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Court : Rajasthan

Decided On : Mar-01-2000

Reported in : 2000CriLJ5093

Judge : Mohd. Yamin, J.

Acts : Rajasthan Tenancy Act - Sections 19 and 180; Code of Criminal Procedure (CrPC) , 1974 - Sections 107, 115, 116, 116(3), 145, 146 and 482

Appeal No. : Cri. Misc. Petn. No. 323 of 1998

Appellant : Vikram Singh and ors.

Respondent : Sub-divisional Magistrate and ors.

Advocate for Def. : Vijay Bishnoi and; C.L. Jain, Advs.

Advocate for Pet/Ap. : A.S. Singhvi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Mohd. Yamin, J.

1. This Cr. Misc. Petition has been directed to quash the proceedings pending before Sub Divisional Magistrate, Rajgarh District Churu under Section 145

Cr.P.C. as well as the order dated 4-6-1987 passed by learned Sub Divisional Magistrate, Rajgarh.

2. The facts of the case are that Vikram Singh, Smt. Jyoti and Smt. Beena are the grandchildren and legal heirs of Smt. Govind Kanwar who was recorded Khatedar tenant of 80 bighas 11 biswas of agricultural land which included khasra Nos. 446, 497 to 499, 542 to 544, 297 and 324 measuring 40 bighas 18 biswas in village Nesal and Khasra Nos. 679, 687, 719 to 721 and 727 measuring 39 bighas 13 biswas in village Nanda Ka Bas in Patwar Circle Nesal, Tehsil Rajgarh District Churu. The land is situated thus at two different places. Smt. Govind Kanwar died on 28-12-1971. Thereafter these petitioners were recorded as khatedar tenants of the said land and they still continue as recorded khatedar tenants of the said land and they still continue as recorded Khatedar tenants. The said Khatedari land was given in certain pieces to various persons by Smt. Govind Kanwar for cultivation on year to year basis. These persons included the respondents No. 2 to 7. Eight eviction suits were filed against these persons in the year 1970, 1971 and 1972 under Section 180 of the Rajasthan Tenancy Act in the Court of Assistant Collector, Rajgarh. The suits were filed against Juga Ram respondent No. 2, Kishan Lal respondent No. 3, Sagar respondent No. 4, Inder Ram respondent No. 5, Mota Ram and Maga Ram respondents No. 6 and 7. Gudan and Mota Ram have expired and their legal representatives were impleaded as parties in the revenue proceedings. Out of the said land the petitioners No. 1 to 3 sold land measuring 35 bighas 1 biswa in village Nanda ka Bas in Patwar Circle Nesal on 5-1-1987. The land of khasra No. 721 and 727 was sold to Smt. Suraj Kanwar petitioner No. 4 and the land of khasra No. 679, 719 and 720 was sold to Shri Narpat Singh who expired and petitioners No. 5 to 7 are his legal heirs. The above mentioned eight suits were dismissed by Assistant Collector, Rajgarh on 13-2-1975. Petitioners No. 1 to 3 preferred appeal before the Revenue Appellate Authority who set aside the judgment and decreed the suits for eviction of the respondents No. 2 to 7 vide common judgment passed on 4-3-1978. In the execution of the decree possession of the entire land measuring 80 bighas 11 biswas was restored to the petitioners No. 1 to 3 and Sub Divisional Officer Rajgarh directed the Tahsildar to restore possession of the petitioners in execution of the said decrees.

3. It is further stated that the possession of the disputed land from seven persons was restored to the petitioners on 22-4-1978 and possession from remaining three persons was delivered to the petitioners on 14-5-1978 with police assistance. Second appeal was filed before Board of Revenue which was dismissed on 31-1-1986. Thereafter six civil writ petitions were filed against the decision of the Board of Revenue. They were disposed of vide order dated 27-10-1987 and the matter was remanded to the Board of Revenue for reconsideration in view of amended provisions of Section 19 of the Rajasthan Tenancy Act. The Board of Revenue again vide its order dt. 7-11-1988 dismissed the second appeals. Again five civil writ petitions were preferred against the said judgment of Board of Revenue which were dismissed by common judgment dated 19-12-1990. The Sub-Divisional Magistrate, Rajgarh initiated criminal proceedings on' 4-6-1987 under Sections 145 and 146, Cr.P.C. against the petitioners in respect of the same land in Cr. Case No. 17/87 in which respondents No. 2 to 7 were joined as party No. 2. By the composite order dated 4-6-1987 the Sub Divisional Magistrate attached the said agricultural land and appointed Tehsildar, Rajgarh as Receiver who took possession of the said land dispossessing the petitioners. The petitioners were peacefully cultivating the said land from 1978 but in April, 1987 their 'Karndar' went on the said land for raising 'Ban' then respondents threatened. Vikram Singh, petitioner No. 1, lodged a report at police station on 17-4-1987 and also filed an application before Circle Officer, Rajgarh and police was required to take action under Section 107, Cr.P.C. to prevent the respondents No. 2 to 7 for committing any breach of peace. It is alleged that instead police reported the matter to the Sub Divisional Magistrate, Rajgarh for initiating proceedings under Section 145 and 146, Cr.P.C. besides requesting for action under Section 107 and 116(3), Cr.P.C. and then learned Sub Divisional Magistrate passed order dt. 4-6-1987. The matter is pending before him for more than ten years and without any progress about 41 adjournments have been given on the ground that the Sub Divisional Magistrate was out on tour or on leave or busy in other executive work or there was some strike. More than four years' time was allowed by learned Magistrate to the parties to submit their replies and ultimately he had to close opportunity for party No. 2 to file reply. It is submitted that it is manifestly an abuse of process of the Court and hence it has been prayed that the proceedings may be

quashed.

4. I have heard the learned counsel for the petitioners as well as the learned counsel for the respondents.

5. Learned counsel for the petitioners submitted that the matter at the most required action under Section 107, Cr.P.C. and the civil litigation was already adjudicated, therefore, the criminal proceedings were not justified . He also submitted that the order passed by learned Sub Divisional Magistrate was without jurisdiction as writ petitions were pending when proceedings were initiated. As such the proceedings pending before the learned Sub Divisional Magistrate should be quashed under Section 482, Cr.P.C.

6. On the other hand learned counsel for the respondents Shri Bishnoi submitted that the party No. 1 is a tenant in occupation and that there was definitely a dispute for which it was necessary to pass order under Section 145, Cr.P.C. and the same was passed by learned Sub Divisional Magistrate. According to him the delay in deciding the proceedings is not caused by the respondents. He submitted that if delay in deciding the case is not taken to be in view and this Court can direct the learned Sub Divisional Magsitrate to decide the case early. He also submitted that there are no civil proceedings pending and hence petition should be dismissed.

7. Learned counsel for the petitioners' argument that there was no dispute about possession is without force for the simple reason that in compliance to the order of the Revenue Appellate Authority against the order of Assistant Collector ten appeals were decreed for eviction of respondents with the result that a serious dispute remained between the parties which might occasion imminent breach in relation to possession of the land bearing Khasras No. 446, 497, 498, 499, 542, 543, 687, 297,324, 544,679, 719, 720, 721, 727 totalling 80 bighas 11 biswas of village Nesal. Learned Sub Divisional Magistrate was satisfied about existence of such a dispute and, therefore, he appointed Tehsildar as receiver after attaching the land vide his order dated 18-6-1987. Then subsequently for samvat year 2047 auction proceedings were undertaken which were stayed by District Judge and in the year 1991 again auction proceedings were taken then Revenue Minister

stayed the proceedings. Thereafter auction proceedings were held that at time nobody was present for auction as the land was possessed by respondents who are members of Scheduled Caste and ultimately Munsif Magistrate, Rajgarh passed stay order on the auction proceedings resulting in no such auction from 1995 to 1997. It was Dy. S. P. Rajgarh who initiated proceedings under Sections 145 and 146 Cr.P.C. as the parties were bent upon disturbing peace and enter into duel. The matter was prolonged not because of various stay orders passed by different Courts and the Minister. The parties were continuously contesting their claims in various Courts. The dispute is far from being over and there is genuine fear of breach of peace. The same was backed by constant report of the Station House Officer concerned and the learned Magistrate felt satisfied regarding existence of such breach of peace. It may be noted that the petitioners were not in possession and it is admitted by the petitioners that the respondents extended threats regarding breach of peace and first information reports were lodged by the petitioners. Learned Sub Divisional Magistrate has himself submitted a statement that there is a serious apprehension of parties entering into violent conflict and the local conditions between the parties still are not conducive to terminate the criminal proceedings between them. The gist of the argument of the learned counsel for the petitioners appears to be that by various proceedings the dispute was already settled and there did not exist any disputed question and, therefore, the learned Sub Divisional Magistrate was not right in attaching the property as there was no apprehension of breach of peace. He relying on *Bharat Singh v. Kalji* (1996) 3 WLC (Raj) 732, submitted that continuation of such proceedings would amount to abuse process of Court. Relying on *Govind Narayan v. Chhotu Das* (1991) 1 Raj LW 200, he submitted that the proceedings under Section 145 and 146, Cr.P.C. are of summary nature and if a Civil Court gives any decision about the disputed property then the same is binding on the Criminal Court. He also relied on *Chatra Ram v. State of Rajasthan* (1996) 1 WLN 517 : 1996 Cri LJ 4495, and submitted that when there was temporary injunction passed by the competent Revenue Court, parallel proceedings under Section 145 and 146, Cr.P.C. should not continue. He also relied on *Kanyabai v. Prahlad* 1998 Cri LR (Raj) 119, where it was observed that when both the parties involved in the land dispute are already arrayed before a competent Civil Court then no order is to be passed about

attachment of the land and for keeping peace orders are to be passed under Section 107 and 115, Cr.P.C.

8. So far as use of powers under Section 482, Cr.P.C. for such cases is concerned, learned counsel relied on *Dharampal v. Ramshri (Smt.)* (1993) 1 SCC 435 : 1993 Cri LJ 1049 in which it was held that attachment order comes to an end as soon as Civil Court passes even an interim order or appoints as receiver and accordingly magistrate must withdraw the matter in view of seizure of the matter by Civil Court. Final determination of rights of the parties by the Civil Court is not essential for cessation of the attachment order and in such cases inherent power under Section 482, Cr.P.C. can be used. Looking to the case at the touch-stones of these principles. I find that there have been various litigations about the land in dispute. There is a chequered history as I have already narrated while giving the factual matrix of the case in the above paragraphs.

9. The Station House Officer, Hamirawas had filed a complaint under Section 145, 107 and 116, Cr.P.C. before the Sub Divisional Magistrate, Rajgarh who sent it to the Dy. S. P. for further investigation and the Dy. S. P. reported that the land in dispute was in the ownership of Vikram Singh and that the opposite party was claiming its rights on the basis of old possession. The opposite party was not fully dispossessed and Vikram Singh could not take possession of the land. The dispute arose from time to time and in the year 1987 it was very hot. According to the report of Dy. S.P. there were some unsocial elements to instigate the respondents and that there was definitely apprehension of breach of peace. Learned Sub Divisional Magistrate, after receiving the report of the Dy. S. P., registered the case under Section 145, Cr.P.C., issued notices to both the parties and in the meantime attached the property under Section 146, Cr.P.C. After making the order under Section 145, Cr.P.C. the learned Sub Divisional Magistrate after making the subjective satisfaction ordered under Section 146 to attach the property and appointed Tehsildar as Receiver. The Section provides that the Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of peace with regard to the subject of dispute. So this could have been done by the learned Sub Divisional Magistrate himself but has not been done so far for the reasons that the matters many a time went to

different Courts and a revision petition was filed before the learned Sessions Judge, Churu which was ultimately dismissed on 10-10-1990. The learned Sessions Judge has discussed all the arguments which were raised before him on behalf of the petitioners who were respondents before him. In the facts and circumstances of this case when different judgments have been passed by different Courts and the Civil Court has not passed any order with regard to interim possession over the property the proceedings under Section 145, Cr.P.C. are not barred as in (1989) 1 Rajasthan LR 854 Ram Pal v. State of Rajasthan, it was held that even when dispute was pending before a Civil Court, proceedings under Section 145, Cr.P.C. could be initiated, then the learned Sub Divisional Magistrate has not committed any error in law. It is well settled that when Sessions Judge dismisses a revision, second revision by way of petition under Section 482, Cr.P.C. cannot be entertained. (See Dharampal v. Ramshri (Smt.) case 1993 Cri LJ 1049 (supra).

10. Section 482, Cr.P.C. gives inherent powers to this Court and they are to be exercised very sparingly. The High Court is invested with the plenary power to quash the criminal proceedings pending in inferior Courts where it appears that there is a legal bar against institution or continuance of criminal proceedings in respect of the offence alleged or where allegations in the first information report or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence or allegations made against the accused persons do constitute an offence but there is either no legal evidence adduced clearly or manifestly which fails to prove the charge. I do not find any such legal bar in the present case and I am of the view that the proceedings should not be quashed. However, the learned Sub Divisional Magistrate can be directed to decide the case within a period of six months from today.

11. Consequently, the petition is hereby dismissed. However, the learned Sub Divisional Magistrate is directed to decide the case within a period of six months from today and report to this Court after completion of six months that he has complied with this order. A copy of this order be sent to the learned Sub Divisional Magistrate, Rajgarh District Churu by his name by registered post.

