
(1998) 09 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No"s. 453 and 454 of 1996

Jora Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 146

Citation : (1999) CriLJ 1302 : (1998) 4 RCR(Criminal) 414

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : R.L. Batta, Sanjay Tangri and J. S. Saggi, for the Appellant; M.L. Sagar and Ms. Sweena Pannu, for the Respondent

Judgement

1. This order will dispose of Crl. Revn. Nos. 453 and 454 of 1996 as the question of facts and law involved in both the petitions is the same. Petitioner No. 1, respondent Nos. 2, 4, 6 and 8 of Crl. Revn. No. 453 of 1996 are brothers; petitioner No. 2 of Crl. Revn. No. 453 of 1996 is wife of petitioner No. 1; respondent No. 5 is wife of respondent No. 4; respondent No. 7 is wife of respondent No. 6 and respondent No. 9 is wife of respondent No. 8. Respondent No. 3 is alleged to be the power-of-attorney holder. The dispute is regarding lands situated in villages Lakha and Manuke. The S.H.O. of Police Station, Jagraon sent a Kalendra Annexure P-1 to the learned Sub-Divisional Magistrate (in short S.D.M.), Jagraon who by his order dated 20-10-1994 appointed Tehsildar Sh. Ajay Sood as a Receiver and directed him to get the crop of the land in dispute harvested and sale-proceeds of Rs. 70,000/- were deposited by the Receiver in the Government treasury. By subsequent order dated 21-11-1994, the S.D.M. passed an order which when translated reads as under :

"4. I have heard the arguments of the learned counsel of both sides and have thoroughly examined the record produced in the case file. It has been found from perusal of the record that now there exist dispute in respect of land of 36 Killa only, the detail of which has also been given by the first party in its written

statement and the party No. 1 is in possession as tenant over the land in dispute and as per their written statement, they are not concerned with the rest of the land. The first party has also produced some documentary evidence in this respect, which are essentially required to be proved. Their veracity cannot be established without producing witness. At present, there is a great tension between the parties in regard to possession of the land in dispute, and the parties could clash any time. Agreeing with the rulings 1976 PLR 803 : 1990 CLJ 389 and 1992 CLJ 34 cited by the first party, I attach u/s 145 of the Cr.P.C. land measuring 29 killa 2 kanal 6 marla, comprised in Khasra Nos. 37/25/2, 46/5/2, 47/1, 2/1, 5/1, 6/1, 7, 8, 6/2, 6/3, 5/2, 13/1, 13/2, 13/3, 14/1, 14/2, 14/3, 16/2, 17/2/1, 17/1, 48/1/2, 1/1, 3/1, 9/2, 10, 47/ 25/1, 18/1, 18/2/1, 74/24, 25, 72/21, 22, 23/2, 73/1, 2, 3, 8, 9, 10, 11, 12/1/1, 12/1/2, 12/2/1, 74/4, 5, 6/1 situate in village Lakha and land measuring 55 kanal 17 marla, comprised in Khasra Nos. 226/15, 16, 17, 18, 19, 23, 24, 25/1, 227/11/1, 20/2, situate in village Menuke, on which the first party has laid claim and the proceedings u/s 145, Cr.P.C. are ordered to continue. The first party (Darshan Singh etc.) is not concerned with the remaining land because as per their written statement, they are tenants over the said land. The first party is ordered to produce on 24-11-1994 witness in support of the documentary evidence produced by it. The Tehsildar, Jagraon has already by my order dated 20-1-1994 been appointed as Receiver in this case u/s 146, Cr.P.C. who may be addressed separately to give on lease the said disputed land.

Sd/ Sub-Divisional Magistrate, Jagraon 21-11-1994."

2. Aggrieved by the said order, respondents No. 2 and 3 filed a Crl. Revn. Petition Nos. 8/9 of 17-2-95/22-3-1996 in the Court of learned Additional Sessions Judge, Ludhiana. The learned Additional Sessions Judge vide order dated 11-5-1996 allowed the revision petition. The order part of the judgment is as under :

"In view of the discussion made above, the revision petition is accepted and the impugned order dated 21-11-1994 passed by the S.D.M. regarding the attachment of the land and continuation of the proceedings under Ss. 145, Cr.P.C. is ordered to be set aside. The proceedings u/s 145 Cr.P.C. are ordered to be dropped. The possession of the land is ordered to be restored to the revision petitioner No. 2. The sale proceeds deposited in the Treasury by the Tehsildar after harvesting the crop, is ordered to be paid to the revision petitioner No. 2 who had sown that crop in the land. Trial Court record be returned. File of this Court be consigned."

3. Being aggrieved by the judgment of the learned Additional Sessions Judge, the petitioners have filed this revision petition.

4. Petitioners in Crl. Revision No. 454 of 1996 have filed the revision petition against the same judgment. However, they contend that they were never a party either before the learned S.D.M., Jagraon or before the learned Addl. Sessions

Judge, Ludhiana, therefore, they were not aware of the proceedings u/s 145 of the Code of Criminal Procedure (in short Code) in respect of the land in their possession. They have also challenged the order on merits. In Crl. Revn. No. 454 of 1996, the petitioners are the sons of respondents Nos. 2 and 1 of Crl. Revn. No. 453 of 1996 respectively.

5. The case of the petitioners in Crl. Revn. 453 of 1996 (hereinafter referred to as petitioners) is that the petitioners were not represented before the learned Additional Sessions Judge and the summons were not duly served on them. As per report of the Process Server the summons were delivered to Surjit Singh, who was neither their mukhtiar nor their power-of-attorney and, therefore, the service of summons was not proper. No Advocate was authorised by them to appear or argue the revision petition. They have also contended that the pendency of litigation in the civil Court will not bar the proceedings u/s 145 of the Code and that the civil Court has not given any finding that Darshan Singh is in exclusive possession of 36 acres and 2 marlas of land in the two villages. There is no finding of the learned S.D.M. that Charan Singh and his wife and through them Darshan Singh is in exclusive possession of the land etc.

6. I have heard the learned counsel for the parties. The argument of the learned counsel for the petitioners is that the learned Additional Sessions Judge was not right in passing the impugned order on the ground that the civil suits were filed. Regarding the effect of the civil suits, the learned Additional Sessions Judge observed as under :

"When the civil litigation is already pending between the parties and ad interim injunctions has not been granted to the respondents Nos. 2 to 9, by the Court and the revision petitioner No. 2 is in possession of land on behalf of the revision petitioner No. 1 and his wife Harbans Kaur, no proceedings u/s 145, Cr.P.C. could be initiated by the S.D.M. on the basis of the police calandra. Even in the calandra it has been alleged by the police that all the co-sharers are in possession of the land, which had fallen to their shares under private settlement and the land in question is in possession of the petitioner No. 2 who had sown the crop. In face of all these facts the S.D.M. should have acted judiciously and avoided to pass the impugned order ordering the attachment of the land and initiation of the proceedings u/s 145, Cr.P.C. Respondents Nos. 2 to 9 even in the reply before the S.D.M. had denied the necessity of taking out the proceedings u/s 145, Cr.P.C. in the fact of the civil litigation already pending between the parties before the learned Sub-Judge, Jagraon. There was no material before the S.D.M. to come to the conclusion about the apprehension of breach of peace at the hands of the parties."

7. Regarding apprehension of breach of peace, the learned Additional Sessions Judge has observed as under :

"Both the parties, i.e. revision petitioners and respondents No. 2 to 9 had denied the apprehension of breach of peace over their dispute regarding the joint land in

their replies filed before the S.D.M. The civil litigation between the parties is already pending before the learned Sub-Judge, Jagraon. Undisputedly the respondents Nos. 2 to 9 had filed civil suits against the revision petitioners seeking permanent injunction restraining them from interfering in their possession of the land of the joint khata. In those suits, as not disputed before me, the ad interim injunctions were no doubt granted by the learned trial Court in their favour but the orders of the learned trial Court were set aside in the appeal. The revision petition filed by the respondents Nos. 2 to 9 against the order, passed by this Court vacating the ad interim injunction as granted to them, by the learned trial Court, were dismissed by the Hon'ble High Court vide order dated 7-8-1995. The copy of that order has been produced before me during the course of arguments by the learned counsel for the revision petitioners."

8. From the judgment of the learned Additional Sessions Judge, it can be found that he has passed the impugned order in view of the following reasons :

(1) Civil litigation is pending between the parties and ad interim injunctions have not been granted to respondents Nos. 2 to 9 by the Court and the revision petitioner No. 2 is in possession of the land on behalf of revision petitioner No. 1.

(2) Both the parties i.e. revision petitioners and respondents Nos. 2 to 9 had denied the apprehension of breach of peace over the dispute regarding the joint land.

9. One more thing to be noticed is that the police had filed the Kalendra treating Charan Singh, Darshan Singh, Harbans Kaur and one Karnail Singh as parties No. 1. The revision petition in which the impugned order was passed by the learned Additional Sessions Judge is filed by Charan Singh and Darshan Singh (in the revision petition before the Additional Sessions Judge, Harbans Kaur w/o Charan Singh and Karnail Singh were not parties). To get a clarity regarding the pendency of the civil suits, I had directed the petitioners vide order dated 10-7-1998 to furnish the statement as to the exact khasra numbers for which the civil litigation is/was there and those khasra numbers for which there is/was no civil litigation. The learned counsel for the petitioners furnished a statement which shows the detail regarding the civil suits which are still pending before the learned Additional Sessions Judge, Ludhiana.

10. Further statement in a tabular form was called for and the same is also produced by the learned counsel for the petitioners, copy thereof has been given to the counsel for the respondents. The said statement dated 2-9-1998 shows as to for which khasra numbers the civil litigation is/was pending and for which khasra number there is no civil litigation at all. The pendency of the civil litigation has weighed with the learned Additional Sessions Judge while deciding the revision application. Relying on the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, and the statement of the parties that there was no apprehension of breach of peace over the dispute regarding the joint land, the

learned Additional Sessions Judge allowed the revision petition and passed the impugned order quoted in para No. 2 above.

11. In the case of Ram Sumer Puri 1985 CriLJ 752 (supra), the Apex Court has held as under (at page 753) :

"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, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding u/s 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate Judge in the civil litigation for appropriate interim orders, if so advised in the event of dispute relating to possession."

12. As against this, learned counsel for the petitioners has cited the case of Prakash Chand Sachdeva Vs. The State and another, . The Apex Court in the said case has held that proceedings u/s 145 of the Code need not necessarily be dropped on the ground that proceedings u/s 107 are dropped. Further it has been held therein that proceedings cannot be dropped on the ground of pendency of civil suit for injunction when suit is not based on title but raises question only of dispossession of a co-owner by another co-owner. The relevant observations on the finding read as under (at page 2119 of CriLJ) :

"True, a suit or remedy in civil Court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal Court as observed by this Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, , 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. The normal rule is as stated by the Court in Puri's case. But that was a suit based on title. And that could be decided by civil Court only. That ratio cannot apply where there is no dispute about title. When claim or title are not in dispute and the

parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance u/s 145, Cr.P.C. Neither the High Court nor the Sub-Divisional Magistrate cared to ascertain if the respondent had any claim to lawfully prevent the appellant from entering into his own house. The proceedings u/s 107 are for public peace and tranquillity whereas u/s 145 relates to disputes regarding possession between parties concerning any land or water or boundaries thereof. Therefore, dropping of proceedings u/s 107 could not furnish foundation for dropping the proceedings u/s 145. Nor the law laid down in Puri's case could result in rejecting the application filed u/s 145 of the Cr.P.C. There being no dispute of title between the appellant and respondent the only claim to be decided was if the appellant had been forcibly or wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the appellant had sought the remedy in civil suit without applying the mind if that decision was in any way helpful for dropping the proceedings. In law, therefore, the order passed by two Courts below cannot be maintained."

13. Learned counsel for the respondents cited the case of Dharampal and others Vs. Smt. Ramshri and others, . The Apex Court in the said judgment held that when there is a dispute over possession of property and order of attachment passed by the Magistrate is there, Civil Court subsequently passes an order of injunction and appoints a Receiver, order of attachment of Magistrate comes to an end. It has been further held by the Apex Court therein that order of Civil Court need not be final order determining rights of the parties, order may be even tentative or interim injunction. The relevant part of the judgment reads as under :

"It is obvious from sub-section (1) of Section 146, that the Magistrate is given power to attach the subject of dispute "until the competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof." The determination by a competent Court of the rights of the parties spoken of there has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a Receiver in respect of the subject-matter of the dispute pending the final decision in the suit. The moment the competent Court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end."

14. In the present case, the suits mentioned in the statement dated 2-9-1998 are suits for injunction. The judgment of the learned Additional District Judge, Ludhiana Annexure P-11 is the one passed in appeal from order in one of the suits. By the said judgment, the Additional District Judge vacated the interim injunction granted in favour of Darshan Singh, the present respondent No. 3.

This Court in Civil Revision No. 2844 of 1995, by its judgment Annexure P-12 confirmed the finding recorded by the learned Additional District Judge. As observed earlier, there are various suits filed in connection with the various lands as mentioned in the statement dated 2-9-1998 and Annexures P-11 and P-12 are the judgments in connection with the interim injunction granted in one of the suits. It is apparent from the copies produced by the learned counsel for the petitioners Annexures P-13 to P-21 that the prayer in the suits is for injunction.

15. Considering this factual position in this case though dispute regarding possession being joint or separate is there, it is clear that the civil Courts are seized of the civil suits for injunction for various lands. The statement dated 2-9-1998 shows that the stay matter in Civil Suit No. 454 of 4-10-1994 came up to this Court. The statement also shows that four other civil suits have been dismissed in default and the applications for restoration have been filed and the next date of hearing has been mentioned in the statement.

16. Therefore, regarding some lands, the matter of interim injunction has been decided by the District Court and this Court vide judgments at Annexures P-11 and P-12. Respondent Nos. 1 and 2 had pleaded before the learned Additional District Judge that all the co-sharers are in possession of their share in land in both the villages and that respondent No. 2 and his wife had given the land of that share for cultivation to respondent No. 3. The present petitioners contend that the civil Court has not given any finding that Darshan Singh-respondent No. 3 is in exclusive possession of three acres and two marlas of land in two villages. According to the judgment of this Court in Civil Revision Application, it is clear that all the co-sharers are enjoying possession of the land and respondent No. 2 and his wife Harbans Kaur are staying outside India and that they have no authority to part with more land than their share to Darshan Singh-respondent No. 3, who is alleged to be the tenant.

17. According to the statement dated 2-9-1998, there are some lands for which no suit has been filed.

18. The other questions raised in this revision petition are that the petitioners were not served though as per the report of the Process Server they were served. The petitioners have contended that they were not represented in the revision petition before the learned Additional Sessions Judge. They gave an application to the learned Additional Sessions Judge for setting aside the order. However, it was withdrawn by them. The petitioners counsel are heard at length by me in these revision petitions. Therefore, it will not be proper to set aside the order of the learned Additional Sessions Judge on this ground only. Moreover, the petitioners in Crl. Revn. No. 454 of 1996 have the grievance that they were not parties in the revision before the learned Additional Sessions Judge. They have also been heard at length and, therefore, for this reason only the order of the learned Additional Sessions Judge need not be set aside. Having given full hearing to the petitioners in both these cases, remanding the case to the learned Additional Sessions Judge only on this ground will delay the proceedings.

19. The revision petitions are, therefore, decided on merits. The question that arises is whether because of the filing of the suits, the criminal proceedings u/s 145 of the Code should be quashed or not. The different judgments cited above have to be considered. The Apex Court has distinguished its earlier judgment of Ram Sumer Puri Mahant in the case of Prakash Chand Sachdeva Vs. The State and another, . The reason for the distinction has been quoted above. However, in the case of Dharampal and others Vs. Smt. Ramshri and others, , the Apex Court has considered the fact that if an order of attachment is passed by Magistrate and civil Court subsequently passes an order of injunction and appoints a Receiver, order of attachment of Magistrate comes to an end. However, considering the principles laid down in the said judgment, a Magistrate is given power to attach the subject of dispute until the competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. It has been further held by the Apex Court therein that "the determination by a competent Court of the rights of the parties spoken of there has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a Receiver in respect of the subject-matter of the dispute pending the final decision in the suit." Though, the above lines have been quoted in para 13 (supra), I have repeated the same to highlight that the case regarding injunction is covered by the said judgment.

20. Considering the cumulative effect of the three Judges of the Apex Court, I find that when cases pertaining to injunctions are/were filed in the civil Court, the decision of the civil Court will be binding and hence (sic) and particularly when there is a dispute whether the partition has taken place or not, it will not be proper for the criminal Court to run parallel proceedings in the matter. The question of injunction has to be considered by the civil Court and whatever the decision may be, it will be binding on the parties. Therefore, the order of the learned Additional Sessions Judge in dropping the proceedings qua the lands for which the suits are filed/pending is quite justified and that part of the order does not remain to be disturbed. It may be made clear that though the learned Additional Sessions Judge has mentioned that possession of the land is ordered to be restored to the present respondent No. 3, the said order shall be subject to any order that will be passed by the civil Court(s) in that regard.

21. So far as the lands for which no suits are pending as mentioned in the statement dated 2-9-1998, I find that the order of dropping the proceedings u/s 145 of the Code is erroneous because it is based on the assumption that the civil proceedings are pending qua the lands. The order of the learned Additional Sessions Judge qua the lands for which no civil suit is filed viz. Khasra Nos. 37/25/3, 47/25/1, 73/9, 12/1/2, 12/2/1 and 74/4 deserves to be set aside. It has been mentioned in the statement dated 2-9-1998 that Khasra No. 37/25/2 appears to be a typographical mistake and it should be 25/3. These revision petitions, therefore, deserve to be allowed qua those lands only.

22. As a result, these revisions petitions are partly allowed. The order of the learned Additional Sessions Judge dropping the proceedings u/s 145 of the Code and handing over the land to the present respondent No. 3 qua Khasra Nos. 37/25/3, 47/25/1, 73/9, 12/1/2, 12/2/1 and 74/4 is set aside. The learned Sub-Divisional Magistrate is directed to proceed further qua these lands and pass necessary order in accordance with law. Rest of the prayer is rejected.

23. Revisions partly allowed.