

(2019) 02 RAJ CK 0155

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Pet.) No. 236 Of 2018

Dalpat Singh And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 145, 482
Rajasthan Tenancy Act, 1955 — Section 212

Citation : (2019) 02 RAJ CK 0155

Hon'ble Judges : Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Om Mehta, V.D. Gaur, JP Bhardwaj, Rakesh Arora

Final Decision : Allowed

Judgement

1. The petitioners have preferred this misc. petition under Section 482 of Cr. P.C. for the following reliefs :-

"It is, therefore, most humbly and respectfully prayed on behalf of the petitioners that this misc. petition may kindly be allowed and the order dated 1.12.2017 passed by Additional Sessions Judge, Sumerpur in Criminal Revision Petition No.25/2017 (Dalpat Singh & Ors. Vs. State of Rajasthan & Anr.) may kindly be quashed and set aside and the order dated 22.6.2017 passed by learned Sub-Divisional Magistrate, Sumerpur may also be quashed and set aside."

2. The petitioners filed regular civil suit before the Sub-Divisional Officer cum Assistant Collector, Sumerpur against Smt. Kankubai and others wherein the respondents Bhanwar Singh S/o. Shri Vagtawar Singh is also a party to the lis. There is another revenue suit filed by the respondent no.2, which is Revenue Misc. Case No.16/2016 wherein an application under Section 212 of Rajasthan Tenancy Act, 1955 has been made. Counsel for the petitioner has demonstrated from order dated 03.3.2016 on record whereby the interim order granted by the learned court below was in operation pertaining to Khasra No.1078, 1079, 1081,

1082, 1087, 1088, 1090, 1102, 1103 and 1104.

3. Counsel for the petitioner made a limited submission that in accordance with precedent law laid down by Hon'ble Supreme Court that once a party has consciously filed a civil suit/revenue suit, then it shall not be open for it to invoke provisions of Section 145 Cr. P.C., for resolving the dispute for possession. Counsel for the petitioner and relied upon the decision of Hon'ble Apex Court in Ram Sumer Puri Mahant Vs. Stater of U.P. & Others, reported in AIR 1985 SC 472

"2. Challenge in this application is to the order of the Allahabad High Court refusing to interfere in its revisional jurisdiction against an order directing initiation of proceedings under Section 145, CrPC (Code for short), and attachment of the property at the instance of respondents 2-5. Indisputably, in respect of the very property there was a suit for possession and injunction being Title Suit No. 87/75 filed in the Court of the Civil Judge at Ballia wherein the question of title was gone into and by judgment dated February 28, 1981, the said suit was dismissed. The appellant was the defendant in that suit. According to the appellant close relations of respondents 2-5 were the plaintiffs and we gather from the counter affidavit filed in this Court that on appeal has been carried from the decree of the Civil Judge and the same is still pending disposal before the appellate court. The assertion made in the Petition for Special Leave to the effect that respondents 2 to 5 are close relations has not been seriously challenged in the counter affidavit. "

Counsel for the petitioner has further relied upon the decision of Hon'ble Apex Court in Amresh Tiwari Vs. Lalta Prasad Dubey & Anr., reported in 2000 AIR SCW 1467

"13. We are unable to accept the submission that the principles laid down in Ram Sumers' case (AIR 1985 SC472 : 1985 Cri. LJ. 752) would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumers' case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be Wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue."

4. Counsel for the respondents is not in a position to dispute that interim order dated 03.3.2016 granted in Revenue Misc. Case No.16/2016 was already covering Khasra No.1078, 1079, 1081, 1082, 1087, 1088, 1090, 1102, 1103 and 1104, whereas proceedings under Section 145 Cr. P.C., have only been initiated on 21.10.2016. The proceedings under Section 145 Cr. P.C., culminated into the impugned order, which is dated 22.6.2017.

5. After hearing learned counsel for the parties and perusing record of the case, this Court finds that the precedent law in the matter of Amresh Tiwari (supra)

and Ram Sumer Puri Mahant (supra) clearly laid down law that if civil proceedings have been launched and dispute of possession of land in-question is already sub-judice in such civil court, then the proceedings under Section 145 Cr. P.C. should be quashed. This Court finds that civil proceedings/revenue proceedings culminated into interim order pertaining to disputed Khasra No.1102, 1103, 1104 between the same parties on 03.3.2016, whereas the proceedings under Section 145 Cr. P.C., were initiated on 21.10.2016, thus, the revenue/civil proceedings were initiated first and order of status quo had already been passed by the competent court before Section 145 Cr. P.C., proceedings even commenced. The facts of the case clearly attract the aforesaid ratio of precedent laws laid down by Hon`ble Apex Court and, therefore, Section 145 Cr. P.C., proceedings could not have been maintained and at best the respondent no.2 could have got his rights determined by the competent court. This Court also takes note of the fact that respondent no.2 had initiated civil/revenue proceedings first and interim order was passed by the learned court on 03.3.2016 was at the instance of respondent no.2 and, therefore, proceedings under Section 145 Cr. P.C. thereafter were initiated on 21.10.2016 were not maintainable.

6. In light of aforesaid observations the present misc. petition is allowed. The order dated 1.12.2017 passed by Additional Sessions Judge, Sumerpur in Criminal Revision Petition No.25/2017 (Dalpat Singh & Ors. Vs. State of Rajasthan & Anr.) as well as order 22.6.2017 passed by learned Sub-Divisional Magistrate, Sumerpur are quashed and set aside.