

Jhummamal alias Devandas

Vs

State Of Madhya Pradesh And Others

Criminal Appeal No. 139 of 1987

(Jagannath Shetty, J.)

25.08.1988

JUDGMENT

JAGANNATH SHETTY, J. –

1. We grant special leave and proceed to dispose of the appeal.
2. The appeal is directed against the order of the High Court of Madhya Pradesh dated April 25, 1986 quashing the final order made under Section 145 of CrPC in respect of a shop premises. The shop was in possession of one Asgar Ali son of Akbar Ali as mortgagee since October 17, 1969. On August, 7, 1982, Asgar Ali 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 Section 145 CrPC before the Additional District Magistrate, Ujjain. In that proceedings the petitioner was party 2 and respondent 2 was party 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 party, 2 Jhummamal alias Devandas s/o Jethanand had the occupation within two months from August 13, 1982 on which summons were issued by the court under Section 145 sub-section (1).

Hence I order that party 2, Jhummamal is entitled for the occupation of the shop unless he is evicted by procedure established obstacle in handing over the possession to Jhummamal. And if there are locks placed by Motitla or his accomplices, the same should be broken open. And the goods, if any, found in the shop be handled over to a responsible person after making a panchnama.

It will be seen from that above order that the petitioner is entitled to restoration of possession since he was dispossessed forcibly and wrongfully within the terms of proviso to Section 145 (4) of CrPC. But unfortunately, the petitioner could not be put into possession.

3. 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 August 7, 1982. It seems to be in 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 Jhummamal. As it is mentioned above the first information report lodged by Kanhayalal on behalf of Jhummamal in which it is stated that Jhummamal obtained possession on August 9, 1982, does not seem right, when only respondent has demanded possession in his petition dated August 13, 1982. hence I believe that Jhummamal obtained the possession of the disputed shop in his capacity as tenant. respondent and his brothers put their locks later on. And as in my opinion on the date of occurrence of incident, Jhummamal 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.

4. 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 Section 145 CrPC, a relation of the appellant filed report before the police complaining against the respondent. On that report the respondent was prosecuted under Section 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.

5. It may also be relevant to state that the respondent challenged the final order under Section 145 (6) of the CrPC in a revision before the Sessions Judge. On september 27, 1985, that revision was dismissed. After becoming unsuccessful in the proceedings under Section 145 CrPC and also before civil court in the suit for injunction, the respondent moved the High Court under Section 482 of CrPC to quash the proceedings under Section 145 CrPC. 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 : 1985 SCC (Cri) 98]. 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, there appears to be no justification for continuing with the proceedings under Section 145 CrPC pending before the SDM.

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 in view of the Supreme Court judgment in Ram Sumer Puri v. State of U. P. [(1985) 1 SCC 427 : 1985 SCC (Cri) 98].

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 matter, 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 courts as it amounts to an abuse of the process of the court which is one of the grounds

for invoking Section 482 CrPC.

For the foregoing reasons, this petition deserves to be allowed. It is accordingly allowed. The proceedings under Section 145 CrPC pending before the Sub-Divisional Magistrate, Ujjain, along with the orders passed therein is, therefore, quashed.

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

7. It will be obvious from the order of the High Court that the decision of this Court in Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] 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 Section 145 CrPC were initiated with regard to the same property. In that proceedings, the Magistrate passed a preliminary order under Section 145 (1) of the CrPC 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 Section 145 CrPC observing : [SCC pp. 428-29 : SCC (Cri) p. 99, para 2]

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

8. We fail to understand how the High Court in this case took advantage of the decision of this Court in Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98]. 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 Section 145 CrPC made by the Magistrate of competent jurisdiction should be set at naught merely because the unsuccessful party has approached the civil court. An order made under Section 145 CrPC 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.

9. 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 Article 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.

10. In the result, we allow the appeal, set aside the order of the High Court and restore that of the

Magistrate. The parties may work out their rights as per law.

</html