

Chandmal and ors. Vs. State and ors.

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Court : Rajasthan

Decided On : Feb-26-1974

Reported in : 1974WLN(UC)277

Judge : Shinghal, J.

Appeal No. : S.B. Cr. Rev. 779 of 1971

Appellant : Chandmal and ors.

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

Shinghal, J.

1. Heard learned counsel.

2. As this case must succeed on the short ground that site-plan Ex. 1 was taken in evidence by the learned Sub-divisional Magistrate, Malpura, at the back of the present petitioners and without hearing them in regard to it, it is not necessary to state all the facts. It will be sufficient to say that procee-dings were taken in regard to the dispute relating to certain fields, Under Section 145 Cr.P.C. and the learned Sub Divisional Magistrate made an order on October 15, 1971 declaring the possession of the parties It appears from the record that the evidence of the

parties was concluded, and their arguments were heard, on September, 16, 1971. The case was reserved for orders on 24-9-1971. The order was however not ready on 24-9-1971, & 7-10-1971 was fixed as the next date for making it. On that date also, the order was not ready & the case was adjourned to 14-10-1971. The order was not ready on that date, and the cue was adjourned to October 15, 1971. On October 15, 1971, the learned Sub-Divisional Magistrate asked a Patwari to produce a site plan which he admitted in evidence and marked Ex. 1. The learned Magistrate has stated in paragraph 7 of the impugned order that he asked the Patwari of the 'harka' to submit the 'site-trace' with an 'indication' regarding the possession of the parties. There is nothing on the record to show that the parties or their counsel were present in the court of the Magistrate on October 15, 1971. It has been argued by the learned Counsel for the petitioners that the aforesaid site-plan Ex. 1 was taken in evidence without proof, and without giving any hearing to the petitioners in regard to its admissibility & evidentiary value. This fact has not been controverted by the learned Counsel for the non-petitioners and has, in fact, been admitted by Mr. B.R. Arora. There is therefore no controversy about the basic fact that the aforesaid site plan Ex. 1 was taken in evidence in a manner not warranted by law, without giving any hearing to the present petitioners in regard to its admissibility and evidentiary value and without giving a chance of rebuttal. It also appears from a reading of paragraph 7 of the impugned order that the site-plan was, all the same, read in evidence by the learned Magistrate, and there is justification for the argument that it formed the basis of the impugned order. The petitioners were therefore prejudiced in the matter of the presentation of their case before the learned Magistrate. Even the risk of such a prejudice is sufficient to vitiate the impugned order, as has been held in *B. Surinder Singh Kanda v. Government of the Federation of Malaya* 1962 (2) WLR 1153.

3. The revision petition is therefore allowed, the impugned order of the learned Sub-divisional Magistrate, Malpura, dated October 15, 1971 is set aside, and the learned Magistrate is directed to make a fresh order according to the law after hearing the parties. The parties are directed to appear in the court of the learned Sub-Divisional Magistrate on March 19, 1974.

