Serial No. 11

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

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Mrs.Sobia Khatoon, Aged 31 years
D/o Mohd. Khan
W/o Asif Ali Mustafa
R/o Galhatta, Tehsil Mendhar
Distt. Poonch. .....Petitioner(s)

Through: Mr. S.H. Shah Ashrafi, Advocate
Mr. T.M. Khan, Advocate.

vs

1. Mohd. Parvaiz
S/o Mohd. Din
R/o Village Galhatta, Tehsil Mendhar,
Distt. Poonch.

2. Mohd. Faiz
S/o Mohd. Din
R/o Village Galhatta, Tehsil Mendhar
Distt. Poonch.

3. Amir Parvaiz
S/o Mohd. Parvaiz
R/o Village Galhatta, Tehsil Mendhar,
Disttt. Poonch.

4. Sameer Parvaiz,
S/o Mohd. Parvaiz
R/o Village Galhatta, Tehsil Mendhar,
Disttt. Poonch.

5. Ayaz Ahmed
S/o Mohd. Faiz
R/o Village Galhatta, Tehsil Mendhar
Distt. Poonch

6. Masheeda Bi
W/o Mohd. Parvaiz
R/o Village Galhatta, Tehsil Mendhar
Distt. Poonch.

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7. Azmat Bi
   W/o Mohd. Faiz
   R/o Village Galhatta, Tehsil Mendhar,
   Distt. Poonch.

8. Reena Parvaiz
   D/o Mohd. Parvaiz
   R/o Village Galhatta, Tehsil Mendhar,
   Disttt. Poonch.

9. Tasleem Akhter
   W/o Mohd. Niyaz
   R/o Village Galhatta, Tehsil Mendhar,
   Disttt. Poonch.

10. Tamana Niyaz
    D/o Mohd. Niyaz
    R/o Village Galhatta, Tehsil Mendhar,
    Disttt. Poonch.

11. Shabeena Kouser
    W/o Ayaz Ahmed
    R/o Village Galhatta, Tehsil Mendhar
    Distt. Poonch.

12. Zeenat Bi
    W/o Maqbool Hussain
    R/o Village Galhatta, Tehsil Mendhar,
    Distt. Poonch.

13. Sub Divisional Magistrate (SDM),
    Mendhar.

14. Station House Officer (SHO),
    Gursai, Tehsil Mendhar, District
    Poonch. ….. Respondent(s)

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

Through: Mr. Arshad Majid Malik, Advocate with
Mr. Umar Shakeel, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

1. The petitioner, Sobia Khatoon, has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (Cr.P.C.), calling in question the legality and propriety of the order dated 02.08.2023

passed by the learned Sessions Judge, Poonch, in a revision petition titled *"Mohd. Parvaiz & Others v. Sobia Khatoon"*. By virtue of the impugned order, the learned Revisional Court set aside the proceedings initiated by the Sub-Divisional Magistrate, Mendhar, under Sections 145 and 146 Cr.P.C., including the order directing attachment of land comprising Khasra Nos. 1166/1, 1178, 1183, 1179, 1167 and 1185, falling under Khewat Nos. 175 and 176, situated at Village Gulhotta, Tehsil Mendhar, District Poonch. The petitioner claims an inherited share measuring 45 kanals and 03 marlas in the aforesaid property.

2. The petitioner assails the impugned order primarily on the ground that the learned Revisional Court failed to appreciate the circumstances necessitating intervention by the Executive Magistrate to prevent an imminent breach of peace. According to her, the order has the effect of prejudicing her lawful claim to inheritance in the estate of her deceased father and exposing the disputed property to unlawful interference by the respondents.

3. The case projected by the petitioner is that she is the surviving daughter and legal heir of late Mohd. Khan and, as such, is entitled to succeed to his share in the ancestral property. It is alleged that the respondents, who are her close relatives, have been obstructing her from enjoying the property and exercising her rights therein, including her right to cut grass and harvest crops from the land falling to her share.

4. It is further pleaded that the conduct of the respondents resulted in repeated confrontations between the parties, culminating in the registration of two criminal cases. Apprehending a serious breach of peace, the petitioner

approached the Sub-Divisional Magistrate, Mendhar, seeking initiation of proceedings under Sections 145 and 146 Cr.P.C. and attachment of the disputed property.

5. Upon receipt of the application, the learned Sub-Divisional Magistrate called for a report from the police agency regarding the factual position obtaining on the spot. The police, after conducting verification and recording statements of the petitioner and certain witnesses, reported that a serious dispute existed between the parties concerning the land in question and that the situation was likely to result in a breach of peace.

6. The police report referred to FIR No. 59/2022, registered under Sections 447, 336, 504 and 506 IPC, arising out of an occurrence dated 11.05.2022, wherein the respondents were alleged to have committed criminal trespass upon the disputed land and resorted to stone-pelting. The report also referred to FIR No. 142/2022, registered under Sections 353, 336, 147, 188 and 323 IPC, following another confrontation when the petitioner, accompanied by police personnel, attempted to cut grass from the disputed property pursuant to directions issued by the competent authorities.

7. On consideration of the police report, the learned Sub-Divisional Magistrate, Mendhar, passed a preliminary order dated 23.12.2022 under Section 145 Cr.P.C., recording satisfaction regarding the existence of a dispute likely to occasion a breach of peace. The police were directed to maintain vigil over the disputed property, and the parties were restrained from indulging in activities likely to disturb public peace and tranquillity. Subsequently, on

04.01.2023, the Magistrate ordered attachment of the property and directed the concerned Station House Officer to take possession thereof.

8. Aggrieved by the aforesaid proceedings, the respondents preferred a revision petition before the learned Sessions Judge, Poonch. During the pendency of the revision, the learned Sessions Judge, by order dated 15.02.2023, directed that the operation of the order dated 23.12.2022 passed by the Sub-Divisional Magistrate, Mendhar, shall remain in abeyance. The revision petition was ultimately allowed by order dated 02.08.2023, which is the subject matter of challenge in the present proceedings.

SUBMISSIONS OF THE PARTIES

9. Learned counsel appearing for the petitioner submits that the learned Revisional Court has committed a manifest error of law and jurisdiction in setting aside the proceedings initiated by the Executive Magistrate. It is contended that the material collected by the police, particularly the registration of two FIRs arising out of confrontations concerning the disputed land, sufficiently established the existence of a serious dispute likely to cause a breach of peace.

10. It is argued that the satisfaction contemplated under Section 145(1) Cr.P.C. is primarily that of the Executive Magistrate and, once such satisfaction has been recorded on the basis of a police report or other reliable information, interference by the Revisional Court is unwarranted unless the proceedings suffer from a jurisdictional defect or patent illegality.

11. Learned counsel further contends that the learned Sessions Judge erred in proceeding on the premise that the parties were in joint possession of the disputed land. According to the petitioner, the very fact that she was being prevented from enjoying the property and exercising her rights therein demonstrated the existence of a dispute requiring preventive intervention. It is submitted that the attachment was intended only to preserve peace and protect the property until the question of possession could be determined in accordance with law.

12. It is additionally urged that any procedural irregularity in the order passed by the Executive Magistrate ought not to have resulted in setting aside the entire proceedings, particularly when the material on record disclosed a genuine apprehension of breach of peace. The petitioner, therefore, seeks exercise of the inherent powers of this Court under Section 482 Cr.P.C. to prevent abuse of the process of law and secure the ends of justice.

13. Per contra, learned counsel appearing for the respondents supports the order passed by the learned Revisional Court. It is submitted that the proceedings initiated by the petitioner under Sections 145 and 146 Cr.P.C. were misconceived and constituted an attempt to obtain possession of the property through a summary preventive jurisdiction.

14. Learned counsel submits that the petitioner has nowhere specifically pleaded that she was in actual physical possession of the disputed land and had been forcibly or wrongfully dispossessed therefrom on any particular date. On the contrary, the substance of her claim is that she is entitled to a share in the

ancestral property by inheritance and that the respondents are refusing to deliver possession of such share.

15. It is further contended that the parties are already litigating before the competent Civil Court at Mendhar in a suit for permanent prohibitory injunction concerning the same property. In the said proceedings, an order directing maintenance of status quo had been passed on 23.01.2021 and was subsequently confirmed on 10.03.2021. The question of possession, therefore, was already the subject matter of adjudication before the Civil Court.

16. Learned counsel argues that the petitioner, instead of pursuing the remedies available to her before the Civil Court, sought to invoke the jurisdiction of the Executive Magistrate with the object of disturbing the existing possession of the respondents. It is submitted that the preliminary order and the subsequent attachment order were passed without proper application of mind to the statutory requirements and were, therefore, rightly interfered with by the learned Sessions Judge.

CONSIDERATION AND ANALYSIS

17. Heard learned counsel for the parties and perused the record.

18. The principal question arising for determination is whether the learned Sessions Judge, Poonch, committed any illegality, perversity or jurisdictional error in setting aside the proceedings initiated by the Sub-Divisional Magistrate, Mendhar, under Sections 145 and 146 Cr.P.C.

19. At the outset, it may be noticed that there is no dispute regarding the competence of the learned Sessions Judge to exercise revisional jurisdiction in relation to the orders passed by the Executive Magistrate. Indeed, during the course of hearing, learned counsel for both sides fairly conceded that the orders in question were amenable to scrutiny in revision. The controversy, therefore, is confined to the legality of the exercise of such jurisdiction in the facts and circumstances of the present case.

20. Section 145 Cr.P.C. confers preventive jurisdiction upon an Executive Magistrate where, upon receiving a report from a police officer or other information, the Magistrate is satisfied that a dispute likely to cause a breach of peace exists concerning any land, water or the boundaries thereof. The Magistrate is required to make an order in writing, stating the grounds of such satisfaction, and calling upon the parties concerned to attend the Court and put forward their respective claims regarding actual possession of the subject matter of dispute.

21. The object underlying Section 145 Cr.P.C. is preventive rather than adjudicatory. The jurisdiction is intended to preserve public peace by addressing disputes concerning actual possession of immovable property. It does not empower the Executive Magistrate to adjudicate questions of title, ownership, inheritance or partition, which fall within the domain of the competent Civil Court.

22. The distinction between a dispute concerning actual possession and a dispute concerning entitlement to possession is of considerable significance. While the former may attract the preventive jurisdiction of an Executive

Magistrate, the latter ordinarily requires adjudication by a Civil Court in proceedings appropriately instituted for that purpose.

23. Under Section 145(4) Cr.P.C., the Magistrate is required to consider the statements of the parties, receive such evidence as may be produced, and determine, if possible, which party was in actual possession of the subject matter of dispute on the date of the preliminary order. The statutory provision also recognises a limited exception where a party has been forcibly and wrongfully dispossessed within the period prescribed therein, in which event such party may, for the purposes of the proceedings, be treated as being in possession.

24. Section 146 Cr.P.C., on the other hand, empowers the Magistrate to attach the subject matter of dispute after making an order under Section 145(1), where the case is considered one of emergency, or where the Magistrate decides that none of the parties was in possession, or is unable to satisfy himself as to which party was in possession. The power of attachment is thus ancillary to the proceedings under Section 145 and must be exercised in accordance with the conditions prescribed by the statute.

25. Examined in the light of the aforesaid legal position, the record reveals that the foundation of the petitioner's claim is her asserted right of inheritance in the estate of her deceased father. Her grievance, in substance, is that although she is entitled to a share in the property, the respondents are not permitting her to enjoy or obtain possession of the land corresponding to that share.

26. Significantly, the application submitted by the petitioner before the Executive Magistrate does not disclose any specific instance of her having been forcibly and wrongfully dispossessed from actual physical possession of the disputed property on a particular date. Nor does the material placed before the Magistrate clearly establish that the petitioner was in exclusive physical possession of any identified portion of the land immediately before the initiation of the proceedings.

27. The revenue entries, as referred to in the proceedings, indicate the joint ownership and possession of the parties to the extent of their respective shares. Such entries may be relevant to the determination of their civil rights, but they do not, by themselves, conclusively establish the actual physical possession of the petitioner over a separately identifiable portion of the disputed property.

28. The police report undoubtedly refers to two incidents resulting in the registration of criminal cases. These incidents indicate strained relations between the parties and the existence of a dispute concerning the property. However, the registration of FIRs, by itself, does not determine which party was in actual possession of the disputed land, nor can it substitute the inquiry contemplated under Section 145(4) Cr.P.C.

29. The first incident, dated 11.05.2022, is alleged to have involved criminal trespass and stone-pelting, while the second arose when the petitioner, with police assistance, attempted to cut grass from the disputed land. The circumstances surrounding these incidents may be relevant for the purposes of the criminal proceedings instituted in respect thereof. Nevertheless, they

do not conclusively establish that the petitioner was in settled physical possession of the land and was thereafter dispossessed within the period contemplated by Section 145(4) Cr.P.C.

30. Rather, the material available on record indicates that the petitioner was endeavouring to exercise her asserted right over a share in the joint property, possession whereof was being resisted by the respondents. The dispute, therefore, substantially concerns the enforcement of competing civil claims arising from inheritance, co-ownership and possession.

31. Another material circumstance which cannot be overlooked is the pendency of a civil suit between the parties concerning the very same property. The respondents had instituted a suit for permanent prohibitory injunction before the Court of Munsiff, Mendhar, wherein an order directing maintenance of status quo was passed on 23.01.2021 and subsequently confirmed on 10.03.2021.

32. The Civil Court, upon consideration of the pleadings and material before it, found that serious questions concerning possession required adjudication and that preservation of the existing state of affairs was necessary to avoid further complications. The interim order was accordingly continued.

33. Once the competent Civil Court was already seized of the controversy concerning possession and had passed an order for preservation of the suit property, the Executive Magistrate was required to exercise particular caution before passing an order which could have the effect of altering the existing possessory arrangement. The preventive jurisdiction under Section

145 Cr.P.C. cannot be employed as a parallel mechanism for obtaining relief substantially involving the enforcement of civil rights.

34. This is not to suggest that the mere pendency of civil litigation invariably excludes the jurisdiction of an Executive Magistrate under Section 145 Cr.P.C. Where the statutory conditions are independently satisfied and a genuine apprehension of breach of peace exists, preventive jurisdiction may still be attracted. However, such jurisdiction cannot be exercised in a manner which circumvents or undermines subsisting orders of a competent Civil Court, particularly where the controversy concerning possession is already under judicial consideration.

35. In the present case, the learned Executive Magistrate appears to have proceeded primarily on the basis of the police report referring to the two criminal incidents, without adequately examining the nature of the petitioner's claim, the existing civil proceedings, the subsisting order of status quo and the material necessary for determining actual possession.

36. The existence of tension between the parties, though relevant to the preventive aspect of Section 145 Cr.P.C., could not, in the circumstances of the case, justify an order of attachment without due consideration of the statutory requirements governing the exercise of power under Section 146 Cr.P.C.

37. The learned Sessions Judge, upon examining the record, found that the preliminary proceedings suffered from non-application of mind and that the attachment order was not sustainable in the factual and legal circumstances

obtaining in the case. The Revisional Court further noticed that the petitioner had failed to demonstrate actual physical possession or any specific instance of wrongful dispossession and that the dispute concerning possession was already pending adjudication before the competent Civil Court.

38. This Court finds no reason to differ with the conclusions so recorded. The learned Sessions Judge has examined the material circumstances and the nature of the dispute and has assigned reasons for interfering with the orders passed by the Executive Magistrate. The impugned order cannot, therefore, be characterised as perverse, arbitrary or contrary to the settled principles governing proceedings under Sections 145 and 146 Cr.P.C.

39. The contention of learned counsel for the petitioner that the impugned order deprives her of her lawful inheritance rights is equally misconceived. Proceedings under Sections 145 and 146 Cr.P.C. neither create nor extinguish proprietary rights. The setting aside of the attachment order does not amount to a declaration that the petitioner has no right, title or interest in the property inherited from her deceased father.

40. The petitioner's entitlement to inheritance, the extent of her share, and her right to seek partition, separate possession or any other consequential relief are matters to be determined by the competent Civil Court in accordance with the applicable substantive law. Nothing observed in the present judgment shall be construed as an expression of opinion on the merits of those claims.

41. It is also necessary to emphasise that the inherent jurisdiction of this Court under Section 482 Cr.P.C. is to be exercised sparingly and with circumspection, primarily to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Such jurisdiction does not warrant interference with a reasoned revisional order merely because another view of the material may be possible.

42. In the case at hand, the petitioner has failed to demonstrate any patent illegality, jurisdictional error or manifest miscarriage of justice in the order passed by the learned Sessions Judge, Poonch. The exercise of revisional jurisdiction, in the circumstances noticed hereinabove, cannot be said to suffer from any infirmity warranting interference by this Court.

CONCLUSION

43. For the foregoing reasons, this Court is of the considered opinion that the learned Sessions Judge, Poonch, was justified in interfering with the proceedings initiated by the Sub-Divisional Magistrate, Mendhar, under Sections 145 and 146 Cr.P.C. The order dated 02.08.2023 does not suffer from any illegality, perversity or jurisdictional error calling for interference in exercise of the inherent powers of this Court under Section 482 Cr.P.C.

44. Accordingly, the present petition is **dismissed**, and the impugned order dated 02.08.2023 passed by the learned Sessions Judge, Poonch, is **upheld**.

45. It is, however, clarified that the observations made herein are confined to the legality of the proceedings under Sections 145 and 146 Cr.P.C. and shall not prejudice the rights and contentions of either party in the civil proceedings

pending before the competent Court. The Civil Court shall adjudicate the controversy independently, on the basis of the pleadings, evidence and applicable law, uninfluenced by any observations made in the present judgment concerning the respective claims of ownership or possession.

46. The parties shall strictly abide by the subsisting orders passed by the competent Civil Court concerning the disputed property and shall refrain from taking the law into their own hands or disturbing public peace.

47. Disposed of in the above terms.

(Sanjay Parihar)
Judge

Jammu
03.11.2026
Rahul Sharma

Whether the order is speaking: Yes
Whether the order is reportable: Yes

Bunty Kumar
2026.11.13 14:21
I attest to the accuracy and
integrity of this document