

(2002) 12 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 30101-M of 2001

Raghbir Dass Mahant Chela Madan Mohan Dass

APPELLANT

Vs

Sub Divisional Magistrate, Jagadhri and others

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Citation : (2003) 2 CCR 254 : (2003) 1 RCR(Criminal) 829

Hon'ble Judges : R.C.Kathuria, J

Advocate : Shri B.S. Sidhu, Advocate.Sh. Sanjeev Sheokand, Assistant Advocate General, Haryana, Sh. S.S. Dinarpur, Counsel., Advocates for appearing Parties

Judgement

R.C. Kathuria, J.

1. Raghbir Dass Mahant, petitioner has invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') praying that Calendera dated 7.4.2001 (Annexure P5) registered with Police Station, Sadhaura, District Yamuna Nagar under Section 145 of the Code and the order dated 20.7.2001 (Annexure P6) passed by the SubDivisional Magistrate, Jagadhri initiating proceedings under Section 145 of the Code and appointing Naib Tehsildar, Sadhaura as Receiver under Section 146 of the Code to take charge and to look after the Thakurdwara Dayalwala, Sadhaura and its property and to get the compensation of crop handed over to the concerned party and depositing the amount so obtained in the Government Treasury and the subsequent proceedings taken therein be quashed.

2. The circumstances under which the present proceedings came to be initiated have to be noticed briefly. On 4.4.2002, Baba Shyam Dass, who had been arrayed as party No. 1, presented an application addressed to Station House Officer, Police Station, Sadhaura praying for action to be taken against Baba Raghbir Dass alias Amrik Singh, arrayed as party No. 2, who is the present petitioner. It was claimed by applicant Baba Shyam Dass that he was the owner and Mohatmim of Thakurdwara Dayalwala, Sadhaura. Thakurdwara Dayalwala, Sadhaura is owner and in possession of 35 acres of land. Shyam Dass Mahant,

Chela Bharat Dass has filed a suit in the Court of Civil Judge, Senior Division, Jagadhri and in that connection he had gone to attend the Court at Jagadhri. On reaching there, he came to know from reliable source that Raghbir Dass Mahant with the help of many other persons wanted to take possession of the land and Thakurdwara forcibly and also to kill him. Because of the fear, he had not gone to the Thakurdwara. He expressed apprehension that possession of the Dera and the land would be taken by Raghbir Dass after killing him. It was also stated by him that Raghbir Dass had obtained his signatures on some papers fraudulently. His other allegations are that his articles, jewellery and documents were lying in the Dera and for that reason there was an urgent need to protect the property of the Dera Thakurdwara Dayalwala as well as his life and his property lying there. He had further stated in the application that he had gone to the spot and found 40 persons in the Mandir who had come from Sadhaura and other places. He found that they had thrown out his servant from the Dera after beating him and also tried to kill him. The above stated persons had also broken the locks and put his papers on fire. Further facts which had come on record are that Station House Officer of Police Station, Sadhaura went to the spot and found Raghbir Dass, second party, present in the Dera. Shyam Dass did not arrive there. On the basis of allegations made, the Station House Officer summoned Baba Shyam Dass for verification of facts stated by him that he did not appear before him. Under these circumstances the present calendera was filed by Station House Officer before the Court of SubDivisional Magistrate, Jagadhri. He had also mentioned in the calendera that Baba Raghbir Dass and Baba Shyam Dass were challenged earlier under Sections 107 and 151 of the Code. The total land of the aforesaid Dera located at Sadhaura and Rajpur is about 41 acres. The articles which were lying in the Dera were found in good condition and nothing was found burnt. Baba Raghbir Dass also informed him that servant Hari Bahadur Thapa left the spot of his own with his belongings. Copies of the Jamabandis of Thakurdwara Dayalwala were also annexed by him. It is further stated by him in the calendera that after the death of Baba Bharat Dass, Baba Shyam Dass was appointed to look after the affairs of Dera on 19.5.1985. Thereafter, Baba Shyam Dass had a dispute with Patti Sainian Sabha and Bairagian Sabha Chhachhrauli. Subsequent thereto Baba Shyam Dass submitted his resignation on Court papers to the Sadhu Samaj due to health problems, upon which Sadhu Samaj and other respectables appointed Baba Raghbir Dass Chela Baba Madan Mohan Dass to look after the affairs of the Dera. Thereafter, Baba Raghbir Dass started looking after the affairs of the Dera. Baba Shyam Dass had employed Hari Bahadur Thapa, who was living in the Dera along with his wife and children. Baba Raghbir Dass and other persons has raised objection regarding living of female in the Dera which led to the dispute between Baba Shyam Dass and Baba Raghbir Dass. Under these circumstances, Baba Raghbir Dass had been claiming his right on the Dera because he was appointed by the Sadhu Samaj and other respectables as Mohatmim of the Dera on the resignation of Baba Shyam Dass, whereas Baba Shyam Dass had been claiming his right on the Dera on the ground that he had been looking after the Dera since 1985. The claim put up by

both the parties, according to the Station House Officer, Police Station, Sadhaura is likely to lead to any untoward incident. Thus, he made a request for initiation of proceedings under Section 145 of the Code.

3. Taking notice of the allegations made in the calendera lodged before him, the SubDivisional Magistrate, Jagadhri, issued notice to both the parties. On 16.4.2001, both the parties put in appearance before the SubDivisional Magistrate and filed their objections. The first party Mahant Shyam Dass took up the stand that Baba Bharat Dass son of Rattan Dass was Mohatmim of Thakurdwara Bairagian Dera Dayalwala, Sadhaura and Baba Bharat Dass had appointed Baba Shyam Dass as Mohatmim of the Dera on 29.4.1983 after performing due formalities. After death of Baba Bharat Dass, Baba Shyam Dass had been looking after the land of Thakurdwara till date and for that reason the second party had no right to the land of the Thakurdwara and rather, he wanted to take forcible possession of the same. It was stated by the first party that forged documents had been procured with regard to his resignation, though, factually he had not submitted any resignation and on the basis of forged documents Baba Raghbir Dass wanted to take forcible possession of the Thakurdwara Dayalwala. It was also brought to the notice of the Sub Divisional Magistrate that a civil suit titled Mandir Thakurdwara Dayalwala Alma Roof etc. v. Patti Sainian Sabha, Sadhaura and others, had been instituted in the representative capacity under JUDGMENT 1, Rule 8 of the Civil Procedure Code (hereinafter referred to as `CPC`) in which status quo with regard to the property in dispute had been ordered by the Civil Court on 27.1.1995.

4. Another factual position brought to the notice of the Court was that the wife of servant Hari Bahadur Thapa had got registered F.I.R. No. 24 dated 7.2.2001 under Sections 376 and 506 read with Section 34 Indian Penal Code against the second party.

5. Despite the order of status quo second party was adamant to take possession of the land of Thakurdwara and further threatened to harvest the ripen crop cultivated in the said land.

6. Contesting the stand of the first party, it was submitted on behalf of the second party before the SubDivisional Magistrate, Jagadhri that in the year 1985 after the death of Mahant Bharat Dass, Mahant Shyam Dass was appointed by Bhekh Samaj to look after the affairs of Thakurdwara. Thereafter, Mahant Shyam Dass submitted his resignation on 28.6.2000 which was accepted by the Sadhu Samaj and thereafter second party was appointed as Mohatmim to look after the affairs of the Dera and since 28.6.2000 second party had been looking after the affairs of the Dera. Thereafter a civil suit for declaration in respect of the land of the Dera had been filed by Bhartiya Samaj Bairagi Parishad which is still pending in the Civil Court. It was also pointed out on behalf of the second party that civil suit had been filed by second party against Baba Shyam Dass and Bhartiya Swami Bairagi Parishad which is also pending in the Court and for that reason proceedings were not required to be initiated under Section 145 of the Code.

7. During the pendency of these proceedings Bhartiya Swami Bairagi Parishad through its President and Patti Sainian, Sadhaura through Sumer Chand moved applications for being impleaded as party to these proceedings which were pending for consideration on 28.5.2001.

8. Taking into consideration the respective stands of the parties and the report dated 13.6.2001 and 25.6.2001 submitted by the Station House Officer, Police Station, Sadhaura, the SubDivisional Magistrate, Jagadhri came to the conclusion that tension existed between the parties regarding the possession of the land in dispute and in order to avoid any untoward incident, Naib Tehsildar, Sadhaura was appointed Receiver in terms of the provisions of Section 146 of the Code to look after Thakurdwara Dayalwala, Sadhaura and its properties. He was also directed to get the compensation of the crop harvested by the concerned party after initiation of the proceedings under Section 145 of the Code and get the same deposited in the Government Treasury. It is thereafter the present petition had been filed.

9. I heard counsel representing the petitioner as well as State Counsel for respondent Nos. 1 and 2 and counsel representing party No. 1 arrayed as respondent No. 3 in the petition at length.

10. The factual position that can be spelled out from the respective stands taken by the contesting parties is that Mahant Bharat Dass son of Rattan Dass was Mahant of Thakurdwara Mandir Dayalwala, Sadhaura. Said Dera has a Mandir besides the land measuring 41 acres to 45 acres. Mahant Bharat Dass had appointed Baba Shyam Dass as Mohatmim of the Dera on 29.4.1983. Mahant Bharat Dass died in the year 1985 and the land continued to be looked after by Mahant Shyam Dass. The bone of contention between the first party and the second party is the office of Mohatmim of the aforesaid Dera. According to the case set up by second party Baba Shyam Dass had submitted his resignation on 28.6.2000. After his resignation was accepted by the Sadhu Samaj, the second party was appointed as Mohatmim of the said Dera and thereafter it had remained in his possession. As per the assertion of party No. 1 he had never submitted any resignation as propounded by second party. Civil Suit No. 375 of 27.5.1994 is pending in the Court of Civil Judge (Junior Division), Jagadhri. Mandir Thakurdwara Bairagian Dayalwala Alma Roof, plaintiff No. 1 besides 11 other named plaintiffs had, in representative capacity under JUDGMENT 1 Rule 8 of the C.P.C., filed suit for declaration to the effect that compromise dated 2.3.1994 entered into and executed between the defendants in Civil Suit No. 457 decided on 2.3.1994, titled Patti Sainian Sabha, Sadhaura v. Shyam Dass by the Court of Sub Judge, Jagadhri regarding the properties of the plaintiff Thakurdwara Dayalwala, Mandir was wholly illegal, wrong, vague, invalid, indefinite, null and void and not binding upon the plaintiff Thakurdwara and its properties situated in Revenue estate, Sadhaura, Tehsil Jagadhri, District Yamuna Nagar. It was also claimed in the suit that the alleged committee constituted by the defendants regarding the Management of Mandir Thakurdwara, is also illegal,

null and void and not binding upon the plaintiffs and for seeking consequential relief for permanent injunction restraining the defendants from interfering in the management of the Mandir and its properties and also from selling or cutting and removing the trees standing in the properties of Mandir and also from withdrawing the amount lying in account No. 3596 with Yamuna Nagar Central Cooperative Bank, defendant No. 11, in the name of Panch Ram Numberdar, defendant No. 4, Khem Chand, defendant No. 6 and Sham Dass Pujari, defendant No. 10 which belonged to Mandir Thakurdwara Dayalwala. Initially, on 28.5.1994, the trial Judge directed status quo with regard to the properties. On 17.1.1995 both the parties to the suit agreed to maintain status quo with regard to the existing possession of the properties in dispute.

11. During the course of arguments, it was contended on behalf of the petitioner that knowing fully well that order of status quo had been passed by the Civil Court to which Shyam Dass was also a party which order was not even contested as consent order was passed on 17.1.1995 directing status quo of the disputed property Shyam Dass sought to initiate the proceedings under Section 145 of the Code through Station House Officer, Police Station, Sadhaura which was a clear attempt on his part to overreach the order of status quo passed by the Civil Court. Merely because Baba Raghbir Dass, second party had not been arrayed as a party to the Civil Suit No. 375 of 1994 filed on 27.5.1994 in the Court of Civil Judge, Jagadhri per se is no ground to overlook the orders of the Civil Court passed because the suit had been filed in a representative capacity and the order passed is binding on Baba Raghbir Dass equally though he had already moved an application to be impleaded as a party to the suit which recourse is permissible where the suit is filed in a representative capacity and thus it is Baba Shyam Dass who is misusing the process of the Court which cannot be overlooked by this Court in exercise of the powers conferred under Section 482 of the Code. It is for that reason reliance was placed by him on *Amresh Tiwari v. Lalta Prasad Dubey and others*, 2000(2) RCR(Cr.) 614 (SC) : 2000(1) C.L.R. 665, wherein the Apex Court had held that where the civil suit had been filed with regard to the property in dispute between the parties in which order of maintenance of status quo had already been passed the proceedings under Section 145 of the Code of Criminal Procedure can be dropped by the SubDivisional Magistrate holding that continuance of said proceedings would be improper.

12. It is admitted case of Baba Shyam Dass that in the written statement filed in the earlier suit he had admitted the claim of the plaintiff though he claimed that this written statement was also obtained fictitiously from him by Baba Raghbir Dass and he continues to be the Mohatmim of Thakurdwara Dayalwala, Sadhaura. The controversy, which is pending before the Sub Divisional is limited to the extent as to who was in possession of the property in dispute on the date of preliminary order when his jurisdiction was invoked by the Station House of Police Station, Sadhaura or two months prior thereto. It does not fall within his domain to decide the title of the property or right of possession. In this case the admitted stand of the first party is that property in question is owned and

possessed by Mandir Thakurdwara Dayalwala, Sadhaura but the dispute is with regard to the right to manage the said property as Mohatmim of the Dera. The circumstances brought on record leave no manner of doubt that the order of status quo of the property in question is still in operation and had not been varied by an competent Court. Baba Raghbir Dass has to be construed as a party to the suit in view of the clear provisions of JUDGMENT 1, Rule 8 of the C.P.C. which expressly says that a decree passed in the suit shall be binding on all persons on whose behalf or for whose benefit the suit is instituted or defended. It is for that reason, it has been expressly provided that any person on whose behalf or for whose benefit the suit had been instituted or defended, the provision of subrule (1) of JUDGMENT 1, Rule 8 of the C.P.C. can apply to the Court to be impleaded as a party in the suit. Admittedly, in this case Baba Raghbir Dass had applied for being impleaded as a party to the suit. Even otherwise he is directly involved in the controversy in the suit and he cannot be sought to be excluded as had been done by Baba Shyam Dass by making a complaint against him and getting the proceedings initiated under Sections 145 and 146 of the Code which is nothing but an attempt on his part to overreach the order of status quo passed by the Civil Court to which he himself was a party. This devise adopted by him is nothing but misuse of the process of the Court. After the civil Court had passed the order of status quo with regard to the suit property the parallel proceedings initiated before the SubDivisional Magistrate could not have continued under the circumstances of the case. Necessary direction or modification of order of status quo could have been sought from the Court itself by Shyam Dass which recourse is still open to him. It is clear from the record of this case that proceedings under Sections 107 and 151 of the Code has already been initiated. Therefore, under the circumstances of the case the nature of the controversy raised in these proceedings cannot be overlooked simply because Baba Raghbir Dass was not impleaded as a party to Civil Suit No. 375 of 1994.

13. For the aforesaid reasons, this petition is accepted and the proceedings initiated under Section 145 of the Code as per Calendera dated 7.4.2001 and the order dated 20.7.2001 passed by the SubDivisional Magistrate, Jagadhri, are quashed.