

Phoolchand and ors. Vs. Jaikumar and ors.

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SooperKanoon Citation : sooperkanoon.com/498391

Court : Madhya Pradesh

Decided On : Nov-22-2001

Reported in : 2002(1)MPHT210; 2002(2)MPLJ189

Judge : N.S. Azad, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 145 and 145(4)

Appeal No. : Criminal Revision No. 1050/2001

Appellant : Phoolchand and ors.

Respondent : Jaikumar and ors.

Advocate for Def. : Rajendra Tiwari, Sr. Adv., ;Yogesh Dhande, Panel Lawyer and ;B.K. Rawat, Adv.

Advocate for Pet/Ap. : T.S. Ruprah, Adv.

Judgement :

ORDER

N.S. Azad, J.

1. It is not being disputed that on a report filed by Police Station, Moti Nagar, Sagar, a criminal case bearing No. 18/2000 was registered in the Court of City Magistrate, Sagar, under Section 145 of the Code of Criminal Procedure, in which

property situated in Mangalgiri locality, was in dispute between both these parties. A perusal of photocopy of certified copy of the order dated 18th June, 2001 passed by City Magistrate, Sagar reveals that on the basis of aforesaid report, the preliminary order was passed on 24th October, 2000. On 28th November, 2000 party No. 1 (respondents) put forth their claim in writing. Then on 12th December, 2000 written reply was filed on behalf of petitioner Nos. 5 to 14. Thereafter, a written reply is stated to have been filed on behalf of petitioner Nos. 1, 4 and 15 also without referring the date.

2. On consideration of the various litigations which were till then fought by these parties and their respective claims, the City Magistrate, Sagar concluded as follows, which was in challenge before the Sessions Judge in Criminal Revision No. 156/2001 :--

^izdj.k esa mHk;i{kdkjksa }kjk izLrqr fyf[krrdZ rFkk FkkukizHkkjh] eksrhuxj] }kjk izLrqr b'rxklk ij euu fd;k x;kA izdj.k esa;g Lohr rF; yxrk gS fd oknxzLr IEIfk ds LoRo ,oa vkf/kiR; dks ysdjmHk;i{kdkjksa ds e/; iwoZ ls gh fookn pyk vk jgk g SA rFkk ikVhZ - 1 dh vksj ls VLV dk xBu dj iath;u dj;k;k x;kA bl iath;u vkns'k dks Hkh ikVhZ ua- 2 dh vksjls O;ogkj U;k;ky; esa pqukSrh nh xbZ g SA VLV esa fufgr IEIfk ds vkf/kiR; ,oaLoRo dk fuiVkj jftLVkj ifCyd VLV rFkk ekuuh; O;ogkj U;k;ky; ls gh gks ldrkg SA mHk;i{kdkjksa dks funsZf'kr fd;k tkrk gS fd os ekSds ij vkf/kiR; dh ;FkkfLFkfrj[krs gq, vkf/kiR; ,oa LoRo dk fujkdj.k l{ke U;k;ky; esa djksa ekSds ij fookndh fLFkfr gksus ij Fkkuk izHkkjh mHk;i{kdkjksa ds fo:) izfrca/kkRed dk;ZokghizLrkfor djsaA izdj.k mYkuqlkj fujkr gksdj nk-fj- gksA**

3. Thus, it is noted that without deciding the case on merits, the City Magistrate disposed of the proceeding on the ground of pendency of a civil suit between the parties, in respect of this disputed property.

4. The learned Sessions Judge has held the aforesaid order of the City Magistrate clearly to be wrongful and arbitrary yet, he observed that the City Magistrate should have held Siyawad Trust to be in possession and management of Mangalgiri property definitely up to 14th September, 2000, within two months of the preliminary order and the first party should have been allowed to do so till a decision was taken by a Competent Civil Court. It is also observed by the learned

Sessions Judge that not only the dropping of proceeding but also the leaving of the management and possession of Mangalgiri property to party No. 2 is not correct. Then holding party No. 1 i.e., the respondents in possession of disputed property within two months of the preliminary order, he directed the City Magistrate to put the non-applicants in possession and management thereof.

5. Since the order of dropping of proceeding on account of pendency of a civil suit was held to be unlawful and arbitrary, the Sessions Judge was required to remand the case back to the Court of City Magistrate for proceeding with the case as per law from the stage at which it was dropped. Since the written claims of both the sides are admittedly received by the City Magistrate, in addition to the papers submitted on their behalf, City Magistrate, Sagar, was further required to be directed to ask both the parties to produce the evidence, in support of their claims, as provided in Sub-section (4) of Section 145 of the Code of Criminal Procedure. Then the case was not disposed of on merits by City Magistrate and hence the learned Sessions Judge was not required to express any opinion on the fact of possession, which he did.

6. Thus, this revision petition is allowed and order dated 8th September, 2001 passed by Sessions Judge, Sagar in Criminal Revision No. 156/2001 is set aside in toto. It is ordered that in case, in compliance to order dated 8th September, 2001 the possession of the disputed property is taken from any party and handed over to respondents, the party whose possession is disturbed shall be again put in possession of the property by City Magistrate, Sagar. City Magistrate, Sagar is further directed to pass specific order directing both the parties to adduce all evidence, which they may wish to adduce in support of their claim, and then to proceed further and dispose of the case, as per law.

7. The case is thus remanded to City Magistrate, Sagar, with aforesaid direction for a fresh disposal. The revision petition stands disposed of accordingly.