

Sita Das Vs. Jaisri Das

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Court : Allahabad

Decided On : Aug-05-1926

Reported in : AIR1927All99

Appellant : Sita Das

Respondent : Jaisri Das

Judgement :

Benerji, J.

1. This is an application in revision from an order of a first Class Magistrate in a proceeding under Section 145, Criminal Procedure Code., The proceeding started on the complaint of one Jaisri Das against the present applicant. In this complaint it was alleged that the complainant Jaisri Das was in possession of a plot No. 116, situated in village Bilaspur and had sown a crop in it but the opposite-party the present applicant-wanted to cut the crop by force and it was therefore prayed that the crop should be ordered to be cut under police supervision and should then be handed over to the complainant. The learned Magistrate, before whom this complaint was filed, on the 3rd of November 1925, called for a report from the police as whether there was any likelihood of a breach of the peace. In accordance with this order the police made an enquiry and submitted a report on the 16th of November 1925, from which it appeared that there was a likelihood of a breach of the peace. But it is clear from this report itself that when the investigating

officer reached the spot the crop in dispute had already been cut and stored. Before making his report the investigating officer attached this crop and made it over to the mukhia of the village for safe custody. It is clear therefore that there was no crop standing when the police report was received by the learned Magistrate so that there could be no dispute relating to immovable property within the meaning of Chapter 12 of the Criminal Procedure Code. The learned Magistrate, however,, assumed jurisdiction under Section 145 and issued a notice calling upon the parties to file their written statements as, to the fact of actual possession. The parties filed written statements and led evidence in support of their respective claims. As a result of the enquiry the learned Magistrate came to the conclusion that the plot No. 116 was in the possession of Jaisri Das, and passed the following order:

So I declare the first party to be in and to be entitled to the possession of the plot in question and forbid all disturbance to the possession of the first party (which is; alleged there to be weaker for being alone while the second party is formed here of several members and is supported by others as well) by the second party until the first party if evicted' in due course under the authority of some competent Court.

2. In the course of the enquiry it was further found that the present applicant had cut not only the crop of the plot in dispute but also of some other plots and the whole crop had been mixed together. It was this crop that had been attached by the police as mentioned above. In view of these facts the learned Magistrate further directed the police to divide the crop between the parties in proportion to the area of the various plots from which it had been reaped. Hence the present application for revision.

3. Having perused the record of the case I find that the whole proceeding of the learned Magistrate is without any juris diction and must be set aside. As stated above, the crop which was the subject of dispute between the parties had already been cut and stored before the learned Magistrate issued the notice under Section 145, Criminal Procedure Code. Section 145 relates only to dispute about immovable property. Standing crops are immovable property within the meaning of

Clause (2) of Section 145. But crops that have been severed from the land are not immovable property at all and a dispute relating to such crops cannot be said to be a dispute relating to immovable property. In support of this view reference may be made to a case Chaurasi v. Rama Shanker [1905] 28 All. 266. The learned Magistrate had, therefore, no jurisdiction to proceed under Section 145. I, therefore, submit the record of the case to the Hon'ble High Court with the recommendation that the whole proceeding be quashed and the order passed by the learned Magistrate be set aside.

ORDER

4. I accept the recommendation of the learned Session Judge.

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