

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 665 OF 2006

Namdeo Bhika Bari
Age: 68 years, Occu.: Agri.,
R/o Shendurni, Tq. Jamner,
Dist. Jalgaon.

..PETITIONER

VERSUS

1. State of Maharashtra

2. Narayan Dhanji Gujar
Age: 57 year, Occu.: Agri.,
R/ Shendurni, Tq. Jamner,
Dist. Jalgaon.

..RESPONDENTS

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Mr. A.I. Deshmukh, Advocate for petitioner.
Mr. S.J. Salgare, A.P.P. for Respondent No.1 – State.
Mr. A.K.Tiwary, Advocate for Respondent No.2.

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**CORAM : T.V. NALAWADE, J.
DATED : 02nd FEBRUARY, 2017**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2. The petition is filed to challenge the judgment and order made in Criminal Revision No. 201 of 2004 which was pending in the Court of

First Ad-hoc Additional Sessions Judge, Jalgaon. The revision was filed by present respondent to challenge the order made by Sub-Divisional Magistrate, Jalgaon under Section 145 of the Code of Criminal Procedure. The said order is set aside by the Sessions Court and it is held that present Respondent No.2 is entitled to get water from the well.

3. The submissions made in this proceeding show that after decision given by the Sessions Court, civil suit came to be decided and the civil Court has also decided the matter in favour of Respondent No.2. Learned Counsel for petitioner submitted that decision of civil Court is under challenge. In any case, there is now decision of the civil Court though it has not become final and order of Sessions Court is in accordance with the decision of the Civil Court.

4. The order is made by Magistrate under Section 145 of the Code of Criminal Procedure. Such order is of temporary nature. Ultimately it is civil Court which is required to decide the rights of parties and so order of Magistrate made under Section 145 of the Code of Criminal Procedure is always subject to decision of civil Court. When this order is taken to the Sessions Court and the Sessions Court either confirms the order or modifies it or places the order of its own in place of

order of Magistrate, that order again becomes order under Section 145 of the Code of Criminal Procedure and that order also becomes subject to the decision of civil Court.

5. In view of these circumstances and as there is decision of civil Court, this Court holds that it is not possible to interfere in the decision given by the Sessions Court in revision. In the result, petition stands dismissed. Rule is discharged.

(T.V. NALAWADE, J.)

SSD