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Court : Rajasthan

Decided On : Nov-08-1990

Reported in : 1990(2)WLN240

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Miscellaneous Petition No. 188 of 1989

Appellant : Pratapvan and ors.

Respondent : Chhognath and ors.

Disposition : Petition allowed

Judgement :

B.R. Arora, J.

1. This revision petition is directed against the order dated May 4, 1989, passed by the Sub-Divisional Magistrate, Sojat, by which the learned Magistrate rejected the application of the petitioners for dropping the proceedings and refused to drop the proceedings.

2. The brief facts of the case are: that the non-petitioners Chhognath, Jagannath and Chhotunath filed a suit for permanent injunction against the petitioners in the Revenue court with respect to the land bearing Khasra numbers 806,807,808 and 809, situated in village Saran, district Pali, and that suit is still pending. Along with

this suit, an application for temporary injunction was also moved, but the learned Trial Court rejected the application for grant of temporary injunction by its order dated December 29, 1987. Dissatisfied with the order rejecting the application for grant of temporary injunction, an appeal was preferred by Chhognath and others before the Revenue Appellate Authority and that appeal is still pending. The Revenue Appellate Authority granted injunction in favour of Chhognath and others, as well as the appeal against the refusal of the temporary injunction, were pending, but still Chhognath and others filed an application Under Section 145, Cr.P.C. in the court of the Sub-Divisional Magistrate, Sojat, on August 2, 1988. The learned Sub-Divisional Magistrate drew a preliminary order on August 2, 1988 and issued notices to the party No. 2. After the service of the notice on (he petitioners, the petitioners, on September 8, 1988, moved an application before the Sub-Divisional Magistrate praying therein that as the revenue suit as well as the appeal against the refusal of the temporary injunction are pending before the Revenue Court and hence the proceedings Under Section 145, Cr.P.C. are not maintainable, therefore, they may be dropped. The learned Sub-Divisional Magistrate, by his order dated May 4, 1989 decided the application filed by the petitioners and refused to drop the proceedings. It is against this order that the present petition Under Section 482, Cr.P.C. has been filed.

3. Mr. M.M. Singhvi. appearing on behalf of the petitioners, has submitted that in view of the fact that the revenue proceedings with respect to the disputed land are pending before the competent revenue Court, where interim relief in the nature of temporary injunction was sought-for, which was refused and against the refusal of the temporary injunction, an appeal before the revenue Appellate Authority was also filed and that appeal is still pending and the temporary injunction was granted by the revenue Court, there is, therefore, no justification for continuing with the parallel proceedings Under Section 145, Cr. P.C. and they should be dropped. The learned Counsel for the petitioner, in support of his contention, has placed reliance over the judgments of the Supreme Court rendered in *Ramsumer puri Mahant and Ors. v. The State of Uttar Pradesh and Ors.* reported in 1985 Cr. LR (S.C.) page 1 and *Har Govind Singh v. The State of Rajasthan and Ors.* (1986 Rajasthan Criminal Cases page 290). The learned Counsel for the respondents, on the other hand, has submitted that inspite of the fact that a revenue suit is pending in the

revenue Court, as well as the pendency of the appeal before the Revenue Appellate Authority against the refusal of the grant of temporary injunction it will not, in any way, affect the proceedings Under Section 145, Cr. PC and they can still continue. In support of its case, the learned Counsel for the respondents has placed reliance on: Jhunamal v. The State Of Madhya Pradesh : 1989 CriLJ82 , Jagdish Ram v. the State of Haryana and Ors. 1990 Cr. LJ 1917. Venkatakrisnan and Ors. v. The State of Tamil Nadu 1989 Cr.U 1936. AC Khader v. P.K Khader and Ors. 1989 Cr.LJ 1276, 1989 Cr.LJ (NOC) 212,1989 Cr.LJ (NOC) 138, Dominic v. The State of Kerala and Ors. 1987 Cr. LJ 2033 and Gokulram v. Ram Gopal and Ors. 1988 Cr. LR 568.

4. I have heard the learned Counsel for the parties and gone through the judgments cited by the respective parties.

5. In 1985 Cr.LR (SC) page 1, the Hon'ble Judges of the Supreme Court have observed as under:

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 the pendency of the dispute. Multiplicity of the litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigations.

This case of Ram Sumer Puri Mahant was followed by this Court in Arvind Singh v. Tite State of Rajasthan and Ors. 1986 RCC 290 and following the judgment of the Supreme Court, this Court, in the case of Arvind Singh, held as under:

Right, title and interest have to be finally adjudicated upon by the Civil Court and such an adjudication Is binding on He parties and the civil Court is equally competent to pass interim order In connection with the protection for alleged right, title and interest of the parties and also In connection with the protection the property in question. If by any interim order passed by the Civil Court, any party

feels aggrieved, then a regular remedy is available to the party in law and the party should not be allowed to invoke the criminal jurisdiction.

The case of Ram Sumer Puri Mahant was again considered by the Supreme Court in *Jhunamal alias Devandas 'V the State of Madhya Pradesh* AIR 1988 SC 1973. After considering the law on the point, the Hon'ble Judges of the Supreme Court observed with respect to the ratio of Ram Sumer Puri Mahant's case as under:

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 be 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 concerns 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.

6. In the case of *Jhunamal alias Devandas* the proceedings Under Section 145, Cr.P.C. were already concluded by the competent Magistrate and the unsuccessful party filed a suit in the civil court. The Court, therefore, came to the conclusion that merely pendency of the civil suit will not set at naught the concluded order passed Under Section 145, Cr.P.C. As the order Under Section 145, Cr.P.C. deals only with the factum of possession of the party as on a particular date and does not confer any title to remain in possession of the disputed property and the decision of the Magistrate Under Section 145, Cr.P.C. is subject to the decision of the civil court; the ratio of this decision is, therefore, that when the proceedings Under Section 145, Cr.P.C. are already stand concluded and thereafter a civil suit is filed then this proceeding cannot be set at naught

though a revision might be pending in the higher court against the judgment of the Magistrate. This decision of the Supreme Court is, thus, not applicable so far as the present case is concerned, as in the present case, the suit was filed, Chhognath and others, which is still pending before the revenue court and in that suit, the dispute with respect to the same property was there and in that case a prayer for temporary injunction was made, which was refused and against that refusal, an appeal was preferred before the Revenue Appellate Authority and temporary injunction was granted. After the grant of the temporary injunction by the Revenue Appellate Authority, the present proceedings Under Section 145, Cr.P.C. have been initiated. Two parallel proceedings With respect to the same property cannot be allowed to be continued, as has been held by the Hon'ble Supreme Court in Ram Sumer puri's case.

7. In the case of 1990 Cr.LJ 1917, 1989 Cr.U 2033, 1989 Cr.U (NOC) 212, 1989 Cr.LJ 1836 and 1989 Cr.U (NOC) 138, while deciding the case, the judgment in Ram Sumer Puri Mahant's case 1985 Cr.URSC page 1 was not considered and, therefore, they are not of any help to the respondents.

8. In Gokul Ram v. Ram Gopal and Ors. 1988 Cr.L.R.(Raj.)568, the Supreme Court's view in Ram Sumer Puri Mahant case was considered, but the facts of that case are different from the facts of the present case. In that case, the non-petitioner Ram present case. In that case, the non-petitioner Ram Gopal initiated the proceedings Under Section 145, Cr.P.C. and the learned Magistrate drew a preliminary order Under Section 145(1) Cr.P.C. and ordered for the attachment of the land in dispute. No evidence was produced by the respondents with respect to the possession in spite of several adjournments and nobody was present on the relevant date when the order of attachment was made final and a revision petition was filed against that order. An argument was made before the court that as the revenue suit was already decided against the applicant, therefore, no proceedings Under Section 145, Cr.P.C. could be initiated. After considering the arguments, the court observed that as no evidence was produced by the parties before the trial court to raise the issue regarding possession nor was any copy of the judgment of the revenue suit produced by the applicants before the trial court and therefore the court came to conclusion that when neither Gopal Ram was a party to that suit nor

was the result of that suit brought to the notice of the learned Magistrate, who decided the application Under Section 145, Cr.P.C. and therefore, the case of Ram Sumer Puri Mahant is not applicable to that case. The judgment rendered in Gokul Rani's case is, therefore, of no help to the counsel for the respondents.

9. After carefully going through the rulings cited by both the parties and looking to the facts and circumstances of the case. I am of the view that the present proceedings Under Section 145, Cr.P.C. cannot be allowed to continue as the revenue suit with respect to the same land is pending before the Revenue Court, in which the right and possession of the parties are to be decided and an appeal against the refusal of the temporary injunction is also pending before the Revenue Appellate Authority, in which a temporary injunction has already been granted in favour of Chhognath and others. When a temporary injunction has already been granted in favour of the respondents Chhognath and others, a parallel proceeding Under Section 145, Cr.P.C. is wholly uncalled-for and cannot be allowed to be continued. Section 145, Cr.P.C. provides a special remedy for the prevention of breach of peace arising out of a dispute relating to immovable property and its primary object is to maintain the public peace and not to decide the dispute between the contending parties or to adjudicate upon the rights of the parties. When the revenue Court, in the present case, has ceased of the matter, then the respective rights of the parties are to be decided by (the revenue court itself. Initiation of the parallel proceeding Under Section 145, Cr.P.C. amounts to abuse of the process of the court and such parallel proceeding with respect to the same subject-matter and dispute should not be allowed to continue and should be quashed.

10. For the reasons mentioned above, the petition Under Section 484, Cr.P.C. is allowed and the proceedings Under Section 145, Cr.P.C. pending before the Sub-Divisional Magistrate, Sojat, in Criminal miscellaneous Case No. 12/1988 (Chhognath and Ors. v. Pratapvan and Ors.) along with the orders passed therein, are, therefore, quashed and set-aside.