

(1994) 03 RAJ CK 0038

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 269 of 1991

Ratan Singh and Another

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-03-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146

Citation : (1994) 1 WLN 591

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—The petitioner, by this miscellaneous petition, has challenged the order dated 5.4.91, passed by the Sub-Divisional Magistrate, Balotra, as well as for quashing the proceedings u/s 145 Cr. P.C. initiated against him on the complaint filed by Mithu Singh.

2. Mithu Singh filed an application u/s 145 Cr.P.C. against Madho Singh, Ratan Singh, Inder Singh, Sawi Singh and Chhotu Singh in the Court of the Sub-Divisional Magistrate, Balotra. It was alleged in the complaint that Madho Singh, Ratan Singh, Indra Singh and Sawi Singh are the sons of Kishore Singh and the petitioner and Chhotu Singh are the sons of Madho Singh and grand-sons of Kishore Singh. They, alongwith their father, are in possession over the land bearing Khasra Numbers 28/1, 28/2, 28/3, 28/4, 30, 50, 38, 67 and 72 of village Lalana measuring 38 Bighas 10 Biswas, 31 Biswas, 12 Biswas, 13 Bighas, 12 Bighas 8 Biswas, 1 Biswa, 9 Bighas and 7 Biswas, 17 Bighas and 4 Biswas and 18 Bighas 12 Biswas after the death of Kishore Singh, which took place in Samvat Year 2023. They are paying the amount of Bigodi. The respondents never interferred with the possession of the petitioners but, now, as the prices of the land have increased, therefore, they are trying to take forcible possession over the land from the petitioner and on 12.6.88, when the petitioners were doing the work of farm weeding in the Khasara, the respondents came there armed with

weapons to dispossess the petitioners and to kill them. It was, therefore, prayed that there is an apprehension of breach of peace with respect to the land in question and, therefore, the proceedings u/s 145 Cr. P.C. may be initiated. An application u/s 146 Cr.PC was, also, moved by the applicant Mithu Singh for attachment of the property and appointment of the Receiver. The learned Magistrate, on 13.6.88, drew the preliminary order u/s 145 Cr.P.C. after coming to the conclusion that there is an apprehension of breach of peace regarding the possession of the land between the party No. 1 and the party No. 2. He, also, passed an order u/s 146(1) Cr.P.C. and attached the property and appointed the Tehsildar, Siwana, as the Receiver to take over the possession of the property. The learned Sub-Divisional Magistrate, also, issued notice to the Party No. 2. Party No. 2 appeared before the learned Magistrate and filed the reply. A preliminary objection was taken by the party No. 2 that as the revenue dispute between the same parties is already pending adjudication before the competent Revenue Court, therefore, the proceedings u/s 145 Cr.P.C. are not maintainable. This preliminary objection, raised by the petitioners, was considered by the learned Sub-Divisional Magistrate and the learned Magistrate, vide his order dated 5.4.91, dismissed the application filed by the petitioners on the ground that neither order regarding the possession has been passed by the Civil or Revenue Court nor any injunction has been issued by the Court and, therefore, he has jurisdiction to entertain the application u/s 145 Cr.P.C. and to declare the possession and to pass an order regarding attachment of the property in order to prevent the breach of peace. It is against this order, passed by the learned Sub-Divisional Magistrate that the petitioners have preferred this miscellaneous petition.

3. It is contended by the learned Counsel for the petitioners that when a regular revenue suit regarding declaration, possession and partition is already pending adjudication between the same parties with respect to the same land before a competent Court then the proceedings u/s 145 Cr.P.C. are not maintainable. In support of its contention, learned Counsel for the petitioners has placed reliance over: N.S.A. Nagar Mahapalika Vs. Ram Gopal, The learned Public Prosecutor, on the other hand, has supported the order passed by the learned Sub-Divisional Officer. No body appeared on behalf of Madho Singh, Sawai Singh and Chhotu Singh inspite of service on them.

4. I have considered the submissions made by the learned Counsel for the parties.

5. It is not in dispute that a Revenue Suit No. 106 of 1988 Mithu Singh v. Madho Singh and Ors. with respect to the same land and between the same parties for partition, correction in the revenue record and for certain other reliefs, is pending in the Court of the learned Sub-Divisional officer, Balotra, and in that revenue suit, an application u/s 212 of the Rajasthan Tenancy Act was moved by plaintiff Mithui Singh and the learned Sub-Divisional Officer, Balotra, by its, order dated 6.12.88, directed the parties to maintain status quo with respect to the

possession over the land in dispute. An appeal against this order was, also, filed by Ratan Singh and Inder Singh before the Revenue Appellate Authority (I), Jodhpur, who, by his order dated 17.10.89, allowed the appeal filed by Ratan Singh and Inder Singh and quashed and set-aside the order dated 6.12.88, passed by the learned Sub-Divisional Officer, Balotra. When the dispute regarding partition, possession, declaration, correction in the revenue record etc. is pending between the same parties with respect to the same land and an injunction was refused then there is hardly any justification for the initiation of a parallel criminal proceedings u/s 145 Cr.P.C. The rights of the parties with respect to the land in question has to be determined by the Revenue Court and when the recourse has been taken for adjudication of the dispute before the competent Revenue Court and the prayer for interim relief has already been refused by the competent Revenue Court then the applicant (non- petitioners) cannot be allowed to take recourse in the same matter in a criminal Court and to initiate the proceedings u/s 145 Cr.P.C. Multiplicity of litigation is not in the interest of the parties. The public time should not be allowed to be wasted over meaning less litigations. It has been held by the Supreme Court in the case of Ram Sumer Puri v. The State of Uttar Pradesh 1985 Cri.L.R.(SC) that when a civil litigation is pending with respect to the property, wherein a question of partition of the property is involved, there is hardly any justification in initiating a parallel proceeding u/s 145 Cr.P.C." The question of possession, title and the other rights of the parties will be considered and decided by the Revenue Court and two parallel proceedings in two different Courts between the same parties with respect to the same land cannot be allowed to continue. The continuation of the proceedings under Sections 145 and 146 Cr.P.C., the preliminary order dated 13.6.88 and the order dated 5.4.91, passed by the Sub-Divisional Magistrate, Balotra, therefore, deserve to be quashed and set-aside.

6. In the result, I allow this miscellaneous petition, quash and set aside the order dated 5.4.91, as well as the order dated 13.6.88, passed by the learned Sub-Divisional Magistrate, Balotra, by which the proceedings u/s 145 Cr.P.C. were initiated and the property in dispute was attached as the initiation of two parallel proceedings was not justified.