

(2001) 07 DEL CK 0014
In the Delhi High Court
Case No : Criminal R. No. 540 of 2000

Shri Dalbir Singh

APPELLANT

Vs

State (NCT of Delhi) and Others

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 145(1), 145(4), 145(6)(a)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Transfer of Property Act, 1882 — Section 52

Citation : (2001) 93 DLT 615 : (2002) 63 DRJ 153 : (2001) 4 RCR(Criminal) 831

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Mr. O.N. Vohra and Mr. V.B. Arya, for the Appellant; Mr. R.P. Bansal
Jaya Rakhecha and Mr. Bhupinder Singh, for the Respondent

Judgement

R.C. Chopra, J.—This revision u/s 397 read with Section 401 of the Code of Criminal Procedure (hereinafter referred to as "Code" only) is directed against an order dated 14.11.2000 passed by Sh. Amar Singh, SDM Hauz Khas, New Delhi whereby he passed an order u/s 146(1) of the code and attached the land measuring about 40 by ad16 bids was situated in Mouza Chattarpur, Teh. New Delhi till further orders. The petitioner, claiming to be the true owner in possession of the land in question, prays for setting aside the impugned order of attachment as well as quashing of the proceedings u/s 145 of the Code of Criminal Procedure.

2. The facts relevant for the disposal of this petition, briefly stated, are that respondent No. 4 herein filed a petition dated 17.9.1997 before the SDM, New Delhi u/s 145/146 of the Code praying for attachment of the property in question on the ground there was grave danger of breach of peace. In the heading of the petition he stated that the respondent (petitioner herein) had tried to dispossess him from the property in question but in para 1 of the petition it was stated that on 24.6.1997 he had dispossessed him from the land in question by use of force.

He had approached the Civil Court and got a stay order against the present petitioner on 23.6.1997 but inspire of stay order on 24.6.1997, the present petitioner had dispossessed him. He stated that he was the owner of the land in question and had purchased it from A.K. Goel of M/s Homestead Industries who in turn had purchased it from present petitioner Dalbir Singh through his attorney. A FIR No. 349/97 dated 24.6.1997 was relied upon which is shown to be field not by respondent No. 4 but by petitioner alleging attempt to dispossess him. The history of previous litigation between the petitioner herein and A.K. Goel of M/s. Homestead was vaguely given and it was stated that in terms of a compromise dated 29.4.1994, the present petitioner had handed over the possession of the land in question to A.K. Goel of M/s. Homestead who had sold the land in question to the respondent NO. 4 herein on 20.8.1996 and handed over the possession thereof to him on the said dated. It was also stated that the Khasra Girdawris of the land in question from 1991 to 1996 were recorded in the name of Homestead and thereafter in the name of respondent No. 4. Under these circumstances the SDM was prayed to initiate the proceedings u/s 145 of the Cr.P.C. directing the petitioner of land to respondent No. 4 or in the alternative to attach the property in question.

3. The present petitioner (respondent before the SDM) filed a detailed reply to the application under Sections 145/146 of the Cr.P.C. raising preliminary objections that in view of the pendency of civil litigation in regard to the land in question and interim orders, there were no grounds for invoking Section 145/146 of the Code. it was also stated that the application was barred by time in as much as the so called dispossession even was beyond 2 months preceding the date of application u/s 145 of the Code. The proceedings u/s 107 Cr.P.C. even initiated on behalf of respondent No. 4 had ended in discharge of the present petitioner. It was submitted that the present petitioner (respondent before the learned SDM) was the owner in possession of the land in question since 1951 and the respondent No. 4 herein (petitioner before learned SDM) had never come in possession thereof. The revenue records were stated to have been manipulated and the proceedings for correction of the entries were pending since 1993. It was also submitted that the petitioner herein had electricity connection and telephone no. 6803560 at the address of the land in question and was living there in a pacca built house.

4. Giving the background of the dispute it was submitted that petitioner herein had married one of his daughters to one Karnail Singh who was a mischievous/dishonest person. A forged general power of attorney dated 3.7.1991 purported to have been issued in favor of Karnail Singh by the petitioner was got registered at Jhajjar, Haryana. On the basis of the said forged power of attorney, Karnail Singh executed 9 sale deeds in regard to land in question in favor of M/s. Homestead through its Director A.K. Goel on 14.8.1991. When Karnail Singh and A.K. Goel of M/s. Homestead tried to dispossess the present petitioner from the land in question, a suit for permanent injunction, bearing Suit No. 2830/91 was, filed by the petitioner in the High Court of Delhi against Karnail Singh and M/s.

Homestead. The High Court appointed two officers of the Court as Local Commissioners to report in regard to actual possession of land in question who found the present petitioner in possession thereof and as such vide orders dated 19.9.1991, the High Court directed parties to maintain status quo in regard to the possession of the suit land. The petitioner gave a public notice also in Hindustan Times dated 11.12.1991. The status quo order continued. The suit was transferred to District Courts and came to be registered there as S.No. 389/93.

5. On 27.1.1992 the present petitioner filed one FIR also bearing No. 35/92 u/s 420/468/471 IPC at PS Mehrauli against Karnail Singh for forgoing the General Power of Attorney in which Karnail Singh was arrested and the case is still pending trial. The police referred the General Power of Attorney to CFSL which confirmed that the signatures and thump impressions purporting to be of the petitioner were forged and fabricated. The petitioner also filed a suit for declaration bearing No. 287/94 against M/s Homestead seeking declaration that the GPA dated 3.7.1991 and the nine sale deeds on the basis thereof were forged, fabricated and invalid and as such may be cancelled. The said suit is also pending in the Court of Civil Judge, Delhi.

6. The petitioner further brought to the notice of the learned SDM that on 16.6.1994 Sh. A.K. Goel of M/s. Homestead Along with others tried to dispossess him from the suit land and take forcible possession thereof on account of which FIR No. 156/94 u/s 395, 365, 448, 147, 148, and 149 IPC was registered at PS Mehrauli. A.K. Goel was declared a proclaimed offender in the said case. It was also pointed out that the present petitioner had filed an application before Teh. Mehrauli on 19.11.1993 for correction of entries in girdawri in favor of M/s. Homestead as the present petitioner was in continuous possession of land in question. The said filed was misplaced from the office of the consolidation officer and inquiry was still pending before Deputy Director, CBI. On an application before the Consolidation Officer by the present petitioner as report of the Patwari was obtained in regard to the possession of the suit land who vide his report dated 25.10.1996 had found that on or about 25.10.1996 the present petitioner was in possession of the suit land. The present petitioner denied that there was any attempt by him on 23.6.1997 or any other date to dispossess the respondent No. 4 from the land in question in as much as respondent (petitioner before SDM) was never in possession thereof. The compromise dated 29.4.1994 was denied as the Counsel appointed by the petitioner without any authority and fraudulently withdrew the suit which was originally filed in the High Court and transferred to District Courts as Suit No. 389/93. On 18.10.1996, on application of petitioner, the learned ADJ had set aside the order of the dismissal of the suit passed on 29.4.1994 as withdrawn in as much as it was found to be on the basis of mis-representations and fraud. Along with the revival of the suit, the status quo order which was operative since 1991 also got revived.

7. Learned counsel for the petitioner submits that on 20.8.1996, A.K. Goel of M/

s. Homestead executed sale deeds in favor of the present respondent No. 4 and got them registered at Bombay knowing fully well that the application for setting aside the withdrawal of the suit on the basis of the so called compromise was pending before the Court. On 21.3.1997 again an attempt was made to forcibly dispossess the petitioner. FIR No. 137/97 u/s 147, 148, 149, 452, 506, 323, 307, 511, 427 and Section 27 of the Arms Act was registered against the respondent No. 4 herein and 7 others. On 1.4.1997 DCP had given a report confirming petitioner's possession of the land in question. On 9.5.1997 Patwari had confirmed his possession and on 13.5.1997 the previous SDM Mr. K.K. Dahiya had also found the petitioner in possession of the land in question.

8. Learned counsel for the petitioner submits that the application u/s 145 of the Cr.P.C. filed by respondent No. 4 on 17.9.1997 was an utter abuse of the process of law in as much as it had concealed from the Court that the orders dated 29.4.1994 had been set aside and the status quo order in favor of the present petitioner had been revived. On 9.10.1997 the local police had also reported to the SDM that the present petitioner was in possession of the land but after about 3 years on 14.11.2000 by the impugned order the learned SDM attached the land in question and threw the petitioner and his family out in spite of the fact that he was having a status quo order in his favor and was the owner in possession of land and there was no imminent apprehension of breach of peace as no incident had taken place between 1997 to 2000 i.e. between the date of the filing of the petition and the passing of the impugned order u/s 146(1) of the Code. Learned counsel for the petitioner argues that the sale in favor of M/s. Homestead on the basis of forged and fabricated General Power of Attorney was not only in contravention of Delhi Land Reforms Act but was also fraudulent. He submits that the impugned order was absolutely illegal, unwarranted and as such the order u/s 146(1) of Code as well as proceedings u/s 145 of the Code are liable to be quashed and the parties should be left to agitate their claims before the Civil Courts. The order u/s 146(1) of the Code was passed although the petition itself stated that respondent No. 4 herein had been dispossessed prior to two months preceding the date of application.

9. Learned counsel for the respondent No. 4 on the other hand has argued that the order of attachment u/s 146(1) of the Code was absolutely justified and warranted under the facts and circumstances of the case. It is submitted that respondent No. 4 was the owner of the suit land and had been in possession thereof but the petitioner had forcibly dispossessed him and as such the learned SDM was fully justified in passing the attachment order. It is submitted that on the basis of the revenue entries which were never challenged the respondent No. 4 was legally entitled to remain in possession of the suit land till his dispossession therefrom in accordance with law. Five sale deeds executed in his favor by M/s. Homestead are filed upon to argue that he is the owner in possession of the land in question. It is also stated that he is not bound by any order of the Civil Court as he was not a party to any civil proceedings.

10. I have heard learned counsel for the petitioner and learned counsel for the respondent No. 4. I have gone through the records of the case.

11. The relevant provisions of Section 145(1), 145(4), 145(6)(a) and 146(1) Code read as under:-

"Section 145 Procedure where dispute concerning land or water is likely to cause breach of peace-(1)

Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute."

"145(4):- The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under sub-section(1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1)."

"145(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted there from in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed."

"146(1). If the Magistrate at any time after making the order under sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof;

Provided that such Magistrate may withdraw the attachment at any time if he is

satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute."

12. Before examining the pleas raised by the parties and the facts and circumstances of the case in hand it needs to be emphasised that proceedings u/s 145 of the Code provide a summary remedy to protect and safeguard the possession of those who are found in actual and physical possession of any land or property. The question of title can neither be determined nor allowed to be agitated in these proceedings except so far as it may have a bearing on the question of actual possession. the proceedings u/s 145 of Code are quasi-civil in nature and the scope of inquiry in these proceedings is limited to find out as to who was in possession on the date of order u/s 145(1) of the Code or was forcibly dispossessed within two month next preceding the date of the receipt the report of police officer or other information leading to the institution of the proceedings. The party forcibly and unlawfully dispossessed, within two months as stated above, may be put back into possession so that the tendency to take law into one's own hands is curbed and the parties are made to agitate their property disputes before Civil Courts. The Magistrate exercising powers u/s 145 of the Code is not empowered to determine title or right of possession. He is to restrict the inquiry to the question of actual possession only.

13. It is also settled proposition of law that proceedings u/s 145 of the Code should not be initiated when a civil litigation is pending between the parties for the determination of their rights. In case party has in its favor any order of the Civil Court whether interim or final, the SDM must abide by the same and must not endeavor to go over the head of the Civil Court. If in spite of the pendency of the civil proceedings and orders of the civil courts, there is an apprehension of breach of peace, the proper proceedings to be initiated are u/s 107 of the Code and not u/s 145 thereof. Action u/s 107 of the Code even may be initiated against that party which is trying to take the law into its own hand with a view to dispossess the party which is in possession and is protected by an order of Civil Court. The practice of invoking proceedings u/s 107 of the Code against both the parties, without any enquiry as to who is the aggressor is repugnant to the principles of natural justice, equity and good conscience. The attachment of property u/s 146(1) of the Code is an extreme step which ought not be taken at the drop of the hat or with a view to give undue benefit to someone who does not appear to be in possession and is merely trying to come into possession on the basis of some so called claim. If the parties are already before Civil Courts in regard to their claims the SDM instead of initiating parallel proceedings u/s 145 of the Code should ask them to obtain necessary orders from the Civil Courts only. Sometimes a status quo order may not be clear about the possession of one or the other party but when the status quo order is based on some report of the Local Commissioner or some other material available on judicial record, the same must be implemented to help the party which appears to be protected under it. If an order of civil Court is obtained after initiation of proceedings u/s 145 of the Code the situation is somewhat different but in case the order, interim or final is

there is favor of one of the parties before commencement of proceedings u/s 145 of the Code the SDM has no option but to abide by it and protect the possession of party armed with such an order.

14. The contentions raised on behalf of the petitioner can be summed up as under:-

(a) The petitioner is the owner in possession of the suit land since 1950 and the proceedings u/s 145 of the Code initiated at the instance of respondent No. 4 are yet another attempt to take possession of the property in question on the basis of sale deeds which are based upon a forged and fabricated General Power of Attorney purportedly issued by the petitioner.

(b) The proceedings u/s 145 and the order u/s 146(1) of the Code are an abuse of the process of law in as much as status quo order based on the report of Local Commissioners issued by the High Court of Delhi was still operative in favor of the petitioner when application u/s 145 of the Code was filed;

(c) That according to the petition even filed on 17.9.1997 by respondent No. 4, his dispossession had allegedly taken place on 24.6.1997 which was beyond 60 days preceding the date of the filing of the petition and as such the proceedings were not maintainable even.

(d) That the petition u/s 145 of the Code was filed in September, 1997 whereas the order under Section 146(1) of the Code attaching the property were passed by the SDM on 14.11.2000 i.e. more than three years after the petition during which period there was not breach of peace whatsoever and as such there was no justification for attachment of the land in question.

(e) That learned SDM by the impugned attachment order had abused his official position and misused the process of law with a view to oust the petitioner from the land in question over which his possession was peaceful and settled.

15. Learned counsel for respondent No. 4 on the other hand has contended that the order under Section 145 and 146(1) of the Code were fully warranted under the facts and circumstances of the case and the learned SDM had acted in accordance with law. It is also submitted that the petitioner could apply to the SDM for vacating the orders and as such the revision is not maintainable. It is also submitted that the revisional Courts should not interfere with the discretion lawfully exercised by the lower Courts. Learned counsel for respondent No. 4 submits that the orders of the Civil Court passed in favor of the petitioner are not binding upon respondent No. 4 as he was not a party to the civil proceedings and had been dispossessed by force. Learned counsel relies upon the revenue records to contend that the petitioner was not in possession of the land in question since 1991 and as such the revision petition filed by him was liable to be dismissed so that the SDM may proceed further in accordance with law.

16. A scrutiny of the pleas of the parties and the material placed on Trial Court file reveals that the land in question was allotted to the petitioner in the year

1950. One of his daughters got married to one Karnail Singh in whose favor the petitioner initially executed power of attorney, Will etc. but on account of certain disputes withdrew the same. Said Karnail Singh on the basis of a power of attorney dated 3.7.1991 executed sale deeds on 14.8.1991 in favor of M/s. Homestead through one Mr. A.K. Goel. On 5.9.91 mutation of the land in question was made in favor of M/s. Homestead without any notice to the petitioner. On 18.9.1991 the petitioner filed a suit No. 2830/91 in the High Court of Delhi against Karnail Singh and M/s. Homestead in which the High Court of Delhi appointed two officers as Local Commissioners to report in regard to the actual and physical possession of the land in question. On the basis of their report which confirmed the possession of the petitioner, a status quo order was issued by the High Court on 19.9.1991. This status quo order, Therefore, prima facie establishes that even after the sale deeds dated 14.8.1991 in favor of M/s. Homestead executed by Karnail Singh on the basis of a General Power of Attorney purportedly issued by the petitioner, the possession of the land in question remained with the petitioner only. The suit filed by the petitioner in the High Court of Delhi got transferred to District Courts on account of the enhancement in the pecuniary jurisdiction of the High Court and was registered as Suit No. 389/93 in District Courts.

17. On 29.4.1994 the Counsel appearing on behalf of the petitioner in civil suit suddenly made a statement withdrawing the aforesaid suit pending in the District Courts. When the petitioner came to know about this withdrawal, he moved an application before the Court concerned and vide orders dated 18.10.1996, the withdrawal order were set aside holding that the counsel had withdrawn the suit without any authority. The status quo order Therefore got revived with the restoration of the suit. It may be mentioned here itself that respondent No. 4, who relies upon the withdrawal of the suit on 29.4.1994 on behalf of the petitioner, is not at all in a position to explain as to why the suit was simply withdrawn instead of getting a compromise recorded if there was really any settlement between the parties to the said suit.

18. It appears that about two months prior to the restoration of the suit of the petitioner, which had been unauthorisedly withdrawn, A.K. Goel of M/s. Homestead sold the land in question to respondent No. 4 on 20.8.1996 by executing five sale deeds registered at Bombay. The vender as well as vendee were shown to be the residence of Bombay.

19. It also may be mentioned here that in the year 1994 itself the petitioner had filed a suit No. 287/94 for declaration that the General Power of Attorney was forged and fabricated and sale deeds in pursuance thereof in favor of M/s. Homestead were null and void. Therefore the sale deeds executed by A.K. Goel of M/s. Homesteads in favor of respondent No. 4 during the pendency of the said suit were hit by the principle of lis-pendens as enunciated in Section 52 of the Transfer of Property Act. It also may be added that A.K. Goel whose title to the land in question was always under cloud and under challenge could not pass a

better title to respondent No. 4. The fact, however, remains that the execution of the sale deeds in favor of respondent No. 4 was inspired by the challenge to the sale deeds and inspired by the absence of possession with A.K. Goel in view of the status quo order issued by the High Court in favor of petitioner.

20. On 16.6.1994, i.e. after the mischievous withdrawal of the petitioner's suit, an attempt was made to dispossess the petitioner from the land in question by using force against him. The attempt got recorded in an FIR No. 156/94 dated 16.6.1994 filed by the petitioner against A.K. Goel and Ors u/s 147, 148, 149, 448, 380 and 365 IPC etc. The said case is still pending and accused A.K. Goel is an absconder therein.

21. On 27.1.1992 i.e. soon after filing the Civil suit, the petitioner lodged an FIR also u/s 420, 468, 471 IPC against Karnail Singh and A.K. Goel of M/s. Homestead alleging that General Power of Attorney was forged and fabricated. The General Power of Attorney on the basis of which Karnail Singh had sold the land in question to M/s. Homestead was sent to CFSL for examination and was found to be a forged and fabricated document as neither the signatures nor thumb impression present thereon were found to be of the petitioner. The criminal case is still pending trial.

22. To meet the question as to when and how the possession of the land in question came to M/s. Homestead a plea was raised by respondent No. 4 that on 29.4.1994 when the suit was withdrawn by the Counsel for the petitioner the possession was handed over to M/s Homestead, but his averment appears to be false on the facts for the reason that in case the parties had amicably settled all their disputes and had entered into a compromise then instead of simply withdrawing the suit on behalf of petitioner, a compromise under Order 23 of the CPC ought to have been got recorded before the Court and not only the Suit No. 389 of 1993 but S. No. 287/94 as well as criminal proceedings initiated by the petitioner ought to have been amicably settled. Had the possession of the land been with Mr. A.K. Goel of M/s Homestead since 29.4.1994, the FIR No. 156/94 dated 16.6.1994 could not have been there which was lodged by the petitioner alleging that A.K. Goel and others had tried to dispossess him from the land in question by use of force. It is, Therefore, clear that the petitioner continued to be in possession of the land in question but the predecessor of respondent No. 4 continued to make efforts to come in possession of the land in question.

23. When the petitioner's suit No. 389/93 got restored on 18.10.1996 holding that its withdrawal was unauthorised, the respondent No. 4 first initiated security proceedings against him u/s 107/151 of the Code, but did not take any interest therein and as such the proceedings got terminated after about six months. On 12.3.1997 respondent No. 4 made one more attempt to forcibly dispossess the petitioner from the land in question by use of force and as such FIR No. 137/97 was registered against respondent No. 4 and others u/s 147, 148, 149, 452, 506, 323, 307, 511 and 427 IPC and Section 27 of the Arms Act. The respondent No. 4 herein got anticipatory bail in the said case on 12.5.1998.

24. It appears that in furtherance of the efforts to acquire possession of the land in question the petition u/s 145 of the Code was filed by respondent No. 4 on 17.9.1997 alleging that on 24.6.1997 he had been forcibly dispossessed from the land in question by the petitioner. In the said petition he concealed that S.No. 389/93 had been restored and status quo order passed therein had been revised. The SDM sought report from the police on this petition and vide report dated 9th October, 1997, even the police reported that the petitioner was in possession of the land all though and attempts were being made to dispossess him there from. The petitioner filed a reply Along with various documents to establish his possession. The documents placed on record revealed that although the respondent No. 4 was alleging that he had been dispossessed on 24.6.1997 but the report of DCP to Additional Commissioner dated 1.4.1997, report of Patwari dated 9.5.1997, report of previous SDM dated 13.5.1997 confirmed continuous possession of the petitioner over the land in question. Since the petitioner had been in possession of the land in question on the aforesaid dates, there was no question of dispossession of the respondent No. 4 on 24.6.1997 as alleged. The report dated 1.4.1997 sent by DCP South to Additional Commissioner of Police gave full details of disputes regarding suit land, continued possession thereof by petitioner and repeated attempts by A.K. Goel and respondent No. 4 to take possession of land by use of force. In view of the report of DCP dated 1.4.1997, report of Patwari dated 9.5.1997 and report of SDM dated 13.5.1997, the assertion of respondent on 24.6.1997 and was dispossessed is a patent falsehood.

25. Without expressing any opinion in regard to the genuineness of the General Power of Attorney allegedly executed by the petitioner and the validity of the sale deeds executed in favor of M/s. Homestead and sale deeds on the basis thereof in favor of respondent No. 4, the aforesaid facts and circumstances placed on record reveal that the petitioner had been all along in possession of the land in question and was continuously challenging the General Power of Attorney as well as sale deeds executed on the basis of the said General Power of Attorney. Since 1993 he has disputing the revenue records also which were manipulated on the basis of said sale deed. His possession remained protected by a status quo order also issued by the High Court. It appears that holders of the sale deed viz. M/s Homestead and thereafter respondent No.4 continued to make efforts to take possession of the land and tried to use force even on certain occasions with the result that FIRs was lodged by the petitioner against them. The initiation of present proceedings u/s 145 of code, Therefore, was a misuse of the process of law, on the basis of averments which were absolutely false and against records. Learned SDM, after keeping the proceedings pending for about three years, suddenly decided to issue an order u/s 146(1) of the Code which resulted in ouster of the petitioner from the land in question. The learned Sub-Divisional Magistrate ignored the pleas raised by petitioner which were based on documents, reports of Police, Patwari and previous SDM. The learned SDM failed to notice that respondent No. 4 even had also gone to Civil Court and filed a suit

for injunction on 21.6.1997 in which ex parte ad interim injunction was granted in his favor on 23.6. 1997. This was also a good ground for asking the respondent No. 4 to have his relief from the Civil Courts where he had already gone.

Thus this Court is of the considered view that the proceedings initiated u/s 145 of the Code by respondent No. 4 were mala fide and an attempt to dispossess the petitioner from the land in question. The proceedings, Therefore, were patently illegal and a blatant abuse of the process of law.

Learned SDM while passing an order u/s 146(1) of the Code attaching the land in question acted contrary to the settled position of law that in all those cases where an order of Civil Court, whether final or interim is in force, the proceedings u/s 145 of the Code must not be initiated and the parties should be left to seek their remedy from the Civil Courts only. In the present case the status quo order based on the report of the Local Commissioners passed by the High Court was in force on the date of the passing of the order u/s 146(1) of the Code. M/s Homestead and Respondent No. 4 could not circumvent the status quo order by merely executing sale deeds in favor of respondent No. 4 who being successor in interest of M/s. Homestead had stepped into his shoes. The reply filed by the petitioner and the documents placed on record had clearly brought this order to the notice of the SDM but still he decided to go ahead with the attachment order and thereby unsettled the settled possession of the petitioner in respect of the land in question. The judgments reported in *Mahant Ram Saran Dass Vs. Harish Mohan & Anr.* JT 2000 (Supp.2) SC 438, *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, *Jhummal alias Devandas Vs. State of Madhya Pradesh and Others*, and *In Sardari Lal and Another Vs. The State of Punjab and Others*, clearly lay down that a Criminal Court should not invoke its jurisdiction when question of possession is being examined by the Civil Court and parties are in a position to approach the Civil Court for orders such as injunction or appointment of receiver. Thus, the impugned order passed by learned SDM is unsustainable.

The plea of respondent No. 4 that the petitioner could have approached the SDM instead of coming to this Court is based on sub clause (5) of section 145 of the Code, which authorises the Magistrate to cancel his order u/s 145(1) of the Code. This Court is of the considered opinion that in view of the approach of the learned SDM in the matter of ignoring the pleas raised by the petitioner and the material on record and the situation created by order u/s 146(1) of the Code, the petitioner had every reason to believe that he would not get the relief from the SDM concerned and as such had a right to come to this Court with a prayer to exercise its inherent powers to give him speedy relief as the impugned proceedings were patently perverse and illegal.

The Proceedings u/s 145 of the Code are primarily aimed at preventing breach of peace on account of disputes in regard to the possession of any land or water or the boundaries thereof only in those emergent situations where breach of peace is imminent. The apprehensions where breach of peace is imminent. The apprehension of breach of peace only confers jurisdiction upon a Magistrate and

empowers him to intervene in the matter which is pre-dominantly Civil in nature. In this case the petition u/s 145 of the Code was filed on 17.9.1997 but the order of attachment u/s 146(1) of the Code was passed on 14.11.2000. Between September , 1997 to November, 2000 i.e. for a period of over three years and two months there was no breach of peace whatsoever in regard to the possession of the land in question and as such the learned Magistrate acted without any legal justification to attach the land in question u/s 146(1) of the Code throwing the petitioner out of the said land. On this ground also, the impugned order u/s 146(1) of the code is liable to set aside. The impugned order had the effect of achieving what the respondent No. 4 had not been able to achieve through Civil Courts and as such it can be safely said that the learned SDM had gone over the head of Civil Courts which were seized of the controversy in regard to possession of the land in question.

According to Section 145(4) of the Code if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date of the report of the Police officer or other information received by the Magistrate or after that date and before the date of his order under Sub Section (1), he may treat the party so dispossessed as if his order under Sub-section (1). The underlying object of this provision is to narrow down the scope of inquiry to be conducted by the SDM so that the person forcibly dispossessed with two months preceding the date of the receipt of the report of police officer or other information or after the filing of the petition but before the passing of an order Sub-clause (1) of Section 145 may be put back in possession. If a person has been dispossessed earlier than two months preceding the report to the SDM the remedy lies in Civil Suit and not in proceedings u/s 145 of the Code. In the case in hand, the petition filed by respondent No. 4 u/s 145 of the Code, which was filed on 17.9.1997 itself, alleged that forcible dispossession had taken place on 24.6.1997. Therefore, there was clear admission that the dispossession was prior to two months preceding the filing of the petition and as such the proceedings u/s 145 of the Code and thereafter pass attachment order u/s (1) of the code. In *R.C. Patuck Vs. Fatima A. Kindasa and others*, Their Lordships of Apex Court had clearly held in paras (9 and 10 of the Judgment that in case a party has lost possession prior to the period mentioned in proviso to sub-clause (4) of Section 145 of the Code, the SDM has no powers to restore his possession in proceedings u/s 145 of the Code.

The contention of learned counsel for respondent No. 4 that he was the lawful owner of the land in question and was in possession cannot be sustained for the reason that neither possession nor ownership of respondent No. 4 is established on record. The ownership of respondent No. 4 is established on record. The ownership by virtue of the sale deeds which were being challenged by the petitioner for the last over 10 years is not free from doubt as the Civil Courts are yet to decide in regard to the validity of the sale deeds executed in favor of transfer or of respondent No. 4 might not have been a party to the Civil proceedings initiated by the petitioner against M/S Homestead and his son-in-law

karnail Singh but the respondent No. 4 does not get a title better than his transferor . The question of title apart, the material on record shows that neither respondent No. 4 nor his predecessor had ever come in possession of the land in question and as such only on the basis of sale deeds, the respondent No. 4 cannot be held to be in possession of land in question. The entries in revenue records are of no help to respondent No. 4 for the simple reason that the actual and physical possession of the land in question was never with respondent No. 4 or his predecessor in interest. These revenue entries were always under challenge on behalf of the petitioner and as such the SDM exercising powers u/s 145 of the Code was not supposed to go only by the revenue records but by the other material on record also in regard to actual and physical possession of the land in question. Therefore were reports by the Patwari, the Police as well as the predecessor of the learned SDM himself supporting the actual and physical possession of the petitioner which alone could be the basis for adjudicating the question of possession in proceedings u/s 145 of the Code. Revenue records based on sale deeds, which were under challenge, did not establish the possession of respondent No. 4.

This Court, Therefore, is of the considered view that impugned orders u/s 146(1) of the Code as well as proceedings u/s 145 of the Cr. P.C. were an abuse of the process of law and as such cannot be sustained. The orders passed by learned SDM u/s 145(1) dated 11.7.2000 as well as section 146(1) dated 14.11.2000 are Therefore quashed. The learned SDM is directed to restore the possession of the land to the petitioner within 10 days as he was in possession thereof at the time of the attachment.

The Trial Court file be sent back immediately.