

Abugunda and ors. Vs. Devgunda

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Court : Andhra Pradesh

Decided On : Feb-25-1953

Reported in : 1953CriLJ1524

Judge : Siadatali Khan, J.

Appellant : Abugunda and ors.

Respondent : Devgunda

Judgement :

ORDER

Siadatali Khan, J.

1. This is a revision petition against the order of the Munsiff Court, Bhodan, dated 19.8.1952 by which the land in dispute has been taken in possession of the Court and the parties directed to resort to a civil Court. Against this order the revision petition has been filed and I have heard the arguments of the learned advocates of the parties, Shri Amanullah and Shri K.B. Swamy Gupta.

2. The learned Counsel for the revision-petitioners argued that when the Magistrate had come to the conclusion that there was no likelihood of breach of peace, the only thing he could do was that he should have returned the possession of the land to the party from whom it was taken. No one can dispute this proposition. The learned Magistrate was himself aware of it as it appears from

the statement in, the judgment that unfortunately the police did not prepare a panchnama at the time of taking possession of the land in the Court's custody. In the circumstances he proceeded to consider the evidence in the case and came to the conclusion that at the time of the order or two months prior to it, the possession of neither-party is established. Evidently, this conclusion after the finding that there was no likelihood of breach of peace cannot be supported; for having cancelled the preliminary order under Sub-section (1) of Section 148, H. Cr.P.C. he could not go on to determine the possession at the date of the order or two months prior to it. But it should be noted that this conclusion was only a means to an end and was not an end in itself. It was for the purpose of determining from whose possession the land was attached. And Clause 5 of Section 148 enacts that when there was no likelihood of breach of peace, the Magistrate should from the evidence adduced in the case determine the possession of the party. What the Magistrate has done, is, in my opinion, nothing more than that and as he could not come to a conclusion on the evidence adduced, he directed that the land be kept in the possession of the Court, In the circumstances, I do not see any reason to interfere.

It has been laid down in-Nazser-e-Osmania 100 (A) and-5 Nazaer-e-Osmania 240 (FB) (B) that when there is no likelihood of breach of peace, the jurisdiction of the Magistrate comes to an end and he cannot proceed to take evidence to determine the possession of the parties. In the circumstances, as already stated, the only thing the Magistrate could do was to determine from the evidence adduced the possession at the time of the order, and failing to reach a conclusion, continue the attachment. This view is borne out by-State v. Sheoratan Singh AIR 1951 Nag 201 (C) where it has been held that:

Where the Magistrate acts under Sub-section (5) and cancels the preliminary order passed under Sub-section (1), there would be nothing wrong if he passes an incidental order cancelling the order of attachment as well. It is but right that when the jurisdiction to act under the section is found wanting the Magistrate should restore the status quo ante. When it is not possible to determine the status quo ante because of the difficulty in determining from whom the property was attached, the appropriate order to pass is to retain the property in the custody of the Court

and direct the parties to have recourse to a civil Court to obtain possession' of the property.

Hence, as already stated above, there is no substance in this revision petition, and it should be dismissed. I may note that the provisions of Section 148, Sub-section 5, Hyderabad Criminal Procedure Code correspond more or less to those of Sub-section 5 of Section 145, Indian Criminal Procedure Code. I may note further that the learned Counsel for the revision petitioners argued from-6 Nazaer-e-Osmania 100 (A) that in the last line of the Judgement it is laid down that the Magistrate should derminate the possession of the party from whom the land in dispute was attached. This is so, but can only mean that the Magistrate should determinate from the record already before him and should not proceed to take further evidence as no jurisdiction for the same remains with him.

3. Order accordingly.

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