

Ch. Gajraj Singh Vs. Emperor

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Court : Allahabad

Decided On : Jan-23-1936

Reported in : AIR1936All320; 165Ind.Cas.716

Appellant : Ch. Gajraj Singh

Respondent : Emperor

Judgement :

ORDER

Niamat Ullah, J.

1. This is an application for revision of an order passed by a Magistrate, First Class of Etah, in proceedings purporting to be those under Section 145, Criminal P.C. It appears that there was a dispute between the applicant, Chaudhri Gajraj Singh, on one side and the opposite party, Rai Bahadur Inder Narain, on the other as regards the right of the former to have a ferry plying between the eastern and the western banks of Kali Nadi at a place which lies within the ambit of villages Rajpur, Dhumri and Gangupur. The case was started by a letter, dated 14th October 1934, addressed by R.B. Inder Narain to the District Magistrate, Etah, complaining that Ch. Gajraj Singh had started a rival ferry on 11th September 1934 not far from the place where his own ferry, which was of old standing, was being worked and that there was an apprehension of a breach of peace in consequence of the action of Ch. Gajraj Singh. Both parties filed written

statements in due course. R.B. Inder Narain alleged that the land lying on both sides of the ghat belonged to him and was in his possession and that the entire bed of the river also belonged to him and had been in his possession. The written statement, filed on behalf of Ch. Gajraj Singh denied that there was any apprehension of breach of the peace and maintained that his ferry was of old standing and that he had every right to ply it. The Magistrate struck four definite issues, one of which raised the question whether R.B. Inder Narain was the exclusive owner in possession of the ferry at Rajpur, Dhumri-Ghat. Another put Ch. Gajraj Singh to proof of his possession of any ferry over the Kali Nadi at or about the said ghat. Another issue put the parties to prove their ownership and possession of the land and water upon which Ch. Gajraj Singh was plying his ferry.

2. The Magistrate found that the land on the western bank of the river at that place belonged exclusively to R.B. Inder Narain to whom the village Rajpur belonged. The entire bank on that side appertains to village Rajpur. The Magistrate also found that the eastern bank, so far as it belonged to village Dhumri, also belonged to R.B. Inder Narain. Part of the eastern bank appertained to village Gangupur, in which R.B. Inder Narain had a share. Ch. Gajraj Singh also has a share in a 'mahal' in village Gangupur. The Magistrate, however, found that Ch. Gajraj Singh failed to establish that he was owner or in possession of any part of the land lying to the east of the river, though it was conceded that he might have land further removed from the 'ghat' in dispute. On these findings the Magistrate ordered Ch. Gajraj Singh to remove his boats and prohibited him from plying them in the river at or about Rajpur, Dhumri-Ghat. The Magistrate also ordered that,

R.B. Inder Narain is restored to the same position which he enjoyed before 11th September 1934, with regard to Rajput Dhumri ferry.

3. It has been argued in revision that 3. 145, Criminal P.C., was wholly inapplicable to the circumstances of the case and that the order passed by the Magistrate is not one which he could pass in proceedings under that section. I do not consider it necessary to examine the correctness or otherwise of this contention, as in my opinion action could more appropriately have been taken

under Section 147, Criminal P.C., and that the proceedings from start to finish are substantially under that section. It is possible that they can also be brought within the four corners of Section 145, Criminal P.C., but assuming the section is wholly inapplicable, the initial notice, the written statements and the subsequent proceedings, including the operative order, are all substantially covered by Section 147, Criminal P.C. The fact that a wrong section, viz., Section 145, has been quoted will not alter the real character of the proceedings. The letter of Rai Bahadur Inder Narain, dated 14th October 1935, discloses a dispute likely to cause a breach of the peace regarding the right of use of land and water. The Magistrate's order, dated 3rd November 1934, initiating proceedings, likewise, refers to the dispute in respect of the plying of ferries. The issues framed by the Magistrate, particularly the one in which the right of Ch. Gajraj Singh to ply a ferry is discussed, contemplate a dispute of the nature referred to in Section 147, Criminal P.C. Lastly the final order passed by the Magistrate is so worded as to be an order more under Section 147, than under Section 145, Criminal P.C. The question raised by R.B. Inder Narain was whether Ch. Gajraj Singh had a right to ply a ferry, having one terminus on land appertaining to his village Rajpur and plying on water wholly belonging to him.

4. The written statement filed by Ch. Gajraj Singh clearly shows that his right to ply a ferry at given points was in controversy. Both parties led evidence in support of their respective cases. The finding of the Magistrate is that the land on the western bank of the Kali Nadi, on which the passengers carried by Ch. Gajraj Singh's boats disembark, belongs to, and is in possession of, R. B. Inder Narain. As regards the land on the eastern bank of it, which is used by Ch. Gajraj Singh, the Magistrate found that it had not been shown to belong to Ch. Gajraj Singh and that, on the contrary, there was reason to believe that it belonged to R. B. Inder Narain. The Magistrate also found that the entire bed of the river between the two termini of Ch. Gajraj Singh's ferry belonged to S. B. Inder Narain. On these facts, there can be no doubt that the act of Ch. Gajraj Singh, so far as it amounted to user of any land belonging to R. B. Inder Narain, was trespass, pure and simple, and that he could not ply his ferry without encroaching on the rights of R. B. Inder Narain. In this view, the order passed by the learned Magistrate was amply justified and is in strict accordance with the provisions of Section 147, Criminal P.C. This application

is accordingly dismissed.

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