

Sudhakar Shashtri Vs. State and ors.

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Court : Rajasthan

Decided On : Nov-06-1985

Reported in : 1986(1)WLN156

Judge : Panna Chand Jain, J.

Appeal No. : S.B. Cr. Revision Petition Nos. 284 and 287

Appellant : Sudhakar Shashtri

Respondent : State and ors.

Advocate for Def. : Shri. Khandelwal

Disposition : Petition dismissed

Judgement :

Panna Chand Jain, J.

1. Those two revision petitions are directed against the order dated 2nd September, 1985, passed by the learned Addl. Sessions Judge No. 3, Jaipur City, Jaipur, whereby he vacated the orders dated 24th November, 1983 and 13th January, 1984, passed under Section 145, Cr.PC. The learned Addl. Sessions Judge also passed an order dropping the proceedings under Section 145, Cr. PC. Being aggrieved by the order dated 2nd September, 1985, the petitioner has preferred these revision petitions before this Court.

2. From the facts disclosed in the case it appears that there two parties one is the petitioner himself and the other is Harindra Mirdha, Rajendra Mirdha and Madan Singh. From the record it also appears that party No. 1 filed a civil suit for injunction against party No. 2 on 26th August, 1983. Party No. 1 obtained an injunction order from the Civil Court restraining party No. 2 from dispossessing him from the plot situated on Jai Singh High Way, bearing No. C-21, measuring 4511.11 sq. yds. Non-petitioners No. 2 to 4 (Party No. 2) purchased the said plot in the name of Indra Associate Private Limited from Shri Prem Chand Jain, who got it from M/s. S.R. Nagpal & Sons. The said plot was given to M/s S.R. Nagpal & Sons on 19th August, 1974, according to the judgment of the Bombay High Court. Aggrieved by the order of injunction, Party No. 2 filed an appeal before the learned Sessions Judge, Jodhpur which was transferred to the Addl. Sessions Judge No. 3, who allowed the appeal vide order dated 17th November, 1983 and vacated the injunction granted in favour of party No. 1 and against party No. 2. It is also on record that against the decision of learned Addl. Sessions Judge, dated 17th November, 1983, a revision petition was filed before this Court which was also dismissed. Leave to appeal filed before the Supreme Court was also dismissed.

3. It is also on record that on the report of the SHO, the learned Magistrate passed a preliminary order. The petitioner filed an application on 5th January, 1984 under Section 146 Cr. PC. The learned Magistrate after hearing both the parties attached the plot in dispute vide order dated 13th November, 1984 and appointed SHO Bani Park, Jaipur as a receiver, Party No. 2 filed a revision petition which was decided by the learned Sessions Judge No. 3, Jaipur City vide his order dated 2nd September, 1985.

4 It is thus, clear that two parallel proceedings are continuing, one under Section 145, Cr. PC and another a civil suit before the Civil Judge, Jaipur. The learned Sessions Judge after considering the facts and circumstances of the case and relying on the judgment of the Supreme Court in Ram Sumerpuri Mahant v. State of U.P. : AIR 1985 SC472 , came to the conclusion that it would be an abuse of the process of the Court to allow the party to have the pleasure of litigation in civil Court as well as in criminal court and, ultimately passed an order by which the proceedings under Section 145, Cr.PC were dropped.

5. The learned counsel for the petitioner submits that while accepting the revision petition, the learned Court below did not consider the merits of the case as to whether there was an apprehension of breach of peace. The learned counsel submits that it was imperative for him to consider this aspect of the matter while passing an order dropping the proceedings under Section 145, Cr.PC. He further submitted that the petitioner is in peaceful possession of the land and there is evidence to substantiate his contention.

6. Shri Khandelwal, learned counsel for the respondents contended that the order passed by the learned Addl. Sessions Judge is perfectly in order. He further submitted that the petitioner's possession is unlawful. He is a trespasser on the land. The petitioner had no title to remain in possession over the land and, therefore, the civil Court did not grant any injunction in favour of the petitioner.

7. I have given my thoughtful consideration to the respective submissions made by the learned counsel for the parties. In my opinion the proposition of law laid down by the Supreme Court in *Ram Sumerpuri Mahant v. State of U.P.* (supra) is fully applicable in the facts and circumstances of the present case. In that case, their Lordships of the Supreme Court observed that when a civil litigation is pending for the property wherein the question of possession is involved the parties should not be allowed to take litigation under the criminal law. In *Peeru Singh v. Gangasingh and Ors.* 1981 RCC 57, this court also had the occasion to consider the case involving similar circumstances. In that case, this Court observed that when a party failed to secure an injunction in a suit for interfering with the possession and files an application under Section 145, Cr. PC. such an application would not be treated bona fide. In the instant case, two proceedings were filed almost simultaneously. A complaint for initiating proceedings under Section 145, Cr.PC was filed on 21st August, 1983 and immediately thereafter on 26th August, 1983 a suit for injunction was filed. In the civil suit, as aforesaid, Party No. 1 could not secure injunction order. The appellate Court vacated injunction order granted by the Munsif. It appears that because Party No. 1 failed to secure injunction order from the Civil Court, therefore, Party No. 1 concentrated its efforts to contest the case under Section 145, Cr. PC. In my opinion in case possession of Party No. 1 is unauthorised protection cannot be given in the garb of attachment order under

Section 145 Cr.PC as it may amount to giving a licence for retaining possession unlawfully. I do not want to discuss the matter on merit. In my opinion the order passed by the learned Sessions Judge is perfectly justified and legal. Parallel proceedings should not be allowed to be continued, when in a civil suit one party has failed to obtain injunction restraining the other party from dispossessing him after litigating the cause upto the Apex court. It is true that in *Ram Sumerpuri Mahant's* (supra) there was an adjudication regarding question of possession made by the Civil Court. In, my opinion the principles laid down by the Supreme Court in that case will not make any difference if the same is applied, where in a suit an application for temporary injunction is filed, but the injunction is refused restraining the other party from dispossessing forcibly by the courts upto the High Court. In case, the petitioner is dispossessed forcibly without recourse to the court of law he has ample remedies available to him under law. If the possession is forcibly taken, he may be well advised to seek his remedy under Section 6 of the Specific Relief Act or may take appropriate measures for his redressal and vindicating his rights which may be available to him. It cannot be said that simply because the proceedings under Section 145, Cr.PC are dropped he will be without any remedy. Then I do not find any merit in the revision petitions and the same are dismissed.