

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 184 of 2005

Bhagwat

Applicant

Versus

Bhagat Singh & Others

Respondents

Post for pronouncement of the order on 20.09.2019

Sd/-

JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 23.07.2019****Order Delivered on : 20/09/2019****CRR No. 184 of 2005**

- Bhagawat S/o. Shri Najru, Aged About 49 Years, R/o. Village Neur, Post Badnara, Tah. Nawagarh Durg

---- Applicant**Versus**

1. Bhagat Singh, Aged about 45 years, S/o.shri Najru Satnami, Resident of Village Neur, Post Badnara, Tag. Nawagarh, district Durg (CG)
2. Majru (Najru) S/o. Shri Rakhiram, Aged about 75 years, R/o. Village Neur, Post Badnara, Tah. Nawagarh, district Durg (CG)
3. State of Chhattisgarh, through the Sub Divisional Magistrate, Bemetara, district Durg (CG)

---- Non-applicants

For Applicant	: Ms. Meenu Banerjee, Advocate
For Respondent No.1 & 2	: Shri Y.C.Sharma, Advocate
For Respondent No.3/State	: Shri Rahul Mishra, Dy.GA

CAV Order**20/09/2019**

Applicant has filed this revision against the order dated 02.04.2005 passed by the Additional Sessions Judge, Bemetara in Cr. Rev. No. 276/2004 whereby the court below has reverted the order of the Sub Divisional Magistrate, Bemetara.

2. Brief facts of the case are that the applicant made a complaint under Section 145 Cr.P.C. stating therein that the land situated in the village Neur bearing Khasra No. 600, 460,729/1, 716 Rakba 0.52, 0.10, 0.60 and 0.42, total area of 1.64 hectares was in peaceful possession of the applicant as ownership rights and respondent No.1 is interfering the same. The Sub Divisional Magistrate, Bemetara registered a case and passed preliminary order under Section 146 Cr.P.C. whereby the land in dispute and the standing crops on the said land were seized and handed over the possession of the subject of dispute to the receiver i.e. the village Kotwar on 30.11.99. After recording the statement of both the parties, Sub divisional Magistrate passed the order dated 26.06.04 and held that the applicants' possession should not be disturbed without the order of the competent authority under the law. Respondent No.1 preferred revision before the learned Additional Sessions Judge Bemetara and the learned Sessions Judge set aside the order dated 26.06.09 on 02.04.05. Hence, this revision.

3. Learned counsel for the applicant submits that the learned appellate court below has committed error in not considering the important and only aspect of possession at the time of passing of preliminary order or two months prior to the passing of the preliminary order which is a paramount consideration for deciding the dispute. The court below has committed error in reverting the well reasoned order passed by the Sub Divisional Magistrate, Bemtara. The court below has committed error in giving its finding which is contrary to the material available on record specially the statement of the witness of respondent No.1.

4. On the other hand, counsel for respondent No.1 supported the impugned order.

5. Heard counsel for the parties and perused the material available on record.

6. Before the SDM, Bemetara both the parties produced their witnesses. Applicant Bhagwat has stated in his evidence that the respondent No.1 is not allowing him to take possession of the land in dispute. The appellate Court has found that in the order dated 22.11.1999 or two months before, the land in dispute was in possession of Bhagat Singh (respondent No.1) and therefore, the order of Sub Divisional Magistrate, Bemetara is not in accordance with law and is rejected. The disputed land in question is in possession of Bhagat Singh and therefore, Bhagwat should not interfere and the revision petition has been allowed.

7. The provision of Section 145 Cr.P.C. reads as under :

(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) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute,

(4) The Magistrate shall then, without, reference to the merits or the claims of 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: Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).

(5) Nothing in this section' shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under subsection (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub- section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub- section shall be served and published in the manner laid down in sub- section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale- proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

8. However, the learned appellate court finds that the applicant is not in possession of the land in dispute and the learned Sub Divisional Magistrate on this statement that the respondent has left the village to earn his livelihood in the year 1998, had passed the order in favour of the applicant which is bad in the eye of law. It is clear from the evidence of the applicant that he is not in possession of the land in dispute and the Sessions Court has rightly set aside the order of the learned Sub Divisional Magistrate. The order dated 02.04.05 is a well reasoned order and there is no manifest illegality in the impugned order, warranting interference.

9. In the light of the above discussion, the present Criminal Revision is dismissed.

Sd/-

(Rajani Dubey)
Judge