

Court No. - 12

Case :- CRIMINAL MISC. WRIT PETITION No. - 9949 of 2022

Petitioner :- Brijesh Kumar Yadav

Respondent :- State Of U.P. Thru. Addl. Chief Secy. (Home), Lko. And Others

Counsel for Petitioner :- Virendra Mishra, Akash Mishra, Amrendra Nath Tripathi, Shradha Mishra

Counsel for Respondent :- G.A., Ajay Rajput

Hon'ble Saurabh Lavania, J.

Supplementary affidavit filed on behalf of opposite party No. 3 in the Court today is taken on record.

Heard Sri Amrendra Nath Tripathi, Advocate assisted by Sri Prashant Tiwari, Advocate, learned counsel for the petitioner, Sri Ajay Kumar Srivastava, learned AGA for the State of U.P. and Sri Ajay Rajput, learned counsel for the private opposite party No. 3 as well as perused the record.

By means of this petition, the petitioner has prayed for the following main relief:-

"I. To issue a writ, order or direction in the nature of Certiorari or likewise for quashing the impugned orders dated 07.10.2021 and 29.10.2022 issued by the Special Executive Magistrate and learned Revisional Court contained in Annexure 1 and 2 respectively."

Taking note of the fact that the instant petition was filed in the Registry of this Court on 21.12.2022 and also that the parties have exchanged their affidavits and also the observations made by the Hon'ble Apex Court in the case of ***Kiran Devi vs. Bihar State Sunni Wakf Board and others, 2021 SCC OnLine SC 280*** and ***B.S. Hari Commandant vs. Union of India and others, 2023 SCC OnLine SC 413***, this Court proceeded to hear the case on merits.

Vide order under challenge dated 07.10.2021, the Deputy Commissioner of Police/Special Executive Magistrate (West), Commissionerate Lucknow (in short "Magistrate") in Case No. 10/2021 (Rajesh Kumar Yadav vs. Brijesh Kumar Yadav), under Section 145 Cr.P.C., P.S.- Thakurganj, District- Lucknow, considered the facts as indicated before it including the pendency of the case for partition before the revenue court as also that the parties are co-sharers of the property in dispute i.e. Khasra No. 362 area 0.848 hectare and Khasra No. 390 area 0.253 hectare situated at Village Malhapur, District Lucknow and first party i.e. Rajesh Kumar Yadav is entitled to 1/12 share and second party i.e. Brijesh Kumar Yadav, petitioner herein, is entitled to 1/18 share in the said piece of land and also that first party has raised construction over some part of the property in issue and thereafter directed the second party, petitioner herein, to not to interfere in the peaceful possession of the first party/Rajesh Kumar Yadav. The

relevant of the order dated 07.10.2021 on reproduction reads as under:-

"पत्रावली पर उपलब्ध समस्त अभिलेखीय साक्ष्य एवं वादी तथा प्रतिवादी द्वारा दिये गये लिखित जवाब का गहनता से अवलोकन एवं परिशीलन करने के उपरान्त मैं इस निष्कर्ष पर पहुँचती हूँ कि उभय पक्ष आपस में चचेरे भाई हैं। खसरा सं० 362 रकबा 0.848 हेक्टेयर है। एवं खसरा सं० 390 रकबा 0.253 हेक्टेयर कुल दो किता कुल रकबा 1.101 हेक्टेयर जो ग्राम मल्हपुर जिला लखनऊ में स्थित है। उभय पक्ष सह खातेदार हैं वाद ग्रस्त उक्त भूमि में द्वितीय पक्ष का 1/18 अंश/भाग तथा प्रथम पक्ष का 1/12 अंश/भाग है। द्वितीय पक्ष ने अपने जवाब में जिस मकान को अपने पिता द्वारा निर्माण कराया जाना बताया है उसकी प्रमाणिकता संदिग्ध प्रतीत होती है। जबकि उक्त मकान का निर्माण प्रथम पक्ष के राजेश यादव के पिता स्व० रामा ने खाद्य सामग्री एवं कृषि संबन्धित सामान रखने हेतु कराया था। उक्त मकान से सटे हुए पश्चिम दिशा के भूमि पर द्वितीय पक्ष का कब्जा है। जिसपर वह अपनी गाय, भैंस बाधता है। उक्त वाद ग्रस्त भूमि के बटवारे के सम्बन्ध में प्रथम पक्ष द्वारा एक वाद मा० उपजिलाधिकारी राजस्व लखनऊ के यहाँ दायर किया गया है। जो विचाराधीन न्यायालय है। द्वितीय पक्ष एवं उसके भूमाफिया साथियों द्वारा वाद विचाराधीन होने के बावजूद वाद ग्रस्त भूखण्ड का क्रय विक्रय एवं कब्जा करना नैसर्गिक न्याय प्रणाली के विरुद्ध है।

आदेश

संस्थित वाद में मकान एवं उससे सटी हुई पश्चिम दिशा की भूमि पर प्रथम पक्ष राजेश कुमार यादव काबिज है। द्वितीय पक्ष को आदेशित किया जाता है कि वह प्रथम पक्ष के शान्ति प्रिय कब्जे में किसी प्रकार का हस्तक्षेप न करे। विचारण के दौरान यह तथ्य भी संज्ञान में आया है कि प्रथम पक्ष द्वारा वाद ग्रस्त भूमि के बटवारे के सम्बन्ध में उप जिलाधिकारी राजस्व लखनऊ के न्यायालय में वाद दायर किया गया है। जो वर्तमान समय में विचाराधीन है। ऐसी स्थिति में अब मेरे द्वारा वाद का विचारण किया जाना न्याय संगत नहीं है। अतः वाद की कार्य वाही समाप्त की जाती है।

आज दिनांक - 7/10/21 को मेरे हस्ताक्षर एवं न्यायालय की मुद्रा से प्रसारित किया गया।"

The order impugned dated 07.10.2021 was challenged by the petitioner in Criminal Revision No.264 of 2021 (Brijesh Kumar Yadav vs. State of U.P. and another). The Additional District and Session Judge, Court No. 14, Lucknow (in short "revision court") dismissed the revision filed by the petitioner and affirmed the order dated 07.10.2021 vide order impugned dated 29.10.2022.

In this background of the case, the instant petition has been filed before this Court.

Considered the aforesaid and perused the record.

The law on the subject is well settled.

In the case of **Prakash Chand Sachdeva vs. State and another** reported in (1994) 1 SCC 471, the Hon'ble Apex Court observed as under:-

"2. Dispute arose about an independent portion in House No. G-39, Jangpura Extension, New Delhi. It was in occupation of a tenant who admittedly vacated in February 1992. The appellant claims to have occupied it. The claim is supported by a letter written by the tenant to the appellant on April 14, 1992 to the following effect:

"I have vacated your Ground Floor Flat at G-39, Jangpura Extn. today and possession of the same was handed over to your goodself.

Please issue me a no dues certificate at the earliest.

Thanking you and with regards,"

The authenticity of the letter is not disputed. But its effect had been attempted to be diluted by the respondent by claiming that it was written to harm him as he got the house vacated. The respondent claims that the appellant never resided in the house in dispute. May be so. Why the appellant who was residing in another

House No. 15/239, New Moti Nagar of his own with family of his other son, who died, decided to shift to the house in dispute, is immaterial. An owner of the house could at his option reside at his one or the other house. Even if it is assumed that the disputed house is ancestral the appellant was not required to explain the reason for his decision to come and live in it. His right to reside could not be disputed. But no sooner he came the problem started. And according to the appellant his report to the police for misbehaviour of his son and his family members went unheeded. That the father had to approach the police authorities against his own son is indeed painful. But that speaks volumes about the son. The inaction of the police on which reliance was placed by the son is explainable but not understandable. It does not help the respondent. It only adds to the helplessness of the appellant. In June 1992 it is alleged when he and his wife went to Jaipur to see their ailing daughter, they to their shock, on return after four days, found that their belongings had been removed, the portion had been locked and they were treated harshly and abusively. And that too by his family members. What must have been his feeling is not easy to comprehend but as said by Shakespeare in King Lear, '[h]ow sharper than a serpent's tooth it is to have a thankless child'. Failing to understand the 'cause in Nature that make these hard hearts', the appellant approached the criminal court by way of proceedings under Sections 107 and 145 Criminal Procedure Code. He also filed a civil suit for injunction in which status quo order was granted. But status quo of what? He had already been thrown out of possession. It is not necessary to comment on the merits of these proceedings. However, proceedings under Section 107 were dropped, and in our opinion rightly, as the nature of these proceedings 'are of preventive justice' as held by this Court in *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr* [(1970) 3 SCC 746 : AIR 1971 SC 2486] . It is to be invoked when any person is likely to commit a breach of peace or disturb public tranquillity. But the order dropping the proceedings under Section 107 led the Sub-Divisional Magistrate to drop the proceedings under Section 145 CrPC as the proceedings under Section 107 having been dropped there was no apprehension of breach of peace. The High Court while agreeing with this reasoning added that the appellant having sought civil remedy the proceedings under Section 145 could not be continued.

3. True, a suit or remedy in civil court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal court as observed by this Court in *Ram Sumer Puri Mahant v. State of U.P.* [(1985) 1 SCC 427 : 1985 SCC (Cri) 98 : AIR 1985 SC 472] 'particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation'. The normal rule is as stated by the Court in *Puri case* [(1985) 1 SCC 427 : 1985 SCC (Cri) 98 : AIR 1985 SC 472] . But that was a suit based on title. And that could be decided by civil court only. That ratio cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognisance under Section 145 CrPC. Neither the High Court nor the Sub-Divisional Magistrate cared to ascertain if the respondent had any claim to lawfully prevent the appellant from entering into his own house. The proceedings under Section 107 are for public peace and tranquillity whereas those under Section 145 relate to disputes regarding possession between parties concerning any land or water or boundaries thereof. Therefore, dropping of proceedings under Section 107 could

not furnish foundation for dropping the proceedings under Section 145. Nor the law laid down in Puri case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98 : AIR 1985 SC 472] could result in rejecting the application filed under Section 145 of the CrPC. There being no dispute of title between the appellant and respondent the only claim to be decided was if the appellant had been forcibly or wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the appellant had sought the remedy in civil suit without applying the mind if that decision was in any way helpful for dropping the proceedings. In law, therefore, the order passed by the two courts below cannot be maintained."

Further, in the case of **Amresh Tiwari vs. Lalta Prasad Dubey and another** reported in **(2000) 4 SCC 440**, the Hon'ble Apex Court observed as under:-

"12. The question then is whether there is any infirmity in the order of the SDM discontinuing the proceedings under Section 145 of the Criminal Procedure Code. The law on this subject-matter has been settled by the decision of this Court in the case of Ram Sumer Puri Mahant v. State of U.P. [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] In this case it has been held as follows : (SCC pp. 428-29, para 2)

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for Respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue...."

14. Reliance has been placed on the case of Jhummal v. State of M.P. [(1988) 4 SCC 452 : 1988 SCC (Cri) 974] It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 of the Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145 of the Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 of the Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An order of status quo had already been passed by the competent civil court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] fully applies. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and

granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate."

Further, in the order dated 26.08.2022 passed in ***Special Leave to Appeal (Crl.) No. 5061 of 2022 (Mohd. Shakir vs. State of Uttar Pradesh and others)***, the Hon'ble Apex Court observed as under:-

"Not much of elaboration on factual aspects is required in this matter. Suffice it to observe that while dropping the proceedings under Section 145 of the Code of Criminal Procedure, 1973 ('CrPC') because of the pendency of civil litigations, the learned Magistrate could not be considered justified in making any observations or returning any findings as regards rights of the parties qua the property in question. The learned Magistrate had proceeded to record the findings, as if the possession of the respondent on the questioned property was proved from the documentary evidence from the date of issuing notice and two months prior to the same and then, had also proceeded to order that the second party would not interfere in the peaceful possession of the first party until the competent Civil Court passes final judgment in the matter, and that status quo shall be maintained.

In our view, in the given set of facts and circumstances, while dropping the proceedings under Section 145 CrPC, there was no justification for the learned Magistrate to make any such observations or to record any such findings or to issue any interim direction for maintaining status quo by the parties. This was more so because two civil suits had already been filed in relation to the property in question."

Having considered the aforesaid including the impugned order dated 07.10.2021, affirmed vide impugned order dated 29.10.2022, whereby, the Magistrate in exercise of power under Section 145 Cr.P.C., directed the second party (petitioner herein) to not to interfere in the peaceful possession of the first party (opposite party No. 3 herein), this Court is of the view that the impugned orders are liable to be interfered with. Accordingly, the impugned orders dated 07.10.2021 and 29.10.2022 are hereby set-aside.

The petition is ***allowed*** in above terms. Cost made easy.

Order Date :- 27.11.2024

Arun/-