

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1181 of 2018

Dinesh Sharma & Another

Applicants

Versus

Smt. Nirmala Sharma & Another

Respondents

Post for pronouncement of the order on 27.08.2019

Sd/-

JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 17.07.2019****Order Delivered on : 27/08/2019****CRR No. 1181 of 2018**

- Dinesh Sharma S/o Late Ganga Prasad Sharma Aged About 38 Years R/o Village- Betar, Police Chowki, Police Station- Bemetara, Tahsil And District- Bemetara, Chhattisgarh.
- Pramod Sharma S/o Late Ganga Prasad Sharma Aged About 36 Years R/o Village- Betar, Police Chowki, Police Station- Bemetara, Tahsil And District- Bemetara, Chhattisgarh.

---- Applicants**Versus**

- Smt. Nirmala Sharma W/o Late Udho Prasad Aged About 60 Years R/o Village- Betar, Police Chowki- Khandhasra, Police Station- Bemetara, Tahsil And District- Bemetara, Chhattisgarh, At Present R/o Amapara, Skaprabhatthi, Near Azad Police Station- Raipur, Tahsil And District- Raipur, Chhattisgarh.,
- State Of Chhattisgarh Through The District- Magistrate- Bemetara, District- Bemetara, Chhattisgarh.

---- Respondent

For Applicant	: Shri Shobhit Koshta, Advocate
For Respondent No.1	: Shri Atanu Ghosh, Advocate

Hon'ble Smt. Justice Rajani Dubey**C A V Order****27/08/2019**

Present revision arises out of order dated 18.09.18 passed by the Sessions Judge, Bemetara in Cr. Rev. No. 30/17 whereby the appellate court has set aside the order dated 24.7.17 passed by the

learned Sub Divisional Magistrate in Criminal Case No. 03/17.

2. Brief facts of the case are that Istagasa was filed before SDM, Bemetara under Section 145 Cr.P.C. in relation to a dispute of land bearing patwari halka No. 9 Khasra No. 298, Rakba 1.42 acres, between the applicants and the respondents. It is stated in the Istagasa that both the parties belong to same family. The disputed land belongs to one Udho Prasad, husband of respondent No.1 who gave his land to Ganga Prasad (tenant) for looking after his fields as Udho Prasad resided at Raipur and he had no issue. After the death of late Ganga Prasad, his sons, i.e. the present applicants used to cultivate the land and are in continuous possession of the land in dispute. In the year 2016, when Udho Prasad died, respondent No.1 mutated her name in the land records. When the applicants came to know about the same they preferred appeal before the SDO (Revenue). Challenging the said order of Tahsildar, subsequently when there was a threat of possession, the applicants moved before the SDM for protecting their right and accordingly, Istagasa No.2/17 was registered and the matter was placed before the Sub Divisional Officer under Section 145 of the Cr. P.C. for giving a finding as to who is in the possession of the land in dispute.

3. After hearing the parties and recording oral evidence, learned SDO found that before two months from the date of passing of the order dated 24.7.17, the applicants were in possession of the land in dispute and therefore has ordered that respondent No.1 shall not interfere with the possession of the present applicants and respondent No.1 shall be at liberty to take appropriate legal remedy. Learned

court below also directed that the crop so cultivated be returned back to the applicants and amount, if any, so collected from the sale of the crop.

4. Against the order of SDO, respondent No.1 preferred revision before Sessions Judge. Learned Sessions Judge set aside the order of learned Sub Divisional Magistrate. Hence, this revision.

5. Learned counsel for the applicant submits that the court below has erred in directing the attachment of the crop on the disputed land and reversion of benefits thereon to respondent No.1 for the reason that under Section 145 Cr.P.C., the power is available only with the SDO, to give a finding as to who is in possession of the land in dispute. Learned revisional court has to see the legality, validity of the order challenged and cannot grant the relief which is not permissible under the particular provision of law as has been done in the present case. Hence, the impugned order is erroneous and without jurisdiction.

6. The evidence available on record clearly shows that the applicants are in possession of the land in dispute before two months from the date of order and even thereafter they are in continuous possession of the land in dispute. In these circumstances the impugned order is liable to be set aside.

7. On the other hand, learned counsel for the respondent No.1 supported the impugned order.

8. Learned counsel for the respondent No.2 State submits that the scope of interference in respect of proceedings under Section 145

Cr.PC. of Land Revenue Court is very limited.

9. Heard counsel for the parties and perused the material available on record.

10. Section 145 Cr.P.C. reads as under :

(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 subsection (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. It is clear from the provision that if the Sub Divisional Magistrate is satisfied that a dispute regarding an immovable property exist and such dispute is likely to cause breach of peace, he can initiate proceeding under Section 145 Cr.P.C. and pass the order. The order made under Section 145 Cr.P.C. deals only with the factum of possession of the parties as on a particular day. It confers no title to remain in possession of the disputed party. In the matter of **Shanti Kumar Panda Vs. Shakuntala Devi (AIR 2004 SC 115)**, it has been held as under:

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 S. 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 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 caused to exist by the time he was called upon to pronounce the final order so far as he was concerned.

12. In oral evidence, it is stated that respondent No.1 resides in another city and it is her husband who gave the land in dispute to Ganga Prasad on *Adhiya*. Learned Sub Divisional Magistrate on that basis found that the applicants were in possession of the land before two months from the date of order. Learned revisional court allowed the revision and set aside the order dated 24.07.17 on the ground that the SDM has passed the order without appreciating the reply and evidence brought on record by the respondent No.1 herein particularly with respect to the fact that the land in question was given to the applicants on *Adhiya*, and thereby committed illegality. The said finding of the revisional court is not sustainable in view of the fact that the SDM in the proceeding under Section 145 Cr.P.C. has found the applicants herein, in possession of the suit land before two months from the date of order. Hence the impugned order passed by the revisional court is liable to be set aside.

13. Accordingly, the revision petition is allowed and the impugned order is set aside.

Sd/-
(Rajani Dubey)
Judge