

CASE NO.:
Appeal (crl.) 401 of 2002

PETITIONER:
RANBIR SINGH

Vs.

RESPONDENT:
DALBIR SINGH & ORS.

DATE OF JUDGMENT: 20/03/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

D.P. Mohapatra, J.

Leave granted.

This appeal filed by the first party in the proceeding under Section 145, Criminal Procedure Code (for short 'Cr.P.C.') is directed against the judgment dated 16.07.2001 of the High Court of Delhi in Criminal Revision No.540 of 2000. The Revision Petition was filed by the second party, who is respondent no.1 herein, under Section 397 read with Section 401, Cr.P.C. for setting aside the order dated 14.11.2000 passed by the learned Magistrate under Section 146(1) of the Cr.P.C. attaching the land in dispute. The High Court allowed the Revision Petition and quashed the preliminary order passed by the learned Sub-Divisional Magistrate under Section 145(1) as well as the order of attachment of the land under Section 146(1) Cr.P.C. The operative portion of the judgment reads thus :

"This Court, therefore, is of the considered view that impugned orders under Section 145(1) of the Code as well as proceedings under Section 146(1) of the Cr.P.C. were an abuse of the process of law and as such cannot be sustained. The orders passed by learned SDM under Section 145(1) dated 11.7.2000 as well as Section 146(1) dated 14.11.2000 are therefore quashed. The learned SDM is directed to restore the possession of the land to the petitioner within 10 days as he was in possession thereof at the time of the attachment. The Trial Court file be sent back immediately."

The factual matrix of the case over which there is no dispute between the parties may be stated thus : Dalbir Singh, respondent no.1 herein, is the owner of the land in dispute measuring about 40 bighas and 16 biswas situated in Mouza Chattarpur, Tehsil Mehrauli, New Delhi. He had given a registered Power of

Attorney in favour of his son-in-law, Karnail Singh in July, 1991. Karnail Singh had executed sale deeds transferring the land in favour of M/s.Homestead on account of which disputes arose between respondent no.1 on one side and Karnail Singh and M/s.Homestead, on the other side. Respondent no.1 filed the suit, Original Suit No.2830/91 (renumbered as 389/93) seeking a decree of permanent injunction against Karnail Singh and M/s.Homestead. The said suit was dismissed as withdrawn by the order of the trial Court dated 29.4.1994. The order was passed on the statement made by the parties that they had amicably settled the dispute relating to the suit property. Thereafter, M/s.Homestead transferred the land in dispute in favour of Ranbir Singh, the appellant herein, under the registered sale deed dated 20.8.1996. The property was mutated in the name of the purchaser. Subsequently, on a petition filed by respondent no.1 on 18.10.1996 the order dismissing the suit as withdrawn was recalled and suit No.2830/91 (renumbered as 389/92) was restored to file. The said order having not been challenged by any party has attained finality.

On 23.6.1997, the appellant filed the suit, O.S.No.300/97 praying for a decree of permanent injunction against respondent no.1. On the same day, an order of ad interim injunction was passed in the suit. As the matter stood thus the appellant filed the petition dated 17.9.1997 before the learned Sub-Divisional Magistrate seeking initiation of proceedings under Section 145, alleging inter alia that immediately after the order of interim injunction was passed by the Civil Court, respondent no.1 and his supporters forcibly dispossessed him (the appellant); in the circumstances, there was an apprehension of breach of peace. About three years after filing of the said petition, the learned Sub-Divisional Magistrate passed the preliminary order under Section 145(1) Cr.P.C. on 11.7.2000. This was followed by the order dated 14.11.2000 in which considering the application filed by the first party (appellant) under Section 146(1), the land in dispute was attached and the local S.D.P.O. was given charge of the property. The respondent no.1 filed an application on 15.11.2000 praying for recall/modification of the preliminary order passed by the learned Sub-Divisional Magistrate under Section 145(1) Cr.P.C. The said application is stated to be pending for consideration before the learned Sub-Divisional Magistrate. The respondent no.1 moved the High Court in revision on 5.12.2000 by filing the application under Section 397 read with Section 401 Cr.P.C. The Criminal Revision has been disposed of by the High Court by the order dated 16.7.2001 in the manner noted earlier.

The main thrust of the submissions made by Shri A.M.Singhvi, learned senior counsel appearing for the appellant was that the High Court has approached the case as if it was deciding an appeal. Elucidating the point, Shri A.M.Singhvi submitted that if the High Court found certain lacunae in the preliminary order passed by the learned Sub-Divisional Magistrate, it should have set aside the said order and remitted the matter to the Magistrate for passing a fresh order in accordance with law. The further contention of Shri A.M.Singhvi is that the High Court has gone beyond the scope of Section 145

of the Code and has dealt with the question of title and right to possession without paying due attention to the undisputed factual position that the parties are before the Civil Court in a suit which is pending and in that proceeding the Civil Court will determine the question of possession and may incidentally go into the question of title to the property also. According to Shri Singhvi in any view of the case, the High Court was in error in directing the learned Sub-Divisional Magistrate to restore possession of the land in dispute to the petitioner, respondent no.1 herein.

Per contra, Shri S.C.Maheshwari, learned senior counsel appearing for respondent no.1, contended that from the preliminary order passed by the learned Sub-Divisional Magistrate it is clear that he has not stated grounds for his satisfaction that there was apprehension of breach of peace relating to possession of the property. Since the preliminary order did not comply with the conditions prescribed in Section 145(1) the High Court rightly quashed the same. The further contention of Shri Maheshwari was that since the order under Section 145(1) is unsustainable in law, the order under Section 146(1) could not have been allowed to continue. Therefore, no exception can be taken to the order of the High Court quashing the order under Section 146(1), Cr.P.C. also. Shri Maheshwari further submitted that in the meantime, the respondent no.1 has also filed a civil suit challenging the validity of the sale deeds executed by Karnail Singh in favour of M/s.Homestead and those executed by M/s.Homestead in favour of the appellant and the said suit is pending.

On perusal of the relevant papers on the record and on consideration of the contentions raised by learned counsel for the parties, we are of the view that in the context of the facts of this case, the order passed by the High Court setting aside the order dated 11.7.2000 passed under Section 145(1) as well as the order dated 14.11.2000 passed under Section 146(1) Cr.P.C. is unassailable.

However, the High Court was in error in dealing with the Revision Petition as if it was exercising appellate jurisdiction. The High Court has dealt with the developments in the case relating to the acquisition of title, the allegations of fraudulent transfers made by Karnail Singh and M/s.Homestead and the circumstances in which the suit was dismissed as withdrawn. Keeping in view the limited scope of the proceeding under Section 145, Cr.P.C. these questions were not material for determination of the main issues in the case. The Court, while dealing with a proceeding under Section 145 Cr.P.C., is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the Court is not required to decide either title to the property or right of possession of the same. The question for determination before the High Court in the present case was one relating to the validity or otherwise of the preliminary order passed by the learned Sub-Divisional Magistrate under Section 145(1) Cr.P.C. and sustainability of the order of attachment passed under Section 146(1) Cr.P.C. For deciding the questions it was neither necessary nor relevant for the

High Court to have considered the matters relating to title to and right of possession of the property. Further, both the parties in the case have filed suits seeking decree of permanent injunction against each other and in the suit filed by the appellant an order of interim injunction has been passed and an objection petition has been filed by respondent no.1. The suits and the interim order are pending further consideration before the civil court.

In these circumstances, we are of the view that while maintaining the order of the High Court quashing the preliminary order passed by the Sub-Divisional Magistrate under Section 145(1) and the order of attachment of the property under Section 146(1) Cr.P.C., leave should be granted to the parties to approach the civil court for appropriate interim order and the civil court should deal with the application for interim order without being influenced by the observations made/findings recorded by the High Court in the impugned judgment. It is ordered accordingly. In order to enable the parties to approach the civil court for interim order and with a view to avoid further complication in the matter, the interim order passed by this Court on 18.01.2002 directing status quo regarding possession of the property in dispute to be maintained shall remain in force for a period of three weeks from today.

The appeal is disposed of on the above terms.

.....J.
(D.P. MOHAPATRA)

.....J.
(BRIJESH KUMAR)

March 20, 2002