

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 641 of 2015**

1. Ramkumar Sahu S/o Gorelal Sahu Aged About 45 Years R/o Sonsari, Police Station Pamgarh, Tah. Akaltara, Civil And Rev. Distt. Janjgir Champa Chhattisgarh.
2. Vikramlal S/o Ganesh Sahu Aged About 65 Years R/o Sonsari, Police Station Pamgarh, Tah. Akaltara, Civil And Rev. Distt. Janjgir Champa Chhattisgarh.
3. Tatiram S/o Ganesh Sahu Aged About 55 Years R/o Sonsari, Police Station Pamgarh, Tah. Akaltara, Civil And Rev. Distt. Janjgir Champa Chhattisgarh.

---- Petitioners**Versus**

1. Ramkishor Dubey S/o Shankaracharya Aged About 45 Years R/o Sonsari, Police Station Pamgarh, Tah. Akaltara, Civil And Rev. Distt. Janjgir Champa Chhattisgarh.
2. Shankaracharya Dubey S/o Chetan Prasad Aged About 78 Years R/o Sonsari, Police Station Pamgarh, Tah. Akaltara, Civil And Rev. Distt. Janjgir Champa Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Devesh G. Kela, Advocate.
For Respondents	:	Shri Anup Majumdar, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****26/09/2016**

1. The present petition has been preferred by the petitioners seeking to invoke extra ordinary jurisdiction of this court conferred under Section 482 CrPC assailing the order passed by the Sub Divisional Magistrate, Janjgir (for short, SDM) dated 06.09.2013 in Misc. Criminal Case No.86/2005-06. Vide the said order, the SDM in a proceeding under Section 145 CrPC had ordered that the disputed property was in possession of the applicant

before the SDM i.e. respondents in the present petition.

2. The petitioners have also assailed the order passed by the Additional Sessions Judge (FTC), Janjgir in Criminal Revision No.01/2014 dated 14.05.2015 whereby the revisional court has rejected the revision petition upholding the order of SDM declaring the property to be in possession of the respondents in the present petition.
3. Assailing the two orders passed by the SDM as well as the revisional court, learned counsel appearing for the petitioners submitted that the father of the present petitioners Ganesh Ram was an Army man working with the Mahar Regiment of Indian Army and served till his retirement. After his retirement, he had made an application for allotment of land and he got Patta of land bearing Khasra No.942/2 area measuring 2.2 Acres in Village Sonsari, Circle and Tehsil Akaltara, District Janjgir Champa in the year 1954. It is said that Ganesh Ram, the father of the petitioners, died in the year, 1961 and thereafter the said property was recorded in the name of his wife namely Bund Kumari Sahu. Bund Kumari Sahu also died leading to entry of said land in the joint names of their three legal heirs namely Gorelal, Vikramlal and Tatiram. In due course of time, Gorelal also died and is legal heir Ram Kumar i.e. petitioner No.1's name was recorded.
4. The land adjacent to the petitioner's land belong to the respondents. It is said that there were some trees standing on the boarder of the two properties. It is said that the petitioner No.2 had got the trees cut down as a result of which there was quarrel with the respondents leading application being made before the Tehsildar on more than one occasion and the

dispute was resolved on the basis of report of the Tehsildar. Subsequently, it is again submitted that in the year, 2004, the respondents filed a fresh application to the SDM, Janjgir under the provisions of Section 145 CrPC stating that the petitioners have forcefully taken possession of around 0.15 Acres of land in Khasra No.213/1 and 0.30 Acres of land in Khasra No.213 where the respondents had shown Vishnu Bhog rice and was to be harvested.

5. The SDM, later on, call for a report of the incharge of the Police Station, Pamgarh and finally vide its order dated 06.09.2013 taking into account the submissions made and pleadings of the parties, held that the respondents have been able to establish their possession over the property and the possession part also stands established and corroborated from the evidence adduced on behalf of the petitioner's witness namely Bharat Lal. Accordingly, proceedings under Section 145 CrPC was disposed of holding the respondents to be in possession of the property.
6. The said order of the Magistrate was put to challenge in a revision petition before the Additional Sessions Judge (FTC), Janjgir by way of Criminal Revision No.01/2014. The Revisional Court also vide order dated 14.05.2015 reached to the conclusion that there was no illegality or infirmity in the order passed by the Magistrate in a proceeding under Section 145 CrPC. According to revisional court, the evidence which have come on record clearly reflects that it was the respondents who were in possession of the property. It was also the contention of the revisional court that the present petitioners, the respondents before the revisional court, have not

been able to establish as to how and in what manner they have the right over the property. Further, the revisional court also referred to the revenue records where too it was the entries of the respondents name which were mentioned in the said property and there was no evidence brought on rebuttal to the said evidence.

7. The revisional court, referring to the provisions of Section 145 CrPC held that in a proceeding under Section 145 CrPC, all that the Magistrate has to see is as to who were in possession of the subject land in dispute and the Magistrate could not have decided any further. The Revisional court reached to the conclusion that on perusal of the records of the Magistrate, it does not appear that there was any procedural illegality to have been committed both while taking procedure or while passing the order under Section 145 CrPC and accordingly the revision petition was also rejected leading to filing of present petition.
8. Assailing both the orders, learned counsel appearing for the petitioners submits that both the courts below have not properly appreciated the pleadings and evidences which have been brought on record by the petitioners, the respondents before the magistrate court. It further did not appreciate the fact that the property originally belonged to the father of petitioners No.2&3 and grandfather of petitioner No.1. According to him, both the courts below ought to have appreciated the report of the Tehsildar as well as the officer in charge of the police Station, Pamgarh and then should have passed the order. Having not done so, both the courts below have committed an error and the orders are bad in law and arbitrary and

liable to be set aside/quashed.

9. On the other hand, learned counsel for the respondents opposing the petition submitted that it is a simple case of proceeding under Section 145 CrPC whereby the authorities concerned have only to look into the possession of the property and as to who is in actual possession of the said disputed property. According to respondents, the authorities concerned have reached to the specific conclusion of the fact that it was the respondents in present case to be in actual possession of the property. This finding cannot be said to be bad in law nor can it be held to be a perverse finding. It was further submitted that the findings of the Magistrate Court itself clearly reflects that it was the stand of the respondents i.e. petitioners herein, before the magistrate so far as the possession is concerned, was corroborated by the petitioner's witness, inasmuch as, one of the witness Bharat Lal has categorically deposed before the Magistrate in respect of respondents in the present case having possession over the suit property.
10. It was further submitted that till date, the petitioners have not filed any suit in respect of their claim, title or right over the disputed property which by itself gives a great element of doubt in the case of the petitioners. According to respondents, in case if the right, title or possession of the petitioners have been illegally taken over by the present respondents, the petitioners ought to have initiated proper suit in this regard. Referring to the complaint case filed before the magistrate by the present petitioners, it has been categorically pleaded that they have been dispossessed of their

property immediately before filing of the complaint case under Section 145 CrPC with specific date 03.12.2004 to be the date of dispossession. Therefore, prayed for rejection of the petition.

11. Having considered the rival contentions of the parties and on perusal of record as well plain reading of provisions of Section 145 CrPC itself would clearly reflect that all that the Magistrate is required to decide is which of the parties on the date of complaint made to him was in possession of the subject land. If we look into the nature of dispute and the pleadings which have come on record, what would clearly reflect is that there is a long pending dispute between the parties in respect of land boundaries belonging to the petitioners as well as the respondents. It also appears that the dispute between the parties for the same land first time arose somewhere in the year, 2000 when some trees were cut by the petitioners No.2. Till now none of the parties have filed any suit in respect of claim over the subject land before any court of law. Under the provisions of Section 145 of CrPC, all that the magistrate has to see is the possession of the suit property. The witness of the present petitioners namely Bharat Lal have specifically deposed before the magistrate in respect of subject land being in possession of the respondents and that as early as in 1970, the said land having been purchased by the respondents, they are in possession over the suit property.
12. In view of the aforesaid facts and circumstances of the case, this court does not find any strong case made out by the petitioners for interference with the orders passed by the magistrate as well as by the revisional court.

If at all, if the petitioners are aggrieved for the possession of their property owned and belonging to them and for their right and title, the appropriate option would be of pursuing remedy before the appropriate court of law and to obtain specific decree in this regard. So far as the proceedings under Section 145 CrPC is concerned, it is only a matter of possession without dealing with and deciding with the rights and title of any of the parties.

13. Thus, the petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P.Sam Koshy)
Judge

inder