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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 92 OF 2026

SHANKAR SHIVA GAONKAR

... PETITIONER

~ VERSUS ~

**RATNAKANT SHANKAR KUDNEKAR
AND ANOTHER**

... RESPONDENTS

APPEARANCES:

for the Petitioner

Mr. Mayur Mhamal

CORAM : AMIT S. JAMSANDEKAR, J.

DATED : 16th APRIL 2026

P.C:

1. Heard the learned Counsel appearing for the Petitioner.
2. By the present Petition, the Petitioner has challenged the order dated 30.07.2025 (*the impugned order*) passed by the learned Additional Sessions Judge, North Goa, Merces (*the learned Judge*) in Criminal Revision Application No. 70 of 2023. By the impugned order, the

learned Judge has allowed the Application filed by the 1st Respondent, thereby quashing and setting aside the order dated 13.12.2021, passed by the learned Deputy Collector and SDO, Sattari, Valpoi, (***the learned Magistrate***) under Section 145 of the Code of Criminal Procedure, 1973 (***the Code***).

3. The learned Magistrate invoked powers under Section 145 of the Code on the basis of the Report dated 08.05.2015 and issued notice under Section 145(1) of the Code. Accordingly, the proceedings were initiated and the matter was proceeded with before the learned Magistrate. The learned Magistrate was pleased to pass the following operative order:-

“The Court on the basis of proved facts pass order that the Party-I is entitled to possession of the property under Survey No. 10/3 (Part) denominated as “Maharsagal” admeasuring 14550 square metres of village Xelop Curdo, Taluka and Sub District Sattari, any disturbance to the possession of the Party-I by the Party-II is forbidden. Any disturbance to the Party-II to the possession of Party-I over the property after making of this order will be criminal offence under section 188 of Indian Penal Code.”

4. The order passed by the learned Magistrate was challenged before the learned Judge on various grounds, which include the ground that the order is passed by the learned Magistrate without jurisdiction and the learned Magistrate could not have decided the civil rights of the parties by invoking Section 145 of the Code.

5. It is submitted that the order is passed by the learned Magistrate, without there being any preliminary inquiry as contemplated under Section 145(1) of the Code. It was further contended that on the date of issuance of notice, the 1st Respondent was in possession of the subject land. Therefore, it was the case of the 1st Respondent that the learned Magistrate has arrived at a wrong finding in respect of the possession of the subject land and has wrongly proceeded with the matter under Section 145 of the Code and has wrongly decided the civil rights between the parties.
6. A perusal of the order passed by the learned Magistrate clearly reveals that there are no findings given by the learned Magistrate about the possession of the Petitioner in respect of the disputed land. Therefore, the entire proceedings under Section 145 of the Code are misdirected on facts as well as law.
7. The learned Judge has considered the factual aspect of possession of the 1st Respondent based on the report dated 03.07.2015 of Talathi and the report dated 08.05.2015 submitted by the Head Constable of the Valpoi Police Station. Both the Reports clearly show that the 1st Respondent was in possession of the disputed land. In view thereof, the 1st Respondent being in actual possession of the disputed property, the learned Judge has rightly quashed and set aside the order passed by the learned Magistrate. I agree with the findings given by the learned Judge in paragraphs 7 to 15 of the impugned order.

8. I also agree with the findings and reasoning given by the learned Judge in paragraphs 17, 18 and 19 of the impugned order, which read as follows:-

“17. The object of section 145 is to prevent breach of peace, to provide a speedy remedy by bringing the parties before the Court, and ascertain who of them was in actual possession and to maintain status quo until their rights are determined by a competent Court. The proceedings under section 145 are primarily concerned with the prevention of breach of the peace by declaring the party found in possession to be entitled to remain in possession until evicted there from in due course of law and are not meant for the purpose of evicting any person from any land.

18. There is no incident to remand to the Ld. Dy. Collector to decide afresh on this point as the proceedings u/s 145 are primarily concerned with the prevention of breach of peace by declaring the party found in possession to be entitled to remain in possession until evicted there from in due course of law and section 145 proceedings are not meant for the purpose of evicting any person from any land.

19. Under Section 145 of Cr.P.C, Ld. Magistrate has to deal with the claim of the party without reference to the merits of the claim and findings given by Ld. Magistrate/Dy. Collector are prima facie findings. Hence, I am of the view that the impugned order is not in accordance with Section 145 of Cr.PC and deserves

to be quashed and set aside. Hence, my answer to this point is in the affirmative.”

9. I do not find any arbitrariness or perversity in the impugned order. The impugned order has been passed after considering the factual aspect and the well settled principles of law. The jurisdiction exercised by the learned Judge in Revision is appropriate and judicious. Therefore, I am not inclined to exercise jurisdiction under Article 227 of the Constitution of India.

10. The Writ Petition is dismissed.

11. No order as to costs.

12. However, it is made clear that the findings recorded by the learned Judge shall not come in the way of the Petitioner, if the Petitioner adopts any civil proceedings against the 1st Respondent. Also, the claim of the Petitioner that the 1st Respondent is wrongly in possession and has trespassed on the land of the Petitioner is kept open, if the Petitioner adopts appropriate civil proceedings. If such civil proceedings are adopted by the Petitioner, then the same shall be decided on its own merits and without reference to the findings given by the learned Judge in the impugned order dated 30.07.2025.

13. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]