

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 352 of 2020

Prahlad Rai Agrawal, S/o. Late Sadhu Ram Agrawal, aged about 75 years,
R/o. Nehru Park Road, Surajpur, Police Station, Tahsil and District Surajpur
Chhattisgarh.

---- Petitioner

Versus

1. Smt. Sushila Devi, W/o. Late Sahdev, aged about 55 years.
2. Devmuni, W/o. Mohit Ram, aged about 56 years,
3. Hiramani, W/o. Ramdhyam, aged about 54 years,
4. Tarabai, W/o. Late Surendra Prasad, aged about 50 years,
5. Neera Bai, W/o. Nain Sai, aged about 42 years,

All are R/o. Village Badkapara, Surajpur, Police Station and Tahsil
Surajpur, District Surajpur Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Rajat Agrawal, Advocate with Mr. Vivek Singhal, Advocate
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For Respondents	: None present
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

16/08/2021

1. This petition has been brought being aggrieved by the impugned order dated 13.02.2020, passed by the learned Third Additional Sessions Judge, Surajpur in Criminal Revision No. 36 of 2019, by which, the revision filed by the petitioner was dismissed and the order dated 17.09.2019 and 23.09.2019 passed by the Courts below have been affirmed.
2. The respondents filed an application, before the Sub Divisional Magistrate, Surajpur making an statement, that the petitioner and the one K.K. Agrawal are constructing boundary wall on the land bearing Kh.No. 2827 of which the respondents are title holders. The S.D.M.

passed initial order dated 17.09.2019 directing the parties to maintain status-quo. On 23.09.2019, the petitioner filed reply subsequent to which, the case has been fixed for evidence.

3. It is submitted by the learned counsel for the petitioner that application filed by the respondents has been erroneously treated as an application under Section 145 of Cr.P.C. Under Section 145 (1) of Cr.P.C., the Executive Magistrate has to be satisfied from a report, which is to be called from the Police Officer. The learned S.D.M. did not order for submission of such report from the concerned police station. Therefore, the order of status-quo, passed is against the intention of Section 145 (1) of Cr.P.C. It is submitted that the petitioner is not the person, who is raising construction and the construction is being raised on the Kh.No.2829, which is jointly owned by the petitioner and his brother. As the procedure under Section 145 of Cr.P.C. has not been followed, therefore, the proceeding before the Court below is unsustainable. Prayer has been made for grant of relief.
4. The respondents are unrepresented.
5. Considered on the submissions.
6. Section 145 (1) of Cr.P.C. provides as follows :-

“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.

7. The provisions above mentioned provides that if Executive Magistrate is satisfied regarding existence of a dispute then he shall pass an order in writing requiring the parties concerned to attend the Court on specified date and make their submissions and written statement. Sub-section (2) of Section 145 of Cr.P.C. provides that the expression 'land or water' with description. Sub-section (3) provides for copy of service of order passed under Section 145 (1) on the opposite party. Sub-section (4) provides for enquiry and making decision of the dispute regarding the possession over the suit land or the dispossession of the one of the parties within two months prior to the date of filing of the application or other information received by the Magistrate. Sub-section (5) provides for defence, which can be raised by the opposite party. The Executive Magistrate has authority under Sub-section (6) of Section 145 to declare one of the parties entitled to possession and forbidding all disturbance on such possession. This stage in which the order of forbidding the other party to interfere in the possession of one of the parties or can be passed after the decision is taken in the enquiry, in favour of the one of the parties.
8. Although, the learned S.D.M. registered a case under Section 145 of Cr.P.C. , but the enquiry in the case is at the initial stage as no evidence of the parties have been recorded so far. Neither any documents have been submitted by the parties in support of their claims. Therefore, it is clear that stage at which the Executive Magistrate has power to pass an order under Sub-section (6) of

Section 145 of Cr.P.C. has not arrived.

9. The Executive Magistrate has authority in case of emergency to pass order under Section 146 (1) of Cr.P.C. to attach the suit property but the order dated 17.09.2019 is not of such nature and there is no order passed under Section 146 (1) of Cr.P.C. directing attachment of the suit property.
10. The order of status-quo clearly can not be granted by the Executive Magistrate in the circumstances as they are present in this case as mentioned here-in-above. The authority of Executive Magistrate had been to pass order under Section 146(1) of Cr.P.C. in case of emergency and such order had not been passed, therefore, this Court is of the view that the order of status quo dated 17.09.2019 has been passed without the authority of law.
11. Hence on this basis, this petition is allowed. The impugned order dated 13.02.2020 and the order of S.D.M. dated 17.09.2019, are set-aside. The order dated 23.09.2009 is not needed to be set-aside as it is interlocutory order regarding the proceeding and posting of the case for evidence. The case is remanded back to the Court of S.D.M., Surajpur with a direction to proceed with the case in accordance with the law as provided under Section 145 and 146 of Cr.P.C.

Sd/-
(Rajendra Chandra Singh Samant)
Judge