

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 788 OF 2016

Smt. Suraj Bai, W/o Late Pyare Lal Yadav, aged about 64 years, R/o Nariyal Kothi, Dayalband, Bilaspur, District Bilaspur (C.G.)

... Petitioner

Versus

1. Smt. Smita Bole, W/o Yogesh Bole, aged about 38 years, Dayalband, Bilaspur, District Bilaspur (C.G.)
2. Yogesh Bole, S/o Kashi Lal Bole, aged about 40 years, Dayalband, Bilaspur, District Bilaspur (C.G.)
3. State of Chhattisgarh, through : the District Magistrate, Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Rajeev Kumar Dubey, Advocate.
For Respondents 1 & 2	:	Mr. Somnath Verma, Advocate.
For Respondent 3	:	Mr. SRJ Jaiswal, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/12/2016

1. The present petition under Section 482 of CrPC has been preferred by the Petitioner assailing the order dated 8.4.2016 passed by the Sub Divisional Magistrate (Town), Bilaspur in Criminal Case No. 1809 of 2015.

2. Vide the impugned order, the learned Magistrate in a proceeding under Section 145 of CrPC has held that the present Petitioner is not in possession of the disputed property and accordingly passed an order.

3. Learned Counsel for the Petitioner submits that it is an extraordinary circumstance which has compelled the Petitioner to file the present petition under Section 482 of CrPC. According to him, the admitted fact as per the pleadings of the Respondents themselves, there was a hut belonging to the Petitioner on the suit property which subsequently by playing mischief and fraud by the Respondents have been got demolished and as on date the Petitioner has been rendered homeless which has compelled her to file the present petition. Counsel for the Petitioner further submits that it is a

case where though in the impugned order there is a reference of a civil suit having been filed and which has got dismissed for want of prosecution, but the present Petitioner has not filed any civil suit whatsoever and it appears that the said suit also had been got filed by impersonating the Petitioner and she is not aware of any suit having been filed, and thus he prayed for the quashing of the impugned order.

4. Learned Counsel for Respondents No. 1 and 2, opposing the petition, submits that it is a case where the impugned order is a revisable order, as against the order passed by the Sub Divisional Magistrate the Petitioner should have filed a revision petition under Section 397 of CrPC before the appropriate Court and she should not have filed a petition directly under Section 482 of CrPC, and thus the petition for want of alternative remedy deserves to be rejected. He further submits that it is a case where the impugned order reflects that in the year 2011 a civil suit was filed by the present Petitioner but which later on got dismissed for want of prosecution; that means, the present Petitioner has availed the remedy of filing a suit so far as obtaining the possession over the disputed property is concerned and she has not pursued it any further, and therefore the proceeding under Section 145 of CrPC was totally uncalled for. He thus prayed for the rejection of the petition.

5. Learned Counsel for the State adopts the arguments put forth by the learned Counsel for Respondents No. 1 and 2.

6. Having considered the rival contentions put forth on behalf of each side and on perusal of the records, what clearly reflects is the fact that admittedly the impugned order dated 8.4.2016 is a revisable order. The Petitioner herself in her petition pleads that the alleged construction made by her and her forefathers on the disputed property has since been raised to ground by way of demolition at the instance of Respondents No. 1 and 2

and thus she no longer is in possession of the said property. In the given facts and circumstances of the case, the only remedy available to the Petitioner is, to have filed an appropriate suit for getting the relief of possession as well as her claim over the suit property. It is further also pertinent to take note of the observation made in the impugned order of a civil suit having been filed by the Petitioner, whether the suit has been filed by impersonation by some other person or there has been a fraud or cheating done with the present Petitioner is concerned, this again would not be a matter which could be looked into by this Court in a proceeding under Section 482 of CrPC. For this also, the Petitioner would have to avail other appropriate remedy under the criminal justice delivery system. The petition, in the opinion of this Court, is also not one for which the extraordinary powers of this Court can be exercised invoking the provisions of Section 482 of CrPC. The impugned order being a revisable order, the Petitioner ought to have first preferred a revision before the appropriate Court and should have challenged the finding of the Magistrate and only thereafter could the Petitioner have filed the present petition.

7. For the aforesaid reasons, this Court is of the opinion that no strong case for interference with the impugned order is made out. The petition being totally devoid of merits is accordingly dismissed.

8. It is made clear that the rejection of the present petition would not preclude the Petitioner from availing other remedies available to her to challenge the impugned order as well as initiating appropriate proceeding so far as the property which the Petitioner is claiming to be hers is concerned.

9. The Criminal Misc. Petition stands accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge