

**Hanuman Prasad Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-13-1997

**Reported in :** 1998CriLJ2421

**Judge :** P.C. Jain, J.

**Acts :** Evidence Act - Sections 43; Indian Penal Code (IPC) - Sections 379 and 447; Code of Criminal Procedure (CrPC) , 1974 - Sections 145, 145(4), 397 and 401

**Appeal No. :** Criminal Revision No. 154 of 1986

**Appellant :** Hanuman Prasad

**Respondent :** The State of Rajasthan

**Advocate for Def. :** S.K. Goel, Adv. for No. 2 and; R.S. Rathore, Public Prosecutor

**Advocate for Pet/Ap. :** S.K. Mathur, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**P.C. Jain, J.**

1. This petition under Section 397 read with Section 401, Cr.P.C. is directed against the order dated 26-6-1986 passed by the learned Sub-Divisional Magistrate, Churu in Criminal Case No. 29 of 1980 arising out of the proceedings initiated under Section 145, Cr.P.C.

2. The brief facts leading to this revision petition are that late Magniram, the ancestor of the petitioner obtained two pattas from the former State of Bikaner in respect of the land measuring 28800 square meter. He also constructed a well known as 'Magnisagar'. A house was also constructed on this land together with a garden. It is alleged that the petitioner obtained permission for construction of a boundary wall around this entire land on 1-6-1979 vide Ex. 4 and accordingly he erected 'Patties' on all the three sides of the wall in question. On the fourth side, there is his own building and well. This erection was completed in the afternoon of 22-5-1980.

3. Thereafter, the petitioner received a notice Ex. 13 on 22-5-1980 after the completion of the aforesaid erection work from the Administrator, Municipal Board, Churu whereby the petitioner was directed not to raise the construction. The petitioner by his letter Ox. 23 dated 23-5-1980 informed the petitioner that he had already completed the erection of Patties around the land in question.

4. The dispute relates to the land measuring 3000 square meter yards situated towards southwest of the above land. It is also relevant to mention here that the Municipal Board, Churu had acquired this land from the petitioner for construction of road including the part of the land in question vide order Ex. P. 6 dated 24-11-1979. The petitioner has alleged that non-petitioner No. 2, assisted by non-petitioner No. 3 and one Sadule Khan forcibly occupied the land in question on the intervening night of 14th and 15th June, 1980 and also erected some temporary structures consisting of 'Jhopadi' and 'Chhapara' and when Shri Suganaram the agent of the petitioner asked them not to do so he was threatened with dire consequences and four patties erected by the petitioner were removed.

5. On receipt of the above information from his agent, the petitioner immediately lodged an FIR on 15-6-1980 at Police Station, Churu whereupon a case under Sections 447 and 379, IPC was registered vide FIR No. 90 (Ex. 11). The police

started investigation and also inspected the site and prepared the site plan and site inspection memos, which fully confirm the contention of the petitioner that the structure raised by the respondents was recent one and they have removed the four patties erected by the petitioner. It is alleged that on the application of the petitioner, the learned Sub-Divisional Magistrate, Churu vide his order dated 5-8-1980 issued notices to the opposite party. Manzoor Ali submitted his reply on 28-8-1980 and claimed that the property in question did not belong to the petitioner and he was in possession of the same. He also took a false plea that he had paid a sum of Rs. 10,000/- to the petitioner for purchasing the impugned land. However, Manzoor Ali could not manage to produce any documentary evidence in proof of the above assertions. He denied the allegation of the petitioner relating to the incident dated 3-8-1980. Shri Manzoor Ali submitted an ambiguous reply to the specific allegations made by the petitioner regarding erection of patties around the land in question.

6. However, the learned Sub-Divisional Magistrate attached the property in question on 22-12-1980. Thereafter, he proceeded to make an enquiry regarding possession. The petitioner examined himself and also produced two witnesses in support of his case and also submitted 17 documents. Manzoor Ali also examined himself and produced some witnesses and documents in support of his case. After completion of the enquiry, the learned Sub-Divisional Magistrate vide his Judgment dated 26-6-1986 dropped the proceedings and directed the receiver [S.H.O., Churu] to hand over the possession of the said property to Manzoor Ali. Dissatisfied with the Impugned order dated 26-6-1986 passed by the learned Sub-Divisional Magistrate, Churu the petitioner has preferred this revision.

7. The learned Sub-Divisional Magistrate came to the conclusion that from the evidence adduced by the petitioner, his possession has not been proved over the disputed land within two months of the passing of the preliminary order. The learned Sub-Divisional Magistrate placed heavy reliance on the appellate judgment delivered by the learned Sessions Judge, Churu dated 27-2-1983 whereby the learned Sessions Judge, Churu acquitted the non-petitioners. On the basis of the above judgment, the learned Sub-Divisional Magistrate held that no incident occurred during the night intervening 14th and 15th June 1980. The

possession of Manzoor Ali on the land in question was accepted by the learned Sessions Judge before 14-6-1980. On that basis it was concluded that Manzoor Ali was not in possession of the above land before 14-6-1980. The learned Magistrate also referred that both the parties failed to prove their respective possession over the disputed land, although Manzoor Ali was in possession of the above land on the date the alleged incident occurred. He also observed that after the filing of the complaint under Section 145, Cr.P.C. and till the date the impugned order was passed, no incident occurred. He, therefore, concluded that it was not at all necessary to continue the attachment. He, therefore, ordered for the withdrawal of the attachment order and it was directed that the possession be delivered to Manzoor Ali.

8. I have heard the learned counsel appearing for the parties and have very carefully gone through the record of the case.

9. The learned counsel appearing for the petitioner has vehemently assailed the rationality of the conclusions drawn by the learned Sub-Division 1 Magistrate. According to him, there was a tot misconception about the relevancy of the judgment delivered by the learned Sessions Judge. The judgment on a criminal complaint can only prove what were the charges and what decision was rendered by the criminal Court. On the basis of that judgment, the learned Magistrate is not absolved of his duties to determine the possession on the basis of the evidence adduced by the parties. It will be totally erroneous on the part of the executing Court to substitute the finding of possession given in a criminal complaint case as its own opinion and to decide the matter accordingly. In the instant case, virtually the learned Magistrate passed his order on the basis of the above judgment of the learned Sessions Judge.

10. The learned counsel referred to the evidence of the petitioner produced before the executing Court and submitted that by overwhelming evidence, the petitioner has proved that he was in possession of the above land and that Manzoor Ali by taking the law in his own hand took the forcible possession of a part of the land on the date of the occurrence and this was exposed when the Investigating Officer went to the site and made an inspection of the site and prepared the relevant

memos. The Investigating Officer categorically stated that Almirah and Jhopada were recently constructed. He also found the evidence of recent removal of the stone slabs erected by the petitioner. The learned Executing Magistrate conveniently ignored the fact that the non-petitioner himself has admitted that stone slabs were erected by the petitioner but qualified his statement by saying further that it was done with his consent. The non-petitioner even went to the extent of alleging that he paid a sum of Rs. 10,000/- to the petitioner for executing the sale deed of the above disputed land but the petitioner did not do so and also failed to return the above amount. It was very easy to have levelled such a sserious allegation against th petitioner. The non-petitioner, however, did not produce any receipt or evidence to prove the above payment qua the above land which is known as Magani Sagar, which is based on the ancestral's name of the petitioner. It is also pertinent to note here that even before erecting the stone slabs, the petitioner had applied to the Municipal Board for according permission and the Municipal Board accorded him permission in writing. While applying for permission, the petitioner had also annexed the Blue print showing the land in dispute. It was only after obtaining the above permission that the petitioner erected the stone slabs. In order to establish his possession, the non-petitioner removed three stone slabs and also erected a temporary structure. In proof of these facts, the petitioner has also produced two witnesses. However, in rebuttal the non-petitioner has failed to produce any evidence but he only relied on the judgment of the criminal Court. He himself admitted that he occupied the land in dispute in the year 1970 when it was lying vacant. He did not seek any permission from anybody. For such a long possession, the non-petitioner ought to have produced some tangible evidence but no evidence at all has been produced on his behalf.

11. The learned counsel appearing for the non-pettioner on the other hand justified the impugned order. He has submitted that the learned Magistrate has correctly come to the conclusion that at the time of attachment, the non-petitioner Manzoor Ali had erected the structures which were even found by the Investigating Officer when the site was inspected. It was erroneous on the part of the Investigating Officer to have opined that the structures were newly constructed. It is not possible to render such an opinion unless one is biased. There has been litigation over this land and the matter has even reached this Court. Except the permission sought by

the petitioner from the Municipal Board, no other evidence has been produced which can prove the possession of the petitioner. Thus, the learned Magistrate was right in ordering delivery of possession to the non-petitioner, consequent upon withdrawal of attachment.

12. I have considered the rival submissions made at the bar. From the above, it is clear that the learned Magistrate has recorded a finding in terms of Section 145(4), Cr.P.C. Before I deal with the evidence adduced by the parties, I would like to comment upon the relevancy of the judgment of a criminal Court on the proceedings under Section 145, Cr.P.C.

13. In *Anil Behari v. Latika Bala Dass* AIR 1955 SC 566, while dealing with the provisions of Section 43 of the Evidence Act, the Hon'ble Supreme Court held that the judgment of the criminal Court is relevant only to show that there was such a trial resulting in the conviction and sentence of the accused. It is not evidence of the fact that the accused was the murderer of the testator. That question has to be decided on evidence.

14. This Court in *Onkarmal v. Banwarilal* AIR 1962 Raj 127, has also held that a judgment of acquittal in a criminal Court is irrelevant in a civil suit based on the same cause of action. Just as a judgment of conviction cannot, in a subsequent civil suit, be treated as evidence of facts on which the conviction is based. The civil Court must independently of the decision of the criminal Court investigate facts and come to its own findings.

15. From the above, it is clear that the judgment given by the learned Sessions Judge was only relevant for showing the nature of the case as also the result of the trial as to whether the accused was convicted or acquitted. The above judgment was not relevant for deciding the question of possession between the parties on the relevant date or time. It appears that the learned Magistrate heavily relied on the observations made in the judgment of the criminal Court as also by its nature. Of course the question of possession was only for determining the nature of the offence but in civil cases or in a case under Section 145, Cr.P.C, the parties are required to prove possession independently. Such a question cannot be proved by the judgment of a criminal Court. Thus, the approach of the learned

Magistrate was erroneous in relying on that judgment for deciding the question of possession under Section 145(4), Cr.P.C. The learned Magistrate was also not correct in holding that the petitioner failed to produce any reliable evidence regarding his possession over the disputed land on the relevant date as referred to Section 145(4), Cr.P.C. vide Ex. P. 4, the Municipal Board, Churu accorded permission to the petitioner for erecting stone slabs over the plot. Even reference to the annexed Map [Blue print] has been made in Ex. P. 4. From the perusal of the letter Ex. P. 6, it is further proved that the same land was acquired by the Municipal Board and compensation thereof was also paid to the petitioner. Even when a criminal case was registered, the S.H.O. investigated the matter and also inspected the site and in site inspection memo, the Investigating Officer clearly stated that the structure claimed by non-petitioner Manzoor Ali was constructed recently. The name of the land is also on the name of the ancestors of the petitioner. When we examine the statement of Manzoor Ali, it would be clear that he is just flirting with the truth. The non-petitioner Manzoor Ali has claimed that he paid a sum of Rs. 10,000/- to the petitioner for purchasing the above land but neither the land was sold nor amount was returned back to him. When details were asked about this transaction, the non-petitioner has stated that the petitioner promised to execute the sale deed within a period of 6 months. However, on his non-compliance, the non-petitioner did not make any complaint. He has not taken any steps to recover the amount of Rs. 10,000/- paid by him to the petitioner. The most important part of the statement of Manzoor Ali non-petitioner is when he claims that the petitioner erected the stone slabs with his permission. Indirectly, the non-petitioner has admitted that the stone slabs were erected by the petitioner. He only qualified the statement by alleging that the petitioner did so with his consent. This is not the case pleaded by the non-petitioner in his pleadings. It appears that in view of the formidable evidence produced by the petitioner, the non-petitioner wanted to dilute the same by making a false assertion that the erection work was done with his consent. The plaintiff has proved all the relevant documents of the Municipal Board showing his possession.

16. I, therefore, hold that the learned Magistrate was not correct in recording the finding of possession under Section 145(4), Cr.P.C. In my opinion, the petitioner was in possession at the relevant time over the land in dispute.

17. For the above reasons, I accept this revision petition and set aside the impugned order dated 26-6-1986 passed by the learned Sub-Divisional Magistrate, Churu. In the facts and circumstances of the case, I order that the possession of the disputed land shall be delivered to the petitioner by the learned Sub-Divisional Magistrate forthwith.

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