

Radmal and ors. Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Nov-10-1993

Reported in : 1994(1)WLC229; 1993WLN(UC)502

Judge : V.R. Meena, J.

Appeal No. : S.B. Cr. Misc. Petition No. 550 of 1992

Appellant : Radmal and ors.

Respondent : The State of Rajasthan and ors.

Advocate for Def. : Shri. Kaushik

Judgement :

Y.R. Meena, J.

1. This Miscellaneous petition under Section 482 Cr.P.C. is directed against the order of the learned Addl. District & Sessions Judge No. 2, Ajmer, dated 29.7.91, whereby he has rejected the revision petition of the petitioner on the ground that it is an interlocutory order.

2. The impugned agricultural land bearing khasra numbers 835, 836, 837, 838, 839, 293 and 473 in village land in Tehsil Kishangarh measuring 48 Bighas, is the Khatedari land of Shri Dev Narain Ji Maharaj and it was Khudkast of Shri Dev Narainji Maharaj and it was Khudkast of Shri Dev Narainji Maharaj since Samvat

1752, through its pujaris, The seva-puja of the temple is performed by respondents No. 2 and 4, and their ancestors since inception when the temple constructed. The impugnal Agricultural land is attach with the aforesaid temple. It was in the possession of the non-petitioners who are performing seva-puja of the temple. Mainly the Gurjar Community is the worshipers of Shri Dev Narainji Maharaj but the Pujaris of the temple are Jats. In 1990 the petitioners have applied for the registration of a trust of the temple alongwith the attached land, under the Rajasthan Public Trust Act, 1959. Objections were invited and, thereafter Assistant Commissioner, Devasthan Department allowed the application for registration of the trust under the Rajasthan Public Trust Act, 1959. Against that order the respondents have filed the appeal which is still pending. After the registration of the Trust, Shri Radmal became the. President of the Trust and the steps were taken for auctioning the agricultural land of the Trust for the agricultural year starting June/July, 1990 by issuing a public notice for auction of the impugned land, the non-petitioners No. 2 to 4 filed a civil suit for permanent injunction, in the Court of Munsif & Judicial Magistrate, Kishangarh alongwith the application for grant of temporary injunction. The learned Munsif & Judicial Magistrate vide order dated 9th January, 1990 has ordered that status-quo be maintained. The non-petitioners have also filed a suit in the Revenue Court and also an application under Section 242 of the Rajasthan Tenancy Act. Meanwhile a report has also been lodged to the SHO, P.S. Arrai on 8th November, 1990, In consequent of that application, the SHO.P.S. Arria filed a complaint in the Court of the SDM who initiated proceedings under Section 145 and 146 Cr.P.C. and appointed the Tehsildar as receiver.

3. The petitioners then filed revision in the Court of learned Sessions Judge, Ajmer and vide his order dated 7th January, 1991, he set aside the, order of the SDM and remitted the matter back to SDM with a direction to decide the proceedings Under Section 145 Cr.P.C. after hearing the petitioners also. Before hearing both the parties, as there was imminent danger of breach of peace over the possession of the land in question, the SDM has again attached the land in question and this time the SHO, of P.S. Arrai has been appointed as Receiver of the land in question vide order dated 24.6.1991. That order has been again challenged by the petitioners in the court of learned Addl. District & Sessions Judge. Learned Addl.

District & Sessions Judge has dismissed their revision petition on the ground that it is an interlocutory order, therefore, it is not maintainable under Section 397 of Cr.P.C.

4. Being Dissatisfied by the order of the learned Addl. District & Sessions Judge, No. 2, Ajmer, the petitioner preferred this Misc. petition Under Section 482 Cr.P.C.

5. Heard learned Counsel for the petitioners Shri Kaushik and counsel for the respondents Shri Balwada. The counsel for the parties have also filed the written submission in support of their claim.

6. The facts are not in dispute that the impugned land is attached with the temple of Shri Dev Narainji Maharaj and since the construction of the temple seva-puja has been performed by the respondents and their ancestors, as pujaris of this temple and land was in possession of Pujaris of temple and mainly the persons of Gurjar Community are the worshipers of Shri Dev Narainji Maharaj. For the first time in 1990 the people of Gurjar Community have decided to form a public charitable trust of the temple as well as the land attached and applied for its registration to the Assistant Commissioner, Devasthan Department, Government of Rajasthan. The registration of the Trust has been allowed by the Assistant Commissioner, Devasthan. The respondents have challenged the order of the Assistant Commissioner, Devasthan in appeal. The appeal is still pending. Meanwhile the respondents moved before the Civil Court as well as the Revenue Court and the proceedings under Section 145 Cr.P.C. have also been initiated. In the Civil Suit an interim order for maintaining the status-quo has been passed and in proceedings under Section 145, the land has been attached and finally SHO, P.S. Arrai has been appointed as receiver of the land.

7. The first issue before me, in this petition, is whether Misc. Petition under Section 482 Cr.P.C. can be entertained against the order in revision passed by the Addl. District & Sessions Judge No. 2, Ajmer.

8. The similar issue has been considered by their Lordships of the Supreme Court in case of Rajan Kumar Manchanda v. State of Karnataka reported in 1990 Cr. L.R. (S.C.) page 602, their Lordships had considered the scope of Section 397(3)

Cr.P.C. and observed as under:

The revisional court dismissed the petition of the State. A second revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. Should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the state that the move before the High Court was really on application for revision of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the Jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have, been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482 Cr.P.C. we are satisfied that this is a case where the High Court has no jurisdiction to entertain the revision.

9. This issue has also been considered by their Lordships in their latest judgment in case of Dharmpal and Ors. v. Smt. Ramshri and Ors., reported in : 1993 CriLJ1049 . Their Lordships of the Supreme Court have observed as under:

The question that falls for our consideration now is whether the High Court could have utilized the powers under Section 482 of the Code and entertained a second revision-application at the instance of the 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr. R. No. 180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 with drawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the

second revision at the instance of 1st respondent. On this short ground itself the impugned order of the High Court can be set aside.

10. The controversy regarding whether petition under Section 482 Cr.P.C. can be entertained against the order passed in revision by the Revisional Court under Section 397(3) Cr.P.C. has also been considered by Full Bench of this Court in the case of Kana Ram v. State of Rajasthan and Ors., reported in 1993 Cr. L.R. (Raj.) 103 and the Full Bench of this Court in that case has also considered the case of Rajan Kumar Manchanda (supra) and has taken the view that petition under Section 482 Cr.P.C. can be entertained against the revisional order passed under Section 397 of Cr.P.C. The relevant para 6 of the judgment reads as under:

6. We, therefore, answer the above question as under:

The provisions of Section 397(3) of the Code of Criminal Procedure, 1973 do not limit or affect the inherent power of this court under Section 482 of that Code. The said inherent power can be exercised for either of three purposes specifically mentioned in Section 482, 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 can also exercise such power as and when in a given case the conscience of the court is shaken, but such cases will be far and few and the power should be exercised only sparingly.

11. Considering the view taken by their Lordships in the cases referred above and the decision of the Full Bench of this Court in case of Kana Ram (Supra) it is apparent that no petition under Section 482 Cr.P.C. can be entertained against the revisional order passed by the Sessions Judge in a revision petition filed by petitioner in Sessions Court, but when there is a case of gross injustice to the party and conscience of the Court is shaken then in that case the petition under Section 482 Cr.P.C. also can be entertained. In the case in hand, the petitioners having, nothing to do with the land before 1990 and that was under the cultivation of respondents, namely, the Pujaris of Mandir Shri Dev Narainji Maharaj. Therefore, strictly, it cannot be said that if petition under Section 482 Cr.P.C. is not entertained, any gross injustice will be done to the petitioners, consequently this petition can be set aside on this ground alone, but as learned Addl. Sessions

Judge has not dismissed the revision petition on merits to avoid any injustice to petitioners, I proceed to decide this petition on merits also.

12. The next submission of the learned Counsel is that order under Section 146(1) is an interlocutory order, therefore it cannot be entertained in revision under Section 397?

13. As stated above, the land in question was in possession of the respondents but when Trust was formed in 1990 and petitioners wanted to auction this land for cultivation, the respondents moved before the Revenue Court as well as the Civil Court and obtained interim status-quo order but that was flouted by the petitioners. Simultaneously, the respondents have also approached the Police, under Section 145 Cr.P.C. The land was attached and Tehsildar was appointed as receiver. The petitioners then carried the matter before the learned Sessions Judge in revision. The learned Sessions Judge has set aside the attachment order of SDM and send the matter back to decide the issue afresh after hearing both the parties. As there was imminent danger of breach of peace, over the possession of land, therefore, before hearing both the parties afresh SDM has again passed an order for attachment of the land and this time SHO was appointed as receiver of the agricultural land in question. The petitioners again carried the matter in revision before the learned Addl. Sessions Judge. The learned Addl. Sessions Judge this time has dismissed the revision petition on the ground that the order dated 24.6.91 passed by the SDM is an interlocutory order, therefore, the revision cannot be entertained.

14. There is no dispute of fact that SDM has not heard both the parties before passing afresh order of attachment on 24.6.91, as there was imminent danger of breach of peace over the possession of land, and he has to pass a formal order as per the direction of learned Addl. Sessions Judge vide order dated 7.1.91. But when he again attached the land in question and appointed the SHO as receiver that decides substantial right of parties, therefore, the order of SDM can be considered in revisional jurisdiction Under Section 397 Cr.P.C.

15. Now the only question remains for consideration is when the dispute regarding property is pending in the Civil Court, can proceedings Under Section 145 & 146

Cr.P.C. be allowed at the same time?

16. This aspect has been considered by this Court in the case of Rampal v. State of Rajasthan and Anr. reported in RLR 1989(1) Page 854, and in para 23 it has been observed as under:

23. In view of the decisions which have been considered above, it is to be seen whether in view of the pendency of the civil suit it could be said that the Criminal Courts should not have taken proceedings under Sections 145 and 146 Cr.P.C. So far as the facts go it can be said that the Civil Court has not passed any order with regard to interim possession over the property, which is the subject matter of dispute. An application for grant of injunction was filed in Jan. 1986, but the same is pending. The earlier application, which was dismissed was for restraining Dinesh Kumar from transferring the property to anyone else. This has nothing to do with the possession over the disputed land. No doubt its dispute is pending before the Civil Court but at the same time it can be said that so far no finding of any sort as regards possession 'over the property has been given and no arrangement about possession during the pendency of the suit has been made. In the case of Ram Sumer Puri Mahant (supra) (1), the question of possession has been already adjudicated when the parallel criminal proceedings were dropped. It was also observed that when the 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, the criminal court should not be allowed to invoke its jurisdiction. Multiplicity of litigation is not in the interest of parties, nor should public time be allowed to be wasted over meaningless litigation.

17. In Jagdish Ram v. State of Haryana and Ors. reported in 1990 Cr. L.J. 1917, in para 6 the Punjab & Haryana High Court has observed as under:

Section 145 of the Code empowers the authorities concerned to take immediate preventive action in an emergency. Cases are not unknown in which inspite of an injunction issued by a Civil Court the parties had tired, to take forcible possession of the land in disregard of the injunction orders. If a party in whose favour there is an injunction by the Civil Court is not strong enough to retain the possession and

approaches the authorities to intervene to protect its possession it would be in the fitness of things if the police intervenes in such a situation so that the orders passed by the Civil Court are not flouted and are respected. In such a situation, it will not be parallel proceedings because the proceedings launched under Section 145 of the Code are in aid of the Civil Court.

18. In *N.A. Ansary and Ors. v. Jackiriya and Ors.* reported in 1991 Cr. L.J. page 476 in para 6, the Madras High Court has observed as under:

Invoking the jurisdiction under Section 145 Cr.P.C. is not permissible when the civil litigation between the parties is admittedly pending before the civil court in respect of which proceedings are initiated under Section 145 Cr.P.C. To this submission, I am unable to affix my seal of approval in the circumstances of the case. Pertinent it is to point out here that the pendency of the proceedings before the civil court between the parties is not at all in respect of actual or factual possession of the subject matter in dispute in the proceedings under Section 145 Cr.P.C. As already indicated, the civil proceedings had been initiated by both the parties for the relief of injunction, prohibiting the other party from interfering with the due performance of the function as office bearers of the mosque in question. Even the temporary injunction obtained by both the parties relate to restraining the other party from interfering with the administration of the mosque. As such, the dispute of the factual or actual possession of the mosque is not in fact projected before the civil court for adjudication. In such circumstances, it can by no stretch of imagination be stated to have advanced or improved the case of 'B' Party to any extent whatever.

19. In *Narsingh v. Dhanraj and Ors.* reported in RLR 1984, page 98 in para 8, this Court considered the similar issue and has observed as under:

8. The learned Sessions Judge was much impressed by the fact that the fields in dispute were in the possession of the non-petitioners and stood in their name in Revenue Records. As such, in the opinion of the learned Sessions Judge, attachment was not called for because it would deprive the non-petitioners from their possession. The learned Sessions Judge was obviously In error in having this approach. The essential question for attachment is not the protection of the

possession of a party but the maintenance of peace to avoid violence and bloodshed between the parties and prevent the untoward Incident likely to take place In view of the grave situation. Moreover, as the effect of attachment Is to place the property into CUSTODIA LEGIS, the possession of a court (here through the Receiver) ensures to the benefit of the person, who is ultimately found to be entitled to the possession of the property. The legal possession being in the true owner, the attachment does not operate as dispossession of the rightful owner. The possession is ultimately restored to the party who is entitled to it at the end of the proceedings.

20. Considering the cases referred above, it is true that normally when the Civil Suit is pending, the parallel proceedings under Section 145/146 Cr.P.C. are not permissible, but in absence of order of attachment of Civil Court and if there is likelihood of breach of peace with regard to possession of the property and if SDM is satisfied about the existence of this situation, it cannot be said that the SDM should keep his hands off and allow some untowards incident to occur merely because a Civil suit is pending. The main purpose of proceedings under Section 145 Cr.P.C. is to prevent breach of peace or any untowards happening on possession of the land or any immovable property. The question whether the pendency of the Civil suit should put a stop to the criminal proceedings would arise only when complete circumstances are placed before the Civil Court.

21. In this case, no attachment order has been passed by the learned Civil Court in the suit filed by the respondents. Only an interim order regarding status-quo has been passed. Whether such order will prevent breach of peace is a pertinent question. Admittedly in these facts the Jats who are the Pujaris of the temple of Shri Dev Narainji Maharaj are in minority and the worshipers of Shri Dev Narainji Maharaj are Gurjars who are in majority and by force they can dispossess the respondents and there is every possibility of breach of peace, while the petitioners uses physical force and dispossess the respondents. In this case, as I have already stated that the interim order of Civil Court has been flouted by the petitioners and there is complaint to this effect in the Police Station Arrai. Prima-facie, to my mind, the attachment of land is necessary as the attachment of the land will not cause any injustice to the petitioners who had nothing to do with the land before 1990,

but that was under the cultivation of respondents. But at the same time, the fact remains that the Civil suit is pending and normally in such situation no parallel proceedings are permissible under Section 145 Cr.P.C.

22. Considering the facts of the case that (when parallel proceedings under Criminal Procedure are normally not permissible, but at the same time to prevent breach of peace it will appropriate on the facts of the case, that civil court should consider this aspect whether the appointment of receiver is just and reasonable.)

23. Therefore, to avoid injustice to both the parties and to prevent the breach of peace, over the possession of land in question, it is directed that the respondents No. 2 to 4 will move application before the civil court concerned, before 25.11.93 for appointment of receiver on land in question, and both the parties are also directed to appear before the civil court concerned on 25.11.93 and to adduce their evidence, if any, in their support. Learned Civil Court concerned, is also directed to decide the application regarding appointment of receiver on or before expiry of four months from the date of this order. Till disposal of the application for appointment of receiver or expiry of four months, whichever is earlier, the order dated 24.6.91 of SDM will continue.

24. In the result, the Misc. petition is partly allowed, as indicated above.

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