

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRM-M-5134-2015 (O&M)

Charanjit Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

2. CRM-M-5840-2015

Charanjit Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

Date of decision: 29.05.2015

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

PRESENT: Mr. RS Ghuman, Advocate for the petitioner (in both cases).

Mr. Gurveer Sidhu, AAG, Punjab.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. RS Athawl and Mr. Pratham Sethi, Advocates
for respondent No. 5.

R.P. NAGRATH, J.

By this common order CRM-M-5134-2015, (Charanjit Kaur Vs. State of Punjab and others) and CRM-M-5840-2015 of the same title are being disposed of as the common questions of facts and law arise in both these petitions. In the first petition, i.e. CRM-M-5134-2015 the

proceedings being held under Section 145 Cr.P.C. pertain to the land situated in Tehsil Phagwara, District Kapurthala and in the second petition the disputed land falls within the Sub Division, Garhshankar, District Hoshiarpur.

2. The petitioner has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. seeking quashing of Calendra bearing Report No. 13 dated 10.12.2014 (Annexure P-1) Police Station Sadar, Phagwara, District Kapurthala (in CRM-M-5134-2015) and Calendra bearing Report No. 15 dated 27.01.2015 (Annexure P-1) Police Station Mahalpur, District Hoshiarpur (in CRM-M-5840-2015) presented by the Station House Officer (SHO) of the concerned police stations under Section 145 Cr.P.C. along with subsequent proceedings arising therefrom. For brevity, the facts are being extracted from CRM-M-5134-2015.

3. Colonel Gurdev Singh (deceased) was entered as owner of a big chunk of land at both the places. The claim of private respondent No. 5-Anterpreet Kaur daughter of Colonel Gurdev Singh as asserted in Civil Suit No. 29 instituted on 09.05.2014 (Annexure P-8), was that she along with her sister-Simrat Kaur Cheema and mother-Gurpal Kaur are having the right by birth/marriage in the land held by Colonel Gurdev Singh as Karta of the Joint Hindu Family Coparcenary.

4. It is admitted case of the parties that Colonel Gurdev Singh was married to Gurpal Kaur on 02.06.1968 and two daughters, namely; Anterpreet Kaur-respondent No. 5 and Simrat Kaur Cheema were born from the wedlock. The proceedings under Section 145 Cr.P.C. were

initiated at the instance of respondent No. 5.

5. The version of petitioner is that Colonel Gurdev Singh obtained a divorce decree against Gurpal Kaur in H.M.A. Case No. 77 dated 15.11.1995 decided on 06.10.1997. Copy of that judgment is Annexure P-7. The claim made in the said petition was that Gurpal Kaur had deserted Colonel Gurdev Singh since the year 1982. It is the petitioner's case that her marriage with Colonel Gurdev Singh was solemnized on 17.12.1997 as per Sikh religious rites and ceremonies after the decree of divorce was granted against the previous wife. It was stated that petitioner had been residing with Colonel Gurdev Singh till his death taking place on 21.04.2014. Colonel Gurdev Singh also executed a registered Will of his estate on 03.03.2014 in favour of the petitioner in his sound disposing mind. Therefore, it was claimed that after the death of Colonel Gurdev Singh his entire estate came into possession of the petitioner.

6. Respondent No. 5-Anterpreet Kaur while opposing the prayer in the instant petition stated in her reply that she shifted to Canada in the year 1994 along with her mother. Respondent No. 5 used to visit India and stay with her father during her visit to India. It was further stated that Colonel Gurdev Singh was residing alone in India after his retirement in the year 1990 and used to avail services of the petitioner who was a divorcee, as maid. It was also alleged that Colonel Gurdev Singh died on 21.04.2014 under suspicious circumstances for which respondent No. 5 made various complaints for registration of FIR. The facts mentioned in the Will set up by the petitioner contain averments

with regard to incorrect age, wrong place of residence, incorrect status of his marriages, incorrect name of his own children etc. There was no reference of the alleged adoption of Jagdeep Singh @ Lucky son of the petitioner from her previous husband, by Colonel Gurdev Singh in the Will. The Will was registered at Garhshankar and Mehnga Singh, Advocate of Nawanshahar/SBS Nagar, Mohali is a witness to the Will whereas Colonel Gurdev Singh was residing in village Chaheru, Tehsil Phagwara, District Kapurthala. The thumb impressions of Colonel Gurdev Singh on the backside of the Will are also missing. Respondent No. 5 further stated that petitioner also relied upon an affidavit dated 26.02.2014 (Annexure R-5/6) allegedly executed by Colonel Gurdev Singh wherein the petitioner has tried to project that deceased Gurdev Singh had dis-inherited his wife and her daughters. Strangely the stamp paper of this document was purchased on 17.02.2014, executed on 26.02.2014 and attested on 28.02.2014. In the affidavit a different version was stated that wife of Colonel Gurdev Singh had deserted him since the year 1980. Further Mehnga Singh, Advocate of SBS Nagar, the same Advocate has again identified the executant Gurdev Singh on the affidavit. This means that Gurdev Singh made three trips from Chaheru to SBS Nagar to purchase the stamp paper, then to execute it and then to get it attested. It was, thus, suggested that Mehnga Singh, Advocate was having blank signed papers from Colonel Gurev Singh and mis-utilized the same.

7. In the reply filed by on behalf of the State, it was stated that an enquiry into the complaints dated 10.10.2014 and 20.10.2014 made by

Anterpreet Kaur-respondent No. 5 against the petitioner and her son Jagdeep Singh was held by the Superintendent of Police, Phagwara who recommended that the matter can result in serious crime at any time and it was necessary to initiate proceedings under Section 145 Cr.P.C. That enquiry report was approved by the Senior Superintendent of Police, Kapurthala and presented before the Sub Divisional Magistrate, Phagwara. It was further stated that petitioner and respondent No. 5 are aggressive against each other and the present situation is serious and apprehension of dispute over the possession of property prevails at the spot, which necessitated the filing of Calendra under Section 145 Cr.P.C.

8. Annexure R-1/T is the enquiry report attached with the reply whereunder it was found that daughters of Colonel Gurdev Singh with their mother started residing in Canada with their mother. The relations of Colonel Gurdev Singh (deceased) father of respondent No. 5 became strained with Gurbal Kaur (mother of respondent No. 5) and ultimately, marriage was dissolved by divorce decree on 29.10.1997. It was further reported that Colonel Gurdev Singh solemnized second marriage on 17.12.1997 with the petitioner who was having a son from the previous marriage. She had obtained divorce from her previous husband in the year 1996. It was ultimately found that respondent No. 5 was claiming her right over the movable and immovable property of Colonel Gurdev Singh whereas petitioner along with her son were claiming their right on the basis of a registered Will. Mutation of the property of Colonel Gurdev Singh had not been sanctioned and the Civil Court had ordered the status quo to be maintained.

9. I have heard learned counsel for the petitioner, learned State counsel, learned senior counsel for respondent No. 5 and perused the paper-book quite extensively with their able assistance.

10. Learned petitioner's counsel contended that the assertion of respondent No. 5 that petitioner was a maid servant of Colonel Gurdev Singh can be *prima facie* ruled out from numerous record relied upon by the petitioner. Annexure P-2 is the copy of certificate dated 19.03.2001 issued by Registrar of Marriages, Phagwara, certifying that marriage of Gurdev Singh and the petitioner was solemnized on 17.12.1997. Annexure P-3 is the copy of passport of Gurdev Singh in which name of the petitioner was entered as his wife and this passport was issued on 15.01.2001. Annexure P-4 is the copy of pass-book of the joint account opened in the name of Colonel Gurdev Singh and the petitioner on 16.06.1998 in the Kapurthala Central Co-operative Bank Ltd. and Annexure P-5 is the copy of voter's card of the petitioner issued in the year 2006 with particulars of the petitioner as wife of Colonel Gurdev Singh. Apart from aforesaid record, the petitioner has also placed on record the large number of photographs Annexures P-26 and P-27 for ruling out the contention that the petitioner was only staying with Colonel Gurdev Singh as his maid servant. There is also Annexure P-20 the copy of Ration Card of the family issued on 25.05.2000 showing head of the family as Colonel Gurdev Singh, the petitioner as wife and Jagdeep Singh the son.

11. The complaints made by respondent No. 5 that she suspected foul play in the death of Colonel Gurdev Singh were enquired into by

Superintendent of Police, Sub Division, Phagwara and it was found that there was no truth in the complaints made by respondent No. 5 and the parties were directed to pursue their remedy before the Civil Court. Copy of enquiry report dated 11.08.2014 is Annexure P-21 which was approved by the Senior Superintendent of Police, Kapurthala vide letter Annexure P-22.

12. Learned senior counsel for respondent No. 5 vehemently contended that the *ex parate* divorce decree was obtained by the deceased by playing fraud and mis-representation as the address of Gurpal Kaur mentioned in the said petition was resident of village and Post Office Butala, Tehsil Baba Bakala, District Amritsar whereas indisputably, Gurpal Kaur was living at Canada along with her daughters. Moreover, the said decree has since been set aside on 18.09.2014 in an application filed Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure filed on 01.07.2014 (Annexure P-15) and thereafter, the main petition filed under Section 13 of the Hindu Marriage Act, stood withdrawn on 19.09.2014. It is, thus, submitted that as on date there is no valid divorce decree and Gurpal Kaur mother of respondent No. 5 continues to be the legally wedded wife of Colonel Gurdev Singh.

13. It may be seen that in application Annexure P-15 the deceased was impleaded through his daughters, namely; Simrat Kaur Cheema and Anterpreet Kaur as his legal heirs. There was no contest by these daughters to the said application the same was allowed on 18.09.2014 vide order Annexure P-16, passed by learned Additional District Judge, Kapurthala. Thereafter the statement was made by the

legal representatives of Colonel Gurdev Singh that the petition for divorce after setting aside the *ex parte* decree may be dismissed as withdrawn and consequently, the order dated 19.09.2014 (Annexure P-17) was passed.

14. I am of the considered view that it would be a quite debatable issue if the divorce decree could be set aside after about 17 years without impleading the petitioner as a necessary respondent. The petitioner has since filed an application dated 10.11.2014 (Annexure P-18) before the Additional District Judge, Kapurthala for review of the orders dated 18.09.2014 and 19.09.2014 which is still pending adjudication. It was averred in the said application that Gurpal Kaur visited India in the year 1999 i.e. after the divorce decree and came to know about the marriage of petitioner with Colonel Gurdev Singh and never raised any objection.

15. Learned senior counsel for respondent No. 5 also referred to Annexure R-5/3 (colly.) copy of Ration Card issued in the name of Gurpal Kaur dated 07.10.2014 by the District Defence Services Welfare Officer, Jalandhar, describing her as the wife of Colonel Gurdev Singh. Similarly, the identity card issued by the said officer in respect of widow of Ex-servicemen is also a part of this document.

16. I am of the view that issuance of that document cannot be of much importance at this stage because vide letter dated 05.03.2015 (Annexure P-24), the Army Authorities have issued the certificate of family pension in favour of the petitioner, intimating that as per record in respect of late Colonel Gurdev Singh, Gurpal Kaur was the wife of the

officer at the time of his retirement. The officer had divorced Gurpal Kaur vide decree of divorce dated 06.10.1997 and he had re-married with Charanjit Kaur on 17.12.1997. This is a process which the Army Authorities adopted on the request to issue a Corrigendum Pension Payment Order according to the aforesaid document.

17. The endorsement on the passport Annexure R-5/13 of Gurpal Kaur would show that she visited India in the year 1999. Therefore, the above facts would show that there is a serious dispute with regard to validity of marriage of the petitioner with Colonel Gurdev Singh despite there being abundant evidence in her favour and also the dispute about execution of Will in favour of the petitioner. These matters require adjudication in the civil suit which is already pending.

18. The main question now would be the effect of civil suit instituted on 09.05.2014 by respondent No. 5, her sister and mother (plaintiffs) on the Calendra presented under Section 145 Cr.P.C. before the Executive Magistrates of the two places.

19. Before discussing the proposition of law involved in this case, a brief reference to the facts agitated and the prayer made in the civil suit Annexure P-8 instituted on 09.05.2014 would be important. The plaintiffs have filed the suit for declaration to the effect that they are owners in possession in equal shares of the land of late Colonel Gurdev Singh situated at both the places i.e. at Tehsil Phagwara, District Kapurthala and Tehsil Garhshankar, District Hoshiarpur and for permanent injunction restraining the defendants therein i.e. petitioner and Mehnga Singh, Advocate from forcibly dispossessing the plaintiffs or

interfering in their lawful possession over the land in dispute and further to prohibit the defendants from selling, alienating or transferring the suit land in any manner. It was stated that marriage of defendant No. 1-Charanjit Kaur (petitioner herein) with Colonel Gurdev Singh (deceased) was illegal, invalid and void since the marriage of deceased with plaintiff No. 1-Gurpal Kaur was still subsisting. The Will setup by the petitioner was also attacked.

20. Annexure P-9 is the copy of application filed under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking *ad interim* injunction during the pendency of suit. Prayer for *ad interim* injunction was for restraining the defendants from forcibly dispossessing or interfering in the lawful/peaceful possession of the plaintiffs and further restraining and prohibiting the defendants from selling, alienating or transferring the same in any manner during the pendency of suit. The learned Civil Court passed the order dated 09.07.2014 (Annexure P-10) and the defendants were directed to maintain the status quo regarding alienation and/or transfer of the suit property as fully detailed in the head note of the plaint. Vide order dated 09.07.2014 (Annexure P-11) the *ex parte* status quo was extended till the next date. Annexure P-12 is the copy of order dated 08.12.2014, passed by the Civil Court framing the issues and additional issues were framed vide order dated 05.01.2015 (Annexure P-13). The status quo earlier granted was extended till the final disposal of the case as per order Annexure P-13. Annexure P-14 is the copy of written statement filed by the petitioner and co-defendant. With the aforesaid background, whether it was feasible to

entertain and continue with the proceedings under Section 145 Cr.P.C. is the moot question?

21. The law on the subject has been settled by Hon'ble the Supreme Court in **Ram Sumer Puri Mahant Vs. State of U.P. and others, 1985 (1) SCC 427**. Hon'ble Supreme Court held as under:-

“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.”

22. Learned senior counsel for respondent No. 5, however, referred upon judgment of this Court in **Mukhtiar Singh Vs. State of Punjab, 1997 (3) RCR (Criminal) 14.** In that case, civil suit in respect of a property in question was pending. At one point of time the Civil Court granted the stay order in favour of the plaintiffs but vide order dated 12th February, 1997, the Civil Court specifically held as under:-

“Therefore, in the facts and circumstances of the case, the affidavits cannot be given much weight at this stage. The documents on the file are clearly favouring the case of the plaintiffs. As the parties are yet to lead evidence, therefore, it will meet the ends of the justice if both the parties are directed to maintain status quo regarding possession of land in suit till the disposal of the present case.”

23. Later on Calendra under Section 145 Cr.P.C. in the Court of Executive Magistrate by the State through SHO, Police Station City, Patti against Gurdip Kaur and others was presented and the Magistrate, feeling satisfied that the dispute was likely to take place concerning the breach of peace between the parties and invoking the emergency provisions, he appointed Tehsildar, Patti, as receiver with a direction to take possession of the land during the pendency of the proceedings. One of the contentions among others raised by the petitioner was that in the light of civil suit and the order dated 12.02.1997, the action on the part of the police as well as the action on the part of Executive Magistrate was

nothing but an abuse of the process of law and the petitioner(s) were not justified in availing of the remedy under the proviso to Section 146 Cr.P.C. Reliance was placed upon **Ram Sumer Puri's case (supra)**.

24. It was observed by this Court in **Mukhtiar Singh's case (supra)** that to prevent breach of peace with regard to immovable property, the criminal proceedings under Section 145 Criminal Procedure Code can be and should be invoked in the circumstances of the case. It was further observed that the principle held by Hon'ble Supreme Court in **Ram Sumer Puri's case (supra)** would be applicable where the civil suit regarding possession has been adjudicated upon.

25. The above view of this Court in **Mukhtiar Singh's case (supra)** observed by Hon'ble Mr. Justice R.L. Anand (as he then was) came up for discussion in **Ram Niwas and others Vs. Bhagirath and others, 2009 (4) RCR (Criminal) 579**, a later judgment of this Court. The facts of that case were exactly similar. The petitioners in that case filed a civil suit wherein the order of status quo was passed. The entire case law was discussed by this Court by also referring to the provisions of Section 107/151 Cr.P.C. and the provisions of appointment of receiver etc. under the Code of Civil Procedure. It was held as under:-

“.....With utmost humility and great respect to his lordship (Hon'ble Mr. Justice R.L. Anand) in the face of the catena of the rulings referred to by the learned counsel for the respondents, it will be difficult for me to follow the observations rendered by his Lordship. To conclude finally, if the petitioners were

dis-satisfied for one or the other reason with the status-quo order passed by the learned trial Court, they could have recourse to either the modification of such order or sought appointment of receiver as well as attachment of the disputed land. In view of this, the learned Sub Divisional Magistrate, Mahendergarh was not competent and justified to initiate the proceedings under Sections 145/146 of Cr.P.C.”

26. In **Amresh Tiwari Vs. Lalta Prasad Dubey and another, 2000 (4) SCC 440**, respondent No. 1 had filed a civil suit for declaration of title, possession and for injunction. In the said suit an order was passed to maintain status quo. While the civil suit was pending the recourse was taken to the proceedings under Section 145 Cr.P.C. The Hon'ble Supreme Court under the circumstances held it was unable to accept the submission that the principles in **Ram Sumer Puri's case (supra)** would only apply if the Civil Court has already adjudicated on the dispute regarding the property and given a finding. It was further held that 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 should not continue. The Hon'ble Supreme Court further held as under:-

“Reliance has been placed on the case of Jhummal alias Devandas v. State of Madhya Pradesh and others, 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 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 Sumers' 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.”

Therefore, the Hon'ble Supreme Court allowed the appeal and set aside the order of the High Court and it was held that SDM was right in discontinuing the proceedings under Section 145 Cr.P.C.

27. It seems that respondent No. 5 did not press upon the prayer for *ad interim* injunction with regard to possession before the Civil Court in the already instituted suit, clearly with an idea of taking recourse to proceedings under Section 145 Cr.P.C. for redressal of the grievances by the means other than legal. If the Civil Court had not adverted to the prayer for *ad interim* injunction, respondent No. 5 and other plaintiffs in the suit could always press upon such a prayer even now and get an adjudication on the question. They could also seek prayer for appointment of the receiver etc. under the provisions of Criminal Procedure Code to preserve the property by making out a case for such a relief, if permissible.

28. In **Balwinder Singh Vs. State of Punjab, 2000 (4) RCR (Criminal) 838** this Court observed that from the perusal of revenue record, it was found that the case involves intricate disputed question of fact. Even the possession of the respective parties cannot be said to be clearly established on the basis of the pleadings. This can only be done through the Civil Court by taking appropriate remedy for which civil suit was already pending. It was held that the proceedings under Section 145 Cr.P.C. would be inappropriate on the facts and circumstances of the case, therefore, this Court allowed the petition and consequently, the impugned orders were quashed.

29. In the instant case, even in the absence of Will, if the petitioner shows herself to be legally wedded wife of Colonel Gurdev Singh for which she has relied upon so many documents, the petitioner and the daughters of Colonel Gurdev Singh may be co-sharers but respondent No. 5, Gurpal Kaur and other daughter of Colonel Gurdev Singh having restored to the remedy by filing a civil suit, the proceedings under Section 145 Cr.P.C., therefore, could not have been instituted at the instance of respondent No. 5. This Court in **Gain Chand and others Vs. State of Haryana and others, 2005 (3) RCR (Criminal) 958**, quashed the proceedings under Section 145 Cr.P.C. simply on the ground that the dispute with regard to property was already pending in Civil Court.

30. There is serious dispute between the parties over possession of the disputed land. There is, however, nothing to suggest that after the status quo by way of *ad interim* order was initially granted by the Civil Court in July, 2014, there had been any untoward incident of over

possession for enabling the official respondents to initiate proceedings under Section 145 Cr.P.C.

31. Strong reliance was, however, placed by learned senior counsel for respondent No. 5 to **Prakash Chand Sachdeva Vs. State and another, 1994 (1) SCC 471.** In that case, the dispute was between father and son and the appellant-father was stated to have been forcibly thrown out of the house. The respondent claimed right in the said house on the ground that the property was ancestral in nature. The appellant-father also filed a civil suit for injunction in which status quo order was granted. But status quo of what? The father had already been thrown out of possession. It was further held that, in view the fact that proceedings under Section 107 Cr.P.C. were dropped, the Sub Divisional Magistrate, also dropped the proceedings under Section 145 Cr.P.C. That order passed by the Magistrate was upheld by the High Court on the reasoning that appellant having sought civil remedy the proceedings under Section 145 Cr.P.C. could not continued. Hon'ble the Supreme Court referred to the principles held in **Ram Sumer Puri's case (supra)**, that remedy in Civil Court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal Court 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 litigations.

32. It was further held by Hon'ble Supreme Court in **Prakash Chand's case (supra)**, that normal rule is as stated by the Supreme Court in Puri's case. That was a suit based on title and that could be decided by civil Court only. That ratio cannot apply where there is not dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly or unlawfully and ask the other to act in accordance with law. It was further held that where the dispute is not on the right to possession but on the question of possession, the Magistrate is empowered to take cognizance under Section 145 Cr.P.C. There being no dispute of title between the appellant and respondent the only claim to be decided was if the appellant had been forcibly and wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the appellant has sought the remedy in civil suit without applying the mind if that decision was in any way helpful for dropping the proceedings. In the said case Hon'ble Supreme Court further held as under:-

“In equity and justice the appellant has still stronger case. On own showing of the respondent the property is ancestral. The behaviour of the son is cruel and unjust. The learned Counsel for the respondent during arguments stated that the son was willing to keep his father with him. What a charitably disposed son the respondent appears to be. He is

willing to permit the father to live with him but not agreeable to permit him to occupy a separate portion which was in his possession. In the light of the averments made by the son in the affidavit filed in this Court and the alleged misbehaviour by him and his family members this appears to be only an excuse for preventing the father from living in peace in the end of his life.”

33. So the aforesaid judgment would not support respondent's case because the pending suit before the trial Court is not only with regard to claim of possession but also for the title and injunction as already observed.

34. In the light of facts of instant case also this Court would be inclined to quash the Calendras and the subsequent proceedings. It is apparent that application for setting aside *ex parte* divorce decree was filed after 17 years and that too without impleading the petitioner as a necessary respondent. Only the daughters of Gurdev Singh who are co-plaintiffs with Gurpal Kaur in the civil suit, were impleaded as LR's of deceased Colonel Gurdev Singh. The daughters admitted the claim for setting aside the *ex parte* decree of divorce. In view of the aforesaid discussion, I find that the proceedings under Section 145 Cr.P.C. is not but a sheer abuse of the process of Court. The appropriate remedy for redressal of grievances would have been to take recourse before the Civil Court with regard to appointment of receiver or to make an exact prayer for *ad interim* injunction specifically qua possession on making out a

prima facie a case under the relevant provision of Code of Civil Procedure.

35. It is pertinent to note that when the instant petition was listed on 16.02.2015, before a co-ordinate Bench, notice of motion was issued and learned Sub Divisional Magistrate, was directed to adjourn the case beyond the date fixed for awaiting further directions of this Court. The Sub Divisional Magistrate, Phagwara, passed an order dated 16.03.2015 (Annexure P-19) with the observations that he was unable to satisfy himself as to which party was in possession of the land in dispute and appointed Tehsildar, Phagwara as the receiver. When passing of the said order was brought to the notice of this Court on 07.04.2015, the operation of the same was stayed. With regard to passing of the order by the Magistrate, contempt proceedings bearing COCP No. 902 of 2015 have also been initiated against him at the instance of petitioner.

36. In view of the aforesaid discussion, both the petitions are allowed and the impugned Calendars bearing Rapat No. 13 dated 10.12.2014 (Annexure P-1) at Police Station Sadar, Phagwara, District Kapurthala (in CRM-M-5134-2015) and Rapat No. 15 dated 27.01.2015 (Annexure P-1) at Police Station Mahalpur, District Hoshiarpur (in CRM-M-5840-2015) and the subsequent proceedings arising therefrom are quashed and consequently, the order dated 16.03.2015 (Annexure P-19) passed during the pendency of instant petition is also quashed.

May 29, 2015
rishu

(R.P. NAGRATH)
JUDGE