

Khem Giri and Anr Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Feb-03-2015

Appellant : Khem Giri and Anr

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC.

PETITION NO.1794/2012 Khem Giri & Anr.

versus State of Rajasthan & ORS.Date of order : 03.02.2015 PRESENT HON'BLE
Mr.JUSTICE VIJAY BISHNOI Mr.S.L.Jain for the petitioneRs.Mr.R.K.Bohra, Public
Prosecutor.

Mr.Tribhuvan Gupta for the respondents.

BY THE COURT:- This criminal misc.

petition under Section 482 Cr.P.C.has been filed by the petitioners against the
order dated 5.5.2012 passed by learned Additional Sessions Judge, Nimbahera
(hereinafter referred to as 'the revisional court') in Criminal Revision Petition
No.32/2007 whereby the revisional court has dismissed the revision petition filed

by the petitioner against the order dated 25.4.2007 passed by learned Sub-Divisional Magistrate, Nimbahera (hereinafter referred to as 'the Executive Magistrate') in proceedings under Section 145 Cr.P.C. Brief facts of the case are that on the basis of complaint filed by the petitioners, the proceedings under Section 145 Cr.P.C. were initiated by the Executive Magistrate.

The dispute between the rival parties was in relation to 3 temples situated at Hoda Magra, Village Sarlai, Tehsil Bhadesar, District Chittorgarh.

The petitioners have complained that the respondents No.2 and 3 are creating hurdles in maintaining the said temples and are also forcibly taking away the offerings of the said temples donated by the public at large.

It is noticed that the S.H.O., Police Station, Bhadesar also filed a complaint under Section 145 Cr.P.C. before the Executive Magistrate on 24.7.2004.

The Executive Magistrate has recorded the statements of the petitioners Khem Giri and Bheru Singh and one another person Shiv Giri on 28.7.2004 and 29.7.2004 respectively and also recorded the statements of respondents No.2 and 3 on 29.7.2004 and 31.7.2004 respectively.

Vide order dated 4.8.2004, the Executive Magistrate while exercising powers under Sub-Section (1) of Section 145 Cr.P.C. attached the temple premises and while exercising powers under Section 146 Cr.P.C., has appointed the Tehsildar, Bhadesar as Receiver.

The order passed by the Executive Magistrate under Sub-Section (1) of Section 145 and Section 146 Cr.P.C. on 4.8.2004 was challenged by the respondents No.2 and 3 by way of a revision petition before the revisional court.

The revisional court vide order dated 17.3.2006 dismissed the said revision petition while affirming the order dated 4.8.2004 passed by the Executive Magistrate and directed the parties to produce their evidence before the Executive Magistrate in the pending proceedings under Section 145 Cr.P.C. The Executive Magistrate vide order dated 25.4.2007 has finally decided the proceedings under Section 145 Cr.P.C. while observing that looking to the fact that civil litigation

between the parties is pending, the proceedings under Section 145 Cr.P.C.cannot be continued.

The Executive Magistrate has also observed that civil litigation between the parties pending in the civil court is in relation to injunction only and not in relation to possession, declaration or title.

He further observed that the court has to see that on the date of incident, who was in possession of the property in question and as per the site inspection and after hearing both the parties, it is proved that the respondents 4 No.2 and 3 were in possession of the disputed property on the day, when the court passed the order of attachment of the property and appointment of Receiver.

After observing this, the Executive Magistrate has directed the Receiver to handover the possession of the disputed property to the respondents No.2 and 3.

Being aggrieved with the order dated 25.4.2007, the petitioners preferred a revision petition before the revisional court, however, the same has been dismissed vide impugned order dated 5.5.2012.

Hence, this criminal misc.

petition.

Learned counsel for the petitioners has assailed the impugned order by arguing that sub- Section (4) of Section 145 Cr.P.C.casts a duty upon the Executive Magistrate to decide that which of the party was, on the date of order made by him under Sub-Section (1) of Section 145 Cr.P.C., in possession of the disputed property.

It is contended that in the present case, the Executive Magistrate, without taking into consideration the fact that at the time of passing of the order under sub-Section (1) of Section 145 Cr.P.C., the petitioners were in possession of the disputed property, has ordered 5 for handing over the possession of the disputed property to the respondents No.2 and 3.

It is further contended that the revisional court, without taking into consideration this aspect of the matter, has dismissed the revision petition in mechanical manner.

Learned counsel for the petitioners has submitted that since the dispute property belongs to a public trust, it should be handed over to the trust and not to the private persons.

Learned counsel for the petitioners has placed reliance upon the judgment rendered by Jaipur Bench of this Court in the case of Mohd.

Munnvar Khan versus State & ORS. reported in 2007 WLC (Raj.) UC page 679.

On the strength of above arguments, the learned counsel for the petitioners has prayed for setting aside of the impugned orders passed by the courts below.

Per contra, learned counsel for the respondents No.2 and 3 has argued that from the material available on record particularly from the statements of the petitioners recorded before the Sub-Divisional Magistrate, it is clear that on the date when the Executive Magistrate passed the order in the proceedings under Section (1) of Section 145 Cr.P.C. the property in question was in possession of respondents No.2 and 3.

It is also submitted that from the statements of the petitioner and other witness, recorded before Executive Magistrate, it is clear that since 2002, the respondents No.2 and 3 are in possession of the property in question.

Heard learned counsel for the parties and perused the record.

As per Sub-Section (4) of Section 145 Cr.P.C., the Executive Magistrate has to decide the question that which party is entitled for possession of the disputed land which was attached while exercising powers under sub-Section (1) of Section 145 Cr.P.C. The Executive Magistrate while passing the order dated 25.4.2007 has observed that on the basis of the site inspection and after hearing both the parties, it is clear that the disputed property was in possession of the respondents No.2 and 3 at the time of passing of attachment order.

It is noticed that in their statements, the petitioners Bheru Singh and Khem Singh have clearly stated that there was some dispute between the parties in respect of the possession of disputed property in the year 2002 and since then Jagannath Gurjar-respondent No.3 was opening boxes and was not allowing anybody to interfere in the affairs of management of the temples.

It is not in dispute that the civil litigation between the parties is going on and the question regarding the title of the property is to be decided in those civil proceedings.

After carefully perusing the record and after going through the impugned orders, this Court is of the opinion that the Executive Magistrate has not committed any illegality in directing to handover the possession of the disputed land to the respondents No.2 and 3 as it was proved that at the time of passing of the order under Sub-Section (1) of Section 145 Cr.P.C., the respondents No.2 and 3 were in possession of the disputed.

So far as the argument of learned counsel for the petitioners that the disputed property is belonging to trust and should not be handed over to private persons is concerned, the Executive Magistrate was not required to take decision regarding title of the property while exercising powers under Sub-Section (4) of Section 145 Cr.P.C. Only thing which he has to take into consideration, is that, who was in the possession of the disputed property when the same was put under attachment and it was proved that the respondents No.2 and 3 were in possession of the same on the day when the attachment order was passed.

Hence, there is no merit in this criminal misc.

petition.

The criminal misc.

petition is hereby dismissed.

The stay petition is also dismissed.

[VIJAY BISHNOI], J.

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