

PETITIONER:
AMRESH TIWARI

Vs.

RESPONDENT:
LALTA PRASAD DUBEY & ANR.

DATE OF JUDGMENT: 25/04/2000

BENCH:
D.P.Mahapatro, K.T.Thomas, S.N.Variava

JUDGMENT:

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S. N. Variava, J.

Leave granted.

This appeal is against an Order dated 8th September, 1999. By this Order the High Court has, in exercise of powers under Section 482 of the Criminal Procedure Code, set aside an Order dt. 9th June 1999, passed by the sub-divisional Magistrate. The SDM had dropped/discontinued the proceedings under Section 145 of the Criminal Procedure Code.

Briefly stated the facts are as follows : In respect of the property concerned the 1st Respondent had a dispute with Sharda Prasad and Shiv Kumar. The 1st Respondent filed Civil Suit No. 280 of 1990 in the Court of Civil Judge, Gyanpur on 10th October, 1990. It is not denied that this Suit was for declaration of title, possession and for injunction. On 10th October, 1990, itself an application for ad interim Order was made. An Order to maintain status quo, as on that date, was passed by the Court.

According to the Appellant, on 10th October, 1990 itself the said Sharda Prasad and Shiv Kumar had executed a Sale Deed in favour of Smt. Prem Kali, who was the mother of the Appellant. According to the Appellant possession of the property was delivered to Smt. Prem Kali on the same day. In Suit No. 280 of 1990, on an application made by Smt. Prem Kali, she was impleaded as a party defendant. In that Suit the pleadings are complete. Issues have been framed. The suit is pending trial.

While this Suit was pending the S.O. Police Station, Aurai made a report to the S.D.M., Gyanpur stating that there was a dispute regarding possession of land likely to cause a breach of peace within his jurisdiction and for initiating of proceeding under Section 145 Criminal Procedure Code. On the basis of this report, the learned S.D.M. passed preliminary Order under Section 145(1) Criminal Procedure Code. Pursuant to this preliminary Order the Appellant's mother appeared and filed a written statement stating that there was no dispute likely to cause

breach of peace regarding possession of the said property. It was pointed out that the civil Suit was pending in the court of civil jurisdiction and an Order directing maintenance of status quo had already been passed. The 1st Respondent also filed a written statement pursuant to the preliminary Order. The 1st Respondent claimed that the property which formed the subject matter of the civil Suit was different from the property in respect of which proceedings under Section 145 Criminal Procedure Code had been adopted.

The Appellant thereafter made an Application that the proceedings under Section 145 Criminal Procedure Code be dropped as a civil Suit in respect of the same property was pending. That Application was rejected by the S.D.M. on 13th September, 1991. Against the Order dated 13th September, 1991, a Criminal Revision was filed before the Additional Session Judge, Gyanpur. The said Criminal Revision was rejected by an Order dated 16th March, 1993. A Review Application was also dismissed by the Additional Session Judge on 11th May 1993.

Thereafter the proceedings under Section 145 Criminal Procedure Code were resumed. Statements of parties were recorded. In the course of her statement the 1st Respondent, inter alia, stated as under :

"The Civil Suit which has been filed regarding this land which is Suit No. 280 of 1990. In respect of the disputed land which is the subject matter of the suit an order for maintain status-quo has been passed. The Civil Suit, I have filed in the Civil Court is for dispossession of Amrit Lal and Prem Kali from the disputed land. This suit has been filed for obtaining stay order against Sharda Prasad."

Thus the 1st Respondent admitted that the civil Suit was in respect of this land i.e. the land in respect of which proceedings under Section 145 Criminal Procedure Code had been adopted. The 1st Respondent also admits that the Suit is for possession and for stay. Very fairly it is conceded before us that the land in respect of which the proceedings under Section 145 Criminal Procedure Code was adopted were part of the properties in respect of which Suit No. 280 of 1990 had been filed.

After the statement of the parties had been recorded, an Application was made by the Appellant that the proceedings under Section 145 Criminal Procedure Code may be discontinued/dropped in view of the pending civil Suit in which an order of maintenance of status quo had already been passed. By an Order dated 9th June, 1999, the S.D.M. dropped the proceedings under Section 145 Criminal Procedure Code by concluding that there was no propriety in continuing the proceedings under Section 145 Criminal Procedure Code when the civil Court was in seisin of the matter and an Order for maintaining status quo had already been passed.

Against the Order dated 9th June, 1991, the 1st Respondent filed Criminal Revision No. 1230 of 1999 before the Allahabad High Court. The Criminal Revision Application was allowed by the learned single Judge, who set aside the Order dated 9th June, 1999 and remanded the matter back to the trial Court for resuming the proceeding under Section

145 Criminal Procedure Code. The only ground on which the learned single Judge has set aside the Order dated 9th June, 1999 is that earlier an Application for dropping the proceedings under Section 145 Criminal Procedure Code had been made and dismissed and that the Revision against that Order had also been dismissed by the Sessions Court by the Order dated 11th May, 1993. It was held that the Order 11th May, 1993 had become final between the parties and was thus binding. It was held that in view of that Order the trial court could not have accepted the contention and should have rejected the Application for dropping the proceedings. It was held that in view of that Order the only option left to the Magistrate was to decide the proceedings under Section 145 Criminal Procedure Code between the parties on merit. It is this Order which is assailed in this Appeal.

We have heard the parties at length. In our view the High Court has committed an error in setting aside the Order of the Magistrate on the basis that the earlier Order was final and binding. The earlier Orders were interim Orders. They were passed before any evidence or statements had been recorded. Those Orders were passed only on the basis of the contentions of the parties. At that stage the 1st Respondent had contended that the civil proceedings did not relate to the same properties in respect of which the proceedings under Section 145 Criminal Procedure Code were adopted. Thereafter statements were recorded in the Section 145 proceedings. In her statement the 1st Respondent admitted that proceedings under Section 145 Criminal Procedure Code were in respect of property which formed the subject-matter of the civil Suit and in respect of which an Order for maintenance of status quo had been passed by the civil Court. The S.D.M. was bound to take a decision afresh based on the statements before him. It is settled law that interim Orders, even though they may have been confirmed by the higher Courts, never bind and do not prevent passing of contrary Order at the stage of final hearing. The learned single Judge of the High Court appears to have lost sight of this.

The learned single Judge also failed to appreciate that the earlier Orders were passed on the footing that the civil proceedings related to different properties and were between different parties. Subsequently, when it became clear that the civil proceedings were in respect of the same properties and between the same parties even the factual position had changed. For that reason also the earlier Order would not be binding.

The question then is whether there is any infirmity in the Order of the S.D.M. discontinuing the proceedings under Section 145 Criminal Procedure Code. The law on this subject-matter has been settled by the decision of this Court in the case of Ram Sumer Puri Mahant vs. State of U.P. & Ors., reported in 1985 (1) S.C.C. 427. In this case it has been held as follows :

"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 the one before us. Counsel for 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 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."

We are unable to accept the submission that the principles laid down in Ram Sumers case would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumers case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.

Reliance has been placed on the case of Jhummal alias Devandas versus State of Madhya Pradesh & Ors., reported in 1988 (4) S.C.C. 452. It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145 Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded Order under Section 145 Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An Order of status quo had already been passed by the competent civil court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumers case (supra) fully applies. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate. In this view of the matter the appeal is allowed. The impugned Order is set aside. In our view, the S.D.M. was right in discontinuing the proceedings under Section 145 Criminal

Procedure Code. The Order passed by the S.D.M. on 9th of June, 1999 is restored.

Before we part it must be mentioned that in the impugned Order the High Court has passed strictures against the S.D.M. The High Court has also directed the District Magistrate to transfer the proceedings from the S.D.M. who passed the Order dated 9th June, 1991. In our view the strictures were uncalled for. We hope that in future the High Court would not pass such strictures. Two views are always possible. Merely because the High Court takes a different view is no ground for passing strictures against the lower court.

JUDIS