

NAFRHIGH COURT OF CHHATTISGARH, BILASPURReserved on 07-07-2021Pronounced on 28-07-2021CRMP No. 766 of 2015

- Sukhdev S/o Moharsai Rawat, Aged About 56 Years Occupation-Agriculturist, R/o Village Koshir, P. H. No. 2, P. S. Koshir, Tahsil Sarangarh, Civil And Revenue District Raigarh, Chhattisgarh

---- Applicant

Versus

- Kalaram S/o Jethu Rawat, Aged About 38 Years Agriculturist, R/o Village Koshir, P. H. No.2, P. S. Koshir, Tahsil Sarangarh, Civil And Revenue District Raigarh, Chhattisgarh

---- Respondent

For Applicant : Shri Awadh Tripathi, Advocate

For Respondent : Shri Rajesh Ranjan Sinha, Advocate

Hon'ble Shri Justice Narendra Kumar VyasC.A.V. ORDER

1. The applicant has filed the present Cr.M.P. under Section 482 Cr.P.C. challenging legality and propriety of order dated 27.7.2015 passed by the Additional Sessions Judge, Sarangarh passed in Criminal Revision No. 17/2014 affirming the order dated 13.02.2014 passed by the Sub Divisional Magistrate, Sarangarh in Misc. Criminal Case No. 438/2009.
2. The facts as projected by the applicant are that the applicant has filed application under Sections 145 and 146 of the Cr.P.C. before the Sub Divisional Magistrate, Sarangarh, District – Raigarh on 16.11.2009 and also filed an application under Section 146 Cr.P.C. for attachment of the land as well as crop mainly contending that the property bearing Khasra No. 836 area 0.235 Ha., Khasra No. 831 area 0.174 Ha, Khasra No. 845/1 area 0.081 Ha., Khasra No. 1071 area 0.057 Ha., Khasra No. 1519/1 area 0.214 Ha. total area 0.761 Ha. Situated in village Kosir, Patwari Halka No. 2 Tahsil Sarangarh, District - Raigrah is recorded in the name of Dashrath S/o Anand Rawat. He has also attached document B-1 Kistbandi along with the

application filed before Sub Divisional Magistrate Sarangarh.

3. Learned counsel for the petitioner would submit that Dashrath died on 14.04.2009 and his wife also died. They have no issue. The present applicant is the only legal heir of the deceased Dashrath. He has valid succession over the land bearing area 0.761 Ha. owned by deceased Dashrath. On the said land he has cultivated Sarna rice which is ready for harvesting, but all of a sudden respondent Kalaram started announcing that he will harvest the crop, therefore, he has filed application before the Sub-Divisional Magistrate, Sarangarh stating that seizure of agricultural land and possession over the land be also declared, so that the interest of the applicant is secured. In support of his application he has also filed affidavits of Nok Kumar and Mahendra.
4. Respondent raised objection with regard to initiation of proceedings under Section 145 and 146 of the Cr.P.C. mainly contending that the deceased Dashrath has no issue, therefore, respondent Kalaram has been given on adoption to him and he has solemnized his marriage also. He was with him all over his life time. Deceased Dashrath has also registered adoption deed on 18.01.2002 and therefore, he is adopted son of deceased Dashrath, as such, he has managed all the affairs even last rituals of deceased Dashrath has also been performed by him and he was living peacefully on the land without any interference from anyone and he is independently doing agricultural work. The deceased died on 14.04.2008 and he is sole owner of the land as successor on count of adoption. As such, present application is liable to be rejected. It was further contended by the respondent that he himself had cultivated the land, the applicant with malafide intention has filed application under Sections 145 and 146 Cr.P.C., therefore, application filed by the petitioner deserves to be dismissed.
5. Learned Sub-Divisional Magistrate vide its order dated 16.11.2009 allowed the application filed under Section 146 Cr.P.C. and ordered for seizure of the crop and further directed that it be given to any impartial person. Learned Sub-Divisional Magistrate has also called report from Thana In-charge, Koshir and the Revenue Inspector, Hardi thereafter, fixed the case on 24.11.2009. Considering the

reports, learned Sub-Divisional Magistrate passed interim order on 04.06.2010 directing the applicant to furnish bond of Rs. 2000/- for maintaining peace and harmony in the area for one year. Therefore, on 30.11.2010 learned Sub-Divisional Magistrate has directed for seizure of crop cultivated over the property in dispute and fixed the case on 28.12.2010 for compliance report. On 28.01.2011, respondent filed in reply to the interim order and also filed application under Section 145(4) Cr.P.C. i.e. objection against the ex-parte interim order.

6. Thereafter, learned Sub-Divisional Magistrate vide order dated 23.09.2011 has passed the order on the basis of Patwari report and Itsgasa submitted by the police by recording a finding that since respondent is in possession of the land, his possession over the land is proved and the land be returned to respondent Kalaram. The applicant preferred Criminal Revision before the learned Additional Sessions Judge, Sarangarh, District – Raigarh which was registered as Criminal Revision No. 45/2011. Learned Additional Sessions Judge, Sarangarh vide order dated 17.09.2012 quashed the order dated 23.09.2011 and directed the learned Sub-Divisional Magistrate to give an opportunity to the parties to lead evidence, thereafter, the case may be decided and further directed the parties to appear before the Sub-Divisional Magistrate on 16.10.2012.
7. On 30.04.2013, the applicant herein himself and his witness Pardeshi were examined and cross-examined and case was fixed for examination of remaining witnesses on 13.05.2013. On 13.05.2013, the proceeding was adjourned and the case was fixed for 11.06.2013. On 11.06.2013 none appeared on behalf of respondent, therefore, the learned Sub-Divisional Magistrate proceeded ex-parte against respondent and fixed the case for arguments on 21.06.2013. On 8.8.2013 the respondent moved an application for setting aside ex-parte proceedings. The case was fixed on 06.09.2013 for reply and argument on the application filed by the respondent for setting aside ex-parte proceedings. On 13.02.2014, learned Sub-Divisional Magistrate rejected the application filed by the respondent for setting aside ex-parte order and also the application filed under Sections 145 and 146 Cr.P.C. filed by the applicant herein by recording a finding

that it was dispute of title over the land and parties can take recourse for their remedy before appropriate forum.

8. This order was challenged by the applicant by filing revision before learned Additional Sessions Judge, Sarangarh registered as Criminal Revision No. 17/2014. Learned Revisional Court vide order dated 27.07.2015, dismissed the said revision and confirmed the order the learned Sub-Divisional Magistrate. These two orders have been challenged by filing the Cr.M.P. by present applicant alleging that learned Sub-Divisional Magistrate has committed material irregularity and illegality in rejecting the application filed under Section 145 Cr.P.C. as the Sub-Divisional Magistrate has to decide who is in possession of the land. The learned Revisional Court has committed further material irregularity in affirming the order of the learned Sub-Divisional Magistrate.
9. The point to be determined by this Court whether dispute with regard to title or ownership of property in dispute has to be decided or possession over propriety which likely to create a breach of peace exists concerning any land, water of the boundaries is to be determined by the Sub Divisional Magistrate while deciding application filed under Sections 145 and 146 Cr.P.C.?

For examining the same, it is necessary to quick look the Sections 145 and 146 Cr.P.C. which are extracted below:-

"Section 145 in The Code Of Criminal Procedure, 1973-
 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.

Section 146 in The Code Of Criminal Procedure, 1973- Power to attach subject of dispute and to appoint receiver.

(1) If the Magistrate at any time after making the order under sub- section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908);

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate-

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just."

10.From perusal of Section 145 Cr.P.C. it is quite clear that if the dispute concerning land or water likely to cause breach of peace, the Sub-

Divisional Magistrate or Executive Magistrate can examine the issue and can decide who is in actual possession of the property in dispute. The jurisdiction and authority of Sub-Divisional Magistrate while deciding the possession of the property under Section 145 Cr.P.C. has been examined by the Hon'ble Supreme Court in case of **Shanti Kumar Panda vs Shakuntala Devi**¹, relevant paragraphs thereof are extracted below:-

“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 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.

18. In *Jhummal Vs. State of Madhya Pradesh*, (1988) 4 SCC 452, this Court has held that a concluded order under Section 145, Cr.P.C., made by the Magistrate of competent jurisdiction should not be set at naught merely because the unsuccessful party has approached the civil Court. An order made under Section 145, Cr.P.C., deals only with the factum of possession of the party as on a particular day. It confers no title

¹ 2004 (1) SCC 438

to remain in possession of the disputed property. The order is subject to decision of the civil Court. The unsuccessful party therefore must get relief only in the civil Court. He may move the civil court with a properly constituted suit. He may file a suit for declaration and prove a better right to possession. The civil Court has jurisdiction to give a finding different from that which the Magistrate has reached. Here again we may hasten to add that the expression 'civil court' used by this Court in Jhummal's case (supra) means competent court and not necessarily a civil court as commonly understood.

21. The order of the magistrate under Section 145/146 of the Code 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.”

11. In the present case, learned Sub-Divisional Magistrate initiated procedure for recording of evidence as there was dispute with regard to the actual possession of the land and has considered the record and proceeded exparte against the respondent, as such, committed illegality in not deciding the issue who was in the actual possession of the property in dispute which is likely to cause breach of peace, thus, learned Sub-Divisional Magistrate has committed material illegality in not examining the actual cause of dispute with regard to possession of the land. According to Section 145 Cr.P.C. duty casts upon Sub-Divisional Magistrate to decide the possession over the property which may cause breach of peace in the nearby area of the land. As such, order of the learned Sub-Divisional Magistrate dated 13.02.2014 suffers from material irregularity and illegality, which warrants interference by this Court. The learned Revisional Court has also committed illegality in dismissing the revision petition vide its impugned order dated 27.07.2015, thus the order dated 13.04.2014 passed by learned Sub-Divisional Magistrate, Sarangarh District – Raigarh in Misc. Criminal Case No. 438/2009 (Sukhdev vs. Kalaram)

as well as order dated 27.07.2015 passed by Additional Sessions Judge in Criminal Revision No. 17/2014 are quashed in sequel. The learned Sub-Divisional Magistrate is directed to decide the case filed under Section 145 of Cr.P.C. in accordance with law after giving proper opportunity of hearing to the petitioner as well as respondent to lead evidence, amend the pleadings, if so required.

12. Before parting with this case, it has to be seen that the learned Sub-Divisional Magistrate has rejected the application filed by the respondent for setting aside the ex-parte proceedings and thus has committed illegality which is also liable to be set aside by this Court as it is denial of principle of natural justice and provisions of Section 145 do not bar the authority to set aside ex-parte proceedings if sufficient reason for absence on the date of hearing has been assigned by the party. Therefore, the ex-parte proceeding initiated against the respondent as well as order dated 13.02.2014 and order dated 27.07.2015 passed by the Revisional Court are quashed and the matter is remitted back to the learned Sub-Divisional Magistrate to decide the case afresh after giving opportunity to the applicant as well as respondent to lead evidence, to amend the pleading, if they so desire and place all the materials on record.
13. The record of Sub Divisional Magistrate, Sarangarh in Misc. Criminal Case No. 438/2009 and record of Additional Sessions Judge, Sarangarh in Criminal Revision No. 17/2014 be sent forthwith for deciding the case.
14. The parties are directed to appear before the Sub Divisional Magistrate, Sarangarh on 7th September, 2021 and thereafter the same shall be decided by the Sub Divisional Magistrate within a period of six months from the date of appearance on 7th September, 2021.
15. With the above observations and directions, the present Cr.M.P. is allowed to the extent indicated above.

Sd/-

(Narendra Kumar Vyas)
Judge