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Hardeo Vs. Ram Lal and ors.

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Court : Allahabad

Decided On : Dec-19-1952

Reported in : AIR1953All382

Judge : Harish Chandra, J.

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

Appeal No. : Criminal Ref. No. 302 of 1951

Appellant : Hardeo

Respondent : Ram Lal and ors.

Advocate for Def. : Shanti Bhushan, Adv.

Advocate for Pet/Ap. : J.S. David, Adv.

Judgement :
ORDER

Harish Chandra, J.

1. This is a reference by the Additional District Magistrate of Muzaffarnagar in a case decided by a Magistrate of the first class under Section 145, Criminal P. C. One Herdeva filed a complaint under Section 145, Criminal P. C., against Ram Lal and others alleging that the opposite party had forcibly taken possession of certain

plots over which stood a temple of the deity Kali Singh and were taking the offerings by ousting the complainant, his brother Kanshiram and the manager, Baldeodatt. The opposite party in their written statement stated that the parties were entitled to receive offerings according to their respective shares. Evidence was recorded and the learned Sub-Divisional Magistrate dismissed the complaint erroneously holding that Section 145 only contemplated a dispute between two parties each of which asserted the right to hold exclusive possession of the property as against the other and not a dispute between a party claiming joint possession with another and a party contesting such right, the finding of the Court being that both the parties were entitled to a share in the offerings at the temple. The learned Additional District Magistrate rightly points out that the Magistrate did not approach the case correctly and that it was, therefore, necessary for him to find out which party was in actual possession of the property at the time of the passing of the preliminary order. He points out that there is strong documentary evidence on the record to show that the property is being managed by a managing committee in pursuance of decrees passed by competent Courts and that the committee had given the theka to the complainant Herdeva to receive offerings on behalf of all the co-sharers. He further points out that as the property was in possession of the thekadar on behalf of the managing committee at the time when the preliminary order was passed it should be released in his favour and that the order of the learned Sub-Divisional Magistrate should be set aside.

2. On behalf of the opposite party it is contended that Section 145, Criminal P. C., will not apply to the present case inasmuch as the dispute relates to the performance of worship and not to the right of user of the temple or land belonging to the idol and reliance is placed upon the Calcutta case of Surendra Nath v. Shashi Bhushan, 52 Cal. 959. Section 145 applies when a dispute likely to cause a breach of the peace exists 'concerning any land or water or the boundaries thereof'. It is explained in that section that the expression 'land or water'' includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property. In the Calcutta case the dispute related to the performance of the puja of an idol and there was no dispute as regards the temple or any land belonging to the idol. The right alleged was a right to go into the temple and to perform the puja and to take a portion of the offerings made to the

idol. It was held in that case that the right to perform the puja of an idol or to have a share of the offerings made to the idol cannot be said to be a right of user of any land as explained in Section 145.

A similar view was taken by the Patna High Court in the case of Ghulam Sibtain v. Mt. Kaniz Khatoon, A. I. R. 1920 Pat. 383 (1).

The Nagpur High Court in the case of Sobhag Singh v. Bakhtawarsingh, A. I. R. 1927 Nag. 333, took a similar view and held that the offerings made by pilgrims at a shrine do not come within the definition of 'profits' as given in Section 145 and I am in full accord with the view held in this and the other cases referred to above.

The Nagpur High Court in the case of Abdul Majid v. Mohammad Saheb Azizuddin A. I. R. 1941 Nag, 171, however, pointed out that where a dispute regarding the right to receive the offerings at a shrine centred round and depended upon the right to sit upon a particular spot the dispute related either to the possession of the land or to its use.

8. I have carefully read the complaint in this case and there can be no doubt that the dispute was not only with respect to the right to receive offerings at the temple but also in regard to its management. The managing committee not only receives offerings but looks after the temple and its maintenance and Herdeva is a thekadar on behalf of the managing committee not only for the purpose of receiving offerings but also for its management. The learned Additional District Magistrate has discussed the evidence and I agree with his view that the present dispute relates not only to the offerings but also to the possession of the temple and that on the evidence the complainant was in possession of the property on the date on which the preliminary order was passed by the Sub-Divisional Magistrate.

4. I accordingly set aside the order of the Sub-Divisional Magistrate dated 19-2-1951, and declare that the complainant Herdeva is entitled to possession of the property in dispute until evicted therefrom in due course of law and forbid all disturbance to such possession until such eviction. The property is under attachment and will accordingly be released in favour of the applicant.

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