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Court : Rajasthan

Decided On : Jan-14-1975

Reported in : 1975WLN(UC)7

Judge : J.P. Jain, J.

Appeal No. : S.B. Criminal Revision No. 525 of 1973

Appellant : Mohar Singh

Respondent : Kanchan and ors.

Disposition : Application dismissed

Judgement :

J.P. Jain, J.

1. This revision application arises out of the proceedings initiated by Mohar Singh under Section 145 Criminal P.C. (Old) against Kanchan and eight others.

2. There are two fields under the Khatedari tenancy of the petitioner Mohar Singh they are Khasra No. 1040 measuring 14 Bighas and 7 Biswas & Khasra No. 1041 measuring 27 Bighas and 17 Biswas in Village vallabharh Tehsil Weir. Adjoining to the village towards the east is the village Katariyapura. Subject matter of dispute in these proceedings is a piece of land measuring 8 Bighas. According to Mohar Singh the disputed land forms part of 1040 and 1011 and the Non

petitioners were trying to dispossess him. According to the Non petitioners the land in question forms part of their fields No. 36 measuring 5 Bighas and 4 Biswas and 37 measuring 15 Bighas and 7 Biswas, in Katiriyapura Tehsil Bavana the petitioner initiated the proceedings, on 19-10-65 in the Court of Sub-Divisional Magistrate, Bayana. The matter, was referred to the Station House Officer, Police Station, Bhusavar for inquiry and report the petitioner obtained a preliminary order on 20-1-66. At the instance of the petitioner the land in question was attached by an order of the Sub Divisional Magistrate. After notice to the opposite parties statements of their claims were filed along with affidavits and documentary evidence the learned Sub Divisional Magistrate (sic) himself unable to deride the possession of the land he, therefore, made a reference to the court of Munsif Bayana under Section 146 of the Criminal P.C. (Old), on 10-7-67. In addition, to the evidence on record the Munsif recorded further evidence Adduced by the parties. He found by his order dated 23.11.71 that the subject matter of dispute lies in village Katariyapura and forms part of the fields Nos. 36 and 37 and on the date of preliminary order and two months prior to it the Non petitioners were in possession. With this answer he sent the case back to the Sub-Divisional Magistrate, Bayana. The learned Magistrate by his order dated 15-1-72 disposed of the proceedings under Section 145, Criminal P.C. in conformity with the decision of the Civil Court.

3. The petitioner then challenged the order by revision before the Additional District Magistrate, Bharatpur. The contentions raised before, him were not accepted and he dismissed the revision application by his order dated 9th November 1973 It is against this order that the present revision has been preferred by the petitioner Mohar Singh.

4. I heard Mr. Singhvi for the petitioner and Mr. Goyal for the Non petitioners Mr. Singhvi strenuously contended that the order passed by the Sub-Divisional Magistrate, Bayana on 10-7-67 by which he referred the matter to the Munsif, Bayana is bad. According to his submission the learned Sub-Divisional Magistrate did not apply his mind judiciously to the facts of the case and he was not right in recording that he was unable 'to decide the question of possession on the evidence adduced before him He has placed reliance on Sher Khan v. Sagar 1953

RLW 115 and Diwan Singh v. the State 1953 RLW 410. Both these cases are decided by one and the same learned judge of this Court the ratio of these decisions is that every attempt should be made by the Magistrate on a careful examination of evidence, to find as to which, party is in possession. It is not proper for him to shirk his duty because he shall have to take some pains in deciding this question. It was further, laid down that Section 146, Criminal I.P.C. applies only when the Magistrate is unable, on a judicious consideration of the evidence on record to decide the question of possession the fact that it is difficult to decide, the question of possession will not justify an, order under Section 146, Criminal I.P.C. In the present case the learned Sub-Divisional Magistrate heard the parties and observed that on the basis of evidence and the documentary evidence on record he was unable to determine the question of possession as to which party was in possession and on this finding he made the reference Under Section 146(1), Criminal P.C. (Old). In pursuance of this order the record was sent to the Munsif Magistrate, Parties led their evidence and obtained a finding which happened to be against the petitioner the petitioner also challenged that finding before the Addl. Dist. Magistrate. Bharatpur in revision and after having failed there on 9th November, 1973, he has come to this court to challenge that the reference was incompetent. Having regard to the circumstances of the case I am unable to hold that the Sub-divisional Magistrate Bayana did not apply his mind judiciously. In my opinion he acted in good faith on a consideration of evidence that he was unable to decide the question of possession fields. According to the petitioner, the land in question was situated in village Vallabharh whereas according to the Non-petitioners it lies in village Katarivapura. I do not find any fault in the reference made by the Sub-Divisional Magistrate. That apart, it is too late for the petitioner to come and challenge the reference. I find no substance in this contention.

5. Another submission made by Mr. Singhvi is that non petitioners Nos. 6, 7 and 8 had settled their dispute out of court and they filed a composition deed that the land in question does not lie in their fields Nos. 36 and it is in the fields of the petitioner in village Vallabharh Learned Counsel for the petitioner urged that in view of this compromise the order passed by the Sub-Divisional Magistrate should not have been passed there is no merit in this argument. According to the petitioner, all the nine non-petitioners were trying to oust him from the land in

question. In the joint reply filed by the non-petitioners the subject matter in dispute was claimed to be a part of field No. 36 and 37. It has not come in evidence as to how much lay in field No. 37. The compromise in such a case is of no effect the learned Munsif was right in deciding the question of possession and the Sub-Divisional Magistrate had no other option but to dispose of the proceeding under Section 145, Criminal P.C. (Old), in conformity with the finding of the Munsif.

6. The finding under challenge is supported by evidence on record the High Court would not interfere in revision with such order where the Magistrate was satisfied that there was likelihood of breach of peace and the finding of possession is based on evidence.

7. I find no substance in the revision application & it is accordingly dismissed.

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