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**(2022) 01 JH CK 0012**

**In the Jharkhand High Court**

**Case No : Criminal Revision No. 763 Of 1999(P)**

Rameshwar Mahto And Others

APPELLANT

Vs

Ishwar Lal Mahto And Others

RESPONDENT

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**Date of Decision : 24-01-2022**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 144, 145

**Citation : (2022) 01 JH CK 0012**

**Hon'ble Judges : Anubha Rawat Choudhary, J**

**Bench : Single Bench**

**Advocate : Lakhan Chandra Roy**

**Final Decision : Dismissed**

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## **Judgement**

Anubha Rawat Choudhary, J

1. Heard Mr. Lakhan Chandra Roy, learned counsel appearing on behalf of the petitioners.

2. No body appears on behalf of the opposite parties.

3. It appears from the records that notices were issued to opposite party nos. 1, 1(A), 1(B), 2 and 2(A) vide order dated 24.01.2013 and notice upon

opposite party nos. 1, 1(A), 2 and 2(A) was validly served, but notice upon opposite party no. 1(B) was received by his brother and thereafter, fresh

steps were taken for service of notice upon opposite party no. 1(B) pursuant to the order dated 11.04.2013 read with order dated 04.07.2013.

Thereafter, the notice was again received by his brother and consequently, vide order dated 27.09.2013, a direction was issued to take steps for

service of notice upon opposite party no. 1(B) through paper publication having wide publication in the district of Godda and steps for that purpose

were taken and thus, the service of notice is complete and no one is appearing on behalf of the opposite parties.

4. This criminal revision petition has been filed for the following relief:

That the petitioners figured as Ist party craves to move in Cr. Revision in this Honâble Court against the order impugned in a

proceeding under Section 145 Cr.P.C., whereby the order being misconceived and illegal as the trial courts order was set aside on total

misconceived conception of law that order dated 3.1.1985 in a proceeding under section 144 Cr.P.C. cannot be converted to a proceeding

under section 145 on 26.2.1985 and therefore the petitioners declaration of possession was set aside.

5. The learned counsel for the petitioners has submitted that vide order dated 29.02.1992 (Annexure-1) passed in Cr. Rev. No. 30 of 1990 by the court

of learned Second Additional District and Sessions Judge, Godda, , the order dated 13.11.1985 passed in T.R. Case No. 104 of 1985, passed by the

learned Executive Magistrate, Godda, was set-aside on ground of violation of the principles of natural justice and the matter was remanded back to the

concerned authority to pass a fresh order regarding the actual possession over the disputed land without entering into the question of right and title

thereof as provided under Section 145 of Code of Criminal Procedure.

6. The learned counsel for the petitioners further submits that pursuant to the said order of remand, a fresh order dated 07.09.1992 was passed against

the petitioners which was challenged in Criminal Revision No. 63 of 1992 and decided by the court of learned 2nd Additional Sessions Judge, Godda

on 15.09.1999 and the fresh order passed pursuant to order of remand dated 07.09.1992, has been set-aside. He submits that the order passed in Cr.

Rev. No. 63 of 1992 passed by the court of 2nd Additional Sessions Judge, Godda on 15.09.1999 has been challenged in the present proceedings. He

submits that the impugned order is perverse and cannot be sustained in the eyes of law, in as much as, there was a direction passed in the order of

remand vide Cr. Rev. No. 30 of 1990 that the actual possession over the disputed land was to be gone into and there was no question of entering into

right and title of the parties as provided under Section 145 of Code of Criminal Procedure.

7. Brief fact of the case is that, on the basis of a petition filed by the Jhangu

Mahto (father of the original petitioners), a proceeding under Section 145 of Code of Criminal Procedure was started by the S.D.M. Godda (T.R. Case No. 104/1985) which was transferred by him in his own file and decided the matter in violation of principles of natural justice against which a revision was preferred by the original opposite party no. 1, being Cr. Revision No. 30 of 1990. The said revision was allowed by the learned 2nd Additional Sessions Judge, Godda on 29.02.1992 with a direction to the learned Executive Magistrate to hear both the parties. The matter was transferred to the file of one Sri. Umesh Prasad Singh and the case was renumbered as 252 of 1992. After remand, the learned Executive Magistrate, Godda heard the parties and vide order dated 07.09.1992, he decided the proceeding under Section 145 of the Code of Criminal Procedure in favour of the first party in the original proceedings.

8. Against the order dated 07.09.1992 passed in Case No. 252 of 1992, Cr. Rev. No. 63 of 1992 was filed by the opposite party no. 1 in the original proceedings, namely, Ishwar Lal Mahto before the learned court below. The grounds taken were that the learned Executive Magistrate did not consider the judgement of Title Suit No. 4 of 1963 and Title Appeal No. 40 of 1967, wherein the original opposite party no. 1 was found in the possession of the land and the learned Executive Magistrate also failed to consider the document produced by the original opposite party no. 1.

9. The learned revisional court perused the record of lower court, and found that the proceeding under Section 145 Cr.P.C. was started between the parties on the land appertaining to J.B. No. 42, Plot Nos. 227, 46 and 44 and 3K. and 4K (total area 1 bigha 11 kathas 11 dhurs) situated under mouza Rampur. The learned revisional court considered the arguments of both the parties and recorded that in Title Suit no. 4 of 1963 / 34 of 1964 the issue with regards to title and possession was already decided wherein, inter alia, it was held that Jhingu Mahto (father of the present petitioners) had no title and possession, against which title appeal no. 40 of 1967/ 12 of 1974 was also dismissed. The learned revisional court while setting aside the order dated 07.09.1992 passed by Sri U.P. Singh, Executive Magistrate, Godda in Case No. 252/1992, inter alia, recorded that the learned magistrate had crossed his jurisdiction and tried to put the respondent ( the first party-represented by the petitioners of this case) in possession in spite of the fact that

they never pleaded that they came in possession of the land in question in particular year after the judgement and decree passed against their father in the said title suit.

10. This court is of the considered view that the learned court below has rightly taken the view that once the possession was already decided in civil

suit, possession cannot be claimed by losing party in a proceeding under section 145 Cr.P.C, in absence of any case made out that they came in

possession of the property in particular year after the judgement in the title suit. This court does not find any illegality, perversity or material irregularity

in the aforesaid findings of the learned court below while allowing the revision petition. The impugned order is a well-reasoned order based on

materials on record and it calls for no interference by this court.

11. Accordingly, the present revision petition is dismissed.

12. Pending interlocutory application, if any, is closed.

13. Office is directed to send back the lower court records.

14. Let this order be immediately communicated to the learned court below through FAX/E-mail.