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**(1990) 09 P&H CK 0078**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 4786-M of 1990**

Singh Ram and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

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**Date of Decision :** 06-09-1990

**Acts Referred:**

**Citation :** (1990) 2 RCR(Criminal) 581

**Hon'ble Judges :** S.D.Bajaj, J

**Advocate :** Surinder Lamba, S. S. Dinarpur, Advocates for appearing Parties

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## **Judgement**

S. D. Bajaj, J.

1. After having filed a civil suit for declaration of her status as joint owner of undivided share in the disputed lands and obtaining an order for maintenance of status quo therein regarding actual physical possession over these lands, Suit. Kishni respondent No. 3 is alleged to have approached the police in Police Station, Raipur Rani, for initiation of section 145 Cr.P.C. proceedings against the remaining joint owners of undivided shares in these lands.

2. Initially learned SubDivisional Magistrate ordered on 26th June, 1989 that no party shall enter on the lands in dispute. Realising the legal fallacy on 18th April, 1990 the land in dispute was attached and Naib Tehsildar, Raipur Rani was appointed as receiver.

Remaining joint owners have now approached this Court in Cr. Misc. No. 4786M of 1990 for quashing the proceedings before the learned SubDivisional Magistrate as also for vacation of the impugned orders aforesaid.

3. I have heard Shri S. S. Dinarpur, Advocate, for the petitioners, Shri Surinder Lamba, Advocate. for the State, Shri J. S. Duhan, Advocate, for respondent No. 2, Shri Hari Om, Advocate, for respondents 3 and 5 and have carefully perused the relevant records.

4. In law everyone of the owners in undivided share of joint lands is deemed to

be the owner in actual physical possession of every inch of the joint land. The right to exclusive possession becomes available to such joint owner after he gets the land partitioned and that also in respect of the land falling to his share. Civil Court thus acted strictly in accordance with the law while maintaining status quo recording possession. Assumption of jurisdiction by the learned SubDivisional Magistrate and making the orders dated 26th June, 1989 and 18th April, 1990 by him is thus wholly illegal.

5. in Naresh Thevar and others v. Executive Magistrate and Tehsildar and others, IV 1987(1) Crimes 886 it was observed : "It is also brought to my notice that under section 145(1) Cr.P.C., the Magistrate is not empowered to permit both the parties not to enter upon the land at any cost and such a direction is illegal and without jurisdiction. I find much force in the said contention as there is nothing empowering the Magistrate under section 45, Cr.P.C. to pass such an order."

6. In Mohinder Singh and others v. State of Punjab and others, 1989(2) Recent Criminal Reports 15 this Court observed : "The authority in Ram Sumer Puri Mahant's case (supra) is fully applicable to the facts of the case in hand, inasmuch as proceedings under Section 145 of the Code were initiated, while civil suit between the parties, regarding the same subject matter, was already pending. It is pertinent to note that the Civil Court had already directed maintenance of status quo concerning possession of the suit land. In these circumstances it hardly seems reasonable that the Criminal Court in preliminary proceedings could be permitted to decide the same question or to pass orders concerning attachment of property. and, appointment of receiver in respect thereof. when such functions can be more conveniently, and, effectively performed of the Civil Court."

7. For the reasons given above Criminal Misc. No. 4786M of 1990 succeeds and is allowed. Section 145, Cr.P.C. proceedings as also both the impugned orders passed therein by the learned SubDivisional Magistrate, Ambala, are quashed.