

procedure is erroneous. Therefore, the petition deserves to succeed on this short ground of procedural aberration and the matter is to be remitted back to the hands of the concerned Court to redo the exercise from the beginning, bearing in mind the observations made in the course of the order.

13. For the aforesaid reasons the following:

ORDER

(i) Criminal Petition is allowed.

(ii) Impugned order dated 16-07-2024 passed by the XLII Additional Chief Judicial Magistrate, Bengaluru in PCR No.9136 of 2024 stands quashed.

(iii) Matter is remitted back to the learned Magistrate to redo the exercise afresh, from the stage of entertainment of the complaint, bearing in mind the observations made in the course of the order.

(iv) The said exercise shall be undertaken within 4 weeks from the date of receipt of the copy of this order.

Consequently, I.A.No.2 of 2024 stands disposed."

10. In view of the above facts and discussions, present application is **allowed**. The impugned order dated 15.10.2024 is in violation of the provision of Section 223 of B.N.S.S., and therefore, the same is hereby set aside.

11. The Chief Judicial Magistrate, Sitapur is directed to pass fresh order after recording the statement of the complainant as well as witnesses of the present case.

(2024) 11 ILRA 530

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 12.11.2024

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Matters Under Article 227 No. 9750 of 2023
(Criminal)

Babbar @ Pabbar & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Sri Romeshwari Prasad

Counsel for the Respondents:

G.A., Sri Vinay Kumar Pandey, Sri Himanshu Srivastava

Civil Law – Constitution of India,1950 – Article 227 – Criminal Procedure Code,1973 - Sections – 145 & 146:

Misc. Petition – challenge to the impugned order – petitioner in peaceful possession over the land in question for 40-50 years – respondent no. 4 initiates proceedings u/s 145/146 Cr.P.C. for forcible possession – objection raised, citing pending civil suit – no likelihood of breach of peace – impugned proceedings alleged as an attempt to harass the petitioner – SDM directs attachment and custody takeover – Criminal Revision – dismissed – Misc. Petition – court observes – respondent no. 4 not impleaded as a defendant in civil suit – no ad-interim injunction in petitioner's favour – held, relying on case law of Hon'ble Supreme Court in Amresh Tiwari's case, no illegality in impugned order – petition dismissed. (Para – 7, 8, 9)

Misc. Petition Dismissed. (E-11)

List of Cases cited:

Amresh Tiwari Vs Lalta Prasad Dubey & anr. (2000 vol. 4 SCC 440).

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Sri Romeshwari Prasad, learned counsel for the petitioners, Sri

Himanshu Srivastava, holding brief of Sri Vinay Kumar Pandey, learned counsel for the respondents, Sri Rajesh Kumar Gupta, learned A.G.A. for the State and perused the record.

2. By means of this petition under Article 227 of the Constitution of India, the petitioners have prayed to set aside the impugned orders dated 18.08.2023 passed by learned Additional Session Judge, Court No. 1, Varanasi in Criminal Revision No. 102 of 2021 Babbar @ Pabbar and others Vs. State of U.P. and others and order dated 27.02.2021 passed by learned Sub-Divisional Magistrate, Sadar, Varanasi in Case No. 15142 of 2020, under Section 145 Cr.P.C., P.S.-Maduadih, District-Varanasi, Ravindra Sonker Vs. Babbar and further not to interfere in the peaceful possession of the petitioners' property during the pendency of this present writ petition.

3. The main submission of learned counsel for the petitioners is that the petitioners are in the peaceful possession of Arazi No. 223/1 admeasuring 2720 square ft. land for the last 45-50 years. By initiating the proceedings under Section 145/146 Cr.P.C. before the Sub-Divisional Officer, Sadar, Varanasi, the respondents are trying to take illegal and forceful possession of his property. It has also been submitted that a civil suit is already pending between the parties before the Competent Court of law, therefore, there was no occasion to institute a parallel proceeding under Sections 145 and 146 Cr.P.C. There was no likelihood of the breach of peace and the instant proceedings have been endeavoured to harass the petitioners under the garb of Section 145 Cr.P.C. in order to settle their personal score.

4. Per contra, learned counsel for the respondent Nos. 4 and 5 have controverted

the aforesaid contention and have asserted that they are the owners of the disputed land as the sale deed dated 24.09.2018 was executed in favour of respondent No. 4.

5. Upon hearing learned counsel for the parties and from the perusal of record, it transpires that the said property belongs to Bhudaan Yagna Samiti and was donated to Shri Laxamdas and after the death of Shri Laxamdas, his son Shri Kalidas inherited the property. Kalidas permitted the petitioners to enjoy the property after taking some consideration. Kalidas had two sons, namely, Ishwarchand Vidyasagar and Anand Sagar. After the death of Kalidas, two sons of Champa Devi tried to take illegal possession. Ishwar filed a suit against Champa Devi and her sons, however, it was dismissed. After the death of Ishwar, his brother Anand Sagar in connivance with Champa Devi tried to evict the petitioners. The petitioners then filed a Civil Suit bearing No. 239 of 2012 for declaration of ownership and injunction which is still pending. It also transpired that in 2003, Kalidas executed a sale deed to Champa Devi pertaining to the land Arazi No. 223/1, total area 2720 square ft. situated in the Village Shivdaspur, Police Station-Maduadih, District-Varanasi. Subsequently, Champa Devi executed Satta to Ravindra Sonker and Ashish Sonker. After the death of Champa Devi, her sons Heera Lal and others executed a registered sale deed of 544 square ft. from the said arazi on 15.09.2018. Her son Pyare Lal executed a registered sale deed of his share. After that on 24.09.2018, Heera Lal, Nand Lal, Santosh and Chotey Lal, son of late Shiv Ram executed a sale deed to Ravindra Sonker and his name was entered in the revenue record. The petitioners who are in possession tried to raise construction on the said land due to which there was likelihood

of breach of peace and the proceeding under Section 145 Cr.P.C. was initiated by Ravindra Sonker respondent No. 4.

6. On the basis of a Police Report dated 12.11.2020, the Sub-Divisional Officer, Sadar, Varanasi vide order dated 24.11.2020 had passed a preliminary order under Section 145 Cr.P.C. directing both the parties to claim their rights. After having satisfied that there was all likelihood of breach of peace as the purchaser tried to take possession over the disputed plot while the petitioners who were already in possession raised objection, accordingly, the disputed property was attached vide order dated 27.02.2021 and the Station House Officer, Maduadih, Varanasi was directed to either take over the custody himself or give to some other impartial person and the parties were directed to produce oral and documentary evidence claiming their title.

7. Being aggrieved by the order of attachment dated 27.02.2021, the petitioners filed a Criminal Revision No. 102 of 2021 before the Additional Sessions Judge, Court No. 1, Varanasi. However, the said Criminal Revision was dismissed and the order dated 27.02.2021 passed by the Sub-Divisional Officer, Sadar, Varanasi was affirmed on the ground that respondent No. 4 Ravindra Sonker was not made a defendant in the Civil Suit No. 239 of 2012 pending before the Court of Civil Judge (Junior Division), Varanasi Babbar Vs. Anand in which the main dispute was with regard to the possession of the disputed land between Ravindra Sonker and the petitioners. It is also apparent that no any ad-interim injunction has been granted in favour of the petitioners in the said suit. The police report dated 12.11.2020 also

reveals that there was every chance of breach of peace.

8. The Hon'ble Apex Court in the case of **Amresh Tiwari Vs. Lalta Prasad Dubey and Anr.** 2000 4 SCC 440 has held that *"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 then 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."*

9. In the matter in hand, through the civil suit is pending, but no protection or ad interim injunction has been granted, therefore, considering the aforesaid facts and circumstances, the submissions advanced above and the case law referred, there is no illegality in the order impugned. No interference is required.

10. Hence, the petition is **dismissed**.

(2024) 11 ILRA 532
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.11.2024

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Matters Under Article 227 No. 9914 of 2023

Lakshmi Narayan & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents