

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 523 of 2015**

- Jethuram Tilakwar S/o Gangaram Tilakwar Aged About 52 Years R/o Village- Khairbana Khurd, Police Station & Tahsil- Bodla, Civil & Revenue District- Babirdham, Chhattisgarh

---- Petitioner**Versus**

1. Taluram @ Ramtahlu S/o Gangaram Tilakwar Aged About 55 Years R/o Village- Khairbana Khurd, Police & Tahsil- Bodla, District- Kabirdham, Chhattisgarh
2. State Of Chhattisgarh Through: The Collector, Kabirdham, District Kabirdham, Chhattisgarh

----Respondents

For Petitioner
For Respondent No.1
For State

Mr. Ajit Singh, Advocate
Mr. Rakesh Pandey, Advocate
Mr. Ashok Swarnkar, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****22.12.2016**

1. The present Petition under Section 482 of the Cr.P.C. has been preferred assailing the order dated 19.05.2015 passed by the Additional Sessions Judge, Kabirdham in Criminal Revision No. 18/2014.
2. Vide the said revision the Court below had rejected the Revision Petition preferred by the present Petitioner while challenging order dated 23.05.2014 in Criminal Case No. 12/2012 passed by Sub-Divisional Magistrate Bodla District – Kabirdham. The order of the S.D.M. Bodla dated 23.05.2014 was in a proceeding under Section 145 of the Cr.P.C. whereby the S.D.M. had declared the possession of the

disputed property to be that of Respondent No.1 also.

3. The brief facts necessary for the adjudication of the present dispute is that the Petitioner and Respondent No. 1 are real brothers and disputed property involved in the case is located in Khasra No. 126/2, 126/3 and 126/4 having total Rakba 1.11 Acres.
4. According to the Petitioner the family property of his ancestors were partitioned between the present Petitioner and his brother Respondent No.1 long ago and the aforementioned disputed property fell in the share of the present Petitioner. The appropriate entries were also entered in the Revenue Record showing the said property in the name of the present Petitioner.
5. According to the Petitioner since the property which fell in the share of the Respondent No.1 has been sold by him to different individuals and as he was rendered land less, therefore, he is now trying to interfere with the peaceful possession of the Petitioner over the aforesaid disputed property. According to the Petitioner, Respondent No.1 does not have any right, title or ownership over the said property as he has got this property by way of partition in the ancestral property and necessary entries in this regard in the Revenue Record has also been made, showing the Petitioner to be the actual owner of the said property. Subsequently, Respondent No.1 is said to have filed an application before the police station, Bodla which later on was referred before the S.D.O who initiated proceeding under Section 145 Cr.P.C. between the parties. During the course of proceeding the S.D.O. got report of the Revenue Officer and Revenue authorities. The Revenue officer and the Revenue authorities however have given a report

holding that Respondent No.1 is also in possession over the said piece of land.

6. Based upon the said report the S.D.O., Bodla passed the order on 23.05.2014. This order was subjected to challenge in the Criminal Revision before the Court of Additional Sessions Judge, Kabirdham which was rejected vide the impugned order dated 19.05.2015.
7. Learned Counsel for the Petitioner submits that the entire finding of the S.D.O. and also upholding by the Revisional Court is bad in law and contrary to the evidence. According to the Petitioner the entire report which has been prepared by the Revenue Officer and the Revenue Inspector are fabricated, preplanned and without any basis. Counsel for the Petitioner submits that the authorities below ought to have taken in to consideration the entries that have been made in the Revenue Record for determining the proceeding under Section 145 of the Cr.P.C.
8. Learned Counsel for the Petitioner relies upon the decision of the Madhya Pradesh High Court in cases of **Ram Naresh Singh v. Shyam Singh** reported in 2011 (3) JL313 and **Prakash Chandra Prasad v. State of M.P. and Others** reported in 2010 (1) M.P.L.J. 607. Thus prayed for setting aside of the two orders.
9. Sh. Rakesh Pandey, Counsel appearing for Respondent No.1 however opposing the Petition submits that no case whatsoever has been made out by the present Petitioner, calling for interference with the two orders under challenge. According to the Counsel for Respondent No.1 there being concurrent finding of fact by the S.D.O. at the first stance and the Revisional Court subsequently, there is not much left to be adjudicated upon neither was there any error committed by the two authorities while

deciding the case.

10. According to the Counsel for Respondent No.1 in a proceeding under Section 145 Cr.P.C. all that is to be determined is as to who has the physical possession of the property to which in the present case the Revenue Inspector and Revenue Officer have reported that the Respondent No.1 also was in possession, therefore, this matter stands fully adjudicated upon.
11. According to Sh. Pandey in case, if the Petitioner intends to claim his right and title over the said property he needs to initiate an appropriate proceeding before the competent Civil Court seeking declaration. According to Sh. Pandey the two authorities below could not have decided the title and ownership of the suit property or the disputed land in a proceeding under Section 145 of the Cr.P.C.
12. Considering the rival contention put forth on either side and on perusal of the record what comes up to the notice of this Court is the fact that the proceeding under Section 145 Cr.P.C. is only to prevent obstruction in the public piece in respect of dispute relating to an immovable property. A proceeding under Section 145 Cr.P.C. is initiated only to settle the matter temporarily till the rights and title of the properties are decided by a competent Court. The Proceeding under Section 145 Cr.P.C. only deals with the factum of possession of the property on a particular date without legally deciding the right and title of any person over the suit property.
13. A plain reading of the provision under Section 145 Cr.P.C. clearly shows that in such proceeding the Magistrate is only required to decide whether any or which of the parties on the date of order is in

possession of the subject land in dispute.

14. Now since there is a clear finding of two of the Court below that Respondent No.1 is also in possession of the disputed property, this Court is of the opinion that in so far as the possession is concerned let status quo as it exists today be maintained for a period of 60 days and meanwhile the Petitioner is permitted to approach the competent civil Court to seek appropriate relief claiming for his right and title over the property.

15. It is also submitted that in case if the Petitioner moves to the Civil Court along with application for grant of temporary injunction and if an order is passed on the said application the order of this Court of status quo as it exists today to be maintained for a period of 60 days shall lose its efficacy.

16. Thus with the aforesaid observation granting a liberty to the Petitioner to approach the competent Court for establishing his right over the said property and an order of maintaining status quo as it exists today for a period of 60 days from the date of receipt of certified copy of this order, the present Petition stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE