
(1990) 08 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9438-M of 1989

Rachhpal Singh

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 16-08-1990

Acts Referred:

Citation : (1990) 2 RCR(Criminal) 566

Hon'ble Judges : S.D.Bajaj, J

Advocate : B.S. Randhawa, Surinder Lamba, Baljinder Singh, Ashutosh Mohunta, Advocates for appearing Parties

Judgement

1. Smt. Jinda Bai respondent owner of undivided 2035/6824 share in the disputed lands through civil

court's decree dated 30th April, 1988 filed before the learned Sub Divisional Magistrate, Sirsa, an application for his taking action against the respondents owners of 4789/6824 share therein, under section 145 of the Code of Criminal Procedure because the respondents named in her application were out to dispossess her forcibly out of her share in the land and there was, therefore, an apprehension of breach of peace interparties on that score. Learned Sub Divisional Magistrate attached the land, appointed S.H.O. Ding as its receiver vide his impugned order of 28th August, 1989 Annexure P1.

2. Criminal Revision No. 17/18 dated 31st August, 1989/12th October, 1989 filed against it was dismissed by the learned Additional Sessions Judge, Sirsa, on 4th November, 1989 vide orders Annexure P5 as incompetent on the ground that impugned order dated 8th August, 1989 was an interlocutory order. Hence Criminal Misc. No. 9438M of 1989 has been filed in this Court for quashing the two orders dated 28th August, 1989 and 4th November, 1989 Annexure P1 and P5 on the grounds;

(i) that on 30th June, 1989 respondent Smt. Jinda Bai had herself moved the Revenue Agency for partition of her 2035/6824 share out of the entire joint

holding measuring 341 Kanals 4 Marlas of the parties to possessory dispute; (ii) that pendency of civil suit interparties in the civil court of competent jurisdiction at Sirsa filed on 14th June, 1989 wherein civil court concerned had issued status quo order on 17th July, 1989 was not disclosed to the learned Sub Divisional Magistrate by respondent Smt. Jinda Bai in her application filed on 30th June, 1989; and (iii) that the disputed land being joint of the petitioner and predecessor in title of respondent Smt. Jinda Bai, learned Divisional Magistrate could not invoke his jurisdiction under section 145 of the Code of Criminal Procedure in respect of it. In result it was suggested that the proceedings under section 145 of the Code of Criminal Procedure taken against the petitioners (before this Court) at the instance of respondent No. 2 being obviously an abuse of the process of the Court should be quashed.

3. I have heard Shri Ashutosh Mohunta, Advocate, for the petitioner, Shri Surinder Lamba, Advocate, for the State, Shri B.S. Randhawa, Advocate, for respondents 2 to 4 and have carefully gone through the entire record.

4. In almost similar circumstances I have already held in Chand Rattan and others v. Sham Rattan and others, 1989(2) Chandigarh Law Reporter 679 :

"Accepting the contention raised by the two respondents at its face value, it can at best be termed as a case of joint possession of the allegedly joint owners over the land in dispute, wherein every one of the five joint owners is in joint possession of every inch of the joint land. The safest order which could be passed therein has already been made by the civil court regarding the maintenance of status quo regarding possession of the rival parties over the land in dispute. Taking of criminal action under section 145 Criminal Procedure Code in such like cases is barred in terms of the observations made in K. Janardhan Reddy and another v. The VIth City Magistrate Criminal Court, Hyderabad and others, AIR 1961 Andhra Pradesh 150, and Bharat Singh and others v. The S.D.M. Bhiwani and another. 1931 Punjab Law Reporter 557 : (197882) Suppl. CLR 106, which read :

"Where the property in dispute is a joint family property, proceedings under Section 145 cannot be initiated on the ground that one member of the family is in actual and exclusive possession of the part of the family property, which may give rise to the dispute likely to cause breach of peace."

In the present case also the complainant before the Sub Divisional Magistrate Smt. Jinda Bai had asserted herself to be joint owner of the disputed land to the extent of undivided 2035/6824 share in the entire holdings of both the parties measuring 341 Kanals 4 Marlas and had also moved the Revenue Authorities for partition of her share from the joint lands on the same. day viz. 30th June, 1989. Keeping in view the legal maxim of everyone of the joint owners being owner in possession of every inch of the joint land, learned Sub Divisional Magistrate could neither entertain her application nor make the impugned order dated 28th August, 1989 therein. Impugned order dated 28th August, 1989 of the learned

Sub Divisional Magistrate being wholly without jurisdiction calls for being quashed.

5. Learned counsel for respondents 2 to 4 has referred me to the contrary observations made in *Makhan Singh v. State of Punjab and others*, 1974 Chandigarh Law Reporter 409 and urged that his clients could, therefore, invoke the jurisdiction of the learned Sub Divisional Magistrate on the basis of their alleged joint possession over the disputed lands. In view of the latter decisions of this court in *Bharat Singh and others v. The S.D.M., Bhiwani and another*, 1987 PLR 557 and *Chand Rattan and others v. Sham Rattan and others*, *ibid* I do not think the decision in the authority cited still binds this court. The arguments advanced as also the authority cited is, therefore, of no help to respondents 2 to 4.

6. Secondly it was urged with reference to the observations made in *Swarn Khanna and others v. State of Punjab and another*, Criminal Misc. No. 6974M of 1988, decided on 28th February, 1999 that the order passed by the learned Sub Divisional Magistrate on remand could be the subject matter of Criminal Revision before the learned Sessions Judge, Sirsa, and, therefore, the petition for quashing does not lie. Neither the argument nor the authority cited is of any help to respondents 2 to 4 because Criminal Revision No. 17/18 dated 31st August, 1989/12th October, 1989 was admittedly filed before the learned Sessions Judge, Sirsa, against the impugned order of the learned Sub Divisional Magistrate dated 28th August, 1989 and the petitioner has come to this Court because the learned Additional Sessions Judge, Sirsa, dismissed the revision petition as incompetent on 4th November, 1989, even after making orders dated 1st September, 1989 and 27th September, 1989 Annexures P2 and P4 therein at the adinterim stage.

7. In result Criminal Misc. No. 9438M of 1989 succeeds and is allowed. Both the parties are therefore directed to rest content with the statusquo order passed by the civil Court in interparties litigation on 17th July, till the civil Court expresses itself finally on their possessory title in their litigation before it. Both the parties shall thereafter abide by the final verdict of the civil court in this regard.