

**Mt.Gyan Devi Vs. Rex**

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**Court :** Allahabad

**Decided On :** Jul-04-1948

**Reported in :** 1949CriLJ209

**Judge :** Agarwala, J.

**Appellant :** Mt.Gyan Devi

**Respondent :** Rex

**Judgement :**

ORDER

**Agarwala, J.**

1. This is a reference arising out of proceedings under Section 145, Criminal P. O., initiated by Mt. Gian Devi against Atma Singh who claimed himself to be the chela of Chetan Deva.

2. The property in dispute is a house situated in Risikesh. It consists of eleven kothris, five .of which are in the possession of tenants. It appears that this house was owned by one Sant Chetan Deva. Chetan Deva died on 23rd December 1945. It is admitted that Mt. Gian Devi used to live in this house with Chetan Deva. Atma Singh alleges that Chetan Deva executed a will .in his favour. This will, dated 16th December 1945, has been produced and is on the record. According to Atma Singh the house was bequeathed to him by Chetan Deva under this will and

on the litter's death he was installed as a Mahant by the other Mahants of his brotherhood.

3. According to Mt. Gian Devi, she has been in possession throughout after the death of Chetan Deva. On her behalf, three unregistered rent, notes have been produced to show that she has let out three kothris to tenants. She has also produced five witnesses: Alia Rakha and Puran Chand are the tenants of the kothris and they swear that they pay rent to Mt. Gian Devi. Sheo Parshad, Arjun Giri and Swami Sachchida Nand swear to her possession over the house in dispute.

4. On behalf of Atma Singh four witnesses were produced. Swami Earn Singh, Swami Janardhan Ahsram, Mahant Man Singh and Swami Dayanidhiji. All these witnesses depose to Atma Singh having been installed as the Mahant in place of the deceased Chetan Deva. As to the possession over the house, however, these witnesses say that they saw Atma Singh in possession of the house for some time after the death of Chetan Dava. But I do not find any. thing in their statements to show that Atma Singh was actually in possession within two months of the order passed by the Magistrate under Section 145 (I), Criminal P. O., or that Mt. Gian Devi was not in possession during that period.

5. There is on record a copy of a complaint filed by Mt. Gian Devi against Atma Singh and others alleging that Atma Singh and others had assaulted her. This complaint is dated 23rd August 1946. In defence Atma Singh and others accused in that case filed their written statements in which they said that they had no concern with the house in dispute and that the case against them was a pure fabrication. This admission of Atma Singh would go to show that he was not in possession of this property at that time. It, there, fore, falsifies Atma Singh's ease in the present proceedings that he has always been in actual possession of the house in dispute.

6. The learned Magistrate recorded a finding that Atma Singh was in actual possession and that Mt. Gian Devi was not. In arriving at this finding the learned Magistrate was, however, influenced by the fact that Atma Singh was installed as the successor, of Chetan Deva and that he was the rightful owner of the property.

The learned Magistrate says:

On considering all the evidence and circumstances there cannot be the slightest doubt that Mt. Giyan Devi and her husband lived with Sr. Chaitanya Dey during his last days as attendants and that after his death they had no right to stay and the second party Atma Singh became his rightful successor according to the law applicable in his Order of Sadhua as proved by Mahant Man Singh, Swami Janardhan Ashram and Swami Bam Singh.

This would show that the learned Magistrate was influenced in arriving at his finding by the apparent title of Atma Singh to possess this house. Again, the learned Magistrate finds that both Atma Singh and Shrimati Gian Devi lived in the house till the dispute arose between the parties. But he says that the possession of Gian Devi was 'by the sufferance of Atma Singh.' Here again the learned Magistrate seems to be influenced by the title of Atma Singh, otherwise one cannot find any evidence on the record to prove that Mt. Gian Devi was living in the house by sufferance or permission of Atma Singh. The learned Magistrate further proceeds to remark: 'The Mt. has not been able to show a shred of right to possession.' This, again, would show that the learned Magistrate was concentrating his attention upon a decision of the title to the property. The learned Magistrate has further not taken into consideration the admission of Atma Singh in the complaint filed by Gian Devi mentioned by me above. I cannot, therefore, accept the learned Magistrate's finding of fact as binding upon me.

7. The learned Sessions Judge who has made this reference rightly observes that ordinarily findings of fact of learned Magistrates in proceedings under Section 145, Criminal P. C., are not to be disturbed, but that in this case the learned Magistrate was thinking more of the title to the property than actual possession over the same on the crucial date. I agree with these observations of the learned Sessions Judge.

8. learned Counsel appearing for Atma Singh argues that assuming that the learned Magistrate was influenced by the apparent title of Atma Singh to this property, he was entitled to take that fact into consideration in proceedings Under Section 145, Criminal P C. learned Counsel has cited a number of cases in support of his contention: Parthasarthy v Venkataswami, 11 Cr, L. J. 858 : 84 Mad.

138), Dwarka Bai v. Nathitni A.I.R. (5) 1918 Pat. 658 : 19 Cr. L. J. 764), Bam Saroop v. Mt. Darsono Koer A.I.R. (7) 1920 Pat. 499 : 21 -Or L. J. 748), Adaikkan v. M. Karuppan A.I.R. (9) 1922 Mad. 188 : 28 Cr.'L J. 197) and Ranchi Zamindari Co, Ltd. V. Pratab Udainath A.I.R. (26) 1939 pat. 209 : 40 Cr. L. J. 631).

9. In Parthasarthy v. Venkataswami, 1910 (11) Or L. J. 353 : 34 Mad. 188), Miller J. observed that the learned Magistrate in that case had used evidence of title to supplement the evidence of actual possession and that he was not entitled to do that. On that ground he set aside the Magistrate's order. This case, therefore, far from supporting the case for Atma Singh, is against him.

10. In Dwarka v. Nathuni A.I.R. (5) 1918 Pat. 668 : 19 Cr. L. J. 764), the Magistrate had found difficulty in coming to a conclusion upon the oral evidence of the parties. Jwala Prasad J. observed that in those circumstances the learned Magistrate was in error in refusing to admit documents of title.

11. In Bam Saroop v. Mt. Darsono Koer A.I.R. (7) 1920 Pat, 499 : 21 Cr. L. J. 748) it was observed:

A Magistrate in proceedings under Section 148 is entitled to look into the question of title only to arrive at a satisfactory conclusion on the question of possession. He has got no power to decide the question of title or look into it apart from the question of possession. If he wanted to go into the question of title in order to effectively decide the question of possession, he would be perfectly justified in doing so. On the other hand, if the question of possession could be effectively decided without a decision on the question of title, he would not be entitled to go into the title of the parties.

12. In Adaikkan and Anr. v. Mallaka-ruppan and Anr., A. 1. B. (9) 1922 Mad, 188 : 28 Cr.'L. J. 197), it was observed:

The Magistrate is entitled to rely on the documentary evidence as to title to corroborate the oral evidence as to possession, Kali Kristo Thakur v. Golam Ali Chowdhry, (1882) 7 Cal. 46: 8 C L E 245 and reading the judgment as a whole, I think what the Magistrate means is that, though the oral evidence is unsatisfactory,

and had it stood alone, would not afford a basis for decision as to who was in possession, the documentary evidence supports the evidence pi No. 1 party and makes it more probable that it was in possession.

13. *Banchi Zamindari Co. Ltd. v. Pratab Udainath* A.I.R. (26) 1939 Pat. 209 ; (40 Cr. L. J. 631), was a case in which the question as to who was in possession of unworked minerals was decided. It was held that evidence of title could be called in aid to prove possession of a party.

14. It is clear from a consideration of the-above cases that : 1) the duty of a Magistrate in proceedings under Section 145, Criminal P. C, is to ascertain which party was in possession on the relevant date; (2) he is not to decide any question of title at all; and (8) evidence bearing on title can be considered only in two instances, one in which the property in dispute admits of no actual possession, and second, in which the evidence as to possession is equally balanced and the presumption of possession which flows from title can be of help in a correct decision of the question of possession.

15. In the present case, however, the question is one of possession over a house and it is not a case in which there could be any doubt as to who was in actual possession within two months of the date of the order of the Magistrate under Section 145 (I), Criminal P. C. It seems to me that the evidence was entirely one way and the Magistrate could come to no other conclusion than that Mt. Gian Devi was in actual possession. It is immaterial that Atma Singh may be the rightful owner. I do not decide that point at all. It is in evidence that Mt. Gian Devi has been living in this house since the lifetime of Chetan Deva, She appears to have been in possession throughout. Even if she were a rank trespasser having come into possession of this house recently-but more than two months before the order under s. 145 (I) was passed-even then she would be entitled to maintain her possession and the Courts would be bound to maintain that possession as against any interference by the rightful owner *Agni Kumar Das v Mantasaddin* : AIR1928 Cal610 and *Sheo Govind v. Zahur Mohammad* A.I.R. (28) 1941 Oudh 1S5 : 16 Luck. 382).

16. I, therefore, accept this reference and set aside the order of the learned Magistrate. Possession over the house in dispute will be restored to Mt. Gian Devi.

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