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Court : Rajasthan

Decided On : Oct-24-1962

Reported in : AIR1964Raj81; 1964CriLJ429

Judge : C.B. Bhargava, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 145(6), 146, 146(1B), 146(1D) and 439

Appeal No. : Criminal Revn. Nos. 36 and 37 of 1962

Appellant : indersingh and ors.

Respondent : State and ors.

Advocate for Def. : J.S. Chordia, Adv. for Non-petitioner No. 2 and; R.P. Goyal, Adv.

Advocate for Pet/Ap. : M.C. Bhandari, Adv.

Judgement :
ORDER

C.B. Bhargava, J.

1. As common question of law has been raised, these two revision applications are being disposed of by this judgment.

2. Both these applications arise out of the proceedings under Section 145 of the Code of Criminal Procedure. The learned Sub-Divisional Magistrate before whom the proceedings were instituted, referred the question of possession to a Civil Court under Section 146 (i) of the Code and after receiving the finding from the Civil Court, disposed of the proceedings. A revision application was preferred against the order of the learned Sub-Divisional Magistrate before the Sessions Judge, but he held that 'the learned Sub-Divisional Magistrate has done what was required by law to do'. He has not given his own finding. He has given his finding on the basis of the findings communicated to him by the learned Civil Judge. Under these circumstances as there is no judgment of the Magistrate himself no revision lies. A preliminary objection has been raised that no revision lies in such cases. It is also urged that even if a revision lies its scope is limited to the extent that the Court has to satisfy itself whether the order of the learned Magistrate is in conformity with the decision of the Civil Court.

3. On behalf of the petitioners it is contended that the revisional Court has got the same powers to interfere with the order of the Magistrate passed under Section 146 (1B) as it has in a similar case decided under Section 145 (6). It is further contended that the order of the learned Sub-Divisional Magistrate is not in conformity with the decision of the Civil Court. Lastly, it was contended that the learned Sub-Divisional Magistrate has wrongly ordered restoration of possession over those fields also from which dispossession was not alleged by the opposite party.

4. Sub-section (1-D) of Section 146 provides that

'No appeal shall lie from any finding of the Civil Court given on a reference under this section nor shall any review or revision or any such finding be allowed.'

The provisions of Section 145 are primarily meant for the prevention of the breach of the peace where the dispute relates to the possession of immovable property and it should be decided as promptly as possible. In cases where a Magistrate is of opinion that none of the parties was then in such possession, or is unable to decide as to which of them was then in such possession of the subject of dispute, he may attach it, and draw up a statement of the facts of the case and forward the

record of the proceeding to a Civil Court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained in Sub-section (4) of Section 145; and he shall direct the parties to appear before the Civil Court on a date to be fixed by him. The Civil Court has to peruse the evidence on record and take such further evidence and after considering the effect of all such evidence and hearing the parties is to decide the question of possession which is referred to it. Under Sub-section (1-B) of Section 146 it is required that the Civil Court should conclude the inquiry and transmit its finding together with the record of the proceeding to the Magistrate as far as may be practicable within a period of three months.

Then comes Sub-suction (1-D). It bars ap-peal, revision or review against the findings of the Civil Court. By incorporating this provision it is intended by the legislature that the proceedings under Section 145 be not needlessly protracted and the dispute regarding possession should be decided soon. This sub-section bars the remedy of appeal, revision or review against the finding of the Civil Court. It cannot be interpreted to mean that when a final order is passed by a Magistrate., though in conformity with the decision of the Civil Court, a revision under the provisions of the Code of Criminal Procedure will also not lie to the Court of Session or the High Court. The order passed by a Magistrate under Sub-section (1B) of Section 146 is by an inferior criminal Court and should be amenable to the revisional jurisdiction, of the Courts mentioned in Section 435 Criminal Procedure Code. I, therefore, see no force in the preliminary objection that no revision lies against the order of the Magistrate passed under Sub-section (1-B) of Section 146 of the Code. No decision has been cited by the learned counsel in support of this contention. The following cases relied upon by the learned counsel only deal with the question of the scope of revision in such cases, but do not lay down that a revision does not He-against that order.

Ramnarain Singh v. Mahatha Niranjan Lal, AIR 1958 Pat 85 Muthu Sethurayar v. Lourdu-swami Odayar, AIR 1959 Mad in, Ram Narayan Goswami v. Biswanath Goswami, AIR 1959 Cal 366.

It was held in Ramnarain Singh's case, AIR 1958 Pat 85 that because the Magistrate is onlyrequired to pass an order in conformity with the decision of the Civil Court and if he does so, it cannot be said that his order is illegal and once the learned Magistrate had done so the order of the learned Magistrate cannot be said to be illegal and if the order is not illegal, it is not open to the High Court to set that order aside in revision. The High Court did not interfere in revision because it found that the order of the Magistrate was in conformity with the decision of the Civil Court. In Muthu Sethurayar's case, 1959 Mad in it was held that:

'It is open to file a revision under Sections 435 and 439 against the order of the Magistrate who disposed of the petition under Section 145 after the receipt of the findings of the Civil Court after, reference under Section 146 (1) at least to show that the order of the lower Court is not in conformity with the decision of the Civil Court and it cannot be said that no revision at all lies against the order of the Magistrate.' But it was further held that: 'The High Court in revision has no jurisdiction to go into the correctness or legality or otherwise of the findings of the Civil Court. To do that would be to do a thing indirectly what is directly prohibited. What utmost the High Court can do in revision is to ascertain whether the criminal Court has implemented the decision of the Civil Court. To this limited extent only a revision can lie.'

In Ram Narayan Goswami's case, AIR 1959 Cal 366 the application in revision was dismissed by the High Court because it found that the order of the Magistrate was in conformity with the decision of the Civil Court and as such there was no merit in the application. Reference In this connection was made to Sub-section (1-D) of Section 746 and it was held that:

'The only remedy left would be to go to a (Court of competent jurisdiction under Sub-section (1) (e) of Section 146 of the Code of Criminal Procedure.11

As the learned counsel for the petitioners has not challenged before me the correctness or legality of tbe order of the Civil Judge, I do not feel called upon to decide as to what should be the scope of revision which is directed against an order passed under Section 146 (1~B). Sub-section (1-B) only prohibits filing of appeals, revision, review against the finding of the Civil Court on the Civil side and

not on the criminal side under Sections 435 and 439 of the Code of Criminal Procedure. If the legislature intended that finality should be attached to the orders passed under Section 146 (1) (B) then a provision could have been inserted in this section that the order passed under Section 146 (1) (B) would be final and no revision would lie against that order. I, therefore, think that a revision lies against the orders passed under Section 146 (i) (B).

5. It is now to be seen whether the learned Magistrate has disposed of the proceedings in conformity with the decision of the Civil Court. In revision No. 36 of 1962 the petitioner in the proceedings alleged that he was in possession of Qilla Nos. 1, 2, 9, 10, 11, 12, 19, 20 and 21 of Sq.

'No. 26 in village GGA No. 12, Qilla No. 13 of Sq. No. 13 and Qilla Nos. 5, 6, 15, 16 and 25 of Sq. No. 23 as the said fields had been allotted to his father. It was alleged that he was dispossessed by the opposite party from Qilla Nos. 1, 2, 9, 10, 12 and 19 of Sq, No. 26 on 27th October, 1959. He, therefore, prayed that he should be reinstated on Qilla Nos. 1, 2, 9, 10, 12 and 19 of Sq. No. 26 from which he had been forcibly and wrongfully dispossessed and his possession over Qilla Nos. 11, 20, 21 of Sq. No. 26 and Qilla No. 13 of Sq. No. 13 and Qilla Nos. 5, 6, 15, 16 and 25 of Sq. No. 23 be declared because the opposite party was trying to interfere with his possession.

The learned Civil Judge to whom reference was made after briefly giving the substance of the application under Section 145 considered the material on record and observed that it was clear that the evidence of the opposite party was vague, unreliable and insufficient to rebut the evidence pro-duced by the applicants. It was proved from the oral and documentary evidence of the applicants that possession was delivered to them on 24th October, 1959, and they were dispossessed from it on 27th October, 1959, forcibly by the opposite party. It was, therefore, ordered that possession of the applicants be declared on the disputed property under Section 145 (4) of the Code of Criminal Procedure.

The learned Magistrate taking the finding as relating to the entire disputed property passed a final order describing in detail the disputed property with reference to its Qilla Numbers and Square Numbers. The order of the learned Magistrate cannot

be regarded as being not in conformity with the finding of the Civil Judge because the learned fudge declared the possession of the applicants on the disputed property.

However, the learned Magistrate was not justified in passing an order for restoration of possession to applicants over those fields from which dispossession was not alleged. Under Section 145 (6) an order for restoration of possession to a party can be made if he has been forcibly and wrong-fully dispossessed within two months next before the date of the preliminary order. Whereas in this case it was not alleged that there has been any wrongful and forcible dispossession from Qilla Nos. 11, 20 and 201 of Sq. No. 26 and Qilla No. 13 of Sq. No. 13 and Qilla Nos, 5, 6, 15, 16 and 25 of Sq. No. 23. The learned Sub-Divisional Ma-gistrate had no jurisdiction to order restoration of possession of those fields to the opposite party. The order regarding restoration of possession would be valid only with regard to Qilla Nos. 1, 2, 9, 10, 12 and 19 of Sq. No. 26 because it was found that the party had been forcibly and wrongfully dispossessed from these Qilla Numbers within two months next from the date of the preliminary order. With regard to other Qilla Numbers the order for restoration of possession is set aside. The petitioners before this Court contended that they are still in possession of these Qilla Numbers, I do not, however, express any opinion on that question.

6. in revision No. 37 of 1962, the case of Variyan Singh who was petitioner in the proceedings was that he was in possession of Qilla Nos.1, 2, 9, 10, 11 and 12 in Sq. No. 20 and the opposite party had forcibly and wrongfully dis-possessed him on 27-10-1959, from Qilla Nos. 1, 2, 9 and 10. The learned Civil Judge to whom the case was referred gave a finding that possession was delivered to Variyan Singh over the disputed Qillas on 24th October, 1959, and he was dispossessed from the disputed fields on 27th October, 1959, forcibly by Indersingh and others. There is no finding by the learned Civil Judge nor was it alleged that Variyan Singh had been dispossessed from Qilla Nos. 11 and 12 of Sq. No. 20 also. The learned Magistrate while passing the final order under Section 146 (1-B) not only declared possession of Variyan. Singh over all the disputed Qilla Numbers of Sq. No. 20 but ordered restoration of possession over Qilla Nos. 11 and 12 also. To this extent the order of the learned Magistrate is wrong and must be set aside because no

dispossession was alleged over these Qilla Numbers.

7. The result, therefore, is that these revisions are partly allowed. In revision No. 36 of 1962 the order of the learned Sub-Divisional Ma-gistiate in so far as it relates to the restoration of possession over Qilla Nos. 11, 20 and 21 of Sq. No. 26 and Qilla No. 13 of Sq. No. 13 and Qilla Nos. 5, 6, 15, 16 and 25 of Sq. No. 23 is set aside. In revision No. 37 of 1962 the order relating to restoration of possession over Qilla Nos. 11 and 12 of Sq. No. 20 is set aside. In all other respects the order of the learned Magistrate is confirmed.