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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.557 of 2018

Order Reserved on : 23.10.2018

Order Passed on : 21.1.2019

1. Tekram, aged about 67 years, S/o Sukhdas Satnami,
2. Chatrapal, aged about 34 years, S/o Tekram Satnami,

Both r/o Gandhirwahdih, (Bhanvarkachar) Thana and Tahsil Pathariya,
District Mungeli, Chhattisgarh

---- Applicants

versus

1. Satyaprakash aged about 10 years S/o Shravan Kumar
2. Suryaprakash, aged about 5 years, S/o Shravan Kumar,
3. Ku. Kajal, aged about 7 years, D/o ShravanKuamr

Respondent No.1 to 3 are being minor through mother Sunita Widow
of Shravan Kumar Mahilange now wife of Raju Shastri

4. Rikhi Gond, aged about 50 years, s/o Radhe Gond,
5. Birij aged about 60 years, S/o Bishamber Gond,

All R/o Gandhirwahdih, (Bhanvarkachar), Thana and Tahsil Pathariya,
District Mungeli, Chhattisgarh

--- Respondents

For Applicants	:	Shri Parag Kotecha, Advocate
For Respondents	:	Shri Vipin Singh, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred by the Applicants against the order dated 19.4.2018 passed by the Additional Sessions Judge, Mungeli in Criminal Revision No.4 of 2017, whereby the Additional Sessions Judge has allowed the revision preferred by

Respondents No.1 to 3 against the order dated 22.12.2016 passed by the S.D.M., Pathariya in Criminal Case No.16 of 2015 and quashed the order of the S.D.M.

2. Facts of the case are that Respondents No.1 to 3 moved an application before the S.D.M. under Section 145-146 of the Cr.P.C. on the ground that they are the title holders of the property situated at Khasra No.21, 22/1ख, 22/1ग, 29, total area 1.489 Hectares and they have also sown paddy on the said land and the present Applicants are threatening them to cut the crop grown over the said land. It was replied by the Applicants that the disputed property belongs to both of the Applicants along with Late Shrawan Kumar, father of Respondents No.1 to 3. It was also replied that after the death of Shrawan Kumar, his wife Sunita, i.e., mother of Respondents No.1 to 3 performed second marriage with Raju Shastri, therefore, she does not have any interest over the said property. Respondents No.1 to 3 are minors and the Applicants are looking after them.

3. On 28.11.2015 the S.D.M. passed a preliminary order under Section 145(1) of the Cr.P.C. and thereby seized the crop grown over the disputed property and also directed to hand over the crop grown over the said property to any independent person on supurdnama. Thereafter, in compliance with this order of the S.D.M., the crop was seized and handed over to the Sarpanch of the village on supurdnama. Against the preliminary order of the S.D.M. a revision was preferred by the present Applicants before the Additional Sessions Judge, which was rejected vide order dated 19.8.2016. On 3.11.2016, the present Applicants moved an

application before the S.D.M. for cancellation of the order of seizure of the crop grown over the disputed land on the ground that the mother of the Respondents No.1 to 3 performed second marriage and Applicant No.1 is the grand father of Respondents No.1 to 3 and the disputed land is recorded in the revenue records in the name of Applicant No.1. Vide order dated 22.12.2016, the S.D.M. set aside the order of seizure of the crop and handed over the crop on supurdnama. Against this order, a revision was preferred by the Respondents No.1 to 3 before the Additional Sessions Judge. Vide the impugned order, the Additional Sessions Judge allowed the revision of the Respondents No.1 to 3 and quashed the order dated 22.12.2016 passed by the S.D.M.

4. I have heard Learned Counsel for the parties and perused the record.
5. There is no dispute on the point that Applicant No.1 is the grand father of Respondents No.1 to 3. Shrawan Kumar was the father of Respondents No.1 to 3. After his death, his wife Sunita remarried with Raju Shastri. Earlier the disputed land was recorded in the revenue records in the name of Shrawan Kumar. After death of Shrawan Kumar, the said land was mutated in the names of his wife Sunita and children i.e., Respondents No.1 to 3. After the re-marriage of Sunita, on the basis of the application moved by Applicant No.1, the land was mutated in the name of Applicant No.1 (as guardian) and Respondents No.1 to 3. Thereafter, the application under Section 145-146 Cr.P.C. was filed by Respondents No.1 to 3 along with Sunita.

6. Section 145(4) of the Cr.P.C. reads as under:

“145. Procedure where dispute concerning land or water is likely to cause breach of peace.—

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(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).”

7. A plain reading of the above provision clearly shows that claim of any party to a right to possess a subject of dispute is wholly irrelevant in proceedings under Section 145 Cr.P.C. and before passing an order under Section 145(6) Cr.P.C. the Magistrate is only required to decide whether any and which of the parties was, at the date of the order made by him under sub-clause (1), in possession of the subject of dispute.
8. From perusal of the order dated 22.12.2016 passed by the S.D.M., it is also clear that without making any inquiry or taking evidence on the point that who was in possession over the dispute property

two months before 22.12.2016, the S.D.M. passed the order dated 22.12.2016. Therefore, the Additional Sessions Judge has rightly quashed the order dated 22.12.2016 passed by the S.D.M.

9. Resultantly, this revision has no substance. It is dismissed.

Sd/-

(Arvind Singh Chandel)
JUDGE