

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-7553 of 2013

.....

Date of decision:19.2.2015

Kashmir Singh

.....Petitioner

v.

State of Haryana and another

.....Respondents

....

Present: Mr. R.S. Mamli, Advocate for the petitioner.

Mr. Deepak Grewal, Deputy Advocate General, Haryana
for the respondent-State.

Dr. Anand Kumar Bishnoi, Advocate for respondent No.2.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for setting aside the impugned order dated 13.6.2012 (Annexure-P.1) passed by learned Sub Divisional Magistrate, Fatehabad and the impugned order dated 22.1.2013 (Annexure-P.2) passed by learned Additional Sessions Judge, Fatehabad.

Notice of motion has been issued in this case.

Mr. Deepak Grewal, learned Deputy Advocate General, Haryana has put in appearance on behalf of the respondent-State and Dr. Anand Kumar Bishnoi, learned counsel has appeared on behalf of respondent No.2 and contested this petition. Reply has also been filed by respondent No.1.

I have heard learned counsel for the petitioner and learned Deputy Advocate General, Haryana appearing for the respondent-State and

learned counsel for respondent No.2 and have gone through the record.

Learned counsel for the petitioner argued that vide calendra under Section 145 Cr.P.C., the Sub Divisional Magistrate, Fatehabad, held that FIR was registered in Police Station Bhattu Kalan on 14.11.2010. Learned Sub Divisional Magistrate in the order held that neither of the party has moved an application for partition before the Tehsildar, therefore, as per the judgment of Hon'ble Supreme Court in Tara Singh v. State of Haryana, 1986(3) CLJ 451, there is no use to proceed under Section 145 Cr.P.C. Because in the revenue record, both the parties are 'Khud Kasht Makbuja Malkan' and Smt. Saroj Rani and Sh. Kashmiri Lal are co-sharers, therefore, they have got right on each inch of the land.

Learned counsel for the petitioner argued that the Sub Divisional Magistrate has partitioned the property temporarily in the impugned order, which is illegal.

On the other hand, learned counsel for respondent No.2 argued that it was a temporary adjustment, which is to be remained in force subject to partition. He argued that respondent No.2 will file the partition proceedings before the revenue authorities. He also argued that all the civil suits are decided in favour of respondent No.2 and the petitioner is a person of criminal character as so many cases are pending against him.

After hearing learned counsel for the parties as well as the State counsel, I find that the impugned order passed by the learned Sub Divisional Magistrate for temporarily partitioning the property in the proceedings under Section 145 Cr.P.C. is illegal. The Sub Divisional Magistrate has no

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power to partition the property even temporarily as per the provisions of Sections 145 and 146 Cr.P.C. The partition proceedings are to be conducted as per law by the Collector i.e. Revenue Officer and not by the Executive Magistrate. Otherwise also, the perusal of provisions of Sections 145 and 146 Cr.P.C. shows that no such power has been given to SDM to partition the land even temporarily. The impugned order itself shows that the SDM is saying that there is no use to proceed under Section 145 Cr.P.C because in the revenue record both the parties are 'Khud Kasht Makbuja Malkan' and Smt. Saroj Rani and Sh Kashmiri Lal are co-sharers and they have got right on each inch of the land. The impugned order shows that none of the parties have even filed any application for temporarily partitioning the property in dispute. Under Section 145 Cr.P.C, such type of proceedings cannot be initiated. These proceedings under Section 145 Cr.P.C. are of preventive in nature only and the SDM is to pass the order to protect the possession etc. and to decide the dispute between the parties by appointing Receiver etc. so as to determine the actual possession of the subject of the dispute. In no way, the Sub Divisional Magistrate is authorized to partition the property temporarily between the parties to solve the dispute.

Therefore, the impugned order passed by the SDM is against the law and is illegal. The impugned order 22.1.2013 passed by learned Additional Sessions Judge, Fatehabad, dismissing the revision petition is also not as per law and both these orders are set aside.

Finding merit in the present petition, the same is allowed.

February 19, 2015.

hsp

(Inderjit Singh)
Judge