

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV. P. 392/2007 and Crl. M.A. No. 6645/2007

KAVITA

..... Petitioner

Through: Mr. N.S. Dalal, Advocate with the
Petitioner in person.

versus

S.S.PARIHAR & ANR

..... Respondents

Through: Mr. R.N. Sharma, Advocate for
Respondent No. 2.
Mr. Pawan Bahl, APP for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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23.11.2010

The facts relevant for the present petition are that a civil suit was filed on 8th August, 2006 by the Respondent No.2 against six defendants including the husband of the Petitioner Yunis Khan and Smt. Sunita and Smt. Shabnam wives of Yunis Khan. The civil suit prayed for injunction and restraining the defendants therein from dispossessing the plaintiff therein without due process of law. In the civil suit no interim injunction was granted and summons were issued to the defendants. On 7th September, 2006 a Local Commissioner was appointed by the learned Civil Court who inspected the plot on 9th September, 2006. It is stated by learned counsel for

the parties that the Local Commissioner was not able to ascertain the possession of the plot as equally divided versions were available. On 18th November, 2006 on the complaint of the Respondent No.2, a Kalandra under Section 145 Cr.P.C. was filed before the SDM. On this, notice was issued to the husband of the Petitioner. On 16th January, 2007 when both the parties appeared, both claimed to be in possession of the disputed premises. The SDM directed the parties to maintain status quo and submit their documents on the next hearing and also directed the Halka Patwari to be present along with the record. The matter was adjourned to 26th March, 2007. On 22nd January, 2007 an application was moved by Respondent No.2 stating that the date of hearing given was too long and that he had all the documents to show the possession of the property and prayed for preponement of the date so that the matter can be disposed of expeditiously. On this application notice was issued to the Petitioner's husband for 7th February, 2007. He appeared on the said date and moved an application seeking a copy of the application on which notice was issued to him and also asking the reasons for preponement of the date of hearing. The said application also stated that already a civil suit is pending disposal before the court of Sh. Jitender Mishra, learned Civil Judge, Tis Hazari Courts, Delhi in relation to the same property filed by Respondent No.2. This application of

the Petitioner's husband was not adjudicated and a preliminary order under Section 145 Cr. P.C. was passed by the SDM directing parties to maintain status quo till further orders. The case was listed on 19th February, 2007 and thereafter on 26th February, 2007. It appears that on those dates the matter was not heard as the order sheets have not been signed by the SDM but by somebody else on his behalf. The case was thereafter taken up on the 28th February, 2007. However, on 20th February, 2007 the Petitioner's husband was arrested in case FIR No.144/2007 under Section 307 IPC P.S. Najafgarh and thus nobody was present on behalf of the Petitioner's husband 28th February, 2007. The SDM after recording the evidence of the Respondent No.2 held that the Respondent No.2 was in possession and passed the final order under Section 145 Cr.P.C. In the impugned order also the SDM has noted that Mohd. Yunis Khan is in jail under Section 307 IPC. The order sheet also reflects that the petitioner's side was unrepresented. This order dated 28th February, 2007 whereby the SDM has observed that the Respondent No.2 is in possession of the suit land and has restrained the Petitioner's husband from interfering in the peaceful possession of the Respondent No.2 without due process of law is challenged in the present petition.

Mr. N.S.Dalal, learned counsel for the Petitioner contends that no

application was moved by the Respondent No. 2 and the learned SDM malafidely preponed the date of hearing to 7th February, 2007 without any reason. He next contends that once a civil suit is pending no proceedings under Section 145 Cr.P.C. can be instituted unless extremely necessitated. Reliance is placed on *Ram Sumer Puri Mahant v. State of U.P. and others*, AIR 1985 SC 472. It is also contended that from the facts of the case there was neither any emergency nor any necessity for proceeding under Section 145 Cr.P.C. and thus the impugned order be set aside.

Learned counsel for the Respondent No. 2 contends that an application was moved before the SDM on 22nd January, 2007 praying for preponement of the date of hearing due to the fraudulent activities of the Petitioner's husband, the Respondent No.2 was under serious mental harassment. It is also stated that the proceedings before the SDM under Section 145 are independent of the civil proceedings pending before the learned Civil Judge. The learned SDM passed the impugned order after recording evidence and on being satisfied about the claim of the Respondent No.2.

I have heard learned counsel for the parties. I do not find any merit in the contention of learned counsel for the petitioner that the date was preponed to 7th February, 2007 malafidely by the SDM without any

application being on record. Having perused the record I find that an application was moved by Respondent No. 2 seeking preponement of the date on the basis of which the date of 7th February, 2007 was fixed, for which due notice was issued to the Petitioner's husband. In the present case when the impugned order was passed admittedly neither the petitioner's husband nor his representative was present. The SDM was aware that the petitioner was in judicial custody and thus he could not have been present on the date of hearing. In my opinion, the impugned order is in clear violation of the principles of natural justice. The Petitioner's husband has not been given an opportunity to produce his evidence and address arguments and the impugned order deserves to be set aside on this ground itself. This Court is not going into the other contentions raised by the parties because it would be for the SDM to decide the issues raised. The parties will be free to make all factual and legal submissions before the SDM.

For the reasons aforesaid the impugned order dated 28th February, 2007 is set aside. The SDM will now hear the parties or their authorised representative and proceed with the matter in accordance with law. The parties will be present in person or through their representative before the SDM on 6th December, 2010 at 2.00 P.M. The record of the SDM be sent back immediately along with a copy of the order.

The Revision Petition and the application are disposed of.

Order dasti.

NOVEMBER 23, 2010

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MUKTA GUPTA, J.