

(2012) 03 AHC CK 0255

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 865 of 1997

Brij Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 144, 145, 145(1)

Citation : (2012) ACR 2019 : (2012) 5 ADJ 59

Hon'ble Judges : Surendra Kumar, J

Bench : Single Bench

Advocate : N.D. Kesari and A.P. Singh, for the Appellant; Kamla Yadav, S.N.S. Yadav and A.G.A, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Surendra Kumar, J.—Heard Sri A.P. Singh, learned counsel for the applicants and learned A.G.A. and perused the record. The applicants Brij Lal, Nankau and Lalla have filed this application u/s 482 Cr.P.C. impleading Brij Mohan and Bal Krishna as opposite party Nos. 3 and 4, with the prayer that the proceedings of Criminal Case No. 52 of 1996, u/s 145 Cr.P.C-Brij Mohan and others v. Brij Lal and others, Police Station Soraon, District Allahabad, pending before the S.D.M., Soraon, Allahabad, be quashed and set aside.

2. The opposite party Nos. 3 and 4 filed an application against the applicants before the Pargana Magistrate, Soraon, Allahabad, u/s 145 Cr.P.C. stating that they are Bhumidhars of Plot No. 236, area 2 biswa situated at Village Malak Chaturi, Pargana and Tehsil Soraon, District Allahabad and are in possession thereof. The applicants are bent upon for taking unlawful possession from them and there is an apprehension of breach of peace between the parties and some serious incident is likely to take place regarding possession of the said land, over which they had constructed the house. The applicants have never been in possession of the house in dispute and have no concern therewith. They prayed for initiating proceeding u/s 145 Cr.P.C. and also for attaching the said house,

saying that the proceedings u/s 107/116 Cr.P.C. were pending between the parties and there was tension regarding possession between them.

3. The Pargana Magistrate/Sub-Divisional Magistrate, Soraon called for a report from the police station concerned. As per police report dated 29.11.1996, there was dispute over the house between two parties and the proceedings u/s 107/116 Cr.P.C. were in existence and both the parties claimed ownership and possession over the disputed house of Khasra No. 236. It has further been stated in the police report that all the three applicants were bent upon taking unlawful possession over the house in dispute by force and they were likely to cause breach of peace. The police also recommended for attachment of the said property apprehending breach of peace and also in the public interest. The details of the house in dispute are mentioned in the application u/s 145 Cr.P.C. and also in the police report. Site plan showing clear boundaries of the house in dispute was also annexed by the police with the police report.

4. The Pargana Magistrate/Sub-Divisional Magistrate, Soraon relying on the police report dated 29.11.1996 and being satisfied therewith, passed preliminary order u/s 145 (1) of the Criminal Procedure Code, 1973 on 23.12.1996 impleading Brij Mohan and Bal Krishna as the first party and Brij Lal, Nankau and Lalla as the second party, requiring them to file written statements of their respective claims alongwith evidence regarding possession over the house in dispute, fixing 10.1.1997. The Pargana Magistrate came to the conclusion after perusing the police report that the parties may do some act by interfering in the possession of the disputed house, which may cause breach of peace.

5. The applicants filed their written statements contending therein that there was no apprehension of breach of peace with respect to the possession of the disputed house which was got constructed by the applicants and they were in possession over the house in dispute since long time. The police report dated 29.11.1996 (Annexure-2 to the application) was in collusion with the opposite party Nos. 3 and 4 and false report by the police was submitted because, in fact, there was no apprehension of breach of peace. The boundaries of the house given by the police are different to that of the house mentioned in the application u/s 145 Cr.P.C. (Annexure-1 to the application). It has also been contended in the written statements by the applicants that the Sub Divisional" Magistrate, Soraon without summoning the applicants and without affording any opportunity of hearing to them, passed the impugned preliminary order dated 23.12.1996. It was also stated in the written statements by the applicants that Suit No. 1744 of 1995 had already been filed in the Court of Civil Judge, East (Junior Division), Allahabad by Brij Mohan Singh and another against Brij Lal and others and the applicants are defendants and the opposite party Nos. 3 and 4 are the plaintiffs in the said civil suit regarding the same property in question. According to civil suit filed by the opposite party Nos. 3 and 4, the applicants were threatening to raise construction over the plot No. 236 in dispute and a relief for permanent injunction was sought against the applicants in the said civil suit. An application

for grant of interim injunction was also filed by the plaintiffs (opposite party Nos. 3 and 4 herein) seeking relief of interim injunction restraining the defendants (applicants herein), from raising any construction over the house in dispute. Copies of the application for temporary injunction and affidavit in support thereof have been filed as Annexures 4 and 5 to this application. It has further been contended in the written statements submitted by the applicants in the Court of Pargana Magistrate/Sub Divisional Magistrate, Soraon, Allahabad that the aforesaid civil suit was being contested by filing written statements and thus, the civil suit was pending in the Civil Court and the civil suit was filed in the year 1995, much prior to the initiation of the proceedings u/s 145 of the Criminal Procedure Code, 1973 and temporary injunction was granted in favour of the plaintiffs (opposite party Nos. 3 and 4 herein) ex parte, where the applicants had moved an application for vacation of the ad interim injunction. The applicants also raised objection before the Pargana Magistrate, Soraon that since the civil suit was subjudice before the Civil Court between the same parties with respect to the same property in question and there was a temporary injunction in favour of the plaintiffs and there was no apprehension of breach of peace respecting possession between the parties, the proceedings u/s 145 Cr.P.C. should be dropped but the Pargana Magistrate did not drop the proceedings and fixed 19.2.1997 to pass order u/s 146 Cr.P.C. for attachment of the property in dispute. It has further been contended by the applicants before the Sub-Divisional Magistrate that once an order of attachment was passed, the applicants could be ousted from the possession of the house in dispute in which they are residing and their belongings are lying there.

6. In the counter-affidavit of Sri Bal Krishna, opposite party No. 4 it has been averred that the police report on the basis of which the proceedings u/s 145 Cr.P.C. started, was right as there was apprehension of breach of peace and the boundaries in the said report as well as in the application of the opposite party Nos. 3 and 4 moved before the Sub-Divisional Magistrate, Soraon, Allahabad were same. It has further been averred in the counter-affidavit that though the civil suit is pending but the apprehension of breach of peace is always there respecting possession over the disputed property and, therefore, the learned Magistrate has rightly and legally attached the property u/s 146(1) Cr.P.C. by his order dated 19.2.1997 against which the applicants had filed criminal revision in the Court of learned Sessions Judge, Allahabad and the Sub-Divisional Magistrate, Soraon, Allahabad has rightly and legally initiated the proceedings u/s 145 Cr.P.C. believing that there was apprehension of breach of peace. It has further been averred in the counter-affidavit that the applicants have never been in possession of the disputed house. As per the counter-affidavit of the opposite party No. 4, the opposite party No. 4 is the owner of the disputed house and the applicants are trying to dispossess causing apprehension of breach to them and only remedy was to initiate the proceedings u/s 145 Cr.P.C. and the applicants were given sufficient time by the lower Court to prove their case before passing the attachment order u/s 146 Cr.P.C. The counter-affidavit of opposite party No.

4 is totally silent about the civil suit filed by him in the Civil Court. It appears from the Annexures filed with the counter-affidavit that the effect of the attachment order dated 19.2.1997 was stayed by the Sessions Judge, Allahabad in Criminal Revision No. 139 of 1997-Brij Lal and others v. State, vide order dated 20.2.1997.

7. Rejoinder-affidavit of the applicant Brij Lal depicts that Criminal Revision No. 108 of 1997 was also filed challenging the preliminary order passed u/s 145(1) Cr.P.C. and was not meant for quashing the proceedings u/s 145 Cr.P.C. as the same was beyond scope of the revisional Court u/s 397 Cr.P.C. and the order of attachment u/s 146 Cr.P.C. was passed in the said Criminal Case No. 52 of 1996 during pendency of the instant proceedings u/s 145 Cr.P.C., hence the attachment order was challenged through Criminal Revision No. 139 of 1997 filed in the Court of Sessions Judge, Allahabad. In this rejoinder-affidavit, it has specifically been stated that the opposite party Nos. 3 and 4 are not in possession over the suit property and there was no circumstance to dispossess them and the Sub-Divisional Magistrate, Soraon, Allahabad has not applied his mind to the merits of the case and has passed a mechanical and illegal order, which is liable to be quashed in the interest of justice. It has further been stated in the rejoinder-affidavit filed by the applicant Brij Lal that the question of ownership has to be determined by the Civil Court.

8. The main contention of the learned counsel for the applicants is that since the civil suit was already pending between the same parties regarding the same property since the year 1995 in the Civil Court, the proceedings u/s 145 Cr.P.C. which were subsequently initiated in the year 1996, pending before the Pargana Magistrate/Sub-Divisional Magistrate, Soraon are an abuse of process of the Court and are also bad in law, hence the same are liable to be quashed because two parallel proceedings, one before the Civil Court and another before the Sub Divisional Magistrate with respect to the same property, cannot go between the same parties.

9. In *Kanwar Pal Bisnoi v. Additional Sessions Judge*, 1985 (1) Crimes 221, 227 (Del), *Malkappa v. Padmana*, AIR 1959 Mys. 122, *Purun Singh v. Labhu Ram*, 1976 Cr LJ 571 (HP) and *Sardari Lal v. State of Punjab*, 1980 Cr.L.J. 1151 (P&H), it was observed that in the normal course proceedings initiated by a preliminary order under this section must run its full course. The consensus of judicial opinion is that the pendency of a civil suit and even existence of an ad interim injunction does not operate as a bar to the initiation of a proceeding under this section, but it is equally well accepted principle of law that in such a situation the Magistrate should not ordinarily resort to proceedings under this section, the better course to be adopted being to proceed against the parties u/s 107 or 144 Cr.P.C., as the case may be. Indeed some of the High Courts have expressed the view that if the Civil Court is seized of the matter and temporary injunction has been obtained, there is hardly any necessity for duplication of proceeding before the Criminal Court.

10. In the case of *Puran Singh v. Labhu Ram*, 1976 Cr LJ 571 (HP) and *Bal Mukund Gupta v. State of A.P.*, 2002 Cr LJ (NOC) 382, it was further observed that if the Civil Court is seized of the matter regarding the dispute over possession of the property and temporary injunction has been obtained, there is hardly any necessity for duplication of proceedings u/s 145 Cr.P.C. in a Criminal Court.

11. This Court in the case of *Minta Devi v. Anant Ram*, 1997 Cr LJ 1113 (All), observed that where civil suit is pending between the parties and effective injunction is in operation, proceedings in respect of the same property u/s 145 Cr.P.C. are not maintainable. On the same point, Punjab & Haryana High Court in the case of *Prem Singh v. Parbati*, 1987 (2) Crimes 236 (P&H), also observed that when the parties are already before the Civil Court and the said Court has also granted an injunction in favour of a particular party, the Magistrate cannot initiate or continue proceedings under this Section with regard to the possession of the same land. In such situations the only course open to the Magistrate is to proceed u/s 107 Cr.P.C. 1973. In *Kanwar Pal Bishnoi v. Additional Sessions Judge*, 1985 (1) Crimes, 221, 227 (Delhi), it was held that during the enquiry u/s 145 Cr.P.C., if it is brought to the notice of the Criminal Court that there is an order of the Civil Court in regard to the possession even by way of interim injunction, the same should be given due weight and it is expedient that the Criminal Court should uphold the order of the Civil Court, it makes no difference whether the order of the Civil Court was passed before or after the initiation of the proceedings u/s 145 Cr.P.C. The Criminal Court should better drop the proceedings initiated under this Section when there is such an order of injunction issued by the Civil Court in regard to the possession.

12. This Court in the case of *Ranjit Singh v. Moti Lal Katiyar*, 1988 (1) Crimes 102, 105, (All), it was held that the fact that the civil suit where the question of possession was involved was pending in the Civil Court on the date when the order under Sections 145(1) and 146(1) Cr.P.C. were passed and an injunction order was in operation, the proceedings cannot be allowed to continue as it would be nothing but abuse of the process of the Court.

13. In *Mangilal v. Bagmal*, 1988 Cr LC 1905 (MP), it was held that mere pendency of civil litigation may not furnish any justification for dropping the proceedings u/s 145 Cr.P.C. Where the relief of temporary injunction has been sought and obtained, it cannot legitimately be urged that despite the order granting temporary injunction apprehension of breach of the peace still exists. An order granting temporary injunction is in no way less efficacious than the one u/s 145 (6) (a) Cr.P.C

14. Punjab & Haryana High Court in the case of *Nehar Singh v. State of Punjab*, 1987 (3) Crimes 483 (P&H), had laid down that if the Civil Court passes an order of ad interim injunction in favour of a party, such an order cannot be interfered with in proceedings u/s 145 Cr.P.C.

15. In *Sardari Lal v. State of Punjab*, 1980 Cr LJ 1151 (P&H), it has been held that when an interim order of injunction has been passed by a Civil Court, Section 145 Cr.P.C. is not attracted and if at all there is likelihood of breach of peace, concerned person shall be proceeded under. Section 107 Cr.P.C. It has further been held in *Sukhdeo Singh v. S.D.M., Sirsa*, 1997 Cr LJ 1326 (P&H), *Jora Singh v. State of Punjab*, 1999 Cr LJ 1302 (P&H), *Prakash Chand Sachdeva Vs. The State and another*, and *Dharampal and others Vs. Smt. Ramshri and others*, , that where civil suit relating to disputed land is pending in Civil Court and the complainant has obtained interim injunction in his favour, the institution of proceedings u/s 145 Cr.P.C. without notice to parties is arbitrary and abuse of the process of the Court, The proceedings u/s 145 Cr.P.C. were quashed.

16. This Court in the case of *Madan Pal Singh v. State of U.P.*, 1995 Cr LJ 2353 (All), held that where in a pending civil suit, the Civil Court had passed injunction directing the parties not to interfere with each other's possession, dropping of Section 145 Cr.P.C. proceedings by the Magistrate was proper.

17. In the case of *Sukhbir Singh v. State of Punjab*, 2008 Cr LJ (NOC) 714 (P&H), it was also laid down that where the civil suit with regard to the same property is pending and the Civil Court has passed status quo order, initiation of proceedings u/s 145 Cr.P.C. would not be justified and proceedings would be quashed.

18. Reiterating the same view, the Delhi High Court in *Suresh Kumar v. Vijay Kumar*, 1988 Cr LJ 977 (Del), has observed that once the parties have resorted to settle their respective claims in a Civil Court, the Magistrate has no longer any duty to perform. In such like situations, if the Criminal Courts are allowed to start parallel proceedings in respect of the same subject-matter, it will not only create complications but will also undermine the respect for the authority of the Civil Courts. Where civil litigation was pending between the parties much prior to the initiation of proceedings under this provision and the parties have been directed to maintain status quo there is no justification for initiating proceedings u/s 145 Cr.P.C.

19. The Hon''ble Apex Court in *S. Prabhjeet Singh Johr v. Harjeet Singh*, 2002 (4) Crimes 25 (26) (SC), laid down that where a civil suit is pending and injunction order therein for status quo has been passed, proceedings u/s 145 Cr.P.C. are not maintainable. On the relevant point, there is also one judgment of Rajasthan High Court reported in *Chatra Ram v. State of Rajasthan*, 1996 Cr LJ 4495 (4497) (Raj), wherein it was held that where an injunction order has already been passed by the Civil Court in respect of the disputed property, the Magistrate cannot start proceedings u/s 145 Cr.P.C. (1) and Section 146(1) Cr.P.C.

20. The law on this subject-matter has been settled by the Hon''ble Supreme Court in the case of *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, . In this case it has been held as follows; (SCC PP 428-29, Para 2).

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 u/s 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 a 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 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. We are, therefore, N.E. satisfied that parallel proceedings should not continue"

21. The Hon''ble Supreme Court in *Amresh Tiwari Vs. Lalta Prasad Dubey and Another*, , while applying the ratio law laid down in *Ram Sumer Puri* case upheld the order of S.D.M. observing that the S.D.M. was right in discontinuing the proceedings u/s 145 Cr.P.C. and observed in paragraph 14 as under :

We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the Civil Court that proceedings u/s 145 should not be allowed to continue. This is because the Civil Court is competent to decide the question of title as well as possession between the parties and the orders of the Civil Court would be binding on the Magistrate.

22. In the case of *Amresh Tiwari v. Lalta Prasad Dubey and another*, the suit had been filed first, an order of status quo had already been passed by the competent Civil Court and thereafter Section 145 Cr.P.C. proceedings were commenced, no final order had been passed in the proceedings u/s 145 Cr.P.C. and in those circumstances, the S.D.M. continued the proceedings u/s 145 Cr.P.C. The appellant filed an application for dropping the proceedings u/s 145 Cr.P.C. on the ground that civil suit in respect of the same property was pending wherein order directing maintenance of status quo had already been passed. The S.D.M. dropped the proceedings u/s 145 Cr.P.C. as the civil suit was for the possession and the same was in respect of the same property in respect of which proceedings u/s 145 Cr.P.C. were initiated.

23. It is evident from the averments made in the application u/s 482 Cr.P.C., affidavit annexures therewith and other annexures, counter and rejoinder-affidavits, that the Civil Suit No. 1744 of 1995 titled as *Brij Mohan Singh v. Brij Lal and others*, was filed by Brij Mohan, who is opposite party No. 3 herein, on 10.10.1995 in the Court of Civil Judge (Senior Division) Sharki, Allahabad for a decree of permanent injunction against the defendants Brij Lal (applicant No. 1) and others to the effect that the defendants be restrained from digging any

foundation, raising any construction and from obstructing path way of the plaintiffs and also from interfering with the peaceful possession of the plaintiffs over the Bhumidhar land of Khasra No. 236 with area 0.051 shown in the plaint map. The plaintiffs of the civil suit Brij Mohan and others also filed an application for temporary injunction under Order 39 Rule 1 C.P.C. in the Civil Court (Annexure-4 to the application) with affidavit of Brij Mohan (Annexure-5 to the application). The defendants of the civil suit filed their written statements in the Civil Court with certain averments in February, 1997 (Annexure-6 to the application). The civil suit was filed on 10.10.1995. Copy of the plaint which has been filed as Annexure-9 to the application, makes it evident that the Civil Court on the date of filing of the civil suit on 10.10.1995 found a prima facie case of the plaintiffs showing the plaintiffs as Bhumidhar of the disputed house after perusing the Khatauni and Khasra extracts Paper No. 9C1 and 10C1, issued ex parte/ad interim injunction against the defendants restraining the defendants from interfering with the peaceful possession of the plaintiffs. The defendants subsequently moved an application in the Civil Court for vacating the ex parte injunction/ad interim order (Annexure-8 to the application).

24. It is evident from the record of this case, that after filing of the civil suit on 10.10.1995 by the plaintiff Brij Mohan and obtaining ad interim injunction in his favour against the defendants, the same plaintiff Brij Mohan alongwith one Bal Krishna moved an application u/s 145 Cr.P.C. before the Sub Divisional Magistrate, Soraon, Allahabad on 13.11.1996 admitting that the proceedings under Sections 107/116 Cr.P.C. against the parties were going on in the Court of Executive Magistrate. Thus prior to filing of the application u/s 145 Cr.P.C., civil suit was already pending in the Civil Court between the parties regarding same property and before initiation of the proceedings u/s 145 Cr.P.C., ad interim injunction order in favour of the plaintiffs and against the defendants regarding the same property had already been passed. Thus, the continuance of the proceedings u/s 145 Cr.P.C. and consequential attachment proceedings u/s 146 Cr.P.C. are clearly abuse of the process of the Court. In view of the facts and circumstances of the case, the proceedings u/s 145 Cr.P.C. and consequential attachment proceedings u/s 146 Cr.P.C. pending before the Sub-Divisional Magistrate, Soraon, Allahabad in Criminal Case No. 52 of 1996- Brij Mohan and others v. Brij Lal and others, are hereby quashed. The application u/s 482 Cr.P.C. is accordingly allowed.