

**(1997) 11 P&H CK 0067**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 4293-M of 1991**

Sohan Singh

APPELLANT

Vs

Malook Singh

RESPONDENT

**Date of Decision : 12-11-1997**

**Acts Referred:**

**Citation : (1998) 1 RCR(Criminal) 511**

**Hon'ble Judges : M.L.Singhal, J**

**Advocate : D.V. Gupta, B.S. Sewak, Advocates for appearing Parties**

## **Judgement**

M.L. Singhal, J.

1. This is a Criminal Misc. petition filed under Section 482 Cr.P.C. by Sohan Singh and others petitioners whereby they have prayed the quashing of order dated 16.5.1989 (Annexure P2) passed by the SubDivisional Magistrate, Gurdaspur initiating proceedings under Sections 145 Cr.P.C. and ordering the land in their possession to be attached, receiver to be appointed for taking possession of the said land from them. They have further prayed for the quashing of order dated 8.1.1991 (Annexure P3) passed by the Additional Sessions Judge, Gurdaspur, dismissing their revision against the order Annexure P2.

Now the facts in brief :

2. Sohan Singh petitioner has been in possession of agricultural land measuring 20 kanals 5 marlas situated in village Theh Thikha, Tehsil and District Gurdaspur since 8.4.1974 in pursuance of mortgage deed executed by its previous owner Tara Singh. Respondent No. 1 Malook Singh claims that he has purchased this land from Wassam Singh son of Tara Singh after the death of Tara Singh vide registered sale deed executed in the year 1983. Respondent No. 1 wanted to use force so as to take possession from Sohan Singh unlawfully and forcibly. To thwart his effort to dispossess him forcibly, Sohan Singh filed a civil suit for permanent injunction in the Court of Sub Judge Gurdaspur on 23.7.1983, which was decreed on 18.12.1984 and thereby respondent No. 1 was restrained from

taking possession of land forcibly i.e. otherwise than in due course of law. In that suit, respondent No. 1 appeared and made statement that he would take possession in due course of law. Thereupon the Sub Judge, Ist Class, Gurdaspur passed order on 16.3.1984 directing Malook Singh that he shall take possession in due process of law and that he will take possession only after redeeming the land. Thereafter, the said suit was decreed. Malook Singh filed a suit for possession by way of redemption in the Court of Sub Judge on 14.5.1984. On 8.1.1985, the suit was decreed ex parte preliminarily. On 10.5.1985, the suit was finally decreed for possession through redemption. The decree obtained by respondent No. 1 for possession through redemption was without jurisdiction because in Punjab, redemption of agricultural land is governed by the Punjab Redemption of Mortgages Act, 1913 and the redemption can be ordered by the Collector on an application made to him in that behalf by the mortgagor desirous of redeeming the land. When Sohan Singh came to know of the ex parte decree for redemption in favour of Malook Singh, he filed application under JUDGMENT 9 Rule 13 CPC for its setting aside. That application is pending. On 22.11.1985, the executing Court stayed the execution of the decree and recalled the warrant of possession as Sohan Singh furnished security in pursuance of the direction given by the executing Court while staying the execution of the decree. These facts have been taken note of by the Additional Sessions Judge in order Annexure P3, which is sought to be quashed now. In proceedings under JUDGMENT 9 Rule 13 CPC, Sohan Singh filed an application under JUDGMENT 6 Rule 17 C.P.C. for amendment which was declined. Sohan Singh petitioner filed revision against that order in the High Court. The civil revision petition No. 2511 of 1990 arising out of an interim order passed in proceedings under JUDGMENT 9 Rule 13 C.P.C. was disposed of by the High Court and the matter was ordered to be taken up again by the Subordinate Judge for recording evidence. It is claimed that Sohan Singh is in actual possession of the land and he has not been dispossessed so far through any process issued by the Court. The warrant of possession which has been issued was recalled on petitioner's furnishing security. JUDGMENT Annexure P1 staying the execution of the decree for redemption is still in force. Respondent Malook Singh filed complaint under Section 145 Cr.P.C. with SHO Police Station, Kalanaur, District Gurdaspur, who put in Kalendra in the Court of Sub Divisional Magistrate, Gurdaspur. The petitioner appeared before the Sub Divisional Magistrate, Gurdaspur and brought to his notice the entire facts. Vide order Annexure P.1/A, the Sub Divisional Magistrate, Gurdaspur ordered the dropping of proceedings under Section 145 Cr.P.C. He ordered that the receiver will hand over the possession to the party who succeeds in the civil suit. The application under JUDGMENT 9 Rule 13 CPC filed by Sohan Singh petitioner for setting aside the ex parte redemption decree is still pending. The redemption decree has not so far been executed. The execution proceedings have been stayed. Malook Singh respondent got instituted proceedings under Sections 145/146 Cr.P.C. unjustifiably. The Sub Divisional Magistrate, Gurdaspur passed order Annexure P2 on 16.5.1989 without noticing Annexure P.1. The facts mentioned in Annexure P.1 were not disclosed to the Sub Divisional Magistrate,

Gurdaspur by Malook Singh respondent. The Sub Divisional Magistrate, Gurdaspur passed order Annexure P2 and appointed respondent No. 2 as receiver and directed him to take possession of the land in ignorance of order Annexure P1 passed by the Civil Court. The Additional Sessions Judge, Gurdaspur dismissed the revision vide order Annexure P3 unjustifiably. The Additional Sessions Judge, Gurdaspur while disposing of the revision observed that Sohan Singh petitioner is mortgagee and he is unnecessarily sticking to the land. He is entitled to receive Rs. 10,000/ only which has been deposited. JUDGMENT Annexure P2 was only an interlocutory order and therefore no revision lay. These observations made by the Additional Sessions Judge Gurdaspur are wrong inasmuch as possession is with the petitioner and there is no evidence that he has been dispossessed. Sections 145/146 Cr.P.C. cannot be used to dispossess the one who is in possession. JUDGMENT Annexure P2 aims at removing him from possession. It is of civil consequence and affects the civil rights of the petitioner. It is not interlocutory order. Revision was competent against such an order.

3. Sohan Singh claims to have been in possession of the land measuring 20 kanals 5 marlas as mortgagee from its previous owner Tara Singh. Malook Singh claims to have purchased this land from Wassan Singh son of Tara Singh after the death of Tara Singh vide registered sale deed executed in the year 1983. After the death of Tara Singh, Wassan Singh was claimed to be the heir of Tara Singh on account of bequest made by Tara Singh in favour of Wassan Singh. Sohan Singh was in possession of the land as mortgagee. To Malook Singh only equity of redemption was sold. Malook Singh could claim to be put in possession after he had successfully redeemed the mortgage. Earlier proceedings under Section 145 Cr.P.C. were initiated with regard to this land but those were dropped by the Sub Divisional Magistrate, Gurdaspur vide order Annexure P1/A dated 7.1.1988 by observing that since the competent civil Court is already seized of the matter for deciding about possession of the disputed land, it will be fruitless exercise to give concurrent finding in criminal proceedings. It was also observed that the receiver will hand over the proceeds of the land to the party who is found successful in the civil suit over possession between the parties. Proceedings under Sections 107/151 Cr.P.C. were also dropped as in view of the pendency of the civil litigation there appeared to be no danger of breach of peace. In application for setting aside the ex parte decree for redemption, Sohan Singh made an application for stay of execution proceedings. The Senior Sub Judge, Gurdaspur vide order Annexure P1 stayed the execution proceedings, Sohan Singh was admittedly in possession and he was sought to be dispossessed in execution of the ex parte decree for possession for redemption, execution of which was stayed vide order dated 4.1.1986 Annexure P1.

4. The proceedings under Sections 145/146 Cr.P.C. could not have been taken when Sohan Singh was in possession and he was sought to be dispossessed by Malook Singh through execution of decree.

5. Section 145 Cr.P.C. comes into play when there is dispute concerning land or

water likely to give rise to breach of peace.

Section 145 Cr.P.C. reads as follows :

"(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.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(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 any and which of the parties was, at the date of the order made by him under subsection (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 subsection (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under subsection (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed but subject to such cancellation, the order of the Magistrate under subsection (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection (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 therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to subsection (4), may restore to possession the party forcibly and

wrongfully dispossessed.

(b) The order made under this subsection shall be served and published in the manner laid down in subsection (3).

(7) When any party to any such proceedings dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody of sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107".

Section 146 Cr.P.C. reads as follows :

"Power to attach subject of dispute and to appoint receiver (1) If the Magistrate at any time after making the order under subsection (1) of Section 145 considers the case to be one of emergency, or if he decides that one 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.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements, as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908.

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court the Magistrate

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him.

(b) may make such other incidental or consequential orders as may be just."

6. A bare perusal of Section 146 Cr.P.C. would indicate that Section 146 Cr.P.C. would come into play only when the Executive Magistrate decides that none of the parties was in possession and that if he did not swing in action there was likelihood of breach of peace.

7. In *Babu Singh v. State of Punjab and another*, 1991(3) RCR (Crl) 345 , plaintiff was in actual possession and had obtained temporary injunction from the civil Court restraining defendants from interfering with his possession and the proceedings under Sections 145/146 were started at the instance of the defendants and the Magistrate attached the land and appointed receiver. It was held that initiation of proceedings under Sections 145/146 Cr.P.C. was abuse of the process of the Court. Proceedings under Sections 145/146 Cr.P.C. were quashed and the receiver was directed to deliver back the possession of the land from whom possession had been taken by him. While passing order Annexure P1/ A on 7.1.1988, Sub Divisional Magistrate had observed that the civil Court was already seized of the matter for deciding the question of possession of disputed land. It would be fruitless exercise to determine that question in criminal proceedings. In these premises, he dropped the proceedings under Section 145 Cr.P.C. Where was the occasion for him to initiate the proceedings under Sections 145/146 Cr.P.C. over again ? Where was the occasion for him to have observed that it had been made to appear to him that the dispute likely to induce breach of peace existed between Sohan Singh etc.first party and Malook Singh etc.second party over possession of the land measuring 20 kanals 5 marlas ? Additional Sessions Judge, Gurdaspur observed in his order Annexure P3 that Sohan Singh could not produce any material before the police as to why he is still retaining the possession of 20 kanals 5 marlas of land. This shows that Sohan Singh was in possession of the land, Sohan Singh was mortgagee with possession for a sum of Rs. 10,000/. Malook Singh could take possession from him after redeeming the mortgage. Shri Tara Singh Sub Judge 1st Class, Gurdaspur passed decree on 18.12.1984 in favour of Sohan Singh restraining Wassan Singh and Malook Singh from dispossessing Sohan Singh from the land except in due course of law. Malook Singh obtained ex parte decree for possession by redemption from the court of Senior Sub Judge, Gurdaspur on 10.5.1985. Sohan Singh filed an application for setting aside the ex parte decree on 16.11.1985. On 22.11.1985, Senior Sub Judge stayed the execution of the decree on Sohan Singh's depositing security in the sum of Rs. 10,000/ for mesne profits. Warrant of possession was ordered to be recalled on compliance of the direction given in order dated 22.11.1985 by Senior Sub Judge, Gurdaspur.

8. In my opinion, there was no warrant for the initiation of the proceedings under Section 145/146 Cr.P.C. when the matter was pending before the Civil Court. It

was held in Nachhattar Singh v. State of Punjab and others, 1994(2) RCR 439 that if a party is in actual possession of the land and there is likelihood of breach of peace, then the only proper action would be to resort to security proceedings under Section 107 Cr.P.C.

9. In Major Singh v. Sukhdev Singh, 1991(2) RCR 531 it was held that where civil Court is already seized of the matter, proceedings under Sections 145/146 Cr.P.C. will be abuse of the process of the Court. Initiation of proceedings under Sections 145/146 Cr.P.C. after the civil Court had become seized of the matter as to possession, was unwarranted and abuse of the process of the Court.

10. For the reasons given above, this Criminal Misc. petition is allowed and the impugned orders are set aside. Receiver will restore possession to the party from whom he had taken the same.