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**IN THE COURT OF SESSIONS JUDGE, GORAKHPUR**

PRESENT: RAJ KUMAR SINGH (H.J.S.)

CRIMINAL REVISION No. 262/2025

Anoop Kumar Dubey son of late Digvijay Nath Dubey, age 42 years, resident of village- Samahutapur, P.S.- Belghat, District- Gorakhpur, Uttar Pradesh.

.....Revisionist

VERSUS

1. Government of Uttar Pradesh
2. Mahendra Dubey son of late Ramsukh Dubey, resident of village- Samahutapur, P.S.- Belghat, District- Gorakhpur, U.P.

.....Respondents

JUDGMENT

1. This criminal revision has been filed by the revisionist against the order dated 05.08.2025 passed by the learned Sub Divisional Magistrate, Tehsil- Khajni, District- Gorakhpur in Case No. 3332/2024, Computerized case No. T202405310203332 (State Vs. Anoop Kumar Dubey & ors.) under Section-145 Cr.P.C., District- Gorakhpur.

2. Brief facts of the case are as under:-

2. The brief facts of the present case are as follows:

“The aforementioned case has been instituted based on a police report submitted by the Station House Officer of Belghat Police Station

under Section 145 of the Code of Criminal Procedure, dated May 6, 2024. The report states that a dispute and tension exist regarding the possession of specific land parcels namely Gata No. 334, area 0.684 hectares in Village Ratanpura, Tehsil Khajni and Arajji No. 72, area 917 acres in Village Samhutapur both under Belghat Police Station, District Gorakhpur between Anoop Kumar Dubey son of the late Digvijay Nath and Mahendra Dubey son of Ramsukh Dubey, both residents of Village Samhutapur. Anoop Kumar Dubey (Party No. 1) claims ownership of the said land parcels and intends to cultivate them, whereas Mahendra Dubey (Party No. 2) also claims ownership and is preventing Party No. 1 from carrying out agricultural activities. Both parties are asserting their respective rights of ownership, and tension prevails between them regarding possession of the land. Proceedings under Sections 151, 107, and 116 of the Cr.P.C. were previously initiated against both parties on October 14, 2023, due to disputes over the possession of this land. Despite this, the tension between the parties persists. In the interest of maintaining public order, proceedings under Sections 107 and 116 of the Cr.P.C. have once again been initiated on May 3, 2024. In view of the aforementioned circumstances, a report under Section 145 of the Cr.P.C. is respectfully submitted, recommending the attachment of the said land/property and the appointment of an independent receiver.

2.1 Upon being satisfied with the report submitted by the Station House Officer of Uruwa under Section 145 of the Code of Criminal Procedure dated 06.05.2024, a preliminary order was issued under Section 145(1) Cr.P.C., directing both parties to appear before the Court either in person or through their counsel on the scheduled date of 27.06.2024 to present their respective written statements and evidence regarding the actual possession of the disputed land.

2.2 Following the service of notice, a written statement was submitted on behalf of the second party respondent, Mahendra Dubey,

on 30.05.2025. It was stated therein that the police report dated 06.05.2024 is correct and truthful; therefore, the attachment of the disputed land specifically Plot No. 334, area 0.684 hectares in Mauja Ratanpura and Plot No. 72, area 0.917 hectares in Mauja Samhutapur is justified. Regarding the ancestral property of Ramsukh, Mahendra held a half-share, while the other half-share belonged to Anoop and Amit sons of Digvijay and Draupadi wife of Digvijay; they have continued to remain in actual possession of their respective shares on the ground. Anoop and others (first party) conspired with witnesses to fabricate a forged will through impersonation and surreptitiously without the knowledge or information of the petitioner had the petitioner's name removed from the Khatauni (land record). Upon learning of this, an application for restoration (Kaymi) was filed on 10.12.2018, which is currently pending before the Court of the Naib Tehsildar, Belghat. Following the death of their father, the late Ramsukh, the Lekhpal and Kanungo conducted an inquiry in the village and, on 02.11.2012, recorded the names of both parties in the Khatauni as heirs in place of the deceased Ramsukh; since then, both parties have remained in possession of their respective half-shares. Approximately five years after the inheritance order was recorded, the first party surreptitiously had their name entered unilaterally on 05.05.2017 based on the alleged forged will a matter regarding which a restoration application is currently pending. Upon becoming aware of the said will, a suit seeking the cancellation of the forged will was filed in the Civil Court, and proceedings regarding the same are currently underway. Following an escalation in the dispute regarding possession, a mediation meeting was held at the police station; it was agreed that both parties would continue to hold possession of their respective halves as before, and a final decision regarding possession would be made in accordance with the law following the court's verdict. However, on June 28, 2024, the first party forcibly took possession of Plot No. 334, area 0.684 hectares in Mauja Ratanpura while the lawsuit was still pending an incident the

complainant reported to the Sub-Divisional Magistrate of Khajni on June 29, 2024. These facts establish that, based on the police report dated May 6, 2024, and the preceding two months dating back to the father's death, both parties had been in possession of their respective halves; yet, on June 28, 2024, the first party forcibly seized Plot No. 334/0.684 hectares in Ratanpura. This has heightened tensions on the ground, creating a situation where a serious incident regarding the issue of possession could occur at any moment.

2.3 Anoop Kumar Dubey, representing the first party, appeared in court and submitted an objection dated 06.06.2025, stating that the report submitted by the Station House Officer of Belghat is entirely incorrect and contrary to both the law and the actual facts. The owner of the disputed land was Ramsukh Dubey son of the late Ganpat Dubey, the grandfather of Defendant No. 1; pleased with the care and support provided by Defendant No. 1, he executed and completed a registered will regarding his entire movable and immovable property on 25.11.2011 before passing away on 06.10.2012. Based on the said will, the petitioner has been in actual possession and cultivating the disputed land continuously since his grandfather's death. A mutation order was passed by the Court of the Tehsildar, Khajni, based on the will dated 25.11.2011, and the names of the petitioner and his brother, Amit Kumar Dubey, were recorded in the Khatauni (record of rights). The petitioner's grandfather had two sons: Digvijay Nath Dubey and Mahendra Dubey. The elder son, Digvijay Nath Dubey, has passed away; the petitioner and his brother, Amit Kumar Dubey, are his sons. Ramsukh Dubey's second son is Defendant No. 2, Mahendra Dubey. He never provided care or support to his late father, Ramsukh, and has been living separately with his own family since 1996. While the mutation (Dakhil-Kharij) for the land in Mauja Ratanpura Plot No. 334/0.684 hectares was completed based on the will dated 25.11.2011, the mutation order for the land in Village Samhutapur Plot No. 72/0.917 hectares was not issued; instead,

the Revenue Inspector passed an order based on inheritance (Virasat), resulting in the name of Defendant No. 2 being recorded against Plot No. 72 which holds no legal validity. Defendant No. 1 has maintained continuous possession and occupation of the disputed land from the very beginning to the present day. The Hon'ble Civil Judge (Junior Division), Bansgaon, issued an order dated 06.03.2024 in Civil Suit No. 330/24, Anoop vs. Mahendra Dubey, restraining Defendant No. 2, Mahendra Dubey, from creating any kind of obstruction regarding Plot No. 334, area 0.684 hectares in Village Stanpura. Mahendra Dubey has also filed Suit No. 48/2019, Mahendra Dubey vs. Anoop Dubey & Ors. in the Court of the Hon'ble Civil Judge (Senior Division), Gorakhpur; Defendant No. 1 has appeared and presented his case therein, and the matter is currently sub judice. Under these circumstances, this Court lacks the jurisdiction to determine title, interest, or possession. The disputed land in Village Samhutapur is held under joint tenancy and has not been partitioned; therefore, proceedings under Section 145 of the Cr.P.C. cannot be initiated. On the aforementioned grounds, the police report dated 06.05.2024 should be set aside.

3. Feeling aggrieved by the order dated 05.08.2025, the revisionist has preferred the present revision with the following averments that- “Based on baseless facts, the Station House Officer of Belghat submitted an unlawful report under Section 145 of the Code of Criminal Procedure, 1976, to the court of the Sub-Divisional Magistrate, Khajni, District Gorakhpur, on May 6, 2024. This report sought to declare the petitioner's Bhumidhari land specifically Gata No. 334, area 0.684 hectares in Village Ratanpura and Araj No. 72, area 0.917 hectares in Village Samhutapur both under Police Station Belghat, District Gorakhpur as disputed immovable property. Citing an apprehension of a breach of the peace, the SHO requested the attachment of the land in question and the appointment of a receiver. Acting on the report submitted by the SHO, the SDM, Khajni, issued

notices to both parties under Section 145(1) and directed them to present their respective cases. After both parties submitted their arguments and evidence, the SDM, Khajni, passed an order dated August 5, 2025, in Case No. 3332/2024, which was legally flawed and unsustainable. To issue notices to the disputing parties under Section 145(1) Cr.P.C., the Magistrate must be "satisfied" based on the claims presented by the parties regarding the "fact of actual possession of the subject matter of the dispute." In the present case, the report from Police Station Belghat was submitted to the Magistrate by Probationary Sub-Inspector Ashish Tripathi; this report was unlawful and insufficient to invoke the provisions of Section 145. The report from the Belghat Police Station contains no mention regarding actual possession. It does not state whether any crop has been sown on the plot in question or if the disputed plot is fallow land; nor does it specify which party planted the crop, if any. Such facts would reveal the answer regarding actual possession and enable the Magistrate to reach a conclusion on the matter. The Sub-Divisional Magistrate of Khajni passed the order based on this incomplete report. No attempt was made in the Belghat Police Station's report to ascertain actual possession. The Investigating Officer did not even examine the revenue records to identify the actual possessor of the disputed plot. Furthermore, no effort was made to determine which party is recorded as the Bhumidhar with transferable rights in the revenue records for the disputed plot. The Sub-Inspector/Investigating Officer submitted a report riddled with deficiencies in a perfunctory manner, without due application of mind; such a report was wholly unacceptable. The Magistrate's court initiated proceedings under Section 145 of the Code of Criminal Procedure based on this incomplete report; these proceedings are legally flawed and based on an incorrect procedure. Along with the incomplete and deficient report, the Investigating Officer had also prepared a site map (Naksha Nazri). This map contains no indication as to whether there is a crop on the disputed land or if it has merely been tilled. Nor does it

specify the nature of the crop whether it is a Rabi or Kharif crop. While the report identifies the disputed property, the determination of actual possession required a clear statement regarding whether the land was sown with a crop or lay fallow. Section 145(1) explicitly requires determining "which party was in possession of the subject matter of the dispute on the date of the order." The subordinate Magistrate's court failed to provide an answer or resolution to this crucial legal question in its order. The competent Civil Court at Bansgaon had passed an injunction order (Order 7/Ga) in favor of the revisionist in Suit No. 330/2024 filed under Sections 37 and 38 of the Specific Relief Act restraining the defendant and ensuring the protection and preservation of the disputed property (Plot No. 334, Area 0.684 hectares). The Hon'ble Sub-Divisional Magistrate of Khajni failed to make any mention of the aforementioned civil suit or the injunction order passed therein within his judgment under Sections 145 and 146 of the Cr.P.C.. Instead, the order erroneously and defectively stated that "the disputed plots were originally the sole property of Ramsukh Dubey, and a suit regarding title based on inheritance or a will is currently pending final adjudication before a competent court." Despite the matter being sub judice in the Civil Court at Bansgaon and the existence of a clear injunction order in favor of the revisionist regarding the disputed property, the SDM of Khajni proceeded with summary, ex-parte attachment proceedings without even discussing the said civil suit in the judgment; such action is legally flawed. The SDM/Magistrate Court initiated proceedings against the revisionist under Section 145 of the Cr.P.C. based on a police challan report pertaining to an entirely different matter. In the impugned order, the Magistrate Court initiated proceedings under Sections 145 and 146 of the Cr.P.C. against the revisionist based on a report prepared by the Station House Officer of Bansgaon, whereas the dispute actually falls under the jurisdiction of the Belghat Police Station. Thus, initiating proceedings under Section 145 of the Cr.P.C. based on a report from a different case is entirely open to criticism. In fact, the said matter has

already been adjudicated by the Allahabad High Court. And the subject matter of the said decision and the subject matter of the case in question.” On these grounds, the revision be allowed and the impugned order dated 05.05.2025 be set-aside.

4. The learned counsel for the revisionist submitted that the learned subordinate court did not consider the entire matter in right perspective and passed the impugned order dated 05.08.2025 contrary to law. Learned counsel for the revisionist further submitted that the learned Sub-Divisional Magistrate was not empowered to pass the impugned order, without considering the fact that a suit regarding the property in question pending before the Civil Court, and a suit filed by respondent is pending before the Appellate Civil Court where the respondent could not obtain any interim order. The learned counsel for the revisionist also submitted that the property is an agricultural land and belongs to a Sah-Khatedar (co-sharer) and the revenue record in the name of the revisionist is already on record. Therefore, by the impugned order, the learned Sub Divisional Magistrate wrongly attached the property which belongs to the revisionist. The order passed by the learned Sub Divisional Magistrate is erroneous and contrary to the law. Thus, the revision may be allowed and the impugned order be set aside.

5. Per-contra, the learned counsel for the respondents/opposite parties submitted that the learned Sub Divisional Magistrate rightly adjudicated the matter and passed an appropriate order. Learned counsel for the respondents further submitted that by way of fraudulent deed, the name of the revisionist has wrongly been entered in the revenue record (Khatauni). The respondent has already filed a suit before the competent court. During the pendency of the civil proceedings, the claim of the revisionist is unsustainable and that the revisionist wants to forcefully occupy the entire share of the land. There is no illegality in the order

passed by the learned Sub Divisional Magistrate, the present revision should be rejected.

6. I have heard the arguments of the learned counsel for the revisionists as well as learned counsel for the respondents/opposite parties and perused the record.

7. From the perusal of the record, it appears that the revisionist is seeking his title on the basis of a Will deed and opposite party No. 2 is seeking his right on the basis of revenue record. The matter is pending before a Civil Court, the opposite party Mahendra Dubey has filed a regular suit before the Civil Judge in which no interim order has been passed and the matter is sub-judice before the Civil Judge. It would have been proper for the parties to get the title decided by the competent court of Civil jurisdiction. The learned Sub Divisional Magistrate attached by the impugned order attached the property without giving any finding in regard to the title only on the basis of the report submitted by the Police Station Basgaon, Gorakhpur. The names of both the parties were mutated in the revenue record by way of mutation proceedings but after a lapse of 5 years on 05.05.2017. The revisionist's name was recorded in the revenue record and he is claiming possession over the entire property. Mutation in the revenue record does not confer any right title unless the suits/proceedings are finally disposed. The proceedings in regard to such mutation as well as regular suits in regard title, is still pending. Thus, at this stage, the revisionist and opposite party No. 2 appears to be joint title holders and at this stage, attachment of the property does not appear to be just and proper; hence, it is liable to be set aside.

ORDER

The Criminal Revision No. 262/2025 filed by the revisionist is hereby allowed. The matter is remanded back to the learned Sub-Divisional Magistrate after hearing both the parties and pass an appropriate order without being influenced by its earlier order.

Office is directed to consign the record as per the rule.

Let a copy of the order along with the record of the court of Sub-Divisional Magistrate be send back.

Date: 07.08.2026

**(Raj Kumar Singh)
Sessions Judge,
Gorakhpur.
Code- UP1889**

The judgment was pronounced today in open Court, signed and dated by me.

Date: 07.08.2026

**(Raj Kumar Singh)
Sessions Judge,
Gorakhpur.
Code- UP1889**