

**Chadha Oil Co. Vs. Radhey Shyam Brahmchari and ors.**

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**Court :** Delhi

**Decided On :** Dec-13-1985

**Reported in :** 29(1986)DLT258

**Judge :** G.R. Luthra, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145(1)

**Appeal No. :** Criminal Revision Appeal No. 159 of 1985

**Appellant :** Chadha Oil Co.

**Respondent :** Radhey Shyam Brahmchari and ors.

**Advocate for Pet/Ap. :** K.K. Sud,; Rajiv Chauhan and; D.C. Mathur, Advs

**Judgement :**

**G.R. Luthra, J.**

1. The present revision petition is directed against two orders each dated 26th July 1985 passed under Section 145(1) Cr PC. By way of one order, the parties before the Court of learned Sub Divisional Magistrate, Punjabi Bagh, Delhi were directed to file their written statements, list of witnesses and documents in respect of their respective claims and the second order was to the effect that any construction made by 'Party No. 2' (Consisting of Manohar Lal Chadha, Subhash Kallu, Kailash, Mangu and Hindustan Petroleum Corporation Ltd.) would be subject to

the final decision of the said court made under Section 145 Cr PC.

2. Originally the petitioner was M/s. Chadha Oil Co. through one of the partners, named Manohar Lal Chadha. An objection was raised by the respondent i.e. Saraswati Sahitya Mandir that M/s. Chadha Oil Co. was not a party before the Sub Divisional Magistrate, that the parties were different persons and that, therefore, the present petition was not maintainable. Although the petitioner did not concede to the validity of the said objection, set as an abundant precaution, the other persons who constituted the 'second party' before the learned Sub Divisional Magistrate came up with an application (Criminal Misc. No. 1851 of 1985) to the effect that the persons other than Hindustan Petroleum Corporation Ltd. were partners of M/s. Chadha Oil Co. and that they also wanted to be brought on record as partners.

3. The proceedings before the learned Sub Divisional Magistrate started on a petition under Section 145 Cr.P.C. which was filed on June 27, 1985 by Saraswati Sahitya Mandir, respondent. That petition was to the effect that the petitioners were running a petrol pump in a wooden hutment on certain piece of land, the since last week of April 1985 they had started constructing a puce building on land apartment to the temple, that there was thus a dispute which was likely to cause breach of piece and that, therefore, the court should pass appropriate orders for taking cognizance of the matter immediately and decide the possessory right in respect of the property in dispute. In the application it was stated that the 'dispute' of possession was in respect of authorised construction by the second party which was ordered to be demolished by Municipal Corporation.'

4. The petitioner felt aggrieved against the order of maintaining status quo because it amounted to prohibition against continuing of construction. therefore, a Criminal Misc. (Main) 728 of 1985 was filed in the High Court on which on June 11, 1985, H.C. Goel, J. passed the following order:

'Heard. The petitioner may approach the SDM concerned in the matter. As regards the impugned order dated June 27, 1985 directing the maintenance of status quo in the matter the petitioner shall on an application within three days from today. The learned SDM shall pass appropriate orders on that application within one

week of the service of the notice of the application of the petitioner on the respondents. Be listed on July 30, 1985 along with the stay application.'

5. In view of the aforesaid order, the petitioner filed an application before the learned Sub Divisional Magistrate who then passed the impugned orders set aside the order of maintaining status quo.

6. The respondent contested the petition and I have heard the learned counsel for the parties. First of all I take up Criminal Misc. 1851 of 1985. The said application, as already mentioned, is for impleading all the partners of M/s. Chadha Oil Co. as petitioners. Obviously, there is no difficulty as far as that application is concerned and the same is allowed. Now the petitioners will be all partners of M/s. Chadha Oil Co. who along with Hindustan Petroleum Corporation Ltd. constituted second party before the learned Sub Divisional Magistrate.

7. Both the impugned orders were passed under Section 145 Cr.P.C. therefore, it is so to be seen if such orders could be passed under the provision or not. It is apparent from Sub-section (1) of Section 145 Cr.P.C. and is also well established that the enquiry by the court has to be confined to the finding of fact of actual possession of the subject of dispute between the parties. This is also emphasised by Sub-section (4) of Section 145 Cr PC which reads as under:

'(4) The Magistrate shall then, without reference to the merits of the claims of any of the parties to a right to possess the subject of dispute, I peruse the statements so put in here the parties receive such evidence as any be produced by them, take such further evidence, if any, as he think necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made under Sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that one party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of police officer or other information was received by the Magistrate, or after that date of and before the date of his order under Sub-section (1) may treat the party so dispossessed as if that party has been in possession on the date of his order under Sub-section (1).'

8. It is further apparent from the above that an executive Magistrate can restore possession to a party who had been forcibly and wrongly dispossessed within two months immediately, preceding the application of the complainant or report of the police. That necessarily means that if any party has been in possession for more than two months prior to that report of complaint, the executive magistrate cannot do anything and therefore the proceedings can be taken by the Executive Magistrate.

9. In the present case the complaint (filed on 27th June 1985) by respondent No. 1 shows that actually the respondent was not in possession of the land now under occupation of the petitioners within two months immediately before the filing of the said complaint. Paragraph 2 of that complaint is very important in this respect. The relevant portion of that paragraph reads as under:

'That the second party in fact has no land left with them for any construction because of road widening of Rohtak Road. The 2nd party who were running a petrol pump in a wooden hutment earlier, has now started constructing pucca building since the last week of April 1985 slowly and slowly in the land which belongs to 1st party and attached to the temple in possession of first party.'

10. It is clear from the above that before April 1985 the petitioners were running a petrol pump in a wooden hutment. therefore, even before April 1985 the petitioners were in possession. That clearly means that the petitioners were in possession for more than two months prior to the filing of the complaint on 27th June 1985. Under these circumstances the making of the order by the learned Executive Magistrate was without jurisdiction.

11. There was another defect in the order also. Neither the order nor the complaint dated 27th June 1985, on the basis of which said order was passed, gives the particulars of the land with respect to which there is a dispute and with respect to which the order was passed. Neither boundaries nor measurements nor the exact situation of land is given. The respondent as it appears, felt the existence of that defect and that is why on application dated 9th August 1985 was moved in which the measurement of the land and its boundaries were mentioned, and along with that application a plan alleged to have been prepared by Shri P.C. Goel, architect

on 30th July 1985 was attached. That application cannot remove the defect and the vagueness of the orders under Section 145(1) Cr.P.C. which had been passed earlier on 26th July 1985. But the orders are, therefore, liable to be set aside on this ground alone.

12. In fact the dispute between the parties involves complicated question of fact regarding possession and title which can be settled only by a civil court. The petitioners have stated that they had already a civil litigation with Sanatan Dharam Sabha and that they had been in possession since long on account of a compromise in the said litigation. The case of the respondent on the other hand, is that the petitioners were not entitled to any land and that whatever land was in their possession had been lost on account of acquisition under the provision of Land Acquisition Act on account of requirement of land for widening of road. All these matters can be gone into by the civil court only and it is only that court which can see as to what rights and possession the parties held.

13. In view of the foregoing reasons, I accept the revision petition, set aside both the orders of the learned Sub Division Magistrate and dismiss the applications filed by the respondent.

14. A copy of this order shall be sent to the learned Sub Divisional Magistrate, Punjabi Bagh, Delhi for information and necessary action.

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