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

CRM-M-41787-2017

Date of Decision: 17.05.2024

HARBANS SINGH**... Petitioner****Versus****STATE OF PUNJAB & OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab
for respondent Nos.1 & 3.

None for respondent No.2.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 19.08.2014 (Annexure P-1) passed by the SDM, Gurdaspur whereby a Receiver has been appointed in proceedings under Section 145 Cr.P.C. and for quashing of the order dated 27.07.2017 (Annexure P-3) passed by the ASJ, Gurdaspur whereby the revision against the aforementioned order has been dismissed.

2. The brief facts of the case are that proceedings under Section 145 Cr.P.C. were initiated on the basis of a complaint of Charanjit Kaur, Sarpanch (respondent No.2) and other members of the Gram Panchayat. The SDM, Gurdaspur vide his order dated 19.08.2014 appointed the Block Development and Panchayat Officer, Dhariwal, District Gurdaspur



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(respondent No.3) as the Receiver. The copy of the said order dated 19.08.2014 is attached as Annexure P-1 to the petition.

3. The petitioner filed a revision before the Court of ADJ, Gurdaspur, and the said revision petition came to be dismissed vide judgment dated 27.07.2017. The copy of the said judgment is attached as Annexure P-3 to the petition.

4. The instant petition has been filed against the aforementioned orders.

5. The learned counsel for the petitioner contends that the proceedings under Section 145 Cr.P.C. have been wrongly invoked in the present case. In fact, the petitioner had purchased the property in question on 11.04.1988 and had been put in possession of a specific part of the same though, the formal partition had not taken place. Despite passing of the impugned order appointing a Receiver, the petitioner has continued to remain in possession right from the year 1988 and was even today in possession. Even pursuant to the order appointing a Receiver on 19.08.2014, there has been no dispute between the parties upto date. In fact, the instant proceedings had been initiated on account of party faction as the opposite party happens to be the then Sarpanch and members of their Panchayat. Proceedings under Section 145 Cr.P.C. were otherwise not maintainable in the case of co-sharers. He therefore contends that the impugned orders were liable to be quashed. Reliance is placed on the judgments in the cases of **Jasvir Singh &**



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others Versus State of Punjab & others, 2008(4) R.C.R. (Criminal) 466 and Shish Pal Versus State of Haryana, 2001(2) R.C.R. (Criminal) 826.

6. On the other hand, the learned State counsel while referring to the reply dated 19.03.2020/23.06.2020 filed by respondent No.3 contends that the impugned order appointing a Receiver had been correctly passed in accordance with law. There was no illegality in the judgment dated 27.07.2017 (Annexure P-3) passed in the revision petition against the said order. Therefore, the present petition was liable to be dismissed. She, however, concedes that despite the Receiver being appointed the petitioner continues to remain in possession even today, that between 1988 when the petitioner purchased the property right upto 2014 when the application under Section 145 Cr.P.C. was moved there had never been any dispute between the parties and that even subsequent thereto upto date, there was no breach of peace between the parties. It is also not denied that the petitioner was a co-sharer in the property in question though he was in possession of a defined share.

7. I have heard the learned counsel for the parties.

8. When this matter had come up for hearing, on 17.01.2018 the following was passed:-

“CRM-1001-2018

Prayer in this application is for placing on record the documents and photographs as Annexures P-3 to P-8.

For the reasons stated in the application, same is allowed. Annexures P-3 to P-8 are taken on record. CRM stands disposed of.



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Prayer in this petition is for quashing of the order dated 19.08.2014 passed by the trial Court and the order dated 27.07.2017 passed by the revisional Court.

Counsel for the petitioner submits that the petitioner has purchased part of the land comprising in khasra No.42/10 and has installed the gate on the same. It is further submitted that the entire khasra No.42 is under construction where houses or shops have been constructed. Counsel for the petitioner has referred to copy of khasra girdawari (Annexure P-4) to argue that khasra No.42 has been bifurcated into 12 parts and as per this document, vide mutation No.532-533, khasra No.42/10 has been sold by its owner in favour of the petitioner. It is further submitted that as per column of cultivation, it has been shown in self-cultivation of the owners and as such, the petitioner who has purchased half share of khasra No.42/10, is in possession of his respective share, which he has purchased from the owner. Counsel for the petitioner has further submitted that even as per the field book, khasra No.42 is shown to be bifurcated, whereas both the Courts below have relied upon the statement of Patwari Halqa who has stated that it cannot be ascertained that as on which part of this khasra No.42, the co-sharers are in possession of their respective shares. It is thus submitted that the statement made by Patwari Halqa is factually incorrect.

Notice of motion for 06.04.2018.

Notice re: stay also.”

9. A perusal of the record would reveal that though the petitioner had purchased a specific portion and was in possession of the same right from the year 1988, no formal partition has taken place. Therefore, as the



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parties are co-sharers and in joint possession, proceedings under Section 145 Cr.P.C. are not maintainable as has been held in **Jasvir Singh** (supra) and **Shish Pal** (supra).

10. It is also relevant to mention here that despite the passing of the impugned order on 19.08.2014 (Annexure P-1) appointing respondent No.3 as a Receiver, the petitioner continues to remain in possession of the property in question till date. Between the year 2014 when the application was moved and upto now, there have not been any further breaches of peace between the parties. It appears that the present proceedings were initiated on account of party faction as the respondent No.2 was the then Sarpanch and members of the Panchayat.

11. In view of the aforementioned discussion, I find considerable merit in the present petition. Therefore, the order dated 19.08.2014 (Annexure P-1) passed by the SDM, Gurdaspur, the judgment dated 27.07.2017 (Annexure P-3) passed by the ASJ, Gurdaspur and all subsequent proceedings arising therefrom stand quashed.

12. Needless to say if there are any further instances of breach of peace between the parties, the appropriate authorities are free to proceed in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

17.05.2024

JITESH

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