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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43103-2022
Date of Decision: 14.08.2024

SURENDER KUMAR

... Petitioners

Versus

STATE OF HARYANA & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.K. Kaushik, Advocate
for the petitioners.

Mr. Deepak Grewal, DAG, Haryana
for respondent Nos.1 & 2.

Mr. Bhupender Singh, Advocate for
Mr. V.S. Mandhan, Advocate
for respondent Nos.3 to 6.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 09.08.2022 (Annexure P-6) passed by respondent No.2 whereby proceedings initiated against respondent Nos.3 to 7 by the SHO, P.S. Indri, Karnal on the complaint of the petitioner while filing a Kalandra dated 09.05.2022 under Section 145 Cr.P.C. have been dropped.

2. As per the case of the petitioner, his father Jagir Singh S/o Sh. Ram Kishan alias Kishna was the owner in possession of ancestral Joint Hindu Property i.e. agricultural land being a share-holder measuring 218 kanal 16 marla in Revenue Estate of Village Kamalpur Roran, Tehsil Indri, District Karnal as well as 63 kanal 18 marla in Revenue Estate of Village

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Bibipur Jattan, Tehsil Indri, District Karnal. In April, 2018, an oral family settlement had taken place between the petitioner, his father and the private respondents herein as per which the land standing registered in the name of the father of the petitioner was divided in three equal shares between the petitioner and respondent Nos.3 and 4 and the possession of the same had been handed over to the petitioner after which he has continued to remain in possession of the land of his share. As per the family settlement respondent Nos.3 and 4 were in possession of their shares but in the revenue record the land was shown to exist in the name of the father of the petitioner and respondent Nos.3 and 4. However, taking advantage of the old-age of their father respondent Nos.3 and 4 had got transferred the share of the land of the petitioner.

3. Aggrieved on this, the petitioner had filed a suit for declaration with the consequential relief of permanent injunction bearing Civil Suit No.309 of 2020 titled as *Surender Kumar Vs. Mohinder Singh and others* by challenging the three transfer deeds vide which the total land measuring 40 kanals 37.2 marlas had been transferred. When the suit came up for hearing, the Civil Judge (Jr. Division), Indri, Karnal passed an order to maintain status quo regarding the alienation of the suit property vide order dated 29.09.2020. The copy of the said order dated 29.09.2020 is attached as Annexure P-1 to the petition.

4. Though, the petitioner was in possession to the extent of his share, the private respondents tried to restrain him from going to his fields for cultivation threatened to kill him and his family and destroy his crops

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because of which he made a complaint to the Superintendent of Police, Karnal on 14.03.2022 and requested to initiate proceedings under Section 145 Cr.P.C. against the private respondents. The copy of the complaint/application is attached as Annexure P-2 to the petition.

5. Based on the said application, the SHO, P.S. Indri, Karnal prepared a Kalandra dated 09.05.2022 under Section 145 Cr.P.C. and sent it to the SDO (Civil), Indri, Karnal for further action stating that tension had been growing between the parties over the wrong distribution of land and an untoward incident was likely. The translated copy of the Kalandra dated 09.05.2022 is attached as Annexure P-3 to the petition.

6. Notice was issued to the private respondents who filed their objections stating that a civil suit was pending regarding the property which stood in their names in which status quo orders had been passed and therefore, the Kalandra under Section 145 Cr.P.C. was not legally maintainable. The copy of the written statement/objection is attached as Annexure P-4 to the petition.

7. After receiving the above Kalandra, the respondent No.2 sought a report from the Tehsildar, Indri, Karnal who filed a report dated 05.07.2022 that there was a dispute between the three sons of Jagir Singh namely the petitioner and respondent Nos.3 and 4 who were cultivating the land as per their respective shares. The copy of the report dated 05.07.2022 is attached as Annexure P-5 to the petition.

8. The proceedings initiated under Section 145 Cr.P.C. were closed by respondent No.2 on the ground that the matter regarding the disputed land

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was pending between both the parties in which the Civil Court had passed an order of status quo and therefore, no action under Section 145 Cr.P.C. could be taken. The copy of the order dated 09.08.2022 is attached as Annexure P-6.

9. It is this order which is under challenge in the present petition.

10. The learned counsel for the petitioner contends that merely because an order of status quo regarding alienation had been passed did not preclude the proceedings under Section 145 Cr.P.C. to continue as there was no order of status quo having been passed regarding possession. Proceedings under Section 145 Cr.P.C. related to disputes regarding possession between the parties and where the dispute was not on the right to possession but on the question of possession then the Magistrate was empowered to taken cognizance under Section 145 Cr.P.C. The judgments relied upon by the SDO (Civil), Indri, Karnal in the impugned order dated 09.08.2022 had no relevance to the factual scenario as existed in the present case. Reliance is placed on the judgment of **Prakash Chand Sachdeva Versus State and another, 1994(3) R.C.R. (Criminal) 217.**

11. On the other hand, the learned State counsel contends that it was the admitted case of the petitioner who had initiated proceedings under Section 145 Cr.P.C. that he was in possession. The State reply dated 19.01.2023 is also to the similar effect that it was the petitioner who was in possession of his share and the private respondents of their respective shares. Once it was the case of the petitioner that he was in possession of the property in question then proceeding under Section 145 Cr.P.C. could not be



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initiated. He was at liberty to initiate proceedings under Sections 107/151 Cr.P.C. Further, if there was any other dispute between the parties, appropriate criminal proceedings could be initiated by the petitioner against the opposite party. In case, he feared dispossession then he was at liberty to approach the Civil Court which was in seisin of the matter wherein an appropriate application seeking stay from dispossession could be filed. He, therefore contends that the present petition was liable to be dismissed.

12. The learned counsel for respondent Nos.3 to 6 contends that where the admitted case of the party seeking invocation of proceeding under Section 145 Cr.P.C. was that they were in possession, the question of initiation of proceedings under Section 145 Cr.P.C. did not arise in the absence of the respondents claiming themselves to be in possession of the same land. In the instant case, it was the case of the petitioner that he was in possession but that proceedings under Sections 107/151 Cr.P.C. had been initiated between him and the private respondents and that he and his wife had filed criminal cases against the opposite party. He, therefore states that the petitioner was at liberty to either initiate proceedings under Sections 107/151 Cr.P.C., get an FIR registered, if so warranted or moved an appropriate application before the Civil Court in case he feared dispossession. Reliance is placed on the judgments in the cases of **Ram Sumer Puri Mahant Versus State of U.P., 1985(1) R.C.R. (Criminal) 278,** **Mahant Ram Saran Dass Versus Harish Mohan & another, (2001) 10 SCC**



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758 and Mohd. Abid & others Versus Ravi Naresh & others, SLP (Crl.)
No(s).5444/2022.

13. I have heard the learned counsel for the parties.
14. Before proceeding further in the matter, it would be apposite to refer to the provisions of the Code of Criminal Procedure, 1973.

Section 145 Cr.P.C, reads ad 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 of 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,



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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 this 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 sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such



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proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.”

Section 146 Cr.P.C., reads as under:-

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



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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.

15. A perusal of Section 145(4) Cr.P.C. would show that the concerned Executive Magistrate, on the basis of the evidence led can decide as to which party was in possession of the property in dispute on the date on which he makes the order. In case, he is unable to decide as to which party was in possession of the subject matter, he may attach the same under Section 146 Cr.P.C. Apparently, where a party claims to be in possession of a property and the finding of the State is also to this effect that it was the party claiming initiation of proceedings under Section 145 Cr.P.C. that was in possession the question of initiation of proceedings under Section 145 Cr.P.C. does not arise particularly in those cases where the opposite party does not claim possession of the same land.

16. The judgment relied upon by the learned counsel for the petitioner is as under:-



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In **Prakash Chand Sachdeva** (supra), the Hon'ble Supreme held as under:-

2. Dispute arose about an independent portion in house No. G-39, Jangpura Extension, New Delhi. It was in occupation of a tenant who admittedly vacated in February 1992. The appellant claims to have occupied it. The claim is supported by a letter written by the tenant to the appellant on 14th April, 1992 to the following effect :

"I have vacated your Ground Floor Flat at G-39, Jangpura Extn. today and possession of the same was handed over to your goodself.

Please issue me a no dues certificate at the earliest.

Thanking you and with regards,"

The authenticity of the letter is not disputed. But its effect had been attempted to be diluted by the respondent by claiming that it was written to harm him as he got the house vacated. The respondent claims that the appellant never resided in the house in dispute. May be so. Why the appellant who was residing in another house No. 15/239, New Moti Nagar of his own with family of his other son, who died, decided to shift to the house in dispute, is immaterial. An owner of the house could at his option reside at his one or the other house. Even if it is assumed that the disputed house is ancestral the appellant was not required to explain the reason for his decision to come and live in it. His right to reside could not be disputed. But no sooner he came the problem started. And according to the appellant his report to the police for misbehaviour of his son and his family members went unheeded. That the father had to approach the police authorities against his own son is indeed painful. But that speaks volumes about the son. The inaction of the police on which reliance was placed by the son is explainable but not understandable. It does not help the respondent. It only adds to the helplessness of the appellant. In June 1992 it is alleged when he and his wife went to



*Jaipur to see their ailing daughter, they to their shock, on return after four days, found that their belongings had been removed, the portion had been locked and they were treated harshly and abusively. And that too by his family members. What must have been his feeling is not easy to comprehend but as said by Shakespeare in King Leare, 'how sharper than is serpent tooth it is to have a thankless child'. Failing to understand the 'clause in Nature that make these hard hearts', the appellant approached the criminal Court by way of proceedings under sections [107](#) and [145](#), Criminal Procedure Code, 1973. He also filed a civil suit for injunction in which status quo order was granted. But status quo of what ? He had already been thrown out of possession. It is not necessary to comment on the merits of these proceedings. However, proceedings under Section 107 were dropped, and in our opinion rightly, as the nature of these proceedings 'are of preventive justice' as held by this Court in *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr*, AIR 1971 Supreme Court 2486. It is to be invoked when any person is likely to commit a breach of peace or disturb public tranquility. But the order dropping the proceedings under Section 107 led the Sub-Divisional Magistrate to drop the proceedings under Section [145](#), Criminal Procedure Code, 1973 as the proceedings under Section 107 having been dropped there was no apprehension of breach of peace. The High Court while agreeing with this reasoning added that the appellant having sought civil remedy the proceedings under Section 145 could not be continued.*

*3. True, a suit or remedy in civil Court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal Court as observed by this Court in *Ram Sumer Puri Mahant v. State of U.P.*, AIR 1985 Supreme Court 472, '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. The normal rule is as stated by the Court in Puri's case. But that was a suit based on title. And that could be decided by civil Court only. That ratio cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognisance under Section [145](#), Criminal Procedure Code, 1973 Neither the High Court nor the Sub-Divisional Magistrate cared to ascertain if the respondent had any claim to lawfully prevent the appellant from entering into his own house. The proceedings under Section 107 are for public peace and tranquility whereas under Section 145 relates to disputes regarding possession between parties concerning any land or water or boundaries thereof. Therefore, dropping of proceedings under Section 107 could not furnish foundation for dropping the proceedings under Section 145. Nor the law laid down in Puri's case could result in rejecting the application filed under Section [145](#) of the Criminal Procedure Code There being no dispute of title between the appellant and respondent the only claim to be decided was if the appellant had been forcibly or wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the appellant had sought the remedy in civil suit without applying the mind if that decision was in any way helpful for dropping the proceedings. In law, therefore, the order passed by two Courts below cannot be maintained.



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5. In the circumstances we allow this appeal, set aside the order passed by the High Court and the Magistrate dismissing the application filed under Section [145](#), Criminal Procedure Code, 1973 and direct that the appellant shall be placed in possession of the green portion forthwith, shown in the map filed by the appellant the correctness of which was not disputed even if third party interest had been created with the help of the police, if necessary. We hope that the respondent shall not create any further hindrance in peaceful living of his father. The map filed by the appellant is made a part of this order. Any observation that has been made shall not be taken as binding in any civil dispute between parties.

(emphasis supplied)

17. The judgments relied upon by the learned counsel for the State and private respondents are discussed hereinbelow:-

In **Ram Sumer Puri Mahant** (supra), the Hon'ble Supreme Court held as under:-

D.A. Desai and Ranganath Misra, JJ. - Special leave granted.

2. Challenge in this application is to the order of the Allahabad High Court refusing to interfere in its revisional jurisdiction against an order directing initiation of proceedings under Section 145. Code of Criminal Procedure ('Code' for short), and attachment of the property at the instance of respondents 2-5. Indisputably, in respect of the very property there was a suit for possession and injunction being Title Suit No. 87/75 filed in the Court of the Civil Judge at Ballia wherein the question of title was gone into and by judgment dated February 28, 1981, the said suit was dismissed. The appellant was the defendant in that suit. According to the appellant close relations of respondents 2-5 were the plaintiffs and we gather from the counter-affidavit filed in this Court that an appeal has been carried from the decree of



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the Civil Judge and the same is still pending disposal before the appellate Court. The assertion made in the petition for Special Leave to the effect that respondents 2 to 5 are close relations has not been seriously challenged in the counter-affidavit. 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 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. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceedings under Section 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate Judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession.

Order accordingly.

(emphasis supplied)

In **Mahant Ram Saran Dass** (supra), the Hon'ble Supreme

Court held as under:-



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1. Leave granted.

2. The short question that arises for consideration is whether in the facts and circumstances of the present case, a civil suit for declaration under Section [92](#) of the Code of Civil Procedure being pending before the competent forum, Civil Court, the respondent was entitled to invoke the jurisdiction of the Magistrate under Section [145](#) of the Criminal Procedure Code , and the Magistrate was entitled to initiate the proceedings and pass any interim order of appointment of Receiver therein. It is not disputed that in the civil suit itself the Court has passed interim order of injunction, and put certain restrictions on the parties with regard to alienation of the property in question. It is true that applicant before the Magistrate has not been arrayed as party- defendant in the civil suit, but that will not alter the position in any manner since in our view the Civil Court being in seisin of the matter, any appropriate relief could be obtained from the Civil Court itself and the Magistrate had no jurisdiction in the case in hand to entertain the application under Section [145](#), and to pass any other thereon. In the circumstances, the impugned order of the High Court as well as the proceedings initiated before the Magistrate under Section [145](#) of the Criminal Procedure Code stand set aside. The appeal is disposed of accordingly. Needless to mention the status quo as on today to be maintained to enable the parties to move the Civil Court for appropriate orders.

Appeal allowed.

(emphasis supplied)

In **Mohd. Abid** (supra), the Hon'ble Supreme Court held as under:-

3. While the petitioners claim that they have purchased the subject property by way of four consecutive registered Sale Deeds dated 05.10.2020, the case of the respondents is that the



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suit property was purchased by their predecessors-in-interest way back on 16.11.1949 by way of a valid Sale Deed.

4. It is, however, an admitted fact that the petitioners have already filed a suit for injunction in which ex-parte ad-interim injunction has been granted by the Civil Court, Faizabad, Uttar Pradesh on 05.12.2020. Once the Civil Court is seized of the matter, it goes without saying that the proceedings under Section 145/146 Cr.P.C. cannot proceed and must come to an end. The inter-se rights of the parties regarding title or possession are eventually to be determined by the Civil Court.

5. In this view of the matter, and without expressing any views on merits on the rival claims of the parties, we dispose of this Special Leave Petition with a direction that the ad-interim order passed by this Court on 03.06.2022 shall continue to operate as an interim measure till the Civil Court, Faizabad passes an appropriate order after hearing both the parties.

6. To avoid multiplicity of proceedings, it is, however, directed that both the parties shall not create any third party rights or encumbrances over the property in dispute.

(emphasis supplied)

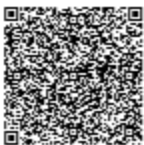
18. Coming back to the facts of the present case, apparently, the petitioner in his complaint (Annexure P-2) which is the basis of the Kalandra dated 09.05.2022 (Annexure P-3) categorically stated that he is in possession of the property which purportedly came to his share on the basis of an oral settlement. Similar is his stand in the present petition to the effect that he was in possession of the property which came to his share. Once the petitioner claims possession over the property purportedly falling in his share and the report of the Tehsildar dated 05.07.2022 (Annexure P-5) is also to the effect that the three sons of Jagir Singh were cultivating their



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share in the property, proceedings under Section 145 Cr.P.C. cannot be initiated moreso when the private respondents have never claimed to be in possession of the said land but have stated that they are owners on the basis of transfer deeds. As has already been mentioned hereinabove, the said proceedings can only be initiated, if there is a doubt regarding which party is in possession or if there is a dispute regarding possession. In the instant case, it is the categoric stand of the petitioner and of the official respondents that the parties were in possession of their respective shares and the respondents do not claim to be in possession of the land being cultivated by the petitioner. Further, civil proceedings are already pending between the parties. Therefore, the petitioner would be at liberty to either initiate proceedings under Sections 107/151 Cr.P.C. again, initiate appropriate criminal proceedings in case the private respondents commit offences in future or approach the Civil Court which is in seisin of the matter by way of an appropriate application seeking stay from forcible dispossession. The appointment of a receiver can also be sought by approaching the Civil Court. Further, the judgment in **Prakash Chand Sachdeva** (supra) relied upon by the counsel for the petitioner has no relevance in the present case. In that case, the father had been dispossessed by the son and the Hon'ble Supreme Court had put the father back in possession despite the pendency of a civil suit. In this case, as has already been mentioned above, the petitioner is in possession of his share of the land which is the admitted position by the



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State and not denied by the private respondents. Therefore, no fault can be found with the impugned order dated 09.08.2022 (Annexure P-6).

19. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

14.08.2024

JITESH

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