

Sukhdev Singh and anr. Vs. Sub-divisional Magistrate and ors.

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Court : Punjab and Haryana

Decided On : Aug-06-1996

Reported in : 1997CriLJ1326

Judge : P.K. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 107, 145, 146(1), 161(1) and 482; Code of Civil Procedure (CPC) - Order 6, Rule 17

Appeal No. : Criminal Misc. No. 157-M of 1996

Appellant : Sukhdev Singh and anr.

Respondent : Sub-divisional Magistrate and ors.

Advocate for Def. : Raman Gaur, Adv. (for Nos. 1 and 7),; P.C. Mehta and; Ra

Advocate for Pet/Ap. : Gurmit Singh, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.K. Jain, J.

1. This petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for quashing the complaint dated

21-11-1995 (Annexure P. 7) and the order dated 18-12-1995 (Annexure P.9), passed by the Sub-Divisional Magistrate, Sirsa, whereby, on initiation of proceedings under Section 145 of the Code, agricultural land measuring 8 Kanals, comprised in Square No. 132, Killa No. 23, situated in village Mangala, Tehsil and District Sirsa, has been attached and Tehsildar, Sirsa, has been appointed Supurdar under Section 146(1) of the Code.

2. Admittedly, the petitioners purchased the aforesaid agricultural land along with 16 Kanals more comprised in the same square bearing Killas Nos. 13 and 18 from one Jagir Singh son of Kaur Singh, vide registered sale deed dated 27-10-1980. Mutation No. 1886 (Annexure P.I) was sanctioned in their favour on 7-2-1981. Since the vendor-Jagir Singh was in self-cultivating possession of the agricultural land including the disputed one, actual physical possession was handed over to the petitioners and since then they are in cultivating possession thereof. It appears that after the sanction of the mutation (Annexure P.I), the Halqa Patwari did not incorporate the same in the Jamabandi for the years 1985-86 and 1990-91 and the name of the previous owner Jagir Singh continued in the revenue record. On the death of Jagir Singh, inheritance mutation bearing No. 2682 dated 13-3-1991 was sanctioned in favour of Milkhi Singh - the son, and Smt. Deepo and Smt. Bhagan Bai - the daughters of the deceased - Jagir Singh. When the mistake was discovered, the village Patwari entered 'Fard Badar' No. 27 on 26-8-1995, seeking permission to correct the mistake, which was allowed by the Assistant Collector II Grade on 30-8-1995. Copy of the 'Fard Badar' is Annexure P.2.

3. It has been alleged by the petitioners that the legal heirs of the deceased-Jagir Singh, having come to know about the error committed by the Patwari at the time of the preparation of 'Fard Badar' entered into a collusion with respondent No. 2. As a result of the said collusion, respondent No. 2 filed a civil suit on 12-9-1955 (copy of the plaint of which is Annexure P.3) claiming that he was cultivating the said land as a tenant since Kharif 1985. The suit was filed against respondents Nos. 3 to 5, who are the legal heirs of Jagir Singh. These respondents, being in collusion with respondent No. 2, filed a written statement admitting the claim of respondent No. 2. But the petitioners came to know about this conspiracy and moved an application for being impleaded as a party in the suit. Under the

circumstances, respondents Nos. 3 to 5, to show their innocence, filed an application (Annexure P.4) under Order 6, Rule 17 of the Code of Civil Procedure, retracting their admission made in their written statement on the ground that respondent No. 2 had played a fraud upon them. The petitioners then filed a suit for permanent injunction (Annexure P.5) against Milkhi Singh-respondent No. 3 (son of deceased vendor) and Siri Krishan-respondent No. 2, for restraining them from interfering with the ownership and in cultivating possession of the petitioners in respect of the land in dispute. On an application, ad interim injunction was issued by the Civil Court by order dated 30-11-1995 (Annexure P.6), thereby restraining both Milkhi Singh and Siri Krishan (respondents 2 and 3 herein) from interfering with the ownership rights and in actual and cultivating possession of the petitioners over the suit land. That suit is still pending between the parties.

4. On 21-11-1995, respondent No. 2 filed a complainant (Annexure P. 1) under Section 145 of the Code before the Sub-Divisional Magistrate, Sirsa, concealing all the material facts regarding, the ownership and possession of the land in dispute, and without impleading the petitioners as party-respondents. It has been alleged that the complaint was filed fraudulently and with a mala fide intention only against Milkhi Singh-respondent No. 3 and his son Resham Singh-respondent No. 6. The fact that a Civil Court relating to the property in dispute was pending in the Civil Court which had already granted interim injunction in favour of the petitioners, had also been concealed therefrom. Jagir Singh and his son did file a reply (Annexure P.8) disclosing all the relevant facts regarding the sale, title and possession to and of the petitioners over the land in dispute and the pendency- of the civil suit between the parties and the fact that an interim stay had already been granted in favour of the petitioners restraining Siri Krishan and others from interfering with their right and possession over the land in dispute. The Sub-Divisional Magistrate (respondent No. 1), without notice to the petitioners and without affording any opportunity to them to be heard, passed the impugned order (Annexure P.9) on 18-12-1995. Feeling aggrieved, the petitioners have invoked the jurisdiction of this Court under Section 482 of the Code for quashing the aforesaid complaint and the impugned order.

5. Notice was given to the respondents. Although respondents Nos. 3 to 6, who are the legal heirs of the deceased-Jagir Singh (vendor), have put in appearance, but have not contested the petition. In his reply, Siri Krishan-respondent No. 2 has stated that the petitioners have no locus standi to invoke the jurisdiction of this Court inasmuch as they were not parties to the complaint before the Sub-Divisional Magistrate; that he was inducted as a tenant to cultivate the land as a tenant on batai in the year 1985 by Jagir Singh - the then owner of the land and since then he is in continuous cultivating possession thereof and that after the death of Jagir Singh he continued to cultivate the said land on the same terms as a tenant under the legal heirs of deceased-Jagir Singh. He has denied the allegations of collusion between him and the legal heirs of deceased Jagir Singh and has stated that 'Fard Badar' was prepared and sanctioned in his absence. He has also alleged that the suit filed by the petitioner is a false and frivolous one and an application filed by him for Vacating the stay is still pending in the Civil Court. It has been further stated that the petitioners after exchanging their lands in civil suit No. 626-C of 1995, left the village permanently. It has been further stated that the petitioners have never been in possession of the land in dispute; that the dispute was between him and respondent No. 3 and his son, who were threatening to dispossess him forcibly and the proceedings have rightly been initiated under Section 145 of the Code and the Sub-Divisional Magistrate was justified in appointing a Supurdar under Section 161(1) of the Code.

6. I have heard the learned counsel for the parties and have perused the record.

7. Mr. Gurmit Singh, Advocate, learned counsel for the petitioners, has argued that admittedly the petitioners had purchased the land in dispute in the year 1980 from Jagir Singh vide registered sale deed and the mutation was sanctioned in their favour in the year 1991. Learned counsel for the petitioners has made a reference to the copies of the Khasra Girdawari (Annexures P. 10 and P.11) wherein the proprietors/owners have been shown to be in self-cultivation of the land in dispute, and the same contains a reference to the mutation regarding sale. While making a reference to the copy of the mutation (Annexure P.1), 'Farad Badar' (Annexure P.2), copy of the complaint (Annexure P.5) and copy of the order dated 30-11-1995 (Annexure P.6), passed by the Sub-Judge, has been argued by the learned

counsel that not only the revenue record but the Civil Court by an ad interim injunction (Annexure P.6) has recognised and upheld the actual and physical cultivating possession of the petitioners over the land in dispute and respondents Nos. 2 and 3 have been restrained from interfering with the rights and possession of the petitioners thereupon. It has been, thus, argued that once a civil litigation is pending wherein the right and actual physical possession has been recognised and upheld, the initiation of parallel proceedings under Section 145 of the Code and passing of the impugned order under Section 146(1) of the Code are an abuse of the process of the Court, without jurisdiction and liable to be quashed. In support of this plea, the learned counsel has placed reliance upon a judgment of the apex Court in *Ram Sumer Puri Mahant v. State of U.P.*, AIR 1985 SC 472 : (1985 Cri LJ 752), and certain decisions of this Court in *Balwant Singh v. State of Punjab*, (1995) 1 Cur CC 536; *Old Trust of Sarai Jagiri Mal Garashankar v. Sat Pal Soni*, (1995) 1 Rec Cri R 271; *Manohar Lal v. Sub-Divisional Magistrate*, (1993) 2 Cur CC 227; *Mst. Manzooran v. The State of Punjab*, (1987) 1 Rec Ces R 405.

8. On the other hand, Shri P.C. Mehta, Senior Advocate, while appearing on behalf of respondent No. 2, has vehemently argued that the mere pendency of the civil suit between the parties is no ground to quash the proceedings under Section 145 of the Code which are quite independent in their nature and are necessary to prevent an apprehension of breach of peace. It has been further pointed out by the learned counsel that the petitioners have already exchanged their lands and left their village and are no more residents thereof, and as such the version put forward by them is not credible. It has also been argued by the learned counsel that the petitioners are not parties in the proceedings initiated under Section 145 of the Code before the Sub Divisional Magistrate and as such they have no locus standi to challenge the impugned order. The learned counsel has placed reliance upon certain decisions of this Court reported as *Mohinder Singh v. Shri Dilbagh Rai*, (1976) 78 Pun LR 803 : (1977 Cri LJ 1029); *Jagdish alias Jagdish Kumar v. Sub Divisional Magistrate*, (1987) 1 Chand LR 487; *Sanjeev Kumar (Minor) through his father Sri. Jagdev Singh v. Sub Divisional Magistrate, Naraingarh*, (1990) 1 Rec Cri R 125; and *Jagdev Singh v. Hazara Singh*, (1990) 1 Rec Cri R 276.

9. I have considered the respective arguments advanced at the Bar and have perused the record as well as various decisions cited by the learned counsel at the Bar.

10. It cannot be disputed that Section 145 of the Code is intended to provide a special remedy for the prevention of breach of peace arising out of a dispute relating to immovable property. Its primary object is to maintain the public- peace and not to decide disputes between the contending parties or adjudicate upon the rights of the parties to possession. In cases of dispute regarding immovable property a party should not be permitted to litigate before the criminal Court when the civil suit is pending in respect of the same subject matter.

11. The question was examined by their Lordships of the apex Court in Ram Sumer Puri Mahant's case (1985 Cri LJ 752) (supra) and the following law was laid down (Para 2):-

'When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding under Section 145 of the Code, would not be justified. The parallel proceedings should not be permitted to continue and in the event of a decree of the Civil Court, the criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the Civil Court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.'

These views were reiterated in Prakash Chand Sachdeva v. State, (1994) 3 Rec Cri R 217: (1994 Cri LJ 2117 (SC).

12. In a recent decision rendered in Dharampal v. Smt. Ramshri(1993) 1 JT(SC) 61 : (1993 Cri LJ 1049), their Lordships were pleased to observe as under (at p 1052 of Cri LJ):-

'It is obvious from sub-section (1) of Section 146, that the Magistrate is given power to attach the subject of dispute 'until the competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. The determination by a competent Court of the rights, of the parties spoken of there has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a receiver in respect of the subject-matter of the dispute pending the final decision in the suit. The moment the competent Court does so, even at the interim stage; the order of attachment passed by the Magistrate has to come to an end. Otherwise, there will be inconsistency between the order passed by the Civil Court and the order of attachment passed by the Magistrate.'

Thus, it becomes clear that Magistrates exercising their jurisdiction under Section 145 of the Code would always do well to take note of the orders passed by the Civil Courts and do respect them in so far as they are consistent with their duties under Section 145. If a civil Court decides the question of possession even for the purpose of giving an interim relief, the Magistrate acting under Section 145 of the Code, should respect that decision as well. During the enquiry under Section 145 of the Code, if it is brought to the notice of the Criminal Court that there is an order of the Civil Court in regard to the possession even by way of interim injunction, the same should be given due weight and it is expedient that the Criminal Court should uphold the order of the Civil Court, and it makes no difference whether the order of the Civil Court was passed before or after the initiation of the proceedings under Section 145 of the Code. The criminal Court should better drop the proceedings initiated under Section 145 when there is such an order of injunction issued by the Civil Court in regard to the possession, and if necessary may initiate proceedings under Section 107 of the Code.

13. Adverting to the case in hand, it is not disputed that the land in dispute was purchased by the present petitioners vide sale deed dated 27-10-1980 from Shri Jagir Singh, the then sole owner thereof, and thereafter mutation No: 1886 (Annexure PI) was also sanctioned in favour of the petitioners on 7-2-1981. The Copies of the 'Khasra Girdawari (Annexure P10 and PI 1) prima facie go to show

that the land in dispute has always been in the self-cultivation of the proprietors thereof. It is also not disputed that the present petitioners have filed a suit (Annexure P.5) on 28-11-1995 against respondents Nos. 2 and 3, herein, and by order dated 30-11-1995 (Annexure P.6) both these respondents have been restrained from interfering with the right, title and possession of the petitioners over the suit land. In these circumstances, respondent No. 2 filed the complaint (Annexure P.7) under Section 145 of the Code without impleading the present petitioners as party-respondents, although these petitioners had already filed the civil suit against respondent No. 2. It is also important to note that this complaint was filed against the legal representatives of deceased Jagir Singh who had in reality no right, title or interest in the land in dispute since the same had been sold away by the deceased Jagir Singh in the year 1980. Respondent No. 3 filed a reply (Annexure P.8) disclosing the sale of the land in dispute in favour of the petitioners in the year 1980 by his father and that the petitioners were in cultivating possession thereof. He also disclosed the pendency of the civil suit and that an ad interim injunction had already been granted against the complainant and himself. Even after coming to know about the title and possession of the petitioners over the land in dispute, and the factum of the pendency of the civil suit and the operation of the ad interim injunction granted therein, the Sub Divisional Magistrate passed the impugned order in an arbitrary manner in violation of the well-settled principles of law.

14. From a perusal of the impugned order (Annexure P.9), it is interesting to note that the same is based on an inspection of the land in dispute by the Sub Divisional Magistrate in the absence of the parties, and the alleged enquiry made by him from the Patwari and other respectables without any notice to the parties. In other words, the Sub Divisional Magistrate himself became a party to the litigation and passed the impugned order in contravention of the Civil Court order. The various judgments relied upon by the learned counsel for respondent No. 2 has no bearing upon the factual position of the case and particularly in view of the law laid down by the apex Court, as discussed above. Thus I have no hesitation in holding that the impugned order is arbitrary in nature and amounts to an abuse of the process of law.

15. For the foregoing reasons, this petition is allowed. The complaint dated 22-11-1995 (Annexure P.7) and the order dated 18-12-1995 (Annexure P.9), passed by respondent No. 1, are hereby quashed.

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