
(1990) 01 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6371-M of 1989

Bhajan Dass

APPELLANT

Vs

Hari Dass and anr.

RESPONDENT

Date of Decision : 11-01-1990

Acts Referred:

Citation : (1990) 1 AICLR 502 : (1990) 1 CurLJ 491 : (1990) 1 RCR(Criminal) 483

Hon'ble Judges : S.S.Grewal, J

Advocate : Baldev Singh, J. R. Mittal, M.P. Gupta, K.S. Raipuri, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the Code) relates to quashment of orders passed by Executive Magistrate, Budhlada, dated 1651989. Annexure P/2, under Section 145(1) and dated 861989 Annexure P/3. under Sections 145(1) and 146(2) of the Code, whereby Halqa Kanuago, has been appointed as receiver of the disputed land.

2. In brief relevant facts for the disposal of this petition are that according to Bhajan Dass he and his brother are joint owners in exclusive possession of the land in question since long, and Khasra Girdawri entries, concerning Kharif 1988 and Rabi 1989 are in their favour. Besides, Girdawri entries from 1981 to 1986 are also their favour. The intervening Khasra Girdawri entries from Kharif in 1996 to Rabi 1988, according to the present petitioner, were got changed in collusion with the Patwari by the opposite party, and application for correction thereof is pending. Hari Dass respondent is said to have filed three suits. namely, Civil Suit No. 961 dated 21st January, 1989 which was dismissed in default on 8th April, 1989. In the second suit the Sub Judge directed both the parties to maintain status qua regarding the possession of the land in dispute and while disposing of the application for temporary injunction in the third suit i.e. Civil Suit No. 163 of

1989. the Sub Judge directed both the parties to maintain status quo regarding the land in dispute. In May, 1989, Hari Dass brought the police which initiated proceedings under Section 145 of the Code against both the parties, namely. Bhajan Dass present petitioner as party No. 1 and Hari Dass present respondent as party No. 2. The dispute regarding the possession relates" to Killa No 294/18 measuring 8 Kanals 6 Marlas. The Executive Magistrate, Budhlada passed the impugned orders Annexures P2 and P3.

Learned counsel for the parties were heard.

3. The main grievance of the learned counsel for the petitioner is that the Executive Magistrate concerned has acted without jurisdiction inasmuch as in the impugned order Annexure P2 there is no specific mention that a dispute likely to cause breach of peace exists concerning the land in dispute and mere mention in the said order that dispute exists amongst parties regarding possession of the land, would not be sufficient to fill in this lacuna and thus the Executive Magistrate, Budhlada could not legally proceed further under Section 145 of the Code.

4. There is considerable merit in his contention. It was obligatory for the Executive Magistrate to satisfy himself from the police report or from other information that a dispute likely to cause breach of peace exists concerning the land in dispute between the parties, and, only then he could assume jurisdiction to proceed under Section 145 or 146 of the Code, as held by Single Bench of this Court in Nika v. Aka, vol, LXVI 1964 PLR 245. Thus both the impugned orders Annexure P2 under Section 145 of the Code or. Annexure P 3 under Sections 146(1) and 146(2) of the Code cannot be legally sustained and the same are hereby set aside.

5. It was brought to my notice that the third civil suit between the parties is still pending. The dispute regarding the possession of the be land can very well be settled in that suit and not by having recourse to proceedings under Section 145 of the Code, particularly when security proceedings between the parties are abostated to have been initiated before the Executive authorities. its. In case the civil Court finds while deciding application for grant of temporary injunction, that one of the parties is prima facie in actual physical possession of the land in dispute then it may pass appropriate orders in that regard. It may also consider the request of one of the parties for appointment of a receiver, if the circumstances so warrant.

6. Counsel for the parties stated at the bar that the Kanungo has not So far taken over possession of the suit land. In these circumstances, the order concerning status quo passed by the Civil Court shall continue till it is modified.

This petition is disposed of accordingly.