

Bhagwat Saran Vs. State and ors.

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Court : Allahabad

Decided On : Aug-30-1965

Reported in : AIR1967All164; 1967CriLJ417

Judge : Gyanendra Kumar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145, 145(1) and 537

Appeal No. : Criminal Revn. No. 1464 of 1965

Appellant : Bhagwat Saran

Respondent : State and ors.

Advocate for Def. : S.D. Agarwala and ;S.N. Mulla, Advs. and ;J.N. Chaturvedi,
Adv. General

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Gyanendra Kumar, J.

1. The facts giving rise to this revision are that on 22-7-1965 the Kotwali Police, Agra, submitted a report to the effect that in mohallah Dhuliaganj there exists a

cinema house known as 'Basant Talkies,' whereof Bhagwat Saran (applicant) and Pannalal (opposite party no. 2) are lessees for a period of ten years. On 28-10-1961, (he above parties have added two other partners in the business, vix., Gauri Shanker (opposite party No. 3), who is brother of Pannalal aforesaid and Smt. Kanak Lala, who is wife of Bhagwat Saran aforesaid. In 1964 some disputes started between the parties, with the result that on 2-9-1964 Bhagwat Saran applicant filed a suit in the court of the Civil Judge. Agra, on the allegations that he had already dissolved the partnership, or the same may be deemed to have been dissolved. He accordingly prayed for rendition of accounts of the Basant Talkies from 21-10-1961 onwards by Gauri Shanker and Pannalal.

On 21-12-1964 the Civil Judge passed an order that by common agreement of the parties. Pannalal and Gauri Shanker shall run the Talkies till the Commissioner submitted his report. However, on 25-2-1965, the Civil Judge set aside his previous order appointing a Commissioner. The Police report further stated that the relations between the parties became worse day by day till on 20-7-1965 at 12.5 mid-night It First Information Report was lodged by Ram Charan Lal Munim, on behalf of Pannalal and Gauri Shanker, against Bhagwat Saran and his companions for dacoity on the allegations that they had forcibly entered the Cinema house at about 7 p.m. and snatched away the keys and documents from him. The report went on to say on enquiry the police discovered it to be only a case of criminal trespass under Section 448 of I.P.C. The fact of the matter being that on the evening of 20-7-1965 Bhagwat Saran and his companions came to the Cinema house. On seeing these persons, Ram Charan Lal Munim left the place, with the result that now Bhagwat Saran is in possession of the Cinema house (Cinema par adhikar kiya huwa hai), while Pannalal's party-men are bent upon taking possession of the Cinema house by all possible means and are hovering round the building. On the other hand, Bhagwat Saran's followers are also ready to meet all contingencies. In the end, the report stated that in view of these circumstances there was grave apprehension of the breach of peace. Hence Basant Talkies should be attached under Section 145 Cr. P. C., otherwise very serious consequences may ensue. Necessary orders may be passed. A report under Section 107/117 Cr. P. C. has also been submitted.

2. On receipt of the above report D/-22-7-65 from the Police, the City Magistrate passed the following order that very day:

'No report under S. 107, Cri. P. C. has reached this Court so far. However, from P. R. (police report) forwarded by C. O. City, I am satisfied that there is a dispute regarding Basant cinema between the parties mentioned in the report. So, I, K. P. Gupta, C. M. hereby order that notices under Section 145, Cri. P. C. be issued to parties for 30/7. Since imminent danger of breach of peace has been reported so S. H. O. Kotwali will attach this Cinema building including the contents and give it in supardgi of a reliable suprudar. An Armed Guard shall be posted there, if necessary. Supurdginama shall be sent to me.'

3. The applicant challenged the above quoted order in revision before the Additional District Magistrate (Judicial) Agra and obtained an interim order of stay dated 22-7-65. The learned A. D. M. (J), by his judgment dated 3-8-65, dismissed the revision and vacated the stay order, hence this revision by Bhagwat Saran applicant.

4. Sri P. C. Chaturvedi, appearing for the applicant, has urged that: (1) the parties, being joint lessees, are in joint possession of the Cinema, so the provisions of Section 145, Cri. P. C. are inapplicable to their case, and (2) that the order passed by the City Magistrate under Section 145. Cri P C is a speaking order, but it does not comply with the mandatory provisions of Section 145 (1). Cri P. C. inasmuch as it does not record the grounds of the satisfaction of the City Magistrate to the effect that there exists a dispute likely to cause breach of the peace; on the contrary, it merely states that there is a dispute between the parties regarding Basant Cinema; so the order is wholly illegal and inoperative. In support of his contention Shri Chaturvedi mainly relies upon the following cases:

1. Taylor v. Taylor, (1875) 1 Ch. D. 426, 2. Nazir Ahmad v. King Emperor. . State of Uttar Pradesh v. Singhara Singh : [1964]4SCR485 and 4. Sri Ram v. The State .

5. On the other hand, the Advocate General, appearing for opposite parties 2 and 3, has contended that: (1) joint possession of the parties, if any, has unlawfully been converted into exclusive possession by the applicant, so Section 145 would

be attracted: (2) that the order essentially complies with the requirements of Section 145 (1) (8) that the Proceedings under Section 145, Cri. P. C. are only quasi judicial and quasi administrative in nature and an order passed thereunder is merely 'a police order'; so the failure of the Magistrate, if any, to mention the grounds of his satisfaction in the preliminary order that there exists a dispute likely to cause breach of the peace would not be of much consequence and cannot vitiate the proceedings; and (4) that at any rate. i1 merely amounts to an irregularity, which is curable under Section 537, Cri. P. C. The Advocate General has principally placed reliance, in support of his contention, on the cases noted below:

1. Kapoor Chand v. Surja Prasad : AIR1933 All264 ; 2. Hanumappa v. Kondappa, AIR 1964 Mys 195 and 3. Bhinka v. Charan Singh. : 1959 CriLJ1223 .

In order to appreciate the controversy between the parties it is necessary to consider the material portions of Section 145, Cri P. C., which run as under:

'145 (1): Whenever a District Magistrate. Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report.. ..that a dispute likely to cause a breach of the peace exists concerning any landwithin the local limits of his 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, within the lime to be fixed by such Magistrate, 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'.. .. ,. ..includes buildings

4. The Magistrate shall then, without reference lo the merits or the claims of any of such parties to a right lo 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..

Provided further that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date.'

6. From the above quoted provisions of Section 145 it follows that if the Magistrate is satisfied from the police report that a dispute likely to cause a breach of the peace exists, he shall first make an order in writing stating the grounds of his being so satisfied. Secondly, he has to determine as to which of the parties was in actual possession of the subject of dispute at the date of the preliminary order, or, within two months next of the date of such order, having been forcibly and wrongly dispossessed by the other party. Lastly, as far as possible, he has to conclude the enquiry within a period of two months from the date of the appearance of the parties before him.

7. There can be no manner of doubt that the proceedings under Section 145, Cri. P. C. are only preventive and are quasi judicial and quasi administrative in nature; their object being to prevent breach of the peace and maintain tranquillity. The proceedings under Section 145 do not determine the rights and interest of the parties vis-a-vis the subject matter of dispute, but only maintain and restore possession of that party, who was in actual possession thereof on the date of the passing of the preliminary order who had wrongfully been dispossessed therefrom within two months next of the passing of such order. This is merely an interim arrangement, to avoid breach of the peace, till the rival parties get their right title and interest in the disputed property determined by a competent court of civil jurisdiction. It is also noteworthy that under Section 146 (1) the Magistrate has not to record the fact of his being satisfied that a dispute likely to cause breach of the peace exists, but he has only to record the grounds of his being so satisfied.

8. In the instant case. the Magistrate based his impugned order on the report of the police, which he has accepted to be sufficient for the purposes of his initial satisfaction, as contemplated by Section 145 (1). Therefore the preliminary order has necessarily to be read along and in conjunction with the police report on which he has based the same.

If we read the City Magistrate's order in isolation, the criticism of Shri P. C. Chaturvedi may hold good to some extent. But if the order of the City Magistrate is read as a whole, together with the Police report, there is hardly any illegality or irregularity in his order. The Police report clearly states that there is a serious dispute between the parties regarding possession of the Cinema house, which is likely to cause breach of the peace, and therefore, recommended immediate attachment of the building. The Magistrate obviously accepted all this to be true and directed the S.H.O. Kotwali to attach the Cinema building along with its fittings and contents and put it under the charge of a reliable Supurdar. The Magistrate went to the length of saying that if the situation worsened an armed guard may also be posted there. In other words, the detailed grounds given in the Police report leading to the apprehension of a breach of peace, were accepted by the Magistrate as the basis of his satisfaction entitling him to pass the preliminary order and direct attachment of the property. That being the position, there was full compliance of the provisions of Section 145 (1) of the Code of Criminal Procedure. But even if there was any irregularity in drawing up the impugned order it was curable under the mandatory provisions of Section 537 of the Code of Criminal Procedure, particularly when the learned counsel for the applicant has failed to show any prejudice or failure of justice to his client.

9. At any rate it is not open to this Court in revision to reverse or alter the order of the learned City Magistrate on account of any error, omission or irregularity which he might have committed in drawing up the impugned preliminary order and the direction to attach the property in question, for S. 537, Cri. P. C. lays down:

'.. .. no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered. . . .on appeal or revision on account-

(a) of any error, omission or irregularity in the. . . order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code.

(d). . . unless such error, omission, irregularity. . . has in fact occasioned a failure of justice.

10. Coming to the cases cited on behalf of the applicant, it has been laid down in (1875) 1 Ch D 426 'When a statutory power is conferred. . . .upon a Court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted.'

11. Dealing with the provisions of Sections 164 and 364, Cri. P. C., their Lordships, of the Privy Council held as under in :

'. . . .Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.'

12. Likewise the Supreme Court, approving the principle applied in (1875) 1 Ch D 426 and observed as under in : [1964]4SCR485 :

'If a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164.'

13. I have no quarrel with the dictum laid down in the above authorities but I have already held that the order of the Magistrate has to be read as a whole and in conjunction with the police report. If it is so read, there is no violation of the requirements of Section 145 (1), Cri. P. C. It may also be pointed out that in the cited cases neither the Privy Council nor the Supreme Court was invited to consider the scope and effect of S. 537, Cri. P. C.

(13-A) In the order passed by the Magistrate was:

'As it is a case of emergency, I order the land in dispute to be attached pending the decision of this application'. It was there fore, observed by Tek Chand, J. 'Before a preliminary order can issue, the Magistrate has to satisfy himself from a police report or olier information that a dispute likely to cause a breach of the peace exists concerning the land etc. and after doing so. he is to make an order in

writing, stating the grounds of his being so satisfied, and requiring the parties concerned, to attend his Court and put in written statements of their respective claims.

The legislature has put in the forefront the satisfaction of the Magistrate as to the likelihood of the existence of a breach of the peace.Not only the Magistrate is required to satisfy himself as to such a likelihood, but the law requires him to state the grounds of his being so satisfied before he could take any further action. No! only the Magistrate had to inquire into the likelihood of breach of the peace occurring, but he further had to come to a judicial decision upon it. These provisions contained in Sub-section (1) of Section 145 have not been observed in this case and they are of a mandatory character. Omission to observe such provisions vitiates the entire proceedings.

The requirements of law relating to the issuance of a initiatory order are not dispensable. On the other hand these are the pre-requisites or sine qua non for instituting proceedings under Ch. 12 of the Code.'

14. It is noteworthy that in Sri Ram's case , Tek Chand, J. had disagreed with the contrary view expressed by Din Muhammad, J. in Ratan v. Tika, AIR 1939 Lah 233 and the authorities mentioned therein, as the reasoning of those cases did not commend themselves to Tek Chand, J. In this connection it may be pointed out that in AIR 1939 Lah 233 the Single Judge of the Lahore High Court had also relied upon the Full Bench decision of this Court in : AIR1933 All264 would naturally be bound by the above Full Bench decision of this Court, unless it has been overruled by the Supreme Court or by another subsequent larger Bench of this Court. I have not been referred to any such rulings of this Court or the Supreme Court. I have already remarked above that the general observations contained in : [1964]4SCR485 have no application to the instant matter, for in my view the procedure laid down in Section 145 (1). Cri P. C. was fully complied with by the, learned City Magistrate, when we read his order along with the police report on which it was found ed the police report having been specifically referred to in his order. Nevertheless, the defect, if any, is cured by the special provisions of Section 537, Cri. P. C., which did not come up for determination in Singhara

Singh's case : [1964]4SCR485 .

15. This brings us to the consideration of the Full Bench case in : AIR1933 All264 , in which Suraj Prasad had filed a petition under Section 145, Cri. P. C. before the City Magistrate of Kanpur, Mr. Barron. The petitioner said that his master, Chunni Lal, was in possession of house in the city and the opposite parties were trying to interfere with the possession of his master and that there was a likelihood of a breach of the peace. The Magistrate took down the statement of Sarju Prasad on oath and directed a police enquiry into the matter. On receipt of the police report he passed the following order:

'There appears to be some basis for this complaint to judge from the police report. As I am unable, owing to pressure of work, to dispose of it myself, I transfer it for such action as may be thought fit.to the Court of Babu Anand Sarup Sahib for disposal.'

16 The papers were accordingly received in the Court of Mr. Anand Sarup, who passed the following order:

'. . . . on inspection of the record it is ordered that notice be issued, in accordance with law, to the opposite parties. . . .' On this order a notice was issued which professed to be one under Section 145, Criminal P. C. and mentioned that section therein. The relevant portion of the notice is reproduced below:

'Since I have been informed that with respect to house No. 35/183 situated in Bengali mohallah in the city of Cawnpore there is a serious dispute between the parties, you are hereby informed that on 19th August 1930 you should appear in my Court and file your reply.... Written statements were filed and evidence was recorded and Mr. Anand Sarup, by his order dated 2nd June 1931, decided the matter in favour of the petitioner and directed that the applicant Sarju Prasad's master be put in possession of the property, his finding being that Chunni Lal had been really in peaceful possession of the property, before his eviction by the opposite parties.

17 The main argument advanced in Kapoor Chand's case : AIR1933 All264 was that Mr. Anand Sarup did not proceed in accordance with law and, as he did not strictly comply with the provisions of Section 145, Criminal P. C., he had no jurisdiction in the matter. Mukerji, Acting C. J., delivering the judgment of the Full Bench observed on the point as under:

'There can be no doubt that Mr. Anand Sarup did not strictly comply with the law. He did not expressly state that he was satisfied that there was a likelihood of a breach of peace nor did he mention specifically the grounds on which he was so satisfied. All that he said was that he had perused the record which of course, included the police report and the statement on oath of the petitioner. He directed a notice to issue 'according to law' which can only mean that it purported to be an order under Section 145 (1), Criminal P. C. Then the order which he actually issued quoted Section 145, as the rule of law under which it had been issued. The order recorded the fact that the Magistrate had received information that there was a 'serious dispute' between the parties. In these circumstances, although we are of opinion that the Magistrate did not follow the letter of the law, we have every reason to believe that he was satisfied in his mind, on a perusal of the Police report and the sworn statement of the applicant, that there was a likelihood of a breach of the peace. ... In the circumstances there is reason to believe that the Magistrate was satisfied in his own mind, before he took any action, that there was a likelihood of a breach of the peace with respect to an immovable property. Now we have to consider whether the defects in the Magistrate's order deprived him of jurisdiction to proceed with the case. In other words we have to see whether because the Magistrate did not strictly comply with the letter of the law in formulating his order under Section 145 (1), he had no jurisdiction to proceed with the case. On this point a large number of cases have been cited. . . We may also point out that many of these judgments do not consider the effect of Section 537 upon defects in the order passed under Section 145 (1).. ...

Section 537 would cure all defects provided the Court which passed the order was one of competent jurisdiction and provided that the defects did not in fact occasion a failure of justice. The jurisdiction of the Magistrate arises from the fact he has received certain information and that he is satisfied as to the truth of that

information. The jurisdiction of the Magistrate does not depend on how he proceeds. There are two things: one is the authority conferred on him to act and the other how he is to act. If he has jurisdiction he is not deprived of jurisdiction merely because his procedure is erroneous or defective. If this view be right the omission on the part of the Magistrate to follow certain directions contained in the Code, although some of these directions may be more important than others, cannot be said to deprive him of jurisdiction. The sole criterion given by Section 537 is whether the accused person has been prejudiced or not. The object of procedure is to enable the Court to do justice, but in spite of even total disregard of the rules of procedure justice has been done, there would exist no necessity for setting aside the final order which is just and correct simply because the procedure adopted was wrong. We have repeatedly asked Mr. Pathak, the learned counsel who ably argued the case for the applicants, if he could tell us how his clients were prejudiced by the omission on the part of the Magistrate to comply strictly with the provisions of Sub-section (1) Section 145 Criminal P. C. He replied that he was not in a position to say that his clients had been prejudiced. In view of this admission and in view of the fact that we ourselves are not in a position to discover that the applicants have in any way been prejudiced by the said omission, we are of opinion that the irregularity committed by the Magistrate is cured by Section 537, Criminal P. C.'

In the above case the Magistrate had passed only a partially speaking preliminary order under Section 145 (1), Cri. P. C. when read with the notice issued to the parties, yet it was held to be in order: inasmuch as the omission or irregularity was curable under the special provisions of Section 537, Criminal P. C. particularly when no prejudice or failure of justice had been caused to the parties. As already pointed out, in the instant case as well, Shri P. C. Chaturvedi has not been able to tell me how the applicant has been prejudiced. Neither he has been able to point out what failure of justice has been caused to his client, nor do I find any. As such, the order passed by the City Magistrate cannot be struck down in revision on this ground. The Full Bench decision in Kapoor Chand's case : AIR 1933 All 264 (supra) has uniformly been followed by various single Judges of this Court right upto the year 1955.

18. In AW 1959 SC 960 their Lordships dealt with the question of the scope of Section 145, Cri. P. C. and observed:

'The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is on apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is conterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court' Their Lordships of the Supreme Court then approved of the following observations of the Privy Council in *Dinomoni Chowdhurani v. Brojo Mohini Chowdhurani*, (1901) 29 Ind App 24, 33 (PC), which dealt with the scope and effect of orders passed under Section 145 of the Code of Criminal Procedure:

'These orders are merely police orders made to prevent breaches of the peace. They decide no question of title. I have already observed earlier that proceedings under Section 145, Cri P. C. are only quasi-judicial and quasi-administrative in nature, purely meant to maintain peace and tranquility between the parties during the intermission of adjudication of their rights, title and interests in the disputed property by a competent Court of civil jurisdiction

19. This leads us to the consideration of the last but important point whether the parties are in joint possession of the disputed 'Basant Talkies' as alleged by the applicant. It is true that the police report shows that Bhagwat Saran (applicant) and Pannalal (opposite party No. 2) were joint lessees and on 28-10-1961 they had further added two other partners in the business, viz., Gauri Shanker (opposite party No. 3) and Smt. Kanak Lata (opposite party No. 4). It has also not been challenged by the parties that the licence for exhibition of films stands in the joint names of Bhagwat Saran and Pannalal. However, the report further shows (and this has again not been challenged by the parties) that on 21-12-1964 the Civil Judge, Agra, passed an order by consent of the parties that Pannal Lal and Gauri Shanker shall run the Talkies till the Commissioner submitted his report. In other

words, Pannalal and Gauri Shanker were to be in exclusive possession and management of the cinema till the Commissioner's report was received by the Civil Judge. However, on 25-2-1965 the Civil Judge set aside his previous order appointing a Commissioner. But there is nothing to show that the arrangement arrived at by common consent on 21-12-1964 was also revoked, with the result that Pannalal and Gauri Shanker aforesaid continued in sole physical possession of the Cinema house till 20-7-1965, when Bhagwat Saran applicant entered the cinema house and obtained possession and control thereof, which still continues to the exclusion of Pannalal and Gauri Shanker (opposite parties).

20. From the above narrative it is clear that from 21-12-1964 to 20-7-1965 Pannalal and Gauri Shanker were in exclusive possession and management of the Cinema house, and that from 20-7-1965 onwards it is the applicant alone who is in such possession thereof. In other words, the exclusive possession of Pannalal and Gauri Shanker has now been replaced by the exclusive possession of the applicant. In this view of the matter, there was no question of joint possession and joint lease at the relevant dates, even though originally the parties may have been joint lessees and joint licensees of the cinema house in question. However, even if it is assumed that the order of the Civil Judge dated 21-12-1964 did not result in excluding the possession of the applicant and that only the management and control of the Cinema house, for the limited purpose of exhibiting pictures, was entrusted to Pannalal and Gauri Shanker for the time being; such joint possession of the parties continued only upto 20-7-1965, when the applicant admittedly got into possession of the property in dispute. This would amount to conversion of joint possession into exclusive possession by Bhagwat Saran, and even to such a case the provisions of Section 145 would be attracted. There is ample authority on the subject--one such case being AIR 1964 Mys 195, wherein it was observed:

'. . . there is a consensus of opinion that the mere putting forward of a case of joint possession by one party while the other party claims exclusive possession does not take the matter out of the purview of Section 145, Cri. P C. There can hardly be any doubt about the correctness of this view since as long as there is a dispute relating to a land which is likely to cause a breach of the peace and the possibility of declaring one of the parties to be in actual possession, the requirements of

Section 146 are satisfied. Otherwise all that one of the parties need do to secure the termination of the proceedings is to plead joint possession. This would defeat the object of Section 145 as a preventive measure against breach of the peace. The enquiry has to proceed until the Magistrate arrives at a finding whether one of the parties is in exclusive possession or both are in joint possession. In the former case he has to issue an order under Sub-section (6) declaring such party to be entitled to possess until evicted in due course of law and forbidding all disturbances of such possession '.

21. I have already mentioned at the outset that the police report shows that there is a serious dispute between the parties and there is likelihood of the breach of the peace, inasmuch as Bhagwat Saran has entered the cinema house and he is in exclusive possession thereof. Shri P. C. Chaturvedi argues that the word 'adhikar' used in the police report 'cinema par adhikar kiya huwa hai' merely denotes that Bhagwat Saran is managing or controlling the cinema house but it does not refer to his actual physical possession thereof. The suggestion is that the parties are still in joint possession of the Cinema, with the result that the jurisdiction of the Magistrate under Section 145, Cri. P. C. will be excluded. But the fact is otherwise. The cinema was being run since 21-12-64 by Pannalal and Gauri Shanker by common consent of parties, whereas the applicant now himself wants to run it exclusively having got into its possession on 20-7-1965 by ousting Pannalal and Gauri Shanker from the cinema house. As observed earlier, the words used in the police report are 'Bhagwat Saran ne cinema par adhikar kiya huwa hai'. In 'Dictionary Hindustani and English' by D. Forbes, LL. D. the word 'Adhikar' has been defined as 'possession', 'domination'. So when it is said that Bhagwat Saran ne Cinema par adhikar kiya huwa hai it clearly means that Bhagwat Saran is in possession and domination over the cinema house. The context in which this word has been used in conjunction with the narration of other facts also shows that the word 'Adhikar' means nothing else but physical possession and domination over the Cinema house by Bhagwat Saran. to the exclusion of Pannalal and Gauri Shanker opposite parties. That being the position, the provisions of Section 145, Cri. P. C. would be obviously applicable to the present case, which is no longer one of joint possession of the parties, but the property in question is now in the sole possession of Bhagwat Saran

22. For the reasons discussed above I find that the revision is without any substance Accordingly it is hereby dismissed The slay order passed by me on 5-8-1965 stands vacated

23. Shri S. I). Agarwal on behalf of opposite parties 2 and 3, undertakes to bear the expenses of the special messenger who may take the record of the case from here to Agra Let the record be sent down to the Magistrate concerned through a special messenger forthwith at the cost of opposite parties 2 and 3. TheMagistrate shall hear and decide the case withall expedition in accordance with law.

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