

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 3950 of 2013 (O&M)

Date of decision: 16.1.2015

Sher Singh and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Parminder Singh,Advocate,
for the petitioners.
Mr.Rajiv Doon,Assistant Advocate
General,Haryana
Mr.Kulwant Singh,Advocate
for respondents No. 4 and 5

SABINA, J.

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging Calendra dated 20.6.2012 and order dated 4.10.2012 (Annexure P8) whereby proceedings under Section 145 Cr.P.C. have been initiated against the petitioners.

Learned counsel for the petitioners has submitted that respondents No. 4 and 5 were claiming possession over the property in question on the basis of sale deed dated 27.4.2012 (Annexure R-4/1). The case of respondents No. 4 and 5 was that they had been delivered possession over specific khasra numbers of

the joint property in view of the sale deed dated 27.4.2012(Annexure R-4/1). Petitioners were trying to take forcible possession of the land in question. However, petitioners had filed civil suit No. 348/13 on 4.6.2012 for declaration and permanent injunction. At the time of passing of the impugned order, civil suit filed by the petitioners was pending and parties had been directed to maintain status quo with regard to possession. Thereafter, application moved by the petitioners under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 was disposed of vide order dated 26.8.2013 (Annexure P9) and respondent No.4 was restrained from trying to take possession of any specific khasra numbers of the joint land mentioned in the sale deed. The suit filed by the petitioners was decreed by the trial Court vide judgement dated 25.3.2014. Learned counsel for the petitioners has submitted that the partition proceedings were pending between the parties.

Learned counsel for respondents No. 4 and 5 has opposed the petition and has submitted that the said respondents were in possession of the specific khasra numbers in question in view of the sale deed dated 27.4.2012(Annexure R-4/1). Against the decision given by the trial Court in civil suit, respondents No. 4 and 5 had preferred an appeal.

In the present case, respondents No. 4 and 5 had got initiated proceedings under Section 145 Cr.P.C against the petitioners and others. The case of respondents No. 4 and 5 was that they were in possession of specific khasra numbers of the joint land in view of the sale deed executed in their favour dated

27.4.2012(Annexure R-4/1).

Admittedly, the civil suit had been filed by the petitioners seeking declaration to the effect that the vendees could not sell the specific khasra numbers out of the joint land as well as for permanent injunction restraining respondent No.4 from taking possession of any specific khasra numbers of the joint holding. The suit was filed by the petitioners on 4.6.2012. Parties were directed to maintain status quo with regard to possession over the property in question vide order dated 07.6.2012 (Annexure P5).

Since the matter was pending before the Civil Court, the proceedings under Section 145 Cr.P.C. should have been dropped by the Executive Magistrate. During the course of arguments, it has transpired that vide order dated 26.8.2013(Annexure P9), respondent No. 4 was restrained from taking possession of any khasras of the joint land in terms of the sale deed. The suit filed by the petitioners was decreed by the Civil Court vide judgment/decreed dated 25.3.2014. Para 10 of the judgment of the Civil Court reads as under:-

“As a sequel to my findings recorded hereinabove, suit of the plaintiffs is decreed with costs and the recital contained in the impugned sale deed dated 27.4.2012 (Ex.D1) regarding sale of aforesaid specific khasra numbers by defendants No.2 to 4 in favour of defendant No.1, is held to be illegal, in-operative and not binding on the rights of the plaintiffs. The plaintiffs are also held entitled to the grant of perpetual injunction restraining defendant No.1 from taking possession of any specific khasra

number of the joint holding except by way of partition. Decree sheet be prepared accordingly. File, after due compliance be consigned to the records.”

It has also transpired, during the course of arguments, that the partition proceedings have been initiated between the parties and the same are pending.

In view of this factual background, this petition is liable to be allowed. Accordingly, this petition is allowed. Calendra dated 20.6.2012 (Annexure P1) and all subsequent proceedings arising thereto including order dated 4.10.2012 (Annexure P8), are quashed.

**(SABINA)
JUDGE**

January 16,2015

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