

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No. 22253 of 2014(O&M)

Date of Decision :09.02.2015

Multan Singh and others

.....Petitioners

Versus

Sub Divisional Magistrate-cum-Executive

Magistrate, Karnal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. J.S.Bedi, Sr.Advocate with
Mr.Simar Barnala, Advocate
for the petitioner.

Mr.Ashish Yadav, Addl.AG, Haryana.

Mr.Kanwaljit Singh, Sr. Advocate with
Mr.Ajaivir Singh, Advocate for the private respondents..

- i. Whether Reporters of local papers may be allowed to see the judgment?
- ii. To be referred to the Reporters or not?
- iii. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This petition has been filed against the order of the Sub Divisional Magistrate, Karnal initiating proceedings under Section 145 Cr.P.C. appointing a receiver under Section 146 Cr.P.C. in respect of the land measuring 130 kanals 8 marlas situated in Khewat No. 313 and Khewat

No. 208.

The land was owned by four brothers which remains joint today. One of the brothers sold his share to the wife of respondent No.4-Jarnail Singh(who is stated to have sold it during the pendency of the proceedings). In the sale deed executed in favour of wife of respondent No.4-Jarnail Singh it was recorded that the seller was also in possession of his share in both the Khewats but he had handed over possession of the land in Khewat No.313. The petitioners filed a civil suit seeking a declaration that the assertion in the sale deed that the vendor was in possession of 29 Kanals 18 marlas in Khewat No. 313 was wrong and actually he was in possession only of 21 Kanals and 1 marla in that Khewat and they were in possession over the remaining land in that Khewat. The civil court noticed that as per the revenue record it was not clear as to which party was in possession of which portion of the land and directed the parties to maintain status quo regarding possession. Thereafter respondent No.4 approached the police complaining that the petitioners were trying to forcibly dispossess them. The police on its part submitted a Kalandra before the Magistrate to initiate proceedings under Section 145 Cr.P.C. and after hearing the parties appointed the Naib Tehsildar, Nigdhu as a receiver and the petitioners have challenged that order.

The grievance of learned Senior Counsel appearing on behalf of petitioner is that when the matter regarding possession was pending before the Civil court the Criminal Court could not have stepped in. He has relied upon ***Ram Sumer Puri Mahant Vs. State of UP and others 1985 (1) R.C.R. (Criminal) 278***, wherein the Hon'ble Supreme Court 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 preposition that parallel proceedings should not be permitted to continue and in the event of 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 an 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 and the order of learned Magistrate should be quashed.”

He has further relied upon **Amresh Tiwari Vs Lalta Prasad Dubey**, 2000 (2) RCR (Criminal) 614, wherein the Hon'ble Supreme Court held as follows:-

“We are unable to accept the submission that the principles laid down in Ram Sumer's case 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's case 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.

Reliance has been placed on the case of Jhummamal alias Devandas Vs. State of Madhya Pradesh, reported in 1989 (1) RCR (Crl.) 428: (1988) 4 SCC 452. It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 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 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 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 the competent civil court. Thereafter Section 145 proceedings ere 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's case (supra) 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.”

Learned Senior Counsel appearing on behalf of respondents No.2, 3 and 4 has argued that once even the Civil Court has not been able to determine who is in possession and there is a possibility of breach of peace between the parties on the issue of possession, the jurisdiction of the Criminal Court cannot be ousted. He however has not been able to cite any judgment of the Hon'ble Supreme Court to this effect though he has cited judgment of this Court. It is beyond the pale of any controversy that the judgment of the Supreme Court would supersede all the Courts and the observations made by their lordships (which have been extracted above) would cover the facts of this case also.

Consequently the petition has to be allowed and the impugned order set aside leaving the parties to approach the Civil Court where the matter is still stated to be pending for any relief qua possession/appointment of receiver etc.

Petition stands disposed of.

(AJAY TEWARI)
JUDGE

February 09, 2015

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