
(1993) 01 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition No. 6262-M of 1992

Jora Gir, Mahant Dera Gaj Raj Gir

APPELLANT

Vs

B.L.Singal and ors

RESPONDENT

Date of Decision : 29-01-1993

Acts Referred:

Citation : (1993) 1 AICLR 763 : (1993) 1 CurLJ 833 : (1993) 2 RCR(Criminal) 23

Hon'ble Judges : J.B.Garg, J

Advocate : Amarjit Markan, Sunil Chadha, R.K. Chhokar, Bharat Bhushan Gupta,
Advocates for appearing Parties

Judgement

J. B. Garg, J.

1. Jora Gir, who alleged himself to be the Chela of Mange Gir and his companions Raj Mal, Jage Ram and Hoshiara sons of Duni Gir, were held to be in possession of the land in question in the proceedings under Section 145 of the Code of Criminal Procedure by the Executive Magistrate, find on 15.7.1991. Mahant Krishan Gir preferred a revision against this finding and it was accepted by Shri B. L. Singal, Additional Sessions Judge, Jind, on 27.2.1992. Aggrieved against it, Jora Gir Mahant has come by means of the present petition under Section 482 of the Code of Criminal Procedure. It has been prayed that the impugned order of the Additional Sessions Judge, should be set aside and the proceedings should continue in tune with the order of the Executive Magistrate dated 15.7.1991.

2. There is a Dera which was known earlier as Dera of Gaj Raj Gir at village Pokhar Kheri in Narwana Sub Division. After the death of Gaj Raj Gir, Mahant Mange Gir had succeeded and continued to be its owner. However, Mahant Mange Gir died on 2.11.1988 and a dispute arose amongst the Chelas and a report under Section 145(1) of the Code of Criminal Procedure was made on 23.12.1988 and an order of attachment was passed by the Executive Magistrate, on 27.12.1988.

3. In para : No. 4 of the petition it has been alleged that the dispute did not call

for initiation of proceedings and only an action under Section 107 of the Code of Criminal Procedure against respondent No. 3 and his men was required to be taken. If this is the assessment of the present petitioner on the facts enumerated by him in fact there should have been no grievance if the proceedings under Section 145 of the Code of Criminal Procedure were quashed by the learned Additional Sessions Judge.

4. On facts, the important pleas taken in reply filed by Mahant Krishan Girrespondent No. 3, are that Mange Gir died on 2,11.1988 and the possession of the petitioner and the proforma respondent was denied emphatically and that the petitioner was not the Mahant of the said Dera because he was neither an old Chela nor he was appointed by the Bhekh and the villagers. It has been further averred that Civil Suit No. 371 of 21.7.1980 instituted by Dera Baba Gaj Raj Gir of Pokhar Kheri was decreed on 21.1.1985 against Mange Gir and respondents No. 4 to 6 by Senior Sub Judge, Jind. This judgment has been confirmed by the Additional District Judge, Jind on 31.7.1986. A Regular Second Appeal No. 2321 of 1986, has been dismissed on 3.6.1991 by means of a composite judgment rendered in RFA No. 1657 of 1979. The connected R.S. A. No. 2321 of 1986 and 2370 of 1986 were also disposed of by means of the aforesaid judgment. S.L.P. (Civil) Nos. 14397 to 99 of 1991, were attempted against this judgment and these were dismissed by the Supreme Court on 17.9.1991 and a copy thereof is Annexure R6. In the face of these findings, it has been averred that the present petition has no merit.

5. A dispute arose inasmuch as the land was owned by the Dera² in favour Mange, Gir executed the lease deeds Annexures P1 and P2 in favour of his close relations and that too without consideration. The land in question was owned by the Dera and the character of Mange Gir qua the suit land was as Mahant of the Dera. The conclusion was that the Mahant could not be considered as owner of the land in his individual capacity. The lease deed, Annexure P1, contained a recital that the consideration of Rs. 25,000/ was received in the past several years by Mange Gir from Hoshiara and others, his own nephews for making improvement in the land. This alleged passing of the consideration has not been relied upon by the Senior Sub Judge and also by the learned Additional District fudge and it was rightly held that this lease was a fake transaction. Similarly, the second lease for a period of 99 years and that too without passing of any consideration before the Sub Registrar, was rightly held to be a sham transaction with the ulterior motive of transferring the valuable land attached to the dera to own close relations of Mange Gir.

6. While deciding the Regular First Appeal No. 1657 of 1979, on 3.6.1991, A. L. Bahri, J. observed that Mahant Mange Gir was to look after the properties of the Dera with due care and caution and it was not expected of him to transfer the land attached to the Dera permanently without any legal necessity and the two lease deeds executed in favour of wives of sons of Duni brother of Mange Gir himself were illegal, without necessity and not binding on the Dera. No

consideration in respect of these lease deeds was paid before the Sub Registrar. These transfers were acts of mismanagement rendering removal of Mange Gir from the post of Mahant. This judgment has been brought on record here by the respondent Krishan Gir.

7. The learned counsel for the petitioner has referred to *Jaswant Singh and others v. State of Punjab and others*, 1987(1) RCR 237, wherein, it was observed that jurisdiction of Magistrate does not end as soon as he has ordered attachment of the disputed property on the ground of emergency. This principle is not attracted in the facts and circumstances of the case now in hand inasmuch as there is a finding of the civil Court which has been upheld upto the Supreme Court against the present petitioner and in the circumstances it cannot be said that interference of this Court is called for under Section 482 of the Code of Criminal procedure.

8. The learned counsel for the petitioner has, also referred to *Bhinka and others v. Charan Singh*, AIR 1959 SC 960 and has pointed out that in para 13 thereof, it has been observed that Section 145 of the Code does not confer on a Magistrate any power to make an order directing the delivery of possession to a person who is not in possession on the date of preliminary order made by him under Section 145 of the Code. However, after discussing the various situations in para No. 16 of the judgment, the conclusion has been arrived at and it has been held that the Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. It has further been held that the life of the said order is conterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction it displaces the order of the Criminal Court. In the case, now in hand, the acts of Mange Gir have been held to be void and it shall be an abuse of the process of the Court to relegate Krishan Gir to the position already existed on 23.12.1988 or 25.12.1988.

9. In *Ram Sumer Puri Mahant v. State of U.P. and others*, AIR 1985 SC 472, referred to by the learned counsel for the respondents it was observed that when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, there was hardly any justification for initiating any parallel criminal proceedings under Section 145 of the Code. In the case now in hand, the civil dispute has been decided upto the highest Court and there is no justification in the claim of the present petitioner.

10. The conclusion is that the present petition moved under Section 482 of the Code of Criminal Procedure has no merit and it is hereby dismissed.