

Arya Datt Etc. Vs. State Etc.

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Court : Delhi

Decided On : Feb-08-1973

Reported in : 10(1974)DLT353; 1973RLR228

Judge : Pritam Singh Safeer, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145(4)

Appeal No. : Criminal Revision Appeal No. 433 of 1972

Appellant : Arya Datt Etc.

Respondent : State Etc.

Advocate for Pet/Ap. : O.P. Tyagi and; R.S. Chaudhary, Advs

Judgement :

P.S. Safeer, J.

(1) This petition has come up in consequence of an order passed by an Additional Sessions Judge, Delhi in exercise of the power given by section 438 of the Criminal Procedure Code, hereafter called 'the Code'.

(2) The petitioners who moved

'S.145(I).Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police- report or other information that a dispute

likely to cause a breach of the piece exists concerning any land or water or the boundaries thereof, within the local limits of this jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute (and further requiring them to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims). (4). The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, phrase the statements, documents and affidavits, if any, so put in. hear the parties and conclude the inquiry, as far as may be practicable, within a period of two months from the date of the appearance of the parties before him and, if possible, decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject: 355 Provided that the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in as to the facts contained therein : Provided further that, if it appears to the Magistrate 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 : Provided also that, if the Magistrate considers that case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.' In terms of sub-section (4) quoted above, the Sub Divisional Magistrate was to decide as to which of the parties was in actual physical possession on the date of the preliminary order passed under sub-section (1) of section 145 of the Code. Under the second proviso he could determine as to who had been in similar actual physical possession within two months next before the date on which he had passed the preliminary order under sub-section (1) of section 145 of the Code.

(3) After going through the reports made by the Kanungo that all the fields were under wheat crop at the time when he went to deliver the possession and that he had been able to deliver only symbolical possession by way of 'Kabza Malkana' and after taking into consideration the documents furnished by the parties within the scope of subsection (1) of section 145, the Court acting within sub-section (4)

thereof came to the conclusion that respondents 2 to 4 were in actual physical possession.

(4) Aggrieved by that determination, the petitioners filed the petition under sections 435/438 of the Code. The learned Addl. Sessions Judge noticed the provisions contained in Order 21 Rule 35 of the Code and came to the conclusion that possession had been delivered to the petitioners in accordance therewith and it sufficed for concluding that the petitioners had received physical possession. In a part of his order the Addl. Sessions Judge expressed :-

'SINCE the decree-holders did not have any right in the crops standing the price thereof was assessed and they were directed to deposit the same in the executing Court. The decree-holders deposited the amount of the cost assessed within the stipulated time and became the owners of the crops also.'

I hardly find any justification for the view quoted above Respondents 2 to 4 to this petition had raised objections regarding the assessment of the price of the wheat crop and had refused to receive the amounts. Since there wheat crop was standing on the land they were in actual physical possession thereof.

(5) In the proceedings under section 145 of the Code the Court was functioning under its own legal obligation to determine for itself as to who was in actual physical possession within the scope of sub-section (4) of section 145 of the Code. There was no material available to conclude that the petitioners had ever received actual physical possession It is not contended before me that any kind of possession was ever received by the petitioners en any date subsequent to the 20th of November, 1968. On that date obviously symbolical possession described as 'Kabza Malkana' was given to them.

(6) It would be appropriate to notice that in Chapter Xii G Vol. I of the High Courts Rules & Orders, the ultimate provision, is:-

'WHEN a decree is passed giving possession of agricultural land, the date on which possession is to be delivered, should always be specified in the decree and orders passed as to any stanading crops that may be on the and. If this has not

been done in the decree, it should be done in the order which is sent to the Collector by the Court executing the decree. If, however, no date is specified in either the decree or the order, and the land of which possession is to be delivered is in the cultivating possession of the judgment debtor, the Collector should at once refer to the Civil Court for instructions as to whether or not he is to delay executing of the decree until any crop which may have been sown by the judgment debtor and is standing on the land has been removed.'

The afore-quoted provision was made to meet the contingencies which could arise in the course of execution of a decree granting possession of agricultural land. The provision is intended to meet the object that where the land is under crop the decree being for the delivery of the land only it should always be specified as, to when the delivery of the land- will be made and an order ought to be passed specifically in respect of the crop that may be standing. Where the decree is silent then the executing court while sending the order for execution of the decree to the Collector has to specify as to what has to be done in respect of the standing crop and as to when the de(r)ree is to be executed. It is contemplated that the Court while passing the decree or while sending the order in consequence of the execution proceedings will prescribe that the decree be executed after a specified date by which the judgment debtor may have removed the crop. Where the Collector receives an order for execution of a decree for possession in respect of agricultural land and finds that the order is silent he has to refer it back to the civil court for instructions.

(7) When Bhim Singh went. to the spot for executing the warrant and found that the land concerned was under wheat crop he should have submitted a report to the Collector who should have in turn sent a request to the Civil Court for giving appropriate instructions in terms of the afore quoted provision.

(8) I hold that the decree was never executed so as to deliver actual physical possession to the petitioners.

(9) The Sub Divisional Magistrate was right in holding in exercise of his jurisdiction given by sub-section (4) of section 145 of the Code, that respondents 2 to 4 were in actual physical possession.

(10) Affirming the order made by the Sub Divisional Magistrate, the recommendation under section 438 of the Code is declined and the petition is dismissed.

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