

**Beer Singh and ors. Vs. State and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/472221](http://sooperkanoon.com/472221)

**Court :** Allahabad

**Decided On :** Sep-27-1972

**Reported in :** 1973CriLJ755

**Judge :** P.N. Bakshi, J.

**Appellant :** Beer Singh and ors.

**Respondent :** State and ors.

**Judgement :**

ORDER

**P.N. Bakshi, J.**

1.This application in revision arises out of proceedings under Section 145, Cr.P.C. Zulfi alias Jugal Kishore moved an application under Section 145. Cr.P.C. against Bir Singh and others on the allegations that he is the tenant in possession over plot No. 383 area 6.85 acres, situate in village Chandpur Khurd, and that the opposite parties without any right thereto were interfering with his possession, which was likely to lead to a breach of peace. On this application the magistrate called for a report from the Station Officer Nojhil which was submitted on 29.9.1969. Being satisfied there from as to the existence of an apprehension of breach of peace, the Magistrate passed a preliminary order on 6.10.1969. In pursuance of the preliminary order parties were directed to file their written statements and affidavits in support of their respective claims. On behalf of Jugal

Kishore three affidavits were filed including his own. Certain documentary evidence was also filed in support of the claim. On behalf of the opposite parties fourteen affidavits were filed along with documentary evidence. The case was proceeded with and 19th of February, 1970 was fixed for arguments. On this date parties did not appear and the case had to be adjourned for 21.2.1970 for arguments. It appears that on 20th February, 1970 Udai Singh claiming to be the minorson of Jugal Kishore under the guardians-ship of his mother Smt. Chameli Devi filed an application before the Court to the effect that Jugal Kishore had been murdered and that he may be substituted in place of the deceased. This application was allowed by the Magistrate on 20-2-1970. Thereafter the case proceeded and the final order was passed by the Sub-Divisional Magistrate on 7.3.1970. By this order the Sub-Divisional Magistrate held Udai Singh to be in possession of the plot in dispute through his father Jugal Kishore in whose place he had been substituted. He therefore, directed the opposite parties to refrain from interfering with the possession of Udai Singh until he was evicted therefrom in due course of law. Aggrieved by this order Bir Singh and others filed a revision before the Additional District Magistrate (Judicial) Matlhura. which was rejected by him on 16.7.1970. The applicants have now come to this Court in revision.

2. I have heard counsel for the parties and have also perused the record of the case. Counsel for the applicants has submitted two points. The first question raised by him is that Bir Singh and others being the heirs of the deceased Jugal Kishore are entitled to be substituted under Section 145 Sub-section (7), Cr.P.C. He urges that as the applicants had been accused with respect to the murder of Jugal Kishore and had been sent to jail in connection therewith, they were not in a position to apply before the Magistrate for substitution under Section 145(7) Cr.P.C. It was, therefore, prayed on their behalf that this case may be remanded so that the applicants may also be substituted as the heirs of Jugal Kishore. I have given my anxious consideration to this submission made by the learned Counsel for the applicants but I am unable to agree. It appears from a perusal of the order-sheet that 19th of February, 1970 had been fixed for argument in the case. According to the case of the applicants Jugal Kishore had been murdered on the 22nd January, 1970. There is nothing on the record to indicate as to when the applicants who had been accused in connection with this murder, were taken into

custody by the police and sent to jail. A general averment has been made that in February the applicants were sent to jail as a result of which they could not file any application for substitution earlier. This averment to my mind does not inevitably lead to the conclusion that the applicants had been sent to jail prior to the 19th February, 1970. If they had cared to attend the court of the Magistrate on 19th February, 1970 which was the date fixed for arguments, they could have on that date applied for being substituted as the heirs of Jugal Kishore. On that date they were well aware of the fact that Jugal Kishore had been murdered on 22nd January, 1970. I, therefore, do not see any justification for their not applying to the court, of the Magistrate concerned on the 18th February, 1970 for being substituted as the heir of the deceased. On the other hand, Udai Singh seems to be much more vigilant and he applied on the 20th February, 1970 for being substituted as the heir of Jugal Kishore. Section 145 Sub-section (7) lays down that when any party to any such proceeding dies, the Magistrate may cause the legal representatives of the deceased party to be made parties to the proceeding, 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.

3. It is nowhere laid down in Sub-section (7) of Section 145, Cr.P.C. that the Magistrate is fastened with the duty of entering into an inquiry with respect to the persons who are truly and correctly the heirs of the deceased. These proceedings under Section 145 are not intended for deciding the question of heir-ship or the question of title which may arise inter-partes. The obvious intention of Section 145 Sub-section (7). Criminal Procedure Code is to allow the legal representatives to continue the proceedings merely for the purpose of deciding whether there exists an apprehension of breach of peace or not. It is even not necessary under this section that all the persons who are the heirs should be impleaded. The proceedings can be continued by the substitution of some of the heirs, and not all of them, even if they are subsequently found to be the heirs by the Court of civil jurisdiction. In this view of the matter I am of the opinion that the Magistrate did not commit any error in substituting Udai Singh as the legal representative of the deceased Jugal Kishore by his order dated 20th February 1970. It is always open

to the applicants to file a civil suit for a declaration of their rights for the purpose of determining where they are the heirs of the deceased Jugal Kishore.

4. The next point that has been pressed by the learned Counsel for the applicants is that the Court below has not exercised its jurisdiction under Section 145 Sub-section (5), Criminal Procedure Code. He asserts that as there was no apprehension of the breach of peace, it was the duty of the Magistrate to have proceeded under that section. Here again I am unable to agree with this contention. I am not satisfied after a perusal of the affidavits filed on behalf of the opposite parties that they did amount to a clear denial of the existence of an apprehension of breach of the peace. Assuming for a moment that it did amount to such a denial, it was open to the applicants to have urged this point before the Magistrate and to have insisted upon a decision thereon. It was also open to the applicants on the 19th of February, 1970, which was the date fixed, to have appeared before the Court and to have filed an application bringing Section 145(5), Criminal Procedure Code to the notice of the Court and requested it to decide the question of the non-existence of breach of peace. They have failed to take any steps which they were entitled to do under the law. Now after the final order under Section 145, Criminal Procedure Code has been passed against them, they are contending before this Court that the Magistrate has committed an error in not deciding this question. From a perusal of the grounds of revision. I find that even here in this Court no such ground has been taken on behalf of the applicants. In the absence of any such ground in this revision, in the absence of this point having been canvassed before the Courts below, and in the absence of a clear plea amounting to a denial regarding the existence of a breach of peace. I do not think it proper at this stage to interfere with the order under revision on this ground.

5. For all these reasons I am satisfied that this application in revision has no force. It is hereby dismissed.