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Court : Rajasthan

Decided On : Mar-18-1986

Reported in : 1986(1)WLN610

Judge : Milap Chand Jain, J.

Appeal No. : S.B. Cr. Revision Petition Nos. 14, 15 and 456 of 1985

Appellant : Arvind Singh and ors.

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

Milap Chand Jain, J.

1. The revision petition No. 456 of 1984 is directed against the orders dated November 22, 1984 and November 23, 1984 in Criminal Case No. 940/84--State of Rajasthan v. Mahendra Singh, and Ors. under Sections 145 and 146, Cr. PC. By order dated November 22,' 1984 the preliminary order was drawn up and notices were ordered to be issued to Shri Mahendra Singh (respondent No. 2), Rajmata Smt. Sushila Kumari (respondent No. 3), and Arvind Singh, the present petitioner (in S.B. Criminal Revision Petition No. 456 of 1984). The preliminary order was drawn up in respect of all the properties left by Maharana Bhagwat

Singhji viz. Shambhu Niwas Palace, Fateh Prakash Palace, Darbar Hall and Shiv Niwas Palace. By order dated November 23, 1984, the Station House Officer, Ghanta Ghar, Udaipur was appointed receiver in respect of the ground-floor of Shivniwas Mahal after it was ordered to be attached. Proceedings under Section 145, Cr. PC were initiated on the report of the Station House Officer, Ghanta Ghar, Udaipur.

2. By order dated January 7, 1985, Fateh Prakash Palace & Shivniwas Palace including the Darbar Hall were ordered to be attached. Against that order, of attachment, the revision petitions No. 14, and 15 of 1985 have been filed.

3. The petitioners have prayed for quashing the proceedings under Sections 145 and 146, Cr. PC and their principal ground of attack is that Shri Mahendra Singh (respondent No. 2) had already filed a civil suit for partition much before the initiation of the proceedings under Section 145, Cr. PC. The suit was filed in the year 1983, in the court of District Judge, Udaipur and in that suit, applications were filed Milder. Order 39, Rules 1 & 2 and Order 40, Rule 1, CPC and read with Section 151, CPC. In all three applications were filed. The two applications filed by the plaintiff are Civil Misc. Case No. 80 of 1983 and No. 232 of 1985, The third application was filed by Rajmata Smt. Sushila Kumari Civil Misc. Case No. 55 of 1985. All these miscellaneous applications were heard and disposed of by the District Judge, Udaipur by his composite order dated 2nd December, 1985.

4. In Civil Misc. Case No. 80 of 1983, the present petitioner Shri Arvind singh was directed that he shall render true and correct account of the suit properties (immovable), which are in his possession/management/control duly audited by a Character Accountant, as directed in the order. He, his agents, officers or servants were further restrained from disposing of and/or alienating or otherwise dealing with the suit-property till the decision of the suit.

5. In Civil Misc. Case No. 55 of 1985, the petitioner Shri Arvin Singh and one Shri Subramaniam were personally or through their agents, servants or representatives restrained from, disturbing the possession of Smt. Sushila Kumari and were ordered to maintain the status quo till the decision of the suit.

6. On behalf of the petitioner, it is urged that When the properties; subject matter of proceedings under Section 145 Cr.PC are also the subject matter of the partition suit in which, the applications for grant of temporary injunction and appointment of the receiver were submitted and on which, necessary orders have been passed then it would be highly unjust and improper and it would be unwarranted that the proceedings under Section 145, Cr.PC may continue. The Civil Court is seized of the dispute between the parties relating to the properties in question. In such a situation, a criminal court should not be allowed to deal with the matter and pass any orders in respect of the properties in dispute.

7. I find force in the above submissions of the learned Counsel for the petitioners. Right, title and interest have to be finally adjudicated upon by the Civil Court and such an adjudication would be binding on the parties and the Civil Court is equally competent to pass an interim order in connection with the protection for alleged right, title and interest of the parties and also in connection with the protection of the properties 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 parties should not be allowed to invoke the criminal jurisdiction.

8. In *Ram Sumer Puri Mahant v. State of U.P. and Ors.* 1985 Cr.LR (SC) 1, the following observations are relevant:

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 Section 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 one before us. Counsel for the respondents 2-5 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 a 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. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed.

9. The proposition, which is under-lined above, is most apt. Although in that case, the question of possession was already adjudicated upon by the Civil Court. However, it has been categorically stated that the Civil Court is competent, to pass interim orders such as injunction or appointment of receiver for adequate protection of the property during the pendency of the dispute. It has also been observed that multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation, and that parallel proceedings should not continue. In that case, therefore, the order of the learned Magistrate was quashed.

10. As already stated that as the matter is pending in the Civil Court and interim orders have passed, it would not be proper to allow the criminal proceedings to continue. In my opinion, the criminal proceedings deserve to be quashed. Accordingly, the revision petition No. 456 of 1984 is allowed and the proceedings under Section 145, Cr.PC are quashed.

11. When the proceedings under Section 145, Cr.PC have been quashed, the revision petitions No. 14 and 15 of 1985 have become infructuous, as, all the orders automatically fall.