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Court : Rajasthan

Decided On : Aug-28-1997

Reported in : 1998CriLJ986

Judge : Mohd. Yamin, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 145, 145(1), 146, 397, 397(2) and 482

Appeal No. : Criminal Misc. Petn. No. 127 of 1992

Appellant : Nar Singh

Respondent : Badri Singh and ors.

Advocate for Def. : Dinesh Maheshwari, Adv.

Advocate for Pet/Ap. : S.D. Rajpurohit, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Mohd. Yamin, J.

1. This is a petition under Section 482, Cr. P. C. against the order of learned Additional Sessions Judge, Bali, in Cr. Revision No. 35/91 decided on 30-1-1992

by which he confirmed the order of learned ACM, Desuri in Cr. Case No. 20/89 decided on 19-8-1991.

2. The allegations are that on 11-7-89 petitioner Narsingh moved an application under Sections 145, 146, Cr. P. C. before the Assistant Collector and Executive Magistrate, Bali camp Desuri, against Hari Singh, Gamana, Naring, Uda and Lada in relation to agricultural land bearing old Khasra Nos. 47 and 47/1. The new numbers of the said land are 73,75,76,77 and 78. The old Khasra No. 47 was of 34 bighas and 5 biswas and 47/1 was well wherefrom the Khasra No. 47 was being irrigated. In the aforesaid land, petitioner had 1/4 share; Hari Singh had 1/4 share and the rest of 1/4 share was of non-petitioners. The petitioner in the aforesaid application averred that the division of the land had taken place between khatedars though the khatedari in the record was joint in nature of the tenants-in-common. It was further averred that the said Hari Singh at the commencement of the rainy season forceably dispossessed the petitioner from his land on the plea of entry of co-tenancy in the revenue record and thereby the danger of breach of peace on the question of dispute regarding possession of said land was existing. It was also averred that Hari Singh was a outlaw and was involved in murder case pending before the learned Addl. Sessions Judge. He along with his relatives was wandering with lathis and dhariyas and was threatening that in case the petitioner or his sons entered into the field, they would be murdered. A due inquiry was held by the learned Magistrate and on 11-7-89 he passed preliminary order under Section 145(1), Cr. P.C. After that he heard the parties and by order dated 25-7-89 he found the matter of emergency in terms of Section 146, Cr. P. C. and attached the disputed land and appointed the Tehsildar Desuri as receiver Gamna, Pakhiya, Narsingh, Gamna, Uda, Vagta and others filed a revision petition against this order before the learned Additional Sessions Judge who dismissed the same by order dated 7-8-90. Thus the preliminary order as well as the attachment order of the entire land in dispute was confirmed in the aforesaid revision petition and thereby both the aforesaid order merged into the order dated 7-8-90 passed by Addl. Sessions Judge, Bali. Though the respondents Nos. 1 to 4 were not recorded Khatedars yet they were the petitioners in the Revision Petition No. 18/89 and alleged that they had purchased the entire share viz. 1/2 of the entire disputed land, from the aforesaid khatedar through registered sale deed which was

executed after the order of attachment. They pleaded that no division by metes and bounds of the land in dispute had taken place and the land was undivided. The aforesaid plea was made before the learned ACM by application for releasing the share of the disputed land for attachment. Whereupon the site was ordered to be inspected and by site inspection report dated 6-8-91 it was found that the land bearing Khasra Nos. 76 and 77 was joint belonging to both the parties. On the basis of this report the attachment order dated 25-7-89 was modified by the Magistrate by his order dated 12-9-91 to the effect that half portion of Eastern side belong to respondents Nos. 1 to 4 and the same was released from the receiver and the possession was ordered to be given to respondents Nos. 1 to 4 while possession of receiver on rest of 1/5 share was directed to be continued. The petitioner had cultivated the entire land which he had taken in auction by bidding highest amount of 3475/- for the Sam vat year 2045 from the receiver. A revision was filed against the order dated 19-8-91 before the learned Sessions Judge who modified the order on 30-1-92 and dismissed the revision petition. Aggrieved from the order dated 19-8-91 of the learned Magistrate modifying the attachment order dated 25-7-89 and the order dated 30-1-1992 of the Additional Sessions Judge this petition has been submitted. Notice was sent to the respondents and record of the lower Courts was summoned.

3. I have heard the learned counsel for the parties at length. . The short question, which has been raised before me by the learned counsel for the petitioner, is that the attachment order dated 25-7-89 passed under Section 146, Cr. P. C. merged into the order dated 7-8-89 of Additional Sessions Judge, Bali and as such the learned Magistrate has no jurisdiction to modify or alter the same. It has been contended that once the land is attached, the attachment is to continue till the final disposal of proceedings and the order of attachment of land cannot be modified by the Magistrate. He has also contended that the site inspection report could not be used as conclusive proof on the question of possession and was not the final word so far as the possession of the parties was concerned. Even in the site inspection report, Khasra Nos. 76 and 77 were shown to be joint belonging to both the parties in equal share i.e. the petitioner and Hari Singh on the one hand and the respondents Nos. 1 to 4 on the other. In respect of Khasra Nos. 76 and 74 (77), the receiver could not be released as 1/4 share alleged to have been belonged to

respondents Nos. 1 to 4 was not capable of being separated. It is contended that the learned Addl. Sessions Judge gravely erred by holding non-existence of any dispute for a particular portion of the land and, therefore, it has been prayed that the order of the learned Sessions Judge should be set aside.

5. On the other hand, learned counsel for the non-petitioners has supported the order of the learned Sessions Judge.

6. The first question arises whether a petition under Section 482, Cr. P. C. is maintainable in the circumstances of this case as the question is whether either of the three conditions mentioned in Section 482, Cr. P. C. exist in the present case. The conditions are, if the Court considers necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. According to the learned counsel for the non-petitioners, none of these conditions exists.

7. Learned counsel for the petitioner submitted that the order of the learned Magistrate had merged in the order of learned Sessions Judge and the learned Executive Magistrate vide his order dated 19-8-91 could not have released 1/2 portion of the land on Eastern side from the receiver. He has, therefore, prayed that the order of the learned Magistrate as well as of the learned Sessions Judge are not according to law and should be interfered under Section 482, Cr. P. C. It may be stated that the learned Magistrate reached to the conclusion that there was a dispute in relation to only 50% of the share in the property and there was no dispute for the remaining part of the land and, therefore, there was no necessity to keep the receiver for the particular part of the land for which there was no dispute. According to him, there was no apprehension of breach of peace so far as 50% part of the land was concerned which was in possession of the respondents Nos. 1 to 4. It is to be mentioned that the proceedings under Section 145, Cr. P. C. can be drawn only when there is an apprehension of breach of peace in relation to a particular piece of land and attachment can be made only with regard to the land which is in dispute. When there was no dispute regarding 50% of the share of land, in my view the learned Magistrate and the learned Sessions Judge were right in withdrawing the order of attachment in relation to that property. The matter was

not of such a nature in which this Court should interfere under the provisions of Section 482, Cr. P. C. It may also be mentioned that the order of learned Magistrate was challenged before the learned Sessions Judge in revision who upheld this and this petition under Section 482, Cr. P. C. amounts almost to a second revision which is barred under Section 397(2), Cr. P. C. Of course, there is a full Court decision of this Court in Kana Ram v. State of Rajasthan reported in 1993 Cri LR (Raj) 103, where after taking into account decisions of the Apex Court, it is ruled that provisions of Section 397 Cr. P. C. do not limit or affect the inherent power of this Court under Section 482, Cr. P. C. The said inherent power can be exercised for either of three purposes specifically mentioned in Section 482, Cr. P. C. but in exercising the aforesaid power, the Court should exercise self-restraint and the said power should be exercised very sparingly for the purposes mentioned in that section. It was further ruled that inherent power as envisaged Under Section 482, Cr. P. C. can also be exercised as and when in a given case, the conscience of the Court is shaken but such cases will be far and few. I do not find such a situation in the present case.

8. In view of above discussion, the instant Misc. Petition is hereby dismissed.