

(1994) 06 AHC CK 0010

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19148 of 1994

Raju and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 145, 146

Citation : (1994) 18 ACR 546

Hon'ble Judges : K.L. Sharma, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

K.L. Sharma, J.—This is a writ petition under Article 226 of the Constitution of India for quashing the order dated 23.5.1994 passed by Special Judge/Additional District and Sessions Judge, Fatehpur in Criminal Revision No. 138A/93. and another order dated 17.6.1993 passed by Sub-Divisional Magistrate, Bindki, Fatehpur in Case No. 12 of 1993 u/s 145, Code of Criminal Procedure and Section 146(1) of the Code of Criminal Procedure and the proceedings thereof. The Petitioners have further prayed for issuing a writ of mandamus commanding Respondent No. 3 not to interfere with the peaceful possession of the Petitioners on plot No. 573 situated in village Umrauri. police station Kalyanpur, district Fatehpur.

2. I have heard learned Counsel for the Petitioners and Standing Counsel and also perused the record.

3. Learned Counsel for the Petitioners has submitted that the Respondent No. 3 has filed a Civil Suit No. 90 of 1986 for cancellation of the sale deed dated 13.10.1981 executed by Ram Niranjana on the ground of forgery and got an ex parte decree on 23.4.1987 but the Petitioners moved an application for restoration and setting aside the ex parte decree on 12.4.1989 and that application was allowed and the ex parte decree was set aside. In the meantime

the name of the Petitioners were recorded in the revenue records in respect of half portion of plot No. 573 and the appeal and revision in respect thereof were rejected. The Petitioners filed original Suit No. 322 of 1992 in the Court of Munsif Fatehpur for restraining the Respondent No. 3 from interfering in the peaceful possession over half portion of plot No. 573 and the learned Munsif granted interim injunction on 11.5.1992 directing the Respondent No. 3 to maintain status quo. But subsequently on 30.3.1993, the Respondent No. 3 moved an application before the District Magistrate, Fatehpur and on the direction of the District Magistrate, the Sub-Divisional Magistrate Bindki passed an order of attachment on 17.6.1993 u/s 146(1) of the Code of Criminal Procedure without recording his satisfaction about the dispute of possession. The Petitioners filed a criminal revision in the Court of Sessions Judge, Fatehpur, but that revision was dismissed as it was not maintainable against an interlocutory order. Learned Counsel for the Petitioners therefore contends that during the pendency of the civil proceedings in respect of half portion of plot No. 573, learned Sub-Divisional Magistrate has no jurisdiction to entertain proceedings u/s 145, Code of Criminal Procedure, and to pass a preliminary order of attachment u/s 146(1), Code of Criminal Procedure in respect of his contention, he is relying upon a decision of the Hon'ble Supreme Court in the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, .

4. In the above cited case, the following proposition of law has been made by the Hon'ble Supreme Court. "When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding u/s 145 of the Code would not be justified. The 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 the present case even though civil litigation is pending for the property involving the question of title and possession before the Munsif, but, it has not so far been adjudicated, and the interim order passed by the learned Munsif does not clearly specify the possession of either of the parties and it does not restrain the other party to interfere with the peaceful possession. In the instant case, the Munsif has directed the Respondent No. 3 to maintain status quo. An order of status quo is very vague and it does not clearly specify as to which one of the two parties is in possession. Naturally on the basis of this vague order every party shall try to take possession over the disputed property so that the vague order of status quo may come to his rescue. In this process, a dispute regarding possession will definitely arise and the jurisdiction of the Executive Magistrate can be invoked by either of the two parties and if the Magistrate passes an

interim order of attachment of the disputed property, there does not appear to be any illegality or impropriety. The Hon''ble Supreme Court has only stated that initiation of a parallel criminal proceedings u/s 145, Code of Criminal Procedure, would not be justified when a civil litigation involving the question of possession of the property has been adjudicated. Here the learned Munsif did not solve the problem. The parties should have approached the learned Munsif to assert their respective possession and obtain a proper order. Since it is an agricultural land, the problem of possession would arise frequently. The civil litigation cannot be afforded for long. The Magistrate has rightly passed the order of attachment by way of interim measure. If the civil Court passed a clear cut order regarding possession of either of the two parties, the order of the Magistrate shall automatically come to an end and the order of Civil Court shall be binding on the parties as well as the Magistrate. Therefore in my opinion no interference can be made at this stage with the impugned orders passed by the Sub-Divisional Magistrate Bindki and the learned Additional Sessions Judge, Fatehpur. The Petitioners are directed to approach the learned Munsif and to move an application asserting their possession and may obtain a proper order from that Court. If the learned Munsif passes a clear cut order regarding the possession of the disputed property, then the order of Magistrate for attachment shall stand withdrawn and the proceedings shall stand terminated.

5. With these observations and directions this writ petition is finally disposed of at the admission stage.