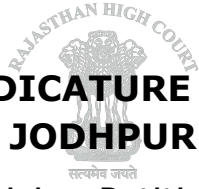




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Criminal Revision Petition No. 1521/2024

Rajpal Singh S/o Shri Pannaram, Aged About 53 Years, R/o Dabdiya, Police Station Gacchipura, District Deedwana-Kuchaman, Rajasthan, Presently At Central University, Bandrasindhi, Tehsil Kishangarh, District Ajmer, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Pannaram S/o Shri Bhugnaram, Aged About 78 Years, R/o Dabdiya, Police Station Gacchipura, District Deedwana-Kuchaman, Rajasthan.
3. Pushpendra S/o Shri Narendra Singh, Aged About 30 Years, R/o Dabdiya, Police Station Gacchipura, District Deedwana-Kuchaman, Rajasthan.
4. Ashok S/o Shri Narendra Singh, Aged About 28 Years, R/o Dabdiya, Police Station Gacchipura, District Deedwana-Kuchaman, Rajasthan.

----Respondents

For Petitioner(s) : Ms. Jhamak Nagda
For Respondent(s) : Mr. Bajrang Singh
Mr. N.S. Chandawat, Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

DATE OF CONCLUSION OF ARGUMENTS : 15/01/2026

DATE ON WHICH ORDER IS RESERVED : 15/01/2026

FULL ORDER OR OPERATIVE PART : Full Order

DATE OF PRONOUNCEMENT : 24/03/2026

BY THE COURT:-

1. The instant criminal revision petition, preferred under Section 438 of the BNSS, has been instituted on behalf of the



petitioner assailing the legality and propriety of the order dated 18.11.2024 passed by the learned Additional Sessions Judge, Makrana, District Nagaur, Rajasthan, in Criminal Revision No. 18/2024, whereby the revision petition preferred by the respondents came to be allowed and the order dated 04.09.2024 passed by the learned Sub-Divisional Magistrate, Makrana in proceedings No. 6/2023 was set aside.

2. The brief facts of the case, concisely stated, are that the petitioner, claiming to be a co-sharer in agricultural land bearing Khasra Nos. 81 and 81/1 admeasuring 3.7088 hectares situated at village Besaroli, alleged that the said land originally belonged to Pannaram, who is the father of the petitioner and that he has been in possession and cultivation thereof.

2.1 It was contended that Pannaram executed a gift deed in favour of the private respondents with an intention to deprive the petitioner of his lawful share, whereafter proceedings were initiated before the Sub-Divisional Officer, Makrana, which are still pending. The petitioner further alleged that the respondents are attempting to forcibly dispossess him, damage crops, and create law and order issues, giving rise to an apprehension of breach of peace.

2.2 Upon police inquiry, the learned SDM, Makrana, vide order dated 04.09.2024, directed attachment of the disputed property and appointment of a receiver. However, the said order was set aside by the learned Additional Sessions Judge, Makrana, vide impugned order dated 18.11.2024, passed in a revision petition





preferred by the respondents. Aggrieved thereby, the petitioner has preferred the present revision petition.

3. Heard the learned counsel appearing on behalf of the parties and perused the material available on record.

4. Upon perusal of the material available on record, it is emerging that the disputed khasra Nos. 81 and 81/1 stood recorded in the name of respondent No.2 as khatedar. It is also not in dispute that a civil suit seeking cancellation of the transfer executed in favour of respondents Nos. 2 and 3, which came to be rejected under Order VII Rule 11 CPC for want of jurisdiction and the appeal thereagainst is stated to be pending before this Court. Further, an order dated 28.10.2021 has been passed by this Court restraining further alienation of the disputed property. It is also an admitted fact that petitioner has instituted proceedings before the Sub-Divisional Officer, Makrana, seeking partition, declaration and permanent injunction, wherein an order of status quo has been passed. Notably, in the said proceedings, petitioner himself has acknowledged joint possession of the disputed land with the respondents.

5. 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, pursue 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."

6. In the case of **Ram Sumer Puri Mahant v. 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.





7. 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 126 and 135 read with 170 of BNSS.

8. After considering the facts and circumstances of the case, as well as the legal principles discussed above, this Court finds that when a civil suit concerning the title and possession of a disputed property is already pending before a competent Civil Court, initiating or continuing parallel proceedings under Section 145 and 146 of CrPC is neither appropriate nor legally justified. Such parallel proceedings amount to a needless duplication of efforts, leading to unnecessary expenditure of public time and resources. The Civil Court, being fully empowered to adjudicate disputes relating to possession and ownership, can also grant appropriate interim relief during the pendency of the suit. Moreover, any decision rendered under Sections 145 and 146 of CrPC remains subordinate to the outcome of the civil proceedings, as the orders of the Civil Court are binding upon the criminal courts. Therefore, in the presence of a pending civil suit, the continuation of





proceedings under Sections 145 and 146 of CrPC serves no useful purpose and lacks any legal foundation. This Court is of the considered view that until the rights of the parties are conclusively determined by a competent Civil Court, the property of an individual cannot be arbitrarily taken or handed over at the instance of a public servant under the garb of Sections 145 and 146 of CrPC, specially when there is no question of possession involved and an imminent danger of breach of peace apprehended.

9. In light of the foregoing discussion, the order dated 18.11.2024 passed by the learned Additional Sessions Judge, Makrana, District Nagaur, is found to be just and proper and is hereby affirmed. Consequently, the order dated 04.09.2024 passed by the learned SDM, Makrana is quashed and set aside.

10. Accordingly, the instant petition is hereby dismissed.

11. Stay petition and any pending applications stands disposed of.

(FARJAND ALI),J

8-Mamta/-