

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.

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.