NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 962 of 2017

1. Rajendra S/o Sundarlal, aged about 60 years.
2. Bhimsen Patel S/o Rajendra Prasad, aged about 35 years,
3. Guddu S/o Rajendra Prasad, aged about 25 years

All resident of Parasdhiha, P.S. Basantpur, District Balrampur-Ramanujganj C.G. **---- Petitioners**

Versus

1. Ramlalla Dubey S/o Arjun Dubey, aged about 45 years, R/o Village-Parasdhiha, P.S.- Basantpur District- Balrampur-Ramanujganj C.G.
2. The State of Chhattisgarh through District Magistrate, District-Balrampur- Ramanujganj C.G. **---- Respondents**

For Petitioners	:	Mr. A.K. Prasad, Advocate.
For Respondent No. 1	:	Mr. A.N. Pandey, Advocate
For Respondent No. 2	:	Mr. Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/05/2019

1. The petitioners herein have questioned the order dated 01-3-2017 passed by revisional Court by which the revisional Court has affirmed the order dated 23-7-2014 passed by the learned Sub-Divisional Officer, Wadrafnagar in proceedings under Section 145 of the CrPC injuncting the petitioners from interfering into the possession of respondent No. 1.
2. Mr. A.K. Prasad, learned counsel for the petitioners would submit that both the Courts have erred in entertaining the application filed under Section 145 of the CrPC in view of civil suit filed and decided

now, Second Appeal No. 112/2010 is pending consideration before this Court and in which this Court has already been granted temporary injunction in favour of respondent No. 1, therefore, impugned order is liable to be set aside.

3. Learned counsel for respondent No. 1 would support the impugned order.

4. I have heard learned counsel for the petitioners, considered their submissions and went through the record with utmost circumspection.

5. It is not in dispute that father of respondent No. 1 had filed civil suit for declaration of his possession over the suit land by setting aside 'Patta' granted which was dismissed by both the Courts below and Second Appeal No. 112/2010 is pending consideration before this Court, in which other side therein have been restrained from interfering with the possession of the respondent No. 1's father Arjun Dubey, as he has already died and respondent No. 1 has been substituted.

6. The question for consideration would be whether in view of the pendency of second appeal in which there is already interim order granting injunction in favour of respondent No. 1 is operating and in existence the proceeding under Section 145 of the CrPC is maintainable in the light of decision rendered by the Supreme Court in the case of **Ram Sumer Puri v. State of U.P.**[1]**?**

7. In a similar set of facts, the Supreme Court in the matter of **Ram Sumer (supra)** has held that the initiation of proceeding under

1 (1985) 1 SCC 427

Section 145 of the CrPC during the pendency of civil litigation which involved the question of possession and which has been adjudicated, there is no justification for initiating a parallel proceeding. It was observed as under:-

> "**2**.....…There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession in being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under Section 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate Judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession."

8. Reverting to the facts of the present case, it is quite vivid that the proceeding under Section 145 of the CrPC has to be quashed if the parties right and title has already been adjudicated by the Civil Court or in a pending civil proceeding, the temporary injunction has been granted with respect to the disputed land.

9. In the instant case, this Court has already been granted injunction in favour of respondent No. 1 in respect of the property in dispute. Undisputedly, after granting temporary injunction by this Court in

Second Appeal No. 112/2010 on 20/10/2010, respondent No. 1 initiated proceeding under Section 145 of the Code on 6-8-2012, as such, the initiation and continuance of proceeding under Section 145 of the CrPC is not maintainable in view of principle of law laid down by the Supreme Court in **Ram Sumer Puri (supra)** and therefore, application under Section 145 of the CrPC could not have been entertained by learned Sub-Divisional Magistrate, which could not have been affirmed by the revisional Court and consequently, order passed by two Courts below deserves to be set aside.

10. Accordingly, order of the learned Sub-Divisional Magistrate as well as the order of the revisional Court is hereby set aside, however, respondent No. 1 is at liberty to move an application for violation of the order of temporary injunction, if any, in accordance with law.

11. The petition under Section 482 of the CrPC is allowed to the extent indicated herein-above.

Sd/-

(Sanjay K. Agrawal)
Judge

Pawan