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Banarsi Devi Vs. Prahlad

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Court : Rajasthan

Decided On : Dec-10-1973

Reported in : 1973(6)WLN863

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Revision Nos. 624 and 469 of 1972

Appellant : Banarsi Devi

Respondent : Prahlad

Judgement :

K.D. Sharma, J.

1. These two revision petitions arise out of a single judgment passed by the learned Sessions Judge, Jhunjhunu on 7th June, 1972 upholding the order of the Sub-Divisional Magistrate. Jhunjhunu, dated 19th May, 1970 in a proceeding under Section 145, Cr. P.C. As there are common questions of law and fact involved in these two applications in revision, they are disposed of by one judgment.

2. The relevant facts giving rife to these revision petitions may be shortly slated as follows. The Station House Office', Police Station, Ghidawa initiated proceedings under Section 145, Cr P.C. against the parties in the court of the Sub Divisional

Magistrate, Jhunjhunu on 12th August, 1968. It was alleged by the police that there is an agricultural land measuring 24 bighas and 2 biswas under a well popularly known as 'Swamiwala Will' situated in khasra No. 529 at village Ojatu Out of this land one half, i.e. 12 bighas and 1 Biswa belong to Nathudas and his daughter Kamali and her husband Hajarilal (hereinafter referred to as Party No. 2) and the remaining half belongs to Prahlad, Dwarka, Sagar and Radheshyam (hereinafter referred to as Party No. 1). There is a dispute concerning a portion of this land measuring 2 bighas and 5 biswas between the parties which is likely to cause breach of peace. On account of this dispute a quarrel ensued between the parties on 27th July, 1968 which led to a 'marpeet'. The party No. 1 got a criminal case registered under Sections 447 and 324, IPC. at the Police Station. The party No, 2 also lodged a first information report about this incident with police. Each party has claimed this piece of land to be of their ownership and possession and there is every likelihood that they may again commit breach of peace over the possession of this land in dispute.

3. The learned Sub Divisional Magistrate was satisfied by the police report that a dispute likely to cause a breach of peace concerning this portion of this land existed; so he made a preliminary order on 19th August, 1968 requiring the parties concerned in such dispute to attend his court and to put in written statements of their respective claims as regards to the fact of actual possession of the subject of dispute and further requiring them to aduce evidence in support of such claims. The parties submitted their claims and produced documents and put in affidavits of witnesses on whom they relied in support of their respective claims. During the pendency of the proceedings in the court of the learned Sub Divisional Magistrate Nathudas died and his legal representatives Banarsidevi, widow of Laxmandas and her son Parmeshwar were brought on record and the proceedings continued inspite of Nathudas's death. The learned Sub Divisional Magistrate after hearing the parties and concluding the inquiry arrived at a conclusion that party No. 2 was in actual possession of the land in dispute at the date of the preliminary order. He consequently passed an order declaring Nathudas deceased, Kamali and Hajarilal to be entitled to the possession of the land under controversy until evicted therefrom in due course of law and for forbidding all disturbances of such possession until such eviction. As the land in dispute Was Cinder attachment and

was in possession of the Receiver, i.e. Tehsildar, Chidawa, the learned Sub Divisional Magistrate released the land from attachment and directed the Receiver to hand over its possession to party No. 2, Karraii and Hajarilal along with the benefit accuring during the period of attachment. Aggrirved by 'his order the party No. 1 filed a revision petition in the court of the Sessions Judge. Jhunjhunu. The learned Sessions Judge, however, dismissed the application in revision and upheld the order of the earned Sub Divisional Magistrate.

4. The legal representatives of Nathudas deceased who have been brought on record by the learned Sub Divisional Magistrate under Sub-section (7) of Section 145, Cr. P.C. also felt aggrieved by the order of the Sub Divisional Magistrate because the Sub Divisional Magistrate did not pass the order that they should also be put in joint possession of the land in dispute. Hence the legal representatives also filed an application in revision against the order of the learned Sub Divisional Magistrate. Jhunjhunu before the Sessions Judge for modification of the order for restoration of possession in their favour The learned Sessions Judge heard the revision petition and held that the order of the learned Sub Divisional Magistrate should be interpreted in such a manner as to mean that the legal representatives of Nathudas deceased were also ordered to get joint possession of the land with Kamli and Hajarilal along with the benefits accuring therefrom during the period of attachment. Against this judgment of the learned Sessions Judge both the legal representatives of Nathudas deceased and Kamali and Hajarilal have come up in revision to this Court as stated above.

5. I have gone through the record and heard the arguments. It has been contended on behalf of Kamali and Hajarilal that the order of the learned Sessions Judge is erroneous and contrary to law because if he considered that the Sub Divisional Magistrate had passed a wrong order he ought to have made a reference to the High Court with recommendation that the order of the Sub Divisional Magistrate should be modifi?d or set aside so far as it adversely affects the legal representatives of Nathudas deceased The above contention is not devoid of substance. A revision petition was filed before the learned Sessions Judge under Section 435, Cr. P.C. by the legal representatives of Nathudas deceased against the order of the Sub Divisional Magistrate If the learned

Sessions Judge was of opinion that the order of the Sub Divisional Magistrate was incorrect, improper or unreasonable he ought to have referred the matter to the High Court with a recommendation that the impugned order be set aside or modified as the case may be. He was not empowered under Section 435, Cr P.C. to set aside, cancel or after the order under revision But as the matter has come up in revision before this Court the illegality committed by the Sessions judge may be ignored.

6. The second contention put forward by the learned Counsel appearing on behalf of Kamali and Hajarilal is that Banareidevi and Parmeshwar were impleaded parties to these proceedings as legal representatives of Nathudas deceased although they were not it possession of the land in dispute at 'he date of the preliminary order. They were not entitled to get joint possession of the land in dispute from the Receiver merely on the ground that they have been made parties to these proceedings after the death of Nathudas. It was further submitted that Banarsidevi and Parmeshwar were residing separately from Nathudas in his life-time and that they have already got their shares by filing a suit for partition which was decided in 1963 ft was also contended that Banarsidevi and Parmeshwar were hostile to Nathudas deceased and that Banarsidevi sided party No. 1 in these proceedings by putting in her affidavit that she was not in possession of the disputed land and that party No. 1 has been in possession thereof The learned Counsel further urged that neither the learned Sub Divisional Magistrate, not the Sessions Judge was empowered under the proceedings under Section 145, Cr. P.C. to decide questions of rights and titles of party No. 2 inter se and that if the legal representatives of Nathudas deceased had any claim to this Land they should have been directed to get it decided by a Civil court of competent jurisdiction.

7. The learned Counsel appearing for Banarsidevi and Parmeshwar on the other hand contended that under Sub-section (7) of Section 145, Cr. P.C. the learned Sub Divisional Magistrate was empowered to bring the legal representatives of Nathudas deceased on record and that after they have been impleaded as parties to the proceedings they were entitled to get joint possession of the land along with Kamali and Hajarilal in whose favour the learned Sub Divisional Magistrate had

passed the final order.

8. According to his submission the learned Sub Divisional Magistrate ought to have directed the Receiver to hand over the possession of the disputed land to party No. 2 which consisted of Kamali, Hajarilal, Banarsidevi and Parmeshwar after the death of Nathudas.

9. I have given my anxious consideration to the above contentions. It is not disputed before me that Banarsidevi is the widow of Laxmandas son of Nathudas deceased and Parmeahwar is the son of Laxmandas. After the death of Nathudas they were brought on record as legal representatives of the deceased by the Sub Divisional Magistrate, Jhunjhunu. After a legal representative is impleaded under the provisions of Sub-section (7) of Section 145, Cr. P.C. he or she becomes a party to the case and will be treated as such like other parties on the record. There was no such provision in the earlier Code of Criminal Procedure for substitution of legal representatives of the deceased party. This provision has been introduced by the Amendment of 1923 and it now provides for bringing the legal representatives of the deceased party on the record. Now the court has no power to drop the proceedings on account of the death of any of the parties The introduction of Sub-section (7) of Section 145, Cr. P.C. clearly indicates that the legal representatives of deceased party are brought on record to safeguard the interest of the deceased and to continue the proceedings inspite of the death of any of the parties To my mind, after a legal representative is brought on record under Sub-section (7) of Section 145, Cr P C. he steps in the shoes of the deceased and if eventually an order is passed in the proceedings under Section 145, Cr.P.C. declaring the possession of the deceased at the date of the preliminary order or within two months immediately preceding it, the legal representatives of the deceased are entitled to reap the benefits of such an order because they have been substituted for the deceased and because they are as such a party to the case as the others. In this view of the matter the order passed by the Sub Divisional Magistrate in favour of party No. 2 must be construed to mean that party No. 2 includes Banarsidevi and Parmeshwar who have stepped into the shoes of Nathudas deceased after his death and who have been substituted as legal representatives for him.

10. The revision petition filed by Banarsidevi and Parmeshwar is, therefore, accepted and the order of the learned Sub Divisional Magistrate is modified to the extant that party No. 2 includes Banarsidevi and Parmeshwar petitioners also. The revision petition filed by Kamali and Hajarilal has no force and is hereby dismissed.

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