

**Deepika and ors. Vs. State and ors.**

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**Court :** Delhi

**Decided On :** Jan-07-1994

**Reported in :** 1994IAD(Delhi)234; 1994(1)Crimes971; 1994(28)DRJ323

**Judge :** Anil Dev Singh, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145

**Appeal No. :** Criminal Revision Appeal No. 129 of 1992

**Appellant :** Deepika and ors.

**Respondent :** State and ors.

**Advocate for Pet/Ap. :** Mohinder Kumar,; Meera Bhatia and; G.S. Chatterjee, Adv

**Judgement :**

**Anil Dev Singh, J.**

(1) This is a criminal revision against the orders of the Sub Divisional Magistrate dated July 8, 1992 and August 5, 1992 where by proceedings under section 145 of the Code of Criminal Procedure (for short ' the Code') were initiated and sealing of the part of the premises bearing No.734, Shora Kothi, Subzi Mandi, Delhi was also directed.

(2) The revision petition has been filed with the following allegations: The property, bone of contention between the petitioner and respondent No.2 to 4, which is a part of a big katra, comprises of two rooms on the ground floor with an open verandah in front thereof. The petitioners are also residing in different portions of the katra. Earlier Parvati Devi and her sons including Krishan Lal Sindhi, their wives and children were also living in the property in dispute. Some years back Parvati Devi and her son Krishan Lal Sindhi started a lucky draw scheme and made the petitioners and some other people as members of the same. The petitioners were regularly paying money to Parvati Devi and her son for the aforesaid scheme. After sometime Parvati Devi and Kishan Lal stopped the draws and failed to make return payments to the petitioners with the result that a sum of Rs. 2 lakhs became due and payable by former to the latter. Not being able to meet the demands of the petitioners for payment the family of Parvati Devi left the premises and locked the property in dispute. On March 30, 1992 Parvati and her son Krishan Lal are said to have requested the petitioners to allow them to remove their belongings from the property in question. The petitioners acceded to their request on the condition that Parvati Devi and Krishan Lal would make the requisite payment to the petitioners within 15 days failing which the defaulters would hand over the possession of the property to the petitioners and the arrangement would be treated as an agreement to sell the property to the petitioners and the consideration for the sale would be the amount which Smt. Parvati Devi and Krishan Lal were liable to pay to the petitioners. The defaulters agreed to the proposal and also gave their consent to execute a regular sale deed in favor of the petitioners in the event of their not being able to fulfill the promise to pay a sum of Rs.2 lacs within 15 days from March 30,1992. Parvati Devi and Krishan Lal failed to make the payment of the dues within the stipulated period with the result that the agreement between the parties was required to be treated as an agreement to sell in favor of the petitioners. Contrary to the expectations of the petitioners, Parvati Devi executed a sale deed of the property in dispute in favor of respondent No.2 Smt. Kamlesh Kumari, wife of Shri Som Parkash on April 10,1992. It is further alleged that Som Parkash approached the petitioners and informed them that the property had been purchased by his wife and the possession of the same should be handed over to him Along with the keys of the

same. The petitioners refused to oblige Som Parkash as the property stood vested in them under an oral agreement dated March 30, 1993. It is also alleged that Som Parkash visited the property and tried to break open the locks but his efforts did not fructify and the petitioners are said to have lodged a report on May 1, 1992 for the said intrusion. According to the petitioners the property in dispute was converted into a Mandir, where puja was being performed regularly and even Bhagwati Jagran took place on May 17, 1992.

(3) It is not disputed that respondent No.2 herein brought a suit for permanent injunction against some of the petitioners for restraining them from interfering with her possession, inter alia on the grounds: that respondent No.2 is in possession of the property; that she had purchased the same from Parvati Devi by registered sale deed dated April 10, 1992; that earlier her husband Som Parkash was a tenant in the same property with effect from February 1, 1992 at a rental of Rs.60.00 per month; and that the property was being used for residential cum commercial purposes. In the written statement, the petitioners herein, inter alia, averred that they were in possession of the property since March 30, 1992 and Som Parkash was trying to take forcible possession from them. On May 12, 1992 the learned Sub Judge directed the parties to maintain status quo.

(4) On October 5, 1992 respondent No.2 filed an application before the learned Sub Divisional Magistrate for initiating proceedings against the petitioners under Section 145 of the Code with the allegations that respondent No.2 was in lawful possession of the property and the petitioners were threatening to dispossess her. Preliminary order was passed by the learned S.D.M. on July 8, 1992 whereby the petitioners herein were asked to appear before him on July 20, 1992 along with their reply. The petitioners appeared on July 30, 1992 and the case was adjourned to August 4, 1992. On August 4, 1992 the matter was heard by the learned Sdm and the orders were pronounced on August 5, 1992 whereby the learned Sdm attached the property and directed sealing thereof. It is this order as also the preliminary order dated July 8, 1992 which are impugned in the present revision petition.

(5) The main thrust of the argument of the learned counsel for the petitioners is that the proceedings under Section 145 of the Code could not be initiated as the matter in dispute was subject matter of a civil suit and the learned Sub Divisional Magistrate ought not to have exercised the powers there under. According to him the proceedings under Section 145 of the Code are an abuse of the process of law.

(6) Learned counsel for the respondent No.2 contended that since the dispute pertains to an immovable property with regard to which there was an apprehension of breach of peace, the proceedings under Section 145 of the Code were rightly initiated. Learned counsel also urged that there is no impediment in making an order under Section 145 of the Code in respect of an immovable property which was also a subject matter of a civil suit.

(7) The respondent's counsel further submitted that the present revision against the impugned orders passed by the Sdm under Section 145(1) and 146 of the Code is not maintainable.

(8) The purpose of Section 145 of the Code is to preserve peace between parties to the disputes arising in connection with possession of the immovable property. The disputes arise where both the parties claim to be in possession of a land or a building. The magistrate assumes jurisdiction and initiates proceedings under this section on being satisfied from the report of a police officer or on the basis of other information that dispute with regard to the possession of the immovable property is likely to cause breach of peace. After making a preliminary order under section 145(1) of the Code, the Magistrate can, proceed under section 146(1) of the Code and pass an order of attachment of the property and other consequential orders provided the conditions laid therein are fulfilled.

(9) The orders passed under Section 145(1) and 146(1) of the Code are transitory in nature and the object of attachment is to keep the property in custodia legis so as to ward off breach of peace by the contesting parties in their attempt to obtain actual physical possession of the property in dispute. The Magistrate after passing the order of attachment is required to proceed with the matter so as to pass a final order under sub-section (6) of Section 145 of the Code. While passing that order

he is required to take into consideration the relevant material evidence which comes on record.

(10) Learned counsel for the respondent by way of a preliminary objection submitted that the impugned order of attachment passed by the Sdm was tentative in nature and could not be termed as a final order. According to him the bar of Section 397(2) of the Code would be attracted as no revision would lie against an interlocutory order of the subordinate court. In support of this submission he relied upon a Division Bench decision of the Punjab & Haryana High Court in Kartar Singh and others v. Smt.Pritam Kaur and another 1985 (1) CLR 338. On the other hand, learned counsel for the petitioner submitted that the powers of the court in interfering with the order passed by the learned Magistrate are vast and are not circumscribed by the provisions of Section 397(2) of the Code. He submitted that the Court can proceed to quash the order of the learned Magistrate under Section 482 of the Code on finding that the order is suffering from an infirmity or an illegality, so as to satisfy the ends of justice.

(11) In Kartar Singh and others (Supra) the Division Bench of the Punjab & Haryana High Court has taken a view that an order of attachment of immovable property under Section 146(1) of the Code is in the aid of proceedings under Section 145 and is of a transitory nature and attachment cannot be termed as final. It was further held that the order being purely of an interlocutory nature a revision would be barred under Section 397(2) of the Code.

(12) No decision of this court has been brought to my notice with regard to the preliminary objection raised by the learned counsel turn the respondent. As submitted by the learned counsel for the petitioner it can be legitimately argued that the provisions of Section 482 of the Code vests the High Court with vast powers for rendering justice to the litigants by passing appropriate orders. Undoing of injustice is the basic principle envisioned by Section 482 of the Code. Where no specific provision is made in the Code to deal with a situation, the provisions of Section 482 of the Code can be pressed into service to do justice to the parties. The questions whether or not an order of attachment passed under Section 146(1) of the Code would be covered under Section 397(2) and whether or not Section

482 of the Code could be resorted to for knocking off proceedings under Section 145 thereof, in my opinion, require an authoritative decision by at least two Judges of this court.

(13) The other question raised by the learned counsel for the respondent namely, whether the Magistrate should proceed with the matter under Section 145 of the Code when the dispute with regard to the possession of the property is pending before the civil court is a question which arises very often and there appears to be a grey area which needs to be illuminated. Learned counsel for the petitioner relied upon the decisions of the Supreme Court in Ram SumerPuri Mahant Vs . State of U.P. and others : AIR 1985 SC472 and Dharampal and others, Vs.Ramshri (Smt.) and others : 1993 CriLJ1049 in support of his submission that parallel criminal proceedings under Section 145 of the Code are not maintainable when a civil litigation is also pending between the parties in regard to the same property.

(14) Learned counsel for the petitioner also relied upon Charan Singh and others Vs . S.D.M Jallandhar and others and Suresh Kumar Vs.Vijay Kumar and another : 31(1987)DLT318 .

(15) In Ram Sumer Puri Mahant (Supra), the Supreme Court held asunder:

'WHEN a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under S.145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2 to 5 was not in a position to challenge the proposition that 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 practics arc 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 ill the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.'

(16) Again in Dharampal and others (Supra) the Supreme Court took the view that Section 146(1) of the Code empowers the Magistrate to attach an immovable property in dispute until the rights of the parties thereto are determined by a competent civil court. According to the decision, determination may not necessarily be a final determination, the determination could be 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 final decision in the suit. It was further held that the moment a competent civil court passes the interim order, the order of attachment passed by the Magistrate comes to an end.

(17) Reacting to the decisions of the Supreme Court, learned counsel for the respondent submitted that in the present case there has not been any determination by the civil court with regard to the question as to which party was entitled to possession of the property. Learned counsel drew my attention to the fact that the order of status quo was passed by the civil court in the suit for possession and injunction instituted by the respondent and submitted that both the parties were claiming that they were in possession and the status quo order was in their favor. He, however, did not dispute that a determination undoubtedly can beat the interlocutory stage in contradistinction to the final determination. Learned counsel for the respondent further contended that there does not appear to have been any determination by the court with regard to the right of the parties in this regard. He relied upon the decision of the Supreme Court in Jhunamal alias Devandasa Vs . State of MadhyaPradesh and others : 1989 CriLJ82 where in it was held as follows:-

'WE fail to understand how the High Court in this case took advantage of the decision of this court in Ram Sumer's case. The ratio of the said decision is that 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. That does not mean that a concluded order under Section 145 Cr.P.C.made by the Magistrate of competent jurisdiction should he set at naught merely because the unsuccessful party has approached the civil court. An order made under Section 145.Cr.P.C.deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision

of the civil court. The unsuccessful party therefore must get relief only in the civil court. He may move the civil court with properly constituted suit. He may file a suit for declaration and prove a better right to possession. The civil court has jurisdiction to give a finding different from that which the Magistrate has reached.'

(18) He also relied upon the following decisions:

1)Major Singh and another v. Angrez Kaur and others 1992 (2) CLR 55, and Pradeep Tyagi v. The State and others 1985 (1) CLR 199.

(19) Since the questions raised by the parties arise frequently and invariably incases where proceedings under Section 145 of the Code and civil suit are launched side by side in connection with dispute over possession of immovable property, I am of the view that an authoritative resolution of the matter by a division bench is needed. Accordingly the matter may be placed before Hon'ble the Chief Justice for constituting the Division Bench.

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