

Narasingha Rou Vs. Sricharan Panda and ors.

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Court : Orissa

Decided On : Sep-01-1966

Reported in : AIR1967Ori182; 1967CriLJ1549

Judge : G.K. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145, 517(1), 522, 522(1) and 561A; Limitation Act, 1908 - Schedule - Article 47

Appeal No. : Second Appeal No. 171 of 1964

Appellant : Narasingha Rou

Respondent : Sricharan Panda and ors.

Advocate for Def. : R.N. Misra, ;R.C. Patnaik and ;B. Harichandan, Advs.

Advocate for Pet/Ap. : Y.S.N. Murty and ;L.K. Dasgupta, Advs.

Disposition : Appeal dismissed

Judgement :

G.K. Misra, J.

1. Plaintiff's suit was for declaration of title and recovery of possession Title is based on a registered sale deed (Ex. 1) dated 11-4-1956 for a consideration of Rs. 1400 executed by defendant-2 on behalf of himself and his sons and defendant-1,

the mother-in-law of defendant-2. Plaintiff's case is that from the date of purchase he was in possession. In 1957 defendant-3 started a proceeding under Section 144, Cr. P. C. which ended in his favour.

2. Defendants 1 and 2 supported the case of the plaintiff. Defendant-3 claimed the disputed land as his ancestral property and asserted that he and his ancestors are in possession for the last 20 years or so and that defendants 1 and 2 had no title or possession. It was further averred that the plaintiff had no possession within 12 years of the suit and in a proceeding under Section 145, Cr. P. C. between him and defendants 1 and 2, the land was delivered to him in 1952, and that no suit having been filed within three years of the final order, this suit is barred under Article 47 of the Limitation Act.

3. The suit was decreed by the learned Munsif on the finding that defendants 1 and 2 had a valid title which was conveyed to the plaintiff and that the plaintiff has possession within 12 years of the suit. In appeal, the learned Subordinate Judge recorded the following findings and dismissed the suit.

4. It is crystal clear from the evidence, both documentary and oral, on either side that the plaintiff has not acquired any title in the suit by virtue of his sale deed executed by defendant No. 2 who himself had no title and possession in it and defendant No. 3 is in possession of the suit land for more than 12 years prior to the institution of the suit. He however, held that the suit was not barred under Article 47 of the Limitation Act.

5. The second appeal is concluded by a pure finding of fact that defendant-3 was in possession of the disputed land for more than 12 years before the suit, and that the plaintiff or his predecessors in interest were not in possession within 12 years of the suit. The learned Subordinate Judge was, however, wrong in saying that the suit was not barred by limitation under Article 47.

6. The facts and circumstances relating to the applicability of Article 47, Limitation Act, may be clearly stated as the judgments of the Courts below are unsatisfactory in not discussing this aspect of the case and in not stating clearly even the relevant facts. In M. C. 11/1952 in the Court of the Special First Class Magistrate,

Chatrapur, there was a proceeding under Section 145, Cr. P. C. between defendant-3 as the first party and defendant-2 as the second party. In M. C. 43 of 1951, which related to refund of Rs. 300, the value of the usufruct, deposited in Court during the pendency of the proceeding under Section 145, Cr. P. C. two applications (Exs. M and M/1) were filed on 26-8-1952. Ex. M was filed by defendant-2 clearly admitting that the disputed land was in possession of defendant-3 and that the possession should be delivered to him, defendant-2 having no rights therein. Ex. M/1 is the petition of compromise signed by defendants 2 and 3. Therein Survey Plots 332 and 336, which are the disputed land, have been mentioned. The compromise petition recited that defendant-2 would never go upon the land and the Rs. 300/- deposited in Court would be paid to the first party and the proceeding under Section 145, Cr. P. C. should be dropped and disposed of in terms of the compromise. On the same day the learned Magistrate passed the following order :

'Both parties have filed a petition today compromising the dispute. Before accepting the compromise it is necessary to know if there is still apprehension of breach of peace in respect of the disputed land'.

A report was called for from the S. I. Purusottampur. On receipt of the order, the Magistrate passed the following order on 28-8-1952.

'Parties present. S. I.'s report received according to which there is no apprehension of breach of peace in respect of the disputed lands. Parties have compromised which is accepted and further proceedings are stayed under Section 145(5), Cr. P. C. Orders issued under Sections 145(1) and (4) are cancelled. According to the terms of the compromise, the disputed land should be made over to the first party. Inform S. I. to deliver possession of the attached land to the first party and obtain his receipt and send the same to this Court'.

On 24-9-1952, the learned Magistrate passed an order to the effect:--

'As possession of the disputed land has been restored to the first party Sricharan Panda, he is allowed to receive the deposited amount of Rs. 300/- which is the income of the disputed land during 1366 Fasli year..... Bill prepared and paid to the

first party today. S. I.'s report received. No further action.'

7. On the aforesaid facts the question for consideration is whether the final order respecting the possession of immoveable property made under the Code of Criminal Procedure was passed by the Magistrate in 1952 so as to attract Article 47 of the Limitation Act, 1908. The suit was admittedly filed beyond three years on 28-1-1958.

8. Article 47 reads thus-

'In a suit filed by any person bound by an order respecting the possession of immoveable property made under the Code of Criminal Procedure, the limitation is three years from the date of the final order in the case'. There cannot be any dispute that the aforesaid orders passed in the proceedings under Section 145, Cr. P. C. were in respect of possession of immoveable property. By those orders the property that was attached under Section 145, Cr. P. C. was restored to defendant-3 on the basis of the compromise petition. The short question is whether such orders respecting possession of immoveable property were made under the Code of Criminal Procedure. The learned Subordinate Judge seems to be of opinion that since the proceedings under Section 145, Cr. P. C. were dropped, the orders were not made under the Code of Criminal Procedure. The view suffers from confusion of thought.

9. Section 145 (5), Cr. P. C. lays down that

'nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings, thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under Sub-section (1) shall be final'.

Defendant-2 was the person interested. It is also not disputed that he was representing defendant-1 also. Defendant-2 appeared and showed cause by the compromise petition that no such dispute likely to cause breach of the peace existed. The Magistrate on a full inquiry into the compromise petition cancelled the

preliminary order passed under Section 145(1).

10. So far as this Court is concerned, it is well settled that after cancellation of order under Section 145 Cr. P. C., the Magistrate has full jurisdiction to direct restoration of the attached property and the crops to the party from whose possession they were taken. There is no express provision under Section 145 for passing ancillary or incidental orders for disposal of the attached property. The Magistrate has jurisdiction to invoke the power conferred upon him under Section 517(1), Cr. P. C. and return the attached property to the person from whose custody it was taken. 22 Cut LT 435 = (1957 Cri LT 288), 23 Cut LT 37 -(AIR 1957 Orissa 92), 25 Cut LT 340 = (AIR 1959 Orissa 81) and (1984) 31 Cut LT 132, are cases directly on the point.

11. Mr. Murty contends that this power is not exercised under Section 517(1), Cr. P. C. which deals with only moveable and not immoveable properties as in Section 522, Cr. P. C. The argument is based on some authorities taking that view. This contention is not sound. Section 517(1) Cr. P. C. lays down that

'when an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence'.

12. Section 522(1), Cr. P. C. is to the effect that

'whenever a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the Court that by such force or show of force or criminal intimidation any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, when convicting such person or at any time within one month from the date of the conviction order the person dispossessed to be restored to the possession of the same'.

13. Mr. Murty's contention is that Section 522 in terms refers to immoveable property and that the identical matter being covered in Section 517(1), by necessary implication immoveable property must be excluded from its ambit. The argument is devoid of force. It has been held by this Court in a series of decisions that in exercise of the ancillary power, after dropping of a proceeding under Section 145, Cr. P. C., the Magistrate can return the attached property to the person from whose possession it was taken. Doubtless in those cases, the argument in the form presented by Mr. Murty has not been specifically advanced. That does not, however, take away the value of those authorities as precedents. That apart, in terms Section 517(1) does not confine itself to moveable property. It speaks of any property which includes both moveable and immoveable. If Section 522(1) is specifically confined to immoveable property, there was no difficulty for the Legislature in clearly confining Section 517(1) to moveables. Further Section 522(1) covers only cases ending in conviction wherein dispossession of the property took place by application of criminal force or intimidation by an accused. Every other class of dispossession of immoveable property comes within the sweep of Section 517(1). *Kami Bai v. Natho*. AIR 1961 Madh Pra 25 is a direct authority on the point. For all the reasons discussed above Mr. Murty's contention that the restoration of the property to defendant 3 cannot come within Section 517(1), Cr. P. C. must be rejected.

14. Even if the order of the Magistrate delivering possession to defendant 3 may not come within Section 517(1), it would fall within the scope of the inherent powers of the Magistrate. Section 561-A, Cr. P. C. in terms saves the inherent powers of the High Court and not of the subordinate Courts. It is now well settled that the subordinate Magistrates possess inherent powers apart from the express provisions of law which are necessary to their existence and proper discharge of duties imposed upon them by law. Every Court, whether Civil or Criminal, in the absence of an express provision to the contrary, shall be deemed to possess, as inherent in its very constitution, of such powers as are necessary in the course of administration of justice. This power is, however, not to be exercised contrary to express provisions of the Code and must be used cautiously. If Mr. Murty's contention that delivery of possession to defendant-3 cannot come within any express provision of the Criminal Procedure Code be correct, it can be justified to

have been done in exercise of the inherent powers of the Magistrate.

15. The order of delivery of possession passed by the Magistrate, whether it was passed in exercise of the ancillary powers under Section 145 or under Section 517(1), Cr. P. C. or his inherent powers, was an order made by him under the Criminal Procedure Code respecting the possession of the immovable property and the plaintiff and his predecessors in interest were bound by such an order. Article 47 of the Limitation Act applied in terms and the suit is barred by limitation not being filed within three years of the order. Admittedly defendant-3 is in continuous possession of the property subsequent to the order.

16. Mr. Murty raised a further contention that the criminal proceeding was dropped and delivery of possession was given to defendant-3 by virtue of the compromise between the parties and that the order of the learned Magistrate delivering possession merely embodied the terms of the compromise and was in pursuance thereof, and, as such, was not an order passed by the Magistrate under the Criminal Procedure Code. He conceded that there is no authority to support such an argument. Doubtless delivery of possession was given as a result of the compromise and that obviated the necessity of making further inquiry by the Magistrate in an ancillary proceedings as to in whose possession the immovable property was at the time of attachment. The question, whether the order was passed under the Criminal Procedure Code, has nothing to do with the mode of inquiry whereby the conclusion in support of the order was reached. Whether it was passed on the compromise or by an elaborate inquiry in an ancillary proceeding, it remained an order of the Magistrate passed in a criminal proceeding started under the Criminal Procedure Code. The contention is fantastic.

17. The judgment of the lower appellate Court must therefore stand not only on his finding that the plaintiff failed to prove his possession within 12 years of the suit and that defendant-3 was in possession for more than 12 years before the suit, but also on the ground that the suit is hit by Article 47 of the Limitation Act. In the result, the second appeal fails and is dismissed with costs.