

(1995) 02 AHC CK 0009

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6494 of 1994

Madan Pal Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1)

Citation : (1995) CriLJ 2353

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

Bench : Single Bench

Advocate : Satish Trivedi, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Mathur, J.—This writ petition is directed against the order dated 17-12-1991 (Annexure-3 to the petition) passed by the City Magistrate, Shahjahanpur and the order dated 15-1-1994, passed by the I Additional Sessions Judge, Shahjahanpur to the extent the directions are given in these orders for delivering possession to the opposite party No. 2.

2. It appears that on 12-5-1991, the police of Police Station Sadar Bazar, Shahjahanpur submitted a report to the City Magistrate that the petitioner Madan Pal Singh was a tenant of one room in the ground-floor and one room in the first floor of the disputed house and the remaining portion of the house is locked and was in possession of the opposite party No. 2 Smt. Kanchan Lata Saxena. It was further reported that the first party, namely Madan Pal Singh was threatening to take possession over the entire house and this may lead to breach of peace. On this report, the learned City Magistrate passed a preliminary order u/s 145(1), Cr. P. C. on 13-5-1991. An order u/s 146(1), Cr. P. C. was passed attaching the premises in dispute. A further report appear; to have been given that Madan Pal Singh had taken forcible possession over some part of the house and the Magistrate directed the police to attach those rooms also. On 30-5-1991, the

opposite party No. 2 moved an application before the Magistrate that the revisionist has broken the seal of one room and is using the same. A report was called from the police and, according to the police, the allegations of the opposite party No. 2 were correct. On 1-8-1991, the opposite party No. 2, namely Smt. Kanchan Lata Saxena moved an application before the Magistrate that in a civil suit No. 159/91 between the parties in respect of the same house, the Civil Judge, Shahjahanpur has made an order dated 23-5-1991 directing both the parties, not to interfere in each others possession on the portions indicated in the order. The learned Magistrate, after hearing both the parties, passed the impugned order holding that after the injunction order of the Civil Court, there was no necessity of continuing the attachment and that the , proceedings u/s 145, Cr. P. C., deserve to be dropped. He consequently withdrew the order of attachment and directed the police to release the property in favour of the parties in accordance with the order of the Civil Court. The petitioner, Madan Pal Singh filed a revision against this order. This revision has been dismissed by the I Additional Sessions Judge by his order dated 15-1-1994.

3. I have heard the learned counsel for the parties and have gone through the record and, in my opinion, there is no force in this writ petition. The only contention raised by the petitioner in the revisional Court and by his learned counsel before this Court, in this writ petition, is that the Magistrate committed an error in directing the police to hand over the possession in accordance with the order of the Civil Court.

4. It is settled law and has been so laid down by the Hon"ble Supreme Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, and Dharampal v. Ramshri (Smt.) (1993) 1 SSC 435, that the order of decree of the Civil Court is binding on the criminal Court in a matter of this nature. In Ram Sumer Puri Mahant's case, Hon"ble Supreme Court has observed :

"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 "under Section 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". In Dharampal's case, the Supreme Court has held :?

"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. Otherwise, there will be inconsistency between the order passed by the Civil Court and the order of attachment passed by the Magistrate. The proviso to sub-section (1) of Section 146 itself takes cognizance of such a situation when it states that Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of any breach of peace with regard to the subject of dispute".

A perusal of these two decisions makes it clear that, once a matter regarding possession has been adjudicated by the Civil Court, the proceeding u/s 145, Cr. P. C. will no more be competent. It also clearly follows from the observation, noted above, that, on such adjudication being made, even by way of interlocutory order, the proceedings-under Section 145, Cr. P. C., will have to be dropped and the matter regarding possession will be governed by the directions of the Civil Court. The copy of the order dated 23-5-1991 has been placed on record along with counter affidavit. Although it was stated by the learned counsel for the opposite party No. 2 that this counter affidavit may not be taken into consideration, it was submitted that the order of the learned Civil Judge may be taken into consideration as the petitioner had only filed the operative part of the order. The learned counsel for the petitioner was directed by order dated 1-2-1995, to verify the correctness of this order and if it be not correct to place on record the correct copy of the order. No other copy has been placed on record by the learned counsel for the petitioner who was present today. Accordingly, I do not see any difficulty in considering this detailed order.

5. The detailed order passed by the Civil Judge clearly indicates the possession of the respective parties on the particular portions of the house. After giving this specific finding, he has made specific direction in respect of the portion of the house which shall continue to be in the possession of the respective parties and they have been restrained from interfering with each others possession. It is not disputed that, in view of this order, the learned Magistrate was bound to drop the proceedings u/s 145, Cr. P. C. as he has done. The only grievance is that he should not have made a further order for delivery of possession in terms of the order of the Civil Judge. This contention is clearly unfounded. Once the Civil Court has passed an order adjudicating the question of possession, even at an interlocutory stage, the Magistrate has no option but to drop the proceeding. The necessary corollary of this legal position, quite obviously, would be that the parties will be governed by the orders passed by the Civil Court. This would have been the result every if the learned Magistrate had not indicated this fact specifically in his order. Merely because he has referred to the order of the Civil Judge and has directed that the possession shall be delivered in accordance with the order of the Civil Judge, no infirmity in the order could be said to have occurred. If any party is aggrieved, the only remedy open to him would be to

approach the Civil Court but any challenge to the order passed by the Magistrate on 17-12-1991 is wholly misplaced.

6. The petition is accordingly devoid of merit and is dismissed.