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

CRM-M-30470 of 2011 (O&M)

Date of decision: December 06, 2016

Suraj Mal and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. K.S. Dhaliwal, Advocate for the petitioners.

Mr. Surender Singh, AAG Haryana.

Mr. Harish Bhardwaj, Advocate for respondents No.2 to 4.

A.B. CHAUDHARI, J

The present petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') is directed against the order dated 12.07.2011 (P-9) passed by the Sub Divisional Judicial Magistrate, Safidon (for short 'SDJM, Safidon) and confirmed vide order dated 13.09.2011 (P-10) passed by the Additional Sessions Judge, Jind, Haryana, arising out of Kalandra dated 15.06.2011 (P-4).

FACTS

The total land area of 27 acres situated at Village Bhambhewa, Tehsil Safidon, District Jind was jointly held by three brothers, namely, Suraj Mal, Raja and Wazir, all sons of Chandgi cast Jat, Village Bhambhewa. Following is the description of the land:-

“land bearing Muraba No.44, Killa No.1, 8, 9, 10, 11, 12, 13, Muraba No.46, Killa No.11, 12, 20, 21/1, Muraba

No.47, Killa No.15, 16, 17, 24, 25, Muraba No.48, Killa No.4, 5, 6, 7, Muraba No.68, Killa No.12/2, 13/2, 18/2, 19, 20, 22/2, 23/1, Muraba No.16, Killa No.1, 2/1, 9/2, 10, Muraba No.162, Killa No.5, 6, Khasra No.629, 637, 691, 36 Parts, total area 214 Kanal 8 Marla situated in village Bhambhewa, Tehsil Safidon, District Jind.”

Wazir had sold his undivided share of 9 acres of land to one Harish Chander son of Sh. Ram Kalan, resident of Snot, Delhi, a few years back before the dispute arose. Respondents No.2 to 4 (described as party No.1 in the proceedings under Section 145 Cr. P.C. before the SDJM, Safidon instituted on Kalandra on 16.06.2011) had purchased the said 9 acres of land from Harish Chander vide sale-deed No.231 dated 20.05.2011 and also came into possession thereof, ofcourse jointly. The remaining two brothers, namely, Suraj Mal and Raja (described as party No.2 in the above proceedings), thus, had their share 18 acres together after Wazir had sold out 9 acres of land as above. The dispute about the possession arose and as such, upon filing of the reports to the Police Station, the Station House Officer, Police Station Pillukhera, prepared and presented a Kalandra under Section 145 Cr. P.C. in the Court of SDJM, Safidon. The proceedings were accordingly registered and tried. After hearing both the sides, learned SDJM, Safidon, vide order dated 12.07.2011, under Section 146 Cr. P.C., appointed Tehsildar Pillukhera as Receiver over the entire suit property, i.e. 27 acres of land including that of Suraj Mal and Raja who are the petitioners No.1 and 2 before this Court. This order was put to challenge in revision before the Additional Sessions Judge, Jind

in revision petition No.140 dated 16.07.2011 which was decided on 13.09.2011 and the revisional Court dismissed the revision petition as not maintainable. Hence, the present petition.

SUBMISSIONS:-

Learned counsel for the petitioners has submitted that there is absolutely no justification for the SDJM, Safidon acting in the proceedings under Section 145 Cr. P.C. to appoint Tehsildar Pillukhera as Receiver over the entire property, namely 27 acres when the party No.1 was the owner of only 9 acres of land which is an admitted fact. He further, contended that even if the entire 27 acres of land was jointly held, i.e. without there being any partition, there was no justification whatsoever to appoint Receiver over the entire 27 acres of land, thereby, depriving the petitioners (party No.2) of their right to cultivate their respective shares of land in the amalgam of 27 acres of land. Accordingly to the learned counsel for the petitioners, appointment of Receiver has deprived the petitioners of their right to cultivate their land and earning their livelihood. He, therefore, submitted that the petitioners would be satisfied, if 18 acres of land held by the two brothers (party No.2), namely Suraj Mal and Raja, is freed from the possession of the Receiver. He, therefore, prayed for allowing the present petition.

Per contra, learned counsel for the respondents No.2 to 4 submitted that no fault can be founded with the impugned order dated 12.07.2011 passed by the SDJM, Safidon, because the entire 27 acres of land has been jointly held and respondents No.2 to 4 (party No.1)

are the legal owners of the 9 acres of the land out of the total 27 acres of land by virtue of sale-deed dated 20.05.2011. According to him, in the absence of any partition, it was not possible for SDJM, Safidon to appoint Receiver on the particular piece of 9 acres of land and therefore, the impugned order does not deserve any interference. He also submitted that as a matter of fact, respondents No.2 to 4 (party No.1) had offered to be in possession of the inferior quality of land out of the said 27 acres of land to the extent of 9 acres. Finally, he prayed for dismissal of the petition.

CONSIDERATION:-

Heard learned counsel for the rival parties at length and perused the impugned order as well as the entire record. The facts are not in dispute that respondents No.2 to 4 (party No.1) had purchased 9 acres from the undivided share of Wazir (third brother of party No.2), i.e. two brothers together, namely Suraj Mal and Raja. It is also not in dispute that respondents No.2 to 4 had absolutely no concern with the remaining 18 acres of the land belonging to the petitioners' brothers, namely Suraj Mal and Raja and it was only the land belonging to undivided share of Wazir to the extent of 9 acres, i.e. respondents No.2 to 4 have become owner thereof by the aforesaid sale-deed. Though, it is true that the property is jointly possessed by all these owners and there is no partition of the land, the moot question that arises for consideration is whether SDJM, Safidon was justified in appointing Receiver over the entire 27 acres of land when admittedly, party No.1 was the owner of only 9 acres thereof and thus, depriving the

petitioners of their lawful right to cultivate from 18 acres of land.

In my considered opinion, SDJM, Safidon has made a grave mistake in appointing Receiver over the entire 27 acres of land. If respondents No.2 to 4 had with open eyes endeavoured to purchase 9 acres of undivided land out of 27 acres of total land, it was for them to take steps in the Civil Court to file a suit for partition and get the land property divided. The petitioners cannot be allowed to find summary solution by asking for appointment of Receiver over the entire 27 acres of land as their right to enjoy possession was only on undivided 9 acres of land. The petitioners cannot be punished in the manner as has been done by the learned SDJM, Safidon by appointing Receiver even on their 18 acres of land. I, therefore, find that the impugned order made by learned SDJM, Safidon must be held to be illegal, improper and atrocious.

Having thus, found as above that respondents No.2 to 4 had purchased 9 acres of undivided land at their risk, the next question is about the protection of interest of respondents No.2 to 4 qua their claim. It is well settled legal position that the proceedings under Section 145 Cr. P.C. are not made for final adjudication of the civil rights of the parties. The proceedings as well as orders under Section 145 Cr. P.C. obviously are subject to the outcome of the adjudication of civil rights of the parties by the competent Court. As stated earlier, respondents No.2 to 4 ought to have got determination of their exact share of 9 acres of land duly identified out of the chunk of 27 acres of land in a suit for partition. But then since respondents No.2 to 4 have

paid valuable consideration for purchase of 9 acres of land, their interest to the extent possible, deserves to be protected and as already held, the petitioners cannot be deprived of their right to cultivate 18 acres of land by appointment of Receiver.

Learned counsel for respondents No.2 to 4 stated that he had made a statement before the Courts below that in the peculiar situation pending adjudication by the civil Court, respondents No.2 to 4 would like to have possession of 9 acres of land, even if of inferior quality from the chunk of 27 acres of total land without prejudice to the rights of the parties.

I think, the statement made by the learned counsel for respondents No.2 to 4 is fair and accordingly, effective arrangement can be worked out instead of depriving respondents No.2 to 4 completely from having possession of 9 acres of land. Thus, subject to the decision or decree in the civil Court, the matter is required to be sent back to SDJM, Safidon to ask the petitioners which 18 acres of land out of 27 acres of total land, they would like to be in possession and then to give in possession the remaining 9 acres of land to respondents No.2 to 4. The petitioners will have to be given the preferential treatment because respondents No.2 to 4 with open eyes endeavoured to purchase 9 acres of land held jointly and which was undivided. In that view of the matter, following order is inevitable:-

ORDER

- (i) CRM-M-30470 of 2011 is partly allowed;
- (ii) Impugned orders dated 12.07.2011 (P-9) passed by

the Sub Divisional Judicial Magistrate, Safidon (for short 'SDJM, Safidon) and dated 13.09.2011 (P-10) passed by the Additional Sessions Judge, Jind, Haryana are quashed and set aside;

(iii) The proceedings before the learned SDJM, Safidon in case No.7/EX, instituted on 16.06.2011, are remitted to the learned SDJM, Safidon for giving in possession 18 acres of land out of 27 acres of land to the petitioners as per their choice and thereafter, to give in possession of 9 acres of land to respondents No.2 to 4 after hearing all the concerned parties;

(iv) Learned SDJM, Safidon, thereafter, shall be entitled to fix a date of handing over of possession of the land as stated in the earlier part of the order looking to the crops etc. in the land and till then, the Receiver shall continue in possession;

(v) In any case, the exercise stated in the present judgment shall be completed before 28.02.2017. The entire exercise shall be subject to the ultimate adjudication in the suit in the civil Court and without prejudice to the rights of any of the parties to the litigation;

(vi) The parties shall appear before the SDJM, Safidon on 23.01.2017 and shall abide by the further instructions from the learned SDJM, Safidon who shall expeditiously deal with the matter;

(vii) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

December 06, 2016

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No