

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 881 of 2014

Vijay Kumar Rathore, S/o. Late Mohan, Aged 46 Years, Occupation – Agriculturist, R/o. Purani Basti, Kharsiya, P.S. Kharsiya, Distt. Raigarh, C.G.

---- Petitioner

Versus

1. Daya Shanker Rathore, S/o. Keval Prasad, Aged About 28 Years, R/o. Gopimahaka, Tah. -Kharsiya, P.S.- Kharsiya, Distt. -Raigarh C.G.
2. Sub Divisional Officer, Kharsiya, Distt. Raigarh C.G.

-----Respondents

For Petitioner	: Mr. Amit Sharma, Advocate
For Respondent No.2/State	: Mr. Vivek Singhal, Panel Lawyer
For Respondent No.1	: None present

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

08/08/2017

Heard.

1. Counsel for the petitioner submits, that respondent No.1 moved an application under Section 145, 146 of Cr.P.C. before the Sub-Divisional Magistrate, Kharsiya, District – Raigarh (C.G.) alleging that parties are in dispute regarding the possession of the land and prayed that preliminary order be passed for attachment of crops. On the basis of which preliminary order dated 04.12.2012 for attachment of disputed property was passed by Sub-Divisional Magistrate, which was challenged before the Sessions Judge,

Raigarh. Second Additional Sessions Judge, Raigarh has passed the order dated 17.07.2014, dismissing the revision petition filed by the petitioner. Hence this petition.

2. It is submitted that admittedly a civil litigation is pending between the parties with respect to the same land. Certified copy of plaint (Annexure A/4) is on record according to which petitioner had filed a suit for relief of permanent injunction with respect to the suit land bearing Kh.No.38/2 and 39/7, joint area 0.809 hectares, situated at village – Gopimahka. It is submitted that the application under Section 145, 146 of Cr.P.C. has been filed with respect to the same landed property during the pendency of the civil suit, hence the proceeding before the SDM under Section 145, 146 of Cr.P.C. was not maintainable.
3. Counsel for the State has opposed the arguments submitted and the grounds raised in the petition.
4. I have heard the learned counsel for the parties and perused the documents on record.
5. Section 145 Cr.P.C. is provision to prevent breach of peace when there is dispute of actual possession of the subject matter of the dispute. This provision addresses only the situation with ultimate aim of maintaining the peace between the parties. The fact remains that parties are in dispute since 2007 as the date of filing mentioned on this plaint is 23.04.2007. It is submitted that respondent No.1 resorted to the provision earlier also with a motive to dispossess the petitioner and failed. The order of the Sessions Judge, Raigarh dated 23.08.2011, passed in Criminal Revision No.154/2009 clearly

mentions existence of civil dispute between the parties.

6. On perusal of the order dated 23.08.2011, passed in criminal revision No.154/2009, it appears that respondent No.1 had moved an application under Section 145, 146 of Cr.P.C. before the Sub-Divisional Magistrate, Kharsiya on the basis of which preliminary order dated 16.11.2009 was passed with respect to the land of description as mentioned herein above. This order was set-aside by the revisional Court holding that civil suit was pending between the parties and the appellate Court had in civil appeal No.10/08 passed an order for maintaining status-quo. For these reason, the order of Sub-Divisional Magistrate was set-aside.
7. It is apparently clear from the perusal of the documents in this case that respondent No.1 has repeatedly moved applications under Section 145, 146 of Cr.P.C. on the basis of which the order was passed by the Sub-Divisional Magistrate on 04.12.2012 and this order has been affirmed vide impugned order by the revisional Court below.
8. After considering all the facts in this case, it appears that the existence of civil suit between the parties had been since year 2007 and the matter is in appeal which is continuation of civil suit. Counsel for the petitioner has submitted before the Court that civil case is still pending before the civil Court, hence for these reasons, the relief asked by the respondent No.1 under Section 145, 146 was not tenable and not sustainable. Respondent No.1 has option to make prayer before the civil Court for asking relief as required in his case. Hence for these reasons, this petition is entertained and

allowed at the motion stage. The proceedings under Section 145, 146 of Cr.P.C. pending before the Sub-Divisional Magistrate, Kharsiya, District – Raigarh is hereby quashed.

9. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram