

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 107 OF 2018

Jehangir Dinshaw Moriabadi (Irani)

Age: 56 years, Occu. Busienss,

R/at: Kaach Bungalow, S. No. 74B,

Manjari Bk., Pune Solapur Road,

Tal. Haveli, Dist. Pune.

...Applicant

Versus

1. The State of Maharashtra

2. Mr. Behajad Marzaban Irani

3. Mr. Cyrus Dara Dastoor

4. Mr. Ali Akbar Jafri

...Respondents

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Mr. Siddhesh Bhole a/w Mr. Ahmed Padela i/by SSB Legal and
Advisory, Advocate for the Applicant.

Mr. Ram S. Apte, Sr. Advocate, i/by Mr. Siddharth C. Wakankar,
Advocate for Respondent No.4.

Mr. Arfan Sait, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 20th SEPTEMBER 2022

PC :

1. The applicant has invoked inherent powers of this Court under
Section 482 of Cr.PC. challenging the order dated 17th January 2018
passed by learned District Judge-2 and Additional Sessions Judge,
Pune in Criminal Revision No. 465 of 2016 and order dated 29th

September 2016 passed by Taluka Executive Magistrate Haveli, Taluka Haveli District Pune in Application No.Cr.PC.145/1992/2013.

2. The dispute relates to property bearing survey No.74-A, 74-B, 74-C and bungalow standing thereon situated at village Manjari Bk. Taluka Haveli, District Pune.

3. Report under Section 145 of Cr.PC. in respect of the aforesaid property was sent by Loni Kalbhor Police Station to Taluka Executive Magistrate Haveli, Pune. The proceedings were initiated under Section 145 of Cr.PC. Vide order dated 29th September 2016, the learned Taluka Executive Magistrate Haveli, Pune directed the applicant not to obstruct the possession of Respondent Nos. 2 and 4 in respect of the said properties and the Police Inspector attached to Loni Kalbhor Police Station was directed to take measures to prevent the breach of peace at the instance of applicant and in the event, applicant commits breach of peace, necessary action would be initiated under Section 107 Cr.PC.

4. Being aggrieved by order dated 29th September 2016, the applicant preferred Criminal Revision No.465 of 2016 before the Court of Sessions at Pune. Learned District Judge-2 and Additional Sessions Judge, Pune has rejected the said Criminal Revision vide order dated 17th January 2018.

5. Learned Advocate for the applicant submitted that, the impugned orders are contrary to law. The learned Taluka Executive Magistrate issued notices to the applicant and the Respondents. However, no preliminary order was passed as contemplated under Section 145 (1) of Cr.P.C. In support of his submission, reliance is placed on the *roznama* of the proceedings before the Taluka Executive Magistrate. The land and bungalow is in possession of the applicant and he has been cultivating the agriculture land and residing in bungalow. On 20th January 2013, the Respondent Nos.2 to 4 and several other persons came over the aforesaid properties and started obstructing the possession of the applicant. Complaint was filed by applicant with Loni Kalbhor Police Station, Pune under Sections 143, 147, 323, 504, 506 of Indian Penal Code. The aforesaid properties and the property bearing Survey No.82/1 were previously owned by Rashid Khodaram Irani and Mr. Bharucha. They divided the said property and properties bearing survey No.74-A/1, 74/B and 74/C came to the share of Rashid Irani. Will dated 1st November 1970 was executed by Rashid Khodaram Irani and he bequeathed the said property to his nephew Dinshaw, Dara, Fardun and Khodaram. Rashid Khodaram Irani died on 7th November 1970. Fardun and Khodaram were residing at Germany. Khodaram died in Germany and Fardun never returned to India. As per will dated 1st

November 1970, if Khodaram and Fardun return to India within two years from the death of Rashid Khodaram Irani for permanent residence then they would be entitled to the said properties and if they fail to return to India Mr.Dinshaw and Dara Irani would be entitled to all the aforesaid properties. Since, Fardun and Khodaram failed to return to India, Dinshaw and Dara became owners of the said properties. Dinshaw Irani and Dara Irani died on 5th July 1992 and 21st October 2004, respectively. Dara Irani died intestate. However, Respondent No.2 is claiming rights in the said property by virtue of fabricated Will dated 27th May 2004 purportedly executed by Dara Irani. Special Civil Suit No.134 of 1995 is pending before the learned City Civil Court, Pune in respect of the said Will. It is submitted that, Respondents are illegally claiming rights under the said Will dated 27th May 2004 alleged to have been executed by deceased Dara K. Irani, who died on 21st October 2004. The aforesaid suit is filed by applicant against Dara K. Irani and others for partition of various properties which includes the property bearing No.74-A/1, 74-B, 74-C situated at Manjari Bk. Taluka Haveli, District Pune. Miscellaneous Application No. 802 of 2005 was filed by Pesi Ardhesir Chindhy and Marzban Fardoon Irani for obtaining probate of Will dated 27th May 2004 alleged to have been executed by Dara K. Irani. The said Miscellaneous Application was dismissed by order

dated 3rd October 2013. Since, the Civil Suit is pending in respect to the said property, the learned Taluka Executive Magistrate ought not to have been passed the impugned order. Reliance is placed on the decision of the Supreme Court in the case of *Ram Sumer Puri Mahant vs State Of Uttar Pradesh And Ors. (1985) 1 SCC 427*. The Respondents are not in possession of the disputed property. The learned Taluka Executive Magistrate as well as the Sessions Court failed to appreciate that the applicant is in possession of the disputed property since last several years. The applicant is paying all the taxes of the disputed properties. The applicant is relying upon the copy of receipts regarding payment of Municipal taxes and other bills with regard to the said property. Dinshaw Irani died on 5th July 1992 and after his death, the suit properties devolved upon mother of applicant being wife of Dinshaw Irani. Pursuant to amendment, the applicant has placed on record the Police Report, statements of parties, copy of plaint, written statement filed by in suit, application for injunction, orders passed by the Court and several other documents.

6. The Respondent No.4 has filed Affidavit-in-reply opposing the reliefs sought by the applicant in this application.

7. Learned Senior Advocate Mr. Apte appearing for Respondents submitted that, the application is devoid of merits. There is no

infirmity in the order dated 29th September 2016 passed by learned Taluka Executive Magistrate and order dated 27th January 2018 passed by learned Sessions Judge, Pune rejecting the Criminal Revision Petition preferred by applicant. It is submitted that, the Respondent No.4 have purchased the property bearing survey Nos.74-A/1 (part), 74-B (part), 74/C (part) from the owners by virtue of the registered sale-deeds dated 25th March 2013 and 26th March 2013. The applicant did not challenge the sale-deeds executed by owners of said property in favour of Respondent No.4. Prior to execution of sale-deeds, the owners of said property had executed Development Agreement and Power of Attorney in favour of Respondent No.4. The said documents were duly registered in the office of Sub-Registrar and he was put in possession of said property from the date of Development Agreement. The Respondent No.4 have availed the services of M/s.Essential Enterprises for the security of the said property, in the year 2010. Reliance is placed on the photographs showing the possession of Respondent No.4 over the property and the bills issued by Agency in the name of Respondent No.4. The claim of the applicant that, he is in possession of the property is false. The applicant has filed Civil Suit No.134 of 1995 in the Civil Court at Pune. He filed amendment application in the suit to seek declaration about the rights of predecessors of Respondent

No.4. The said amendment application was rejected by the Court and the said order has attained finality. There is no suit pending as on date challenging the sale-deed as well as Development Agreement and Power of Attorney on the basis of which the Respondent No.4 is put in possession of the property. The applicant has sought prayer of possession of the suit properties in the said suit which itself indicate that he is not in possession of the property in question. The applicant has failed to prove that, he is in possession of property. The dispute is about title of immovable property. The applicant has filed Civil Suit for declaration of Will and partition viz. Civil Suit No. 134 of 1995. The defendants in the said suit had denied the claims of applicant. Unless there is decree of the Court declaring the applicant as the owner of the properties, the applicant cannot contend in the present proceedings that he is the owner of the property. In the Special Civil Suit No. 134 of 1995 it is stated by the applicant that, under the Will of Mr.Rashid Irani, his share devolved into four brothers, i.e. Dinshaw, Dara, Fardoon and Khodaram. Since the claimant has stated about Fardoon, and Khodaram are having the right, title and interest in the property, who are the predecessors in title of the Respondent No.4, it cannot be said that, the applicant is the only owner and predecessor of the property. The contention of Respondent No.4 apparent from the reply filed by him is that, the

applicant has filed an application Exh.204 for amendment under Order 6 Rule 17 of the Civil Procedure Code to contend that, as per Rashid Khudaram Irani's Will Deed dated 1st November 1970, if the Khodaram Irani and Fardun Irani return to India within two years from the death of Rashid Khodaram Irani for permanent residence then they would be entitled to get share in the properties. The learned Civil Judge Senior Division, Pune vide order dated 4th February 2008 rejected the Application/Exh.204 by observing that, the plaintiffs want to challenge the Will of Rashid Khudaram Irani after 36 years of his death and the allegations made by the plaintiffs in their amendment application and prayer clause are not within limitation. Proposed amendment is time barred. The nature of the suit will change due to proposed amendment. The said order has not been challenged by applicant. Since, the properties are situated in Pune, the probate is not mandatory. Mere dismissal of probate application i.e. M.A. No. 802 of 2005 does not take away the rights of legatees under the Will. The Court below have rightly come to the conclusion that, the Respondent No.4 is in possession of property and since, there was necessity to issue notice under Section 145 in view of action on the part of applicant, the trial Court had passed impugned order. The applicant (plaintiff) in Special Civil Suit No. 134 of 1995 had filed application for appointment of Court receiver,

which was rejected by the Civil Court and this Court. Best possible evidence to decide factum of possession is the revenue record, wherein the names are incorporated as the possessor of property. The Respondent No.4 is relying upon the revenue entries in his name and photographs to claim the possession of the property. The contention of the applicant that, he is in possession and has paid taxes is devoid of any merits. The alleged electricity bill appears to be of bungalow situated on the property, which is in possession of legatees under the Will of late Mr. Dara and not the applicant. Mr.Dinshaw had bequeathed his 25% property to his brother Mr.Dara and thereafter Mr.Dara had bequeathed his 25% and his own 25% i.e. 50% to the legatees under the Will. The Respondent No.4 is the owner and possessor of the land by virtue of aforesaid sale-deeds which refereed herein above. Neither the applicant nor his mother are having any right, title or interest in the property in question. The Respondent No.4 and others had filed an application before the Tahsildar/Taluka Executive Magistrate Haveli, Pune. The Tahsildar issued notice under Section 145 of Cr.P.C. The order is confirmed by Court. While observing that the Magistrate has power to pass order under Section 145, 106, 110 and 111 of Cr.P.C. The Sessions Court has observed that, mere tax receipts were not sufficient to hold that the applicant is the owner and possessor of the property in question. The adjoining

property bearing S. No.73-A/1+2A belongs to Maloji Construction. They had sought easementary access to its property from Respondent No.4, since he was in possession of the property. Accordingly land/approach road admeasuring 40 ft. in width was given to Maloji Construction for ingress and egress vide agreement dated 7th March 2008. Hence, the application is devoid of merits and deserves to be rejected.

8. Vide order dated 29th September 2016, the Taluka Executive Magistrate/Tahsildar Haveli, Pune had taken into consideration the submission of both the sides and perused the documents relied upon by parties. The Tahsildar/Taluka Executive Magistrate had drawn the following inferences:-

(i) Will dated 27th May 2004 was executed by Dara Irani and the same has been registered in the office of Sub-Registrar-11, Pune bearing No.3254/2004 description of the property, which is the subject matter of the said Will is survey No. 82, 74-B, 74-C, 74-A/1, 74-A/2 situated at Mauje Manjari, Taluka Haveli, District Pune. Dara Irani was unmarried and properties were bequeathed through the Will to his friend and acquaintances.

(ii) The property bearing survey No. 74-B situated at Manjari and construction thereon is referred to in the Will dated 27th May 2004.

The disputed property i.e. survey No. 74-B situated as Manjari Bk. was purchased by sale-deed dated 27th October 1943 from the original owner by Rashid Irani, Khodaram, Kaikhshru Irani and Mr.Bharucha. The sale-deed is registered in the office of Sub-Registrar Haveli vide registration No.1102/43. In 1956, there was internal distribution of property bearing survey No.74-B and it was given to Rashid Khodaram Kaikhshru Irani/Moraibadi.

(iii) Rashid Khodaram K. Irani (Moraibadi) died on 7th November 1970. He executed will dated 1st July 1970 and parted the property bearing survey No. 74-B to his nephew Dinshw, Dara, Fardoon and Khodaram. Amongst them, Fardoon K. Irani is alive. Jahangir Irani is the son of Dinshaw K. Irani. Dinshaw Irani died on 5th July 1992. He had executed Will dated 23rd March 1991. He had parted his share in the property to Dara K. Irani.

(iv) After the death of Dara Irani, son Jahangir has filed Special Civil Suit No.134 of 1995 for partition of property. He has disputed the Will executed by his father. Temporary injunction was granted vide application exhibit-5 by the Court. The said order was challenged before the High Court vide A.O. No.697 of 1996 /Civil Appeal No.1796 of 1996 and aforesaid order has been stayed by order dated 14th June 1996. During the lifetime of Dara Irani, Basappa Bhandari was appointed as worker. He was provided room

for residence. Beneficiaries of Will has given salary to Basappa Bhandari till September 2012. Jahangir has no right, interest in relation to property bearing survey No. 74 and bungalow on the said property. The said land and bungalow was in possession of Dara Irani during his lifetime and thereafter in possession of executor of Will PC. Chindhi, Nevil Hovi and Marjban Fardoon Irani.

(v) Dinshaw had not provided the share in the property to his legal heirs. He had given the ownership right in respect to the property as per the Will to Dara Irani. Jahangir Irani had filed Special Civil Suit No.134 of 1995 for partition of property and disputed Will of his father. Jahangir Irani had filed an application for appointment of Court receiver which indicate that, he was not in possession of property.

(vi) Behjad Irani had filed third party application in Special Civil Suit No.134 of 1995 for impleading him as defendant. The said application was allowed by the Civil Court. The said order was challenged by Jahangir and his mother Moti Irani in the High Court vide Writ Petition No.2950 of 2013. From the said Writ Petition it appears that, Behjad Irani has right in respect to the suit property.

(vii) Name of Jahangir is not appearing on 7/12 extract. Names of 20 other persons appears on the said extract. Hence, it is evident

that, Jahangir Irani is not sole possessor of property. On the ground that Jahangir Irani and his mother had misled revenue officer and entered their names in 7/12 extract and hence in 2010, the Sub-Divisional Officer Haveli, Sub-Division Pune had passed order cancelling name of Jahangir from mutation entry No.19838.

(viii) Dara had executed will dated 27th May 2004 for the benefit of Pesi Chindhy and 14 others. Marajban and Pesi Chindhy were appointed as executor. After death of Dara Irani the will has been implemented and possession has been handed over to Pesi Chindhy and 14 others.

(ix) Sale-deed has been executed in respect to $\frac{1}{4}$ share of Fardoon Irani on 26th June 2013 and registered with Sub-Registrar Haveli vide Registration No. 2228 of 2013 in favour of Ali Akbar Jafari. Tahmur Irani and Karin Irani had executed gift deed in respect to $\frac{1}{4}$ shares of property on 5th March 2013 registered in the office of Sub-Registrar Haveli in favour of Ali Akbar Jafari.

(x) On perusal of the documents forwarded by Police Inspector attached to Loni Khalbhor Police Station, Behzad Marazban Irani and Jahangir Dinshaw Moriabadi (Irani), it is apparent that, there is dispute in respect to property bearing survey No.74-A/1, 74-B and 74-C situated at Mauje Manjari Bk. There is likelihood of breach of

law and public order resulting in breach of public peace.

9. The Taluka Executive Magistrate in exercise of powers under Section 145 of Cr.P.C. passed order dated 29th September 2016 that Behzad Marazban Irani and Ali Akbar Jafari are in possession of the subject property as owners. Jahangir Irani was directed not to create obstructions in respect to the said property. Police Inspector, Loni Kalbhor Police Station was directed to take appropriate measures to see that there would be no breach of law and order situation in respect to the subject property.

10. Learned Sessions Judge vide order dated 17th January 2018 rejected the Revision Petition preferred by applicant. While passing the said order it was observed that, it is the case of Police Officer that the Magistrate has held that Behajad Marzaband Irani and Ali Akabar Jafri are in possession of the property and the applicant-Jahangir Dinshaw Moriabadi (Irani) was restrained from obstructing possession, use and enjoyment of opponents Nos.1 and 2. While dealing with the objection of the applicant that interim order has not been passed by Magistrate as per Section 145 (1) of Cr.P.C. It was observed that, in the case of *A. Dhaweethu Vs. District Collector, Sivagangai District, Sivagangai and Ors., 2017 Cri.L.J. 329*, it was held that, non passing by preliminary order by Magistrate under Section 145(1) Cr.P.C. would not vitiate his final order under Section

145(4) of Cr.P.C. Failure of Magistrate to pass preliminary order is mere irregularity and not illegality. No prejudice would be caused to parties. Aggrieved parties can move Civil Court in appropriate cases. Learned Sessions Judge has observed that, ratio laid down in the aforesaid case is applicable to the present case. The Magistrate has passed order stating that, the property bearing survey No.74-B was subject matter of Will dated 27th May 2004 executed by Dara Irani. The said property was purchased on 27th October 1943 and in the partition it was received by Rashid Khodaram Irani. The applicant filed Will which shows that, property is owner by Deza Irani and Ali Akbar Jafri. Civil Suit is filed bearing Special Civil Suit No.496 of 2015, which is pending before the Civil Court. No injunction order was passed by Civil Court. Documentary evidence is in support of Respondents, which shows that the applicant has no right, title and interest in the property. The applicant is contending that, he has deposited taxes about the property. The tax receipts are not sufficient to hold that, he is owner and possessor of the property. Will-deed shows prima facie ownership and possession of Respondents. Criminal case is filed about obstruction by applicant Report was made by Police i.e. Loni Kalbhor Police Station to Magistrate dated 28th May 2013. It was stated that, there is dispute between the parties and there is likelihood of commission of

cognizable offence at the hands of parties. The Magistrate gave an opportunity to both the parties. There is no illegality in the order passed by Magistrate. The said order will remain till passing order pass by the Civil Court and aggrieved party may approach Civil Court and obtained necessary reliefs. The matter is pending before the Civil Court and the said Court will take appropriate decision. The applicant has not made out any case to show that the Magistrate has passed illegal order. Hence no interference is called for. Revision Application was rejected.

11. I do not find any reason to interfere in the aforesaid orders. It is apparent that the Civil Court has not passed any order contrary to the impugned orders. Learned Advocate for applicant has relied upon the decision in the case of *Ram Sumer Puri Mahant Vs. State of U.P. and Ors.* (supra) it was observed that, when the civil litigation is pending for the same property wherein the question in the possession is involved and the 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, there is no justification for initiating a parallel criminal proceeding under Section 145 of Cr.PC. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. Parallel

proceeding should not continue and the order of the Magistrate directing initiation of such a proceeding under Section 145 of Cr.P.C. must be quashed. The said decision cannot be applied to the fact of the present case to set aside the impugned orders. It is apparent that, there is no challenge to the sale-deed executed in favour of the Respondent No.4. The applicant in Civil Suit No. 134 of 1995 had preferred an application for appointment of Court receiver and the said application was rejected. The documents which were assessed by the learned Taluka Executive Magistrate as well as learned Sessions Judge *prima facie* indicate that, the Respondents were in possession of the property and the applicant was not in possession of property. The sale-deeds were registered. The dispute is about title of the immovable property. The Civil Suit is pending since 1995. The amendment application in Order 6 Rule 17 of C.P.C. contending that, as per Rashid Khudaram Irani's Will dated 1st November 1970 if, within two years Khudaram Irani and Fardoon Irani did not return to India and therefore they are not entitled to get share in the properties, has been rejected by order dated 4th February 2008. It also appears that prior to execution of sale-deeds, the Development Agreement and Power of Attorney was executed in favour of Respondent No.4 and the said document was registered in the office of Sub-Registrar and it is claimed by Respondent No.4 that he was

put in the possession of the property. No suit is pending challenging the sale-deeds executed in favour of Respondent No.4. In the facts of this case, assuming that preliminary order under Section 145 of Cr.P.C. is not passed, would not vitiate the impugned orders. Considering the factual matrix as stated above no case is made out for interfering in the impugned orders. The application is devoid of merits and deserves to be rejected.

ORDER

Criminal Application No.107 of 2018 is rejected and disposed off accordingly.

(PRAKASH D. NAIK, J.)