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Court : Rajasthan

Decided On : Aug-07-1974

Reported in : 1974WLN499

Judge : B.P. Beri, C.J.

Appeal No. : S.B. Criminal Revision No. 664 of 1971

Appellant : Mohan Singh and anr.

Respondent : Malia

Disposition : Application dismissed

Judgement :

B.P. Beri, C.J.

1. This is a criminal revision directed against the order of the learned Additional Sessions judge, Sikar, dated September 2, 1971 passed in i, proceeding under Section 145 of the Code of Criminal Procedure.

2. I might briefly recall the circumstances leading to this dispute. There is a parcel of agriculture land measuring 7 Bighas and 8 Biswas situate in village Khatiawas bearing Khasra No. 92. On October 7, 1909 Malia, patty No. 1, made an application under Section 145 of the Code of Criminal Procedure before the Sub-Divisional Magistrate, Sikar, saying that he was in possession of the land in

dispute and he apprehended a danger of a breach of the peace. The learned Magistrate passed a preliminary order on the same day and appointed the Tehsildar as the Receiver of the property in dispute. The party No 2 in these proceedings were Mangal Singh and his two sons Mohansingh and Swaisingh. In the course of proceedings, it appears, Mangal Singh died and his two sons continued to contest party No. 1's claim. Party No. 1 filed affidavits besides certain documents, which might conveniently be called 'revenue records'. Party No. 2 filed eight affidavits and certain revenue records. The learned Sub-Divisional Magistrate in his order dated September 26, 1970, examined the affidavits of both the parties and appraised the documentary evidence submitted by them and came to the conclusion that Malia, party No. 1, was in possession of Khasra No. 91 and the attachment was removed and the Tehsildar, Danta Ramgarh was informed. Dissatisfied the party No. 2 preferred a revision before the learned Additional Sessions Judge, Sikar, who by his order dated 2.9.1971 affirmed the conclusions reached by the learned Sub-Divisional Magistrate, Sikar on the ground that the affidavits filed by parties No. 1 and 2 were 'somewhat balanced' but on the examination of the Jamabandi he found that Mangal Chand (should be Mangal Singh) was entered as the Khatedar cultivator and Malia was shown as the actual cultivator of Khasra No. 92, therefore Malia's possession stood proved. Mohan Singh and Swai Singh having failed before the learned Additional Sessions Judge, Sikar, are before me seeking the revision of that order.

3. Mr S.C. Bhandari, learned Counsel for the applicants, submitted that the preliminary order in this case was passed on 7-10-1969 and what was material for the courts below was to see the documentary evidence in the light of this crucial date. Party No 1 has merely filed Khasra Girdawaris of St. Years 2009 to 2019 and Jamabandis from 2017 to 2020, whereas party No. 2 had filed Khasra Girdawaris of St. Years 2021 to 2024. His documentary evidence was more proximate to the St. Year 2026, which is equal to the year 1969 and should have weighed with the courts below. He placed reliance on *Randheo Singh and Ors. v. Govind Lal* AIR 1954 Patna 310.

4. Learned Counsel for the party No. 1 submitted that in point of fact a suit had been instituted on 23rd June, 1969 before the Revenue Court seeking declaration

as well as an injunction against the party No. 2 That suit ran almost parallel to the proceedings under Section 145 Cr. P.C. and now it has been decided, wherein the Revenue Court has found the possession of party No. 1 and, therefore, this revision does not survive on that account. His, other submission was that what this Court is being asked in its revisional jurisdiction is to re-appreciate evidence.

5. Mr. Bhandari rejoined that the Revenue Court, which passed the judgment on 29-9-1973 was point of fact influenced by the judgment in the criminal proceedings under Section 145 Cr. P.C. which is prima facie illegal.

6. The proceedings under Section 145 Cr. P.C., 1908 are in the nature of preventive proceedings, the foundation for which is the existence of a dispute likely to cause a breach of the peace concerning any land, water, etc. The intention of the Legislature evidently was that such dispute should not disturb the public tranquility and such proceedings 'as far as may be practicable decided within a period of two months from the date of the appearance of the parties before him'. Experience, however, tells us that these proceedings are notoriously long and all kinds of disputes are raised within their periphery. The Supreme Court in *Bhinka and Ors. v. Charan Singh* : 1959 CriLJ1223 has characterised an order under Section 145 Cr. P.C. to be in the nature of a police order and no finality is, however, attached to such an order because the parties' rights are still open to challenge and adjudication.

7. The learned Counsels grievance is that so far as the learned Additional Sessions Judge is concerned, he found that the affidavits were equally balanced and he was persuaded to favour the case of party No. 1 by relying on those revenue records which were earlier in point of time than those submitted by him and thus the order was perverse because it is based on no evidence.

8. It will be profitable at this stage to remember the latest pronouncement of the Supreme Court in regard to the revisional jurisdiction of this Court in *Amar Chand Agarwala v. Shanti Bose and Anr.* AIR 1973 SC 789. The brief note satisfactorily summarises the position. It reads:

The jurisdiction under Section 439, is normally to be exercised only in exceptional cases, when there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice.

Could I in these circumstances hold on the basis of the arguments advanced before me whether there is glaring mis-carriage of justice? My answer is firmly in the negative. The process of appraising the evidence led by two parties can be equated almost to the process of holding a balance-the time-honoured symbol of justice. Sometimes when the two pans of the balance are seemingly equal even a slight evidence--circumstantial or otherwise-tilts the balance on one side and thereby probablises the case of one party as against the other. In this process of holding the balance what pieces of evidence--of course excluding inadmissible evidence--would lean the balance in favour of one party is dependent on the evidence available in a given case. But asking the revisional court to say that this piece of evidence should have weighed more than the other is nothing more than seeking a reassessment of evidence in a criminal revision in regard to a 'police order'. The Supreme Court has clearly ruled that it is not the scope of revision. The defect in the procedure which has led to mis-carriage of justice must be 'glaring' and the resultant miscarriage of justice must be 'flagrant'. There is nothing of the kind in this case. The appreciation of evidence is a mental process involving selection, assessment and conclusion. What documents ought to weigh, and how much cannot be rigidly laid down in a manner which the learned Counsel suggests. The two courts below have consistently held that the case of party No. 1 appears to be more probable and, therefore, proved and at the material point of time what was to be proved was the question of possession, which is basically and essentially a question of fact. I decline to reappraise evidence.

9. I do not wish to make any comment on the judgment of the Revenue Court for it might prejudice the parties. So far as the present revision-application is concerned, it has no force and it is dismissed.