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Court : Allahabad

Decided On : Sep-15-1961

Reported in : 1963CriLJ345

Judge : Brijlal Gupta, J.

Appellant : Deep Chand

Respondent : Faiz Ali and anr.

Judgement :

Brijlal Gupta, J.

1. This is a plaintiff's appeal arising out of a suit for a declaration that the sum of Rs. 635 held in deposit in the Criminal Court as price of the crop standing in the plots mentioned at the foot of the plaint in Rabi 1356E belonged to the plaintiffs and they were the owner of the said crop, and also for recovery of the said sum. The defence was a denial of the title of the plaintiffs and the claim to the crop by the defendant. The defendant alleged that he had grown the crop himself and he was entitled to its price. The suit was decreed by the Munsif, but that decree was reversed in appeal by the learned; Judge-Small Cause Court exercising the powers of a Civil Judge, who heard the said appeal. The learned Judge considered only one point in appeal and that was whether the plaintiffs or the defendant were in possession over the plots in suit in Rabi 1356F.

2. It may be stated that there were proceedings, under Section 145, Cr.P.C. in which it was held that the defendant was in possession over the plots in dispute in Rabi 1356F. The learned Judge felt himself bound by the findings of the Criminal Court in Section 145, Cr.P.C. proceedings by reason of a Single Judge decision of the Lahore High Court reported in *Sewa Das v. Ram Prakash* AIR 1947 Lah 173. The learned Judge quoted extensively from this decision. The principle upon which he relied on the basis of this decision was that once a finding had been recorded regarding possession by a Criminal Court in proceedings under Section 145, Cr.P.C. the Civil Court in subsequent proceedings was bound by that finding and was precluded from going into the question of possession who there on the evidence led in the Criminal Court or further evidence led in the Civil Court. The learned Judge came to the conclusion that as the finding of the Criminal Court was binding on the Civil Court the plaintiff was not entitled and could not be entitled to lead evidence against the finding recorded in the Criminal Court.

3. I have examined the decision of the Lahore High Court. The decision is not based upon any authority or principle. On the other hand I have discovered that there is a decision of the Privy Council reported in *Dinomoni Chowdhurani v. Brojo Mohini* ILR 29 Cal 187 (PC), in which it is laid down at page 198 while referring to orders under Section 145, Cr.P.C. as follows:

These police orders are in their Lordships' opinion admissible in evidence on general principles as well as under Section 13 of the Indian Evidence Act to show the fact that such orders were made. This necessarily makes them evidence of the following facts, all of which appear from the orders themselves, viz., who the parties to the dispute were; what the land in dispute was; and who was declared entitled to retain possession. For this purpose and to this extent such orders are admissible in evidence and against every one when the fact of possession at the date of the order has to be ascertained.

From the above quotation from the decision of their lordships of the Privy Council it will be clear that the orders of the Criminal Court are not binding and conclusive with regard to the factum of possession and the party in whose favour the question of possession is decided by the Criminal Court. Upon the entire reading of the

case decided by their Urdships I find that their Lordships examined the evidence of possession themselves and recorded their conclusion upon that evidence. They upheld the finding of the High Court on the question of possession and dismissed the appeal. Reference may also usefully be made to a recent decision of this Court reported in *Mula v. Babu Ram* : AIR1960 All573 . In view of this it seems to me that the decision of the lower appellate Court was not correct.

4. In the result the appeal is allowed and the decree of the lower Appellate Court is set aside. The case is sent back to the lower Appellate Court which will decide the appeal afresh in the light of the observations made by me in this judgment. I make no order as to costs.

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