

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.556 of 2012

1. Dhanva, S/o Shri Man Singh, aged about 63 years, Occupation Agriculture.
2. Mahesh, S/o Shri Dhanva, aged about 35 years.

Both are R/o Bhagatpur, P.S. and Tahsil Pandariya, Distt. Kabirdham (C.G.)

(Non-applicants)
---- Petitioners

Versus

1. Balchand, S/o Shri Gandmal Solanki, aged about 35 years, R/o Pandariya, Distt. Kabirdham (C.G.)
(Applicant)
2. State of Chhattisgarh, Through Sub-Divisional Officer, Pandariya, Distt. Kabirdham (C.G.)
---- Respondents

For Petitioners:	Mr. Ajit Singh, Advocate.
For Respondent No.1:	None present.
For Respondent No.2 / State: -	Miss Shivali Dubey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/04/2019

1. In a proceeding initiated under Sections 145 and 146 of the CrPC, after making enquiry, the learned Sub-Divisional Magistrate on 21-2-2011 declared respondent No.1 as Bhumiswami and the person entitled to be in possession which was affirmed by the revisional court against which this petition under Section 482 of the CPC has been preferred.
2. Learned counsel for the petitioners submits that the finding recorded by both the Courts below that respondent No.1 is entitled to possession is perverse and contrary to the record.
3. None present for respondent No.1, though served.
4. I have heard learned counsel for the petitioners and perused the orders

and records of the Courts below with utmost circumspection.

5. Both the Courts have held that respondent No.1 Balchand is in possession of the suit property and is entitled for the suit property is a finding of fact based on the evidence available on record and I do not find it perverse or contrary to record.
6. The Supreme Court in the matter of Shanti Kumar Panda v. Shakuntala Devi¹ while dealing with proceedings against order passed by executive Magistrate under Sections 145 and 146 of the CrPC 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 a competent court which though not expressly directing eviction of the successful 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 view of the above, the petitioners are liberty to question the finding recorded by the Sub-Divisional Magistrate as upheld by the revisional court and to demonstrate that the said finding is perverse and also claim title, if any, in accordance with law. However, the part of order of learned Magistrate holding the respondent No.1 as Bhumiswami is not being affirmed.
8. With the aforesaid observation, the petition stands disposed of finally.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

¹ (2004) 1 SCC 438