
(2009) 03 DEL CK 0088
In the Delhi High Court
Case No : Criminal M.C. 2940 of 2001

Mohd. Ayub khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-03-2009

Acts Referred:

Citation : (2010) 6 RCR(Criminal) 2981

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Manish Verma, for the Appellant; Arvind Kr. Gupta, APP Aly Mirza, for R-2 and Daksh, for R-3 and 4, for the Respondent

Judgement

Mool Chand Garg, J.—This petition arises out of an order passed by the ASJ dated 03.08.2001 in Criminal Revision No. 30/2001 whereby the Additional Sessions Judge, New Delhi upheld the orders passed by the SDM dated 24.01.2000 and 04.01.2001 directing handing over of the possession of the property situated in Khasra No. 2016/554 measuring about 2000 sq. yards, Basti Hazrat Nizamuddin near MCD School (referred to as the "disputed property") to respondent No. 2 after adjudicating the dispute as to who was in possession within two months before the date of the order passed u/s 145(1) of Cr.P.C. on two references made on 10.08.1990 and 11.06.1993 of the police.

2. The lis was in fact between the petitioner, respondent No. 3 and 4 on one hand and respondent No. 2 on the other hand. Both the parties claimed possession of the disputed property deriving their title from their common ancestors which was the bone of contention between them.

3. It is a matter of record that after protracted trial the proceedings ultimately came to be decided by SDM, Defense Colony/Mehrauli where the proceedings were transferred on account of the allegations made by the petitioner. In those proceedings an advocate had appeared on behalf of the petitioner, namely, Sh. S. Adil Akhtar which fact is noticed even in the report of the Local Commissioner.

Before the SDM concerned parties were called upon to lead the evidence. While the second respondent lead his evidence, the petitioner/ respondent No. 3 & 4 has led no evidence. It is in these circumstances, the SDM decided the matter in favour of the second respondent which has been upheld by the first revisional Court on a revision preferred by the petitioner who is now before this Court. In fact by way of second revision though titled as a petition u/s 482 Cr.P.C.

4. The evidence led by the second respondent included statement of (1) Sh. Qayyum Khan S/o Late Sh. Chand Khan R/o House No. 258, Basti Nizamuddin, N.Delhi, (2) Sh. Anwal Ali S/o Buddhhan Khan R/o 256, Old Seema Puri, Delhi, (3) Sh. Yasin khan S/o Sultan Khan R/o Kh No. 554, Basti Hazrat Nizamuddin, N. Delhi, (4) Sh. Bundu Khan S/o Allah Baksh R/o Kh No 554, Mauja Ali Ganj, Basti Hazrat Nizamuddin, (5) Sh. Mohd. Umar S/o Mohd. Farooq R/o 185 A, Basti Nizamudin, (6) Mohd. Jamal S/o Late Gazi Baba R/o Kh. No. 554, Basti Nizamuddin and the documents mentioned below:

1. copy of Jambandi dated 28.06.1980.
2. copy of water bill in the name of Sh. Qayam Khan R/o 554A/2016 Nizamuddin Basti for the period 31.12.1989 to 31.12.1990.
3. copy of water bill for the period 15.9.1984 to 31.12.1989.
4. Copy of letter issued by Asst. Registrar, Delhi High Court for repair of old hand-tufted woolen carpets of Delhi High Court vide No. 8828/Gen/DHC dated 23.5.1989 addressed to ACM carpets, opp. Lodhi hotel, 554a.Basti Nizamuddin
5. Copy of tender notice issued by Supreme Court of India addressed to M/s ACM Carpets dated 27.10.1989.
6. Copy of letter issue Dy. Land and Dev. Officer for issuance of passes for Nirman Bhawan to the workers of M/s ACM carpets, 554A, Basti Nizamuddin for the period 17.2.1990 to 18.2.1990
7. Copy of certificate issued by Min. of State for Health and F.W. dated 21.5.90 for carrying out the dry cleaning of carpets by ACM carpets.
8. Copy of Envelope addressed to ACM Carpets, 554A, Basti Nizamuddin, ND. Dated 21.7.90 vide dispatch No. CB70/DS/90-Cash of Deptt. Of Supply, C. Wing, Niraman Bhawan.
9. Copy of Envelop addressed to Sh. Qayyum Khan s/o Lt. Sh. Chand Khan R/o 554A, Basti Nizamuddin, N. Delhi dated 28.9.90 and 15.1.1991 from the o/o Dy. Commissioner of Police, Vigilance Delhi.

5. In view of the aforesaid and there being no evidence led on behalf of the petitioners, the SDM concerned made a declaration in terms of Section 145(4) of Cr.P.C. holding that the respondent No. 2 was in possession of the disputed property on the date of reference and two months before that and accordingly directed the SHO concerned to desal the property and hand over the possession

thereof to the said respondent. The orders so passed are reproduced here under:

In view of the above facts, this Court has no alternative left but to decide the case with one sided evidence and on merits in absence of the IInd party as it is clear that they are intentionally delaying the proceedings by absent from the court proceedings for more than 50 court sitting in three years. Further the IInd party could not produce any documentary evidence to show that they were in possession of the above said disputed property prior to either from the date of first Kalandra or from the date of dispossession whereas the Ist. Party i.e. Qayyum Khan produced both documentary proof and also lead evidence in support of his physical possession till the date of initiating action u/s 145 Cr.P.C. over the disputed property i.e. Kh. No. 2016/554, Revenue Estate Ali Ganj, Basti Nizamuddin, New Delhi.

It is therefore through this order I, Rajesh Kumar-Sub Divisional Magistrate (Defence Colony) being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said Party No. 1 viz Sh. Qayyum Khan is true, I do decide and declare that he is in possession of the said property Kh. No. 2016/554 measuring 2000 sq.yds, situated within revenue estate of Aliganj, Basti Nizamuddin; Near MCD school, New Delhi which is part of Kh. No. 554 measuring 15 bigha and 18 biswas and entitled to retain such possession until ousted by due course of law, and do strictly, forbid any disturbances of his possession in the meantime.

6. While assailing the aforesaid order the petitioner made following grievances before the revisional Court:

i) That the civil proceedings were pending in respect of the disputed property inasmuch as he has filed a Civil Suit No. 309/94/82 on 25.10.1982 against Union of India, LG of Delhi and DDA. Admittedly the second respondent was not a party to those proceedings.

ii) That the SDM did not issue any notice to the petitioner and proceeded ex parte vide order dated 17.01.2000.

7. The Additional Sessions Judge who heard the revision petition dealt with both the points raised by the petitioner and held:

11. In the above context, it cannot be ignored that the civil suit being referred to by the petitioner herein was against Union of India, Lt. Governor of Delhi and DDA, in which proceedings, the respondent No. 2 here was not a party. It may be that the latter had at some stage moved application for impleadment, but having not presented it and having allowed it to be dismissed in default it cannot be said that he forfeited his right to & stake his claim to the right of continued possession. The pendency of the civil suit against the third party or stay order issued in such civil proceedings cannot adversely affect the right of the party found by the SDM to be in possession.

12. In above premise, I do not see why the order of SDM can be condemned for any error or impropriety. The SDM gave more than necessary liberty and indulgence to the revision petitioner to adduce his evidence. Rather than co-operating with the SDM, the revisionist adopted dilatory tactics and chose to suffer the proceedings ex-parte. He cannot now seek an appraisal by this Court of his evidence, which he never formally adduced before the SDM, (1999 (4) Crimes 48.

13. Consequently, I find no merits in the revision petition, the same is dismissed....

8. In these circumstances, the basic issue which arises for consideration is as to whether the petitioner who has already availed a remedy of revision by exercising his rights u/s 397 Cr.P.C. can invoke jurisdiction of this Court u/s 482 Cr.P.C in the facts of this case. This point has been dealt with in the judgment delivered by the Apex Court in Kailash Verma Vs. Punjab State Civil Supplies Corporation and Another, where the Apex Court held:

5. It may also be noticed that this Court in Rajathi v. C. Ganesan said that the power u/s 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred u/s 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court u/s 397(1) of the Criminal Procedure Code as it is prohibited u/s 397(3) thereof. However, the High Court can entertain a petition u/s 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

9. Even this Court in its judgment delivered in the case of Gajraj Singh Tomar v. State and Ors. CrI.M.C. No. 4024/2008 decided on 02.02.2009 upheld the aforesaid legal position and held as under:

The facts of this case needs to be analysed in the light of the ratio of the aforesaid judgments which circumscribe the powers vested in this Court u/s 482, 483 of Cr.P.C. whenever an attempt is made to again invoke the power of revision though in the garb of petition under Sections 482, 483 in view of the bar created u/s 397(3) Cr.P.C. once the petitioner has already availed the remedy of revision in respect of his grievance by approaching the Sessions Court. The ratio of the judgment, as quoted above, makes it abundantly clear that while the powers vested in this Court under Sections 482, 483 Cr.P.C. are wide enough to still interfere in a case where even the revisional jurisdiction has already been invoked by the Sessions Court on a petition filed by the petitioner u/s 397(1) of the Cr.P.C. but it has to be exercised only in a case where there is grave miscarriage of justice or abuse of the process of Court or where the required statutory procedure has not been complied with or where there is failure of

justice or that the order passed or sentence imposed requires correction.

10. The scope of the proceedings u/s 145 of Cr.P.C. has been discussed in a judgment delivered by the Apex Court in the case of Ranbir Singh Vs. Dalbir Singh and Others, where it has been held:

8. However, the High Court was in error in dealing with the revision petition as if it was exercising appellate jurisdiction. The High Court has dealt with the developments in the case relating to the acquisition of title, the allegations of fraudulent transfers made by Karnail Singh and M/s Homestead and the circumstances in which the suit was dismissed as withdrawn. Keeping in view the limited scope of the proceeding u/s 145 CrPC these questions were not material for determination of the main issues in the case. The Court, while dealing with a proceeding u/s 145 CrPC, is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the court is not required to decide either title to the property or right of possession of the same. The question for determination before the High Court in the present case was one relating to the validity or otherwise of the preliminary order passed by the learned Sub-Divisional Magistrate u/s 145(1) CrPC and sustainability of the order of attachment passed u/s 146(1) CrPC. For deciding the questions it was neither necessary nor relevant for the High Court to have considered the matters relating to title to and right of possession of the property. Further, both the parties in the case have filed suits seeking decree of permanent injunction against each other and in the suit filed by the appellant an order of interim injunction has been passed and an objection petition has been filed by Respondent 1. The suits and the interim order are pending further consideration before the civil court.

9. In these circumstances, we are of the view that while maintaining the order of the High Court quashing the preliminary order passed by the Sub-Divisional Magistrate u/s 145(1) and the order of attachment of the property u/s 146(1) CrPC, leave should be granted to the parties to approach the civil court for appropriate interim order and the civil court should deal with the application for interim order without being influenced by the observations made/findings recorded by the High Court in the impugned judgment. It is ordered accordingly.

11. It is in the light of the aforesaid, I will examine as to whether there is any need for this Court to interfere in the orders passed by the SDM on 04.01.2001.

12. After an order was passed u/s 145(1) Cr.P.C. holding that there was an apprehension of breach of peace with respect to the possession of the disputed property on 05.09.1990 and again after receiving the second reference on 11.06.1993, parties filed their written statements.

13. Perusal of the written statement shows that both sides seek to trace their respective title in the property in question to their common ancestor Chand Khan. The first party and opposite party are sons of Chand Khan though through his different wives, while first party Qauam Khan claimed he was born out of the

wedlock of Smt. Chhoti with Chand Khan, the opposite party Ayub Khan claims Qauam Khan was son of Smt. Chhoti out of her earlier marriage with a person described by him as one Chand Ram. It is, however, undisputed that opposite party Ayub Khan admittedly is son of one Shakuran. Each side claims his mother was the first wife of Chand Khan. The claim of the party No. 1 has been that the property belonged to one named Shadi, who died without any legal heirs and Chhoti (mother of first party) was his real sister and thus inherited his estate, which ultimately devolved upon the first party. The claim of the opposite party, on the other hand, is that the estate was part of a Waqf property in which Chand Khan had been a muttawalli and after his death, the affairs of the said property was being looked after by him. Interestingly, the opposite party/petitioner herein made no attempt at any stage to implead the Waqf, in which he was claiming the title over the property to have vested.

14. Be that as it may, it is well settled and has been admitted by both sides that the SDM was not required to either go into or settle the questions of title in proceedings u/s 145 Cr.P.C. The role of the SDM in such proceedings was restricted to find it out as to who was in possession of the property on the date of preliminary order u/s 145(1) Cr.P.C. or within two months immediately preceding the said order, the object being essentially to prevent breach of peace.

15. A look at the proceedings before the SDM indicates they turned out to be even more protracted than in regular criminal trial. Proceedings of this nature did not deserve to have been prolonged to the extent of almost 11 years to conclude as ideally they should have been treated urgent and concluded expeditiously and as summarily as possible. The perusal of the proceedings before the SDM clearly indicate the delay was caused by the opposite party, i.e. the petitioner in this revision petition. Even the impugned order narrates his dilatory conduct in sufficient detail.

16. As stated above the SDM vide his order dated 24.01.2000 held that the second respondent was in possession and, therefore declared him to be in possession and directed the SHO concerned to desal the property. This order was again assailed by the petitioners by way of a revision petition. The revision petition had come up for consideration before Sh. H.S. Sharma, Ld. A.S.J. New Delhi vide criminal revision number 12/2000. It was brought to the notice of the said Learned Sessions Judge that in the report submitted by police pursuant to the directions of the SDM for handing over of the possession to party No. 1, it had been brought to the notice of the SDM that a status quo order has been passed by a civil court in a civil suit No. 1057/82 instituted by party No. 1 against union of India, Lt. Governor of Delhi and Delhi Development Authority. The SDM thus sought a further report to get the effect of the stay order clarified and thus directed his own order dt. 24.01.2000 to be kept in abeyance. The revision petition earlier preferred by party No. 1 came to be disposed off as per order dt. 14.10.2000 or Sh. H.S. Sharma, Ld. ASJ, New Delhi on the ground the revision was premature as the SDM was yet to finally conclude the proceedings

before him.

17. After the aforesaid order was passed by the Learned Addl. Sessions Judge the SDM sought a report from the SHO about the stay order, if any, and pendency of the civil suit. This was only an administrative act to seek clarification from the SHO. At that stage there was no necessity to issue any fresh notice to any of the parties as they were both aware about the proceedings which were concluded by the SDM. Thereafter, the SHO concerned clarified that in the civil suit referred to by the petitioner the second respondent was not a party and, thus, the SDM passed further order on 4.1.2001, in continuation of his order dated 24.01.2000, inter alia, observing that since the civil suit did not involve party No. 1 (respondents No. 2 herein) and, therefore, the opposite party did not have the power to take law into its hands or to forcibly dispossess any third person. The SDM thus confirmed this order dt. 24.01.2000. It is these orders of the SDM, the legality, correctness and propriety of which have been questioned by the opposite party through this fresh revision petition vide his order dated 04.01.2001.

18. As noticed above, the petitioner and respondents No. 3 & 4 despite opportunity granted to them failed to lead any evidence to show their possession whereas the second respondent led the evidence. It was in these circumstances the Addl. Sessions Judge upheld the order passed by the SDM dated 24.01.2000 and it was confirmed by the order dated 04.01.2001. As stated above, he has also dealt with the two points which were raised by the petitioner before him.

19. In the written submissions filed by the second respondent it has been brought to my notice that the suit relied upon by the petitioner to have been filed against Union of India, DDA and Lt. Governor stands dismissed. An appeal filed against the said judgment also stands dismissed by the Addl. District Judge vide order dated 30.09.2003 passed in civil appeal No. 102/2003.

20. I have also gone through the judgment cited by the parties. In the facts of this case, merely, because some civil proceedings were initiated by the petitioner without impleading respondent No. 2 it cannot be said that no jurisdiction is left with the SDM to proceed u/s 145(1) of the Cr.P.C. In this regard provisions of Section 145 is reproduced:

145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression and or "water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy, of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the Subject of dispute:

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under Sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under Sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under Sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under Sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to Sub-section (4) be treated as being, in such possession of the said subject he shall issue an order declaring such party to be entitled to possession thereof until evicted there from in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to Sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in Sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property the subject of dispute in a proceeding under this section pending before him, is

subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the Magistrate to proceed u/s 107.

21. Under the scheme of Section 145 as quoted above once a dispute was brought to the notice of the SDM by the Police where possession was being disputed by the two sides and there was apprehension of breach of peace, it was necessary for the SDM to have passed an order u/s 145(1) Cr.P.C. However, if the SDM was not in a position to decide this issue, then he could have resorted to the provisions contained u/s 145(6) of Cr.P.C.

22. In this case, the SDM at the relevant time passed an order u/s 145(1) of the Cr.P.C. as there was an apprehension of breach about the possession of the disputed property after holding the trial and recording of evidence. He has passed an order u/s 145(4) of the Cr.P.C. which is a kind of declaration that at the relevant time i.e. two months before the dispute the second respondent was in possession of the disputed property. This declaration is not final in view of Sub-clause (6) of the aforesaid Section of the Cr.P.C. and can always be disputed by the person who is affected by the aforesaid order by taking appropriate legal proceedings by also implicating the person who has been held to be in possession.

23. It will further be appropriate to take note of a judgment delivered by the Apex Court in Shanti Kumar Panda Vs. Shakuntala Devi, where law relating to Section 145 and 146 Cr.P.C. proceedings has been elaborately discussed and it was held as under:

10. Possession is nine points in law. One purpose of the enforcement of the law is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in Sub-section (2) of Section 145 having arisen, causing a likelihood of a breach of the peace, Section 145 of the Code authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Sections 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The

Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in the proviso to Sub-section (4) of Section 145 and maintain the status quo as to possession until the entitlement to possession was determined by a court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned.

11. There is a difference between a case where the subject-matter of dispute is not attached by the Executive Magistrate u/s 146(1) and the case where it is so attached. Under Sub-section (1) of Section 145 a preliminary order taking cognizance of the dispute having been passed, the Magistrate would under Sub-section (4) decide who was in possession of the disputed property on the date of the passing of the preliminary order. Consistently with such finding, a declaration by the Magistrate in favour of such party would follow under Sub-section (6), entitling it to retain possession over such property until evicted therefrom in due course of law. And until such eviction all disturbances in its possession shall be forbidden. If any party is found to have been forcibly or wrongfully dispossessed within two months next before the date on which the report of a police officer or other information setting the Magistrate in motion was received by him or between such date and the date of order under Sub-section (1), then the party dispossessed has to be fictionally treated as one in possession on the date of preliminary order under Sub-section (1). The declaration of entitlement to possession under the proviso to Sub-section (4) read with Sub-section (6) shall be made in favour of such party and the party found to have been so dispossessed forcibly and wrongfully may also be restored into possession. The declaration having been made, it would be for the unsuccessful party to approach the competent court and secure such order as would enable his entering into possession and evicting the party successful in proceedings u/s 145.

12. What is an eviction "in due course of law" within the meaning of Sub-section (6) of Section 145 of the Code? Does it mean a suit or proceedings directing restoration of possession between the parties respectively unsuccessful and successful in proceedings u/s 145 or any order of a competent court which though not expressly directing eviction of the successful party, has the effect of upholding the possession or entitlement to possession of the unsuccessful party as against the said successful party. In our opinion, which we would buttress by reasons stated shortly hereinafter, ordinarily a party unsuccessful in proceedings u/s 145 ought to sue for recovery of possession seeking a decree or order for restoration of possession. However, a party though unsuccessful in proceedings u/

s 145 may still be able to successfully establish before the competent court that it was actually in possession of the property and is entitled to retain the same by making out a strong case demonstrating the finding of the Magistrate to be apparently incorrect.

13. In a case where attachment has been made u/s 146(1) of the Code, it is not necessary for the unsuccessful party to seek the relief of possession from the court; a mere adjudication of rights would suffice inasmuch as the attached property is held custodia legis by the Magistrate for and on behalf of the party who would be successful from the competent court by establishing his right to possession over the property.

24. A perusal of the aforesaid judgment goes to show that an order u/s 145 is required to be passed when there is an apprehension of breach of peace so as to keep peace in a dispute of possession of an immovable property till such time the aggrieved party is able to get clear his title from the civil authorities.

25. Thus, the orders which are passed u/s 145(1) are limited orders to this extent and do not affect the substantive rights of the parties. As such merely because some party files a suit for injunction against other party to which the other party who is in fact in possession is not a party and the said party is not competent to say that there is no jurisdiction in the SDM courts to decide the question as to who was in possession of the disputed property next before two months of the date of initiation of passing of the order u/s 145(1) of the Cr.P.C.

26. As stated above since the SDM after recording evidence has come to the conclusion that the respondent No. 2 was in possession even on that score no interference can be caused in the impugned orders dated 24.01.2000 and 04.01.2001 and the order dated 03.08.2001 passed by the learned ASJ are upheld.

27. Taking into consideration the facts of this case and the conduct of the petitioner who always wanted the matters to be delayed and has been successfully protracting the trial for period of more than 20 years and has not been able to show that how he was in possession of the disputed property next before two months from the date of initiation of the proceedings, there is no reason to invoke the inherent powers of this Court as it is neither a case of miscarriage of justice nor such orders are required in the interest of justice or to do substantial justice between the parties.

28. Thus, the orders passed by the SDM dated 24.01.2000 and 04.01.2001 as well as the order passed by the Addl. Sessions Judge in Criminal Revision No. 30/2001 are upheld. The petition filed by the petitioner is dismissed with costs of Rs. 10,000/-. The concerned police station will implement the order without any further delay.

CrI.M.A. 3613/2001

In view of the orders passed above, the interim orders are vacated. The

application stands disposed of.