
Before M. M. Kumar, J.

SATNAM SINGH,—*Appellant/Defendant*

versus

DR. TRILOKI NATH CHUGH AND OTHERS,—*Respondents*

C. R. No. 1921 of 2004

16th April, 2004

Code of Criminal Procedure, 1973—S. 145—Code of Civil Procedure,—1908—O. 39 Rules 1 and 2—Suit for permanent injunction—After notice of application under O. 39 Rules 1 and 2 CPC Court granting interim order in favour of plaintiff—Despite stay order defendants making attempts to dispossess the plaintiff—Plaintiff seeking police help for implementation of interim order of injunction by filing application under O. 39 Rule 2-A CPC—When specific remedy under section 145 Cr. P.C. is available to plaintiff whether Civil Court can exercise inherent jurisdiction to get its order implemented—Held, yes—Once the Civil Court has passed an interim order of injunction then no proceedings under section 145 Cr. P.C. would be competent—Petition liable to be dismissed.

Held, that under Section 145 Cr. P.C., preventive measures in respect of disputes concerning possession of immovable property could be undertaken in the absence of any direction by the Civil Court. Once the Civil Court has passed an interim order of injunction restraining interference in peaceful possession of plaintiff—respondent No. 1 then no proceedings under section 145 Cr. P.C. would be competent. By no stretch of imagination it could be argued that the so called specific remedy available u/s 145 Cr.P.C. would exclude the inherent jurisdiction of the Civil Court to get its order dated 1st December, 2003 implemented.

(Para 3)

Dr. Gurmit Singh, Advocate, for the petitioner.

JUDGMENT

M. M. KUMAR, J,

(1) This petition filed under Article 227 of the Constitution challenges order dated 6th April, 2004 passed by the Additional Civil Judge (Sr. Division), Sirsa granting police help to plaintiff—respondent 1 for implementation of interim order of injunction dated 1st December, 2003. The police help was necessitated for harvesting ripe Rabi crop. It is not disputed that the defendant-petitioner is party to the order of injunction dated 1st December, 2003 passed by the learned Civil Judge while deciding an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (for brevity, the Code) which was filed along with Civil Suit No. 653 of 2003 titled 'Triloki Nath versus Satnam Singh'. In the suit claim for permanent injunction restraining the defendant-petitioner and other co-owners defendant-respondents 2 to 7 from interfering with the exclusive possession over the suit land has been made. On 1st December, 2003 after due notice of the suit as well as of the application filed under Order XXXIX Rules 1 and 2 of the Code, the Civil Judge has granted interim order in favour of plaintiff-respondent 1 and against the defendant-petitioner as well as defendant-respondents 2 to 7. It has been *prima facie* found that plaintiff-respondent 1 is in cultivating possession of the suit land and the partition proceedings undertaken by defendant-respondents 2 to 7 are pending in appeal before the Commissioner. It is in these circumstances that the defendant-petitioner as well as defendant-respondents 2 to 7 were restrained from interfering into peaceful possession of plaintiff-respondent 1 over the suit land and causing damage to the tubewell in question till final disposal of the suit except in due course of law. During the pendency of the suit and subsistence of the aforementioned order dated 1st December, 2003, an application under Order XXXIX Rule 2-A of the Code was filed by plaintiff-respondent 1 with the allegations that despite the stay order, the defendant-petitioner as well as defendant-respondents 2 to 7 have made attempts to dispossess plaintiff-respondent 1 which resulted into filing of written complaint at

Police Station Rania. The attempts were repeated on 5th December, 2003 and 14th March, 2004 and despite the complaints made to the Superintendent of Police, Sirsa and other Police Officers, no action has been taken. It was alleged that on 24th March, 2004, the defendant-petitioner and defendant-respondents 2 to 7 forcibly harvested the Sarson Crop. After notice of the application and hearing the parties, the learned Civil Judge passed the following order :—

“The present application has been filed in a petition under order 39 Rule 2-A. Though, respondent No. 1 has not appeared and contested the application, yet the learned counsel for the respondents 2, 5 and 6 has put before this Court, the case on behalf of Satnam Singh by showing his possession over 17 kanals of land out of the suit land measuring 64 kanals 4 marlas. It is the case of the applicant that since the defendants/respondents have been restrained from interfering into the suit land till partition, they have no right to harvest the crops even in 1½ acres of land which has already been sown by them and they have no right to so do in the remaining land out of 64 kanals 4 marlas. It is pointed out even the correction of Khasra-girdawari in favour of Satnam Singh has been stayed by the Higher authorities. The order of the Collector has been placed on record. As such, as on today the plaintiff remains in cultivating possession of the suit land in view of the order dated 1st December, 2003 passed by this Court.....”

As such, I am of the view that it is fit case where the police help is liable to be granted to implement the Court order dated 1st December, 2003. Accordingly, the S.H.O. of the Illaqa where the land is situated is directed to provide police assistance on payment of requisite charges for compliance of order dated 1st December, 2003. The application stands disposed of accordingly.”

(2) Dr. Gurmit Singh, learned counsel for the defendant-petitioner has argued that a regular remedy under Section 145 of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr. P.C.') with regard to disputes of possession is available to plaintiff-respondent 1 and the Court could not have exercised inherent jurisdiction under Section 151 read with Order XXXIX Rule 2-A of the Code. The learned counsel has maintained that once there is a specific provision dealing with a situation, then no resort should be made to the inherent jurisdiction of the Court under Section 151 of the Code. He has argued that it is well settled by a catena of judgments that specific provision will exclude the exercise of power under general provisions.

(3) After hearing the learned counsel, I am of the considered view that this petition is without merit and is, thus, liable to be dismissed. It is well settled that under Section 145 Cr. P.C., preventive measures in respect of disputes concerning possession of immovable property could be undertaken in the absence of any direction by the Civil Court. Once the Civil Court has passed an interim order of injunction restraining interference in peaceful possession of plaintiff-respondent 1, then no proceedings under Section 145 Cr. P. C. would be competent as has been held by the Supreme Court in the case of **Ram Sumer Puri Mahant versus State of U.P. (1)**. By no stretch of imagination it could be argued that the so called specific remedy available under Section 145 Cr. P.C. would exclude the inherent jurisdiction of the Civil Court to get its order dated 1st December, 2003 implemented. Moreover, no dispute can be raised with regard to order dated 1st December, 2003 which has attained finality at this stage, because it would result into modifying/displacing the aforementioned order which is impermissible. The general principle of law as submitted by the learned counsel that specific provision will exclude the general provision would not be available and the argument is absolutely misplaced. Therefore, there is no merit in the instant petition and the same is liable to be dismissed.

(4) For the reasons recorded above, this petition fails and the same is dismissed.

R.N.R.