

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1000 of 2017**

- Dr. Avinash Tiwari S/o Shri Suresh Tiwari, Aged About 40 Years R/o Village Balsamund, Police Station Bemetara District Durg (Now District Bemetara) Chhattisgarh.

---- Petitioner**Versus**

1. Dr. Naresh Tiwari S/o Late Ramsanehi Tiwari, Aged About 70 Years R/o Village Balsamund, Police Station Bemetara District Durg (Now District Bemetara) Chhattisgarh.
2. The State Of Chhattisgarh, Through The Police Station Bemetara District Bemetara Chhattisgarh.

---- Respondents

For Petitioner : Shri M.K. Bhaduri, Advocate.

For Respondent No.2/State : Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****12/09/2017**

Heard.

1. Petition has been brought under Section 482 of Cr.P.C. with a prayer to quash the orders passed by the Court below.
2. The facts of the case in brief are these, that a complaint under Section 145 of Cr.P.C., bearing Complaint No.1/2009, was filed by Police Station Bemetara before the Court of Sub Divisional Magistrate, Bemetara with statement that the parties namely-respondent No.1 and petitioner have a dispute with respect to landed property bearing Khasra no. 558, area

11.36 hectares, situate in village-Balsamund, due to which there are possibilities of breach of peace. After completion of proceedings, the order dated 20.7.2011 was passed by SDM, Bemetara, in which, it was held that since respondent No.1 was in possession of the disputed property immediately two months before passing of the preliminary order dated 27.1.2009, therefore, it has been directed that the respondent No.1 shall not interfere with the possession of petitioner over the disputed land unless otherwise directed by the competent authority. The order of handing over possession of disputed property to the respondent No.1 passed, attachment proceedings cancelled. It has also been directed that in case of auction of standing crop etc. has been done then the payment shall be made to the respondent No.1. This order was challenged before the Court of Additional Sessions Judge, Bemetara by filing a revision petition which came to be registered as Revision Petition No.26/2011 and the same has been dismissed vide order dated 18.7.2017.

3. It is submitted by the counsel for petitioner that SDM, Bemetara has clearly mentioned in his order that a civil suit is pending before the Civil Court with respect to the same land and that the land is ancestral property of both the parties. Petitioner is claiming title over the said property on the basis of a Will executed in his favour. It is also submitted that certified copy of Miscellaneous Civil Appeal No.1 of 2013 pending before the Court of Additional District Judge, Bemetara, is filed along with the petition, wherein there is mention of pendency of Civil Suit No.24-A/2012 before the Court which has been brought by respondent No.1. It has also been mentioned in Para-3 of the order dated 18.7.2017 that respondent No.1 has brought the civil suit for declaration of title,

possession and permanent injunction, which clearly demonstrate that respondent No.1 is not in possession of the disputed land. Hence this petition.

4. None has appeared on behalf of the respondent No.1.
5. Learned counsel for respondent No.2/State submits that State is a formal party in this case.
6. Heard both the parties and perused the documents on record.
7. Considering the submissions made by the counsel for petitioner, it appears that civil suit is pending between petitioner and respondent No.1 in which respondent No.1 is the plaintiff and petitioner is arrayed as a defendant. The reliefs claimed by respondent No.1 in the said civil suit are for declaration of title, recovery of possession and grant of permanent injunction against the petitioner and other defendants arrayed in that civil suit. In the said civil suit the respondent No.1 has not prayed for any relief of grant of temporary injunction, as it appears from the perusal of the order dated 18.7.2017 passed by the First Additional District Judge, Bemetara in the appeal filed by the one of the defendants namely-Basubandhu Diwan. However, it is clear that respondent No.1 has claimed for relief of possession in the civil suit. The proceedings before the Court of SDM has though started in the year 2009 but the final order has been passed on 20.7.2011.
8. Learned counsel for the petitioner placed reliance on the judgment of Supreme Court in ***Ram Sumer Puri Mahant V. State of U.P.***, reported in **AIR 1985 SC 472**, in which it has been held that during the pendency of civil litigation any criminal proceedings should be dropped. The principle

so laid down is applicable in this case also.

9. Hence, after due consideration, on the facts of the case and the documents available on the record, this petition is allowed at the motion stage itself. The impugned order and the order passed by the SDM, Bemetara are hereby quashed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

Nisha