

HIGH COURT OF MADHYA PRADESH: BENCH AT

INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA, J

M.Cr.C. No.7222/2011

**1 Ludiram S/o Bheraji Rawat Meena
Age 80 years, Occupation – Agriculturist
R/o Gopalpura, Thana – Jeeran
District Neemuch (M.P.)
..... Applicant**

Vs.

**1 Anil Rao S/o Krishnarao Maratha (Chavhan)
Age- 42 years, Occupation – Pujari,
R/o Junawada, Javad,
District Neemuch (M.P.)**

**2 State of M.P.
Through District Judge,
Neemuch, District – Neemuch (M.P.)
..... Respondents**

Ms. Archana Kher, learned counsel for the applicant.
Shri Manish Sharma, learned counsel for the respondent.

ORDER

(Delivered on 24/11/2014)

Per Alok Verma, J.

Heard.

This application is filed under Section 482 of Cr.P.C. and directed against the order passed by the learned Sub Divisional Magistrate, Neemuch in Criminal Case No.266/145 Cr.P.C./2010 dated 05.10.2010 and order passed by the learned Sessions Judge, Neemuch in Criminal Revision No.60/2011 dated 20.08.2011.

2. The brief facts giving rise to this application are that respondent No.1 Anil Rao filed an application under Section 145 of Cr.P.C. before the learned Sub Divisional Magistrate on 14.09.2010 to the effect that the disputed land bearing survey Nos.663, 664 and 666 total area 2.467 hectare belong to Shriram Temple Devsthan. The respondent No.1 is Pujari of the Temple. As Pujari, he was cultivating the land and sow the crop of Soybean on the land. The present applicant Ludiram forcibly took possession of the land and was trying to reap the harvest. The learned Sub Divisional Magistrate by the impugned order accepted the application filed by the respondent No.1 and ordered that the total income that the receiver appointed on the land received by selling the crop i.e. Rs.18,708/- be given to the respondent No.1 and also issued an advise to the present applicant that he should not interfere in possession of respondent No.1 over the suit property.

3. Aggrieved by this order, the present applicant filed a revision petition before the Sessions Judge, Neemuch. The Sessions Judge dismissed the revision by impugned order dated 20.08.2011 and confirmed the order passed by the learned Sub Divisional Magistrate. The present applicant filed this application under Section 482 of Cr.P.C. argues that the present applicant had possession over the suit property for a very long period of time and, therefore, it cannot be said that the respondent No.1 was dispossessed within the period contemplated by the proviso to Section 145 (4) Cr.P.C. He placed reliance on the judgment of Hon'ble Supreme Court in **R.C. Patuck Vs. Fatima A. Kindasa, AIR 1997 SC 2320**. The second part of his arguments is that there is a civil suit pending in respect of the suit property and, therefore,

proceedings under Section 145 of Cr.P.C. cannot go on. For this, he placed reliance on the judgment of Hon'ble Supreme Court in **Ram Sumer Puri Vs. State of U.P., AIR 1985 SC 472**. His third argument is that the learned Sub Divisional Magistrate did not provide him the opportunity to lead evidence and, therefore, the case should be remanded back with a direction to give him an opportunity to lead evidence and, thereafter, the learned Sub Divisional Magistrate should decide the case.

4. I have gone through the certified copies filed by the present applicant. In my opinion, opportunity to lead evidence was not granted to the present applicant by the learned Sub Division Magistrate. The order-sheet of record of Court of Sub Divisional Magistrate show that the application was filed before the Court of Sub Divisional Magistrate on 14.09.2010. Thereafter, the respondent No.1 filed an application on 05.10.2010 under Section 146 of Cr.P.C. The application was decided ex-parte on 05.10.2010 itself and subsequent to this, a receiver was appointed. The receiver sold the crop and deposited the amount with police station Jeeran. The present applicant first time gave his appearance on 11.02.2011. He filed his reply on 28.02.2011 and then the case was fixed for evidence on 14.03.2011. On 14.03.2011, the learned Sub Divisional Magistrate was not available as he was busy in some other administrative work. Accordingly, the case was fixed on 21.03.2011. On that date, also the Sub Divisional Magistrate was not available and, therefore, the case was fixed on 28.03.2011.

5. The learned counsel for the applicant disputes the date fixed by the Court i.e. 28.03.2011. According to him, the date was fixed as 28.04.2011. However, after cutting it, the date was written

as 28.03.2011. To substantiate his argument, he points out that in the same order-sheet in the March, the counsel signed and noted for 28.04.2011 and the date is clearly visible under his signature. He followed the similar procedure, when date of 21.03.2011 was fixed, he signed and below his signature, he wrote 21.03.2011. In the subsequent order, the date was first written as 28.04.2011, however, after cutting it the figure '04' was made '03' and again the date was written as 28.03.2011. On 28.03.2011, the non-applicant was stated to be absent and show his right to adduce evidence was closed. Surprisingly, the respondent No.1 also did not adduce any evidence and, therefore, the case was fixed for final argument. This is again surprising that on the same date, the respondent No.1 submitted a written argument which was taken on record and final order was passed on 31.03.2011.

6. It is clear from the above order-sheet that the date was initially fixed as 28.04.2011. This is also clear from the impugned order in which in para 5 of page 1 again date was mentioned as 28.04.2011. Looking to all these facts, I find that the argument put forth by the present applicant has forced in it. It appears that the date was preponed by the lower court. The final order was hurriedly passed and the present applicant was not given any opportunity to adduce evidence.

7. It is further unfortunate that the learned Revisional Court in para 14 while considering the argument of the present applicant that he was not given any opportunity to adduce evidence found that the case was fixed on 28.03.2011. On which date, the present applicant remained present before the Sub Divisional Magistrate. However, the learned Revisional Court did not notice the cuttings

and discrepancies in dates that was mentioned at various places as indicated above.

8. In such a circumstances, I find that the assertion by the present applicant that he was not given proper opportunity to adduce evidence is correct and acceptable and accordingly, the matter in my opinion should be remanded back to the Court of Sub Divisional Magistrate and the present applicant should be given an opportunity to adduce evidence.

9. Accordingly, the application is allowed. The impugned order passed by the learned Sub Divisional Magistrate and the Revisional Court as aforesaid are set aside. The matter is remanded back to the Court of Sub Divisional Magistrate with a direction that the present applicant be given opportunity to adduce oral and documentary evidence along with respondent No.1 and after recording the statements of both the parties, fresh order should be passed.

10. With the aforesaid directions, the application stands disposed of.

(ALOK VERMA)
JUDGE