

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.713 of 2012

Smt. Kishan Bai, W/o Late Shri Nakul Singh, Age-48 Years, R/o Village-Chhinditola, Umargaon, Tahsil-Nagri, Distt.-Dhamtari (CG)

---- Petitioner

Versus

1. Smt. Savitri Bai, Late Shri Nakul Singh, By caste-Gound, Age 40 yrs, R/o-Makdi, Chinditola, Umargaon, Tahsil-Nagri, Dist.-Dhamtari (CG)
2. Manrakhan, S/o Shri Gadaram Netam, By caste-Gound, Age 40 yrs, R/o Chinditola, Umargaon, Tahsil-Nagri, Distt.Dhamtari (CG)

---- Respondents

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| For Petitioner:-  | Mr.J.A.Lohani, Advocate    |
| For Respondents:- | Mr.D.N.Prajapati, Advocate |

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Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

**01.04.2019**

1. In a proceeding initiated by the petitioner under Section 145 of the CrPC against respondent-Smt.Savitri Bai, the Sub-Divisional Magistrate, Nagri in Criminal Case No.101/2009 after due inquiry on 4.6.2011 held respondent No.1 is the person entitled for possession and directed for delivery of possession to that respondent, thereafter the petitioner preferred revision before the Court of Sessions, but he remained unsuccessful, against which, this petition under Section 482 of the CrPC has been filed.
2. Learned counsel for the petitioner would submit that both the Courts below have concurrently erred in holding that respondent No.1 is the

person entitled for possession, whereas he is cultivating the land for fairly long time.

3. On the other hand, learned counsel for the respondents would oppose the petition and submit that concurrent finding recorded by two Courts below are based on evidence available on record and the petitioner is at liberty to dispute the correctness of the finding before the competent Court, as such, petition under Section 482 of the CrPC deserves to be dismissed.
4. I have heard learned counsel for the parties herein and considered their rival submissions made herein-above and went through the record with utmost circumspection.
5. It is correct to say that the Sub-Divisional Magistrate as well as the Court of Sessions both have concurrently recorded a finding that respondent No.1 is entitled for possession of the suit land and directed to other side to hand over the possession to the said person, which has been sought to be challenged. The finding of possession recorded by two Courts below is the finding of fact based on evidence available on record.
6. The Supreme Court in the matter of **Shanti Kumar Panda v. Shakuntala Devi**<sup>1</sup> considered the provisions contained in Section 145 (6) of the CrPC and held as under:-

“12. What is an eviction "in due course of law" within the meaning of sub-section (6) of Section 145 of the Code? Does it mean a suit or proceedings directing restoration of possession between the parties respectively unsuccessful and successful in proceedings under Section 145 or any order of competent court which though not expressly directing eviction of the successful

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1 (2004) 1 SCC 438

party, has the effect of upholding the possession or entitlement to possession of the unsuccessful party as against the said successful party. In our opinion, which we would buttress by reasons stated shortly hereinafter, ordinarily a party unsuccessful in proceedings under Section 145 ought to sue for recovery of possession seeking a decree or order for restoration of possession. However, a party though unsuccessful in proceedings under Section 145 may still be able to successfully establish before the competent court that it was actually in possession of the property and is entitled to retain the same by making out a strong case demonstrating the finding of the Magistrate to be apparently incorrect.”

7. In the light of principle of law laid down by the Supreme Court in **Shanti Kumar Panda** (supra), the petitioner is at liberty to question the finding before the competent Court and establish that finding recorded by two Courts below is perverse and he is entitled to retain the same by making a strong case demonstrating the finding to be incorrect.
8. Accordingly, the CrMP is dismissed reserving liberty in favour of the petitioner to question the finding of learned Sub-Divisional Magistrate as affirmed by the Additional Sessions Judge, Dhamtari in accordance with law.

**Sd/-**  
(Sanjay K. Agrawal)  
Judge

B/-