



UPKU010070182025

In The Court of Sessions Judge, Kushinagar at padrauna.

Present:- (Sanjeev Kumar Tyagi), H.J.S. - UP2018

Criminal Revision No. - 130 / 2026

1- Santosh Verma

2- Ramkishun Verma

3- Shivnath Verma

4- Harishankar

All Sons of Devilal.

R/O-Baikunthpur, P.S.-Vishunpura, District-Kushinagar.

-----Revisionists.

Vs

1- State of Uttar Pradesh.

2- Hrikrishna Sharma S/o Devilal Sharma.

R/O-Baikunthpur, P.S.-Vishunpura, District-Kushinagar.

-----Respondents.

JUDGMENT

1- Instant Criminal Revision has been preferred against Impugned Orders dated 27.02.2025, 26.08.2025 & 24.10.2025 passed by learned Sub-Divisional Magistrate at Tehsil Tamkuhiraj in Case No. 3584/2025 titled Harikrishna Sharma vs Santosh Verma & Ors. under Section 164 BNSS.

2- Ld. counsel for the revisionists has submitted following argument:-

(i). Upon application moved by Harikrishna Sharma before Police at P.S. Vishunpura, a police report dated 20/02/2025 has been forwarded to Sub-Divisional Magistrate at Tahsil Tamkuhiraj Distt. Kushinagar. The Ld. Sub-Divisional Magistrate on proceeded u/s 164 BNSS 27/02/2025 passed preliminary order and thereafter proceeded u/s 165 of BNSS in absence of revisionists on 26/08/2025. After knowledge of said proceeding pending before Learned Sub-Divisional Magistrate concerned revisionists appeared and produced their documents along with a recall application dated 01/09/2025. The Ld. Sub-Divisional Magistrate turned down the prayer made before him vide order dated 24.10.2025. Feeling aggrieved the present revision is being preferred against preliminary order the and other consequential order thereto.

(ii). Entire proceeding 164 and 165 of BNSS has been proceeded in absence of revisionists without serving any process duly and accordance with law hence the impugned order deserves to be set aside.

(iii). The impugned order 27/02/2025, 26/08/2025 and 24/10/2025 are erroneous and contrary to law hence deserves to be set aside.

(iv). The learned Sub-Divisional Magistrate has not complied the mandatory provisions of law provided u/s 164(4) of BNSS and has given finality to impugned order erroneously hence it deserves to be set aside.

(v). The learned Sub-Divisional Magistrate has committed manifest error not to consider to provision provided under Sub-Section 5 to Sec. 164 of BNSS. Though mandatory in nature hence the impugned order deserves to be set aside.

(vi). The learned Sub-Divisional Magistrate has passed the impugned order in hot-haste and has also misinterpreted the provision u/s 165 of BNSS, hence it deserves to be set aside.

(vii). The learned Sub-Divisional Magistrate has not applied judicial mind while passing impugned order hence the impugned order deserves to be set aside.

(viii). The learned magistrate has overlooked the documentary evidence supplied by revisionist along with their recall application respecting compromise in between party who are real brothers and has passed the impugned orders and wrongly closed the matter as pending before him for adjudication and passed the order to consign the records to record room. Such illegality is 'Glaring Mistake' hence the impugned order deserves to be set aside.

(ix). The impugned orders passed by learned Sub-Divisional Magistrate are contrary to law and in contravention there and also against the objects behind the law relating to possession or dispossession, of either party and emergency arise therefrom, hence the impugned order deserves to be set aside.

(x). The learned Executive Magistrate has passed the impugned order relying on the sole local police report produced before him in connivance with respondent no. 2, hence the impugned order deserves to be set aside.

(xi). The impugned orders neither legally correct nor judicially proper hence deserve to be set aside.

(xii). The present revision may kindly be admitted in the interest of justice and all the orders passed by Ld. Sub-Divisional Magistrate may kindly be set aside.

3- Ld. DGC (criminal) has submitted that impugned order deserves to be affirmed.

4- Ld. Counsel for the O.P. No.2 has not appeared and have opportunity of argument of O.P. No.2 is closed.

5- I have heard both the learned counsels and perused the file.

Conclusion

6- It transpires from Ld. Lower Court record that one application was recommended by SHO Raju Singh, P.S. Vishunpura, District Kushinagar in which First party was Harikrishna Sharma s/o late Devilal and Second party were Santosh Verma, Ramkishun Verma, Shivnath Verma and Harishankar Verma stating that First party and Second party are in dispute with each other regarding house measuring 37 feet x 85 feet constructed in Gata no. 60 and they have fought each other several times. Though Sh. Harikrishna has taken the house from Bashruddin Ansari vide one Stamp execution but both the parties has been challaned under Sections 126, 135 BNSS. Both the parties are claiming their claim on the said House and there is apprehension and danger to life and property of the parties. Therefore, both the parties be summoned under Section 164(1) BNSS and the above mentioned property be attached through receiver under Section 165 BNSS.

7- Thereafter, SDM Tamkuhiraj, District Kushinagar sent notice to both the parties under Section 164(1) BNSS.

8- From perusal of impugned order, it transpires that Santosh Verma and others pressed application dated 01.09.2025 stating that the First party is a fraud and complete proceedings have been initiated in collusion of First party and Police. They also stated that regarding the disputed property a Civil Suit is pending in the Court of Civil Judge (J.D.), Kasia, Kushinagar and therefore order dated 26.08.2025 be recalled and that First party and Second party are brothers and in joint possession of the House and Land and one partition deed has been executed between First party and Second party as per family partition executed on Rs. 100/- Stamp dated 21.09.2017 is forged because both the parties live jointly. It has been prayed by Second party that order dated 26.08.2025 be recalled.

9- Learned Lower Court order dated 26.08.2025 is being summarized which is as follows:-

Therefore, myself SDM Tamkuhiraj, District Kushinagar using the power u/s 165 BNSS is attaching House measuring 37 feet x 85 feet constructed in Gata no. 60 mentioned as ABCD and that Station House Vishunpura to hand over the said House in favour of receiver and report within seven days to undersigned and directed the parties to adduce their evidence with respect to possession.

10- If we peruse para 2 of the Revision Memo, then we find that impugned orders dated 27.02.2025, 26.08.2025 & 24.10.2025 having said to be erroneous and contradictory to law have been prayed to be set aside.

11- From perusal of the above facts, it transpires that Revisionist has not specifically mentioned as to from which one specific impugned order he is aggrieved. Rather Revisionist has prayed to set aside three impugned orders by one stroke which seems to be impossible as Limitation Act, 1963 bars at least impugned order Dated 27.02.2025 as Revision was filed on 17.11.2025 with a delay of about 09 months.

12- Anyhow, the main point to be considered in this Revision is that whether there is apprehension or danger to life and property to both the parties or not. Now, this fact can be best ascertained at the grassroot level by Police Station. Concerned SHO of Tamkuhiraj has specifically stated in his report that tension has brewed up between both the parties in respect to House situated in Gata no. 60 which is specifically marked as ABCD mentioned at the back of the report. From perusal of Lower Court file, it also transpires that all brothers are in possession of disputed property jointly and dispute between the parties exists in spite of family partition

executed on one simple Rs.100/- Stamp. Needless to mention here that because the apprehension of breach of peace between the parties exists, one Civil Suit between the parties is pending before Ld. Civil Judge (J.D.), Kasia, Kushinagar which again speaks volumes about the fact that apprehension to breach of peace still exists with respect to both the parties. Moreover, both the parties have been challaned under Sections 126, 135 BNSS (107, 116 CrPC) adding impetus to apprehension to breach of peace between the First party and Second party. Now, it is to be specifically mentioned that disputed property has been attached and given to receiver just to avoid the apprehension of breach of peace as well as to preserve the property or to avoid any unwanted criminal incident. Moreover, the Revisionist is at liberty to adduce evidence before SDM and Civil Judge. It will be justified to say that Revisionist has not been able to show or prove at this stage as to what prejudice has been caused to them vide impugned orders passed by Ld. SDM, Tamkuhiraj, Kushinagar. All the orders passed by Ld. SDM, Tamkuhiraj, Kushinagar are to avoid any untoward incident and also to preserve the property. Final judgment has yet not been pronounced because evidence is yet to begin. Therefore, impugned orders do not suffer from any impropriety, irregularity or illegality and therefore cannot be set aside.

13- For the reasons, mentioned above impugned order or orders deserves to be affirmed and Revision deserves to be rejected.

Order

14- Instant Criminal Revision is dismissed and impugned orders dated 27.02.2025, 26.08.2025 & 24.10.2025 passed by Learned Sub-Divisional Magistrate at Tehsil Tamkuhiraj in Case No. 3584/2025 titled Harikrishna Sharma vs Santosh Verma & Ors. under Section 164 BNSS are hereby affirmed.

15- Record of the Lower Court be sent back immediately for further proceedings, if any.

Date: **12.06.2026**

(Sanjeev Kumar Tyagi)
Sessions Judge,
Kushinagar at Padrauna.

Judgment has been pronounced, signed and dated by me in open court, today.

Date: **12.06.2026**

(Sanjeev Kumar Tyagi)
Sessions Judge,
Kushinagar at Padrauna.