

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

CRM-M No.41116 of 2014
Date of decision: 7th August, 2018

Sadhu Ram & others

... Petitioners

Versus

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. G.B.S. Dhillon, Advocate for the petitioners.
Mr. Siddarth Sanwaria, Dy. Advocate General, Haryana
for respondents No.1, 3 to 5/State.
Mr. Manjeet Singh, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

Before venturing into the relative merits of the case of parties to this petition under Section 482 Cr.P.C., it is necessitated to unearth the very genesis of this Lis. One Munshi Ram, undisputedly, was the owner of the land in question and thus, also happens to be predecessor in interest of the parties before this Court. Munshi Ram had three children namely, Main Singh, Ran Singh and Phula. It is over the legacy of Ran Singh, the dispute had arisen. Unquestionably, Ran Singh was initially married to one Smt.Parmeshwari, out of which wedlock he had a son Sadhu Ram and a daughter Birmati. Upon the death of Smt.Parmeshari, Ran Singh underwent second marriage with Smt.Sheela Devi and a daughter Sunita was born to them. Petitioners No.2 and 3 namely

Surender and Ankit are the sons of Sadhu Ram. Ran Singh, admittedly, died on 30.05.2013 and it is his land measuring 158 Kanals and 5 Marlas which is subject matter of dispute. It is the claim of Sadhu Ram and his children that Ran Singh, during his lifetime while in sound disposing mind, executed a registered Will bearing No.135 dated 05.01.2012 bestowing the entire land in their favour. This is the precise subject matter of dispute between the parties. The second wife, Sheela Devi, and her daughter Sunita of Ran Singh, instituted a civil suit for declaration etc. with consequential relief of permanent injunction dated 21.09.2013 against Sadhu Ram, his children Surinder and Ankit as well as Birmati daughter of Ran Singh, over this property. It is during the pendency of this civil suit, by another quirk of fate, a complaint dated 09.06.2014 is alleged to have been filed by Sunita before the SHO, Police Station Uklana, on the basis of which a Kalandra under Section 145 Cr.P.C. dated 23.06.2014 (also referred to as dated 24.06.2014) (Annexure P2) was filed before the learned SDO, Barwala. It is on the basis of this, interim order dated 24.06.2014 (Annexure P3) was passed and thereafter, the impugned order dated 23.07.2014 (Annexure P4) and subsequently amended order dated 01.08.2014 (Annexure P5) were passed whereby the Court of SDM, Barwala had ordered that there exists a dispute between the first party Sheela and the second party Sadhu Ram and others, and therefore, upon initiating proceedings under Section 145/146 Cr.P.C., appointed Naib Tehsildar, Uklana as Receiver under Section 146 of the

Code of Criminal Procedure over the land in dispute measuring 157 Kanals and 2 Marlas. The same is subject matter of challenge before this Court.

Upon hearing Mr. G.B.S. Dhillon, Advocate for the petitioners; Mr. Siddarth Sanwaria, Deputy Advocate General, Haryana representing respondents No.1, 3 to 5/State; Mr. Manjeet Singh, Advocate on behalf of respondent No.2 and on perusal of the records.

Admittedly, it was during the pendency of a civil suit wherein the plaintiff Sheela Devi and her daughter had sought declaration challenging the Will leading to mutation as well as consequential relief of permanent prohibitory injunction qua the defendants and it is after a period of almost nine months she has moved a complaint leading to filing of Kalandra (Annexure P2) on 23.06.2014.

In the initial orders (Annexure P3), the learned SDM has purely cited reasons to state that there is disharmony between the parties who could conduct any unwanted act, and thus, taking it to be a serious matter, had issued notices to the parties under Section 145(1) Cr.P.C. and on hearing the parties, passed the impugned orders, the relevant part of which is reproduced below to lay emphasis:

“... .. I have heard the detailed arguments of Ld. Counsel for both the parties and have thoroughly produced (sic.) the file. As per the revenue record available on the file i.e. jamabandi for the year 2004-05, in land measuring 470 kanal 13 marla, Phoola,

Ran Singh, Mia Singh, three sons of Munshi s/o Sheo Ram were owners of three equal shares. After the death of Ran Singh s/o Munshi Ram on 30.05.2013, on the basis of registered Will No.135 dated 05.01.2012 got registered by Ran Singh, the land of the share of Ran Singh has been recorded in the name of Surinder, Ankit sons of Sadhu Ram. From the perusal of the Will, it was found that late Shri Ran Singh at the time of registration of his Will, has concealed the real facts. He has not shown anywhere in his Will that he has performed two marriages during his lifetime and that he has given some moveable-immovable property to his second wife and his daughter for their livelihood. Apart from this in the Will, there is no mention or basis have been given in respect of not giving any share from his land to his second wife Smt. Sheela Devi and his daughter Sunita. In view of natural justice, Ran Singh's second wife Smt. Sheela Devi and his daughter Sunita, have equal right in the property of Ran Singh. Report dated 11.06.2014 of Deputy Supdt. of Police, Barwala, and from the joint statement of the respectable of village Bithmara, it is clear that there is apprehension of breach of peace regarding the possession of this land in the village. As per the report of Patwari Halqa, Bithmara dated 16.07.2014, land measuring 115/23 min (1-2), 24(8-0), 25(7-12), Rect. No.150 and Killa No.3(8-0), 4(8-0), 5(7-12), 6(7-12), 7(8-0), 8(8-0), 13(8-0), 14(8-0), 15(7-12), 16(7-11), 17(7-11), 18 min (6-0) and Rect. No.232/1

killa No.1(7-8), 2(8-0), 3(8-0), 7/2(1-14), 8(8-0), 9(8-0), 10(7-8), total land measuring 157 kanal 2 marla situated in Bithmara, comes in the share of Ran Singh (deceased) son of Munshi. There is dispute on these killa numbers. This Court is also responsible for maintaining law and order. As per the report of police department, dispute had already taken place between both the parties regarding this land. From the Report No.531 dated 11.06.2014 of Deputy Superintendent of Police, Barwala also it is clear that both the parties can enter into fight anytime. Regarding the Will matter is pending between both the parties in Civil Court.

After considering all the facts, I have arrived to this conclusion that in regard with possession over this land, relation between the first party and the second party have become worse to worsen and any unexpected incident can happen with regard to possession over the land. On the basis of statement of SHO, Uklana, respectable of village Bithmara and report of Patwari Halqa Bithmara while taking proceedings u/s 145/146 Cr.P.C., Naib Tehsildar Uklana is appointed receiver u/s 146 Cr.P.C. over the land in dispute measuring 115/23 min (1-2), 24(8-0), 25(7-12), Rect. No.150 and Killa No.3(8-0), 4(8-0), 5(7-12), 6(7-12), 7(8-0), 8(8-0), 13(8-0), 14(8-0), 15(7-12), 16(7-11), 17(7-11), 18 min (6-0) and Rect. No.232/1 killa No.1(7-8), 2(8-0), 3(8-0), 7/2(1-14), 8(8-0), 9(8-0), 10(7-8), total land measuring 157

kanal 2 marla situated in Bithmara. Now file be presented on 05.08.2014.”

A close look at this order, in the light of arguments addressed before this Court by the two sides, could not satisfy how it was expeditious and imminent for the criminal Court to have taken cognizance on the Kalandra when question of ownership and injunction was already pending before the Civil Court much prior to the initiation of the criminal proceedings. This Court is fortified in its view from two judgments of the Hon’ble Supreme Court in ‘**Ashok Kumar vs. State of Uttarakhand and others**’ 2013 (1) RCR (Criminal) 961 and ‘**Mahar Jahan and others vs. State of Delhi and others**’ 2006 (2) RCR (Criminal) 80, where their Lordships have held that under Section 146 Cr.P.C. a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment and further that a case of emergency, as contemplated under Section 146 Cr.P.C., has to be distinguished from the mere case of apprehension of breach of peace and thus, it is obligatory on the part of the Magistrate to explain the circumstances why he thinks it to be a case of emergency.

However, in the present case, as is there in the impugned order (Annexure P4), the learned Magistrate did not call for adducing any evidence, be it oral or documentary, from the parties to satisfy itself of the veracity of the allegations contained in the Kalandra and how he could infer that a situation of emergency exists on the basis of the

evidence before the learned Magistrate. This Court, from the impugned order which stands rectified through subsequent order dated 01.08.2014 (Annexure P5), certainly is not satisfied that there was something tangible and material to show that an emergency exists so as to invoke its jurisdiction under Section 146(1) Cr.P.C. and thereby attaching the property in question. Thus, in the light of these circumstances, a situation had arisen whereby for a motivated cause to attain a sinister design, the learned Magistrate had sought to usurp the powers and jurisdiction of the Civil Court which has already taken cognizance of the matter over possession and ownership, and therefore, to defeat the same, had malafidely and maliciously resorted to invoke the provisions of the Code of Criminal Procedure, and thus, is a situation contemplating this Court to exercise its powers of inherent jurisdiction under Section 482 Cr.P.C. being a case of exceptional circumstance to undo injustice and to instill confidence of the public at large in the system of administration of justice. In the light of foregoing discussions, the impugned orders (Annexures P2, P4 and P5) are hereby set aside by allowing the present petition.

(FATEH DEEP SINGH)
JUDGE

August 7, 2018

rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No