

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1134 of 2018**

1. Smt.Yamni Kashyap W/o Madhu Kashyap Residence At Village Post Adenga Police Station Keshkal District Kondagaon Present Address Motitalab Para Opposite Akanksha Hotel Jagdalpur District Baster Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
2. Smt. Madhuri Sethiya W/o Suresh Sethiya Residence At Village Post Adenga Police Station Keshkal District Kondagaon Present Address Motitalab Para Opposite Akanksha Hotel Jagdalpur District Baster Chhattisgarh.
3. Santal Dadsena S/o Late Shyamlal Dadsena R/o Kalipur Dharampura, Jagdalpur District Bastar Chhattisgarh.
4. Naresh @Narendra Kumar Dadsena S/o Late Shyamlal Dadsena R/o Kalipur Dharampura, Jagdalpur District Bastar Chhattisgarh.
5. Smt. Motilal Dadsena W/o Naresh Dadsena R/o Kalipur Dharampura, Jagdalpur, District Bastar Chhattisgarh.
6. Bhuwan Dadsena S/o Late Shyamlal Dadsena R/o Bhanpuri Tahsil Bastar, District Bastar, Chhattisgarh.
7. Smt. Renuka Netam W/o Siyaram Netam R/o D.N..K.Colony Kondagaon, District Kondagaon, Chhattisgarh (Wrongly Mentioned As Bastar)

---- Applicants**Versus**

1. State Of Chhattisgarh Through District Magistrate Baster Place Jagdalpur, Police Station Kotwali District Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
2. Deepak Kumar Khatri S/o Magraj Khatri Aged About 33 Years R/at Santoshi Ward And Motitalab Para Jagdalpur Distirct Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
3. Sunil Kumar Khatri S/o Magraj Khatri R/at Santoshi Ward And Motitalab Para Jagdalpur Distirct Bastar Chhattisgarh
4. Smt. Godvari Devi W/o Magraj Khatri Aged About 62 Years R/at Santoshi Ward And Motitalab Para Jagdalpur Distirct Bastar Chhattisgarh.

---- Respondents

For Applicants	: Shri Praveen Tulsyan, Advocate
For Non-applicants	: Smt. Madhunisha Singh, Advocate

Hon'ble Smt. Justice Rajani Dubey

Order On Board

24/07/2019

This revision is directed against the order dated 11.07.18 passed by the Second Additional Sessions Judge, Jagdalpur district Bastar in Cr.Rev. No. 03/18 whereby the learned Sessions Judge has set aside the order dated 30.11.2017 passed by the learned City Magistrate Jagdalpur in Revenue Criminal Case No. 01/2016 and remanded the matter.

2. Brief facts of the case are that respondents No.2 to 4 has preferred the application under Section 145 Cr.P.C. against the applicants before the learned City Magistrate Jagdalpur. The Magistrate has issued notice to the parties on 11.5.2016 and directed the applicants to appear before the court on 07.04.2016. The applicants appeared before the court and filed their reply on 18.07.2016 and informed that against the disputed land, a civil proceeding is already pending between the parties and the applicants have filed a separate application for dismissing the proceedings on the ground that the civil court proceeding is already pending between the parties therefore the instant proceeding cannot be continued. The City Magistrate after hearing both the parties, vide order dated 30.11.17 dismissed the proceedings as not maintainable in view of the pending civil case and therefore the proceedings under Section 145 Cr.P.C.

does not prevail. Against this order respondents 2 to 4 filed a revision petition before the Sessions Court and the learned Second Additional Sessions Judge set aside the order of City Magistrate and case was remanded back for reconsideration. Hence the present revision.

3. Counsel for the applicant submits that the order impugned is bad in law, perverse and thus is liable to be set aside. The trial court has rightly held that the petition is not maintainable as the civil proceeding is already pending in respect of the land in dispute but the revisional court has wrongly held that the civil proceeding is closed as there is ex parte order ignoring that the present applicants have filed counter case in the said proceedings and their application for restoration of proceedings is already pending. Learned Additional Sessions Judge has wrongly passed the order of remanding back the matter to the trial court. Reliance has been placed in the matter of ***Ashok Kumar Vs. State of Uttarakhand (2013) 3 CCSC 1220 (SC)***.

4. On the other hand, counsel for the respondents supports the impugned judgment and order.

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

6. Learned Sessions Judge after having found the Revision petition filed on the above basis admissible, set aside the order passed by the Sub Divisional Magistrate, Jagdalpur with a direction to hear the case as per the procedure prescribed in Sub Section 4 of Section 145 Cr.P.C. after providing reasonable opportunities to the parties and pass order in accordance with law. Thus, on the basis of above, the

Revision Petition was allowed.

7. It is thus clear from the order of the Sessions Judge that the parties will be given opportunity to present their case before the court below.

In view of aforesaid, the order passed by the Additional Sessions Judge does not require any interference by this Court. The revision is accordingly dismissed at the motion stage itself.

Sd/-

(Rajani Dubey)
Judge