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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 1504/2009

DHARAMPAL & ORS.

..... Petitioners

Through: Mr. Shekhar Prit Jha, Advocate.

versus

STATE OF DELHI & ANR.

..... Respondents

Through: Mr Manoj Ohri, APP for State.

Mr. Mahipal Malik, Advocate for
respondents No.3 and 4.

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Date of Decision: 10th October, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J. (Oral)

1. Present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 02nd March, 2009 passed by the Additional Sessions Judge, Delhi in Crl. Rev.No. 45/2008. By the impugned order the Additional Sessions Judge has dismissed a revision petition challenging the order dated 09th June, 2008 passed by the Sub Divisional Magistrate (for short 'SDM'), Karol Bagh, Daryaganj, Delhi under Sections 145 and 146 Cr.P.C.

2. The relevant facts of the present case are that in the year 1991 Smt. Suresh Devi inducted respondents No.3 and 4 as her tenants on the ground floor of property in dispute bearing No. 16/1121-E, Khalsa Road, Karol Bagh, New Delhi (hereinafter referred to as 'said property').
3. In 1998, the disputes between the landlady Smt. Suresh Devi and the tenants were resolved by way of a settlement agreement wherein respondent No.4 agreed to vacate the said property within five years.
4. In 2003, respondent No.3 filed a suit being Suit No. 773/2003 challenging the earlier settlement executed between respondent No.4 and Smt. Suresh Devi.
5. On 12th October, 2004, a fire broke out in the said property in which the said property was gutted in its entirety.
6. On 27th November, 2006, petitioners purchased the said property by way of a registered sale deed. Even the said property was mutated in their favour by the Municipal Corporation of Delhi. In December 2006, petitioners constructed a boundary wall of a property in question along with the toilet.
7. On 24th February, 2007, the erstwhile owner Smt. Suresh Devi filed a suit being Suit No. 96/2007 for declaration and injunction challenging the aforesaid registered sale deed on the ground of mis-representation and fraud by the petitioners.
8. On 03rd April, 2007, a Memorandum of Understanding was executed

between the erstwhile owner Smt. Suresh Devi and respondents No.3 and 4 for reconstruction of the said property and for letting it back to the respondents No.3 and 4. For this purpose, a rent note dated 30th April, 2007 was executed by Smt. Suresh Devi.

9. In May 2007, Smt. Suresh Devi unfortunately expired.

10. On 26th June, 2007, a Kalandra under Section 145 Cr.P.C. from SHO Police Station Prasad Nagar, Delhi was received by the Sub Divisional Magistrate (for short 'SDM'), Karol Bagh, New Delhi. During the pendency of Section 145 Cr.P.C. proceedings, statement of neighbours and son of the complainant were recorded.

11. On 09th June, 2008, the SDM, Karol Bagh, Delhi, sealed the said property in exercise of powers conferred under Sections 145 and 146 Cr.P.C. The relevant portion of the order passed by the SDM is reproduced hereinbelow:-

“Having gone through all the records made available to this office by both the contending parties in support of their claims and taking into account the police report and after hearing both the parties the fact that Sh. Sunil Kumar was a tenant is beyond doubt and there is a civil court order restraining the landlord from dispossessing him from the suit property till further order without due process of law. The fact being that few court cases involving and revolving around the disputed property are still pending for final disposal by other competent courts.

Taking into consideration all the above mentioned facts, in my considered opinion allowing anyone of the contending parties to have free access to the disputed property will not be conducive to maintenance of peace and in order to avoid

any further deterioration of tension already existing among the contending parties which may cause breach of peace. I hereby order that the said disputed premises bearing H. No. 16/1121E Khalsa Nagar, Tank Road, Karol Bagh, New Delhi be sealed forthwith and continue to be kept as such till a competent higher court decides the right of the parties.”

12. On 25th August, 2008, respondents No.3 and 4, alleged tenants of Smt.Suresh Devi filed a suit for declaration and injunction being Suit No. 619/2008 claiming that they are tenants of the said property and restraining the petitioners from transferring the said property to anyone else.

13. Learned counsel for petitioners submits that powers under Sections 145 and 146 Cr.P.C. cannot be used to dispossess a person who is in settled possession of property by way of a registered sale deed. He points out that the factum that the petitioners were in physical possession of said property has even been admitted by the son of the erstwhile owner, Smt. Suresh Devi.

14. He also submits that on account of pendency of civil proceedings between the parties, the SDM had no jurisdiction to overreach the power of the civil Court. Malafide exercise of power by the SDM was apparent, according to him, from the fact that there was no threat of breach of peace as present petitioners were not residing in the vicinity of the said property, but were permanent residents of village Sanoth, Haryana.

15. On the other hand, learned counsel for respondents No.3 and 4 submits that the present petition was not maintainable as the order passed by the SDM was an interlocutory order. He also submits that the present petition amounted to a second revision petition which was not maintainable

under Section 397(3) Cr.P.C. In this connection, he relies upon the judgments of the Supreme Court in *Amar Nath & Ors. vs. State of Haryana & Ors.*, AIR 1977 SC 2185; *Jagir Singh vs. Ranbir Singh & Anr.s*, AIR 1979 SC 381 and *Dharampal & Ors. vs. Smt. Ramshri & Ors.*, AIR 1993 SC 1361.

16. Having heard the parties at length, this Court is of the view that it is first essential to outline the scope, ambit and jurisdiction of the power to be exercised by SDM/Executive Magistrate under Sections 145 and 146 Cr.P.C.

17. The relevant portion of Sections 145 and 146 Cr.P.C. are reproduced hereinbelow:-

“145. Procedure where dispute concerning land or water is likely to cause breach of peace—(1)Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

146. Power to attach subject of dispute and to appoint receiver.—(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute,

he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.”

18. This Court is of the opinion that jurisdiction under Sections 145 and 146 Cr.P.C. is preventive in nature and can be resorted to only in case of emergency or on genuine apprehension of breach of peace or if no one is in settled possession.

19. In our Constitution, there is a clear separation of judicial and executive powers. The civil disputes are to be decided by civil Courts and an unsuccessful litigant has a right to file an appeal. The SDMs cannot use the power conferred on them under Sections 145 and 146 Cr.P.C. to pass an interim injunction order when the civil Court has refused to do so. In ***Roop Lal Bhalla & Ors. vs. State & Anr., 106 (2003) DLT 388***, this Court has taken a similar view and held as under:-

“9. The object and scope of provisions of Section 145 or Section 146 Cr.P.C. is very limited. Once the party has acquired physical possession of the property by virtue of sale deed even if the sale deed is alleged to have been fraudulent or fake, the said party cannot be ousted or dispossessed without due process of law. Moreover in the instant case, declaration has been sought by a civil decree that the sale deed was obtained fraudulently or is fake one. Until there is a finding in the civil suit by way of decree, possession of the respondents cannot be disturbed by resorting to proceedings under Section 145/146 Cr.P.C.”

20. Also in the facts of the present case, this Court is of the view that there was no dispute with regard to who was in possession or emergency or threat of breach of peace inasmuch as the fire happened in the year 2004 and civil suits were already pending between the parties.

21. This Court is further of the opinion that the present petition is not a second revision petition. In *Madhu Limaye vs. The State of Maharashtra, (1977) 4 SCC 551*, the Supreme Court has held that even against an interlocutory order, a petition under Section 482 Cr.P.C. is available. Consequently, the judgments cited by the learned counsel for respondents No.3 and 4 are not applicable to the present case.

22. In any event, this Court is of the opinion that in the present case as the SDM had no jurisdiction to pass an interim order under Sections 145 and 146 Cr.P.C., this Court has power under Article 227 of the Constitution of India to set aside the impugned order.

23. Consequently, the order dated 02nd March, 2009 passed by the Additional Sessions Judge, Delhi and order dated 09th June, 2008 passed by the SDM, Karol Bagh, Delhi are set aside.

24. However, it is clarified that petitioners shall repair the aforesaid property only after getting prior written approval from the Municipal Corporation of Delhi and Delhi Fire Service authorities. Any improvement/reconstruction carried out by the petitioners shall be entirely at their own risk and cost and any construction/improvement shall abide by any order/decreed to be passed by the civil Courts. Respondents are given liberty

to file any appropriate application before the civil Court for protection of their rights and interests. Needless to say, the civil proceedings and any application filed by the respondent No. 3 and 4 would be decided by the trial Court on its own merit without being influenced by any observations made by this Court.

25. With the aforesaid observations, present petition stands disposed of.

MANMOHAN, J

OCTOBER 10, 2012

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