

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-49574-2019(O&M)
Date of Decision: 08.05.2020

Harpreet Kaur and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.K. Singla, Advocate, for the petitioners.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

Mr. Karanvir Singh Khehar, Advocate,
for respondent Nos. 4 and 5.

Harnaresh Singh Gill, J.

Prayer in the present petition under Section 482 Cr.P.C. is for quashing of *Calendera* dated 20.10.2019, under Section 145 Cr.P.C., Police Station Bilga, District Jalandhar (Rural), restraining the petitioners from cutting the paddy crop and appointment of the Naib-Tehsildar as receiver without issuing notices and without inviting objections.

Petitioner-Harpreet Kaur alongwith her minor children has approached this Court for quashing of the proceedings under Section 145 Cr.P.C. on the ground that one Santokh Singh son of Jagat Singh had vide lease deed dated 6.9.2018 leased out his land and land of his extended family measuring 50 kanal 6 marla 5 sarsai for 5 years, w.e.f 01.09.2018 to 31.08.2023 @ Rs.27000/- per acre. The agreement was duly witnessed and the amount of

Rs.3,20,625/- was also received. Since there was a fear in the mind of petitioner-Harpreet Kaur that she might be uprooted midway, a suit for permanent injunction restraining the defendants from dispossessing the plaintiff (petitioner No.1 herein) illegally and forcibly was filed. In the said suit, though the interim injunction had been declined by the learned trial Court, yet petitioner-Harpreet Kaur has filed an appeal against the said order, which is pending.

When the lessor(s) tried to take forcible possession of the leased out land and the house, petitioner No.1 made a complaint on the basis whereof, FIR No.47 dated 10.07.2019 under Sections 323, 324, 148, 149 and 120-B IPC was registered at Police Station Bilga, Jalandhar Rural, against lessors and other co-accused. One of the lessors, namely, Mohinder Kaur, moved an application dated 01.10.2019 to the police regarding non-payment of lease money for the last two and half years by petitioner-Harpreet Kaur.

Learned counsel for the petitioners has argued that as per the agreement on record and receipt of money, it was clearly established that land and house had been leased out to petitioner No.1 upto 31.08.2023 as owners of the land are residing abroad and petitioner No.1 being widow, with minor children has been paying the lease money. Since one of the lessors i.e. Jasbir Singh wanted to take possession, he had moved an application on which proceedings under Section 145 Cr.P.C., had been initiated without issuing notice and without initiating objections. On the complaint of petitioner No.1 i.e. Lessee, FIR No.47 dated 10.07.2019 had

been registered and an interim injunction had also been granted by the Civil Court in the suit for permanent injunction filed by petitioner No.1, though such injunction was later on vacated and an appeal against the said order is stated to be pending.

Learned counsel for the petitioners has also drawn the attention of this Court to the fact that since the pleadings and affidavit of Kulwinder Singh, respondent No.5 do not clearly express as to how much is a statement of the knowledge of the deponent and how much part thereof is based on his belief, therefore, there is violation of Order 19 Rule 3 CPC and as such the pleadings cannot be taken into consideration. He has relied upon on the Full Bench judgment rendered by the Hon'ble Patna High Court in Dipendra Nath Sarkar Vs. State of Bihar and others AIR 1962 Patna 101 the judgment of this Court in Bhupender Singh Vs. State of Haryana AIR 1968 Punjab and Haryana 406.

Another argument raised by the learned counsel for the petitioners is that the jurisdiction of the authorities under Section 145 Cr.P.C. is barred in view of the fact that the suit for permanent injunction filed by petitioner No.1 at prior point of time is pending, wherein *ad interim* stay had been granted. Learned counsel for the petitioners has relied on judgments of this Court in Ram Dhari and others Vs. The Sub-Divisional Magistrate, Kaithal, District Kurukshetra and others, PLR 1975 Page 306, and CRM-M-287-2016 decided on 13.11.2019, titled as 'Baljinder Singh Vs. Sub-Divisional Magistrate, Ludhiana West and others'.

Still further it was argued that the report of the handwriting expert dated 29.04.2019 (Ex. R-4/2), placed on record

by respondent No. 4, cannot be taken into consideration as no proper permission from the Court had been taken before taking the opinion of the expert. Moreover, when the revenue authorities failed to comply with the order dated 25.11.2019 passed by this Court, the petitioner filed COCP No. 608-2020 against violation of stay order in which notice had been issued for 02.07.2020 and the alleged auction made by the Naib Tehsildar, is in the name of Kulwinder Singh, who is closely related to the lessor.

Per contra, learned counsel for respondent Nos. 4 and 5 has argued that owners are in possession of the property in dispute even as per revenue records and the petitioners had not impleaded the necessary parties as she wanted to grab the property of Non-Resident Indians and old aged persons. It is further submitted that in the entire revenue record, which is brought on record by respondent Nos. 4 and 5 as Annexure R-4/1, nowhere has it been reflected that the petitioners are in possession of the land as lessees. Moreover, Mohinder Kaur has filed civil suit against petitioner No.1 and Santokh Singh has also filed civil suit and status quo order was passed on 16.07.2019 by Civil Judge, Phillaur. Santokh Singh also filed CRM-M-24877 of 2019 for protection of life and liberty and for his property. Thus, the Sub Divisional Magistrate has rightly passed the order under Section 145 Cr.P.C. as interim orders passed by the Civil Courts, as alleged by the petitioners, had not been placed before the Sub Divisional Magistrate and the revenue records like Jamabandis or Girdawaris do not support the case of petitioners.

In rebuttal to the arguments of learned counsel for the petitioners regarding formal verification and personal acquaintance with the facts deposed in the affidavit, it was argued that the reply filed by respondent No.4 through attorney respondent No.5 be ignored while deciding the present petition.

It was further argued that the proceedings under Section 145 Cr.P.C. could not be set aside merely on the ground that civil suit is pending when there is no dispute regarding the title/ownership of the property. The Magistrate is empowered to take cognizance under Section 145 Cr.P.C. In support of his contentions, the learned counsel has relied on the judgments of the Hon'ble Supreme Court in Prakash Chand Sachdeva Vs. State and another, 1994(3) RCR (Criminal) 217; Jhummamal alias Devandas Vs. State of Madhya Pradesh, 1989 (1) RCR (Criminal) 428 and C.V. Raja Rao and another Vs. Mirja Basheer Baig and others, (1996)8 SCC 740.

I have heard learned counsel for the parties and have gone through the case filed.

A Suit for permanent injunction was filed by petitioner No.1 Harpreet Kaur against Santokh Singh and others on 6.4.2019. In the said civil suit, vide order dated 9.5.2019, an application under Order 39 Rules 1 and 2 CPC filed by her was dismissed. The relevant part of the order would read as under:-

“.....In the revenue record, defendant No.1 is shown as owner and plaintiff is nowhere shown in the revenue record. Plaintiff's claim on the suit property is based on lease dated 6.9.2018. However, by producing forensic

report, defendant has rebutted the said lease deed and cast doubt over the said document. Further, at this stage, keeping in view the harvesting season, the crop is only livelihood and it should be harvested. However, defendant No.1 is directed to harvest the same and further, it is made clear that if, it is found that agreement of the plaintiff is not forged and fabricated, then defendant will be liable to return the income yielded from the crop along with 6% interest.”

Admittedly, as on today, there is no injunction issued in favour of the petitioner in the civil suit filed by her. The application under Order 39 Rules 1 and 2 CPC filed by petitioner No.1- Harpreet Kaur was dismissed vide order dated 9.5.2019. As per the petitioner, she has filed an appeal against the said order, which is stated to be pending.

Another civil suit for permanent injunction was filed by Mohinder Kaur against Harpreet Kaur (petitioner No.1 herein) and others on 4.7.2019. In the said suit, vide order dated 4.7.2019, the learned trial Court, had directed the parties to maintain status quo the suit property.

Still further yet another civil suit for permanent injunction was filed by Santokh Singh against Harpreet Kaur (petitioner No.1 herein) and others. In the said suit the learned trial Court vide order dated 16.7.2019 directed the parties to maintain the status quo regarding possession.

It may be noticed that in the civil suit filed by petitioner- Harpreet Kaur against Santokh Singh and others, respondent No. 4 has not been impleaded as a defendant. The cause title of the suit

would show that her prayer in the said suit to grant her permanent injunction qua the land measuring 9 acre 5 kanal i.e. the share of Santokh Singh (defendant No.1 therein). Thus, it is apparent that she has not claimed any relief qua the land of respondent No.4- Jasbir Singh in the said civil suit. Also, in the said suit, she claims to be in possession of the land detailed therein on the basis of lease agreement dated 6.9.2018, whereas in FIR No. 47 dated 10.07.2019, got registered by her, she alleges that she had been in possession of the land in question for the last 14 years.

Still further, the total land regarding which the civil suit has been filed by petitioner No.1 is 9 acre 5 kanal situated in the area of village Uppal Bhupa, Tehsil Phillaur, District Jalandhar and village Simbalpur, Tehsil Phillaur, District Jalandhar, whereas the subject matter of the proceedings under Section 145 Cr.P.C. is the land measuring 94 kanals 13 marlas. In the proceedings under Section 145 Cr.P.C., it has been noticed that petitioner-Harpreet Kaur is not paying the lease money nor is vacating the house and the land and that in view of the counter claims regarding possession, there is apprehension of loss of human life and thus, in order to restrain both the parties from indulging in any such activities, the proceedings under Section 145 Cr.P.C. were being initiated.

The Sub Divisional Magistrate, Phillaur, while passing the order dated 1.11.2019 had noticed that regarding the land under reference, no stay order had been produced by the petitioner and it is further noticed therein that in case any of the parties

produces the order of stay from any Court, then the action would be taken in accordance with the said order.

Learned counsel for the petitioners, when confronted with the lease deed dated 6.9.2018 is unable to point out as to how and in which capacity, Santokh Singh had leased out the land belonging to the other co-sharers, including respondent No.4. The agreement/lease deed dated 6.9.2018 has been placed on record as Annexure P.5. Thus, the civil suit filed by petitioner-Harpreet Kaur against Santokh Singh and others that too qua the share of said Santokh Singh, would be no ground to sustain the plea of the petitioners that in view of the filing of the civil suit, proceedings under Section 145 Cr.P.C. are not maintainable, especially when such proceedings have been initiated by respondent No.4-Jasbir Singh.

It is not disputed that Santokh Singh and Jarnail Singh i.e. father of respondent No.4 are co-sharers in respect of the land in question, which is reflected in jamanabdis for the year 2017-18. The petitioners have not been reflected in the said revenue record as lessee(s) or in any other capacity. Thus, no right, title or interest has been shown to have been legally leased out to the petitioners vide the alleged lease deed dated 6.9.2018 qua the share of respondent No.4-Jasbir Singh. Hence, it does not lie in the mouth of the petitioners that the rights in the land subject matter of the proceedings under Section 145 Cr.P.C. were transferred to her vide the alleged lease deed regarding which the civil suit has been filed by petitioner No.1 against Santokh Singh and others.

As per the facts and documents on record, the petitioners have not filed any civil suit against respondent No.4- Jasbir Singh. As noticed above, in the civil suit filed by her against Santokh Singh and others, neither respondent No.4 has been impleaded as respondent nor the land subject matter of the proceedings under Section 145 Cr.P.C. is part of the land in respect of which the permanent injunction has been sought. As referred to above, the said civil suit is qua the share of Santokh Singh only.

Still further, in the proceedings under 145 Cr.P.C., upon inquiry, it has been found by the authorities that petitioner-Harpreet Kaur is in possession of the house belonging to respondent No.4, but receiver has only been appointed qua the land where the crop was/is standing.

Thus, in the present proceedings, there is no dispute as regards the title over the property in question, as the petitioners are not the co-sharers. Admittedly, petitioner No.1 is claiming possession over the land through the alleged lease deed dated 6.9.2018, but she could not produce before the SDM, any injunction order in respect of the land belonging to respondent No.4.

However, I find that while passing the impugned order, the SDM, Phillaur, did not take into consideration the orders dated 9.5.2019, 4.7.2019, 16.7.2019 passed by the Civil Courts in the civil suits filed by petitioner-Harpreet Kaur; Santokh Singh and Mohinder Kaur, under Order 39 Rules 1 and 2. Thus, it is not clear as to how despite there being status-quo order from the Civil

Court, the possession of the land was taken by the SDM, Phillaur, and receiver appointed.

Thus, the impugned order is set aside. The matter is remanded to the Sub Divisional Magistrate, Phillaur, to consider the matter afresh and decide the same after taking into consideration the various orders passed by the Civil Courts as regards the possession/status quo of the land in dispute and also after taking into consideration various judgments passed by this Court as also by the Hon'ble Supreme Court regarding initiation of the proceedings under Section 145 Cr.P.C.

Disposed of in the above terms.

08.05.2020
ds

(HARNARESH SINGH GILL)
JUDGE

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No