

PETITIONER:
JHUMMAMAL ALIAS DEVANDAS

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT 25/08/1988

BENCH:
SHETTY, K.J. (J)
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SHETTY, K.J. (J)
KANIA, M.H.

CITATION:
1988 AIR 1973 1988 SCR Supl. (2) 584
1988 SCC (4) 452 JT 1988 (3) 479
1988 SCALE (2) 582

ACT:

Code of Criminal Procedure, 1973: s. 145-An order under-Deals only with factum of possession on a particular day-Confers no title to remain in possession of disputed property-Civil court has jurisdiction to give finding different from that of Magistrate- Unsuccessful party approaching civil court does not warrant setting aside of concluded order.

HEADNOTE:

The mortgagee in possession leased out the shop to the appellant and delivered possession. His entering of possession became a subject matter of dispute with respondent No. 2 in which the appellant was dispossessed.

In the proceedings initiated under s. 145 Cr. P.C. the Magistrate found that the appellant was entitled to restoration of possession since he was dispossessed forcibly and wrongfully within the terms of proviso to s. 145 (4) Cr. P.C. The respondent filed a suit and obtained temporary injunction against the appellant. That injunction was vacated by the Additional District Judge who found that the appellant was in possession of the shop on the date of occurrence of incident. The respondents revision application challenging the final order under s. 145(6) Cr. P.C. was dismissed by the Sessions Judge. Accepting respondents petition under s. 482 Cr. P.C., for quashing the proceedings under s. 145 the High Court, following the judgment in *Rum Sumer Puri Mahant v. State of U. P.*, [1985] 1 SCC 427, took the view that since the civil proceedings in respect of the disputed premises were pending before the competent civil court where interim reliefs have been prayed for and obtained, there was no justification for continuing the proceedings under s. 145 Cr. P.C. pending before the SDM.

Allowing the appeal by special leave,

HELD: The High Court was in error in quashing the proceedings under s. 145 Cr. P.C. pending before the Sub-Divisional Magistrate. [589F, 587EF]

An order made under s. 145 Cr. P.C. deals only with the factum of possession of the party as on a particular day. It

confers no title to remain in possession of the disputed property. The order is subject to decision of the civil court. The unsuccessful party therefore must get relief only in the civil court. He may move the civil court with properly constituted suit. He may file a suit for declaration and prove a better right to possession. The civil court has jurisdiction to give a finding different from that which the Magistrate has reached. [589D-E]

The ratio of the decision in Ram Sumer Puri Mahant v. State of U.P. is that a party should not be permitted to litigate before the criminal court when the civil suit is pending in respect of the same subject matter. That does not mean that a concluded order under s. 145 Cr.P.C. made by the Magistrate of competent jurisdiction, as in the instant case, should be set at naught merely because the unsuccessful party has approached the civil court. [589C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 139 of 1987.

From the Judgment and Order dated 25.4. 1986 of the Madhya Pradesh High Court in Misc. Criminal Case No. 1 135 of 1985.

Shanti Bhushan, K.M. Tiwari, L.P. Gaur and Ms. Rani Jethmalani for the Appellant.

U.R. Lalit (not present), P.S. Poti, S.K. Gambhir, Sanjay Sarin, S.N. Khare and T.C. Sharma for the Respondents.

'The Judgment of the Court was delivered by JAGANNATHA SHETTY, J. We grant special leave and proceed to dispose of the appeal.

The appeal is directed against the order of the High Court of Madhya Pradesh dated April 35, 1986 quashing the final order made under sec. 145 of Cr. P.C. in respect of a shop premises. The shop was in possession of one Asgarali son of Akbar Ali as, mortgagee since October 17, 1969. On August 7, 1982, Asgarali was said to have leased out the shop to the petitioner and also delivered possession thereof. The entering of possession by the petitioner became a subject matter of dispute. Apprehending breach of peace, the police initiated proceedings under sec. 145 Cr. P.C. before the Additional District Magistrate, Ujjain. In that proceedings, the petitioner was party no. 2 and respondent PG NO 586

no. 2 was party no. 1, On August 13, 1982 the Magistrate made a preliminary order. The proceedings continued for about three years. On May 17, 1985, the Magistrate made the final order in the following terms:

"Hence I believe that the party no. 2, Jhummal alias Devandass S/o Jethanand had the occupation within two months from 13.8. 1982 on which summons were issued by the court under sec. 145 sub-sec. (1).

Hence I order that party no. 2 Jhummal is entitled for the occupation of the shop unless he is evicted by procedure established by law. And I issue injunction that there should not be any obstacle in handing over the possession to Jhummal. And if there are locks placed by Motilal or his accomplices, the same should be broken open. And the goods, if any, found in the shop should be handed over to a responsible person after making a panchnama."

It will be seen from the above order that the petitioner is entitled to restoration of possession since he was dispossessed forcibly and wrongfully within the terms of proviso to sec. 145(4) of Cr.P.C. But unfortunately, the

petitioner could not be put into possession.

On July 15, 1985, the respondent filed a suit for injunction. On August 14, 1985, he obtained temporary injunction against the appellant. But upon appeal that temporary injunction was vacated. The learned First Additional District Judge, who delivered the Judgment in that appeal, has recorded the following findings:

"Consequently it is clear from the above analysis that Asgar Ali was in possession of the disputed shop till 7.8.82. It seems to be his prima facie right to rent out the shop. That it seems that he received the rent in advance executed the rent deed and transferred the possession to appellant/Jhummal. As it is mentioned above the First Information Report lodged by Kanhayalal on behalf of Jhummal in which it is stated that Jhummal obtained possession on 9.8.82, does not seem right, when only respondent has demanded possession in his petition dated 13.8.82. Hence I believe that Jhummal obtained the possession of the disputed shop in the capacity as tenant. Respondent and his brothers put their locks later on. And

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as in my opinion on the date of occurrence of incident, Jhummal was in possession of the shop, respondent, plaintiff does not have a prima facie case in his favour

Hence, I believe that the temporary injunction order passed by the lower court is not just and as per law. Consequently while disagreeing with the order passed by the lower court, I accept the appeal and quash the order passed by the lower court. "

In between the parties, there were also certain criminal proceedings regarding the theft from and house trespass on the same premises. A couple of days before the preliminary order was made under sec. 145 Cr. P.C. a relation of the appellant filed report before the Police complaining against the respondent. On that report the respondent was prosecuted under secs. 380 and 454 of the IPC. On February 22 1984, he was convicted of the said offences. But upon appeal, he was acquitted by the Additional District Judge. The revision against the order of acquittal was also dismissed by the High Court.

It may also be relevant to state that the respondent challenged the final order under sec. 145(6) of the Cr.P.C. in a revision before the sessions Judge. On September 27, 1985, that revision was dismissed. After becoming unsuccessful in the proceedings under sec. 145 Cr.P.C. and also before civil court in the suit to or injunction. the respondent moved the High Court under sec. 482 of Cr.P.C. to quash the proceedings under sec. 145 Cr.P.C. The High Court accepted the petition and quashed the proceedings by following the judgment of this Court in Ram Sumer Puri, Mahant v. State of U. P.[1985] 1 SCC 427. The operative portion of the High Court order is as follows;

"In view of the fact that civil proceedings in respect of the disputed premises is pending before the competent civil court, where interim reliefs have been prayed for and obtained, the reappears to be no justification for continuing with the proceedings u/s 145 Cr.P.C. pending before the S.D.M.

Shri Tiwari learned counsel submitted that in case the plaintiff's suit is either withdrawn or dismissed, he would be left with no remedy. This submission cannot be accepted

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in view of the Supreme Court judgment as reported in Ram Sumer Puri v. State of U.P.

AIR 1985 SC 472.

Section 145 is intended to provide a special remedy for the prevention of breach of peace arising out of a dispute relating to immovable property. Its primary object is to maintain the public peace and not to decide disputes between the contending parties or adjudicate upon the rights of the parties to possession. Now, that the civil court is seized of the matters it is desirable that such parallel proceedings in respect of the same subject matter and dispute should not be allowed to continue in the criminal court as it amounts to an abuse of the process of the court which is one of the grounds for invoking section 482 Cr. P.C.

For the foregoing reasons, this petition deserves to be allowed. It is accordingly allowed. The proceedings u/s 145 Cr.P.C. pending before the Sub-Divisional Magistrate Ujjain, along with the orders passed therein is, therefore, quashed. "

The validity of the aforesaid order has been called into question in this appeal.

It will be obvious from the order of the High Court that the decision of this Court in Ram Sumer's case has been totally misunderstood. In that case, a title suit for possession and injunction in respect of certain property was instituted before the civil court. The suit was dismissed on February 28, 1981. The matter was taken up in appeal. When the appeal was pending for disposal, proceedings under sec. 145 Cr.P.C. were initiated with regard to the same property. In that proceedings, the Magistrate passed a preliminary order under sec. 145(1) of the Cr.P.C. and also attached the property. The aggrieved party challenged that order in a revision petition before the Allahabad High Court. The High Court refused to interfere with that order. But this Court quashed the proceedings under sec. 145 Cr.P.C. observing :

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

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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 flat continue and the order of the learned Magistrate should be quashed.

We fail to understand how the High Court in this case took advantage of the decision of this Court in Ram Sumer's case. The ratio of the said decision is that a party should not be permitted to litigate before the criminal court when the civil suit is pending in respect of the same subject matter. That does not mean that a concluded order under sec. 145 Cr.P.C. made by the Magistrate of competent jurisdiction be set at naught merely because the unsuccessful party has approached the civil court. An order made under sec. 145 Cr.P.C. deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil court. The unsuccessful party therefore must get relief only in the civil court. He may

move the civil court with properly constituted suit. for may file a suit for declaration and prove a better right to possession. The civil court has jurisdiction to give a finding different from that which the Magistrate has reached.

Counsel for the respondent, however, suggested that having regard to the nature of dispute and the rights of parties relating to the property in question, we should not exercise our extraordinary jurisdiction under Art. 136 of the Constitution. We do not think that the contention could be accepted in view of the patently erroneous order of the High Court.

In the result, we allow the appeal, set aside that order of the High Court and restore that of the Magistrate. The parties may work out their rights as per law.

P.S.S.

Appeal allowed.

JUDIS