
(1990) 07 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Nos. 115-M & 8437 to 8440 of 1990

Jasbir Kaur and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:

Citation : (1990) 2 AICLR 512 : (1990) 2 RCR(Criminal) 688

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : Sarwan Gupta, Satya Parkash Jain, Advocates for appearing Parties

Judgement

Jai Singh Sekhon, J.

1. Through this petition filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter called the Code), the petitioners seek the quashment of the order of the Executive Magistrate, Narwana initiating proceedings under section 145 of the Code and order dated 2.1.1990 (Annexure P3) attaching the land and appointing Tehsildar Narwana as receiver, under section 146 of the Code.

2. The briar resume of facts relevant for the disposal of this petition is that Kartar Singh was the owner of the disputed land. He. died in the month of a March/April 1989. During his life time, Kartar Singh aforesaid suffered the decree of Civil Court relating to half of the land in favour of his son Kapur Singh. in the year 1982; Kartar Singh suffered two decrees transferring 71 kanals out of the remaining land to Ranjit Singh adopted son of aforesaid Kapur Singh and 63 kanals of land in favour of Jasbir Kaur, wife of aforesaid. Kapur Singh. On the basis of these decrees, the ownership of the land was transferred in the name of those persons and mutations were sanctioned. Aforesaid Kartar Singh had one daughter, namely, Bir Kaur. Respondents 2 to 5 of the first party are the legal heirs of aforesaid Bir Kaur. During the summer vacation, on 1861989, Kapur Singh along with the present petitioners filed a suit for a permanent injunction wherein the learned District Judge, Jind on 1961989 passed an ex parte ad interim order restraining the heirs of Bir Kaur Respondents 2 to 5 from

interfering in plaintiffs possession over the disputed land. This application for interim stay was ultimately disposed of by Shri Jagdev Singh. Sub Judge IInd Class, Narwana on 12.2.1990 and both the parties were directed to maintain status quo regarding the possession of the disputed land. Jasbir Kaur aforesaid is alleged to have executed a gift deed regarding 63 kanals of land in favour of Trilok Singh and others and delivered its possession. The sons of aforesaid Bir Kaur challenged both the decrees suffered by Kartar Singh in the year 1982 as well as the gift deed executed by Jasbir Kaur through a civil suit. They further claimed to be in actual possession of the disputed land and prayed for injunction.

3. During the period when the exparte ad interim stay order granted by the District Judge on 1961989 was still in force, these proceedings under section 145 of the Code were instituted, obviously at the instance of the first party, i.e., the sons of aforesaid Bir Kaur on 6111989. The Executive Magistrate, Narwana in those proceedings passed order on 2.1.1990 under section 146 of the Code attaching the land in dispute belonging to Jasbir Kaur and Ranjit Singh aforesaid and appointing the Tehsildar Narwana as its receiver.

4. Aggrieved by the initiation of the abovereferred proceedings under 145 of the Code as well as the order Annexure, P3 under section 146 of the Code, the petitioners have filed the present petition, inter alia, on the ground that the civil Court being already seized of the matter and having restrained the present respondents (Party No. 1) from interfering in the possession of Jasbir Kaur etc. Party No. 2 (i.e., the petitioners), the Executive Magistrate had no jurisdiction to initiate the proceedings under section 145 of the Code as there was no bona fide dispute between the contending parties over the possession of the" land. It is also, maintained that security proceeding"s under section 107 of the Code having already been instituted between the parties, the contingency to maintain peace stood well covered.

5. The first party has resisted this application mainly on the ground that the civil Court having ultimately modified the ad interim injunction restraining the defendants to the one of maintaining status quo regarding the possession of the land, the initiation of the proceedings and attachment of the land was legal.

6. I have heard the learned counsel for the parties besides perusing the record. There is no dispute between the parties that the civil suit filed by Jasbir Kaur etc., the present petitioners, for permanent injunction against the present respondents as well as the suit for a declaration and permanent injunction filed by the sons of Bir Kaur, the present respondents, is still pending before the civil Court. It is also not disputed that in appeal against the order dated 1221990 of Shri Jagdev Singh Sub Judge IInd Class, Narwana, the learned District Judge, Jind had modified the order of status quo and restrained the defendants, i.e., the heirs of Bir Kaur from interfering in the possession of the plaintiffs vide order dated 2251990. This appeal was accepted by the District Judge during the pendency of the present petition in this Court. Thus, the perusal of the abovereferred order of the District Judge reveals that he has relied upon the

entries in Khasra Girdawari and Jamabandi reflecting the possession of the plaintiffs over the disputed land. It is not disputed that this order of the learned District Judge still holds the field and that at the time of the initiation of the proceedings under section 145 of the Code on 6.11.1989 the *ex parte* ad interim order dated 19.6.1989 of the learned District Judge was still in force. If that is so, then the initiation of the proceedings under section 145 of the Code is certainly an abuse of the process of the criminal Court as the civil Court was already seized of the matter and had *ex facie* had Kapur Singh etc. to be in actual possession of the land in dispute.

7. There is no force in the contention of the learned counsel for the respondents that the civil Court having not finally decided the dispute regarding the possession of the land, the Executive Magistrate had the jurisdiction to initiate proceedings under section 145 of the Code, as the learned District Judge *vide* order dated 22.5.1990, while accepting the appeal had restrained the respondents from interfering with the possession of the petitioners over the land in dispute. In the case before the Apex Court *Ram Sumer Puri Mahand v. State of U.P. and others*, 1985(2) Recent Criminal Reports 43, civil litigation was pending between the parties regarding the possession of the property and parallel initiation of criminal proceedings under section 145 of the Code was condemned by the Supreme Court by observing the initiation of such proceedings would result in multiplicity of litigation between the parties which is not in their interest as well as in the interest of general public as it would result in meaningless wastage of time of public authority. No doubt, in that case, the civil suit had already been finally decided between the parties but that will be of no help to the respondents in the present case as the order of the District Judge, Jind, dated 22.5.1990 had settled this controversy regarding plaintiffs being in possession of the land by modifying the order of the status quo of the trial Court to the one of restraining the defendants from interfering in the possession of the plaintiffs over the land.

8. Moreover, it appears that the Executive Magistrate while passing the impugned order Annexure P3 attached the land in dispute and appointed Tehsildar as its Receiver without applying his mind to the facts and circumstances of the case although the Second party i.e., Kapur Singh etc had filed the written statement asserting all the abovereferred facts in respect of they being in actual possession of the land in dispute. Under these circumstances, the initiation of the proceedings under section 145 of the Code as well as the impugned order dated 2.1.1990 (Annexure P3) attaching the land in dispute and appointment of Receiver being certainly abuse of the process of the Court are hereby quashed by accepting this petition. The Receiver is directed to hand over the actual possession of the land to the petitioners if actually he has taken over the same, although it appears that *vide* order dated 18.4.1990, A.P. Choudhary, J. of this Court had refused to vacate the ad interim stay by holding that Kapur Singh etc. were *prima facie* in possession and allowing the present petitioners to harvest the crop on furnishing security in the sum of Rs. 25000/ to the satisfaction of the

Subordinate Judge, Narwana, who was dealing with the civil suit. It was further remarked that the aforesaid security shall be kept by the Court till the question of possession is finally disposed of in the proceedings under section 145(1) of the Code.

9. In the view of the above findings, Cr. M. Nos. 8437 to 8440 of 1990 automatically stand disposed of.