

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.827 OF 2019

Prashant s/o Yeshwant Deole
Age : 50 years, Occu. Agri.
R/o. Mogra Tq. Majalgaon,
Dist. Beed
At present R/o. Sahakar Nagar,
Old Pedgaon Road, Parbhani.

... APPLICANT

VERSUS

1. The State of Maharashtra,
through District Collector,
Beed.
[Copy to be served on G.P
High Court of Bombay,
Bench at Aurangabad]
2. The Tahsildar / Execute Magistrate,
Tahsil Office, Majalgaon,
Tq. Majalgaon, Dist. Beed.
3. The Circle Inspector,
Dindrud, Tq. Majalgaon,
Dist. Beed.
4. The Police Inspector,
Police Station, Dindrud,
Tq. Majalgaon, Dist. Beed.
5. Satish Pralhad Deole,
Age : 54 years, Occu. Agri.
R/o : Shikshak Colony,
Majalgaon Road, Majalgaon,
Tq. Majalgaon, Dist. Beed.

... RESPONDENTS

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Advocate for Applicant : Mr. Nagargoje Ankush N.
APP for Respondent nos. 1 to 4 : Mr. B.V. Virdhe
Advocate for Respondent No. 5: Mr. Patil Milind M. (Beedkar)

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CORAM : MANGESH S. PATIL, J.

Reserved on : 03.10.2019

Pronounced on : 14.10.2019

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned APP for the respondent nos. 1 to 4 and learned advocate Mr. Patil Milind M. (Beedkar) for the respondent no.5 waive service. At the request of both the sides the matter is heard finally at the stage of admission.

2. The applicant is challenging the order passed by the respondent no. 2 Tahsildar dated 07.06.2014 under the purported exercise of the powers under Section 145 and 146 of the Code of Criminal Procedure as also the order of the learned Additional Sessions Judge Majalgaon in the Criminal Revision preferred by him challenging the order of the Tahsildar.

3. Shortly stated the facts leading to the filing of this application are to the effect that there has been a dispute between the applicant and the respondent no.5 in respect of land Gat No. 332 (old survey No.111) of Village Mogra Tq. Majalgaon District Beed. The applicant filed Regular Civil Suit No.109/2012 on 29.03.2012 claiming declaration of his ownership to that land and for perpetual injunction.

The respondent no. 4 who is the Police Inspector of Dindrud Police Station submitted a report to the respondent no.2 Executive Magistrate dated 03.06.2013 making the applicant and the respondent no. 5 as parties *inter alia* to the effect that the parties were involved in couple of litigation in the form of Regular Civil Suit No.109/2012 and R.C.S. No.120/2012 as well as R.C.S. No.128/2012. It was informed that the parties were in dispute in respect of land Gat No.332 admeasuring 10 acres. There was an injunction in Regular Civil Suit No.109/2012 restraining one Archana Dharnidharrao Naik from alienating the land. She was the owner of that land and her name appeared in the 7/12 record, however, name of the applicant was appearing in the possession column for 20 years. He had made grievance by lodging complaint with police on 14.04.2013 and 20.04.2013 alleging that the respondent no. 5 was obstructing his possession and was threatening the person who was cultivating the land on his behalf on crop share basis and that there was apprehension of breach of peace. The respondent No. 5 happens to be the brother of Archanabai. The applicant is his nephew and has been threatening him of dire consequences. On the basis of the report, the respondent no.2 Executive Magistrate by the order dated 19.08.2013 and directed attachment of the property till the Civil Court decided the issue.

4. Being aggrieved by the order the applicant preferred

revision before the Sessions Court under Section 337 of the Code of Criminal Procedure. It was allowed by the judgment and order dated 01.10.2013 but the matter was remanded back to the respondent no.2 for revision afresh by extending opportunity to both the sides to be heard. Pursuant to such remand the applicant filed say (Ex. D). After extending opportunity to both the sides by the impugned order the respondent no.2 appointed Circle Officer as a receiver in respect of that disputed land and directed that the attachment would continue till final decision of the Civil Court.

5. The applicant again preferred a revision but by the impugned order it was dismissed. Hence this application invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure.

6. The learned Senior Advocate Mr. Dixit for the applicant vehemently submitted that the applicant has been in possession of the disputed property. There has been consistent revenue record confirming it. The Civil Court is seized of the dispute wherein the rights and liabilities of the parties would be conclusive determined. Therefore there was no reason for the respondent no.2 Tahsildar to invoke the power under Section 145 of the Code of Criminal Procedure. The powers under that provision are meant only to meet

certain exigencies and not meant to disturb the possession. The applicant had only made a grievance to the respondent no. 4 Inspector that the respondent no.5 was threatening his bataidar and was obstructing his possession. The applicant was not expecting him to indulge in submitting any report under Section 145 of the Code of Criminal Procedure. Admittedly there is a Civil Suit pending between the parties and even the report of the respondent no. 4 reads about an injunction operating in favour of the applicant. Therefore, even if he had submitted a report to the respondent no. 2 Tahsildar, the latter ought not to have invoked the power under Section 145 of the Code of Criminal Procedure. In doing so, the respondent no.2 has gone to the extent of invoking the power under Section 146 of the Code of Criminal Procedure and has appointed a receiver and the property in dispute has been directed to be taken over by him. Thus, the impugned order passed by the respondent no.2 is de hors the powers under Section 145 of the Code of Criminal Procedure.

7. The learned Senior Advocate further submitted by referring to catena of decisions as to how, when there is a dispute pending between the parties in Civil Court, the Executive Magistrate is not expected to invoke the power under Section 145 of the Code of Criminal Procedure. He placed reliance on **Ram Sumer Puri Mhant Vs State of U.P and others ; AIR 1985 Supreme Court 472, Jhummal @**

Devandas Vs. State of Madhya Pradesh and Ors. ; 1989 Mh. L.J. 221, Amresh Tiwari Vs. Lalta Prasad Dubey and Anr. ; AIR 2000 Supreme Court 1504 and Mahar Jahan and Ors. VS. State of Delhi and Ors. ; (2004) 13 Supreme Court Cases 421.

8. Learned APP and the learned advocate for the respondent no. 5 submit that though a civil suit was pending between the applicant and the respondent no.5, no injunction ad interim or otherwise regarding possession was issued by the civil court. The ad interim injunction only prevented alienation or creating third party interest. Therefore, the respondent no.2 had the jurisdiction to act upon the report by the respondent no.4 under the powers conferred upon him by Section 145 and 146 of the Code of Criminal Procedure. They further submit that in exercise of such powers, if the respondent no.2 has formed a *bona fide* opinion about possibility of breach of peace, no fault can be found with him in not only exercising the power under Section 145 but also under Section 146 of the Code of Criminal Procedure. The fact that there has been a long standing dispute between the applicant and the respondent no.5 which had resulted in multiple litigation and their conduct in asserting their right to the property in dispute was sufficient to indicate that the apprehension being entertained by the respondent no.2 about there being a likelihood of breach of peace cannot be founded fault with. The

learned advocate for the respondent no. 5 placed reliance on the decision in the case of **Sarbhansingh Nukumsingh Keer and Ors Vs. Husein Khan Kadarnawaz Khan and Ors. ; 1986 Mh.L.J. 386**, and submitted that mere pendency of a civil suit does not affect jurisdiction of an Executive Magistrate under Section 145 and 146 of the Code of Criminal procedure. It is only if in such a civil suit some order regarding possession is passed then only such jurisdiction would stand ousted. He also referred to the decision in the case of **Prakash Chand Sachdeva Vs. The State and Anr. ; AIR 1994 Supreme Court 1436** and submitted that mere pendency of civil suit for injunction when it is not based on title but only raises the question of dispossession of a co-owner by another co-owner cannot affect the powers under Section 145 of the Code of Criminal Procedure.

9. I have carefully gone through the report submitted by the respondent no. 4, the impugned order passed by the respondent no.2 and the impugned judgment of the learned Additional Sessions Judge. So far as facts are concerned there is no dispute that one Archanabai who was the paternal aunt of the applicant is the owner of the land Gat No.332 of Village Mogra. The 7/12 record specifically mentions her name as the owner of 10 Acre portion there from. The petitioner is the nephew of the respondent no. 5. The 7/12 extract further demonstrates that consistently the applicant is shown to be in

possession of 4 Hectare i.e. 10 Acre land. Whereas his father, the respondent no. 5 and few others have been shown to be the owners of 1 Hectare 74 Are portion each. They have also been shown to be in possession of their respective shares. It is also a fact that the applicant has filed Regular Civil Suit No.109/2012 against the State and its officers as well as the owner Archanabai. In the suit it is averred that applicant's father had in fact transferred the land to Archanabai by way of a mortgage in the year 1976. Since it was a sale deed which was not to be acted upon, the applicant's father and applicant continued to be in possession of that 10 Acre portion from the western side of Gat no.332. It is also averred that behind their back she got her name mutated in the ownership column of the revenue record. By the year 1990 the principal amount of the interest was repaid to her but she kept on promising to reconvey the land. After waiting with the hope that she would reconvey the property and finding that she was not inclined to, she was served with a notice and the suit was filed for execution of such reconveyance, when according to them, she started threatening them of dispossession from the disputed land. There is also no dispute that by way of interim injunction the applicant the applicant as well as Archanabai were directed to maintain *status quo* regarding the suit property. A perusal of that order would reveal that pendency of the present proceeding under Section 145 of the Code of

Criminal Procedure was also brought to the notice of the learned Civil Judge and particularly the impugned order passed by the respondent no.2 herein dated 07.06.2014 whereby the receiver has been appointed. It was also observed in that order that Archanabai who was defendant no.5 therein was not in physical possession.

10. It is necessary to note that there is a statement in the first sentence of para 9 of the impugned judgment of the revision which needs to be clarified. It reads that “Regular Civil Suit No. 109/2012 was for perpetual injunction and was dismissed and appeal has not been preferred.” The learned advocates for the applicant and the respondent no. 5 fairly make a statement that the suit is still pending and has not been dismissed or decided finally. They also admit that it is not a suit for perpetual injunction but is a suit wherein the applicant has sought reconveyance of the disputed land from Archanabai.

11. There is also no dispute about the fact that Regular Civil Suit No.128/2012 is also pending between the applicant's father and his paternal uncles for partition and separate possession of the lands and it includes Gat no.332 and one more land bearing Gat no.57.

12. With this factual background let us now turn to the matter in issue. One need not reiterate the scope of powers vested in an Executive Magistrate under Sections 145 and 146 of the Code of

Criminal Procedure. The question in the matter is as to whether the fact situation of the matter justified such invocation of the powers. In this regard the decisions right from Ram Sumer Puri Mahant (supra) and other decisions cited on behalf of the applicant consistently lay down that when a civil litigation is pending in respect of a property wherein the question of possession is involved and has been adjudicated, initiation of a proceeding under Section 145 of the Code of Criminal Procedure would not be justified. Taking hint from such view, the learned advocate for the respondent no.5 has cited the decision in the case of Prakash Chand Sachdeva (supra) wherein the decision in the case of Ram Sumer Puri Mahant (supra) has been distinguished in following words:

3. True, a suit or remedy in civil court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal Court as observed by this Court in Ram Sumer Puri Mahant v. State of U.P. AIR 1985 SC 472, 'particularly when possession is 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'. The normal rule is as stated by the Court in Puri's case. But that was a suit based on title. And that could be decided by civil Court only. That ratio cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with

law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance under Section 145, Cr. P.C. Neither the High Court nor the Sub-Divisional Magistrate cared to ascertain if the respondent had any claim to lawfully prevent the appellant from entering into his own house. The proceedings under Section 107 are for public peace and tranquility whereas those under Section 145 relates to disputes regarding possession between parties concerning any land or waters or boundaries thereof. Therefore, dropping of proceedings under Section 107 could not furnish foundation for dropping the proceedings under Section 145. Nor the law laid down in Puri's case could result in rejecting the application filed under Section 145 of the Cr. P.C. There being no dispute of title between the appellant and respondent the only claim to be decided was if the appellant had been forcibly or wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the appellant had sought the remedy in civil suit, without applying the mind if that decision was in any way helpful for dropping the proceedings. In law, therefore, the order passed by the two courts below cannot be maintained.

13. In my considered view, a bare reading of these observations makes the picture clear. Admittedly there is a suit for partition pending between the applicant's father and his paternal uncles that is the respondent no.5 and others which includes the property in dispute. The applicant has filed another suit for reconveyance against Archanabai as mentioned herein above. The first suit pertains to not merely injunction but for partition and separate possession based on the shares according to the Law of Succession.

The other suit seeks reconveyance. Therefore in may considered view following these observations from the case of Prakash Chand Sachdeva (supra) leave no manner of doubt that the respondent no.2 should not have exercised the powers under Section 145 and 146 of the Code of Criminal Procedure.

14. True it is that it is the applicant who had lodged a complaint with the police alleging that Archanabai and his uncles were disturbing his possession by threatening his bataidar. However, when during such inquiry the aforementioned facts, particularly regarding filing of R.C.S. No.109/2012 for reconveyance and R.C.S.No.120/2012 for partition and separate possession, were brought to the notice of the respondent no. 2 and when the revenue record shows consistent possession of the applicant over the disputed 10 Acre land for years together, the respondent no.2 ought to have concluded that there was no dispute as regards possession. Borrowing the sentence from the decision in the case of Prakash Chand Sachdeva (supra) the respondent no.2 should have borne in mind that the dispute between the parties was regarding right to possession and not on the question of possession. The sentence reads thus :

“ Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance under Section 145 of the Code of Criminal Procedure.”

15. Therefore, it is apparent that in spite of being alive to the factual matrix firstly regarding pendency of civil suites between the parties and secondly about the dispute was for the right to possession and not on the question of possession and there was consistent revenue record, the respondent no.2 ought not to have invoked and exercised the power under Sections 145 and 146 of the Code of Criminal Procedure.

16. It is further pertinent to note that by way of order on the application for temporary injunction, the civil court had directed the applicant and Archanabai to maintain *status quo* by holding that it was he who was in physical possession and not Archanabai. If such was the State of affairs, the impugned order passed by the respondent no.2 in exercise of the powers under Sections 145 and 146 is not legally tenable. The learned Additional Sessions Judge has not at all considered the factual aspects discussed herein above as well as the law and has dismissed the revision in a slipshod manner. The observations and conclusions are clearly perverse, arbitrary and capricious. The learned Additional Sessions Judge clearly ignored the fact that the order passed by the respondent no.2 had the tendency to change the factual matrix which is not in the contemplation of the legislature while conferring the powers under Sections 145 and 146 in the Executive Magistrate. The whole purpose and aim of such powers

is to prevent a breach of peace on account of a dispute pertaining to possession of an immovable property. while exercising this power an Executive Magistrate is not expected to decide any right either as to title or possession. The whole purpose of conferring such power on the Executive Magistrate is to prevent a fight at site and nothing beyond that.

17. Considering all the aforementioned aspects, the order passed by the respondent no. 2 under Sections 145 and 146 of the Code of Criminal Procedure and one passed by the learned Additional Sessions Judge while dismissing the revision preferred by the applicant are both not sustainable in law and are liable to be quashed and set aside.

18. The application is allowed. The impugned order passed by the respondent no.2 dated 07.06.2014 and the order passed by the learned Additional Sessions Judge dated 04.12.2018 are quashed and set aside.

19. The Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)