



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 61/2017

Shyam Singh S/o Shri Prem Singh Rajput, R/o Village-Guda
Kalan, Tehsil-Sojat, Distt.- Pali, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan Through Public Prosecutor.
2. Panna Ram S/o Shri Mukna Ram Mali, R/o Village Guda-
Kalan, Police Station Bagdi, Tehsil-Sojat, Distt.- Pali,
Rajasthan.
3. Ratan Lal S/o Shri Panna Ram Mali, R/o Village Guda-
Kalan, Police Station Bagdi, Tehsil-Sojat, Distt.- Pali,
Rajasthan.
4. Madan Lal S/o Shri Panna Ram Mali, R/o Village Guda-
Kalan, Police Station Bagdi, Tehsil-Sojat, Distt.- Pali,
Rajasthan.

-----Respondents

For Petitioner(s) : Mr. S.P. Sharma
For Respondent(s) : Mr. Sheetal Kumbhat
Mr. Vikram Singh Rajpurohit, Dy.A.G.
Mr. Ravindra Singh, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

Order Reserved on ::: **28/11/2024**
Order Pronounced on ::: **12/03/2025**

1. This criminal misc. petition under Section 482 Cr.P.C. has been filed by the petitioner against the order dated 27.10.2016 passed by the learned Additional Sessions Judge, Sojat, District Pali, Rajasthan whereby the revision petition preferred on behalf of the respondent has been allowed and the order passed by the learned executive Magistrate dated 26.05.2016 in Criminal Case



No. 04/2016 passed under Section 145 and 146 of Cr.P.C. for attachment of disputed property and for appointment of receiver has been quashed and set aside.

2. The brief facts of the case are that the petitioner, representing the villagers of Guda-Kallan, filed a complaint with the SHO, Bagdi, Tehsil Sojat, alleging that a public well known as Ganwai Pichka (Bera), situated on Khasra Nos. 196, 197, and 198, was being illegally occupied by private respondents Panna Ram, Madan Lal, and Ratan Lal, who were unlawfully constructing on the public land. When villagers opposed the encroachment, the respondents allegedly resorted to threats and violence. Following the complaint, the SHO initiated proceedings under Sections 145 and 146(1) Cr.P.C. before the SDM, Sojat, who, by order dated 26.05.2016, attached the land and appointed the SHO as receiver of the property. By aggrieved from this, the private respondents filed a Criminal Revision No. 24/2016 before the Addl. Sessions Judge, Sojat, who allowed the revision on 27.10.2016, holding that the dispute had been ongoing for 43 years and was already subject to civil litigation and therefore, making interference under Sections 145 and 146 Cr.P.C. was unwarranted. The petitioner contends that the revisional order was erroneous and that the order of learned SDM regarding attachment was necessary to prevent law and order issues. The petitioner finding no alternative remedy has approached the High Court under Section 482 Cr.P.C. for relief.

3. The counsel for the petitioner submitted that the learned SDM, Sojat, rightly exercised jurisdiction under Sections 145 and



146(1) Cr.P.C. to prevent the encroachment of public land by respondents No. 2 to 4, based on a police investigation report. However, the learned Addl. Sessions Judge committed a serious error in setting aside the SDM's order, warranting interference by this Court. He further argued that the revisional court exceeded its jurisdiction by treating the matter as if a final determination had been made, despite the fact that the SDM's inquiry was still at a preliminary stage. Furthermore, the private respondents erroneously claimed ownership of the disputed land, whereas revenue records establish it as public land. The orders of the Assistant Settlement Officer dated 18.02.1978 and the District Collector, Pali, dated 31.07.1989, which attained finality, confirm that the private respondents are not khatedari tenants. Further, it was contended that the revisional court failed to consider these conclusive decisions, leading to a perverse and unsustainable finding. The counsel for the petitioner also contends that under Section 146(1) Cr.P.C., an attachment order can be passed without prior notice, and the SDM's decision to protect public property was lawful and justified. The revisional authority's interference amounts to a miscarriage of justice and a misuse of the legal process, necessitating the quashing of the impugned order. The petitioner, therefore, prayed for the restoration of the SDM's order and any other relief deemed just and proper by this Court.

4. Learned Public Prosecutor and counsel appearing on behalf of the respondents opposed the submissions made by the counsel for the petitioner.



5. After hearing the counsel for the parties and minutely going through the orders dated 26.05.2016, passed by the SDM, Sojat, and 27.10.2016, passed by the Revisional Court, this Court finds that the order of the Revisional Court is legally sound, whereas the SDM's order lacks legal backing and reflects an incorrect interpretation of the law. It has been observed that the Revisional Judge has appropriately analyzed the precedents set by Hon'ble the Supreme Court, which establish that when a matter is of such a nature which falls within the jurisdiction of civil courts, ordinarily criminal courts should refrain from intervening and should not appoint a receiver unless emergent circumstances desired by law are present.

6. It is imperative to discuss the precedents set by Hon'ble the Supreme Court concerning Sections 145 and 146 of Cr.P.C. and to fully comprehend the legal position, it is necessary to first reproduce these provisions, which are provided below for ready reference:-

145. Procedure where dispute concerning land or water is likely to cause breach of peace.—

- (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.
- (2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.
- (3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall



be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, persue the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub -section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.





(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under section 107.

146. Power to attach subject of dispute and to appoint receiver.—

(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof: Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908(5 of 1908): Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate—

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.

From bare perusal of these Sections, this Court feels that before initiating a proceeding under Section 145 Cr.P.C. or moving an application under Section 146(1) of the Cr.P.C., circumstances suggesting imminent danger of breach of peace or like circumstance to presume instant threat to public peace and tranquility has to be shown with the assistance of cogent and reliable material. It should not be a vague or bald assertion rather should be supported with strong material. The law in respect of proceeding under Sections 145 & 146 Cr.P.C. is no more res-integra that before initiating any proceeding under Sections 145 &



146 Cr.P.C. there has to be a serious question of possession and a situation where it is not comprehensible as to which party was in possession of the land in question at the relevant point of time or the circumstances suggesting that parties are bent upon to take forcible possession of the immovable property and therefore, there is an imminent danger to public peace and tranquility. The law in this regard has been discussed and dealt with by this Court in the matter of ***Ashoknath Chela Kevalnath Vs. State of Rajasthan passed in SBCRLMP No.1949/2022 decided on 16.11.2022.***

The relevant part of the order is being reproduced as under:

"The law on this point is not res integra that whenever an Executive Magistrate is satisfied from a report of the Police Officer or upon other information that a dispute which is likely to cause breach of peace exists, concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims with regard to the fact of actual possession of the subject of dispute.

Upon appearance of the parties, the Executive Magistrate is supposed to consider the claims of the rival parties in respect of the fact of actual possession of the subject of dispute. It is the requirement of law that prior to passing any order of attachment of the property and appointment of a receiver, the Magistrate should apply his mind as to whether there are emergent circumstances and eminent danger of breach of peace or not and order of attachment of property and appointment of a receiver under Section 146(1) Cr.P.C. can be passed only after conducting a preliminary inquiry under Section 145 (1) Cr.P.C. The Executive Magistrate is not supposed or rather authorized by the law to adjudicate the right or title of any party over the property in question. The Executive Magistrate is not empowered to pass order of taking the possession from one party and deliver it to the other party or to the receiver, if the question of possession is not



under dispute. There is a distinction between right to have possession and question of possession. Right to possession can be decided by a competent Civil/Revenue Court after adjudication of the issues and pleas of the parties to the lis and then it can pass a verdict as to which party has a right to have possession but when it comes to question of possession and the Executive Magistrate is satisfied that none of the parties were then in such possession or the Magistrate was unable to satisfy himself as to which of them was in possession of the subject of dispute and by placing facts strong apprehension has been shown regarding breach of peace and tranquility in respect of the conflict of possession then the Executive Magistrate can very well exercise power under Section 145 Cr.P.C. and 146(1) Cr.P.C. The Executive Magistrate is required to record satisfaction of emergent nature of the case as well as eminent danger of breach of peace or tranquility before passing an order of attachment."

7. Now coming to the order passed by the Revisional Court whereby all the grounds are mentioned as to why the order passed by the SDM is not appropriate and discussed the precedents set by Hon'ble the Supreme Court. In the case of **Ram Sumer Puri Mahant Vs. State of U.P. and Ors.** reported in **(1985) 1 SCC 427**, it was held that since the civil proceedings are already going on in civil Court relating to the question of possession then continuing a parallel criminal proceedings is unjustified. The Court emphasized that the civil court's decree is binding on the criminal court and that multiplicity of litigation should be avoided.

8. In another case of **Kanya Bai v. Prahlad** passed in **S.B. Cr. Misc. Petition No. 688 of 1997** decided on **10.12.1997** by the coordinate bench of this Court, Jaipur Bench, it was held that when a party involved in a property dispute has approached a competent court in a good faith for the determination of their



rights, and the court is capable of issuing appropriate orders regarding the security of the property, then initiating criminal proceedings is not warranted. However, if there is an apprehension of a breach of public peace between the parties, necessary action can be taken under Sections 107 and 116, read with Section 151 Cr.P.C.

9. After considering the facts and circumstances of the case, as well as the legal principles discussed above, this Court finds it appropriate to uphold the order passed by the Additional Sessions Judge, Sojat, District Pali, Rajasthan, dated 27.10.2016. Consequently, the order issued by the Sub-Divisional Magistrate, Sojat, on 26.05.2016, is hereby quashed and set aside.

10. In view of the above discussion, this Court finds no merit in the present miscellaneous petition, as it lacks substance.

11. Accordingly, the petition is hereby dismissed.

12. Stay petition stands disposed of.

(FARJAND ALI),J

20-Mamta/-