

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

CRM-M-5095-2020

Date of decision:-5.2.2020

Balwinder Singh

...Petitioner

Versus

Jatinder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Rajesh Bhatheja, Advocate
for the petitioner.

H.S. MADAAN, J.(ORAL)

By way of filing the present petition under Section 482 Cr.P.C., petitioner Balwinder Singh seeks quashing of order dated 18.1.2020 passed by Additional Sessions Judge, Moga vide which revision petition filed by Jatinder Singh, Rupinder Singh and Narinder Kaur had been allowed and order dated 26.7.2019 passed by Sub Divisional Magistrate, Moga initiating proceedings under Section 145 Cr.P.C. qua the disputed land had been set aside.

Briefly stated, facts of the case are that SHO, Police Station City, Moga vide report No.17 dated 13.12.2018 had presented a Kalendera (Calender) for initiating proceedings under Section 145 Cr.P.C. contending therein that Balwinder Singh had submitted a complaint against Jatinder Singh, Rupinder Singh sons of Baldev Singh

contending that the parties had joint land in Khasra No.54//53(6-16) situated in the revenue estate of Moga Mehal Singh – 1, Dosanj Road, Moga; they have been using the portions allotted to them in oral partition; on the intervening night of 21/22.11.2018, accused pulled down the structure situated in the land in question and took away the bricks, which were jointly owned by the complainant and accused and the accused affixed a shutter at that site; this was so done by the accused in order to take possession of the land of complainant and Ajmer Singh; therefore necessary action be taken against the persons for demolishing joint wall and take of bricks.

On receipt of complaint, SHO concerned summoned both the parties and asked them to produce site plans and photocopies of jamabandies. It was found that Balwinder Singh, Ajmer Singh and Baldev Singh were owners in possession of 90/1224 share in Khewat No.1411 Khatoni No.1628 Khasra No.54//53(6-16) and the total area comes out to 0 Kanal 10 marlas. In that very khewat Balwinder Singh son of Ujjagar Singh was found to be separately owner of 13/1224 share to the extent of 1 marla 4 sarsahi, Ajmer Singh son of Ujjagar Singh was owner of 52/3564 to the extent of 2 marla 8 sarsahi out of total land measuring 9 kanals 18 marlas comprised in Khewat No.69 khatoni No.79, khasra No.129. It was found that both the co-sharers owned 1 marla 4 sarsahi each but they were stretching their boundaries. The parties were advised to get their shares partitioned from the revenue department but to no effect. During the proceedings it came out that a suit for partition of the joint land was pending adjudication before Civil Court, therefore, Sub Divisional Magistrate, Moga initiated proceedings

under Section 145 Cr.P.C. Tehsilder, Moga was appointed as a Receiver under Section 146 Cr.P.C. with a direction to take possession of the shops in the land in question.

The respondents felt aggrieved by the said order and they had approached Sessions Judge, Moga by way of filing revision petition, which was assigned to Additional Sessions Judge, Moga, who vide his detailed order dated 18.1.2020 accepted the revision petition and set aside the order passed by Sub Divisional Magistrate, Moga. The reasoning given by learned Additional Sessions Judge, Moga is contained in para Nos.8 to 10, which for ready reference is being reproduced as under:

8. *Calendra under Section 145 Cr.P.C. has been filed by SHO of Police Station City Moga on the basis of an application dated 22.11.2018 moved by respondent Balwinder Singh. A site plan accompanied said application depicting the separate possession of revisionists and respondent in the jointly owned property bearing Khasra No.54/53(6-16) situated in Moga Mehla Singh – I, Dosanjh Road, Moga. Perusal of said application, site plan and report of Sub Divisional Magistrate indicate that shop marked as EFGD is shown to be in possession of revisionist – Jatinder Singh and other remaining area including shop, verandah and other property is depicted to be in possession of respondent Balwinder Singh.*

9. *Calendra proceedings had been initiated as respondent Balwinder Singh claimed that wall marked FC*

abutting verandah in possession of respondent Balwinder Singh stands demolished and shutter installed by revisionist Jatinder Singh to encroach upon and to get the possession of verandah abutting shutter and other adjoining property. Learned counsel for the revisionists has argued that revisionist Jatinder Singh is earning his livelihood by running the shop marked as EFGD in the site plan. Revisionist is shown to be in possession of said shop. Said contention is correct as site plan filed by respondent. Possession of revisionist over shop marked as EFGD is thus an admitted fact. Revisionist do not deny that respondent Balwinder Singh is running his business in the adjoining shop. Dispute between parties is thus with regard to open area other than the constructed shops mentioned in the site plan. Both the revisionists as well as respondent are running their respective businesses in different shops and do not claim any right of possession in the shop of each other. Dispute is only with regard to vacant portion adjoining these two shops. So there was no reason to invoke proceedings under Section 145 Cr.P.C. with regard to both the said shops in addition to the open area. Learned counsel for revisionists has stated at bar that shutter at point GF will not be opened by revisionists till decision of civil dispute between the parties and that his client had given a similar oral undertaking before Sub Divisional Magistrate, Moga. Impugned order has prevented the

parties to run their respective businesses in the shops in their respective possession without any reason. It shows that impugned order has caused grave injustice by putting property in settled possession of parties under seal by appointing receiver under Section 145 Cr.P.C.

10. In view of my above said discussion, present revision petition is allowed and impugned order dated 26.7.2019 passed by learned Sub Divisional Magistrate, Moga is held to be not legally sustainable being a disproportionate order with regard to existing circumstances at the spot and is accordingly set aside. Summoned record along with copy of this order be returned to the concerned quarters. Revision file be consigned to the record room.

The complainant felt aggrieved with such order passed by Additional Sessions Judge, Moga and he has approached this Court by way of filing present petition under Section 482 Cr.P.C.

Section 482 Cr.P.C. deals with inherent powers of the High Court providing that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

I find that the order passed by Additional Sessions Judge, Moga is quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. Whereas

order passed by Sub Divisional Magistrate, Moga was certainly not in accordance with law and it was passed ignoring several material points. The dispute between the parties is basically of civil nature regarding which litigation is pending between them before the Civil Court. The complainant has not been able to bring this dispute within four corners of Section 145 Cr.P.C. The complainant could have sought his remedy in the Civil Court instead of getting proceedings under Section 145 Cr.P.C. initiated.

No interference with the order passed by Additional Sessions Judge, Moga by way of exercising powers under Section 482 Cr.P.C. is called for.

The petition being without merit stands dismissed accordingly.

5.2.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No