

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 157/2020.

Anandrao s/o Marotrao Fule,
Aged about 58 years, Occupation
Agriculturist, resident of
Hiwara, Post Tarsa, Tahsil
Mouda, District Nagpur.

...

APPLICANT.

VERSUS

1.Smt. Anusaya Sheshrao Gawande,
aged about 75 years, Occupation
Household, resident of Sonegaon
Raja, Post Gumthala, Tahsil Kamptee,
District Nagpur.

2.Sou. Babytai @ Pushpabai Dhanraj
Wankhede, Aged about 55 years,
Occupation – Household, resident of
Ambadi, Post Bhugaon, Tahsil
Kamptee, District Nagpur.

3.Sou. Shobhabai Kashinath Raut
Aged about 50 years,
resident of Gumthala, Kamptee,
District Nagpur.

4.Mohammad Shakib s/o Abdul Haque,
Aged major, resident of
Dalalpura, Dahibazar, Shantinagar,

Near Country Liquor Shop,
Nagpur.

~~5.P.P. Sirsath,
Aged major, Occupation — Not known,
resident of Near Bhumi Abhilekh
Officer, Mouda, District Nagpur.
(Respondent No.5 deleted as
per order dated 10.02.2021.)~~

6.Sou. Ranjana Vitthal Mahalle,
Aged about 65 years, resident
of Yesamba, Tahsil Mouda,
District Nagpur.

7.The Sub Divisional Magistrate,
Mouda, District Nagpur. ... **NON-APPLICANTS.**

Mr. S.S. Sharma, Advocate for the Applicant.
Mr.H.D. Dubey, A.P.P. for Non-applicant No.7.
Non-applicant Nos. 1 to 4 & 6 served.
Non-applicant No.5 – Deleted.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 14, 2002.

ORAL JUDGMENT :

Heard Shri Sharma, learned Counsel for the applicant and
Shri Dubey, learned A.P.P. for non-applicant no.7. Non-applicant

Rgd.

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nos.1 to 4 and 6 though served choose to remain absent. The matter is finally heard at the stage of admission.

Admit.

2. The applicant has impugned herein an order dated 27.04.2014 passed by the Sub Divisional Magistrate, Mouda, in terms of Section 145 of the Code of Criminal Procedure, as well as order of the Revisional Court dated 01.10.2019. The applicant has applied to the Sub-Divisional Magistrate (S.D.M.) in terms of Section 145 of the Code, since he has been allegedly threaten to be dispossessed from the immovable property. On the basis of said application, the learned S.D.M. heard the parties and on perusal of necessary documents was pleased to dispose of the application by holding that since a civil dispute is pending, it is not proper on his part to exercise the jurisdiction. The said order was carried in Revision, however, it was dismissed.

3. It is the case of the applicant that one Layajabai has executed an agreement to sell dated 06.06.1996 in his favour, relating to agricultural land bearing field No.4, situated at Mouza

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Hiwara. Since the successor of Layajabai declined to execute the sale deed, the applicant has filed Special Civil Suit No.471/1997 for specific performance of contract. The said suit came to be decreed vide judgment and order dated 01.09.2006, holding that the applicant was put in possession of the subject property. Being aggrieved by the said judgment and order, two appeals bearing Regular Civil Appeal Nos.551/2006 and 517/2006 have been filed, however, they came to be dismissed. Appellant of Regular Civil Appeal No.551/2006 has filed a Second Appeal, however, the same was also dismissed. Thus, the decree for specific performance has attained finality.

4. It is the contention of the applicant that he was in possession of the suit property by virtue of an agreement, however, sale deed has not been executed as per the decree, therefore, he has filed execution petition, which is pending. It is his further contention that in order to give a go-bye to the decree, legal heirs of Layajabai has scrupulously sold the subject land in favour of opponent no.4, who in turn is trying to dispossess, rather has dispossessed the applicant, and therefore, the proceeding.

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5. The learned Counsel for the applicant would submit that the applicant has been dispossessed on 02.12.2014 by the subsequent purchaser, and therefore, he has filed an application under Section 145 of the Code of Criminal Procedure on 05.12.2014, i.e. within a period of two months. It is the submission of the applicant that without considering the adjudication made by the Civil Court, the learned S.D.M. has declined to exercise jurisdiction merely stating that civil litigation is pending. It reveals that only execution proceeding was pending meaning thereby in substance, no civil proceeding was pending for adjudication of rights of either of the parties.

6. Section 145 of the Code provides only speedy remedy for prevention of breach of peace arising out of a land dispute. The power being of emergency nature, the S.D.M. has to examine the facts and to prevent likelihood of breach of peace to pass appropriate order. It reveals from the impugned order that the learned S.D.M. has not considered the consistent decisions of the Civil Court with reference to adjudication that the applicant was in possession. In the

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circumstances, as no substantial civil litigation was pending, the learned S.D.M. ought to have recorded its independent prima facie finding on the issue involved. The Revisional Court never deliberated on the issue, but, has merely endorsed the impugned order. In that view of the matter, the impugned order would not sustain in the eyes of law. Thus order under challenge passed by the Sub Divisional Magistrate dated 27.04.2017, is hereby quashed and set aside. The matter is remanded back to the learned S.D.M. for fresh adjudication by following the rigor of Section 145 of the Code, and in accordance with law. As the proceedings are pending since long, the learned Magistrate shall decide the application within a period of 6 months from the date of receipt of this order.

7. Criminal Application is accordingly disposed of, with no order as to costs.

JUDGE