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HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 532 of 2018**

Order Reserved on : 01/08/2019

Order Delivered on : 27/09/2019

1. Rekhalal, S/o Laxmicharan Rai, aged about 65 years.
2. Jeevanlal S/o Laxmicharan Rai, aged about 67 years.
3. Chandrashekhar S/o Laxmicharan Rai, aged about 42 years.

All above R/o village Sendari, Police Station and Post Dadhi, District Bemetara (C.G.)

---- Applicants**Versus**

1. Dharmendra Kumar S/o D.P. Dhritlahre, aged about 34 years, R/o village Sendari, Police Station and Post Dadhi, District Bemetara (C.G.) At present R/o village Chakravay, Tahsil Nawagarh, District Bemetara (C.G.)
2. State of Chhattisgarh, Through Police Station Dadhi, District Bemetara, (C.G.)

---- Respondents

For Applicants	:	Shri Manoj Paranjape, Advocate.
For Respondent No.1	:	Shri Awadh Tripathi, Adv.
For Respondent No.2	:	Shri Anant Bajpai, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****27/09/2019**

01. Challenge in this revision petition is to the order dated 16.03.2018 passed in Criminal Revision No.12/2017 by Sessions Judge, Bemetara, District Bemetara, arising out of order passed by SDM, Bemetara, in Miscellaneous Criminal

Case No.270/2003 passed on 31.03.2017.

02. Brief facts of the case are that on 26.07.2003, Ishtgasha No.02/2003 was filed under Section 145 of Cr.P.C. by the Police Station, Dadhi, District Bemetara, before Sub Divisional Magistrate on the ground that there is disputed between applicants Rekhalal and others & one Dharmendra Kumar with regard to possession of the land total Kh.No.8, total rakba 7.54 hectare situated at villge Sendari and there was likelihood of fight which may cause disturbance in peace and order in society. On 26.07.2003, the learned Sub Divisional Magistrate passed preliminary order granting opportunity of hearing to the parties, and after hearing both the parties, final order was passed on 02.11.2012. Against this order, Dharmendra Kumar-respondent No.1 herein, filed Revision Petition No.60/2012 before the learned Sessions Judge and the learned Sessions Judge, vide order dated 06.09.2014, allowed the revision and remanded the matter to the Sub Divisional Magistrate. Thereafter, applicant Rekhalal, against the order dated 06.09.2014, preferred Criminal Revision No.860/2014 before this High Court and this Court, vide order dated 22.07.2016, directed the Magistrate to proceed further to decide the entire matter afresh after recording only the evidence of Rekhalal whose evidence on the earlier occasion was not duly signed by the Magistrate. It was also directed to proceed further to decide the matter finally keeping in view the directives given by the Revisional Court vide impugned order dated

06.09.2014.

03. The learned Sub Divisional Magistrate by reading over the statement of Rekhala, which was verified by him, and after affording proper opportunity of hearing to both the parties, passed final order on 31.03.2017. Against the order dated 31.03.2017 passed by Sub Divisional Magistrate, respondent No.1-Dharmendra Kumar preferred Criminal Revision No.12/2017 before Sessions Judge, Bemetara, which was allowed by setting aside the order of Sub Divisional Magistrate. Hence, this revision.

04. Learned counsel for the applicants submits that the finding recorded by the learned Sessions Judge that, respondent No.1 was in possession of the disputed land on the date of earlier order and two months prior to making of the application, is perverse. He further submits that the order passed by learned Sub Divisional Magistrate is well reasoned order based on material and statements of the parties. The scope of interference in revision with the order passed by the Magistrate under Section 145 Cr.P.C. is a restricted one and normally the revisional jurisdiction has to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is manifest error on the point of law. He also submits that the learned Sessions Judge, while passing the impugned order, ought to have appreciated that the question of title to the disputed field is not relevant for the purpose of deciding possession under Section 145 Cr.P.C. and

only thing which is required to be seen, whether which party was in possession of the disputed field two months prior to the making of application. It has been also submitted that the statements of the villagers recording during the proceeding and the spot inspection report submitted by the revenue authority have been completely ignored by the Sessions Judge. The dispute with respect to the possession is a subject matter before the civil Court, the proceedings ought not to have initiated under Section 145 Cr.P.C.. He also submits that the Sub Divisional Magistrate has rightly held that the applicants are in possession of the property in question and only on the technicalities the learned Sessions Court ought not to have interfered with the order passed by the Sub Divisional Magistrate. Thus, the impugned order may be set aside. In support of his argument, he placed reliance on the decisions of the Supreme Court in the matter of **Ram Sumer Puri Mahant V. State of Uttar Pradesh**¹, **Mahar Jahan and Others V. State of Delhi and Others**², and decisions of Madhya Pradesh High Court in the matter of **Ramesh Das Tyagi V. Babulal & Ors.**³ and **Shyamdas Rathi V. Daulatram & Anr.**⁴.

05. On the other hand, learned counsel for respondent No.1 supported the impugned order and submits that the Court below has not committed any error in passing the impugned

1 1984 LawSuit(SC) 344

2 (2004) 13 SCC 421

3 2011 LawSuit(MP) 1029

4 2015 LawSuit (MP) 979

order.

06. I have heard learned counsel for the parties and perused the material available on record.

07. In the case in hand, when the order dated 02.11.2012 of SDM, Bemetara was quashed on 06.09.2014 by the Additional Sessions Judge, Bemetara, and against that order the applicants had preferred Criminal Revision No.860/2014 before this High Court, wherein, vide order dated 22.07.2016, this Court directed the Magistrate to proceed further to decide the entire matter afresh after recording only the evidence of Rekhlal whose evidence on the earlier occasion was not duly signed by the Magistrate. Thereafter, the Magistrate shall proceed further to decide the matter finally keeping in view the directives given by the Revisional Court vide impugned order dated 06.09.2014.

08. It is clear from the evidence of witnesses that when Dharmendra had come for plowing the field, applicants Rekhalal, Jeevanlal and Shekhar intended to fight, thereafter, Dharmendra went from there. Applicant Rekhalal ploughed the field that was given by Laxmicharan on adhiya, which adhiyare people had left. If Dharmendra come to plow his field then there will definitely be a quarrel. The finding of the learned SDM is mainly based on the ground that the statement was recorded by the police on 19.07.2003 and preliminary order was passed on 26.07.2003. In such situation, a conclusion can be drawn that the applicants were

in possession of the disputed land prior to passing of the order dated 26.07.2003 and two months before that.

09. The Hon'ble Supreme Court, in the matter of **Shanti Kumar Panda V. Shakuntala Devi**⁵, held in para 10, which reads as thus:-

“10. Possession is nine points in law. One purpose of the enforcement of the laws is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in sub-section (2) of [Section 145](#) having arisen, causing a likelihood of a breach of the peace, [Section 145](#) of the Code authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under [Sections 145/146](#) of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in proviso to sub-section (4) of [Section 145](#), and maintain the status quo as to possession

5 AIR 2004 SC 115

until the entitlement to possession was determined by a court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned."

10. Section 145 of Cr.P.C. refers to land dispute and is relevant for this Court purpose, is extracted and 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.

[\(2\)](#) 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.

11. From the aforesaid judicial pronouncement of Hon'ble the Supreme Court in **Shanti** (Supra) and Section 145 of Cr.P.C., it is clear that the order of the learned SDM is not only an order passed by Criminal Court but is also one based on summary enquiry. The competent Court in any subsequent proceedings is free to arrive at its own findings based on the evidence adduced before it on all the issues arising for decision before it. At the stage of judgment by Civil Court the order of the Magistrate shall be of almost no relevance except for the purpose of showing that an enquiry held by the Magistrate had resulted into the given declaration being made on a particular date. The competent Court would be free to record its own findings based on the material before it even on the question of possession which may be inconsistent with or contrary to the findings arrived at by the Magistrate.

12. In the instant case, it is clear from the statement of the witnesses that the applicants were in possession of the disputed land prior to passing of order dated 26.07.2003 and two months before that and, based on the testimonies of the witnesses, the learned SDM has passed the final order dated 31.03.2017. The learned Sessions Judge, while passing the

impugned order dated 16.03.2018, has wrongly appreciated the witnesses of respondent No.1- Dharmendra and set aside the order of learned SDM, which is not in accordance with the law, in view of the settled legal position.

13. In the result, the petition is allowed. The impugned order dated 16.03.2018 passed by the Sessions Judge, Bemetara is set aside. The order dated 31.03.2017 passed by the learned Sub Divisional Magistrate, Bemetara, in Miscellaneous Criminal Case No.270/2003 is hereby affirmed.

Sd/-

(Rajani Dubey)
JUDGE

Vijay