

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M. P. No. 1154 of 2016**

Ajay Singh S/o Lalsaheb Singh, aged about 43 years, R/o Vinoba Nagar, Police Station Tarbahar, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. Smt. Sadhna Bakshi W/o Rajratan Bakshi, aged about 42 years, R/o 4F, 1F, New Power House Road, Jodhpur, Rajasthan.
2. Smt. Sujata Mitra W/o Prasannajit Mitra R/o Vinoba Nagar, Near Gayatri Mandir, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.
3. State of Chhattisgarh through Station House Officer, Police Station Tarbahar, Bilaspur, Chhattisgarh.
4. State of Chhattisgarh through City Magistrate, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Sudeep Verma, Advocate
For Respondent no.1	:	Shri Arvind Dubey, Advocate
For Respondent no.2	:	Shri Malay Shrivastava, Advocate
For Respondents 3 & 4/State	:	Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****10.02.2017**

The present petition under Section 482 CrPC has been filed assailing the order dated 21.09.2016 passed by the Additional Sessions Judge (FTC), Bilaspur (CG) in Criminal Revision No. 110 of 2014 whereby the learned ASJ has rejected the revision petition preferred by the present petitioner against the order dated 28.02.2013 passed by the City Magistrate, Bilaspur in Case No.1141/2000.

2. The present dispute revolves around the property which is situated at Khasra No.776/16, Sheet no.23, Block No.5, Plot No. 313/32 measuring 2400

square feet. The said property was originally in the name of Smt. Kiran Singh i.e. the mother of respondents 1 & 2. After death of Kiran Singh, the property is said to have been mutated in the name of respondent no.1 without knowledge of respondent no.2. After mutation of the property in her name, respondent no.1 entered into an alleged agreement to sale of the said property with the present petitioner on 17.06.2000. Later on, respondent no.1 also appointed the petitioner as her power of attorney holder. Meanwhile, respondent no.2 objected the mutation getting done in the name of respondent no.1 and also the agreement to sale being made with the petitioner by respondent no.1.

3. The matter was ultimately put in a proceeding under Section 145 CrPC before the City Magistrate, Bilaspur. In the said proceeding, the Magistrate passed an interim order making respondent no.1 the receiver of the property. This order of making respondent no.1 as a receiver was subjected to challenge by respondent no.2 before the High Court of Chhattisgarh in M.Cr.C. No.1910/2003. Initially there was an order of status quo vide order dated 28.08.2003 and ultimately the petition was allowed on 12.07.2011 setting aside the order of the Magistrate and sending the matter back to the Magistrate for reconsideration.

4. During the course of reconsidering proceedings, evidences were recorded and thereafter the impugned order dated 28.02.2013 was passed by the City Magistrate, Bilaspur in Case No.1141/2000 whereby the Magistrate while disposing of the 145 CrPC proceeding directed the respondent no.1 Smt. Sadhna Bakshi to handover the possession of the said property to respondent no.2 Smt. Sujata Mitra. It is this order dated 28.02.2013 which was put to challenge by the petitioner before the Additional Sessions Judge (FTC), Bilaspur in Criminal Revision No. 110/2014 which was also rejected vide impugned order dated 21.09.2016 by the Revisional Court.

5. It is these two orders dated 28.02.2013 and 21.09.2016 which are under challenge in the present CrMP.

6. Counsel for the petitioner submits that undisputedly by virtue of the agreement of sale, a Civil Suit has been filed for specific performance of the contract which is registered as Civil Suit No. 60-A/2015 and is pending for consideration before the 9th Additional Sessions Judge, Bilaspur. The petitioner has moved an application for interim relief which is also pending. Counsel for the petitioner submits that in the light of the civil suit having been filed, the proceeding under Section 145 CrPC should not have been proceeded further and the same should have been rejected by the Magistrate. Thus, the proceeding under Section 145 CrPC becomes redundant in the light of the civil suit. Counsel for the petitioner relied upon the judgments of the Supreme Court in the case of Mahar Jahan and Others vs. State of Delhi and others reported in (2004) 13 SCC 421 and also the case of Ashok Kumar Vs. State of Uttarakhand and others reported in (2013) 3 SCC 366. Thus, counsel for the petitioner prayed for quashing of the two impugned orders.

7. Shri Malay Shrivastava, counsel appearing for respondent no.2 opposes the petition on the ground that the order of the Magistrate as well as the Revisional Court is proper, legal and justified and does not warrant any interference. He submits that it is a case where pending the dispute between the respondents 1 and 2, a settlement has been arrived at between the parties and it was agreed by respondent no.1 in whose name the property was mutated to hand over the property in favour of respondent no.2. According to him, once there has been an agreement, the Magistrate was justified in passing the order in the light of the settlement arrived at between the parties.

8. Another contention which counsel for the respondent no.2 raised is

that the present petitioner had filed an objection before the Court below pursuing 145 CrPC proceeding as an attorney holder of respondent no.1. The power of attorney was executed on 22.06.2000. The said power of attorney was subsequently invoked on 21.10.2011. The revocation of the power of attorney was also published in daily newspaper for intimation to the petitioner as well as the general public. Once when the power of attorney was revoked, the dispute was confined between respondents 1 & 2 and thereafter, if the 145 CrPC proceedings have been disposed of in the light of the compromise, the order of the Magistrate cannot be said to be in any manner bad in law or infirm. It was also the contention of the counsel for respondent no.2 that the petitioner in the light of the revocation of the power of attorney does not have any locus to pursue the 145 proceedings at all and that the only remedy open for the petitioner was to get his grievance redressed from the competent Civil Court.

9. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record what is necessary to be decided is that whether the Magistrate was justified in passing the order dated 28.02.2013 in exercise of the powers which are conferred upon him under Section 145 CrPC. The power which can be exercised is clearly codified in the Code of Criminal Procedure under Section 145 which for ready reference is being reproduced hereunder:

“145. Procedure where dispute concerning land or water is likely to cause breach of peace. - (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) (3)

(4) The Magistrate shall then, without reference to the merits or the claims on any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under Sub-section (1), in possession of the subject of dispute.”

10. A plain reading of the aforesaid provision clearly reflects that the only power which the Magistrate could have exercised is the one which has been conferred upon him under subsection 4 of Section 145 CrPC that is to say that the Magistrate should have only decided as to on the given date who is in possession of the property and should have also directed to maintain peace and tranquility in respect of the property. The Magistrate can under no circumstances order for the right and title over the property neither can he pass an order directing one party to hand over the property to the other party which is beyond the scope of Section 145 CrPC. It is also not a case where finding of the Magistrate is that one of the parties was dispossessed from the property before the date on which the Police Officers submitted the report as has been provided under Section 145 of CrPC.

11. Another aspect which strikes the conscience of this Court is that all those objections raised by respondent no.2 have not been elaborately dealt with by the Magistrate with regard to the revocation of the power of attorney and also as to whether the petitioner had any power to pursue the 145 CrPC proceeding, whether he had at any point of time was given the possession of the property and whether in the light of the dispute having been resolved between respondents 1 & 2 the 145 proceeding did require a final adjudication at all or the matter could have been closed in the light of the compromise arrived at between respondents 1 & 2. These are the facts which had to be dealt with by the Magistrate. Having not done so in the opinion of this Court the impugned order of the Magistrate is not sustainable.

The Revisional Court has also not considered any of these aspects while deciding the revision petition.

12. Thus, the two impugned orders dated 28.02.2013 and 21.09.2016 are not sustainable and are accordingly set aside and the matter is remitted back to the Magistrate for fresh adjudication after considering the evidences brought on record.

13. Parties to the dispute would also be at liberty to adduce fresh evidence if so require to substantiate their contention and the Magistrate shall deal with the issue purely in accordance with the powers conferred upon it under Section 145 of CrPC. It is made clear that the Magistrate shall not be influenced by any of the observations made by this Court while passing this order.

14. Taking into consideration the fact that the 145 CrPC proceeding was initiated in the year 2000 i.e. almost 16 years back, it is expected that the Magistrate shall finalize the matter as expeditiously as possible preferably within a period of three months from today subject to the cooperation of the parties. Interim orders passed by this Court on earlier occasion shall also get merged with this order.

Sd/-

P. Sam Koshy
Judge