
(1993) 12 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 635 and 15731 of 1993

Tara Singh

APPELLANT

Vs

State of Punjab and ors.

RESPONDENT

Date of Decision : 03-12-1993

Acts Referred:

Citation : (1994) 1 RCR(Criminal) 200

Hon'ble Judges : S S.Grewal, J

Advocate : R. K. Battas, Sh. I.P.S. Sidhu, Sh. Jasbir Singh, Advocates for appearing Parties

Judgement

S. S. Grewal, J.

1. This revision petition is directed against the order of Additional Sessions Judge, Jalandhar, dated 23rd of August, 1993, whereby order of the

Sub Divisional Magistrate for initiating proceedings under Section 145 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the

Code) and for appointment of Tehsildar, Jalandhar as Receiver was set aside and the Sub Divisional Magistrate, Jalandhar, was directed to

procure the accounts from the Receiver in respect of the land under attachment during the period it remained attached and release the same to the

parties within one month from the date of the order.

2. In brief facts relevant for the disposal of this case are that the present petitioner filed complaint against Gurbachan Singh and others respondents

for initiating proceedings under Section 145 of the Code and for appointment of receiver. The Sub Divisional Magistrate after summoning the

respondents and giving them opportunity to put in their written statement in respect of their claims regarding actual possession of the plot/land in

dispute, held that it was unable to decide as to which of the two parties was in possession of the disputed land at the relevant time and the order of

attachment dated 18/4/1988 was allowed to continue until the competent court determines the right of the parties with regard to the persons entitled

to the possession of the land in dispute and tehsildar was appointed as receiver.

3. The revision filed by Gurbachan Singh and others was allowed by the Additional Sessions Judge, Jalandhar, vide order impugned in this petition.

Aggrieved against the order of the Revisional Court, Tara Singh petitioner has filed the present revision petition.

4. The learned counsel for the parties were heard.

5. Admittedly both the parties are cosharers in the land in dispute. The possession is still joint and none of the parties had either alleged that there

was any partition between them at any stage nor any of the parties had claimed exclusive possession of the land or the property in dispute against

the opposite party. As such possession of one coowner over the property in dispute which is still joint shall be presumed to be on behalf of other

co sharers as well. Judgment Ex RW2/1 of the Civil Court dated 6/4/1992 also shows that the parties are in joint possession of the land in dispute

and Tara Singh is in joint possession to the extent of 1/5th share.

6. The learned Additional Sessions Judge, relying upon the authority in Chand Rattan and others v. Sham Rattan and others, 1989(2) Chandigarh

Law Reporter 679 has rightly held that the Sub Divisional Magistrate, Jalandhar, was not justified in initiating proceedings under Section 145 of the

Code against the parties in the instant case. Nor in the circumstances of the case the Sub Divisional Magistrate was justified in either passing the

order of attachment or appointment of receiver with regard to the land in dispute. I find further support in my view on this point from the Single

Bench authorities of this Court in Gurdial and ors. v The State of Punjab and ors., 1987(2) Recent Criminal Reports 702 and Dhanvir Singh v.

State of Punjab and anr., 1983(1) Recent Criminal Reports 538.

7. The authority of this Court in Makhan Singh v. The State of Punjab, 1974 CLR 409 wherein it was observed that even qua jointly possessed

properties disputes can be raised with regard to exclusive possession. The afore cited authority is not applicable to the facts of the case in hand

inasmuch as none of the parties has claimed to be in exclusive possession of any

portion of the joint property,

8. The impugned order passed by the learned Additional Sessions Judge, cannot be said to be illegal or perverse. Nor does it suffer from any legal infirmity.

9. For the foregoing reasons, I do not find, any merit in this petition the same is hereby dismissed.