
(1992) 02 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9901-M of 1990

Ram Niwas and ors..

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 07-02-1992

Acts Referred:

Citation : (1992) 1 AICLR 646 : (1992) 1 RCR(Criminal) 624

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : Om Parkash Sharma, Rajinder Goel, Ranbir Singh. . Mr. C. B. Goel, M. R C. Chauhan, Advocates for appearing Parties

Judgement

Harmohinder Kaur Sandhu, J.

1. The brief facts giving rise to this petition are that one Manphul Singh father of the petitioners was owner and in possession of the agricultural land measuring 21 Kanals situated in village Rakhi Shahpur, Tehsil Narnaund District Hissar Respondents No. 2 to 5 namely Balwan and his brothers alleged that Manphul Singh sold that land to them vide registered sale deed dated 20121988 for a consideration of Rs. 95,000/ After the alleged sale of land Manphul Singh never returned to his house. The petitioners got suspicious and a case under section 364 of the Indian Penal Code was registered at their instance at Police Station, Hansi on 27.12.1988. Manphul Singh had not been traced since then. The petitioners took possession of the land and started cultivating the same as owners being the sons of Manphul Singh. Entry in the Khasra Girdawari was in their names. The respondents who were politically influential persons tried to take possession of the land by force which led the petitioners to file a civil suit. An ex parte order of status quo regarding the property in question was passed in favour of the petitioners on 1.1.1989 which was confirmed on 15.5.1989 with the consent of the respondents. Copy of the order was Annexure P1.

2. On 5.6.1989, Station House Officer, Police Station Narnaund filed an application under section 145 of the Code of Criminal Procedure in the court of Sub Divisional Magistrate, (Annexure P2), and the Sub Divisional Magistrate

ordered attachment of the property and also appointed Naib Tehsildar Hansi as a receiver to sale possession of the property as per order dated 8.6.1989 Annexure P3. On consideration of the written statement filed by the parties, an order regarding continuance of the proceedings was passed by the Sub Divisional Magistrate on 1989 which is Annexure P 4. . The petitioners filed a Revision Petition against the order Annexure P4 which was dismissed by Additional Sessions Judge on the ground that it was not maintainable, vide order dated 1.8.1989 (Annexure P5) the petitioners have now filed the present petition under Section 482 Cr.P.C. for quashing of orders Annexure P3 and Annexure P4 passed by Sub Divisional Magistrate and Annexure P5 passed by Additional Sessions Judge, Hissar.

3. The respondent have not filed any reply to the petition.

4. I have heard the counsel for the parties. The main contention of the learned counsel for the petitioners is that before the proceedings under section 145 Cr. P. C. were initiated, the petitioners had filed a civil suit, wherein the civil court had directed the parties to maintain. status quo regarding possession by mutual consent of the parties. When the civil court had already taken cognizance of the dispute and had ordered the parties to maintain status quo, proceedings under section 145 Cr.P.C. could not be ordered and the order of the Sub Divisional Magistrate regarding attachment of the land and appointment of receiver amounted to an abuse of the process of the court. The respondents were claiming possession on the basis of a sale deed alleged to have been executed in their favour by the father of the petitioners. After the execution of the alleged sale deed Manphul Singh father of the petitioners never returned home and the petitioners were assailing the very execution of the sale deed and passing of consideration to Manphul Singh in a civil court. When the civil court was seized of the matter and its findings were to be final the respondents had no right to take forcible possession of the land.

5. The learned counsel for the respondents on the other hand contended that the civil court had not given any finding as to which of the parties was in possession of the land and when there was apprehension of breach of peace, the Sub Divisional Magistrate was within his rights to exercise. the emergency powers under subsection 4 of section 145 Cr.P.C., and to defend the orders of the civil court by, not allowing the aggressor to establish himself in possession of the subject matter of the dispute in violation of the orders of the court.

6. A perusal of order Annexure P1 shows that counsel for the parties agreed to maintain status quo regarding the possession over the property in dispute. The order was passed on 15.5.1989. The facts of this case reveal that after the alleged sale deed was executed in favour of the respondents, the vendor never returned to the village to deliver possession of the property to the respondents, It is not the case of the respondents that possession was delivered to them before even the sale deed was executed. The sons of the vendor assailed the sale deed and passing of consideration and they took possession of land when

Manphul Singh did not return. Entry in the Khasra Girdawari was also in their names. Annexure P2 is the complaint under section 145 Cr.P.C. which also shows that sons of Manphul were in possession of the land, and it was the other party which tried to take forcible possession of the land after agreeing to the order of status quo. It has been held in various cases that when Civil court is seized of the matter parallel proceedings cannot be started under section 145 of the Code of Criminal Procedure and, even when there is apprehension of breach of peace, the proper course is to take action under section 107/151 Cr.P.C. which has already been taken in the present case in para 5(c) of the petition it is mentioned that the parties, were challaned under sections 107/151 Cr.P.C. and were bound down to maintain peace so the security proceedings as well as proceedings under section 145 Cr.P.C. should not be allowed to continue simultaneously. This fact is not denied by the respondents. In the case of Indubhai Patel and others v. State and others, 1987(1) Recent Criminal Reports 587 : 1987(2) CLR 266 where there was a dispute regarding possession of immovable property civil suit was pending and parties were ordered to maintain status quo during pendency of suit, it was held that initiation of parallel proceedings under sections 145/146 Cr.P.C. by the SDM was without jurisdiction and only proper course for him was to take recourse to proceedings under section 107 of the Code, in case there was, apprehension of breach of peace between the parties.

7. In Ram Sumer Puri Mahant v. State of U.P. and others, 1985(1) Recent Criminal Reports 278 (SC) : 1985(1) CLR 521 their Lordships, of the Supreme Court dealing with a similar proposition held as under :

"That when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, there is hardly any justification for initiating a parallel criminal proceeding under section 145 of the Code. There is no scope to doubt or disputing the position that the decree of the civil court is binding on the criminal court in a matter like the one before us.

Parallel proceedings should not be permitted to continue and in the event of decree of a civil court, the criminal court should, not be allowed to invoke its jurisdiction particularly when possession is 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. We are, therefore, satisfied that the parallel proceedings should not continue and the order of the learned Magistrate, should be quashed."

8. In view of the above mentioned authority and circumstances of the present case I am of the view that when the very basis on which the respondents are claiming their possession is being assailed in a civil court and the civil court had passed an order of status quo regarding possession the proceedings under section 145 should not continue, especially when the parties have already been bound down to keep peace.

9. As a result I allow this petition and quash the impugned orders.