

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

**CRM-M-22030-2019
Date of Decision:19.11.2019**

Kuldip Singh

...Petitioner

Versus

State of Haryana and others

...Respondent(s)

CRM-M-29445-2019

Kuldeep Singh and others

...Petitioner

Versus

State of Haryana and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K. Pandey, Advocate for the petitioner
(In CRM-M-22030-2019)
Mr. Ranjit Saini, Advocate for the petitioners
(In CRM-M-29445-2019)
Mr. Anmol Malik, AAG, Haryana.
Ms. Harmanpreet Kaur (Simmi), Advocate
for respondent-Bhupinder Singh.
Mr. N.S. Shekhawat, Advocate and
Mr. Rajinder Kumar, Advocate for respondent Nos.2 to 4
(In CRM-M-22030-2019) for respondent Nos.3 to 5
(In CRM-M-29445-2019).

ANIL KSHETARPAL, J.

By this order, two petitions bearing CRM-M-No.22030 of 2019
and CRM-M No.29445 of 2019 shall stand disposed of.

Challenge in both the petitions is to the proceedings initiated

under Section 145 and 146 of the Code of Criminal Procedure (for short 'the Code').

First petition i.e. CRM-M No. 22030 of 2019 was filed challenging initiation of proceedings under Section 145 of the Code by the Sub-Divisional Magistrate. On 14.05.2019 after preliminary hearing, notice was issued. Thereafter, during the pendency of the first petition, the Magistrate once again passed a fresh order under Section 145 of the Code alongwith an order appointing receiver under Section 146 of the Code, subject matter of challenge in the subsequent petition i.e. CRM-M-No.29445 of 2019.

Some facts are required to be noted. The land in dispute was owned by Late Sh. Sohan Singh, who is stated to have died on 14.09.2002. He left behind a widow i.e. Late Smt. Harbans Kaur but with no children. Harbans Kaur is also stated to have died on 12.12.2017. The dispute is with regard to inheritance of the property left by Harbans Kaur or Sohan Singh. On the one part, nephews and brother of Sohan Singh claim the property, whereas on the second part-Ram Singh, who claims to be grandson of Gurdev Singh, brother of Harbans Kaur, claims the property on the basis of alleged registered Will executed by her on 21.05.2014. Yet there is an another party No.3 Bhupinder Singh, who also claims the property being son of brother of Harbans Kaur. He also claims that Harbans Kaur had executed a Will in his favour.

Undisputedly civil suit filed by brothers and nephews of Sohan Singh originally against Harbans Kaur (since deceased) is pending in the Court since 17.08.2017. In this suit, it has been claimed that the property is

owned and possessed by the plaintiffs therein, i.e. brothers and nephews of Sohan Singh.

It is the stand of Ram Singh that he was reared by Harbans Kaur since his childhood and on attaining majority, he was serving late Smt. Harbans Kaur.

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 adjudication by the civil court 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 Jhummamal 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.”

In this case, as noted above, civil suit is pending since 2017. However, the proceedings have been initiated. Even the order of attachment of the agricultural land has been passed by the Magistrate.

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

It may be significant to note here that proceedings under Section 145 of the Code were initiated on the basis of a report submitted by Incharge of the Police Station, Radaur on 5.06.2018. In the aforesaid report, it has been stated that an application from Ram Singh was received in the Police Station against various persons named therein, who are all related to late Sh.Sohan Singh, being his brother and nephews. He complained that he is being threatened by the relatives of Late Sh.Sohan Singh and since there is apprehension of breach of peace, therefore, proceedings under Sections 107 and 151 of the Code were initiated and thereafter a case was registered against Avtar Singh and Rupinder Singh i.e. FIR No.77 dated 26.05.018 with regard to theft of the crop. It was further noted that another FIR No.20 of 2018 has also been registered by Ram Singh with regard to beating and theft. The Police officials vide General Diary details dated 3rd June, 2018 informed the Executive Magistrate that there can be apprehension of breach of peace and therefore proceedings under Section 145 of the Code should be initiated.

On reading of the first order passed by the learned Magistrate, it is apparent that when the police officials visited the land, it was found that Kuldeep Singh son of Ranjit Singh and others i.e. petitioners herein, after cultivating the land were found relaxing in their constructed residential

portion, which is locally known as Dera. The Dera is a place of residence which is constructed by the farmers in their agriculture land, away from residential area of the village.

Further when Ram Singh filed FIR No.68, he admitted that he along with Late Smt. Harbans Kaur went away from the village in November, 2017 but when they came back, they were attacked by the petitioners. It may be noted that there are two more FIRs; FIR No.58 dated 15.05.2019 and FIR No.77 dated 28.05.2018 filed by the petitioners or their progenies against the opposite party.

As noted above, the scheme of proceedings under Section 145 of the Code is to determine who is in possession or who has been forcibly dispossessed within a period of two months before initiation of proceedings.

In the present case, no material even prima facie has been produced to prove that fact. Still further, as noted above, the suit filed by the petitioners, when Smt. Harbans Kaur was alive, is pending before the civil court since 2017. It is not in dispute that Ram Singh as well as Bhupinder Singh etc. have become parties in the aforesaid suit. Thus, the civil court has ample power to make any interim order including appointment of the receiver, grant of injunction or such other order as may be necessary in the facts of the case.

Question is, whether in view of the fact that Ram Singh, who got initiated proceeding under Section 145 of the Code, does not allege that he is in possession or he has been forcibly dispossessed during last two months, initiation of proceedings under Section 145 of the Code was appropriate or not.

Ram Singh now claims that he had leased out the property in favour of one Avtar Singh. However, the validity of a lease deed, if any, shall be determined by the civil court. It may be noted here that when Ram Singh filed FIR No.20 dated 05.02.2018, he does not claim that he is in possession or was in possession and forcibly dispossessed. He does not even state that he had given the land on lease to Avtar Singh.

In these circumstance, in the considered view of this Court, the initiation of proceedings under Section 145 of the Code and subsequent order passed by the Magistrate during the pendency of the one petition before this Court was not called for. It would have been more appropriate for the Executive Magistrate to relegate the parties before the civil court where suit is already pending. The proceedings under Section 145 of the Code cannot be used as a tool to get possession of the land on the basis of title.

In view of the above, both these petitions are allowed. Proceedings under Sections 145 and 146 of the Code shall stand dropped. Pending application(s), if any, shall also stand disposed of, in terms thereof.

19.11.2019
mks

(ANIL KSHETARPAL)
JUDGE

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