

(1986) 02 RAJ CK 0019

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 491 of 1984

Ali Mohammed and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-02-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 482

Citation : (1986) WLN 633

Hon'ble Judges : Mahendra Bhushan Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahendra Bhushan Sharma, J.—This miscellaneous petition has been filed invoking jurisdiction of this Court u/s 482 Cr.PC and it has been prayed that the proceedings u/s 145 Cr.PC pending in the court of Sub-Divisional Magistrate Jhunjhunu in case State v. Ali Mohammed and Ors. be quashed.

2. Some facts are no long in dispute and on those facts, in my opinion, it is abuse of process of the court if the proceedings u/s 145 Cr.PC are allowed to be continued. The dispute relates to khasra No. 1353/1 and 1353/2 measuring 16 bighas, 5 biswas in all situated on the boundary of village Jhunjhunu. The land is said to be in joint khatedari of one Subhan and Ali Mohammed and others. As per Ali Mohammed he is the recorded khatedar in the revenue records. Subhan party No. \\\, it is not disputed, filed a suit against Ali Mohammed and others before initiation of proceedings u/s 145 Cr.PC for declaration and injunction. Two facts thus, emerge the fact that the land is said to be in the joint khatedari of Subhan and Ali Mohammed and others as this fact is not disputed by Ali Mohammed and that the revenue suit was pending between the parties when the proceedings u/s 145 Cr.PC were initiated. This Court has taken consistent view that incase of joint possession of the parties proceedings u/s 145 Cr.PC should not be initiated. It will suffice to make a reference to Bhanwar Lal v. Jeewan Ram and Ors. 1981 Cri.LJ 93 , where in it has been held that where the petitioner comes forward

with a case of joint possession, no order should be passed in his favour u/s 145 Cr.PC. Their Lordships of the Supreme Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, have held that 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". Their Lordships quashed the proceedings u/s 145 Cr.PC. No. doubt in both cases right of parties have been adjudicated by the civil court but the observations of their Lordships make it clear that even if the civil litigation is pending proceedings u/s 145 Cr.PC should not be initiated. As already stated while giving the facts that a civil suit is pending where the rights of the parties are to be adjudicated. Thus, the initiation of the proceedings u/s 145 Cr.PC on both counts referred to earlier was not justified and continuation of those proceedings will amount to abuse of the process of the court.

3. Consequently, this petition is allowed and the proceedings u/s 145 Cr.PC pending in the court of Sub-Divisional Magistrate, Jhunjhunu in case State v. Ali Mohammed and Ors. are hereby quashed. The Receiver shall hand over the possession of the property to the party from whom he has taken the possession.