

Abdullah and ors. Vs. Hanmanthappa

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Court : Andhra Pradesh

Decided On : Jan-08-1953

Reported in : 1953CriLJ1862

Judge : Srinivasachari, J.

Appellant : Abdullah and ors.

Respondent : Hanmanthappa

Judgement :

ORDER

Srinivasachari, J.

1. This is a revision arising in proceedings under Section 148, Hyd. Criminal P.C. corresponding to Section 145, Indian Criminal P.C. The second party in the original proceedings being aggrieved by the order of the Magistrate holding that the first party was in possession of the suit land has preferred this revision. The Magistrate on the application of the first party who is the respondent before me came to the conclusion that there was apprehension of a breach of peace and passed an order to that effect on 29.3.1950. Immediately after, he took over the land under Government supervision pending enquiry. The parties were called upon to submit the statements with regard to their respective claims. After enquiry the Magistrate came to the conclusion that it was proved by evidence that the first party was in possession of the land on the date of the order and two months prior

to that and, therefore, directed that the land that was taken under the supervision of the Government be handed over into the possession of the first party.

2. The learned advocate for the petitioners confined his arguments to purely questions of law as affecting the jurisdiction of the Magistrate, as in revisions preferred against an order under Section 145, Cr.P.C. the High Court rarely interferes with findings of fact arrived at by the Magistrate on enquiry. The first point urged by the learned advocate was that no summons was issued to a necessary party in the case and as such the whole proceedings were vitiated. The second argument of the learned advocate was that the notice of the apprehension of breach of peace was not put up on a conspicuous place as required by law. This, he contended, also vitiated the proceedings. The third argument was that there was no clear finding of the Magistrate that there was apprehension of breach of peace after the second party had been noticed and he had put in his statement as the original order holding that there was apprehension of breach of peace was only an ex parte order. He contended that the Magistrate should have given a definite finding, after the statement of the second party was filed, that there was apprehension of breach of peace.

3. It would be desirable to dispose of the last point in the first instance because there does not appear to be any substance in that argument, for, where the Magistrate had come to a conclusion that there was apprehension of breach of peace and thereafter called upon the parties to file their respective claims, the law does not contemplate a further finding unless the Magistrate is satisfied that the conclusion arrived at by him in the first instance was not correct in which case he may vary his order and say that there is no apprehension of breach of peace. If, however, after going through the statements and at any later stage he is of opinion that there is no apprehension of any breach of peace, the proceedings would be dropped and the property would be handed over into the possession of that party from whose possession it was taken under the supervision of the Government. Therefore, the fact that there was no subsequent finding that there was apprehension of breach of peace would not make the order illegal.

4. The argument that a necessary party has not been served with summons requires consideration. The petitioners before me who form the second party are the son and the wives of one Mashayakh Saheb who is the pattedar of this land. The learned advocate argued that it had been established by the evidence produced by him that the pattedar of his land was one Mashayakh Saheb because the pahanipatrak clearly mentions the name of Mashayakh Saheb as being in possession. So far as this point is concerned, the lower Court has held that the pahanipatrak which is relied upon by the second party has not been proved. It is, therefore, useless to rely upon the pahanipatrak. Apart from it, the advocate contended, it is well established that the actual owner and person in possession of the suit land is Mashayakh Saheb and not Abdullah, the son who was actually in custody of the land. His whole argument is that Mashayakh Saheb should have been called and enquiry proceeded with in his presence because the records show that he was in possession. In support of his argument, the advocate relied upon the following cases: - 14 Deccan LR 49 (A); - 14 Deccan LR 159 (B); - 15 Deccan LR 242 (C); - 13 Deccan LR 177 (D); - 16 Deccan LR 17 (E) and 20 Deccan LR 252 (P). These cases which were relied upon by the advocate for the petitioners only lay down that all person, concerned should receive notice of the proceedings and enquiry should be proceeded with in their presence. They merely say that the person actually interested should be before the Court. In some of the cases cited before me, one of the parties to the proceedings under Section 145, Cr.P.C. was the agent, or the servant of the real owner and the person in whose possession the land was. In these cases the High Court held that an agent or an employee could not be said to be the proper party in such proceedings; the proper party would be the proprietor. It has to be stated that in proceedings under Section 145, Cr.P.C. the enquiry is confined to the fact of actual possession. The Court will only look to the fact as to who was in actual possession. In the case now before me the person contesting the proceedings is the son of Mashayakh Saheb. It could not be said that the son who was managing the land was not a person interested or a 'person concerned' within the meaning of Section 145. An agent or an employee stands on a different footing altogether. Therefore, the cases relied upon by the learned advocate for the petitioners do not support the view that even in cases where a son is in possession of the property, it is necessary to issue

notice to the father because his name happens to be mentioned as owner and proprietor of the land. There can be no doubt that the enquiry must be restricted to parties concerned in the dispute although others may have a title to the land, The court is concerned with the person in actual possession who is likely to create a breach of peace. It is not concerned with the question as to where the title of the land lies.

The duty of the Magistrate under the Section is merely to prevent a breach of peace and this he does by deciding the disputed possession as between the person likely to cause such a breach and as between them alone. His final order is only of a temporary effect to endure till such time as any party is affected in due course of law. Therefore, it comes to this that the order can only have effect as between disputing parties, that is to say, the parties to the proceedings in which it was made. The Court is moved when there is disturbance of possession and the disturbance complained of is of the person on the spot. Giving notice to all concerned and await their submissions would entail enormous delay and protraction in the proceedings and this would be against the very purpose for which Section 145 has been enacted. This remedy is only to prevent a breach of peace and any bloodshed that may follow if it were not prevented and to restore possession by law to that person who was actually in possession two months prior to the date of the order, leaving it to the other contesting party to get a declaration in an appropriate civil suit. It has also to be observed that the law does allow any party who thinks that his interests have been affected to appear before the Magistrate and apply to be made a party. This provision is enacted in Section 145(5) of the Code. One other case relied upon by the advocate for the petitioners is a case reported in - *Tukaram v. Punjabrao* AIR 1018 Nag 46 (1)(G). In this case, one of the parties was not served with the notice and the Magistrate gave a finding in the absence of one of the parties. Rightly the High Court held that the Magistrate's order was without jurisdiction. Passing an order in the absence of one of the parties is giving a decision in one's absence and this is not warranted by law. The result of the discussion is that the fact that notice was not taken out to the father of petitioner No. 1 does not vitiate the proceedings.

5. The other argument advanced was about the non-affixure of the order of the Magistrate to a conspicuous place that he is satisfied that a dispute likely to cause breach of peace exists. It was urged that this was mandatory and since the Magistrate did not conform to the procedure required by law, the proceedings should be declared illegal. The object of the affixure of the order of the Magistrate that there is apprehension of breach of peace in respect of a certain land is that person who may be interested in it may appear and put in their statements with regard to the possession of the land. The question is whether non-conforming to this provision would make the whole proceedings illegal. It is essential before declaring a proceeding to be illegal that the court should be satisfied that there has been an injury sustained by any party by reason of not conforming to a particular provision of law. If it is not so, such an omission would be regarded as an irregularity which would not vitiate the proceedings. In this connection I might refer to the cases reported in - 19 Deccan LR 366 (H) and - Bhurekhan v. Fakira AIR 1924 Nag 171 (I). No doubt the Privy Council has held in the case reported in - Abdul Rahman v. Emperor AIR 1927 PC 44 (J), that certain irregularities under Criminal P.C. are cured under the provisions of Section 537, Cr.P.C. That was a general proposition laid down by the Privy Council. It was not with special reference to proceedings under Section 145, Cr.P.C. The learned advocate cited before me the case of - Chanan Singh v. Emperor AIR 1938 Lah 345 (K). In this case it was found as a fact that by reason of the notice not having been affixed to a conspicuous place as contemplated by Section 145(3) certain parties who could have contested the original petitioner's claim were not able to contest the claim and, therefore, there was real injury sustained by these parties. In the case before me, the son has been noticed. To say that the son would not have informed the father or that the father would not have known about these pending proceedings all this time is something which cannot be believed. As I have stated above, no proof that real injury had been sustained has been forthcoming. Under those circumstances the non-compliance with Sub-section (3) of Section 145, Cr.P.C. cannot make the proceedings illegal. The result is, as I have held against the petitioners in all the arguments, the revision petition has to be dismissed. Revision petition is dismissed.

