

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22581-2016

Date of Decision:13.09.2023

Ruder Krishana Bishnoi

...Petitioner

Vs.

State of Punjab and others.

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Ivneet Singh Pabla, Advocate
for the petitioner.

Mr. Mohinder Singh Joshi, Additional Advocate General, Punjab.

Mr. A.K Khunger, Advocate
for respondent No.3.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned order dated 17.05.2016 (Annexure P-4), passed by the Court of Additional Sessions Judge, Fazilka and the order dated 31.12.2014 (Annexure P-2) passed by the Court of Sub-Divisional Magistrate, Abohar whereby the proceedings under Section 145 Cr.P.C were initiated and the possession of the land was taken from the petitioner and the revision filed by the petitioner was ordered to be dismissed.

2. Learned counsel for the petitioner submits that the land measuring 201 kanals 03 marlas situated at Village Panniwala Mahla, Tehsil Abohar stood in the name of Manphool Singh son of Jawana Ram and the said land was the ancestral and co-parcenary property of the petitioner and other family members. About 25/26 years ago, the share of the land in the name of the petitioner was given to the petitioner and he continued to be owner in possession over the land

comprised in Rectangle No.71 killa No.8/1 (3-16), 13(8-0) Khewat No. 51/24, Khatoni No. 189, situated at Village Panniwala Mahla, Tehsil Abohar. Manphool Bishnoi was requested to change the ownership in the revenue record, as per their share, however, the matter could not be resolved. Ultimately, the petitioner and other co-sharer filed a suit for declaration against Manphool Singh and the suit was pending at Civil Court, Abohar. It is further argued that during the pendency of the Civil suit, Usha Bishnoi, respondent No.3 got the suit land transferred in her name without signatures of Manphool Bishnoi and by forging the signatures. Even the transfer deed in favour of Usha Bishnoi was challenged by way of the civil suit.

4. Learned counsel for the petitioner next contended that during the pendency of the civil suit, Usha Bishnoi, respondent No.3 filed an application against the petitioner in the police station as well as in the Court of Sub-Divisional Magistrate, Abohar, without disclosing the pendency of the civil suit and order of status quo regarding the land. Consequently, vide the rapat No.15 dated 10.02.2014, the proceedings under Section 145 Cr.P.C were ordered to be initiated and Tehsildar, Abohar was appointed as a receiver, who took the possession of the land on 04.07.2014. The petitioner moved an application for early hearing and to cancel the proceedings under Section 145 Cr.P.C, but the respondent No.2 only adjourned the case sine die awaiting the final decision of the Civil Court. The petitioner filed a revision petition before the Additional Sessions Judge, Fazilka and vide the impugned order dated 17.05.2016 the Court of Additional Sessions Judge, Fazilka not only dismissed the revision petition but also ordered to hand over the possession to Usha Bishoni, respondent No.3, during the pendency of the civil suit, which was already

pending separately before the Civil Courts at Abohar. Challenging the same, the petitioner has preferred the petition before this Court.

4. On the other hand learned State counsel submitted that in the present case, respondent No.3 was the registered owner of the land, whereas, petitioner had forcibly occupied the land in question and there was a dispute between the parties over the ownership and possession over the land in question. Since there was apprehension of breach of peace, the proceedings under Section 145 Cr.P.C were initiated and the Tehsildar, Abohar was appointed as a receiver. However, when the matter regarding the pendency of the civil suit was brought to the notice of the Court of SDM, the proceedings under Section 145 Cr.P.C were ordered to be adjourned sine die. Thus, the petition was liable to be dismissed. Learned counsel appearing on behalf of respondent No.3 also made similar submissions and prayed for dismissal of the present petition.

5. I have heard learned counsel for the parties and perused the record.

6. It has been held by Division Bench of this Court in the matter of **Tek Ram Vs. Sub-Divisional Magistrate, Panipat, 1997(2) RCR Criminal 549** as follows:-

11. As already stated above a Magistrate has no role to play in a matter about the disputed possession of some property between the parties where a Civil Court has already granted an injunction and is debarred to invoke the proceedings under Section 145 Criminal Procedure Code, 1973. In this view of the law, it is worthwhile to make mention of AIR 1985 Supreme Court 472 wherein the Apex Court has held that :

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of parallel criminal proceedings under

Section 145 of the Code, would not be justified. The 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 an 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”.

12. In view of the above observation of the Apex Court, we are afraid to hold that the view expressed by the Division Bench of this Court in Mohinder Singh v. Shri Dilbagh Rai, reported in 1976 PLR 803 still holds good and the parallel proceedings under Section 145 Criminal Procedure Code, 1973 can be started to defend the orders of the civil Court by not allowing the aggressor to establish himself in possession of the subject matter.

13. Also we feel that by initiation of parallel proceedings by the same party, one before a Civil Court of law (which is earlier in time) and gets a temporary injunction on adjudication and the other before a Criminal Court of law who attaches the property by invoking powers under Section 145 Criminal Procedure Code, 1973 both the parties are put to a legal jeopardy for there is every likelihood that two Courts may adjudicate differently and that way the parties may get deranged under the process of law.

14. Once the Apex Court by an authoritative pronouncement has held that when a civil litigation is pending for the property wherein the question of possession is involved and adjudicated, initiation of criminal proceedings under Section 145 Criminal Procedure Code, 1973 would not be justified, the rulings of this Court on the subject whether of any learned Single Judge or that of the Division

Bench contrary to that view are of no avail especially when the ruling reported in AIR 1985 Supreme Court 472 is the latest on the subject and no other ruling was cited that the Hon'ble Supreme Court has afterwards held contrary to it and in line with the law laid down in 1976 P.L.R.803.

15. In view of the above discussion this Criminal Misc. is allowed and the proceedings initiated before the criminal Court under Section 145 Criminal Procedure Code, 1973 and the orders passed thereon being illegal and contrary to the settled law as mentioned above are quashed and the parties are left to be governed by the orders of the Civil Courts who shall see that their orders are maintained by the parties in accordance with law.

5. It is not disputed by learned counsel for the parties that this very property, which is subject matter of the proceedings under Section 145 Cr.P.C is also subject matter of civil suit pending in the Civil Court, Abohar. The question as to possession over the property or entitlement to the possession would be determined by the Civil Court. The proceedings under Section 145 Cr.P.C have remained pending for several years. I do not find any propriety behind allowing these proceedings to continue in view of the fact that the parties had already approached the Civil Court. Whichever, way the proceedings under Section 145 Cr.P.C may terminate, the order of Criminal Court would always be subject to the decision by the Civil Court. Inasmuch as, the parties are already before the Civil Court, it would be appropriate to let the civil Court decide the issues and thereupon, pass appropriate interim orders, taking care of the grievances of the parties by making such arrangements as may remain in operation during the hearing of the civil Court.

6. Consequently, without going into the rival claims raised by the

parties, in the considered opinion of this Court, the civil Court would be most appropriate forum to take care of such grievances and pass such interim orders as would reasonably protect the interests of both the parties. The Civil Court may issue an ad interim injunction, may appoint a commissioner or receiver or may make any other interim arrangement as to the possession or user of the property, which is the subject matter of the proceedings in the Civil Court. In view of what has been stated hereinabove, the petition is allowed and the proceedings under Section 145 Cr.P.C are ordered to be quashed and the parties may approach the Civil Court for redressal of their grievances. The Civil Court would be at liberty to grant any interim relief without regard to the fact whether the application for their purposes moved by the plaintiffs or the defendants. Such an application, as and when made, shall be heard and decided expeditiously.

13.09.2023
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(N.S.SHEKHAWAT)
JUDGE

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