

Geparam Vs. Ghewar and ors.

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Court : Rajasthan

Decided On : Jul-24-1987

Reported in : 1988(1)WLN130

Judge : M.C. Jain, J.

Appeal No. : S.B. Cr. Misc. Petition No. 262 of 1982

Appellant : Geparam

Respondent : Ghewar and ors.

Disposition : Application allowed

Judgement :

M.C. Jain, J.

1. This application under Section 482 Cr.PC is directed against the order of the learned Sessions Judge, Pali dated 21st August, 1982 upholding the order of the Sub-Divisional Magistrate. Sojat dated 14-6-1979 whereby, the learned Sub-Divisional Magistrate in proceedings under Section 145 Cr.PC attached the land in question and appointed a receiver and it was not possible for him to decide as to which party was in possession, he directed the parties to approach the competent court and get their rights adjudicated.

2. The facts of the case may briefly be stated: The respondent Labhu submitted an application under Section 145 Cr.PC before the Sub-Divisional Magistrate Sojat on 28-6-1977, on which a preliminary order was drawn on 4-7-1977. Along with the application, certain affidavits were filed by the applicant Labhu, Against the preliminary order dated 4-7-1977 Gopa Ram preferred revision petition before the Sessions Judge, Pali and the learned Sessions Judge by his order dated 31st January, 1979 set aside the preliminary order dated 4-7-1977 and directed the applicant Labhu to submit duly sworn affidavits and the Sub-Divisional Magistrate was directed to proceed in the matter in accordance with law. Thereafter, the learned Sub-Divisional Magistrate took on record the affidavits filed by the applicant Labhu. Learned Counsel for the applicants submits that the applicants have also submitted their affidavits Be that as it may, the learned Sub-Divisional Magistrate proceeded to dispose of the matter under Section 145 Cr.PC by observing that it is not possible to decide the question of possession and directed the parties to approach the competent court, and till the matter is decided, he ordered appointment of receiver and Tehsildar, Sojat was appointed as receiver.

3. I have heard the learned Counsel for the parties. The main contention of the learned Counsel for the applicants is that the learned Sub-Divisional Magistrate ought to have complied with the provision contained in Sub-section (4) of Section 145 Cr.PC. He should not have decided the matter simply on the basis of affidavits. Section 145(4) Cr.PC clearly lays down that after drawing up of the preliminary order and after notice to the non-petitioners and service of the order as mentioned in Sub-section (4) of Section 145 Cr.PC, the Magistrate shall pursue the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties at the date of the order made by him under Sub-section (1), is in possession of the subject of dispute. Learned Counsel for the applicants submitted that no separate preliminary order was passed under Section 145 Cr.PC. This objection of non-compliance of Sub-section (4) of Section 145 Cr.PC was raised by the applicant before the learned Sessions Judge and the learned Sessions Judge did not examine the question and he stated that the matter could be disposal of on the basis of the affidavits, as the affidavits constitute evidence in the case.

4. It may be stated that while accepting the revision by the Sessions Judge against the first preliminary order, the preliminary was set aside and in connection with the passing of the preliminary order, the learned Sessions Judge directed the petitioner to submit duly sworn affidavits. This direction was given in connection with the passing of the preliminary order. The matter was not directed to be disposed of on the basis of the affidavits. The learned Sub-Divisional Magistrate ought to have passed a separate preliminary order and then called upon to submit the written statements and to produce the evidence. No such procedure, has been adopted by the learned Sub-Divisional Magistrate Under Sub-section (3) of Section 145 Cr. P C the preliminary order is required to be served on the persons, as the Magistrate may direct and it is further provided that atleast one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute. Admittedly, this procedure has not been followed. Before proceeding further, Under Section (4) of Section 145, Cr. PC the learned Magistrate is under an obligation to follow the procedure laid down in Sub-section (3). It is only after compliance of Sub-section (3), the parties are required to produce evidence. The procedure of disposing the proceedings Under Section 145 Cr. PC on the basis of affidavits, stands amended under the New Code of Criminal Procedure. Under Sub-section (4), the Magistrate has to afford an opportunity to produce the evidence and he himself, if he so likes take such further evidence as may be thought necessary by him and thereafter he is required to decide the matter. Admittedly, the evidence has not been received by the learned Magistrate. In these circumstances, it would be proper to set aside the order of the learned Sessions Judge as well as the order of the learned Sub-Divisional Magistrate and that he may proceed afresh on the petition submitted by Labhu.

5. Accordingly, this application is allowed. Both the impugned orders are quashed and the matter is sent back to the Sub Divisional Magistrate to proceed afresh on the application submitted Under Section 145, Cr.PC, if the circumstances of the case warrant.