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Hakim Singh Etc. Vs. Girwar Singh

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Court : Delhi

Decided On : Sep-05-1975

Reported in : 1976CriLJ1915; 1975RLR507

Judge : V.D. Misra, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 145

Appeal No. : Company Appeal No. 221 of 1975

Appellant : Hakim Singh Etc.

Respondent : Girwar Singh

Advocate for Pet/Ap. : R.K. Mathur,; B.B. Lal and; Charanjit Talwar, Advs

Judgement :

V.D. Misra, J.

(1) This is a petition under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the new Code), and Article 227 of the Constitution challenging the order passed by an Additional Sessions Judge in revision.

(2) The parties to the dispute are closely related. Hakim Singh petitioner is the uncle of the respondent whereas petitioners Nos. 2 and 3 are the sons of Hakim Singh. A dispute arose between the parties about the possession of shop No.

1980, Gali Paraunthewali, Delhi. The matter was reported to the police which recommended action under section 145 of the Code of Criminal Procedure. The Sub Divisional Magistrate passed a preliminary order on April 5, 1974 under sub-section (1) of section 145 of the new Code. During the pendency of the proceedings there was a violent clash between the parties on the night between 30th/ 31st May, 1974 in which six persons sustained injuries. The Sub-Divisional Magistrate, considering it a case of emergency, passed orders for the attachment of the shop under sub- section (1) of section 146 of the new Code. It may be noticed that the petitioners had filed a suit on May 30, 1974 and had obtained an injunction against respondent No. 1 restraining him from interfering with their possession. On May 31, 1974 the respondent had filed a suit and had obtained an injuction restraining the petitioners from interfering with his possession.

(3) By an order dated May 6, 1975 the Sub-Divisional Magistrate declared the petitioners to be entitled to the possession of the shop and directed the police to unreal the shop and hand over its possession to the petitioners. The respondent went in revision against this order and an Additional Sessions Judge came to the conclusion that after the Sub-Divisional Magistrate had ordered the attachment under sub-section (1) of section 146 of the new Code he had to await the decision of competent court determining the rights of the parties and could not take any further action. The shop was, thereforee, directed to remain under attachment.

(4) Mr. R.K. Mathur, learned counsel for the petitioners, contends that the Sub-Divisional Magistrate was justified in proceeding under section 145 after having attached the property under section 146(1). He also contends that though the new Code has brought in a material change in section 146 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the old Code), the legislature has not debarred the Sub-Divisional Magistrate from determining as to who should be given the possession of the subject of dispute.

(5) In order to appreciate the changes which have been made by the new Code in section 146 it is necessary to take note of the changes which have been brought from time to time in this section. (...)

(6) SUB-SECTION (1) empowered the Magistrate to attach the subject of dispute 'until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof if he could not decide as to which of the party was in possession or if he came to the conclusion that none of the parties was in possession of the subject matter in dispute. The object of the section was to place the subject of dispute under custodia legis in order to prevent the parties from attempting to take possession and thus creating a breach of peace until the decision of a competent court about the rights of a party. N3 power was given to the Magistrate to refer the nutter to a Civil Court for determination of the question as to who was in possession of the property. It was expected that after the subject of dispute is attached the parties will be forced to get a decision of their right from a competent Court. [S. 146 as amended in 1955 is then reproduced]

(7) Vital changes were made by this amendment. Though the conditions, under which attachment under sub-section (1) could be made by the Magistrate, remained the same, the Magistrate was required to draw up a statement of the fasts of the case and forward the record of the proceeding to a Civil Court of competent jurisdiction to decide the question of possession. The Civil Court was to transmit its decision to the Sub-Divisional Magistrate who was required to dispose of the proceeding pending under section 145 in conformity with that decision. In other words, instead of leaving the parties to approach a court of competent jurisdiction to have their rights decided, it was expected that the reference by the Magistrate to the Civil Court would result in quicker disposal since the Civil Court under sub-section (1B) of section 146 was expected to conclude the inquiry and transmit its finding with in a period of three months.

(8) It may be noticed that once the Magistrate takes action under sub-section (1), he cannot proceed under section 145 but has to await the decision of the Civil Court for disposing of the proceedings. To this extent the amendment made no change in the old section.

(9) Now the proviso to sub-section (4) of section 145 of the old Code empowering the Magistrate to attach the subject of dispute at any time if he considered the case to be one of emergency, was not affected by the amendment made by Act 26

of 1955 in section 145. This proviso was in the following terms :(- -) In other words the attachment could be made either under section 145(4) or under section 146(1).

(10) The new Code changed section 146 of the old Code by practically re-enacting the old section before its amendment by Act 26 of 1955. Now it reads thus :(---)

(11) It will be noticed that sub-section (I) is practically in the same terms as it was in the old Code before its amendment by Act 26 of 1955 except the addition of one more condition under which the subject of dispute could be attached by the Magistrate. Now, section 145 of the new Code has done away with the afore mentioned proviso to sub-section (4) under the old Code enabling the Magistrate to attach the subject of dispute. But similar provision has been added to sub-section (1) of section 146 empowering the Magistrate to attach the property if he considers the case to be one of emergency. The intention of the legislature in making these changes is obvious. It has taken away the powers of the Magistrate to refer the dispute to a Civil Court and has left the parties to approach the competent Court for the determination of their rights. After all section 146 is a preventive measure in order to prevent a breach of the peace. This object is satisfied the moment the Magistrate decides to attach the subject of dispute. Once he has made the attachment the proceedings pending under section 145 come to an end. He can later on with draw the attachment if he feels satisfied that the likelihood of breach of the peace no longer exists. But then all the proceedings will come to an end since the object to prevent breach of the peace will have been achieved. In case the attachment continues the Magistrate's only power is to appoint a receiver and then act under sub-section (2).

(12) I find that the learned Additional Sessions Judge was justified in setting aside the order of the Sub-Divisional Magistrate and giving the necessary directions.

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