

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. Nos. 3388-89/2006

% Judgment decided on: 30th November, 2010
RAVINDER SINGH & ANR. PETITIONERS

Through: Mr. S.S. Panwar, Adv.
Versus

GIAN CHAND PANWAR & ANR. RESPONDENTS

Through: Mr. Suresh Sharma, Adv. &
Mr. M.P. Singh, APP

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

A.K. PATHAK, J. (Oral)

1. Petitioners and respondent No. 1 are related to each other. They are living in adjoining buildings. Dispute between the parties in this case is in respect of a staircase. As per the respondent No.1 his access to the first floor and above had been blocked by the petitioners by raising a wall in the staircase. Thus, he had approached the SDM by filing a complaint under Section 147 of the Code of Criminal Procedure, for removal of obstructions created by the petitioners. In view of a civil suit pending between the parties

involving the same subject matter, SDM dropped the proceedings. Respondent no. 1 filed a revision petition before the Additional Sessions Judge which has been allowed by the impugned order. That is how petitioners are before this court by way of the present petition.

2. Brief background of the case is that sometime in the month of November, 2002, respondent No. 1 had filed a civil suit bearing No. 572 of 2002 in the court of Civil Judge, Delhi praying therein that the petitioners be restrained from carrying out any construction or demolish the existing structure including the staircase, in the premises number 253-B, Village Shahpur Jat, New Delhi. Demolition of the illegal constructions raised in the staircase was also prayed. It was alleged in the plaint that the petitioners had been raising illegal construction in the suit premises as also in the staircase which had not only endangered the structure of the building but had also cut off the access of respondent No. 1 and its tenants to the first floor and above.

3. An application under Order XXXIX Rule 1 and 2 CPC was filed in the said suit, which came to be dismissed by the Civil Judge, Delhi on 31st January, 2003. Operative portion of the order reads as under:

“Moreover defendant in para (W) of his written statement told about panchayat meeting where it was settled that plaintiff shall built his own separate stairs and in replication this fact is not specifically denied. Simple vague and general denial amounts to deemed admission of facts alleged by opposite party. Even number of paragraphs of written statement containing some facts against plaintiff are simply denied in replication in single line without specifically dealing with those. Plaintiff also alleges that during pendency of suit, defendant has raised some constructions and made a wall in the stairs but no amendment is sought in the plaint to add subsequent facts nor any application is moved in this regard so when no relief is claimed in the main suit then no relief can be given which is not prayed in the plaint. Accordingly oral prayer of plaintiff for ordering of demolition of wall raised in stairs during pendency of suit allegedly which fact is disputed by defendant cannot be entertained. Hence there exist no ground to believe the story put forward by plaintiff. He has no prima facie case in his favour.

In view of above discussion, injunction application of plaintiff is hereby dismissed. This order shall not prejudice the rights of MCD to take any action as per law against properties of both plaintiff or defendants.”

(emphasis supplied)

4. Appeal against the said order is stated to has been dismissed by the learned Additional District Judge on 22nd January, 2005. Thus, the order passed by Civil Judge has attained finality between the parties.

5. During the course of arguments it has been admitted that the said suit is pending before the Civil Judge.

6. Immediately after filing the civil suit, respondent No. 1 also initiated criminal proceedings under Sections 107/147 Cr.P.C. before the Sub Divisional Magistrate (SDM), New Delhi praying therein that petitioners be restrained from interfering in the right of access of respondent No. 1 leading to first floor of the property and for that purpose, obstruction/hindrance created by the petitioners in the staircase be directed to be removed. It may be noted here that even in the suit respondent No. 1 had prayed that the petitioners be directed by way of decree of mandatory injunction to remove the illegal construction raised in the staircase.

7. In view of the pendency of the civil suit between the parties over the same subject matter, SDM vide order dated 25th January, 2003 ordered for dropping of the proceedings.

8. This order was assailed by respondent No. 1 by preferring a Criminal Revision Petition before the Additional Sessions Judge. Vide order dated 10th April, 2006, learned Additional Sessions Judge has allowed the Revision Petition opining that SDM was not correct in dropping the proceedings since he had no jurisdiction to drop the same, after proceedings under Section 147 Cr.P.C. had commenced

before him. Reliance was placed on **Mathura Lal vs. Bhanwar Lal, AIR 1980 SC 242.**

9. From the facts narrated hereinabove, it is abundantly clear that the subject matter in issue in civil suit and the criminal proceeding is more or less same. On petitioners raising construction in the staircase and other portion of the building, respondent No. 1 had first approached the civil court seeking decree of permanent injunction against raising of construction in the building including the staircase and decree of mandatory injunction for the demolition of the structure already raised. It was specifically alleged in the plaint that by raising construction in the staircase, petitioners had cut off the access of respondent No. 1 to the first floor and above. Similar is the relief claimed in the complaint before the SDM but only with regard to the staircase.

10. In the above facts, in my view, it was not open for the respondent No. 1 to initiate a parallel criminal proceeding before the SDM under Section 147 Cr.P.C. over the same issue claiming similar relief, after having filed a civil suit in this regard. Such proceedings would not be maintainable, inasmuch as, it would result in multiplicity of proceedings.

There was also possibility of these different forums taking conflicting view, regarding the same subject matter.

11. In **Ram Sumer Puri Mehant vs. State of U.P., AIR 1985 Supreme Court 472**, it has been held that when a civil litigation is pending in respect of a property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding under Section 145 Cr.P.C., would not be justified. In **Gurbachan Singh vs. State & Ors., 54 (1994) DLT, 24**, a Single Judge of this Court has held that in the face of an already existent injunction order passed in a pending civil suit, a party cannot be allowed to litigate before criminal court. In **Oriental Bank of Commerce vs. State & Anr., 45 (1991) DLT (SN) 29**, this Court has held that once a matter is pending before civil court regarding the possession of disputed premises, SDM was not competent to go into that question under Sections 145/146 Cr.P.C. Similar is the view expressed by a Single Judge of this Court in **Rajpal Singh vs. Commissioner of Police, 1981 Rajdhani Law Reporter (Note 32)**. In the said case it was held that if civil court is seized of a matter then proceedings under Section 145 Cr.P.C. cannot be commenced on the excuse of breach of

peace. In **Suresh Kumar vs. Vijay Kumar and Anr., 31 (1987) DLT 318**, this Court has held that when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceedings under Section 145 Cr.P.C., would not be justified.

12. It is true that the above Reports are with regard to the proceedings under Section 145 Cr.P.C. but, in my view, same principles will be applicable to the proceedings under Section 147 Cr.P.C., inasmuch as, the issue involved herein is removal of obstruction caused in the staircase by raising a wall. Issue involved in the civil and the criminal proceedings under Section 147 Cr.P.C. is more or less same. Merely because relief in criminal proceedings is differently worded, by itself would not make much difference. The fact remains that respondent No. 1 is aggrieved by the obstructions/hindrances created in the staircase, which according to him had restricted his access to the first floor and above. This issue is pending trial before the civil court, inasmuch as the relief of interim injunction in this regard had already been declined. Thus, the proceedings under Section 147 Cr.P.C. are debarred in the same facts.

13. This court is of the view that when the issue of obstruction of staircase is pending trial in the civil court no parallel criminal proceedings under Section 147 Cr.P.C. can be permitted before the SDM, more so when decree of a civil court is binding on the criminal court in such like matters.

14. For the foregoing reasons, I am of the view that criminal proceedings under Section 147 Cr.P.C., in view of the pendency of the civil suit pending between the parties on the same subject matter, are not maintainable and cannot be permitted to go on. Accordingly, impugned order is set aside and the proceedings before the SDM are dropped.

15. Petition is disposed of in the above terms.

A.K. PATHAK, J.

NOVEMBER 30, 2010 / rb