
(1996) 03 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11975-M of 1995

Sarmukh Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 145(1), 146, 482

Citation : (1996) CriLJ 2958 : (1996) 2 RCR(Criminal) 13

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : D.R. Mahajan, for the Appellant; I.P.S. Sidhu, AAG for Respondent Nos. 1 and 2 and P.N. Makani and A.S. Bhopal for Respondent Nos. 3 to 8, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—The petitioners have filed this, petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) for quashing the calender dated 24-6-1995 u/s 145 of the Code submitted by Police Station Moonak (Annexure P. 1) and the order dated 11 -7-1995 (Annexure P. 2) passed u/s 145 (1) and 146 of the Code, by the Sub Judicial Magistrate, Sunam.

2. According to the petitioners, Bharpurinder Singh vide agreement dated April 18. 1990, agreed to sell the land in dispute to the petitioners at the rate of Rs. 54,000/- per acre and received a sum of rupees two lacs as advance/earnest money and in part performance of the agreement, delivered the possession of the said land to the petitioners. He agreed to execute the sale deed by 15-6-1990 and the balance sale consideration was to be paid before the Joint Sub-Registrar at the time of the registration of the saledeed. However, on 15-6-1990. said Bharpurinder Singh further received Rs. 2.50.000/- from the petitioner and agreed to execute the sale deed on or before 31-12-1990 and to receive the balance consideration at the time of registration of the sale deed.

3. Hardev Singh (Respondent No. 3) and Gurminder Singh (respondent No. 6) have tiled Civil Suit No. 226 of 1990 against Bharpurinder Singh. Balwinder Kaur respondent No. 5. Panninder Singh respondent No. 7 and Malkiat Kaur respondent No. 8 for declaration to the effect that judgment and decree dated 14-2-1983 passed by the Civil Court in Suit No. 15 of 1983 decided on 14-2-1983 titled as Bharpurinder Singh versus Balwant Singh, with regard to the land in suit and the consequent mutation No. 2422 sanctioned on the basis of the said decree in favour of Bharpurinder Singh were null and void and were liable to be set aside and that any mortgage, charge or any other encumbrance created by Bharpurinder Singh on the said property had no effect on the plaintiffs right. They also prayed for permanent injunction for restraining Bharpurinder Singh from alienating/transferring in any way to any person the said land and also claiming joint possession of the said land. As Bharpurinder Singh could not execute the sale deed on account of the interim injunction, he executed a fresh agreement dated 16-3-1991 admitting therein the receipt of Rs. 4.50.000/- as earnest money from the petitioners and agreed to execute sale deed within two months of the vacation of the ad interim injunction. According to the petitioners, Bharpurinder Singh then colluded with the aforesaid persons and suffered a compromise decree on 9-11-1993 whereby the decree dated 14-2-1983 as well as mutation No. 2422 were declared null and void.

4. Since the petitioners were not parties to the aforesaid proceedings, they filed a civil suit in the Court at Sunam against Bharpurinder Singh and others for specific performance of the agreement to sell dated 18-4-1990, 15-6-1990 and 16-3-1991 on payment of balance sale consideration of Rs. 2.63,856/- after declaring that the decree dated 9-11-1993 passed in Civil Suit No. 236 of 1990 (Hardev Singh v. Bharpurinder Singh) were null and void and inoperative against the rights of the petitioners. An application for ad-interim injunction for restraining the defendants from alienating the suit property and from dispossessing the petitioners from suit land was also filed. The Trial Court passed an ad-interim injunction restraining the defendants from alienating the property during the pendency of the suit but declined injunction restraining them from dispossessing the petitioners on the ground that the defendants had filed counter claim for possession of the disputed land. The petitioners challenged the said order by way of appeal which was accepted by the Additional District Judge. Sangrur vide order dated 16-1-1995 (Annexure P.3) and Bharpurinder Singh and the respondents were restrained from forcibly dispossessing the petitioners from the disputed land except in due course of law.

5. On 24-6-1995. Station House Officer. Police Station Moonak. District Sangrur put up a calendar (Annexure P.1) u/s 145 of the Code against the petitioners (party No. 1) and respondent Nos. 3 to 8 (party No. 2) before the Sub-Divisional Magistrate. Sunam for initiation of proceedings u/s 145 of the Code and during the pendency of the proceedings for appointment of Receiver to manage the land. In pursuance of the said calendar, the Sub Divisional Magistrate, passed an order dated 11-7-95 (Annexure P.2) u/s 145 of the Code calling upon the

petitioners and respondent Nos. 3 to 8 to file their written claims and affidavits in support of their rival claims over the land in dispute and also passed the order attaching the land in dispute and appointing Naib Tehsildar. Moonak as official receiver u/s 146 of the Code to take over possession of the land and manage the same.

6. The petitioners have challenged the legality and validity of the said calendar (Annexure p. 1) and the order (Annexure p.2) passed by the Sub Divisional Magistrate in pursuance thereof on the grounds that civil litigation with regard to the land in dispute is pending between the parties, that the petitioners have already paid a sum of Rs. 4,50,000/- to Bharpurinder Singh under an agreement of sale and in pursuance of the said agreement actual physical possession of the land in dispute was handed over to the petitioners by Bharpurinder Singh on 18-4-1990, that since then the petitioners are in possession of the land in dispute; that in the civil suit for specific performance filed by the petitioners the respondents have been restrained from interfering in the possession of the petitioners over the suit land and that the respondents themselves have made a counter-claim for possession of the suit land in the civil suit for specific performance filed by the petitioners. Thus, it is pleaded that the decree was obtained by collusion between Bharpurinder Singh and the respondents which does not affect the rights of the petitioners under the said agreement. It has also been pointed out that the order of the Additional District Judge granting ad interim stay against the respondents was challenged by the respondents by way of Civil Revision No. 1995 wherein the respondents obtained three adjournments during the course of which they manoeuvred to get filed the calendar in question. The petitioners have pleaded that the calendar (Annexure p.1) and the order (Annexure p. 2) passed by the Sub-Divisional Magistrate in pursuance thereof are illegal, null, void and liable to be quashed.

7. In their reply filed by the respondents, it has been stated that no such agreement was ever made by Bharpurinder Singh with the petitioners and the question of delivering the possession to them does not arise. They have admitted that they had filed a suit for declaration, permanent injunction and joint possession which was decreed in their favour. The allegations of collusion by them with Bharpurinder Singh have been denied and it has been explained that the property being coparcenery and that of Joint Hindu Family the parties entered into settlement by way of compromise. Pendency of civil litigation between the parties has been admitted but it is pleaded that inspite of the pendency of the civil litigation the proceedings under Sections 145/146 of the Code can be initiated and continued to their end.

8. In a separate reply filed on behalf of the Stale, efforts have been made to justify the initiation of the proceedings u/s 145 of the Code since civil litigation was pending between the parties and there was a dispute regarding the possession of the land.

9. I have heard the learned counsel for the parties and have perused the relevant

record placed by them.

10. Shri D. R. Mahajan, Advocate the learned counsel for the petitioners, assailing the legality and validity of the calendar (Annexure p. 1) and the order (Annexure p.2) passed by the Sub-Divisional Magistrate, has argued that the actual possession of the land in dispute was handed over to the petitioners by Bharpurinder Singh under the agreement dated 18-4-1990 and since then the petitioners are in possession thereof. It has been further contended by the learned counsel that the possession of the petitioners has been duly recognised by the Civil Court in the suit filed by the petitioners and the respondents have been specifically restrained from interfering with the possession of the petitioners thereon. It has also been pointed out by the learned counsel that the respondents themselves have filed a counter claim for possession of the disputed land in the civil suit filed by the petitioners. Accordingly, the learned counsel has argued that in view of the pendency of this civil litigation between the parties, neither the police nor the Sub-Divisional Magistrate had the power or jurisdiction to initiate proceedings u/s 145 of the Code and to pass the order for the appointment of the Receiver u/s 146 of the Code. In support of this plea, the learned counsel has placed reliance upon a judgment of the Apex Court rendered in Ram Sumer Puri Mahant Vs. State of U.P. and Others, and two judgments of this Court rendered in Kartar Singh v. Balbir Singh Malik 1990 (1) RCR 89 and Babu Singh v. State of Punjab 1991 (3) RCR 345..

11. On the other hand Shri Amrik Singh Bhopal Advocate, the learned counsel for respondent Nos. 3 to 8 has argued that the suit for declaration, permanent injunction and joint possession filed by the respondents has already been decreed in their favour; that there is an actual dispute regarding the possession in respect of the suit land and as such initiation of the proceedings u/s 145 of the Code are fully justified under the circumstances of the case. The learned counsel has further argued that the mere fact that civil litigation is pending between the parties is itself no ground to initiate the proceedings under Sections 145/146 of the Code. In support of this plea he has placed reliance inter alia on a judgment of the Supreme Court rendered in Prakash Chand Sachdeva Vs. The State and another, and a judgment of this Court rendered in Karnail Singh and others Vs. State of Punjab, which in its turn is based upon the decision of the Apex Court in Prakash Chand Sachdeva's case (supra).

12. I have given my careful thought to the respective arguments advanced at the Bar and have also perused the precedents cited in support of such contentions.

13. The question was originally examined by their Lordships of the Supreme Court in Ram Sumer Puri Mahant's case (supra) and the following law was laid down at Page 753 of Cri LJ :--

When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of parallel criminal proceedings 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.

Accordingly their Lordships quashed the proceedings initiated u/s 145 of the Code.

14. The question again arose before the Supreme Court in Parkash Chand Sachdeva's case (supra) and their Lordships were pleased to observe as under:-

True, a suit or remedy in Civil Court for possession or injunction normally prevents a person from invoking jurisdiction of the Criminal Court as observed by this Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, 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. The normal rule is as stated by the Court in Puri's case. But that was a suit based on title. And that could be decided by Civil Court only. That ratio cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance u/s 145 Cr.P.C. Neither the High Court nor the Sub Divisional Magistrate cared to ascertain if the respondent had any claim to lawfully prevent the appellant from entering into his own house. The proceedings u/s 107 are for public peace and tranquillity whereas u/s 145 relates to disputes regarding possession between parties concerning any land or water or boundaries thereof. Therefore, dropping of proceedings u/s 107 could not furnish foundation for dropping the proceedings u/s 145. Nor the law laid down in Puri's case could result in rejecting the application filed u/s 145 of the Cr.P.C. There being no dispute of title between the appellant and the respondent the only claim to be decided was if the appellant had been forcibly or wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the appellant had sought the remedy in civil suit without applying the mind if that decision was in any way helpful for dropping the proceedings. In law, therefore, the order passed by two courts below cannot be maintained.

In view of these two authoritative pronouncements of the apex court, I need not make a reference to any other judicial precedent on the question in hand.

15. In the present case, the petitioners obtained actual possession of the land in dispute on 18-4-1990 from Bharpurinder Singh who was admittedly recorded as the owner in possession of the revenue record at that time. Under an agreement to sell dated 18-4-1990 a sum of Rs. 2 lac was paid to Bharpurinder Singh by way of advance/earnest money. The petitioners are alleged to have further made payment of Rs. 2,50,000/- to said Shri Bharpurinder Singh in pursuance of the said agreement. It was thereafter that Bharpurinder Singh suffered a compromise decree in favour of the respondents and against himself. The petitioners have admittedly filed a suit for specific performance of the agreement(s) entered into by them with Bharpurinder Singh and in that suit an interim injunction had been granted by the Additional District Judge, vide order dated 16-1-1995 restraining private respondents herein from forcibly dispossessing the petitioners from the land in dispute except in due course of law. In other words the actual physical possession of the petitioners over the suit land had been prima facie established before the Civil Court. In that very suit these respondents have made a counter-claim for possession of the suit land. This strikes at the roots of the proceedings initiated u/s 145 of the Code in-as-much as according to the private respondents, they themselves are not in possession of the suit land and are claiming the same in the civil proceedings. It is also important to note that the decree obtained by the private respondents by way of compromise with Bharpurinder Singh contains a relief for joint possession and not the actual physical possession. The obvious reason is that Bharpurinder Singh had already parted with the actual physical possession of the suit land in favour of the petitioners. Thus it is clear that the suit filed by the petitioners is based upon their title being derived from the agreement stated to have been entered into with Bharpurinder Singh who was admittedly recorded to be owner in possession of the suit land at the time of entering into agreement with the petitioners. The dispute between the parties, as would be evident from the counter claim put forward by the private respondents is regarding the right of possession and not regarding the actual possession of the same. Therefore, the decision of the apex court in Ram Sumer Puri Mehant's case is relevant and would govern this case and the judgment delivered in Parkash Chand Sachdeva's case has got no application to the facts and circumstances of the case as discussed above.

16. It may be mentioned that the calendar (Annexure P. 1) u/s 145 of the Code was filed by the police during the pendency of the revision filed by the private respondents in this court against the order (Annexure P.3) passed by the Additional District Judge, Sangrur and not earlier thereto. Prima facie it is evident that this calendar had been prepared and filed with oblique motive to defeat the orders passed by the civil court. When the private respondents had not been in possession of the suit land, the question of appointment of the receiver u/s 146 of the Code could not have arisen at all. Therefore, the initiation of the proceedings u/s 145 of the Code and the appointment of the receiver u/s 146 of the Code are contrary to the law.

17. As a result of the above discussion, this petition is allowed, the calendar (Annexure P.1) filed u/s 145 of the Code and the order (Annexure P.2) dated 11-7-95 passed by the Sub Divisional Magistrate, Sunam in pursuance thereof are hereby quashed.