

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

Sr. No.250

CRM-M-40423-2017 (O&M)

Date of decision : 16.05.2018

Bhajan Singh

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Shiv Kumar, Advocate, for the petitioner.

Mr. K.S. Sidhu, DAG, Punjab.

Mr. Satbir Rathore, Advocate, for respondent Nos.4 to 6.

SUDHIR MITTAL, J.

The petitioner-Bhajan Singh son of Nirmal Singh was co-owner alongwith his brother, Jagdish Singh son of Nirmal Singh of 58 kanals of land situated in three villages i.e. Jhang, Jamalpur and Puro Chalk. In village Jhang, the land jointly owned was to the extent of 16 kanals, in village Jamalpur to the extent of another 16 kanals and in Puro Chalk to the extent of 26 kanals. Vide separate sale deeds dated 11.03.2013, respondent Nos.5 and 6 purchased the share of Jagdish Singh son of Nirmal Singh in all three villages. Respondent No.6-Kanchan wife of Kamal Dev purchased 7 kanals and 6 marlas in village Jhang and respondent No.5-Raj Rani wife of Prem Singh, purchased 8 kanals in village Jamalpur as well as 12 kanals and 12 marlas in village Puro Chalk. The sale deeds placed on record show that the sale was of shares and not of specific khasra number.

2. It appears that respondent Nos.5 and 6 sought partition of the joint land with the petitioner and other co-sharers. Soon after the purchase of land, the learned Assistant Collector First Grade, settled the mode of partition, vide separate orders dated 05.04.2016, in respect of each of the three villages. The petitioner challenged the same vide appeal, which was dismissed. His revision petition has however, been entertained by the Commissioner (Appeals), Jalandhar Division and stay of partition proceedings has been granted. It is also relevant to point out that it is recorded in the sale deeds that physical possession was handed over to the vendees on the date of the sale deed.

3. Thereafter, on the application of respondent No.4, the police prepared Kalandra dated 31.05.2017, under Section 145 Cr.P.C and submitted it in the Court of the Executive Magistrate. The petitioner filed his reply and vide order dated 25.09.2017, the learned Executive Magistrate ordered the attachment of the land in dispute under Section 146 Cr.P.C. and appointed a Receiver.

4. Order dated 25.09.2017, is under challenge in the present petition.

5. A perusal of the Kalendara under Section 145 Cr.P.C. shows that the case of respondent No.4 was that a total of 28 kanals land was purchased by the vendees in three different villages. Possession was taken by them and thereafter, the petitioner viz. Bhajan Singh forcefully dispossessed them and was not ready to permit the vendees to take possession of their land. Moreover, specific khasra numbers are mentioned in the said Kalendra and not shares, as mentioned in the sale

deed. A perusal of the reply filed by the petitioner to the said Kalendra as well as the present petition show that his case is that the vendees want to take possession of the land purchased by them in one village only, which would result in their taking possession of more share than they are entitled to and thus, deprive the petitioner of his land. It is also his case that partition is in progress and that on finalization of the same, the vendees can take possession of the land which comes to their share. The petitioner is in possession of his own share and he cannot be deprived of his possession except by way of partition. There is no dispute between the parties and the petitioner is peacefully cultivating his share of land, but the vendees are trying to use their influence to take possession of the entire land measuring 28 kanals, purchased by them in one village without partition.

6. Reply has been filed only on behalf of the State of Haryana. The stand taken therein is identical to the stand of private respondents taken in the Kalendra i.e. the petitioner has taken possession of the entire joint property and is not allowing the vendees to take possession of their share.

7. Learned counsel for the petitioner submits that the impugned order dated 25.09.2017, is not sustainable in law because Section 145 Cr.P.C. only vests power in Executive Magistrate, to determine the party in possession of land in dispute. It does not entitle him to determine right of possession, which is the domain of the civil Court. Attachment can only be ordered, in case the matter is of grave urgency or if the learned Executive Magistrate is unable to determine which of the parties was in

possession or that neither of the parties was in possession. In the instant case, the admitted position is that the petitioner is in possession and there is no finding of grave urgency. Thus, the impugned order is illegal and is liable to be set aside. The petitioner has been illegally deprived of possession of his land as the Receiver has taken possession thereof and thus, this Court should exercise jurisdiction under Section 482 Cr.P.C. in favour of the petitioner. Reliance is placed upon **‘Ram Sumer Puri Mahant Vs. State of U.P, 1985(1) RCR (CrI.) 278’**, **‘Mahar Jahan Vs. State of Delhi, 2006(2) RCR (CrI.) 80’** and **‘Ashok Kumar Vs. State of Uttarakhand, 2013(1) RCR (CrI.) 961’** as well as some single Bench judgments of this Court.

8. On the other hand, learned counsel for the private respondents submits that there is apprehension of breach of peace as the petitioner is not permitting the private respondents to take possession of the land purchased by them. Thus, the learned Executive Magistrate was empowered to initiate proceedings under Section 145 Cr.P.C and to attach the property in dispute under Section 146(1) Cr.P.C. He relies upon judgment of the Hon’ble Supreme Court of India in **‘Prakash Chand Sachdeva Vs. State and another, 1994(3) RCR (CrI.) 217’**, **‘Devendra Vs. State of Uttar Pradesh, 2010(4) RCR (CrI.) 448’**, **‘M.P. Peter Vs. State of Kerala and Ors. 2009(3), RCR (CrI.) 459’** and some single Bench judgments of this Court.

9. Learned State counsel supports the impugned order on similar grounds as stated by the learned counsel for the private respondents.

10. The pleadings of the parties make it abundantly clear that the case of the private respondents is that the petitioner has taken possession of land being cultivated by his brother. Per contra, the case of the petitioner is that the vendees want to take possession of the complete land purchased by them in one village only and thus, they are attempting to take possession of the share of the petitioner. Pendency of partition proceedings and the order of stay granted by learned Commissioner (Appeals), Jalandhar Division, Jalandhar, is not disputed.

11. Resort to Section 145 Cr.P.C. can be taken when there is a dispute regarding immovable property. When an Executive Magistrate is satisfied on the basis of a police report or other information that the dispute regarding immovable property is likely to cause breach of peace, he can require the concerned parties to put in appearance and submit their respective written statements regarding the fact of actual possession. While passing such an order, he is required to record his satisfaction regarding likelihood of breach of peace. Thereafter, in case he comes to the conclusion that none of the parties, is in possession on the date of passing of order or if he is unable to determine which of them is in possession or if the case is one of emergency, he can attach the land in dispute and appoint a Receiver therefor. Thus, attachment is to be done only if the Magistrate concerned is unable to satisfy himself as to which of the parties is in possession or if he reaches a conclusion that neither of them is in possession. The third situation when attachment can be ordered is when a case of emergency exists. If the Magistrate is able to pin-point the party in possession, then irrespective of right of such party

to be in possession, he will pass an order declaring such party to be in possession and entitled to retain the same until evicted in due course of law and forbidding all disturbance of such possession.

12. In **Ram Sumer Puri Mahant's case** (supra), the Hon'ble Supreme Court has held that where a civil suit is pending between the parties, resort to proceedings under Section 145 Cr.P.C. is illegal. The same proposition has been reiterated in **Mahar Jahan's case** (supra). In **Ashok Kumar's case** (supra), it was held that the object of Section 145 Cr.P.C. is to maintain law and order. The said proceedings are not meant for evicting any person from possession. If a party is found in possession, then the same has to be protected till the decision of a competent civil Court regarding his right to retain the possession. A case of emergency under Section 146(1) Cr.P.C. has to be distinguished from a case of apprehension of breach of peace and the Magistrate is required to explain the emergency before passing an order of attachment.

13. The judgment in **Prakash Chand Sachdeva's case** (supra), is on the facts of that case. It does not hold that where a civil dispute is pending between the parties, proceedings under Section 145 Cr.P.C may be invoked. In fact, it approves the ratio of **Ram Sumer Puri Mahant's case** (supra). The judgment in **Devendra's case** (supra) is not attracted in this case as the ratio thereof is that in respect of a particular incident civil and criminal proceedings carry on simultaneously and that proceedings under Section 145 Cr.P.C. are criminal in nature and orders passed by the Executive Magistrate, are subject to the orders of the civil Court. This is also the ratio of **M.P. Peter's case** (supra).

14. On examination of the judgments relied upon by the learned counsel for the parties, the position in law that emerges is that proceedings under Section 145 Cr.P.C. are only meant for maintaining law and order. If a party is in possession then his possession shall not be disturbed till the decision of a competent civil Court. Attachment of property can only be made where the Magistrate concerned cannot determine as to which of the parties is in possession of the land or if he comes to conclusion that neither of them is in possession thereof, or on recording satisfaction that the case is one of emergency.

15. In this case, the private respondents themselves allege that the petitioner is in possession of the entire joint land. This amounts to an admission on their part on the question of possession. Thus, it cannot be said that the Magistrate is unable to determine which of the parties was in possession or that neither of them was in possession. The impugned order only mentions apprehension of breach of peace as the reason for attachment. No emergency has been cited, leave alone recording of satisfaction that situation was one of emergency. Assuming that, the petitioner has illegally occupied the share of his brother as well, partition proceedings are in progress and separate parcels will be demarcated upon completion thereof. Till such time, the possession of the petitioner, is bound to be protected. The order of attachment, is working untold misery upon the petitioner as he is unable to cultivate his land and earn his livelihood. The private respondents, are vendees and are not depending upon the land, purchased by them for their survival.

16. In view of the above, the impugned order dated 25.09.2017 (Annexure P-15), is not sustainable in the eyes of law and is accordingly, quashed. It is ordered that the petitioner be put in possession of the land in dispute, forthwith and proceeds of the crop, if any, harvested by the Receiver, be handed over to him.

(SUDHIR MITTAL)
JUDGE

16.05.2018
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No