

Ram Kishore Vs. Bali Ram and ors.

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Court : Allahabad

Decided On : Oct-23-1967

Reported in : 1969CriLJ70

Judge : J.N. Takru, J.

Appellant : Ram Kishore

Respondent : Bali Ram and ors.

Judgement :

ORDER

J.N. Takru, J.

1. This is a revision by Ram Kishore, and it arises under the following circumstances;

2. It appears that the applicant initiated proceeding under Section 145, Criminal P.C. against the opposite parties in respect of the property mentioned in his application. His case was that he wanted to make some new constructions on the said land but as the opposite party threatened him with dire consequence he was prevented from making those constructions as a result of which there was an apprehension of breach of peace. On this application the learned S.D.M. called for a police report, and, on being satisfied that an apprehension of breach of peace in respect of the said property existed, he passed a preliminary order under Section

145, Criminal P.C., and pending decision attached the subject of dispute. By the same order he directed the parties to file their written-state-merits, affidavits, documents etc. on which they relied as regards their respective claims to actual possession of the subject of dispute. The parties filed their written-statements, affidavits etc. On the date of hearing, however, the applicants made a statement that he was prepared to have the Case decided on the statement of Sri Pramatra Ram. Advocate, if made on the special oath proposed by the applicant. Sri Pramatra Ram accepted the offer and made a statement to the effect that the land in dispute had been in the continuous possession of Balram, Jiwan Ram, Vidhu Ram, Ram Chandra and Jai Ram opposite parties, and before them of their ancestors for the last about 45 years. On this statement being made the learned S.D.M. decided the question of possession in favour of the opposite parties. The applicant preferred a revision to the Court of the Sessions Judge, but meeting with failure there, he filed the aforesaid revision in this Court.

3. On behalf of the applicant three contentions were urged in support of this revision. The first contention was that as proceedings under Section 145, Criminal P.C. had to be decided in accordance with the procedure laid down therein and no other, the learned S.D.M. was in error in deciding it on the basis of a special oath. The second contention was that as the statement made by Sri Pramatra Ram was not in strict accord with the offer made to him, and by which the applicant agreed to be bound, it was of no avail to the opposite party. The third contention was that as none of the opposite parties accepted the offer made by the applicant, there was no valid agreement between them and consequently the statement of Sri Pramatra Ram was not binding upon the applicant either. After hearing the learned Counsel for the parties I am satisfied that none of these contentions has any force. I shall, therefore proceed to deal with them in the order stated above.

4. Now the powers of the Court in the matter of deciding cases in accordance with special oath are to be found in Section 8 to 11 of the Indian Oaths Act. Section 8 of the said Act empowers the Court to tender certain special forms of oath. Section 9 gives the Court the power to ask the party or witness by whom the special form of oath has to be taken, whether he will make the oath proposed by the opposite party and if he agrees, Section 10 empowers the Court to administer the special

oath. Section 11 then goes to lay down that the evidence given on such oath is to be regarded as conclusive proof of the matter covered by it as against the person who offers to be bound by it. Under Section 4(a) of the Indian Oaths Act, all Courts and persons having by law or consent of the parties authority to receive evidence are competent to administer special oath. It is, therefore, not correct for the learned Counsel for the applicant to contend that the provisions of Indian Oaths Act do not apply to criminal proceedings. Reliance in this connection was, however, placed upon the observation made by Brij. Mohan Lal J. in *Budhan v. Sukhan* : AIR1952 All678 to the effect that 'since the consent of the State cannot be taken and since generally the State does not agree to abide by the oath of any witness Sa. 8 to 11 do not apply to criminal proceedings', and it was contended that it showed that Sections 8 to 11 were not applicable to criminal proceedings. In my opinion it is not correct to interpret this observation in the manner suggested by the applicant's learned counsel. It would have been different if the learned Judge had held that even if the State were willing to abide by the oath of any witness, Sections 8 to 11 of the Indian Oaths Act would not have applied, but that is not what he has said, and the learned Counsel was unable to bring any other authority to my notice in which it has been so held.

5. However, leaving aside the larger question whether Section 8 to 11 of the Indian Oaths Act apply to Criminal Cases or not what was to be seen in this case is whether proceedings under Section 145, Criminal P.C., can be regarded as criminal proceedings in the sense in which that expression is generally understood, namely, proceedings in which the State is directly or indirectly a party. Thus regarded proceedings under Section 145, Criminal P.C., in so far as they relate to question of possession, are proceedings between private individuals, in which the State has no interest nor is it directly or indirectly a party. I am, therefore, unable to see why Section 8 to 11 of the Indian Oaths Act cannot be held to be applicable to proceeding under Section 145, Criminal P.C., at all event so far as the question of possession is concerned. I am supported in this view by the decision in *Budhan* AIR 1952 All 678 cited above.

6. Reliance was placed on behalf of the applicant on the decision in *Ganga Singh v Bahadur Singh* AIR 1958 All 803. This decision, however, has no application to

the facts of the present case. In that case a preliminary order having been passed, the question arose as to what were the sources of information on which the Magistrate could act before dropping proceedings under Section 145(5), Criminal P.C. As that question is quite different from the one involved in this case this decision has no application to the instant case. The learned Counsel for the applicants relying upon a sentence in the Judgment of Mulla J, to the effect that Section 145, Criminal P.C., contains the procedure which should be followed by a Magistrate, argued that the learned S.D.M., had no jurisdiction to decide proceedings under Section 145, Criminal P.C., in accordance with any procedure except that contained in that section i.e., on affidavits etc. This contention has no substance either because the procedure followed by the learned S.D.M., in deciding the question of possession arises out of the offer made by the applicant himself and there is nothing in that section which prohibits him from deciding the question of possession in accordance with the provisions of Sections 8 to 11 of the Oaths Act, particularly when there is nothing in the latter Act excluding its applicability to proceedings under Section 145, Criminal P.C. It would, in my opinion, be opposed to all notions of justice and fair play to allow a party to first offer itself to be bound by the statement of a party or witness if made on special oath, and then to repudiate it on the ground that the provisions of Sections 8 to 11 do not apply to his case. I am, therefore, satisfied that the decision in *Ganga Singh* AIR 1958 All 803 does not help the applicant.

7. Reliance was also placed upon the Full Bench decision of this Court in *Ganga Bux Singh v. Sukhdin*, : AIR 1959 All 141. This case is, however, on a completely different point and as such requires no detailed reference here. The first contention of the learned Counsel must, therefore, be rejected.

8. The second contention of the learned Counsel for the applicant which has been noticed earlier may now be considered. The learned Counsel contended that as the offer made by the applicant was that he would be bound by the statement made by Sri Pramatma Ram if he stated on special oath that Balram etc. and before them their ancestors, had been in possession of the subject of dispute for sixty years, and as the statement made by Sri Pramatma Ram was to the effect that they had been in possession for a period of 45 years only, he was not bound

by that statement. It is true that in the offer made by the applicant Sri Pramatma Ram was required to make statement in regard to the question of possession for the period of the past 60 years, and he confined his statement on that point to the period of the past 45 years but this variation to my mind makes no difference to the conclusiveness of the statement made by him as against the applicant, particularly as in Section 145 proceedings the material period is only of the two months next preceding the date of the preliminary order. Hence so far as the present proceedings are concerned the fact that Sri Pramatma Ram deposed to the opposite party's possession for a period of 45 years only instead of 60 years cannot make any difference to the facts of this case. Thus the second contention of the learned Counsel also fails.

9. The third contention of the learned Counsel for the applicant that as his offer to be bound by the statement of Sri Pramatma Ram, if taken on special oath was never accepted by the opposite parties the applicant could not be held bound by his unilateral act. This contention, however, ignores the fact that Sri Pramatma Ram, apart from being the father of one of the opposite party and the brother of another opposite party, was also the Advocate for all the opposite parties in the Court of the S.D.M., concerned, and under the terms of his Vakalatnama he was empowered to do all the things which the opposite parties could have done in connection with the case pending against them and he accepted the offer made by Ram Kishore. It follows, therefore, that as soon as Sri Pramatma Ram accepted the offer a binding contract came into existence between the applicant and the opposite parties. It is therefore idle to contend that the applicant's offer was not accepted by the opposite parties. This contention also, therefore, fails.

10. Thus for the reasons stated above this revision fails and is dismissed. The revision having been dismissed the order dated the 2nd of March, 1967, staying delivery of possession of the property in question to the opposite parties, stands discharged.