

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRMs-51865 & 39083-2023 and
CRM-M-41061-2013**

Reserved on: 08.12.2023

Pronounced on: 16.12.2023

HARJINDER SINGH

. . . . Petitioner

Vs.

STATE OF HARYANA AND OTHERS

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ranjit Saini, Advocate for the applicant-petitioner.

Mr. Mohit Kakkar, Advocate, for
Mr. Bhupinder Ghai, Advocate, for respondent No.2.

Mr. Sanjeev Manrai, Sr. Advocate, with
Mr. Malkiat Singh and Ms. Neha, Advocates,
for respondent No.3.

DEEPAK GUPTA, J.

CRM-M-41061-2013

By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973 [In short 'CrPC'], petitioner prayed to quash kalendra under Section 145 CrPC dated 07.07.2011 (Annexure P1), presented by SHO Police Station, Ismailabad, District Kurukshetra; order dated 01.08.2011 (Annexure P3) passed by Sub Divisional Magistrate, Pehowa; and order dated 06.11.2013 (Annexure P5) passed by Id. Additional Sessions Judge, Kurukshetra, alleging the same to be contrary to the provisions of Section 145 CrPC. Petitioner further prayed for staying his dispossession from the disputed property.

2. (a) The kalendra dated 07.07.2011 (Annexure P1) was filed by the State through SHO, Police Station, Ismailabad before SDM, Pehowa stating therein that Lakhvinder Kaur (*respondent No.3*), resident of Village Rohati had purchased 8 kanal of land from Harjinder Singh (*petitioner*), resident of Village Thaska Miranji, out of Khewat No.225, Khatoni No.380 by virtue of sale deed bearing No.1019 dated 23.11.2010. Said Lakhvinder Kaur further sold the land to Balwinder Kaur (*respondent No.2*) wife of Baldev Singh s/o Gurmej vide sale deed No.1348 dated 01.02.2011. However, Harjinder Singh did not deliver possession of the land to Balwinder Kaur. Said Harjinder Singh and his brothers were claiming that only 112 kanal 8 marla of land exist in the khewat, which was being cultivated by them and that the land purchased by vendee was not there. The situation had become tensed. Proceedings were earlier initiated under Section 107/151 CrPC on 26.07.2011 against Harjinder Singh etc. and on investigation, he (SHO) came to the conclusion that there was apprehension of breach of peace between both the parties and so, he recommended carrying out the proceedings under Section 145 CrPC.

(b) Harjinder Singh, his three brothers Charanjit Singh, Baldev Singh & Palvinder Singh; and mother Gurdeep Kaur (*petitioner and respondents No.4 to 7 herein*) were impleaded as party No.1 in the kalendra; whereas, vendee Lakhvinder Kaur and subsequent vendee Balwinder Kaur (*Respondents No.3 & 2 herein*) were impleaded as party No.2.

3. In the reply filed by party No.1 i.e., petitioner and his family, it was claimed that total land measuring 112 kanal 8 marla was joint property of Harjinder Singh, Charanjit Singh, Baldev Singh & Palvinder Singh sons of Balkar Singh; and Gurdeep Kaur wife of Balkar Singh. They were cultivating

the same as per their share. Gurdeep Kaur had died. 2 acre of land comprised in Khasra No.716 and 719 fall in Markanda river, which is at a distance of about 1 km from the remaining land and that Girdawari of Khasra No.716 was in the name of Harjinder Singh, whereas Girdawari of remaining land was in the joint name of all the co-sharers. It was further claimed that Harjinder Singh had sold land measuring 8 kanal out of his share to Lakhvinder Kaur vide sale deed dated 23.11.2010 comprised in Khasra No.716 and had delivered possession thereof to her, but when Lakhvinder Kaur sold the land to Balwinder Kaur, she in collusion with vendee got incorporated the delivery of possession of Khasra No.608 min South (2-0) and 609 (6-0), which in fact had not been delivered to Lakhvinder Kaur. It was alleged that Lakhvinder Kaur and Balwinder Kaur along with their respective husbands had committed fraud by incorporating valuable portion of the land in the sale deed and that Harjinder Singh had even filed a complaint under Section 420 IPC in the police station. Prayer was made for setting aside the kalendra.

4. Vide order dated 01.08.2011 (Annexure P3), SDM, Pehowa concluded that there existed apprehension of breach of peace between both the parties regarding possession of the land. Earlier the two parties had been challaned under Sections 107/151 CrPC and so, he initiated the proceedings under Section 145(1) CrPC and further ordered attaching the entire property measuring 112 kanal 8 marla and asked to parties to submit their written claims with respect to the possession.

5. The aforesaid order dated 01.08.2011 of SDM, Pehowa has been upheld by the Court of Id. ASJ, Kurukshetra vide impugned order dated

06.11.2013 (Annexure P5), by observing that it appeared that Id. Executive Magistrate had passed the impugned order attaching the disputed land under Section 146(1) Cr.PC in the interest of maintaining public peace and tranquility so as to prevent any unpleasant happening between the parties.

6. Assailing the aforesaid orders, it is contended by Id. counsel for the petitioner that sale of specific number is the sale of share and that petitioner earlier being in possession of a specific Khasra No.716 (8-0) had delivered possession thereof to Lakhvinder Kaur, but said Lakhvinder Kaur by mentioning different Khasra Nos. i.e. 608 min South (2-0) and 609 (6-0) in the sale deed in favour of Balwinder Kaur, wanted to grab valuable portion of the joint land and that remedy for the vendee was to file suit for partition. Id. counsel also contends that once parties are in joint possession, proceedings under Section 145 CrPC cannot be invoked. Id. counsel further contends that neither Balwinder Kaur nor Lakhvinder Kaur were able to establish their possession over Khasra no.608 min South (2-0) and 609 (6-0) and rather, possession of this land as per the revenue record is with the petitioner, as it evident from Khasra Girdawari Annexure P8 and that Id. SDM wrongly ordered attachment of the property and so, the impugned orders passed by the Court of SDM and that by the Revisional Court are illegal.

7. Vide order dated 04.12.2013, this Court issued notice of motion and in the meantime, operation of the impugned order dated 01.08.2011 (Annexure P3) and order dated 06.11.2013 (Annexure P5) were directed to remain stayed. At one point of time, during proceedings, matter was also

sent to Mediation and Conciliation Centre of this Court to explore the possibility of amicable settlement, but the same failed.

8. Needless to say that respondents have defended the impugned orders.

9. Respondent No.3 moved an application bearing CRM-39083-2023 to place on record the certificate issued by the revenue officer concerned to the effect that petitioner-Harjinder Singh is left with only an area of 19 marla out of total 112 kanal 8 Marla of land in the Khewat. Said certificate is annexed as Annexure R3/1 in the application.

10. Counsel for the petitioner sought time to refute the aforesaid contention, but instead of filing any counter-affidavit to falsify Annexure R3/1, an application bearing CRM-51865-2023 was moved so as to implead Smt. Kulwinder Kaur and Smt. Gurpreet Kaur, the daughters-in-law of the petitioner as petitioners No.2 & 3, as they were now owners of the land in dispute by virtue of sale deeds dated 20.09.2018 and 10.06.2023 (Annexures P9 and P10, respectively) i.e. executed during pendency of these proceedings.

11. Respondents strongly opposed the application.

12. I have considered submissions of both the sides and appraised the record.

13. Relevant part of Section 145; and 146 of the CrPC reads as under: -

145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace

exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute,

(4) The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute: Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).

(5) Nothing in this section' shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under subsection (1) shall be final.

146. Power to attach subject of dispute and to appoint receiver.

(1) If the Magistrate at any time after making the order under sub- section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the

possession thereof: Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908);

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate-

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.

14. Explaining the scope of Sections 145 & 146 CrPC as reproduced above, Hon'ble Supreme Court in the case of ***Ashok Kumar Vs. State of Uttarakhand and others, 2013 (1) RCR (Criminal) 961***, held as under:

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Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145, Cr.P.C. It can only be read in the context of Section 145, Cr.P.C. If after the enquiry under Section 145 of the Code, the Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof

13. *The ingredients necessary for passing an order under Section 145 (1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the*

circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

15. In the light of legal position as above, when the facts of the present case are examined, it is noticed that as per sale deed dated 28.11.2010 (Annexure P6), petitioner-Harjinder Singh, out of 112 kanal 8 marla of land comprised in a single khewat No.225 situated in Village Thaska Miranji, Sub Tehsil, Ismailabad, sold 160/2240 share in favour of Lakhvinder Kaur. As per the sale deed, possession of Khasra No.716 (8-0) was handed over to the purchaser. So, as per this sale deed, though share to the extent of 160/2240 was sold, but possession of a specific Khasra number 716 was delivered.

16. By way the subsequent sale deed dated 01.02.2011 (Annexure P7), Lakhvinder Kaur, claiming to be owner of 20/281 share in the total land measuring 112 Kanal 8 Marla of Khewat No.225, sold the same to Balwinder Kaur, but as per the sale deed, she delivered the possession to the vendee of the land comprised in Khasra No.608 min South (2-0) and 609 (6-0).

17. It is on the basis of the aforesaid documents that petitioner claims that he had delivered possession of land comprised in Khasra No. 716 (8-0) to Lakhvinder Kaur and therefore said Lakhvinder Kaur could not have delivered possession of 608 min South (2-0) and 609 (6-0) to Balwinder Kaur.

18. Counsel for the petitioner has also drawn attention towards Khasra Girdawari for the period Kharif 2010 to Rabi 2011 (Annexure P8) so as to claim that out of the total land of the khewat, Harjinder Singh-petitioner was in specific possession of land comprised in Khasra No.716 (8-0);

whereas remaining entire land was in joint possession of all the co-sharers. However, to the specific query put by the Court to ld. counsel for the petitioner, as to when Harjinder Singh came in possession of specific Khasra No.716 as per the entry in the Khasra Girdawari or as to whether the said entry was reflected regarding his possession over a specific Khasra number in the jamabandi prior to Khasra Girdawari Annexure P8 or any other revenue entry or to when the said entry was incorporated in Khasra Girdawari, ld. counsel was complexly at loss of words.

19. In all the aforesaid circumstances, it is a matter of dispute as to whether petitioner had or could have delivered the possession of Khasra No. 716 (8-0) to Lakhvinder Kaur, as is being claimed by him. At the same time, it is also subject matter of the dispute as to whether Lakhvinder Kaur could have delivered the possession of 608 min South (2-0) and 609 (6-0) to Balwinder Kaur.

20. All the aforesaid disputes are required to be decided at the appropriate forum. In these circumstances, ld. SDM, Ismailabad was not at fault in coming to the conclusion that there was apprehension of breach of peace and tranquility, in respect of possession of the disputed land and so, rightly attached the land. It has also been informed that partition proceedings have already been initiated.

21. Consequently, no fault can be found in the impugned orders and as such, the present petition is hereby dismissed.

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22. This application, moved by respondent No.3 to place on record certificate Annexure R3, is allowed in the absence of any counter by the

non-applicants. Thus, it is found on the basis of Annexure R3/1 that applicant/petitioner is now left with only 19 marla of land out of total 112 kanal 8 marla of the entire khewat.

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23. This application, moved to implead two daughters-in-law of the applicant/petitioner, who purchased the land during the pendency of these proceedings, is hereby dismissed, as the application appears to have been moved just to delay the proceedings. The said subsequent vendees are bound by the outcome of the main petition i.e., CRM-M-41061-2013.

24. In the aforesaid circumstances, the contention of ld. counsel for the respondents also contain force that despite having sold the entire land except to the extent of 19 marla, petitioner is taking undue advantage of the stay order passed by this Court.

25. With the dismissal of this petition, the stay order earlier granted by this Court, stands vacated.

Any pending application(s), if any, shall stands disposed of.

16.12.2023
Vivek

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	No