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Court : Allahabad

Decided On : Jan-16-1996

Reported in : 1996CriLJ2413

Judge : N. Saxena, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 107, 116 and 145

Appeal No. : Criminal Misc. Writ Petition No. 103 of 1996

Appellant : Sanjai Kumar and anr.

Respondent : Vith Additional District Judge and ors.

Advocate for Def. : Standing Counsel and ;R.K. Awasthi and ;Ravi Kiran Jain, Adv.

Advocate for Pet/Ap. : Pradeep Saxena, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

N. Saxena, J.

1. The dispute relates to a house and shop situated in Mohalla Gandhi Tola, Tehsil, Nawabganj, District Bareilly. Sanjai Kumar and Anjai Kumar, who were real

brothers, claimed to have purchased the same from opposite party No. 4, Smt. Babita Gupta alias Pratibha Gupta, wife of Ram Prakash Gupta by means of a sale deed dated 27-7-1994. The property was a house only on the date of the said purchase and the petitioners thereafter, got constructed a shop in it and started business of jewellery therein. Opposite Party No. 4 Smt. Babita Gupta on 16-11-1994 instituted Civil Suit No. 473 of 1994 on frivolous allegations for declaration that she was the absolute owner in possession of the house in dispute and prayed for declaration that the sale deed dated 27-7-1994 executed by her was illegal, void and without consideration. It is not necessary to enter into the details of the suit but it is significant to mention that no interim order of any kind was passed by the civil Court in this suit. The petitioners contested the aforesaid suit by filing their written statement in January, 1995 and the proceedings were still going on. Smt. Babita Gupta on 12-11-1994 initiated proceedings under Section 145, Cr. P. C, admitting therein clearly that the petitioners were in possession over the disputed property since 27-7-1994 and prayed for getting the same vacated by their ejectment, Annexure 3 to the writ petition is the copy of her said application dated 12-11-1994. The learned Magistrate took cognizance of the matter and the petitioners filed their written statement on 25-2-1995 mentioning clearly that there was no dispute at all about possession over the disputed property. The fact of the pendency of the civil suit also was brought to the notice of the Magistrate concerned, who, however, on the request of Smt. Babita Gupta, respondent No. 4 made through her application dated 23-3-1995 under Section 145, Cr. P. C. ordered for the attachment of the disputed property. The petitioners on 13-9-1995 and 21-9-1995 moved application before the Magistrate concerned for dropping the proceedings under Section 145, Cr. P. C, as the civil suit in respect of the disputed property was pending decision between the same parties and there was no apprehension of breach of peace due to which proceedings were not maintainable. The Magistrate allegedly passed an illegal order on 22-9-1995, a copy of which is Annexure No. 10 to the writ petition.

2. The petitioners on 23-9-1995 filed a revision application against the order dated 22-9-1995 which was admitted by the learned District and Sessions Judge, the order of attachment was stayed and it was transferred to the Court of VIth Addl. Sessions Judge, Bareilly, who by his order dated 5-1-1996 wrongly and illegally

dismissed the same holding that it was not maintainable. Annexure No. 11 is the copy of the said judgment and order. The orders dated 22-9-1995 and 5-1-1996 deserved to be quashed as the civil suit was pending decision between the same parties. There being no other remedy open to the petitioners, they instituted this writ petition for getting quashed the order dated 5-1 - 1996 passed by the learned Vth Addl. District and Sessions Judge, Bareilly and order dated 22-9-1995 passed by Sub-Divisional Magistrate, Bareilly and for a writ in the nature of mandamus against the Sub-Divisional Magistrate not to proceed with the case any further under Section 145, Cr. P. C.

3. Opposite Party No. 4, Smt. Babita Gupta filed caveat apprehending institution of writ petition by the petitioners. Sri Ravi Kiran Jain, learned counsel, argued the case on behalf of the Caveator. This Court enquired from him as to whether he wanted time for filing counter-affidavit upon which he stated that he did not want opportunity for filing counteraffidavit and was prepared to argue the case on the question of admission. Naturally, therefore, there was no need of any rejoinder affidavit.

4. The only material question for decision was as to whether in the absence of an effective interim order indicating possession by the civil Court in the aforesaid civil suit in favour of either of the parties to the dispute, the proceedings under Section 145, Cr. P. C. had become liable to be dropped?

5. Learned counsel for the parties relied upon a few decisions of various Courts for and against on the aforesaid question and after going through the same I find that the decision which applied to the facts of the instant case was a decision of this Court reported in 1992 JIC 35, Abdul Gafoor v. State of U. P.. wherein it was held that the criminal Court continued to exercise the jurisdiction under Section 145, Cr. P. C., if no effective interim order was passed in the suit pending before the competent civil or revenue Court. This Court before laying down the aforesaid proposition of law, had considered some other decisions also. It would be proper to reproduce below the relevant findings of this Court in the said decision.

In the case of Ram Sumer Puri, Mahani, the question of title and possession over the subject- matter had already been adjudicated and the suit had been dismissed

by the Civil Judge. An appeal against the judgment and order of the Civil Judge was still pending. It was in this background that the Supreme Court did not approve the parallel proceedings under Section 145, Cr. P. C. in respect of the same subject-matter between the same parties. Thus, Sinner's case is not an authority on the question that proceedings under Section 145, Cr. P. C., must be dropped in all cases whenever a civil suit is pending in respect of the same subject-matter between the same parties or between the parties through whom the parties are claiming their rights. Of course, parallel proceedings should not be allowed to continue, if a party under Section 145, Cr. P. C., can seek an effective remedy/declaration from the Civil Court. Even in such a case, the proceedings under Section 145, Cr. P. C. should be dropped only when the Civil Court has passed some effective order indicating as to which of the parties was entitled to possession. In some cases, the proceedings should also be dropped when the Civil Court has appointed a receiver or has made some arrangement for the maintenance of such property. But, when the Civil Court does not clarify the position regarding the possession of the contesting parties by passing an effective order and simply passes an innocuous order like maintenance of status quo, the criminal proceedings are not to be dropped because in that case both the parties may stake their claim for possession and the situation may lead to the breach of peace. In such cases, even the proceeding under Sections 107/116, Cr. P. C. may not prove to be effective and the subject-matter may have to be attached by the Criminal Court. Of course, orders passed by the Criminal Court in such cases shall be subject to the decision of the Civil Court. Thus, the Magistrate is not bound to drop the proceedings pending in his Court in all cases under Section 145, Cr. P. C. for the simple reason that a civil suit is pending in the Civil Court in respect of the same matter between the same parties or through whom they are claiming.

6. In the instant case, Civil Court even did not pass order directing the parties to maintain status quo although the same would have been of no help as it would not have indicated the actual possession of either party. Thus, it is not a case in which any help would have been available to the Magistrate from the mere pendency of the civil suit between the parties for maintaining peace. The Magistrate was duty bound to maintain peace and, therefore, had got no alternative except to proceed further with the proceedings under Section 145, Cr. P. C. and the impugned

attachment order thus appealed to be perfectly legal and valid. The proceedings under Section 145, Cr. P. C, therefore, continued to be maintainable and the Magistrate could not be directed by this Court to drop the same.

7. The writ petition, under the circumstances, was totally devoid of merits and liable to be dismissed at the stage of admission. Ordered accordingly.

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