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Court : Allahabad

Decided On : Jun-04-1924

Reported in : AIR1924All777; (1924)ILR46All879

Judge : Boys, J.

Appellant : Ram Sri

Respondent : Sri Kishan and ors.

Judgement :

Boys, J.

1. In this, case one Jado Rai died on the 9th of May, 1923. There were three claimants to his property. Firstly, the present applicant, his widow; secondly, some collaterals; and thirdly, Sri Thakurji through Sheo, Manohar. With the third of these we are not concerned. A civil suit was filed on behalf of Sri Thakurji, but Sheo Manohar expressed his inability to pursue it and it was dismissed. The remaining two parties, the widow applicant and the collaterals, have been contending before the Magistrates under Chapter XII of the Code of Criminal Procedure and in mutation proceedings before the revenue court. At the request of the parties, on the 10th of August, 1923, the District Magistrate attached the property under Section 146 of the Code of Criminal Procedure. In the mutation proceedings mutation was ordered on the 20th of February, 1924, in favour of the widow, practically on the basis of title. No emphasis, however, need be laid, particularly on

this last point, because, whether the mutation court finds a party entitled on the basis of possession supported by evidence of title or on title alone, it declares that person's possession, and, if necessary, orders that he be put into possession. In this case the order would necessarily be one that the applicant widow be put into possession as she could not be in possession already, the property being under attachment. In pursuance of this order in favour of the present applicant widow, the Assistant Collector, on the 26th of February, ordered the receiver to 'hand over' the property to the widow. One day before this, the Collector had, on the application of the opposite party without notice to the present applicant, passed an order staying the delivery of the property to the applicant by the receiver. Of this order the Assistant Collector had been unaware. On the 28th of February the Collector refused, till the hearing of mutation appeal, an application by the widow that the property be given to her. This appeal was dismissed on the 7th of April, and on the 8th of April the Collector again refused the widow's application for possession until the period of limitation for a second appeal had expired, or if a second appeal was filed, till that appeal was decided. The applicant widow next, on the 17th of April, 1924, tried to get the Assistant Collector to order the execution of his order of the 26th of February. This he naturally refused to do, in view of the fact that his superior court (that of the Collector) had already refused to allow the property to be handed over. At the end of all these proceedings, the applicant has come up in revision against the order of the Assistant Collector, dated the 17th of April, and has made no application against the order of the Collector, dated the 8th of April. If, however, it appears to me that the Collector was not justified in refusing to hand over possession, I think I in turn should not be justified in refusing to give the applicant here an order merely because she has applied in revision against the order of the Assistant Collector instead of that of the Collector. It would obviously be desirable in the plain interests of justice to pass such an order as I could properly pass under Section 561(a), if not otherwise. In one sense the applicant is not wholly to blame for coming up against the wrong order, for originally it was the Collector himself who made a mistake, on the 25th of February, 1924, in passing his order without notice. It was this that led to alternative cross-applications in his court and that of the Assistant Collector. The point now that I have to consider is whether the order of the revenue court in

favour of the applicant widow was an order such as is contemplated by Section 146, Clause (1), of the Code of Criminal Procedure, i.e., an order of a competent court determining the person entitled to possession. Two questions arise in this connection:-- Firstly, do the words 'competent court' mean 'a competent civil court'? I think that it is really clear that they are not so limited. In the first place, where the intention is to confine the power to a civil court, we find it so stated, and, secondly, the Code of 1882 actually had the phrase 'a competent civil court' and the word "civil" was deliberately dropped in the Code of 1898. The next question is whether the revenue court's order, under Section 40, determined the person entitled to possession. I think this also is hardly open to doubt. Section 40, Clause (2), says that the court, if unable to satisfy itself as to which party is in possession, 'shall ascertain by summary inquiry who is the person best entitled to the property and shall put such person in possession.' It, therefore, appears clear that a competent court has now determined the right of the widow applicant here to possession. I may note here that the Collector has not supported his refusal to allow the widow to have possession by any argument that her right to possession has not been determined by a competent court, but merely, apparently, has been guided by his idea of its being likely to prove convenient to wait further till the matter had been conclusively determined in favour of the widow or the other party. Possession in this view might have to remain with the receiver until the matter had been decided, some ten years hence, possibly more, by the Privy Council.

2. The application is, therefore, allowed and I order the Collector to take action under Section 146 of the Code of Criminal Procedure to release the property from attachment and to order the receiver to hand it over to the applicant, Musammat Ram Sri.