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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 6835/2023

SH. BITTOO SHARMA & ORS.

.....Petitioners

Through: Mr.V.P. Rana, Advocate

versus

STATE GOVT. OF N.C.T. OF DELHI & ANR.Respondents

Through: Mr. Nawal Kishore Jha, APP for State

with Mr. Kapil Prajapati, Ms. Mansi Gupta,

Mr.Neeraj Baisoya, Ms. Ira Rana and Mr. Dishant
Tiwari, Advocates with SI Vijay

Mr.Anand Yadav, Advocate for respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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19.09.2024

1. By way of present petition, the petitioners seek to assail the order dated 25.08.2023 vide which the learned ASJ-02, Karkardooma Courts, Delhi, had set aside the order dated 07.07.2023, whereby the learned SDM, Karawal Nagar, Delhi had passed an order for demarcation of the disputed property, i.e., *Khasra No.406, Sabhapur, Village Shahdara, Delhi*.
2. The present dispute pertains to the possession and identification of the said disputed property. On 19.02.2023, upon a complaint being filed by the respondent No.2 herein, a Kalandra under Section 145 Cr.P.C. was issued by SHO, P.S. Sonia Vihar, Delhi to the learned SDM. As per the said Kalandra, the dispute relates to immovable property comprising of *Khasra No.165* and *Khasra No.406* situated at *Village Sabhapur Patti Chauhan, Sonia Vihar, Delhi*. The petitioners claimed that the disputed property is part of *Khasra No.165, Village Sabhapur* whereas respondent No. 2 claimed the disputed



property to be a part of *Khasra No.406, Village Sabhapur*. Thereafter, the respondent No.2 filed her reply to the said Kalandra, claiming the disputed property to be a part of two khasra numbers, i.e., both *Khasra No.165* and *Khasra No.406*. In the joint written statement/objections filed by the petitioners, they claimed ownership as well as possession over the disputed property which was stated to be a part of *Khasra No.165* only. Subsequently, the SDM took cognizance under Section 145(1) Cr.P.C, directing a private agency, namely *M/s N.K. Engineers* to carry out demarcation of *Khasra No.406* and accordingly, directed the Kanungo and Patwari to extend full cooperation during the demarcation process. The petitioners (party No.2 therein) were also directed to submit a demand draft of Rs. 53,100/- for the purpose of carrying out the said demarcation.

3. Learned counsel for the petitioners submits that the present dispute relates to the disputed property admeasuring 3300 square yards, which is a part of *Khasra No.165, Village Sabhapur, Patti Chauhan, Shahdara, Delhi* and belongs to the petitioners. It is further submitted that one *Maujjam Ali* had executed a General Power of Attorney (GPA) dated 03.09.1998 in favour of the petitioner No.4 and one *Om Veer Singh* with respect to the disputed land, and thereafter, petitioner No. 4 executed another GPA dated 16.03.2022 in favour of petitioner Nos. 1 and 2. It is stated that petitioner Nos. 1 and 3 bought 2400 square yards of the disputed property in respect of *Khasra No. 165* from petitioner No.4, bought another 300 square yards from *Mrs. Sarita* and *Karnal Singh* and another 600 square yards from petitioner No.5.

Learned counsel contends that in compliance with the order dated 07.07.2023, the petitioners had submitted the aforesaid DD and the SDM



had thereafter directed the demarcation to be carried out on 11.08.2023. However, the respondent No.2 in the meantime challenged the said order dated 07.07.2023 before the learned Sessions Court on the ground that in reference to the RTI reply of the concerned Tehsildar dated 06.04.2023/10.04.2023, the revenue authorities cannot conduct the said demarcation as the said disputed property is covered under Section 507 DMC Act post urbanisation of *Village Sabhapur, Shahdara*. In this regard, learned counsel makes a two-fold submission, contending that *firstly*, the learned ASJ did not have the jurisdiction to interfere with the order dated 07.07.2023 as it was interlocutory in nature and hence, barred by Section 397(2) Cr.P.C. *Secondly*, that Section 145 Cr.P.C. relates to the dispute with respect to possession of immovable property only and that the SDM is empowered to decide the said dispute in accordance with law, which includes taking evidence, and therefore, it is contended that the learned SDM had rightly appointed Local Commissioner/independent agency vide order dated 07.07.2023 to demarcate the disputed property, for the purpose of identification and determining possession of the disputed property.

4. Learned counsel for the respondent No.2 defends the impugned order and to that effect, submits that the disputed property claimed by the petitioner, as recorded in the Kalandra and Section 145 proceedings, measured only 2400 square yards. It is further submitted that the late husband of the respondent No.2 was originally a co-sharer/co-owner and in physical possession of his share, measuring 843 square yards out of the area of both Khasra numbers, i.e., *Khasra no. 406* measuring 10 bigha & 4 biswas having 1/12th share and also the co-sharer of *Khasra No.165* measuring 71 bigha & 9 biswas. In this regard, reliance has been placed on



the *Khatuni* of both the Khasra numbers and the *Khasra Girdwari* relating to the financial year 2018-19, which mentions the same. Learned counsel has also placed reliance on photographs which claim to show her in possession of the disputed property.

As regards the aforesaid GPA dated 03.09.1998, it is submitted that *Maujjam Ali* was never in specific possession of the disputed property and after his demise, the said GPA is infructuous in nature, conferring no interest or title in favour of the petitioners. Moreover, the dispute regarding which the said Kalandra has been issued is contended to be civil in nature. Learned counsel further contends that it is the case of the petitioners themselves that the dispute is regarding demarcation and not possession, and therefore falls within the ambit of civil jurisdiction. It is also submitted that the proceedings under Section 145 Cr.P.C. can only ascertain the factum of actual possession in regard to the disputed property and that the learned SDM exceeded its powers in passing an order of demarcation. Furthermore, it is contended that respondent No.2 is in the actual possession of the disputed property. Lastly, learned counsel submits that Section 482 Cr.P.C. cannot be used as a second revision petition, for which he has placed reliance on the decision in Sanjeev Khanna v. The State (NCT of Delhi) in CrI.M.C. 1640/2009 dated 07.02.2011.

5. I have heard the learned counsels of both the parties and perused the material on record.

6. It is a settled position in law that in proceedings under Section 145 Cr.P.C., the SDM is only required to ascertain the factum of actual physical possession on the date of receiving of complaint/Kalandra and if a person who is in actual physical possession has been dispossessed by the other side



within two months prior to the filing of the Kalandra. The question of possession is decided by holding an enquiry into possession as distinguished from right to possession or title, which comes under the jurisdiction of civil courts. In regard to this, reliance is placed on the Supreme Court's decision in Shanti Kumar Panda v. Shakuntala Devi reported as **(2004) 1 SCC 438**.

7. At this stage, learned counsel for the respondent No.2 submits that the learned SDM took cognizance for demarcation of only one *Khasra No.406* whereas the petitioners had prayed for the demarcation of land in *Khasra Nos. 165 & 406*. It is also contended that respondent No.2 had filed the complaint on 13.10.2022, as per which, the petitioners took forcible possession of the disputed property. However, the Kalandra was issued under Section 145 Cr.P.C only on 19.05.2023, i.e., more than 2 months after taking forcible possession. Placing reliance on this Court's judgment in Sudha Gupta & Anr. V. State & Ors. reported as **2010 SCC OnLine Del 3587**, it is submitted that while determining the possession under Section 145 Cr.P.C. proceedings, if a party has been wrongfully dispossessed within 2 months of the police report/information, the Magistrate is required to put the persons so dispossessed in possession of the disputed property. However, learned counsel submits that since more than 2 months had lapsed, the learned SDM could not have taken cognizance under Section 145 Cr.P.C.

8. From the facts noted hereinabove, it is clear that the dispute is limited to the question as to whether an order of demarcation could have been passed by the learned SDM while taking cognizance under Section 145 Cr.P.C. Undisputedly, powers of the Magistrate under Section 145 Cr.P.C. are limited to deciding the factum of actual possession. In that context, the



SDM may undertake relevant inquiry. An order of demarcation is only to decide the dispute of identification of the said property and in no way, is an opinion on the right to possession. In the present case, there is a dispute regarding the location of the disputed property, as two different *Khasra Nos.* are claimed by the parties. By ordering demarcation, only the disparity in the location of the claimed disputed land is sought to be settled. Considering that the order dated 07.07.2023 is merely a preliminary order taking note of the existence of the said dispute and asking for demarcation to correctly identify the disputed property before deciding the factum of actual possession, I find no error with the order of the learned SDM. Accordingly, the petition is allowed and the impugned order dated 25.08.2023 is set aside.

9. The petition is disposed of in above terms.

MANOJ KUMAR OHRI, J

SEPTEMBER 19, 2024
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