

Rambahor Vs. Ramnaresh

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Court : Madhya Pradesh

Decided On : Mar-20-2013

Appellant : Rambahor

Respondent : Ramnaresh

Advocate for Pet/Ap. : Shri. Dinesh Prasad Patel

Judgement :

Mcr.C.No.2103 o

20. 03.13 Shri Dinesh Prasad Patel, counsel for the applicants. None for the respondents. Applicants/ party No.1, have preferred this petition under section 482 of the Cr.P.C being aggrieved by the order dated 28.1.2013 (Anenx.A-6) passed by the ASJ.Amarpatan District Satna in Cr.R.No.197/12 allowing the revision of the respondents and by setting aside the order dated 20.1.12 passed by the SDM Amarpatan in criminal case No.3/10 whereby in a proceedings of section 145 of the Cr.P.C, the possession of the disputed property was directed to be given from the receiver to the applicants, the case has been remanded to the court of SDM with a direction to decide the applicants application for delivery of possession of the property to them afresh with some directions enumerated in para-13 of the impugned order.

2. Initially, after taking me through the papers placed on the record along with the impugned order, applicants counsel argued that before attachment of the property

by the SDM in the above-mentioned proceedings of section 145 of the Cr.P.C, the party No.1 applicants, were in possession of the same but after filing the Istgasa by way of preliminary order such property was attached and handed-over to the receiver/custodian Gorelal and, in pendency of such proceeding, on filing the application to deliver the possession of the property to them from the aforesaid receiver Gorelal vide order dated 20.1.12, such application was allowed and the Tehsildar was directed to carry out the proceedings for delivery of possession of the property to the applicants from the aforesaid receiver. Pursuant to that, the possession was delivered to them. But subsequently, on filing the aforesaid revision, the revisional court, contrary to right and interest of the applicants by holding that the aforesaid order dated 20.1.12 being passed by the trial court without supplying the copy of the concerning application of party No.1 to the respondents so also without extending them the opportunity of hearing, remitted back the matter. Such approach of the revisional court is not in consonance with the record and the same is not sustainable. In continuation, he said that in any case after passing the order by the SDM to deliver the possession of the property to the applicants, from the receiver, the revisional court did not have any authority to to pass the aforesaid order because as per proviso of section 145, such order could have been passed only by the SDM and, in such premises even if such order was passed without supplying the copy of the application of the applicants to the respondents even then the revisional court could not interfere in such order of the SDM and, prayed to set aside the impugned order by restoring the order of the SDM by admitting and allowing this revision.

3. Having heard, keeping in view the arguments advanced by the counsel, I have carefully gone through the papers placed on the record including the aforesaid impugned order Annex.A-6 of the revisional court as well as the order of the SDM Annex.A-3. It is apparent from the record that the SDM has passed the aforesaid order dated 20.1.12 directing to deliver the possession of the property to the applicants from the receiver on the application of the applicants, without supplying its copy to the respondents so also without extending them the opportunity of hearing. So, in such premises, it is apparent on the record that such order was passed by the SDM contrary to the settled proposition and the principle of natural justice. It is settled proposition of the law that before passing any order against any

party, he could not be unheard as laid down by the Apex Court in the matter of Smt. Maneka Gandhi Vs. Union of India-AIR 197.SC 597. So, in such premises, on consideration, the revisional court has not committed any error either in setting aside the aforesaid order of the SDM dated 20.1.2012 or in remanding back the matter to the Court of SDM with a direction to consider the application of the applicants herein afresh after extending the opportunity of hearing on the same to the respondents.

4. Consequently, there is no any circumstance in the present petition on which the impugned order of the revisional court could be interfered by this court under section 482 of the Cr.P.C. Resultantly, this petition being devoid of any merit deserves to be and is hereby dismissed at the stge of motion hearing.

5. However, considering the oral prayer of the applicants counsel, the court of SDM is directed to take an endeavor to expedite the trial of the impugned case and decide the same on some early date probably within six months from today. Applicants counsel is directed to submit the certified copy of this order in the court of SDM within ten days. C.C as per rules. (U.C.Maheshwari) Judge MKL

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