

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

**CRM-M-2732-2019 (O&M)  
Date of decision : 25.1.2019**

**Vishwa Nath Khandelwal**

**..... Petitioner**

**Versus**

**Sanjay Jain**

**..... Respondent**

**CORAM : HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:- Mr. Pankaj Jain and Mr. Rahul Rathore, Advocates  
for applicant-petitioner.**

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

**KULDIP SINGH J. (ORAL)**

**CRM-2933-2019**

Application is allowed. Order dated 10.6.2014, passed by learned Sub Divisional Magistrate Rewari is taken on record as (Annexure P-7) and exemption from filing the certified/true typed copy of the order dated 10.6.2014 (Annexure P-7) is dispensed with.

Disposed of accordingly.

**CRM-M-2732-2019**

Impugned in the present petition is the order dated 29.10.2018, passed by Additional Sessions Judge, Rewari (Annexure P-1), vide which criminal revision No. 147/2014 dated 25.7.2014, filed by respondent against the order dated 10.6.2014 passed by Sub Divisional Magistrate, Rewari (Annexure P-5) under Section 145 of the Code of Criminal Procedure directing the receiver to hand over the possession of the disputed property to the Ist party i.e., the present petitioner was set aside, holding that the civil Court is to decide the inter se dispute regarding the ownership and possession of the disputed property.

Brief facts of the case are that petitioner-Vishvanath Khandewal moved an application dated 16.8.2009 before the Deputy Commissioner, Rewari (Annexure P1/A), wherein, he stated that his ancestor Kishori Lal was owner in possession of the land bearing Khasra No. 241 situated at Kanod Gate within the revenue estate of Rewari of which the initial Khasra number was 1054 which was converted into the 1469 *min* and changed to Khasra number 1606 and now present Khasra number is 241. The land has been succeeded by the applicant-petitioner and his legal heirs. Now the applicant-petitioner and his co-owners are owner in possession of the land in the said Khasra number 241. Applicant-petitioner has also got sanctioned the building plan number 309 dated 08.04.2009 in the name of one co-owner Shri Neeraj Kumar Gupta from Municipal Council, Rewari and proposed to raise construction on some part of the said land as per the sanctioned plan. He further alleged that one property dealer namely Sita Ram with intention to encroach upon the land is digging the foundation on some part of the land and has raised the construction in hasty manner with muscle powers. The said property dealer is liable to be stopped at once.

Applicant-petitioner further claims that he belongs to the place outside Rewari and when he came today at about 1.00 P.M., he was stunned to see the unauthorized digging of foundation over the above said land. He further claims that the property dealer-Sita Ram and his muscle men threatened him to run away otherwise he will be eliminated and following prayer was made: -

'It is therefore, requested that an appropriate legal action may please taken in respect of the land of applicant and his co-owner which has duly been shown and highlighted

in the site of plan of demarcation report and its plan dated 10.9.2008 with green colour enclosed herewith and take the action against the said offenders and his companions and to stop them from making any sort of encroachment and grabbing of our land and to protect the life and property at once any delay may cause irreparable loss and injuries to applicant and his property.'

On the basis of the same, the Deputy Commissioner called for the report of the Naib Tehsildar, Rewari, who inspected the spot of the land. The Naib Tehsildar, Rewari submitted that he inspected the entire Khasra number 241 and out of total land measuring 38 kanals 9 marlas, 5000 square yards is vacant land. The remaining land was found in possession of various persons who have raised construction of houses and shops. The said Khasra number 241 is shown as *gairmumkin abadi deh* in the *jamabandi*. At the spot, property dealer-Sita Ram told that he was digging foundation on the instructions of one Sanjay Jain, who is the respondent in the present petition. Respondent-Sanjay Jain also claimed on telephone that he has got the plan sanctioned for construction of cinema hall on the said land. However, he could not produce the proof of his ownership before the Naib Tehsildar, Rewari. The Naib Tehsildar, Rewari did not submit the report to the Deputy Commissioner, Rewari but submitted the report before the Sub Divisional Magistrate, Rewari, who initiated the proceedings under Section 145 of the Code of Criminal Procedure. During the proceedings, the receiver was appointed. After recording the lengthy evidence of both the parties and the trial which took less than 05 years, the Sub Divisional Magistrate, Rewari held that the applicant-petitioner was in possession of

the said disputed land and directed the receiver to hand over the possession to the first party.

Learned Additional Sessions Judge, Rewari while discussing the provisions of Section 145 of the Code of Criminal Procedure has taken the view that procedure in the said Section was not followed. The Sub Divisional Magistrate, Rewari has in fact recorded the findings regarding the title which was not permissible. Both the parties have led their evidence claiming their title(s) over the property. Learned Additional Sessions Judge, Rewari also referred to the previous criminal litigation between the parties. It was held that criminal litigation could not be commented upon by the Sub Divisional Magistrate, Rewari. It is a big khasra number and therefore, the question of threat was not there.

A perusal of Section 145 of the Code of Criminal Procedure show that the proceedings can be initiated by an Executive Magistrate on the report of the police officer or upon other information that a dispute is likely to cause breach of peace concerning any land or water or the boundaries thereof within the local jurisdiction, then he can call upon the parties to attend the Court and file representation and then proceed accordingly.

Learned counsel for the petitioner further contends that the contents of the application reproduced above show that in fact there was no apprehension of breach of peace and the prayer of the petitioner was to restrain the other party from encroaching upon or grabbing the land.

This was purely a civil dispute. What the applicant-petitioner wanted that the other party should be restrained from encroaching upon or

grabbing his land. In the prayer, it was nowhere stated that there is an apprehension of breach of peace. There is mere reference to threats being given by Sita Ram-property dealer which could make cause of action for filing the civil suit or at the most could be a ground to take criminal action against Sita Ram for threatening the applicant-petitioner. In fact, in place of moving to the civil Court, the applicant-petitioner moved the Deputy Commissioner, Rewari on Sunday, who promptly ordered the inquiry and the inquiry report was submitted by the Naib Tehsildar not to the Deputy Commissioner, Rewari but to Sub Divisional Magistrate, Rewari, who started the proceedings under Section 145 of the Code of Criminal Procedure and started recording the lengthy evidence.

I am of the view that there is no illegality or infirmity in the order dated 29.10.2018 passed by Additional Sessions Judge, Rewari (Annexure P-1). It was a purely civil dispute and provisions of Section 145 of the Code of Criminal Procedure has been misused to secure the rights claimed by the applicant-petitioner.

Petition stands dismissed.

**(KULDIP SINGH)**  
**JUDGE**

**25.1.2019**  
*preeti*

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| Whether speaking / reasoned | Yes |
| Whether Reportable:         | No  |