

Smt. Dayawati Devi and anr. Vs. the Munsif and ors.

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SooperKanoon Citation : sooperkanoon.com/474359

Court : Allahabad

Decided On : Jul-24-1973

Reported in : 1974CriLJ1091

Judge : R.L. Gulati, J.

Appellant : Smt. Dayawati Devi and anr.

Respondent : The Munsif and ors.

Judgement :

ORDER

R.L. Gulati, J.

1. This is a petition under Article 226 of the Constitution.

2. The petitioner No. 1 is the mother and the Detitioner No. 2 is the daughter. A dispute arose between them and the 5th respondent Natthu Khan with regard to the possession over a plot of land. On an application by Natthu Khan, the second respondent, the Sub Divisional Magistrate, Bisauli passed an order under Section 145(1) Criminal P.C. and put the property under attachment. Parties filed affidavits and docu-mentary evidence before him and by are order dated 18th December. 1969 the Magistrate referred the dispute under; Section 146, Criminal P.C. to the first respondent, the Munsif Bisauli. The Munsif by his judgment dated 21st January, 1971 held Natthu Khan in possession on the date of the order passed

under Section 145, Criminal P.C. over the land in dispute except about 5 Biswas of land which was found to be in possession of one Sukhpal. The petitioners challenged the order of the Munsif in revision before the Civil and Sessions Judge, Budaun who by his judgment dated 22-3-1971 dismissed the same as non-maintainable. The petitioners have now approached this Court for a writ of certiorari against the orders passed by the Sub-Divisional Magistrate and by the Munsif.

3. The first contention of the learned Counsel for the petitioners is that the Sub-Divisional Magistrate committed a manifest error in referring the matter to the Civil Court under Section 146 Criminal P.C. He has relied upon the decision of this Court in the case of Sarju Narain v. Lachhmi Narain 1968 All Cr C 290 : 1970 Cri LJ 614 in support of his contention that a Magistrate under Section 145, Criminal P.C. is ordinarily required to apply his own mind to the evidence led before him and not to refer a case to the Civil Court under Section 146. Criminal P.C. unless an intricate question of law or fact arises which he is unable to decide. His contention is that in the present case no intricate question of law or fact was involved and the Magistrate was not justified in referring the matter to the Civil Court.

4. This argument in my opinion, is not available to the learned Counsel inasmuch as the impugned order was passed by the Munsif as far back as December 18, 1969, and the petitioner had without any objection submitted to his jurisdiction. An objection relating to jurisdiction must in the first instance be raised before the Court or the authority concerned. As the petitioners had submitted to the jurisdiction of the Munsif, they cannot be allowed to turn round and object to the jurisdiction now when the order passed by him is not to their liking.

5. It is then contended that the order of the Munsif also is bad inasmuch as he has not applied his mind to the evidence led before him. I have gone through the order of the learned Munsif and I find that it does not suffer from any such infirmity. He has discussed the evidence of both the parties and has attached more weight to the evidence of Natthu Khan than to the evidence of the petitioners. This Court under Article 226 of the Constitution cannot appraise the evidence afresh and

come to a different finding which essentially is a finding of fact.

6. The learned Counsel then submitted that the Munsif has only recorded a finding with regard to the possession on the date of the order passed under Section 145, Criminal P.C. and has not recorded a finding that Naththu Khan was in possession for a period of two months preceding the date of the order. I do not think the learned Munsif was required to Pass such order having regard to the facts and the circumstances of the case. Under Sub-section (4) of Section 145, Criminal P. C the Magistrate has to decide whether any and which of the parties was, at the date of the order passed under Section 145(1), Criminal P.C. in possession of the property in dispute. Under the second proviso to Section 145(4). Criminal P.C. if it appears to him that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date. This proviso has no application in the instant case because it was not the petitioners' case that they were in possession within two months from the date of the order under Section 145(1), Criminal P.C. and had been forcibly and wrongfully dispossessed. In the absence of such a plea the Magistrate was not required to pass any order under the proviso aforesaid. There is nothing to show that even if there is no plea of wrongful and forcible dispossession within two months of the date of the order under Section 145(1). Criminal P.C. the Magistrate is required to record a finding that the party found in possession on the date of the order was also in possession two months prior to that date.

7. For the reasons stated above, the petition fails and is dismissed but in the circumstances there will be no order as to costs.