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Khem Chand Vs. Balwant

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Court : Allahabad

Decided On : Dec-21-1965

Reported in : AIR1967All44

Judge : H.C. Tripathi, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 145(4) and 146

Appeal No. : Criminal Revn. No. 943 of 1964

Appellant : Khem Chand

Respondent : Balwant

Advocate for Def. : N.S. Singhal, Adv.

Advocate for Pet/Ap. : D.P. Mital, Adv.

Disposition : Revision application allowed

Judgement :
ORDER

H.C. Tripathi, J.

1. This revision is directed against an order of the Sub-Divisional Magistrate, Meerut, dated 25-3-1964 in a case under section 145, Cr. P. C.

2. On receipt of a report from police that a dispute likely to cause a breach of peace existed between the parties concerning a well and persian wheel installed therein the learned Magistrate passed a preliminary order requiring the applicant and one Balwant to put up in written statement of their respective claims regarding the facts of actual possession of the subject of dispute and to adduce evidence in support of their respective claims.

3. In response to this order the petitioner Khem Chand and the opposite party Balwant appeared before the Magistrate and filed their written statements and led evidence in support of their respective claims to the persian wheel and the well in question. Balwant in his written-statement averred that the well in dispute and the persian wheel were the joint property of his. Khem Chand and some other cultivators and that they were enjoying the possession of the same Khem Chand on the other hand claimed exclusive possession over the well and persian wheel.

4. On an assessment of evidence the learned Magistrate reached a conclusion that

'Both the parties Balwant and Khem Chand are jointly in possession along with Munshi. Dulley and Bahadur and are entitled to have the possession thereon' He. therefore, passed the impugned order declaring them to be in possession of the well jointly and directing that

'None of them will interfere in the possession of any one till they are evicted therefrom in due course of law by Civil Court.'

5. Learned counsel for the applicant has urged that the impugned order is wholly illegal and beyond the scope of Section 145. Cr. P. C. There is force in this contention.

6. The relevant portion of Section 145 (4) reads :

'The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documents and affidavits, if any, so put in, hear the parties and conclude the enquiry, as far as may be practicable, within a period of two months from the date

of the appearance of the parties before him and, if possible, decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject'

7. A perusal of this Section makes it obvious that it is incoumbent for the Magistrate to decide the question whether any and which of the parties was in possession of the subject-matter in dispute. In case the Magistrate is of opinion that none of the parties was then in such possession or is unable to decide as to which of them was in possession then he has to lake recourse proceedings envisaged under Section 146 of the Act and refer the question of possession for the decision of the Civil Court. The proceedings under Section 145 Cr P C. do not contemplate a case, of joint possession and once the Magistrate, on a consideration of evidence reaches a conclusion that the parties are in joint possession of the subject-matter of the dispute he becomes functus officio and the proceedings under Section 145, Cr P C., should |be dropped in case he is of the opinion that there is dispute between the parties regarding the exercise of their joint possession over the subject-matter of the dispute which is likely to lead to a breach of peace, the Magistrate has the jurisdiction under Section 107. Cr P. C. to proceed against the parties But after having arrived at a finding of joint possession in favour of the parties he has no jurisdiction to continue proceedings under Section 145. Cr P C., or to pass any further order therein The order which the learned Magistrate has passed in this case is a meaningless order as it declares both the parties to be in joint possession of the well and the persian wheel along with some others and directs them not to interfere in the possession of any one of them. The Magistrate did not take into account that it was not possible to enforce his order

8. It is well settled that the possession contemplated under section 145, Cr. P C., is not only actual possession but the exclusive possession of the subject in dispute and the question of joint possession or constructive possession are foreign to the scope of Section 145, Cr P C. (See AIR 1941 Oudh 515. AIR 1945 Oudh 62 and AIR 1948 Oudh 130)

9. In Nahar Singh v. The State) a Division Bench of Rajasthan High Court (Wanchoo. C J, and Bapna, J.) held that an order under section 145. Cr P C. can only be passed in favour of a party in exclusive possession of a property and no declaration on joint possession can be made under that section.

10. It must therefore, be held that the impugned order is illegal and liable to be quashed.

11. Accordingly I allow this revision, and quash the impugned order of the Magistrate.

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