

AGK

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

WRIT PETITION NO.3509 OF 2022

Usharani Prahlad Bhise

Age: 68 years, Occupation Business,
Currently r/at” Lotas B Flat No.1
Rahul Housing Society Ltd.
Road NO.4 E, Champaratna Housing
Society, Udaybhag, Wanwadi,
Pune 411 032

R/at: Flat No.8(13) Building No.4,
Champaratna Housing Society,
Uday bag, Wanwadi, Pune 411 013

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Petitioner

V/s.

1. The State of Maharashtra

through Assistant Police
Commissioner, Khadki Division,
Raja Bungalow, Old Bombay-Pune
Road, Khadki, Pune 411 003

2. Mahadeo Vitthal Jagdale

Age 38 years, Occu.: Advocate,
r/at Flat NO.10, Ground Floor,
C Wing, Shri Nehru bai,
Limyai Dhayari, Taluka Haveli,
District Pune 411 014.

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Respondents

Mr. Sujay Gangal for the petitioner.

Mr. A.R. Patil, APP for respondent no.1/State.

Mr. Kuldeep S. Patil i/by Ms. Saili N. Dhuru for respondent no.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 21, 2023

PRONOUNCED ON : APRIL 18, 2023

JUDGMENT:

1. The challenge in this writ petition is to the order passed by the Sessions Judge, Pune, in Criminal Revision Application No.386 of 2017 dated 11th August 2022 confirming judgment and order dated 1st April 2017 passed by the Sub-Divisional Officer under section 145 of the Criminal Procedure Code, 1973 (hereafter "Code", for short).

2. The petitioner is the applicant who had filed an application under section 145 of the Code on 13th July 2016 seeking delivery of possession of the property in dispute, which is a residential property bearing Flat No.8 in Building No.4 admeasuring 418 sq. ft. in Champaratna No.1 Cooperative Housing Society, Wanwadi, Pune. According to the petitioner, she executed a registered agreement to sell with Smt. Jinwal on 26th May 2003. The agreed consideration was Rs.3,10,000/- (Rupees Three Lakh Ten Thousand Only). Towards earnest amount, Rs.10,000/- (Rupees Ten Thousand Only) was paid. The remaining amount of Rs. 3 lakhs was to be paid within thirty days. The period to pay the

amount was extended till 31st December 2004. Smt. Jinwal executed a registered mortgage deed of the property in dispute in favour of Pune Urban Cooperative Bank, Wanwadi.

3. Due to non-payment of the remaining consideration, the petitioner cancelled the agreement dated 26th May 2003 and 29th October 2004. It is alleged that Smt. Jinwal, by registered sale deed, sold the property in favour of respondent no.2. Without informing the petitioner, the electricity meter in the property in dispute was transferred in the name of respondent no.2 by forging the signature of the petitioner. Since respondent no.2 attempted to take possession, the petitioner, on 9th July 2015, filed a complaint with the concerned police station.

4. On 11th March 2016, the petitioner filed Special Civil Suit No.340 of 2016. It is alleged that on 15th May 2016, respondent No.2 illegally dispossessed the petitioner and therefore, she filed an application under section 145 of the Code on 13th July 2016.

5. Respondent no.2 contested the application contending that he purchased the property in dispute from Smt. Jinwal by paying the full amount of consideration. He had issued public notice before purchasing the property in dispute. He has been in possession of the property in dispute from the date of the sale deed.

6. The Sub-Divisional Officer rejected the application filed by the petitioner. The learned Sessions Court confirmed the order. The petitioner has filed a present writ petition challenging the order passed by the learned Sessions Judge.

7. Heard learned advocates for the parties and perused the record. On perusal of the record, the following undisputed facts relevant to the adjudication of the issue involved arise for consideration.

(i) The petitioner filed Special Civil Suit No.340 of 2016 on 11th March 2016.

(ii) The suit was for a declaration that the agreement to sell was executed on 26th May 2003 by the petitioner in favour of Smt. Jinwal be cancelled and for a declaration that the sale deed executed by Smt. Jinwal and possession receipt executed by Smt. Jinwal, in favour of respondent no.2, is illegal. Accordingly, the petitioner in the said suit prayed for a mandatory injunction against respondent No. 2 for delivery of possession.

8. The Trial Court rejected the plaint in exercising powers under Order VII Rule 11(d) of the Code of Civil Procedure, 1908. An appeal against the said decree is pending before the Appellate Court.

9. The application for a mandatory injunction is dated 10th June 2016. Therefore, based on undisputed facts, it is clear that on the date of initiation of proceedings, i.e., 13th July 2016, the application for delivery of possession of the property in dispute was pending before the Civil Court in a substantive suit seeking a declaration of the sale deed executed in favour of respondent no.2 being declared as void. Therefore, in my opinion, the controversy involved is squarely covered by the judgment of the Apex Court in

Amresh Tiwari v. Prasad Dubey, reported in (2000) 4 SCC 440. The Apex Court, in paragraphs 13 and 14, held as under:

“13. 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.

14. 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 of 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.

10. It appears that in **Amresh Tiwari** (supra), the Apex Court delivered two principles in relation to proceedings under Section 145 of the Code.

I) When parties can approach the Civil Court for adequate property protection during the pendency of dispute, parallel proceedings under Section 145 should not continue.

II) After parties to the dispute under Section 145 applied for the grant of the same relief before the civil court and granted by the Civil Court, proceedings under Section 145 should not be continued.

11. In the facts of the present case, the petitioner had already applied for delivery of possession of the property in dispute before the Civil Court. Therefore, the petitioner could not have initiated proceedings under section 145 of the Code.

12. Learned advocate for the petitioner submitted that the Civil Court dismissed the substantive suit, and an appeal against the decree is pending. The rights of the parties under section 145 are always subject to the decision of the Civil Court. If the petitioner finally succeeds in civil proceedings, the petitioner shall be entitled to get reliefs that the Civil Court would grant.

13. Therefore, no interference in the impugned judgment and order is called for.

14. The writ petition stands dismissed. No costs

(AMIT BORKAR, J.)

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signed by
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KULKARNI
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