

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

CRM-M-287-2016 (O&M)
Date of decision : 13.11.2019

Baljinder Singh

...Petitioner

Versus

Sub Divisional Magistrate Ludhiana West and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S. Dhandi, Advocate for the petitioner.

Mr. Hittan Nehra, Additional Advocate General, Punjab.

Mr. Vaibhav Sehgal, Advocate for respondent Nos.2 and 3.

ANIL KSHETARPAL, J. (ORAL)

The petitioner through this petition filed under Section 482 Cr.P.C. has challenged the order dated 04.12.2015 passed by the Sub Divisional Magistrate, Ludhiana West initiating proceedings under Section 145 Cr.P.C. and appointment of receiver for agricultural land under Section 146 Cr.P.C.

Some facts are required to be noticed. Petitioner-Baljinder Singh and Gurvinder Singh (respondent No.2) are brothers. The petitioner is residing in Village Phallewal, Tehsil and District Ludhiana whereas his brother Gurvinder Singh, respondent No.2 herein, resides in California, USA. The petitioner claims that he was also previously residing in USA and both the brothers had purchased a house jointly in USA. Thereafter, the petitioner came back to India somewhere in 2005-06 and started cultivating the entire joint land. It is further pleaded case that dispute between the

parties was resolved through a panchayati compromise/settlement dated 07.03.2005, in which it was agreed that the petitioner who is in possession of entire land including the share of respondent No.2 would hand over the possession to respondent No.2 on payment of \$20,000 within one month from today by respondent No.2 to the petitioner, accounting for investment made by the petitioner for purchase/construction of house in California USA. It is the case of the petitioner that respondent No.2 never complied with the aforesaid compromise, and, therefore, the petitioner continued in possession of the entire joint land.

The petitioner-Baljinder Singh also filed a suit for passing a decree for permanent injunction restraining the defendant including Gurvinder Singh from interfering in his peaceful possession on 19.05.2015 which is stated to be pending.

A report was submitted by the Station House Officer, Police Station Jodhan claiming that the petitioner is in illegal possession of the land of respondent No.2 and there is no family partition. Since, both the parties are claiming their right over the land, therefore, there is tension between the parties which can lead to disturbance of peace. The learned Sub Divisional Magistrate passed the order after visiting the plot. The Magistrate, after visiting the spot, has recorded as under:-

“In this regard spot was visited and enquiry was conducted from people from which it is found that in case both the parties fight there can be loss to life. So, I on visiting the spot, considering the record and facts and statements of respectable persons, I come to conclusion that at the land in dispute there is danger of breach of peace and

it cannot be clarified that which party is in possession of the property. Therefore, for management of the property, I appoint Tehsildar (Central) as receiver and Order under Section 146 Cr.P.C. is brought into action. Parties are directed that they can take action in Civil Court regarding their dispute. Order pronounced.”

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book.

At the outset, it must be noticed that respondent Nos.2 and 3 have not chosen to file reply to the petition.

Learned counsel for the petitioner has submitted that civil suit between the parties is pending since 19.05.2015, therefore, initiation of proceedings under Section 145 Cr.P.C. is illegal. He further submitted that undisputedly parties are co-sharers and even as per the report of concerned SHO, there is no division of the joint property. Hence, he submitted that every co-sharer is deemed to be in possession of every parcel of land and, therefore, the appropriate remedy is only to seek partition of the joint property. He further submitted that there are no averments that the panchayati compromise, arrived at between the parties, has been complied with by respondent No.2. Hence, he submitted that the petitioner who is in settled possession cannot be dispossessed through initiation of proceedings under Sections 145 and 146 Cr.P.C.

On the other hand, learned counsel appearing on behalf of respondent Nos.2 and 3 has submitted that there is a dispute and, therefore, Sub Divisional Magistrate has correctly appointed receiver.

After considering the arguments of learned counsel for the

parties, this Court is of the opinion that the initiation of proceedings under Sections 145 and 146 Cr.P.C. was erroneous for following reasons:-

- 1) Undisputedly, the parties are co-sharers. Respondent No.2 does not claim that he is in actual possession of the property. He claims that he had leased out the property in favour of respondent No.3. However, possession of respondent No.3 is not prima facie established. In such circumstances, once the parties are undisputedly co-sharers, initiation of proceedings under Sections 145 and 146 Cr.P.C. was not correct. Reference in this regard can be made to judgments passed by this Court in the cases of *Madan Lal Vs. State of Punjab and another, (2002) 4 RCR (Criminal) 47* and *Karam Singh Vs. Sub Divisional Magistrate, Zira, 2001(2) RCR (Criminal) 617.*
- 2) In the proceedings under Section 145 of the Code, questions which needs determination are which party is in possession or was dispossessed two months immediately before the initiation of proceedings under Section 145 of the Code. In these proceedings, question of title and consequent entitlement is not required to be adjudicated upon. So the Executive Magistrates on whom the powers have been conferred under Section 145 of the Code, are expected to adjudicate upon the question that which party is in possession or if any party has been dispossessed two months before the date of initiation of proceedings then restore the possession of party so dispossessed forcibly. The proceedings under Section 145 of the Code are sub-servient to the adjudication by the civil court with respect to possession and it has been repeatedly held that if civil suit is

pending, the Executive Magistrate normally should not initiate proceedings under Section 145 of the Code and relegate the parties to file an application before the civil court in a pending suit particularly when in the civil suit such order as may be necessary can be passed. Reference in this regard can be made to **Amresh Tiwari Vs Lalta Prasad Dubey and another (2000) 4 SCC 440**. In paras 12, 13 and 14 thereof, which are extracted, it has been laid down as under:-

“The question then is whether there is any infirmity in the Order of the S.D.M. discontinuing the proceedings under Section 145 of the Criminal Procedure Code. The law on this subject-matter has been settled by the decision of this Court in the case of Ram Sumer Puri Mahant Vs State of U.P. In this case it has been held as follows :

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. 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 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. We are, therefore, satisfied that parallel proceedings should not continue...”

We are unable to accept the submission that the principles laid down in Ram Sumer case would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumer case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.

Reliance has been placed on the case of Jhummal v. State of M.P. It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 the Criminal Procedure Code should be set at naught. In our view this authority does not lay

down any such broad proposition. In this case the proceedings under Section 145 of the Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 of the Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An Order of status quo had already been passed by the competent civil court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumer case fully applies. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on

the Magistrate.”

- 3) Still further, the Magistrate even after visiting the spot did not even prima facie record that respondent No.2 through respondent No.3 is in possession or has been forcibly dispossessed during the last two months. In the proceedings under Sections 145 and 146 Cr.P.C., the Magistrate is not to determine right, title or interest in the property or entitlement of possession. In the proceedings under Sections 145 Cr.P.C. only question which the Magistrate is required to decide is as to whether there is likelihood of disturbance of peace while adjudicating upon which party is in possession or which party has been forcibly dispossessed immediately two months before the initiation of proceedings. In the present case, Magistrate has not even adverted to the aforesaid facts.
- 4) In the facts of the case, once respondent No.2 is in USA and a civil suit is pending, initiation of proceedings under Section 145 Cr.P.C. was clearly erroneous.

Initiation of proceedings under Section 145 Cr.P.C. and consequent order passed by the Sub Divisional Magistrate are quashed by relegating the parties to the remedy before the Civil Court.

Keeping in view the aforesaid facts, the present petition is allowed.

13.11.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**