

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.458 of 2016**

Parmanand Yadav S/o Gaya Prasad Yadav, aged about 45 years R/o House No.39, Jawahar Nagar, Durg, Police Station, Mohan Nagar, District Durg (CG).

---- **Petitioner**

Versus

1. Arun Kumar Anmole S/o Premlal Anmole, aged about 65 years, R/o Pachripara, Ward No.29, Durg, Distt. Durg (CG).
2. State of Chhattisgarh through Station House Officer, Police Station, City Kotwali, District Durg (CG).

---- **Respondents**

For Petitioner	:	Shri B.P. Singh, Advocate.
For respondent No.1	:	Shri A.K. Patil, Advocate.
For respondent/State	:	Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

08/02/2017

1. The present petition has been preferred assailing the order dated 08.01.2016, passed by the Additional Sessions Judge, Durg, in Criminal Revision No.172/2015. Vide the said impugned order, the revisional court has set aside the order dated 14.09.2015 passed by the Sub Divisional Magistrate, Durg (for short, the SDM) in Criminal Case No.3044/2009, in which the SDM in a proceeding under Section 145 CrPC had held that the disputed property i.e. property situated at Nazul Sheet No.45-D, Land Number 41, Area 28 decimal was in possession of the respondent in the present case at whose instance the dispute was raised.
2. The undisputed facts which has been narrated before this court by either of the parties is the fact that dispute actually revolves around the

land situated as Nazul Sheet No.45, Land Number 42, Area 41 Sq. meters. A perusal of the impugned order dated 08.01.2016, paragraph 15, also reflects that there is a categorical finding of the revisional court that the SDM had initiated proceeding under Section 145 CrPC and has passed the order dated 14.09.2015 in respect of entirely different property which situates at Nazul Sheet No.45-D, Land Number 41, Area 28 decimal. The revisional court has further held that the dispute infact was adjudicated by the Magistrate on the basis of document and other evidence which have been brought on record in respect of the suit property whereas, the actual dispute revolves around the land situated at Nazul Sheet No.45, Land Number 42, Area 41 sq. meter.

3. This being the basic dispute and the preliminary consideration by the revisional court for setting aside the order of SDM, this court is of the opinion that once when the revisional court had reached to the conclusion that 145 CrPC proceeding initiated and decided was in respect of the land which was not infact in dispute, but was in respect of altogether different land, the natural consequence that ought to have done for remitting the matter back to the SDM for a fresh consideration under Section 145 CrPC in respect of the disputed property, which in the instant case is Nazul Sheet No.45, Land Number 42, Area 41 sq. meter.
4. The revisional court should not have acted himself as an authority under Section 145 CrPC to decide the dispute in respect of who is in actual possession of the land as is required under Section 145(4) CrPC. The said finding of the revisional court is not sustainable.
5. In view of the aforesaid categorical finding of the revisional court of the

SDM having proceeded in respect of altogether different land, this court is of the opinion that ends of justice would meet if the matter is remitted back to the SDM, Durg, once again to decide the dispute afresh in respect of the actual disputed land i.e. Nazul Sheet No.45, Land Number 42, Area 41 sq. meter. It is ordered accordingly.

6. The parties to the dispute shall be at liberty to adduce all those fresh evidence which they intend to bring to show that either of the parties was in possession of the property on the date of raising dispute. In addition, the parties shall also be at liberty to file fresh document, if any, in respect of their respective claims.
7. Since the original dispute arose in the year, 2015, it is expected that the Magistrate shall conduct a trial on priority basis and shall make all endeavors for deciding the matter at the earliest as expeditiously as possible preferably within a period of six months from the date of furnishing certified copy of this order.

Sd/-
(P.Sam Koshy)
Judge