

297-98, para 578) per incuriam has been elucidated as under:

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow (*Young versus Bristol Aeroplane Co. Ltd., 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300.*

In *Huddersfield Police Authority versus Watson, 1947 KB 842 : (1947) 2 All ER 193.*); or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

140. Lord Godard, C.J. in *Huddersfield Police Authority versus Watson (1947) 2 All ER 193* observed that where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.

141. This court in *Government of A.P. and Another versus B. Satyanarayana Rao (dead) by LRs. and Others (2000) 4 SCC 262* observed as under:

"The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue."

142. In a Constitution Bench judgment of this Court in *Union of India versus Raghubir Singh (1989) 2 SCC 754*, Chief Justice Pathak observed as under:

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

(13) Elaborating the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule, the Supreme Court in **Sandeep Kumar Bafna versus State of Maharashtra and another**⁶ had laid down as under:-

“It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court.”

(14) Adverting to the factual matrix, in the present case, it may be noticed that the notification under Section 4 of the Act was issued on 31.12.1962 followed by notification under Section 6 of the Act. The award was announced by the Land Acquisition Collector on 30.4.1963. Reference under section 18 of the Act filed by other landowners was decided by the reference Court on 25.4.1970 (Annexure P-2). The petition under Section 28-A of the Act was filed on 3.11.1987 i.e. beyond the period of limitation. The petition having been filed beyond the period of limitation, has been rightly dismissed by the Collector.

(15) In view of the above, we do not find any justification to interfere with order dated 19.12.2014 (Annexure P-7) passed by respondent No.1 dismissing the petition filed by the petitioners under Section 28-A of the Act. Accordingly, finding no merit in the instant petition, the same is hereby dismissed.

P.S. Bajwa

⁶ AIR 2014 SC 1745

Before R. P. Nagrath, J

CHARANJIT KAUR—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CRM M Nos. 5134 & 5840 of 2015

May 29, 2015

Code of Criminal Procedure, 1973—Ss. 107, 145, 151 & 482—Code of Civil Procedure, 1908—S. 151, O. 9 Rl. 13, O. 39 Rls. 1 & 2—Dispute of ownership of land—Deceased Colonel Gurdev Singh was owner of a big chunk of land—Claim of private respondent No. 5, who was his daughter was that she along with her sister and mother-Gurpal Kaur had right by birth/marriage in said land—Petitioner stated that Colonel obtained a divorce decree against Gurpal Kaur and married petitioner—Petitioner stated that Colonel executed a registered Will of his estate in favour of petitioner and, therefore, after death of Colonel his entire estate came into possession of petitioner—Proceedings under section 145 Cr. P.C. was instituted at instance of respondent No. 5 and calendar was filed—Petitioner sought for quashing of calendar—Held, that respondents had already filed civil suit for declaration that they were owners in possession in equal share of disputed land and for permanent injunction restraining petitioner from forcibly dispossessing respondents—Ad interim injunction was granted to respondents against petitioner to maintain status quo regarding alienation or transfer of suit property—After status quo granted by Civil Court, there had not been any untoward incident of over possession for enabling respondents to initiate proceedings under section 145 Cr. P.C.—Proceedings under section 145 Cr. P.C. was abuse of process of Court—Calendar was to be quashed—Appropriate remedy for redressal of grievances would have been to take recourse before Civil Court.

Held, that there is a serious dispute with regard to validity of marriage of the petitioner with Colonel Gurdev Singh despite there being abundant evidence in her favour and also the dispute about execution of Will in favour of the petitioner. These matters require adjudication in the civil suit which is already pending.

(Para 17)

Further held, that it seems that respondent No. 5 did not press upon the prayer for ad interim injunction with regard to possession before the Civil Court in the already instituted suit, clearly with an idea of taking recourse to proceedings under section 145 Cr. P.C. for redressal of the grievances by the means other than legal. If the Civil Court had not adverted to the prayer for ad interim injunction, respondent No. 5 and other plaintiffs in the suit could always press upon such a prayer even now and get an adjudication on the question. They could also seek prayer for appointment of the receiver, etc. under the provisions of criminal Procedure Code to preserve the property by making out a case for such a relief, if permissible.

(Para 27)

Further held, that in the instant case, even in the absence of Will, if the petitioner shows herself to be legally wedded wife of Colonel Gurdev Singh for which she has relied upon so many documents, the petitioner and the daughters of Colonel Gurdev Singh may be co-sharers but respondent No. 5, Gural Kaur and other daughter of Colonel Gurdev Singh having restored to the remedy by filing a civil suit, the proceedings under Section 145 Cr. P.C., therefore, could not have been instituted at the instance of respondent No. 5. This Court in *Gain Chand v. State of Haryana* 2005 (3) RCR (Criminal) 958 quashed the proceedings under section 145 Cr. P.C. simply on the ground that the dispute with regard to property was already pending in Civil Court.

(Para 29)

Further held, that there is serious dispute between the parties over possession of the disputed land. There is, however, nothing to suggest that after the status quo by way of *ad interim* order was initially granted by the Civil Court in July, 2014, there had been any untoward incidence of over possession for enabling the office respondents to initiate proceedings under section 145 Cr. P.C.

(Para 30)

Further held, that in view of the aforesaid discussion, I find that the proceedings under section 145 Cr.P.C. is not but a sheer abuse of the process of Court. The appropriate remedy for redressal of grievance would have been to take recourse before the Civil Court with regard to appointment of receiver or to make an exact prayer for ad interim injunction specifically qua possession on making out a *prima facie* case under the relevant provision of Code of Civil Procedure.

(Para 34)

R.S. Ghuman, Advocate, *for the petitioner* (in both cases).

Gurveer Sidhu, AAG, Punjab.

Dr. Anmol Rattan Sidhu, Senior Advocate with R.S. Athawl and Pratham Sethi, Advocates, for respondent No. 5.

R.P. NAGRATH, J.

(1) By this common order CRM-M-5134-2015, (*Charanjit Kaur versus State of Punjab and others*) and CRM-M-5840-2015 of the same title are being disposed of as the common questions of facts and law arise in both these petitions. In the first petition, i.e. CRM-M-5134-2015 the proceedings being held under Section 145 Cr.P.C. pertain to the land situated in Tehsil Phagwara, District Kapurthala and in the second petition the disputed land falls within the Sub Division, Garhshankar, District Hoshiarpur.

(2) The petitioner has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. seeking quashing of Calendra bearing Report No. 13 dated 10.12.2014 (Annexure P-1) Police Station Sadar, Phagwara, District Kapurthala (in CRM-M-5134-2015) and Calendra bearing Report No. 15 dated 27.01.2015 (Annexure P-1) Police Station Mahalpur, District Hoshiarpur (in CRM-M-5840-2015) presented by the Station House Officer (SHO) of the concerned police stations under Section 145 Cr.P.C. along with subsequent proceedings arising therefrom. For brevity, the facts are being extracted from CRM-M-5134-2015.

(3) Colonel Gurdev Singh (deceased) was entered as owner of a big chunk of land at both the places. The claim of private respondent No. 5-Anterpreet Kaur daughter of Colonel Gurdev Singh as asserted in Civil Suit No. 29 instituted on 09.05.2014 (Annexure P-8), was that she along with her sister-Simrat Kaur Cheema and mother-Gurpal Kaur are having the right by birth/marriage in the land held by Colonel Gurdev Singh as Karta of the Joint Hindu Family Coparcenary.

(4) It is admitted case of the parties that Colonel Gurdev Singh was married to Gurpal Kaur on 02.06.1968 and two daughters, namely; Anterpreet Kaur-respondent No. 5 and Simrat Kaur Cheema were born from the wedlock. The proceedings under Section 145 Cr.P.C. were Initiated at the instance of respondent No.5.

(5) The version of petitioner is that Colonel Gurdev Singh obtained a divorce decree against Gurpal Kaur in H.M.A. Case No. 77 dated 15.11.1995 decided on 06.10.1997. Copy of that judgment is Annexure P-7. The claim made in the said petition was that Gurpal Kaur had deserted Colonel Gurdev Singh since the year 1982. It is the petitioner's case that her marriage with Colonel Gurdev Singh was solemnized on 17.12.1997 as per Sikh religious rites and ceremonies after the decree of divorce was granted against the previous wife. It was stated that petitioner had been residing with Colonel Gurdev Singh till his death taking place on 21.04.2014. Colonel Gurdev Singh also executed a registered Will of his estate on 03.03.2014 in favour of the petitioner in his sound disposing mind. Therefore, it was claimed that after the death of Colonel Gurdev Singh his entire estate came into possession of the petitioner.

(6) Respondent No. 5-Anterpreet Kaur while opposing the prayer in the instant petition stated in her reply that she shifted to Canada in the year 1994 along with her mother. Respondent No. 5 used to visit India and stay with her father during her visit to India. It was further stated that Colonel Gurdev Singh was residing alone in India after his retirement in the year 1990 and used to avail services of the petitioner who was a divorcee, as maid. It was also alleged that Colonel Gurdev Singh died on 21.04.2014 under suspicious circumstances for which respondent No. 5 made various complaints for registration of FIR. The facts mentioned in the Will set up by the petitioner contain averments with regard to incorrect age, wrong place of residence, incorrect status of his marriages, incorrect name of his own children etc. There was no reference of the alleged adoption of Jagdeep Singh @ Lucky son of the petitioner from her previous husband, by Colonel Gurdev Singh in the Will. The Will was registered at Garhshankar and Mehnga Singh, Advocate of Nawanshahar/SBS Nagar, Mohali is a witness to the Will whereas Colonel Gurdev Singh was residing in village Chaheru, Tehsil Phagwara, District Kapurthala. The thumb impressions of Colonel Gurdev Singh on the backside of the Will are also missing. Respondent No. 5 further stated that petitioner also relied upon an affidavit dated 26.02.2014 (Annexure R-5/6) allegedly executed by Colonel Gurdev Singh wherein the petitioner has tried to project that deceased Gurdev Singh had dis-inherited his wife and her daughters. Strangely the stamp paper of this document was purchased on 17.02.2014, executed on 26.02.2014 and attested on 28.02.2014. In the affidavit a different version was stated that wife of Colonel Gurdev Singh had deserted him since the year 1980. Further Mehnga Singh, Advocate of SBS Nagar,

the same Advocate has again identified the executant Gurdev Singh on the affidavit. This means that Gurdev Singh made three trips from Chaheru to SBS Nagar to purchase the stamp paper, then to execute it and then to get it attested. It was, thus, suggested that Mehnga Singh, Advocate was having blank signed papers from Colonel Gurev Singh and mis-utilized the same.

(7) In the reply filed by on behalf of the State, it was stated that an enquiry into the complaints dated 10.10.2014 and 20.10.2014 made by Anterpreet Kaur-respondent No. 5 against the petitioner and her son Jagdeep Singh was held by the Superintendent of Police, Phagwara who recommended that the matter can result in serious crime at any time and it was necessary to initiate proceedings under Section 145 Cr.P.C. That enquiry report was approved by the Senior Superintendent of Police, Kapurthala and presented before the Sub Divisional Magistrate, Phagwara. It was further stated that petitioner and respondent No. 5 are aggressive against each other and the present situation is serious and apprehension of dispute over the possession of property prevails at the spot, which necessitated the filing of Calendra under Section 145 Cr.P.C.

(8) Annexure R-1/T is the enquiry report attached with the reply whereunder it was found that daughters of Colonel Gurdev Singh with their mother started residing in Canada with their mother. The relations of Colonel Gurdev Singh (deceased) father of respondent No. 5 became strained with Gурpal Kaur (mother of respondent No. 5) and ultimately, marriage was dissolved by divorce decree on 29.10.1997. It was further reported that Colonel Gurdev Singh solemnized second marriage on 17.12.1997 with the petitioner who was having a son from the previous marriage. She had obtained divorce from her previous husband in the year 1996. It was ultimately found that respondent No. 5 was claiming her right over the movable and immovable property of Colonel Gurdev Singh whereas petitioner along with her son were claiming their right on the basis of a registered Will. Mutation of the property of Colonel Gurdev Singh had not been sanctioned and the Civil Court had ordered the status quo to be maintained.

(9) I have heard learned counsel for the petitioner, learned State counsel, learned senior counsel for respondent No. 5 and perused the paper-book quite extensively with their able assistance.

(10) Learned petitioner's counsel contended that the assertion of respondent No. 5 that petitioner was a maid servant of Colonel Gurdev Singh can be *prima facie* ruled out from numerous record relied upon

by the petitioner. Annexure P-2 is the copy of certificate dated 19.03.2001 issued by Registrar of Marriages, Phagwara, certifying that marriage of Gurdev Singh and the petitioner was solemnized on 17.12.1997. Annexure P-3 is the copy of passport of Gurdev Singh in which name of the petitioner was entered as his wife and this passport was issued on 15.01.2001. Annexure P-4 is the copy of pass-book of the joint account opened in the name of Colonel Gurdev Singh and the petitioner on 16.06.1998 in the Kapurthala Central Co-operative Bank Ltd. and Annexure P-5 is the copy of voter's card of the petitioner issued in the year 2006 with particulars of the petitioner as wife of Colonel Gurdev Singh. Apart from aforesaid record, the petitioner has also placed on record the large number of photographs Annexures P-26 and P-27 for ruling out the contention that the petitioner was only staying with Colonel Gurdev Singh as his maid servant. There is also Annexure P-20 the copy of Ration Card of the family issued on 25.05.2000 showing head of the family as Colonel Gurdev Singh, the petitioner as wife and Jagdeep Singh the son.

(11) The complaints made by respondent No. 5 that she suspected foul play in the death of Colonel Gurdev Singh were enquired into by Superintendent of Police, Sub Division, Phagwara and it was found that there was no truth in the complaints made by respondent No. 5 and the parties were directed to pursue their remedy before the Civil Court. Copy of enquiry report dated 11.08.2014 is Annexure P-21 which was approved by the Senior Superintendent of Police, Kapurthala vide letter Annexure P-22.

(12) Learned senior counsel for respondent No. 5 vehemently contended that the *ex parate* divorce decree was obtained by the deceased by playing fraud and mis-representation as the address of Gurpal Kaur mentioned in the said petition was resident of village and Post Office Butala, Tehsil Baba Bakala, District Amritsar whereas indisputably, Gurpal Kaur was living at Canada along with her daughters. Moreover, the said decree has since been set aside on 18.09.2014 in an application filed Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure filed on 01.07.2014 (Annexure P-15) and thereafter, the main petition filed under Section 13 of the Hindu Marriage Act, stood withdrawn on 19.09.2014. It is, thus, submitted that as on date there is no valid divorce decree and Gurpal Kaur mother of respondent No. 5 continues to be the legally wedded wife of Colonel Gurdev Singh.

(13) It may be seen that in application Annexure P-15 the deceased was impleaded through his daughters, namely; Simrat Kaur Cheema and Anterpreet Kaur as his legal heirs. There was no contest by these daughters to the said application the same was allowed on 18.09.2014 vide order Annexure P-16, passed by learned Additional District Judge, Kapurthala. Thereafter the statement was made by the legal representatives of Colonel Gurdev Singh that the petition for divorce after setting aside the *ex parte* decree may be dismissed as withdrawn and consequently, the order dated 19.09.2014 (Annexure P-17) was passed.

(14) I am of the considered view that it would be a quite debatable issue if the divorce decree could be set aside after about 17 years without impleading the petitioner as a necessary respondent. The petitioner has since filed an application dated 10.11.2014 (Annexure P-18) before the Additional District Judge, Kapurthala for review of the orders dated 18.09.2014 and 19.09.2014 which is still pending adjudication. It was averred in the said application that Gурpal Kaur visited India in the year 1999 i.e. after the divorce decree and came to know about the marriage of petitioner with Colonel Gurdev Singh and never raised any objection.

(15) Learned senior counsel for respondent No. 5 also referred to Annexure R-5/3 (colly.) copy of Ration Card issued in the name of Gурpal Kaur dated 07.10.2014 by the District Defence Services Welfare Officer, Jalandhar, describing her as the wife of Colonel Gurdev Singh. Similarly, the identity card issued by the said officer in respect of widow of Ex-servicemen is also a part of this document.

(16) I am of the view that issuance of that document cannot be of much importance at this stage because vide letter dated 05.03.2015 (Annexure P-24), the Army Authorities have issued the certificate of family pension in favour of the petitioner, intimating that as per record in respect of late Colonel Gurdev Singh, Gурpal Kaur was the wife of the officer at the time of his retirement. The officer had divorced Gурpal Kaur vide decree of divorce dated 06.10.1997 and he had re-married with Charanjit Kaur on 17.12.1997. This is a process which the Army Authorities adopted on the request to issue a Corrigendum Pension Payment Order according to the aforesaid document.

(17) The endorsement on the passport Annexure R-5/13 of Gурpal Kaur would show that she visited India in the year 1999. Therefore, the above facts would show that there is a serious dispute with regard to validity of marriage of the petitioner with Colonel

Gurdev Singh despite there being abundant evidence in her favour and also the dispute about execution of Will in favour of the petitioner. These matters require adjudication in the civil suit which is already pending.

(18) The main question now would be the effect of civil suit instituted on 09.05.2014 by respondent No. 5, her sister and mother (plaintiffs) on the Calendra presented under Section 145 Cr.P.C. before the Executive Magistrates of the two places.

(19) Before discussing the proposition of law involved in this case, a brief reference to the facts agitated and the prayer made in the civil suit Annexure P-8 instituted on 09.05.2014 would be important. The plaintiffs have filed the suit for declaration to the effect that they are owners in possession in equal shares of the land of late Colonel Gurdev Singh situated at both the places i.e. at Tehsil Phagwara, District Kapurthala and Tehsil Garhshankar, District Hoshiarpur and for permanent injunction restraining the defendants therein i.e. petitioner and Mehnga Singh, Advocate from forcibly dispossessing the plaintiffs or interfering in their lawful possession over the land in dispute and further to prohibit the defendants from selling, alienating or transferring the suit land in any manner. It was stated that marriage of defendant No. 1-Charanjit Kaur (petitioner herein) with Colonel Gurdev Singh (deceased) was illegal, invalid and void since the marriage of deceased with plaintiff No. 1-Gurpal Kaur was still subsisting. The Will setup by the petitioner was also attacked.

(20) Annexure P-9 is the copy of application filed under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking *ad interim* injunction during the pendency of suit. Prayer for *ad interim* injunction was for restraining the defendants from forcibly dispossessing or interfering in the lawful/peaceful possession of the plaintiffs and further restraining and prohibiting the defendants from selling, alienating or transferring the same in any manner during the pendency of suit. The learned Civil Court passed the order dated 09.07.2014 (Annexure P-10) and the defendants were directed to maintain the status quo regarding alienation and/or transfer of the suit property as fully detailed in the head note of the plaint. Vide order dated 09.07.2014 (Annexure P-11) the *ex parte* status quo was extended till the next date. Annexure P-12 is the copy of order dated 08.12.2014, passed by the Civil Court framing the issues and additional issues were framed vide order dated 05.01.2015 (Annexure P-13). The status quo earlier granted was extended till the final disposal of the case as per order Annexure P-13.

Annexure P-14 is the copy of written statement filed by the petitioner and co-defendant. With the aforesaid background, whether it was feasible to entertain and continue with the proceedings under Section 145 Cr.P.C. is the moot question?

(21) The law on the subject has been settled by Hon'ble the Supreme Court in ***Ram Sumer Puri Mahant versus State of U.P. and others***¹ Hon'ble Supreme Court held as under:-

“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. 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 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 not continue.”

(22) Learned senior counsel for respondent No. 5, however, referred upon judgment of this Court in ***Mukhtiar Singh versus State of Punjab***². In that case, civil suit in respect of a property in question was pending. At one point of time the Civil Court granted the stay order in favour of the plaintiffs but vide order dated 12th February, 1997, the Civil Court specifically held as under:-

“Therefore, in the facts and circumstances of the case, the affidavits cannot be given much weight at this stage. The documents on the file are clearly favouring the case of the plaintiffs. As the parties are yet to lead evidence, therefore, it will meet the ends of the justice if both the parties are directed to

¹ 1985 (1) SCC 427

² 1997 (3) RCR (Criminal) 14

maintain status quo_regarding possession of land in suit till the disposal of_the present case.”

(23) Later on Calendra under Section 145 Cr.P.C. in the Court of Executive Magistrate by the State through SHO, Police Station City, Patti against Gurdip Kaur and others was presented and the Magistrate, feeling satisfied that the dispute was likely to take place concerning the breach of peace between the parties and invoking the emergency provisions, he appointed Tehsildar, Patti, as receiver with a direction to take possession of the land during the pendency of the proceedings. One of the contentions among others raised by the petitioner was that in the light of civil suit and the order dated 12.02.1997, the action on the part of the police as well as the action on the part of Executive Magistrate was_nothing but an abuse of the process of law and the petitioner(s) were not justified in availing of the remedy under the proviso to Section 146 Cr.P.C. Reliance was placed upon **Ram Sumer Puri's case** (*supra*).

(24) It was observed by this Court in **Mukhtiar Singh's case** (*supra*) that to prevent breach of peace with regard to immovable property, the criminal proceedings under Section 145 Criminal Procedure Code can be and should be invoked in the circumstances of the case. It was further observed that the principle held by Hon'ble Supreme Court in **Ram Sumer Puri's case** (*supra*) would be applicable where the civil suit regarding possession has been adjudicated upon.

(25) The above view of this Court in **Mukhtiar Singh's case** (*supra*) observed by Hon'ble Mr. Justice R.L. Anand (as he then was) came up for discussion in **Ram Niwas and others versus Bhagirath and others**³, a later judgment of this Court. The facts of that case were exactly similar. The petitioners in that case filed a civil suit wherein the order of status quo was passed. The entire case law was discussed by this Court by also referring to the provisions of Section 107/151 Cr.P.C. and the provisions of appointment of receiver etc. under the Code of Civil Procedure. It was held as under:-

“.....With utmost humility and great respect to his lordship (Hon'ble Mr. Justice R.L. Anand) in the face of the catena of the rulings referred to by the learned counsel for the respondents, it will be difficult for me to follow the observations rendered by his Lordship. To conclude finally, if the petitioners were dis-satisfied for one or the other reason with the status-quo

³ 2009 (4) RCR (Criminal) 579

order passed by the learned trial Court, they could have recourse to either the modification of such order or sought appointment of receiver as well as attachment of the disputed land. In view of this, the learned Sub Divisional Magistrate, Mahendergarh was not competent and justified to initiate the proceedings under Sections 145/146 of Cr.P.C.”

(26) In *Amresh Tiwari versus Lalta Prasad Dubey and another*⁴, respondent No. 1 had filed a civil suit for declaration of title, possession and for injunction. In the said suit an order was passed to maintain status quo. While the civil suit was pending the recourse was taken to the proceedings under Section 145 Cr.P.C. The Hon'ble Supreme Court under the circumstances held it was unable to accept the submission that the principles in *Ram Sumer Puri's case (supra)* would only apply if the Civil Court has already adjudicated on the dispute regarding the property and given a finding. It was further held that Ram Sumer's case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the Civil Court and parties are in a position to approach the Civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 should not continue. The Hon'ble Supreme Court further held as under:-

“Reliance has been placed on the case of *Jhummamal alias Devandas versus State of Madhya Pradesh and others, 1989 (1) RCR (Crl.) 428: 1988 (4) SCC 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

⁴ 2000 (4) SCC 440

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.”

Therefore, the Hon'ble Supreme Court allowed the appeal and set aside the order of the High Court and it was held that SDM was right in discontinuing the proceedings under Section 145 Cr.P.C.

(27) It seems that respondent No. 5 did not press upon the prayer for *ad interim* injunction with regard to possession before the Civil Court in the already instituted suit, clearly with an idea of taking recourse to proceedings under Section 145 Cr.P.C. for redressal of the grievances by the means other than legal. If the Civil Court had not adverted to the prayer for *ad interim* injunction, respondent No. 5 and other plaintiffs in the suit could always press upon such a prayer even now and get an adjudication on the question. They could also seek prayer for appointment of the receiver etc. under the provisions of Criminal Procedure Code to preserve the property by making out a case for such a relief, if permissible.

(28) In *Balwinder Singh versus State of Punjab*⁵, this Court observed that from the perusal of revenue record, it was found that the case involves intricate disputed question of fact. Even the possession of the respective parties cannot be said to be clearly established on the basis of the pleadings. This can only be done through the Civil Court by taking appropriate remedy for which civil suit was already pending. It was held that the proceedings under Section 145 Cr.P.C. would be inappropriate on the facts and circumstances of the case, therefore, this

⁵ 2000 (4) RCR (Criminal) 838

Court allowed the petition and consequently, the impugned orders were quashed.

(29) In the instant case, even in the absence of Will, if the petitioner shows herself to be legally wedded wife of Colonel Gurdev Singh for which she has relied upon so many documents, the petitioner and the daughters of Colonel Gurdev Singh may be co-sharers but respondent No. 5, Gурpal Kaur and other daughter of Colonel Gurdev Singh having restored to the remedy by filing a civil suit, the proceedings under Section 145 Cr.P.C., therefore, could not have been instituted at the instance of respondent No. 5. This Court in *Gain Chand and others versus State of Haryana and others*⁶, quashed the proceedings under Section 145 Cr.P.C. simply on the ground that the dispute with regard to property was already pending in Civil Court.

(30) There is serious dispute between the parties over possession of the disputed land. There is, however, nothing to suggest that after the status quo by way of *ad interim* order was initially granted by the Civil Court in July, 2014, there had been any untoward incident of over possession for enabling the official respondents to initiate proceedings under Section 145 Cr.P.C.

(31) Strong reliance was, however, placed by learned senior counsel for respondent No. 5 to *Prakash Chand Sachdeva versus State and another*⁷. In that case, the dispute was between father and son and the appellant-father was stated to have been forcibly thrown out of the house. The respondent claimed right in the said house on the ground that the property was ancestral in nature. The appellant-father also filed a civil suit for injunction in which status quo order was granted. But status quo of what? The father had already been thrown out of possession. It was further held that, in view the fact that proceedings under Section 107 Cr.P.C. were dropped, the Sub Divisional Magistrate, also dropped the proceedings under Section 145 Cr.P.C. That order passed by the Magistrate was upheld by the High Court on the reasoning that appellant having sought civil remedy the proceedings under Section 145 Cr.P.C. could not continued. Hon'ble the Supreme Court referred to the principles held in *Ram Sumer Puri's case (supra)*, that remedy in Civil Court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal Court particularly when possession is being examined by the Civil court and

⁶ 2005 (3) RCR (Criminal) 958

⁷ 1994 (1) SCC 471