

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-9466-2021
Reserved on 27.04.2023
Pronounced on: 29.04.2023

Sukhwinder Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. M.L. Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate
for the petitioners.

Mr. Amit Rana, Sr. DAG, Punjab
for respondents No.1 to 4/State.

Mr. D.S. Walia, Advocate
for respondent No.5.

MANJARI NEHRU KAUL, J.

1. The petitioners are seeking quashing of proceedings under Section 145 of the Cr.P.C. which were initiated vide report No.11 dated 03.11.2017 (Annexure P-7) with respect to the land measuring 39K-4M. Besides this, a challenge has also been made to order dated 22.11.2017 (Annexure P-8) passed by respondent No.2-Sub Divisional Magistrate, Jagraon, District Ludhiana whereby respondent No.3-Naib Tehsildar, Sindhwan Bet, Tehsil Jagraon was appointed as Receiver. The petitioners have further laid a challenge to order dated 07.12.2019 (Annexure P-9) passed by learned Additional Sessions Judge, Ludhiana.

2. Learned senior counsel for the petitioners has *inter alia*

made the following submissions:-

(i) that respondent No.5 is the registered owner of the land in dispute measuring 39K-4M, however, it was petitioner No.1 who was in cultivating possession of the said land. Petitioner No.1 had entered into an agreement to sell dated 12.01.2004 with respondent No.5 for the purchase of the land in question. It was agreed upon between the parties that after harvesting the wheat crop, petitioner No.1 would retain the possession of the land. The target date for execution and registration of the sale deed was fixed for 16.11.2004. However, respondent No.5 failed to get the sale deed executed and registered in favour of petitioner No.1. Resultantly, a suit for specific performance of the agreement to sell dated 12.01.2004 was instituted by petitioner No.1 against respondent No.5. The said suit for specific performance was decreed by the learned Trial Court. The Lower Appellate Court allowed the appeal preferred by respondent No.5 against the judgment and decree passed by the learned Trial Court and reversed the findings recorded by the learned Trial Court. A Regular Second Appeal which has since been preferred by petitioner No.1 is pending adjudication before this Court, wherein stay of alienation, has been ordered.

(ii) that the petitioner had been in cultivating possession of the land in question even prior to the agreement to sell dated 12.01.2004, which fact had also been admitted by respondent No.5 in his statement dated 15.06.2014 made before one ASI Gulzar Singh, PS Sindhwan Bet (Annexure P-6), pursuant to a complaint bearing No.677 made by him on 14.06.2014. Subsequent to the inquiry carried out on the said complaint, the police had submitted a report to SSP, Jagraon wherein

also it was reported that petitioner No.1 was in possession of the land.

(iii) that due to change of Government in the State, respondent No.5 who is an influential person, started interfering in the peaceful possession of petitioner No.1 as a result of which the petitioners filed a complaint dated 20.06.2017, before the local police authorities. Respondent No.5 had also filed a complaint to police dated 19.06.2017 but the same was with a malicious intent to defeat the rights of the petitioners. Pursuant to the aforesaid complaints, respondent No.4-SHO, Police Station Sindhwan Bet, erred in preparing Report No.11 dated 03.11.2017, seeking initiation of proceedings under Section 145 of the Cr.P.C. The application dated 21.11.2017 for appointing a Receiver for the standing paddy crops was thus clearly misconceived in the above facts and circumstances.

(iv) that the proceedings under Sections 145/146 of the Cr.P.C. could not have been initiated once respondent No.5 had himself admitted to the possession of the petitioners in his statement given to police. Still further, once a civil suit for specific performance had been instituted qua the land in question and a Regular Second Appeal was also pending before this Court, there was no occasion for respondent No.2 to have initiated proceedings under Sections 145/146 of the Cr.P.C. as the question of possession could be decided only in said civil proceedings.

3. Per contra, learned counsel appearing for respondent No.5 has vehemently controverted the submissions made by learned senior counsel for the petitioners by making the following submissions:

(i) that the petitioner had never been in cultivating possession

of the land in question. Apart from bald assertions there was no evidence at all to support the factum of the petitioners being in cultivating possession of the land. In support, learned counsel has referred to the revenue records which stand annexed with his reply, by urging that nowhere had the petitioners been recorded as being in cultivating possession of the land in dispute. Rather it was evident from the records that it was respondent No.5, who was owner in possession of the land.

(ii) that the petitioners had been continuously extending threats with respect to peaceful possession of respondent No.5 as a result of which a civil suit for permanent injunction was instituted by respondent No.5 against the petitioners in the year 2006 wherein relief of temporary injunction was granted in his favour, and subsequently even the suit was decreed in his favour. The said decree for permanent injunction had since attained finality, as the appeal preferred by the petitioners before the Lower Appellate Court stood dismissed and thereafter the petitioners had not preferred any appeal against the same.

(iii) that statement (Annexure P-6) on which the learned senior counsel has placed a great deal of reliance would have no relevance as any statement made before the police has no evidentiary value. He submits that mere pendency of a Regular Second Appeal, cannot be a ground for quashing proceedings under Sections 145/146 of the Cr.P.C. as in a suit for specific performance of agreement to sell, the petitioners had not prayed for possession of the land, therefore, in the circumstances, the Magistrate was well within his jurisdiction to proceed under Section 145 of the Cr.P.C.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. The sole question which arises for consideration of this Court is as to whether or not proceedings under Section 145 of the Cr.P.C. could have been initiated by a Magistrate with respect to the property during the pendency of a civil suit qua the same. The law in the said regard has been well settled by the Hon'ble Supreme Court in ***Ram Sumer Puri Mahant Vs. State of U.P. : (1985) 1 SCC 427***, wherein it was held as under:-

“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.....”

6. The Hon'ble Supreme Court in ***Amresh Tiwari Vs. Lalta Prasad Dubey and another : (2000) 4 Supreme Court Cases 440*** while relying upon its decision in ***Ram Sumer Puri Mahant's case (supra)*** also went on to hold that when possession of a property is being examined by a Civil Court and the parties are in a position to approach the Civil Court for adequate protection during the pendency of a

dispute between them, parallel proceedings under Section 145 of the Cr.P.C. should not be allowed. The Hon'ble Supreme Court in *Amresh Tiwari's case (supra)* further held as under-

*“14. Reliance has been placed on the case of Jhummal alias Devandas versus State of Madhya Pradesh & Ors., reported in 1988 (4) S.C.C. 452. It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 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 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 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 Sumers case (supra) 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.**”*

7. Coming to the case in hand, it is a matter of record that respondent No.5 had filed a suit for permanent injunction against the petitioners in the year 2006 wherein temporary injunction was granted by the Civil Court. Thereafter, the petitioners impugned the said order of temporary injunction before the Lower Appellate Court and it was

during the pendency of that appeal, proceedings under Section 145 of the Cr.P.C. were initiated at the behest of respondent No.4-SHO Police Station, Sindhwan Bet on 22.11.2017. In these circumstances, since the suit for permanent injunction was still pending, there was nothing which prevented the petitioners and respondent No.5 to approach the Civil Court seeking protection of possession over the disputed land.

8. Since the question of possession of the parties over the disputed land was *sub judice* before the Civil Court in a suit for permanent injunction, the Magistrate could not have initiated parallel proceedings under Section 145 of the Cr.P.C. qua the said property, and between the same parties.

9. In the facts and circumstances as enumerated hereinabove, when appreciated in the light of the law laid down by the Hon'ble Supreme Court, the proceedings under Section 145 of the Cr.P.C. pending before respondent No.2-Sub Divisional Magistrate, Jagraon, District Ludhiana, and the order dated 22.11.2017 appointing a Receiver under Section 146 of the Cr.P.C. deserves to be and are accordingly quashed.

10. Accordingly, the instant petition stands allowed.

11. It is clarified here that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of any other proceedings which may be pending between the parties.

29.04.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No