

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

CRM-M-17441-2016 (O&M)

Date of decision: July 16, 2019

Balkaran Singh Bhullar

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Raman Goklaney, Advocate
for the petitioner.

Mr. Gaurav Garg Dhuriwala, DAG, Punjab.

Mr. Diwakar Jaiswal, Advocate for
Mr.C.M. Munjal, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in the present petition is for quashing the Kalandra dated 25.4.2016 under Section 145 Cr.P.C. as well as the order of attachment passed under Section 146 Cr.P.C. by the Sub Divisional Magistrate, Abohar.

Brief facts of the case are that the police recommended the Kanandra under Section 145 Cr.P.C. on 25.4.2016 vide Rapat No.15 in Police Station Sadar, Abohar with the allegations that the party No.1, i.e. Balkaran Singh Bhullar had purchased purchased 30 acres of land from three khewats having total area of 142 acres and there is a dispute with regard to the possession. It is further submitted that party No.2, i.e. respondents No.7 to 8 and 9 are also claiming the possession over the land in dispute. The Sub Divisional Magistrate, Abohar taking cognizance of the report submitted by the police that there is apprehension of breach of

peace thereby by causing loss to life and property and vide impugned order dated 2.5.2016 appointed Tehsildar, Abohar as a Receiver of the land in dispute.

The petitioner has challenged the aforesaid order on the ground that the petitioner has in settled possession of the property and, therefore, initiation of the procedure 145 Cr.P.C. is not maintainable. While issuing notice of motion on 18.5.2016, it was noticed that there is a *status quo* order passed by the civil Court in a civil suit pending between the parties and the petitioner is in possession of the same.

During the pendency of the said petition, the civil Court has dismissed the suit filed by the petitioner praying for a decree of permanent injunction regarding the property in dispute vide judgment dated 4.3.2015. The appeal filed by the petitioner was also dismissed and, thereafter, RSA No.5 of 2016 filed by petitioner Bikram Singh Bhullar was also dismissed by this Court on 4.9.2017.

Counsel for the petitioner has relied upon the judgment dated 25.9.2017 passed by the Additional Civil Judge, (Senior Division), Abohar vide which the suit praying for decree of specific performance of an agreement to sell dated 29.5.2010 was decreed in favour of the petitioner and against the respondents No.7 to 9. Counsel for the petitioner has submitted that since the petitioner is in possession of the property and he never claimed for the possession on the said suit and only decree passed is that the petitioner is entitled to get the sale deed executed from defendants No.6 to 8 on payment of the balance of sale consideration in execution of the agreement to sell dated 29.5.2010.

Counsel for the petitioner has further submitted that the application filed by the private respondents for correcting khasra girdawari in their names stands dismissed upto the Court of the Financial Commissioner (Revenue), Punjab.

In reply, counsel for the respondents No.7 to 9 has submitted that the trial Court has dismissed the suit of the petitioner while holding that he is in exclusive position of the property.

Learned State counsel has relied upon **2013(1) RCR (Criminal) 961 Ashok Kumar Vs. State of Uttarakhand and others** to submitted that when the dispute is between the parties is regarding possession of land and is pending before the civil Court, the Magistrate can not pass an order of attachment and it is for the civil Court to decide as to who was in possession.

After hearing counsel for the parties, I deem it appropriate to set aside the impugned order dated 2.5.2016 and remand the case back to the Sub Divisional Magistrate, Abohar to pass a fresh order in view of the finding recorded by the civil Court, in the judgments passed *inter se* parties and pass a fresh order after obtaining a report from the concerned Police Station if still there is threat to the breach of peace and to the life and liberty of any of the parties.

The parties are directed to appear before the trial Court on 19.8.2019, and the Sub Divisional Magistrate, Abohar will pass a fresh order within period of three months thereafter.

The petition stands disposed of, accordingly.

July 16, 2019
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No