

Brahma Nath Vs. Sundar Nath

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Court : Allahabad

Decided On : Feb-04-1919

Reported in : AIR1919All311(2); 51Ind.Cas.170

Judge : George Knox, J.

Appellant : Brahma Nath

Respondent : Sundar Nath

Judgement :

George Knox, J.

1. This is an application for criminal revision of certain proceedings connected with property within the District of Gorakhpur. The proceedings are proceedings purporting to have been taken under Section 145 of the Code of Criminal Procedure. The application in this Court was filed on the 21st of December 1918. The applicant prayed that this Court might be pleased to call for the record and quash all proceedings on the following grounds:

1. Because the proceedings are absolutely without jurisdiction and are illegal.
2. Because the right and title to possession having been just decided by a competent Court, fresh proceedings, ostensibly under Section 145 of the Code of Criminal Procedure, cannot be started with the object of continuing the attachment

of the property.

3. Because the order dated the 23rd of July 1918, attaching the property is under the circumstances beyond the competence of the Criminal Court.

4. Because the jurisdiction of the Criminal Courts has ceased with the decision of the Civil Court.

2. The application was admitted on the grounds stated therein and in consequence the record is now on the table before me. The property in dispute is said to be property attached to a math called Asthan Gorakhnath. Part of it is situate somewhere, I am told, in Tahsil Sadar and the greater part of it in Tahsil Maharajganj. It apparently is conceded on both sides that there have been various disputes regarding this property and those disputes have resulted in cases instituted in Criminal Courts of Gorakhpur. It is contended on behalf of Baba Sunder Nath that those cases represent cases of serious offences in the Indian Penal Code. According to him riots have multiplied and there has been damage to property. On the other hand looking to the result of the cases and the orders issued upon them, either these cases were not of the serious nature alleged, or they have been grappled with by punishments which would lead to an inference that the proceedings were not so serious as has been alleged. Be that as it may, two cross suits in the Civil Courts had been instituted and both of these were decided by the Subordinate Judge of Gorakhpur, and that as recently as the 15th of June 1918. While these civil suits were pending, a considerable portion of the property in dispute, partly situate in Tahsil Sadar and partly situate in Tahsil Maharajganj, was under attachment by the Magisterial authorities. It appears that as soon as the Subordinate Judge of Gorakhpur decided the cases before him, an application was made by Baba Brahma Nath to the Sub-Divisional Magistrate, Sadar, stating that he, Brahma Nath, had been held in the judgment of the Civil Court to be in possession. The judgment needs careful perusal, for the Civil Court held that though Brahma Nath had failed to prove that Baba Sundar Nath was deposed and that Brahma Nath was made Mahant, yet it held Brahma Nath entitled to possession of the property and ordered him to explain the accounts to Sundar Nath. As I say, there is more in the judgment, but for the purposes of the

proceedings before me I do not think it necessary to recapitulate all that has been stated, but to go at once to the order of the Civil Court which is to the effect that the attachment made of any property of the temple should be withdrawn in all cases. Brahma Nath was held by the Civil Court entitled to possession and all the property attached was now to pass into the possession of Brahma Nath, who was liable to explain the accounts to Sundar Nath. The Tahsil Sadar acting upon this order released all the property attached within the jurisdiction of the Sub Divisional Magistrate of Sadar.

3. On the 1st of July 1918 Baba Brahma Nath applied to the Sub-Divisional Magistrate of Maharajganj asking that the village Ubrichak situate within his jurisdiction should be similarly released. The Sub-Divisional Magistrate of Maharajganj, therefore, addressed the District Magistrate of Gorakhpur stating that he agreed with the Sub Divisional Magistrate of Sadar and asking for an order from the District Magistrate. The opinion of both these officers is said to have been that a fresh case under Section 145 of the Criminal Procedure Code should be started in respect to all the immoveable property belonging to the math of Gorakhnath Asthan situate within Tahsil Sadar as well as within Tahsil Maharajganj and asking that some particular Magistrate might be ordered to try and dispose of the case in respect to the entire property. This points to the matters before the Sub. Divisional Magistrates being proceedings and not cases. If they were cases, this communication between the Sub-Divisional Magistrates and the District Magistrate was entirely out of order. On the 20th of July, the District Magistrate recorded the following order:

It having been brought to my notice that there has been a dispute regarding the title to the management of the immoveable property of the Asthan of Gorakh Nath, and that this dispute is likely to be the occasion of a breach of the peace, I direct that proceedings under Section 145 of the Criminal Procedure Code be taken in respect of this property. The property not being all situate in one Sub-Division, I direct that the proceedings in respect of the whole property be taken by Pandit Badri Narain Misra, Deputy Magistrate of the first class.

4. It is claimed by the learned Counsel for Baba Sundar Nath that the District Magistrate was competent to pass this order under Section 192 of the Code of Criminal Procedure. Section 192 authorises a District Magistrate to transfer a case of which he has taken cognizance, for enquiry or trial, to any Magistrate subordinate to him. It may be open to question whether by passing this order of the 20th of July, the District Magistrate can be said to have taken cognizance of the case, and further it may be questioned whether Section 192 has any reference whatever to proceedings under Section 145 of the Code of Criminal Procedure. Chapter XII, in which Section 145 and the following sections are to be found, very carefully avoids mentioning the word 'case' at all. It talks of disputes and of proceedings, but nowhere of cases; and a third difficulty arises whether, if transfer was authorised under Section 192, the transfer was to a Magistrate competent under the Code. The Magistrate selected by the District Magistrate of Gorakhpur was directed to pass orders in connection with property part of which was not within the local limits of the jurisdiction of Sub-Division Maharajganj. Further, the District Magistrate, if he took cognizance of the case, had to be satisfied that a dispute likely to cause a breach of the peace existed concerning land within his jurisdiction. He had to make an order in writing, stating the grounds of his being so satisfied. He had to require the parties concerned in such dispute to attend his Court in person or by Pleader within a time to be fixed by him and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. The District Magistrate in his order of the 20th of July puts on record not one of these steps. If we pass on to the order passed by the Sub-Divisional Magistrate of Maharajganj, we shall find a notice issued on the 23rd of July 1918. In this notice the Sub-Divisional Magistrate of Maharajganj does set out that he is satisfied that a dispute likely to cause a breach of the peace exists concerning immovable property. He then goes on to shelter himself behind an order of the District Magistrate, but he now here states the grounds of his being satisfied that such a dispute does exist.

5. It may seem, to use a proverbial expression, that this is, 'dotting is and crossing t's with a vengeance;' but it has been help over and over again by this Court, for example in *Jhingai Singh v. Ram Pratap* 1 Ind. Cas. 762 ; 3 A. 150; 9 Cr.L.J. 382 : 6 A. L.J. 113 that proceedings under Section 145 must be in intention, in form, and

in fact proceedings under Chapter XII of the Code of Criminal Procedure by a Magistrate duly empowered to act under that chapter. The same has been held by a Divisional Bench of this Court in Sayeeda Khatun v. Lal Singh 25 Ind. Cas. 321 ; 36 A. 23 b; 12 A.L.J. 344 ; 15 Cr. L.J. chack notfot. It is true that in Ganga Saran \$irigh v. Bhagwat Prasad 5 Ind. Cas. 471 ; 32 A. 132 ; 7 A.L.J. 53 ; 11 Cr. L.J. 141 chackfutnots to which I was a party (a case in which the initial order was defective, in that it did not set forth the grounds for the Magistrate being satisfied with the existence of a dispute likely to cause a breach of the peace), this Court declined in revision to interfere with the Magistrate's order, but that was an exceptional case, and we, rightly or wrongly, did not deem it expedient to exorcise our power in revision. In the present case I deem it expedient to exercise my power in revision and I set aside the proceedings held by the Sub-Divisional Magistrate of Maharajganj.

6. A great deal was addressed to me upon the fact that there is a dispute likely to cause a breach of the peace, that the property in dispute will be in danger of being badly administered, that the math of Gorakhnath is in danger of being misused, if not misappropriated, but all this is really irrelevant to the matter before me. I cannot overlook the fact that a Civil Court, whose competence has been nowhere attacked in the course of the argument, has passed an order directing possession to be given to Brahma Nath over the property in dispute That order can be taken before, and I believe at the present moment is being taken before, a competent Civil Court in appeal. The Civil Procedure Coda gives ample power over property which can be shown to be in danger of being misappropriated or wasted, being protected without having report to a Criminal Court to pass orders contrary to Civil Court orders which up to the present have not been disturbed. The Criminal Court also had ample jurisdiction, provided the facts had been properly state to it, of binding the parties over to keep the peace. Orders under Section 107 can be so framed as to make it not worth while for either party to attempt a breach of the peace, and for these reasons I do not deem it expedient that action should be taken under Section 143, especially since orders have been passed by a Magistrate whose jurisdiction is open to doubt, and which are, not in intention, form or fact, proceedings under Chapter XII of the Code of Criminal Procedure. The proceedings are entirely set aside and the parties will revert to the status

immediately preceding the institution of these proceedings. Let the record be returned.

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