

Hanuman Prasad Vs. State and ors.

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Court : Allahabad

Decided On : Sep-09-1960

Reported in : 1962CriLJ632

Judge : A.P. Srivastava, J.

Appellant : Hanuman Prasad

Respondent : State and ors.

Judgement :

ORDER

A.P. Srivastava, J.

1. This application in revision arose out of proceedings under Section 145 Cr.P.C. The proceedings started on the basis of a police report. A number of persons were then impleaded by the learned Magistrate as opposite parties and were directed to file their written statements. One of them was Bhagwati Prasad Pandey. Written statements were filed. Affidavits and documents were produced. The Magistrate could not decide the question of possession himself and made a reference to the Munsif under Section 146 of the Code, While the reference was pending before the Munsif, Bhagwati Pd. Pandey died. The Munsif thereupon sent the case back to the learned Magistrate for bringing on record the legal representatives of Bhagwati Pd. Pandey as permitted by Sub-section (7) of Section 145, Bhagwati Pd. Pandey had left three sons including the present applicant Hanuman Prasad

Pandey. All the three sons of Bhagwati Pd. Pandey were impleaded in the case in his place as his legal representatives. One of them Sarju Prasad Pandey was actually present when the order impleading the legal representatives was passed but the other two were not there.

The learned Magistrate after having impleaded all the three sons directed notice to issue to the two sons who were not present at the time of his order to enable them to appear before the learned Munsif on a specified date. Against the order of the Magistrate impleading him as a legal representative of the deceased the applicant went up in revision to the learned Sessions Judge. The point he took was; that he could not have been impleaded as a legal representative of the deceased without having been served with a notice to show cause. The point did not impress to the learned Sessions Judge who dismissed the application in revision summarily taking the view that no ground for interference had been made out.

2. The applicant Hanuman Prasad has now come to this Court in revision and it is urged on his behalf that he could not have been impleaded as a legal representative of the deceased without a notice being served upon him and that by his being impleaded in that manner he is likely to be greatly prejudiced as he will not be in a position to examine himself as a witness or to produce other evidence before the learned Munsif or in subsequent proceeding before the learned Magistrate.

3. Sub-section (7) of Section 145 Cr.P.C. reads like this:

When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceedings and shall thereupon continue the inquiry and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

It will be noticed that there is no provision in it requiring notice to be served on any person who is to be impleaded as a legal representative of a deceased party. The sub-section expressly provides that if there is a dispute as to who is the legal

representative of the deceased, it need not be decided. All the persons claiming to be such representatives, will be made parties. When the sub-section itself does not provide for the issuing of a notice to a person before he is to be impleaded as a legal representative of the deceased party the applicant cannot make a grievance of the fact that a notice was not issued to him before he was brought on record. It is not contended by him that he is not the legal representative of the deceased. It is conceded that he being one of the three sons of the deceased was liable to be brought on record as his legal representative.

4. Learned Counsel for the applicant however urged that had the applicant been given notice, to show cause he may have appeared and filed affidavits under Sub-section (1) of Section 145. Without doing that it will not be possible for him to produce evidence under Sub-section (1A) of Section 146 before the Munsif.

5. This argument of the learned Counsel overlooks the important fact that the words, used in Sub-section (7) of Section 145 are 'shall thereupon continue the enquiry.' These words clearly show that after the legal representatives of the deceased party had been impleaded it was not intended that the proceedings were to be re-opened and restarted from the very beginning; but the intention was that the proceedings were to continue from the stage at which the deceased party had died. That being so it cannot be claimed by the applicant that when he was brought on record the whole proceedings should have been reopened and he should have been allowed to file affidavits or to produce evidence under Sub-section (1) of Section 145, That stage had already passed. The only thing which the applicant could claim was that the proceedings should continue from the stage at which his predecessor-in-interest had died.

6. The apprehension that the applicant would not be in a position to examine himself or to produce evidence before the Munsif under Sub-section (1A) of Section 146 of the Code also appears to be unfounded. That sub-section reads as follows:

On receipt of any such reference, the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively, consider the effect of all such evidence, and after hearing the parties

decide the question of possession so referred to it.

It will be noted that the section empowers the Munsif not only to consider the evidence on record meaning the evidence which has been taken by the Magistrate but take such further evidence as may be produced by the parties respectively. At the stage at which the case will now start before the learned Munsif after the applicant has been impleaded the applicant will be as much a party to the case as the others. He too, can therefore, produce evidence before the Munsif just as the other parties can do. I find nothing in Sub-section (1A) which can justify the contention that at that stage a party cannot examine himself and can only produce other evidence. The term 'further evidence' used in the sub-section only means 'evidence which is not already on record.' That evidence may be of various kinds. It may consist of the statements of the parties. It may also consist of the evidence of other witnesses or of documents. Every kind of admissible evidence will fall within the category of 'further evidence', the only restriction being that that evidence should not already be on the record of the case.

7. Learned Counsel referred me to a decision of the Orissa High Court reported in *Keshan Acharya v. Somenath Behera* : AIR1958 Ori79 . In that case the words 'hear the parties' used in Sub-section (1A) of Section 146 were narrowly interpreted by the learned Judge because he took his clue from the use of the same words in Sub-section (4) of Section 145. With due respect to the learned Judge I find myself unable to share his opinion. A perusal of Sub-section 4 of Section 145 will show that under the main provision of that sub-section the Magistrate is expected to decide the dispute before him only on the basis of the affidavits, documents and statements filed by the parties. The first proviso, however, empowers him if he so thinks fit to summon and examine certain persons. The persons whom he can summon and examine are however only those persons whose affidavits have already been put in at the earlier stage. If such persons are summoned and examined their evidence is to be considered along with the affidavits already filed. The parties are to be heard in respect of this entire material and the enquiry concluded. The powers of the learned Magistrate to record evidence are thus extremely restricted. No such restriction is to be found in Sub-section (1A) of Section 146, Under that sub-section the parties are at liberty to

produce any further evidence that they may like to produce. It is, therefore, not possible to say that the intention of the Legislature in enacting Sub-section (1A) of Section 146 was that the Munsif should also allow only those persons to be examined whose affidavits have already been put in under Sec, 145. The Munsif has to hear the parties in respect of the entire materials that have come on the record up to that judge and then to decide the question referred to him. The narrow interpretation put by the learned Judge on the words 'after hearing the parties' as used in Sub-section (1A) of Section 146 does not therefore, commend itself to me and I am unable to accept it.

8. Learned Counsel has, therefore, not been able to satisfy me that any reasonable exception can be taken to the order now sought to be revised. The application must, therefore, fail and is rejected.

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