physical possession over the said property. During the course of evidence, it had also come before the SDM that seller of the property

Prakash Joshi and his brother Vijay Joshi had made categorical statement before the Magistrate court that the disputed land fell into the share of Prakash Joshi in the course of family partition and therefore the said Prakash Joshi had sold the said property to Ahmed Raja on 29.03.2011 and since then the respondents were in possession of the said property. Accordingly, vide order dated 28.02.2013, the SDM, Dhamtari, held that by virtue of registered sale deed executed in favour of the respondents and physical possession being in their custody plus the deposition of the seller who is brother of the petitioners, the possession of respondents on the disputed land stood established and it was ordered that the petitioners shall not interfere with the possession of the respondents over the said property and shall also try not to cause breach of peace until and unless there is an order from the competent court so far as title and rights over the said property is concerned.

5. The said order of SDM dated 28.02.2013 was further put to challenge before the revisional court in Criminal Revision No.17 of 2013 before the Additional Sessions Judge, Dhamtari, who also taking into consideration the pleadings and submissions brought by the parties before the court of SDM in 145 Cr.P.C. proceedings found that there were material contradiction in the evidence of petitioners before the SDM in so far as establishing their possession over the disputed property. The court of SDM and that of the Revisional Court took note of the fact that the brothers of the petitioners themselves have come and deposed against the petitioners in favour of the respondents and

it is the one of the brother himself who has sold the property to the respondents by way of registered sale deed. In addition, the revisional court also found that though there is a specific registered sale deed in favour of the respondents executed by one of the brothers of the petitioners in the year, 2011 and which was well within the knowledge of the petitioners, yet there is no challenge to the said sale deed before any competent court of law seeking its declaration of it being null and void and in these circumstances, the revisional court also rejected the revision preferred by the petitioners leading to filing of instant miscellaneous petition.

6. A bare perusal of two orders passed by firstly the SDM and secondly by the Additional Sessions Judge it clearly reflects that both the courts below have passed a well reasoned and speaking order taking note all the contentions and submissions put forth by the petitioners. The finding given by the two courts below are also based on the oral as well as documentary evidence which have come on record. Once when there is a categorical findings of fact by two courts below, this court invoking its extraordinary jurisdiction under Section 482 Cr.P.C. would not interfere with the speaking orders passed assigning the specific reasons reasons.
7. In the instant case, as has been rightly pointed out by the revisional court, the petitioners till date did not challenge the registered sale deed executed in favour of the respondents by their own brother Prakash Joshi. Likewise, the petitioners have also not taken any steps for an order from the competent court of law so far as title of

the said property is concerned. It is also pertinent to note that the petitioners have also not questioned the authority of Prakash Joshi while selling the said property before any competent court of law.

8. Counsel for the petitioners submits that initially after the said property was purchased by the petitioners along with their mother on 21.06.1993, the Patwari had mutated the said land in their names, however, the brother of the petitioners i.e. Prakash Joshi in the year, 2008 was able to get his name mutated the same property which had been subject to challenge before the various authorities and finally now vide order dated 09.02.2016, the SDM has decided the issue in favour of the petitioners and have ordered for mutation of said property in the name of petitioners with their mother.
9. Though, now the order has been passed by the SDM in favour of the petitioners mutating their names in respect of the said property, but the fact still remains that there is a duly executed registered sale deed in favour of the respondents which has till now not been put to challenge before any competent court of law. Further, there is also a categorical finding of fact that based on the said registered sale deed the respondents have taken possession of the said land of which again title has not been agitated upon before any court of law and so far as proceedings under Section 145 Cr.P.C. is concerned, once there is a finding of fact in respect of respondents being in possession over the disputed property plus the respondents have been in possession by virtue of registered sale deed, the findings of the SDM as well as the revisional court does not warrant any

interference with regard to the possession of the respondents and rejection of the application as well as the revision of the petitioners cannot be faulted with.

10. For the reasons mentioned hereinabove, this court does not find any error both on law as well as on fact to have committed by the SDM or for that matter the revisional court and the petition being devoid of merit is liable to be and is hereby dismissed.

11. However, rejection of this petition would not come in the way of the petitioners in taking the other remedies available to them for establishing their right and title over the disputed property in accordance with law governing the field.

Sd/-
(P. Sam Koshy)
JUDGE