

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38577 of 2017(O&M)

Date of Decision: 17.09.2018

Jangir Singh & ors.

....Petitioners

Versus

State of Punjab & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. N.S. Shekhawat, Advocate, for the petitioners.

Mr. Harpreet Multani, AAG, Punjab.

Mr. NS Sodhi, Advocate, for respondent No.5.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C, prayer has been made for quashing Rapat No.19, dated 07.06.2017 filed under Section 145 Cr.P.C (Kalandra Annexure P-3) and order dated 04.10.2017 (Annexure P-4) of Sub Divisional Magistrate, Guruharsahai, taking cognizance on the same and appointing respondent No.3 as Receiver under Section 146 Cr.P.C, thereby depriving the petitioners from their possession over the land in dispute.

Briefly, petitioner No.2 Darbara Singh is a co-sharer in the land in dispute to the extent of 5/9th share out of a total land measuring 54 kanals 7 marlas detailed in para 2 of the petition situated in Village Malsian, Tehsil Guruharsahai, District Ferozepur. Contesting respondent No.5 is also co-sharer in it to the extent of 7/18th share as per jamabandi for the year 2011-2012 (Annexure P-1). In order to get the possession from the petitioners, respondent No.5 moved application dated 25.04.2017(Annexure P-2) to Senior Superintendent of Police, Ferozepur, admitting the possession of the petitioners over the land in dispute and that petitioners had sown paddy crop

therein, ready to harvest. The said application (Annexure P-2) was referred by Senior Superintendent of Police, Ferozepur to Deputy Superintendent of Police, Guruharsahai, who, after recording rapat dated 07.06.2017, recommended proceedings under Section 145 Cr.P.C. and referred the matter to Sub Divisional Magistrate, Guruharsahai, District Ferozepur, to take appropriate action on Kalandra/rapat (Annexure P-3). Pursuant thereto, Sub Divisional Magistrate, Guruharsahai passed impugned order dated 04.10.2017 (Annexure P-4), appointing respondent No.3 as Receiver under Section 146 Cr.P.C.

Learned counsel has referred Rachhpal Singh Vs. State of Haryana & ors., 1990(2) RCR (Criminal) 566, Jasvir singh & ors. Vs. State of Punjab & ors., 2008(4) RCR (Criminal) 466, Bawa Singh & ors. Vs. State of Punjab & ors., 2012 (3) RCR (Criminal) 348 and Ashok Kumar Vs. State of Uttarakhand & ors., 2013 (1) RCR (Criminal) 961, to contend that the petitioners are in settled possession of their land in dispute. Partition proceedings are already pending between the parties. Therefore, Sub Divisional Magistrate, Guruharsahai, was not competent to pass the impugned order, appointing respondent No.3 as a Receiver without satisfying three ingredients, namely,:-i) that there was a case of emergency; ii) none of the parties in settled possession; iii) or was not in position to decide as to which of them was in possession.

Since Sub Divisional Magistrate, Guruharsahai without satisfying himself qua above three ingredients, under some political influence, passed the impugned order, despite the fact that respondent No.5 Dalwinder Kaur herself has admitted possession of petitioners over the land in dispute in her application (Annexure P-2). Both the parties are co-sharers. Therefore,

the impugned order. The best course for respondent No.5 was to file a civil suit for partition or to pursue partition proceedings, which are already pending between the parties.

On the other hand, learned counsel for contesting respondent No.5 has vehemently opposed the above submissions of learned counsel for the petitioners.

Having given thoughtful consideration to the submissions made by both the sides, this Court finds that this petition merits acceptance, in view of the admission of respondent No.5 in her application dated 25.04.2017 (Annexure P-2) qua possession of the petitioners over the disputed land. That apart, partition proceedings are already pending between the parties. Therefore, Sub Divisional Magistrate, Guruharsahai was not empowered and competent to pass any order qua possession of the disputed property and appointing respondent No.3 as Receiver, ignoring the admission of respondent No.5 qua possession of the petitioners over the land in dispute.

In view of above, the petition is allowed. Impugned order (Annexure P-4) is set aside and Kalandra/Rapat (Annexure P-3) is rejected.

17.09.2018

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Whether speaking/reasoned
Whether Reportable

**(RAMENDRA JAIN)
JUDGE**

Yes/No
Yes/No