



2026:AHC:196119

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 7823 of 2025

Reserved

Kusum Lata And Another

.....Revisionist(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Revisionist(s) : Om Prakash Mishra, Suraj Mishra
Counsel for Opposite Party(s) : Arvind Kumar Mishra, G.A., Pooja
Singh, Rajendra Prasad Tiwari, Rajesh
Yadav

Court No. - 88

HON'BLE SANJIV KUMAR, J.

1. Heard Shri Om Prakash Mishra, learned Counsel for the revisionists, Shri Rajendra Prasad Tiwari, learned Counsel for the opposite party No.3 and Shri Akhilesh Kumar Mishra, learned A.G.A. for the State and perused the record.

2. This criminal revision has been filed against order dated 23.12.2024 (under Section 145/146 Cr.P.C.) as well as order dated 30.12.2016, (under Section 146 (1) Cr.P.C.), both passed by the Deputy Collector Tehsil, Dhampur, Police Station Sherkot, District Bijnor in Case No. 05532 of 2018 (Pradyumn Kumar vs. Anirudh).

3. By the impugned order dated 23.12.2024, the learned Magistrate rejected the application filed by revisionist No.2 to drop the proceedings, and granted him an opportunity to file his objections. By impugned order dated 30.12.2016, the learned Magistrate attached the disputed property and directed to hand over its *supurdgi* to an independent person.

4. Brief facts of the case are that opposite party No.3 filed an application, dated 21.12.2016, before the Sub-Divisional Magistrate, Dhampur, alleging that the disputed land, bearing *Khasra* No. 86 area 1.287 hectares and *Khasra* No. 53 area 1.068 hectares, is his ancestral property and that his father, Banwari Singh was the owner and in possession of the aforesaid land.

During his lifetime, he partitioned the property between his two sons, namely, revisionist No.2, Anirudh and opposite party No.3, Pradyumn Kumar. It was further alleged that revisionist No.2, Anirudh committed fraud and on the basis of forged documents, got a sale deed executed in favour of his wife, against which the opposite party No.3 has filed a suit before the civil court for cancellation of the sale deed. It was further alleged that revisionist No.2 was dishonestly trying to take possession of the disputed land. It was, therefore, prayed that, after conducting an inquiry, the disputed property be attached and its possession be handed over to some independent person. Upon the said application, the police of the concerned Police Station, under direction of the Magistrate concerned, submitted a report stating that there was dispute between the parties over the disputed land and there was an apprehension of breach of peace.

5. The police report dated 24.12.2016 disclosed that both the parties were quarreling over the possession of the disputed land and, in this regard, both parties sustained injuries caused by sharp-edged weapons, for which criminal cases were lodged against them. It was also reported that there was an apprehension of breach of peace. Proceedings under Sections 107/116 Cr.P.C. had earlier been initiated against both parties and, on 02.11.2016, both parties were again challaned under Sections 107/116 Cr.P.C., however, the conditions were violated by them. It was, therefore, reported that the property was liable to be attached and handed over to a receiver.

6. The Naib Tehsildar also submitted his report dated 29.12.2016, stating that both the parties are real brothers. It is alleged that a forged sale deed was executed by revisionist No.2, Anirudh in favour of his wife, regarding which a civil suit for cancellation of the sale deed is pending. Revisionist No. 2, Anirudh, is trying to take possession of the disputed property on the basis of the said sale deed. In this regard, both the parties quarreled with each other, resulting in the registration of criminal cases. There is tension between the parties regarding the disputed land, and there is an apprehension of breach of peace at any time.

7. Upon receiving the reports from the Police and the Naib Tehsildar, Dhampur, the concerned Magistrate passed a preliminary order under Section 145(1) Cr.P.C. on 30.12.2016 and attached the disputed property.

8. The revisionist filed an application, dated 06.01.2017, stating that the impugned order was defective, as the reports of the Naib Tehsildar as well as the concerned Police disclosed that cases were pending before the Civil Court and the Revenue Court with regard to the disputed land. It was stated that it is settled law that where matter relating to the disputed property are pending before the Civil or Revenue Court, proceedings under Section 145 Cr.P.C. are not maintainable. It was further stated that there was no apprehension of breach of peace and, therefore, the proceedings were liable to be quashed. The concerned Magistrate thereafter passed impugned order dated 23.12.2024, whereby he rejected the application dated 6.1.2017, filed by revisionist No.2/Anirudh, and granted him an opportunity to file his objections.

9. It is submitted by learned counsel for the revisionists that both the impugned orders dated 23.12.2014 (rejecting his application to drop the proceeding) and order dated 30.12.2016, passed under Section 146 (1) Cr.P.C (regarding attachment of disputed property) are illegal and arbitrary. The dispute is *sub judice* before the competent civil court, as opposite party No.3 had already filed a Civil Suit No. 1138 of 2016 on 29.11.2016 before the Civil Judge (Junior Division), Nagina and as he could not obtain any interim order from the court concerned, he got initiated this proceedings to harass the revisionists. It is also submitted that opposite party No.3 has not disclosed the filing of the civil suit, in proceedings under Sections 145/146 Cr.P.C. It is further submitted that parallel proceedings before the civil and criminal courts cannot continue in respect of the same cause of action. The rights, title and interest of the parties, over the property in dispute are to be adjudicated by the civil court, therefore, there was no justification for initiating proceedings under Sections 145/146 Cr.P.C. It is also submitted that the revisionists were in possession of the land in dispute, till the date of its attachment. Hence, both the impugned orders are liable to be set aside.

10. Learned counsel for the revisionist has relied upon the decision of a Co-ordinate Bench of this Court in **Application U/s 482 Cr.P.C. No. 9198 of 2021 (Aman Deep Singh Shishya Vs. State of U.P. and Another)**, decided on 20.12.2023, wherein it was found that, at the time of passing of the preliminary order under Section 145(1) Cr.P.C., an interim order was in existence and the civil suit was pending. The civil court had also found

possession of the plaintiff over the property in question. In view of the aforesaid circumstances, the Court held that there was no justification for keeping the parties embroiled in parallel criminal proceedings initiated under Section 145 Cr.P.C., while relying upon the ratio laid down by the Hon'ble Supreme Court in **Amresh Tiwari Vs. Lalta Prasad Dubey and Another**, reported in **(2000) 4 SCC 440**. The relevant paragraphs in *Amresh Tiwari* (supra), are quoted hereinbelow:-

*"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:*

"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."

*"13. We are unable to accept the submission that the principles laid down in **Ram Sumer case** [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] would only apply if the civil court has already adjudicated on the dispute regarding the property and given a finding. In our view *Ram Sumer case* [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil court and parties are in a position to approach the civil court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 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."*

11. Per contra, learned counsel for opposite party No.3, as well as learned A.G.A. for the State have opposed the prayer and submitted that there is no illegality or infirmity in the impugned order. There is no bar against the continuation of criminal proceedings under Section 145 Cr.P.C. during the pendency of a civil suit. It is further submitted that proceedings under Sections 145/146 Cr.P.C. were initiated upon apprehension of breach of peace, and, for this purpose, the learned Magistrate is only required to ascertain the settled possession of the parties.

12. Learned Counsel for opposite party No.3 has relied upon the decision of the Hon'ble Supreme Court in **Amresh Tiwari Vs. Lalta Prasad Dubey and Another**, reported in **(2000) 4 SCC 440**, as well as the decision of a Co-ordinate Bench of this Court in **Criminal Revision No.1848 of 2010; Pawan Singhania Vs. State of U.P. and Others**, decided on 16.03.2023. In **Pawan Singhania (supra)** it was ruled that, in view of decision of Supreme

Court in **Amresh Tiwari** (supra), the proceedings under Section 145 Cr.P.C. cannot be dropped merely on the ground that one of the parties has approached the civil court with regard to title or right to possession.

13. Learned A.G.A. has filed a compliance affidavit, annexing therewith a report of the Naib Tehsildar, Dhampur, forwarded by the Sub-Divisional Magistrate concerned. On the basis thereof, it is submitted that due to dispute with regard to possession between the parties over the disputed land, there is an apprehension of breach of peace. Therefore, the learned Magistrate, after considering the reports submitted by the Police and the Naib Tehsildar and after being satisfied, passed impugned order for attachment of property, which do not suffer from any illegality or infirmity. Hence, the present revision is devoid of merit and is liable to be dismissed.

14. Considering the submissions of learned counsel for both the parties and upon perusal of the record, it is clear that the revisionists have challenged two orders passed by the learned Magistrate in this revision. One order is dated 23.12.2024, by which the learned Magistrate rejected the application of the revisionists dated 06.01.2017, whereby they had prayed for dropping the proceedings under Section 145 Cr.P.C. In this regard, it is material that on 30.12.2016, the learned Executive Magistrate had passed two orders, one order by which he had attached the disputed property and another one directing both the parties to appear before the Court, on the date fixed, with evidence regarding their possession over the disputed property.

15. The learned Magistrate observed that there was an apprehension of breach of peace, as the revisionists had raised certain issues for dropping the proceedings in their application dated 06.01.2017 and the learned Magistrate had earlier directed both the parties to produce evidence regarding their possession over the disputed property. Therefore, the rejection of the application dated 06.01.2017 by the impugned order dated 23.12.2024 has not finally decided any right between the parties. The learned Magistrate has given an opportunity to the revisionists to file their objections with regard to the proceedings under Section 145 Cr.P.C., and after the evidence is produced by both the parties, the learned Magistrate can dispose of the proceedings under Section 145 Cr.P.C. Therefore, the order dated 23.12.2024 is an interlocutory order, having not decided any rights of the parties and the issue of dropping the proceedings is still open for

consideration by the learned Magistrate after the evidence is filed by both the parties. Therefore, no interference is warranted by this Court with the impugned order dated 23.12.2024.

16. So far as the other impugned order dated 30.12.2016 is concerned, a perusal of the same shows that, after receiving the reports from the Police Station concerned and the Naib Tehsildar, the Magistrate concerned attached the disputed property. The reports of the Police Station concerned and the Naib Tehsildar disclose that there was tension between the parties with regard to possession over the disputed land and that they had fought with each other, causing injuries to the members of the other side, regarding which criminal cases were lodged. They were also challaned under Sections 107/116 Cr.P.C., and the conditions imposed therein were also breached by them.

17. The rights of the parties over the disputed property are not to be decided or adjudicated upon in proceedings under Section 145 Cr.P.C., and it is the Civil Court which has to decide their rights. It is not in dispute that, before the initiation of the present proceedings, Civil Suit No. 1138 of 2016 was filed by opposite party No. 3, Pradyuman Kumar, before the Civil Court seeking cancellation of the sale deed executed in favour of Kushum Lata, the wife of his brother Anirudh Singh. He had also prayed for a permanent injunction restraining the defendants from interfering with his possession over the disputed property.

18. A perusal of copies of order-sheets in the above civil suit shows that the temporary injunction application was filed by opposite party No.3, Pradyumn Kumar, but the same is still kept pending by the court concerned and no interim order has been passed.

19. The contention on behalf of the revisionists is that, since a civil suit was already pending before the initiation of proceedings under Section 145 Cr.P.C., wherein appropriate relief could be obtained by either party, the proceedings under Section 145 Cr.P.C. were not maintainable and were liable to be dropped. In this regard, learned counsel for the revisionists has relied upon the decision of the Hon'ble Supreme Court in **Amresh Tiwari (supra)**.

20. On the other hand, learned Counsel for opposite party No.3 has also relied upon the same decision of the Hon'ble Supreme Court in **Amresh Tiwari** (supra) and submitted that the Hon'ble Supreme Court has held that it cannot be said that in every case where a civil suit is filed, proceedings under Section 145 Cr.P.C. would not lie. The Hon'ble Supreme Court has clarified that it is only in cases where the civil suit is for possession or declaration of title in respect of the same property and where relief regarding protection of the property in question can be applied for and granted by the civil court that proceedings under Section 145 Cr.P.C. should not be allowed to continue. On the above basis, learned Counsel for opposite party No.3 submits that, in the present case, as the civil court has not granted any relief, then mere pendency of the civil suit is no bar to the continuation of proceedings under Section 145 Cr.P.C.

21. The contention raised on behalf of opposite party No. 3 has force in it. Admittedly, the disputed property is agricultural land, and there is no interim order passed by the civil court in the civil suit filed by opposite party No. 3. The parties are fighting over possession of the disputed property, and in this regard, they sustained injuries and criminal cases have been lodged against each other.

22. In **Abdul Gafoor v. State of U.P.**, reported in **1991 SCC OnLine All 656**, a Co-ordinate Bench of this Court has held that the criminal court can continue to exercise jurisdiction under Section 145 Cr.P.C. if no effective interim order has been passed in the suit pending before the competent civil or revenue court. Before laying down the aforesaid proposition of law, the Court considered some other decisions also and held that "Of course, parallel proceeding should not be allowed to continue if a party under Section 145 Cr.P.C. can seek an effective remedy/declaration from the Civil Court. Even in such a case the proceedings under Section 145 Cr.P.C. should be dropped only when the Civil Court has passed some effective order indicating as to which of the parties was entitled to possession. In some cases the proceeding should also be dropped when the civil court has appointed a receiver or has made some arrangement for the maintenance of such a property. But, when the civil court does not clarify the position regarding the possession of the contesting parties by passing an effective order and simply passes an innocuous order like maintenance of status quo, the criminal proceedings are

not to be dropped because in that case both the parties may stake their claim for possession and the situation may lead to the breach of peace. In such cases, even proceedings under Section 107/116 Cr.P.C. may not prove to be effective and the subject matter may have to be attached by the Criminal Court. Of course, orders passed by the Criminal Court in such cases shall be subject to the decision of the Civil Court. Thus, the Magistrate is not bound to drop the proceedings pending in his court in all cases under section 145 Cr.P.C. for the simple reason that a civil suit is pending in the civil court in respect of the same subject matter between the same parties or through whom they are claiming".

23. In the instant case, the Civil Court did not pass any interim protection order, despite an application for temporary injunction having been filed along with the suit. Therefore, the Magistrate was duty-bound to maintain peace and, as such, had no alternative but to proceed further with the proceedings under Section 145 Cr.P.C. The impugned attachment order, thus, appears to be legally valid. Hence, the proceedings under Section 145 Cr.P.C. are maintainable despite pendency of civil suit.

24. Here, it is relevant to note that the Hon'ble Supreme Court in **Amresh Tiwari** (supra) has held that the proceedings under Section 145 Cr.P.C. would be dropped only where relief regarding protection of the property can be applied and granted by the Civil Court. Admittedly, despite filing of an application for temporary injunction, the Civil Court has not passed any order for protection of the property. Thus, in view of **Amresh Tiwari** (supra), the proceedings under Section 145 Cr.P.C. was maintainable and as in light of imminent apprehension of breach of peace, the impugned order of attachment of the property was passed. Therefore, there is no illegality or infirmity in the impugned order.

25. In view of the above discussion, this Court finds that there is no illegality, infirmity or perversity in the impugned orders passed by the Magistrate. Thus, this revision has no force and is liable to be dismissed.

26. Accordingly, the present revision is **dismissed**.

(Sanjiv Kumar,J.)

September 18, 2026/Amit