

Roda and ors. Vs. Nathu and ors.

Roda and ors. Vs. Nathu and ors.

SooperKanoon Citation : sooperkanoon.com/756643

Court : Rajasthan

Decided On : Jan-19-1974

Reported in : 1974WLN(UC)128

Judge : P.N. Shinghal, J.

Appeal No. : S.B. Criminal Revision Petition No. 194 of 1972

Appellant : Roda and ors.

Respondent : Nathu and ors.

Disposition : Application allowed

Judgement :

P.N. Shinghal, J.

1. It has been argued by the learned Counsel for the present applicants that the order of the learned Sub-divisional Magistrate, Mandalgarh, dated 1.11.71, does not justify the order which has been passed in favour of the present con-applicants because the learned Magistrate has not decided the question whether the present non-applicants were in possession on the date of the preliminary order & has also not recorded a finding that the present non-applicants had been forcibly and wrongfully dispossessed within two months next before the date of that order. A reading of the impugned order of the learned Magistrate shows that there is

justification for this contention of the learned Counsel because the learned Magistrate has recorded a finding to the effect that the present non-applicants had proved their possession two months before the date of the preliminary order. The order of the learned Magistrate therefore suffers from the defect pointed out by the learned Counsel for the present applicants, and cannot be sustained as a valid order Under Section 146 Cr.P.C.

2. It was suggested by the learned Counsel for the present non applicants that this Court may now examine whether the present non-applicants had succeeded in proving that they were in possession at the date of the preliminary order or had been forcibly and wrongfully dispossessed within two months next before the date of the order. When the evidence of the parties was taken up for re-examination as proposed by the learned counsel, the learned Counsel for the present applicants pointed out that the affidavits which have been filed on behalf of the present non-applicants can not be said to be affidavits at all because they have not been made on oath as there is no invocation of God, or reference to solemn affirmation. Mr. Chopra has nothing to urge against this argument. He has however pointed out that as such an objection regarding the admissibility of the affidavits had not been taken in the court of the Magistrate, the present non-applicants did not get an opportunity to file fresh affidavits, and that the proper course for this Court is to ask for a fresh decision of the case after giving both the parties an opportunity to file fresh affidavits. This is acceptable to the learned Counsel for the present applicants also.

3. In the result, the revision application is allowed, the impugned order of the learned Sub-divisional Magistrate, Mandalgarh, dated November 1, 1971, and the revisional order of the learned Sessions Judge, Bhilwara, dated January 6, 1972, are set aside and the case is sent back to Sub-divisional Magistrate, Mandalgarh, for proceeding further in the matter according to law in the light of the observations made above.