
(1983) 03 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 201-M of 1983

Smt. Harbans kaur and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-03-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1983) 1 RCR(Criminal) 219

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : C.B. Goal and Mr. D.D. Bansal, for the Appellant; Puran Chand and Mr. Ashok Jindal and Mr. C.M. Sharma, for A.G. Pb., for the Respondent

Final Decision : Allowed

Judgement

M.M. Punchhi, J.—This petition u/s 482 of the Code of Criminal Procedure, 1973 reveals a typical instance of misuse of procedural laws hurdling progress towards the goal of justice. Before me are two Petitioners and their supporting Respondents Nos. 12 to 16, who as heirs of one Chand Singh, are pitted on one side against a body of people known as Bhan Singh and Ors. as Respondents No. 2 to 8. The bone of contention is, and has been a piece of agricultural land in village Ghansur Khurd, Tehsil Malerkotla, District Sangrur, which has kept them for nearly nine years in courts of law without any logical end to the litigation. and it is at some stage or the other that litigation must end in the interest of justice, not only for its conduciveness to the parties but society at large, so that law and judicial process does not become a mockery.

2. Let me set out the facts giving rise thereto. The property, in question was owned by one Basakha Singh. Undisputably on January 10, 1959, he made a gift thereof in favour of Chand Singh. Basakha Singh died on February 9, 1960. The property in question was in possession of Bhan Singh and other. Thus Chand Singh, filed a suit for possession to recover the same. The trial court dismissed the suit on June 6, 1974. The Additional District Judge, Sangrur, reversed the

judgment and decree the suit. Bhan Singh and Ors. filed, R.S.A. No. 1899 of 1974. It came for admission before an Hon"ble Single Judge of this Court on December 13, 1974. It was admitted. A Learned Counsel accepted notice on behalf of Chand Singh. On his behest an order of status quo as to possession was passed. The nature of the suit clearly fixed that the possession was with Bhan Singh and Ors. but when it was disputed before the Motion Bench, it can safely be inferred that that was material before the Motion Bench to pass an order of status quo only. Now, what could possibly be that material, is another matter, which could presently be dealt with.

3. According to the Petitioners, after the suit had been decreed by the Additional District Judge, Sangrur, their predecessor-in-interest Chand Singh obtained possession thereof on December 11, 1974, under warrants of the civil court. For the starting crop, a sum of Rs. 1,560/- had been assessed to be paid to Bhan Singh and Ors. which amount was paid in Court by Chand Singh. As is plain, it is two days thereafter that the parties were before the Motion Bench and assumptively possession on the strength of that event had been asserted before the Motion Bench. Yet, it came to be that in the following crop, Bhan Singh and Ors. yet were recorded as being in possession of the suit land. This gave rise to the proceedings u/s 145 of the Code of Criminal Procedure 1973 before the Sub-Divisional Magistrate, Malerkotla. The land in question was ordered to be attached and an Official Receiver was appointed who statedly took possession thereof on April 22, 1975 vide report No. 126. This step by the Sub-Divisional Magistrate was to the distaste of Bhan Singh and Ors. who approached this Court in revision as also under Articles 226/227 of the Constitution of India.

4. Gurnam Singh, J. on August 14, 1975 allowed the petition and ordered that the proceedings taken u/s 145 of the Code of Criminal Procedure, 1973, were uncalled for since the case had been taken to the civil court and a direction had been given by this Court to maintain the status quo regarding possession. As a sequel thereto it was ordered that direction of the learned sub-Divisional Magistrate requiring the parties to file written statement etc. as also for the appointment of Receiver (Naib-Tehsildar, Dhuri) was set aside.

5. At the heels of the aforesaid order, R.S.A. No: 1899 of 1974 was dismissed on August 25, 1975 within a span of eleven days, Incidentally, it may be mentioned that a Letters Patent Appeal against the judgment of the Hon"ble Single Judge too was dismissed. Successful as he was in civil litigation, Chand Singh then approached the sub-Divisional Magistrate praying for the delivery of possession of the land in question to him. He based his claim on the fact that the land in question had been delivered to him by warrant of the civil Court on December 11, 1974 and it is from him that possession had been taken by the Naib Tehsildar, Dhuri, as Official Receiver appointed by the criminal Court on April 24, 1975. The learned Sub-divisional Magistrate, vide his order dated May 3, 1977- (annexure P/3 to the present petition) made an observation that the report of the Receiver did not say as to from whom he had taken possession and further

went to infer that he could not have done so because the possession was disputed. It was also observed that the report simply said that he had taken possession. From the opinion, he received from the District, Attorney, he came to the view that physical possession of the land had been delivered to Chand Singh on December 11, 1974. Therefore to do justice to Chand Singh, he required of Bhan Singh and Ors. whom he termed as trespassers, to vacate the land and for the purpose of their request gave them five days to reap their standing crop. On the expiry thereof, the Receiver was directed to deliver possession to Chand Singh but it was left open for Chand Singh to claim rent in a regular suit from Bhan Singh and others.

6. Having obtained a breathing spell of five days and an opportunity to remove the standing crop, Bhan Singh and Ors. on May 6, 1977 (4th day thereafter) approached the civil court for injunction against the State of Punjab and Chand Singh seeking a restraint order for their taking possession and on delivering the same to Chand Singh. Along therewith an application under Order 39 Rules 1 and 2 of the CPC was filed. Obviously, the same was contested. The learned Judge of the civil court vide his order dated March 30, 1977, (annexure P/4) observed as follows:

From a copy of the report dated 11-12-1974, it is evident that in the execution application filed by Chand Singh, Defendant, the possession of the land was delivered to him and a compensation of Rs. 1560/- was assessed to be paid to Bhan Singh & Jang Singh etc. From the order dated August 14, 1975, it is also evident that at the time of admission of R.S.A. No. 1899 of 1974, Chand Singh had claimed that he was in possession of the disputed land and on account of his representation the Court ordered the status quo as to possession. This is prima facie established that the possession was delivered to Chand Singh in the execution of the decree obtained by him in the civil suit. The State of Punjab in their written statement filed on 11.8.1977 have also averred that the possession of the land has been restored to Chand Singh. They (Plaintiffs) have got no title to the suit land and if they are in possession they are only trespassers. An injunction is not an available remedy and as such attracts in the maximum "that, he who seeks equity must do equity."

7. It seems that the aforesaid order was not challenged in a higher forum and it is not known what became the fate of the suit. All the same, these observations by the civil court that the possession had been delivered to Chand Singh are weighty for the determination of the present petition and pointing out the glaring injustice done to the heirs of Chand Singh, his daughters and sons applied to the Sub-Divisional Magistrate, Malerkotla to put them in possession but this time the new incumbent in office turned a somersault and observed, vide his order dated December 18, 1980 (annexure P/5), that the applicants had not produced any evidence with regard to their being legal heirs of Chand Singh deceased and further that the possession of the land, which they wanted to take was not taken by any Receiver. On the rejection of such application, the heirs of Chand Singh

filed a revision petition before the Court of Session, Sangrur, but the same was dismissed by Mr. R.K. Syngal, Additional District Judge, Sangrur, vide order, (annexure P/7); observing that there is no document to show that the Receiver ever took possession of the land in dispute and there is no document to show that the Respondents took possession of the land in dispute from the Receiver. He left the order of the sub-Divisional Magistrate, Malerkotla, un-interfered with and that has driven the Petitioners to this Court crying for relief.

8. At the out-set, it may be mentioned that Learned Counsel for the contesting Respondents raised a preliminary objection that a petition u/s 482 of the Code of Criminal Procedure, 1973 was not maintainable as it was in the nature of second revision petition. The argument, on the face of it is not tenable. Undoubtedly, a second revision petition is not maintainable against the impugned order of the Sub-Division Magistrate, but this Court has ample powers u/s 482 of the Code of Criminal Procedure, 1973 to pass appropriate orders to prevent the abuse of the process of the court as also to secure ends of justice.

9. The second objection in that regard is that there is a finding of fact recorded by the Sub-Divisional Magistrate as also the revisional court that the Receiver had not taken possession of any land much less that the contesting Respondents had taken possession of the land from the Receiver; and on that score no relief can be granted to the Petitioners. That argument too is not tenable as would be presently seen.

10. There is a wide difference in the concept of Receivership as has been provided in Section 145 of the Code of Criminal Procedure, 1973 than in Order 41 Rule 1 of the Code of Civil Procedure.

The attachment of land under the former law is that the property which is the subject matter of dispute u/s 145 of the Code of Criminal Procedure, becomes custodia legis and the Receiver is only a functionary of the Court to take possession thereof and to manage it to the best of his ability subject to the control of the court and even after effecting attachment, it is not mandatory for the magistrate to appoint a Receiver for he can otherwise take steps to manage the land. Under the latter Code, a civil court by appointing a Receiver does not necessarily assume possession over the land as such, but some one is appointed to take charge for the purpose and remain accountable to the court as also the parties to the suit in accordance with the directions of the court. On this fundamental difference, it has to be noticed that the Receiver herein had taken possession of the land on April 22, 1975 and he did not have to specify as from whom he had taken possession thereof. That is a matter in the instant case to be spelled out from the patent facts on the record. Under the orders of the civil court, Chand Singh had been delivered possession of the land in question on December 11, 1974 towards the satisfaction of the decree. It could then in no case be said that it was trespassed upon again so as to leave the judgment and decree of the court non existent and in that regard meaningless. It is the duty of all courts to lean in favour of maintenance of court orders and towards their

enforced stability certainly being one of the essential requisites of law and people's rights. and no procedural tangle should cloud such a situation for otherwise the purpose of justice becomes meaningless and would encourage chaos and disrespect for law. In that view of the matter, it seems to me that the Sub-Divisional Magistrate, Malerkotla went off the track on asking meticulous proof that the petitioners were heirs of Chand Singh or that it was not known from whom the Receiver had taken possession or not. The court itself should not find fault with its executory process It is presumed to have been undertaken with all propriety, rigor and formality. Thus I have no hesitation to observe that there was complete failure of duty of the Sub-Divisional Magistrate, Malerkotla on having assumed possession over the land in dispute, by not having given it over to Chand Singh, or for that matter his heirs, (when especially litigation on all fronts stands concluded), and the same error seemingly was committed by the learned Additional Sessions Judge, Sangrur.

11. For what I have held above, the impugned orders of the Sub-Divisional Magistrate, Malerkotla as also that of the Additional District Judge, Sangrur are quashed and it is directed that the Petitioners and their supporting Respondents be delivered the land in dispute forthwith and if need be with the aid of police, with the standing crop, for the contesting Respondents can lay no claim thereto as a pretext to hold on to the land on that score. Accordingly this petition is allowed in these terms.