
(1987) 08 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6153-M of 1986

Chand Singh

APPELLANT

Vs

Harnam Kaur alias Middo and State of Punjab

RESPONDENT

Date of Decision : 21-08-1987

Acts Referred:

Citation : (1987) 2 AICLR 1191 : (1987) 2 RCR(Criminal) 448

Hon'ble Judges : I.S.Tiwana, J

Advocate : S.S. Saron, H.P.S. Gill, Advocates for appearing Parties

Judgement

I.S. Tiwana, J.

1. The petitioner seeks the quashing of the proceedings initiated against him under Section 145, Criminal Procedure Code therein. after called the Code) at the instance of the respondents. The facts which remain uncontroverted and are rather established from record are that respondent No. 1 secured a decree for joint possession of the property in dispute on 23rd November. 1984 from the court of SubJudge Ist Class, Mansa. In pursuance of this decree. she even obtained symbolic possession on 17th April, 1995. Thus, she undisputable became a coowner of this property. Later she initiated these proceedings by filing an application in the Court of the Sub Divisional Magistrate, Mansa on 20th November, 1985. During the course of these proceedings, the said Magistrate attached the property in dispute vide his order dated 10th April, 1986 and also appointed Kanungo of the area as Receiver of the property. This Receiver pointed out that out of this property certain areas had already been sold or mortgaged. He, therefore, sought clarification as to of which property he was to take possession. As a result of this the learned Magistrate passed another order on 29th May, 1986 directing him to take possession of 78 Kanals 6 Marlas of land.

2. The submission of Mr. Gill, learned counsel for the petitioner, is that the property in dispute being a joint property, the present proceedings cannot possibly be maintained as the Magistrate cannot give a declaration as to which of the parties was in physical possession of it on the date of passing of the

preliminary order. I find lot of merit in this submission. As a matter of fact, I have already held in Bhawan Pal v. Prem Kumar Jain and others, 1982(1) C.L.R. 121 that in case of joint properties, proceedings, under Section 145 of the Code cannot successfully be maintained by one of the coowners. In the instant case, in the face of the decree of the Civil Court dated 23rd November, 1984, there cannot possibly be any dispute that the property in dispute is a joint property.

3. For all the reasons recorded in Bhawan Pal's case (supra), I allow this petition and quash the proceedings now pending in the court of the Sub Divisional Magistrate, Mansa.