

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 218

Criminal Miscellaneous No.M-12195 of 2014 (O & M)
Date of Decision: April 01, 2015

Jagmal Singh & others

..... PETITIONERS

VERSUS

Dharamveer & others

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Ashok Kumar Khubbar, Advocate, for the petitioners.

Mr. S.S. Rana, Advocate, for respondent Nos.1 to 16.

Mr. Vikas Chopra, Deputy Advocate General, Haryana, for
respondent Nos.18 & 19.

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Jaspal Singh, J

1. Instant petition has been preferred by Jagmal Singh & others under Section 482 Cr.P.C. seeking quashing of order dated April 5, 2013 (Annexure P-5) passed by the Sub Divisional Magistrate, Jagadhri in case No.25/145 Cr.P.C. dated January 4, 2012, vide which, possession of land in question has been ordered to be handed over to Radha Soami Registered Society, Adhyatmic Nagar Dayalpuri, Khatoli, District Muzaffar Nagar (for brevity, 'Society') as well as order dated March 10, 2014 (Annexure P-8) passed by learned Additional Sessions Judge,

Yamuna Nagar at Jagadhri, in Criminal Revision No.106 of May 24, 2013, vide which, revision petition preferred by the petitioners upholding order dated April 5, 2013 (Annexure P-5) has been dismissed.

2. While assailing the impugned orders, it has been ebulliently argued by learned counsel for the petitioner that same are absolutely against evidence available on file and settled canons of law, and are liable to set aside. Infact, learned Sub Division Magistrate, Jagadhri, had no jurisdiction to pass any order of delivering possession of disputed property to the respondents, under Section 145 Cr.P.C., as possession of property in question was never taken by the Sub Divisional Magistrate. Rather, proceedings under Section 145 Cr.P.C. stood adjourned sine die vide order dated December 11, 2008. There was no reason for SDM to entertain an application moved by respondents and order delivery of possession to them. Fact of the matter is that charge of disputed property was given to the SDM by this Court vide order dated March 17, 2009 passed in Civil Revision No.1422 of 2009 during proceedings in Civil Suit No.465 of 2005. Since, charge of disputed property was never given to SDM by this Court under civil jurisdiction, he could not have handed over possession of the disputed property to respondents while dealing with provisions under Section 145 Cr.P.C. Moreover, Civil Court is already seized of the matter as a Regular Second Appeal is still pending disposal before this Court, though, no stay/injunction order has been passed in the said appeal.

3. On the other hand, learned counsel for respondents have strongly supported the impugned order passed by the SDM, Jagadhri which has been upheld by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, vide order dated March 10, 2014, and have submitted that instant petition is nothing but a device

adopted by the petitioners to delay disposal of proceedings pending before this Court as well as before the Court of SDM, Jagadhri.

4. This Court has given a deep thought to the rival submissions made by learned counsel for parties and perused the record available.

5. Undisputably, proceedings under Section 145 Cr.P.C. were pending before SDM in respect of property in question in which order dated February 11, 2009 was passed by him whereby petitioners have been directed to deliver possession of the suit property to respondents within one month from the date of passing of order. The dispute in question relates to property of which both the parties are claiming ownership/possession being followers of Society. Against above said order dated February 11, 2009, Gurnam Dass & another preferred Civil Revision No.1422 of 2009 which was decided vide order dated March 17, 2009 (Annexure P-3) by this Court. It would be apt and proper to reproduce relevant portion of said order for proper appreciation thereof:-

“Both the counsels, who were present in court, were heard.

Without going into the merits of the controversy involved, it was agreed upon between the parties that since the property in dispute is being used for the purpose of holding religious discourse and/or langar, the status thereof may be kept intact to avoid any untoward incident or dispute between the parties. The charge of the property be given to Sub Divisional Magistrate, Yamuna Nagar, who shall appoint a Chowkidar for opening and locking the premises after the religious discourse is complete. The petitioners submitted that they need the premises for religious discourse from 5.30 A.M. to 7.30 A.M. and 6.00 P.M. to 7.30 P.M. daily, whereas the respondents stated that they need the premises on Sunday from 9.00 A.M. onwards.

In addition to this, it was also stated by learned counsels for the parties that the premises is required by them for langar. For that purpose, learned C.R. No. 1422 of 2009 [2] counsel for the petitioners submitted that they will intimate the date and time on which langar Sewa is to be performed to respondent No. 1, and in case the same is not clashing with their langar programme, the premises be given to them for the purpose, otherwise they will make suitable amendment in their schedule.

The salary of Chowkidar to be appointed by the Sub Divisional Magistrate shall be paid by the petitioners.

The aforesaid arrangement shall continue till the decision of the suit by the learned trial court. Thereafter, the parties shall abide by the judgment.

The revision petition is disposed of in the manner indicated above.”

6. After passing of above referred order, an application dated October 17, 2012 was moved before SDM, Jagadhri and in compliance of aforesaid order passed by this Court, learned SDM ordered the handing over of possession and other articles to the applicant – Society vide order dated April 5, 2013 (Annexure P-5) which has subsequently been upheld by learned Additional Sessions Judge vide order dated March 10, 2014 (Annexure P-8).

7. There is no infirmity, illegality or impropriety in order dated April 5, 2013 (Annexure P-3) passed by SDM, Jagadhri as well as in order dated March 10, 2014 (Annexure P-8) passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, especially in the circumstances that order dated March 17, 2009 (Annexure P-3) has been passed by this Court, on the basis of understanding arrived at between the parties. Moreover, pendency of Regular Second Appeal is also not relevant, especially in the circumstances that there is no stay or any injunction order with regard to delivery of possession of property in question. The instant petition is nothing but appears to have been filed just to delay and defeat the rights of applicant – Society.

8. Finding no merit in the instant petition, same stands dismissed.

April 01, 2015
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(Jaspal Singh)
Judge