

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

CRM-M-98-2015

Date of Decision: 25.09.2018

Rattan Singh

...Petitioner

vs.

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

ARVIND SINGH SANGWAN,J

Prayer in this petition is for setting aside the order dated 01.03.2012 (Annexure P1) passed by Sub-Divisional Magistrate, Patran, District Patiala thereby declined to initiate the proceedings under Section 145 Cr.P.C. as well as the order dated 27.08.2014 (Annexure P3) passed by the Revisional Court dismissing the criminal revision filed by the petitioner.

This petition is pending since 2015 and case was repeatedly adjourned in the intervening period.

Counsel for the petitioner has argued that the land in dispute is measuring 7 kanal and 12 marlas comprising in khewat No. 78//5 which was purchased by respondents No. 3 and 4, namely, Sukhdev Singh and Balbir Singh from one Tejinder Singh and on account of possession over this land, the police has initiated the proceedings under Section 145 Cr.P.C., on the premise that there was an apprehension of breach of peace. It is further submitted that after submitting the kalendra under Section 145 Cr.P.C., Sub-Divisional Magistrate recorded the statement of the parties and finally came

to the conclusion that at the time when respondents No. 3 and 4 had purchased the disputed land from Tejinder Singh and possession was delivered to them by aforesaid Tejinder Singh, both of them started cultivating the land in dispute and have sown the crop. Thereafter, the petitioner preferred the revision before the Court of Sessions and the Additional Sessions Judge, Patiala, after hearing both the parties has held as under:-

“I have considered submission made by learned counsel for the parties and have carefully perused the record of learned trial court with their able assistance.

There is no dispute regarding the fact that petitioner and Tejinder Singh son of Kartar Singh, predecessor in interest of the present respondents, were co sharers in the entire land. Copies of revenue record placed on file also shows that they were co sharers in the land in dispute which was a part of 599 Kanal 18 Marlas of land. It is also not disputed by petitioner that Tejinder Singh son of Kartar Singh had executed two sale deeds in favour of respondents regarding land measuring 28 Kanal 16 Marlas in the year 2000. An affidavit had also been given by Tejinder Singh in that regard. It had been categorically stated in the said affidavit that possession of land in question was given to respondents under said sale deeds. Though it had been claimed by petitioner that sale deeds were not valid as the same had been executed by said Tejinder Singh beyond his share, yet petitioner had not challenged the sale deeds executed in favour of respondents. As such, respondents had become co sharers in the land in question apart from other land. It is a settled law that once the parties are in joint possession, being co sharers, proceedings under Section 145 Cr.P.C. are not maintainable. This view of mine finds support in law laid down by Hon'ble High Court in case titled as Jasvir Singh and Others vs. State of Punjab and Others 2008(4) RCR (Criminal) 466 wherein it has been observed that when parties

are co owners, proceedings under Section 145 Cr.P.C. cannot be initiated. Similar were the observations of Hon'ble Delhi High Court in case titled as Manisha Devi vs. Union of India 1994(3) RCR (Criminal) 433.

It had also been claimed by learned counsel for the respondents that civil suit was pending between petitioner and Tejinder Singh, their predecessor in interest regarding property in question and other land which was decided in favour of Tejinder Singh and Civil litigation was still going on between them. Though, there is no copy of civil litigation on record, yet this fact was not disputed by learned counsel for the petitioner. As such, it cannot be disputed that Civil litigation was going on between party no.1 and Tejinder Singh regarding the property in question and litigation is still pending between them. In view of law laid down by Hon'ble Apex Court in case titled as Ram Sumer Puri Mahant vs. State of U.P. and Others 1985(1) RCR (Criminal) 278, once a civil suit for title, possession and injunction is pending in the civil court, criminal proceedings under Section 145 Cr.P.C. cannot be started while the civil suit is pending.

Lastly, from the documents on record, it had been observed by learned Sub Divisional Magistrate that party no. 2 i.e. present respondents were in possession of the property in question. It had been mentioned in Kalandra itself that party No.2 was in possession of the property in question at the spot. On the other hand, petitioner could not produce any document on record to show that he was in possession of the same. Furthermore, as per the case of respondents, they are in possession of the property in question since the year 2000, when they had purchased the same from Tejinder Singh. Once a party is in possession of the property for a long period, proceedings under Section 145 Cr.P.C. cannot be maintained. Similar observations were made by Hon'ble Apex Court in case titled as Lophinoris Shangpling and Others versus Hamboy Shullai and another 2001 CrL. L.J. 2943. In the case in hand

also, as petitioner could not prove that he came in possession of the property after 2000, proceedings under Section 145 Cr.P.C. were rightly held to be not maintainable. Accordingly, I do not find any illegality or infirmity in the impugned order passed by learned Trial court which calls for any interference.

No other point was raised or argued before this court by ld. Counsel for the parties.

As a sequel to my findings above, present revision petition fails and is hereby dismissed. Impugned order passed by learned Trial Court is hereby affirmed. Record of the trial Court be returned with a copy of this judgment and revision petition file be consigned to the record room.”

Counsel for the petitioner has argued that the proceedings under Section 145 Cr.P.C. were rightly initiated as the police has submitted the kalendra finding that there was an apprehension of breach of peace regarding possession over the land in dispute, however, the same have been erroneously dropped by the Courts below.

After hearing learned counsel for the petitioner, I find no ground to interfere with the findings recorded by the Courts below for the following reasons:-

a). The proceedings under Section 145 Cr.P.C. were initiated on 25.07.2011 and, thereafter, after recording the statement of the parties by Sub-Divisional Magistrate, the said proceedings were dropped on 01.03.2012 and the revision preferred by the petitioner was dismissed on 27.08.2014. It is also worth noticing that this petition is pending since 2015 and came up for preliminary hearing for the first time today itself. In the intervening period i.e. for a period of about 07 years, there is no breach of peace at the spot as counsel for the petitioner

fairly concedes that nothing has come on record to show that in the intervening period of 07 years, any untoward incident has happened regarding possession of the property.

b). Even otherwise, the Courts below have recorded a finding of fact that as per the revenue record, the parties to the lis were co-sharers in the land in dispute, which is part of total land measuring 599 kanal 18 marls and one of the co-sharer Tejinder Singh has executed 02 sale deeds regarding land measuring 28 kanal 16 marlas in the year 2000 in favour of respondents who are in possession of same.

c). As per the deposition of Tejinder Singh, he has handed over the possession of the land in dispute to the purchaser i.e. respondents No. 3 and 4 and they are in cultivating possession of the same.

d). The petitioner has alternative remedy of filing a suit for partition, if there is any dispute *inter se* co sharers.

Therefore, finding no merit in the present petition, the same is dismissed.

25.09.2018
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No