

Gokul Ram Vs. Ram Gopal and ors.

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Court : Rajasthan

Decided On : May-25-1988

Reported in : 1988WLN(UC)349

Judge : J.R. Chopra, J.

Appeal No. : S.B. Cr. Revision Petition No. 191 of 1986

Appellant : Gokul Ram

Respondent : Ram Gopal and ors.

Disposition : Petition Dismissed

Judgement :

J.R. Chopra, J.

1. This revision petition has been filed to quash the order of the learned Sub-Divisional Magistrate, Jodhpur dated 16-12-1985 whereby the learned lower court has maintained the order of attachment and the appointment of the Receiver regarding the disputed land bearing Khasras Nos. 177, 188, 190, 368, 369, 370, 373, 596 and 597 and has ordered that the Receiver shall remain in possession of the disputed land till the parties got their rights decided by a competent civil court.

2. The facts necessary to be noticed for the disposal of this revision petition briefly stated are: that non petitioner No. 1 Ramgopal, who is now dead and is

represented by his legal heirs, initiated proceedings against non-petitioners Nos. 2 to 8 in this petition on 3-10-1973 in the Court of learned Sub-Divisional Magistrate, Jodhpur. The learned Magistrate after drawing a preliminary order under Section 145(1) Cr PC ordered for the attachment of the land in dispute situate in village Buchakala as he apprehended immediate breach of peace as regards the possession of the land in dispute and appointed a receiver to look-after the land in dispute and the crops which were standing and which may be raised in this land. The non-petitioners Nos. 2 to 8 filed reply and alleged that non-petitioner No. 1 Ramgopal is not in possession of this land. The case was then listed for the evidence of non-petitioner No. 1 but inspite of taking number of adjournments for number of years, he did not produce his evidence and on 16-12-1985 neither the non-petitioner No. 1 was present nor he produced any evidence. His counsel was of course present. From the side of non-petitioners Nos. 2 to 8, none was present. As the case became very old and nobody was producing any evidence, the learned Magistrate thought it fit to terminate the proceedings keeping alive the order of attachment issued under Section 146 Cr.PC. It is against this order that this revision petition has been filed. None except non-petitioner No. 6 Bhoora Ram has appeared inspite of service. Non-petitioner No. 6 Bhoora Ram is represented by Shri M.S. Narain Bhatt, Advocate.

3. I have heard Mr. B.L. Kachhawaha, the learned Counsel appearing for the petitioner and Mr. M.S. Narain Bhatt; the learned Counsel for non-petitioner No. 6 Bhoora Ram and have carefully gone through the record of the case.

4. Mr. B.L. Kachhawaha, the learned Counsel appearing for the petitioner has submitted that before this order dated 16-12-1985 was passed by the learned Magistrate, non-petitioner No. 1 Ramgopal and his mother Mst. Gehra filed a regular revenue suit in respect of this land in dispute against Ganeshram and Ors. . That suit was dismissed by the learned Sub Divisional Magistrate, Jodhpur vide his order dated 8-4-1975. It is alleged that later on, Rampal and his father Ganeshram got mutation of this land done in their favour and from them the petitioner Gokulram has purchased the land bearing Khasras Nos. 368, 369, 370 and 373. Khasra No. 177 has been purchased by non-petitioner No. 10 and Khasras No. 188 and 190 have been purchased by Sohanpuri and Aughandpuri

respectively and, therefore, the petitioner Gokulram has brought this revision petition for quashing the order of the learned Sub-Divisional Magistrate, Jodhpur.

5. The main contention of Mr. Kachhawaha is that when the rights of the parties have been decided in a revenue suit, no proceedings under Section 145 Cr.PC could be initiated and even if they were initiated, they should have been terminated. In this respect, he has placed reliance on a decision of their Lordships of the Supreme Court in *Ram Sumer Puri Mahant v. State of UP and Ors.* : AIR 1985 SC472 . This ruling cannot have any application to the proceedings in hand because neither Gokulram was a party to that civil suit nor the result of that suit was brought to the notice of the learned Magistrate, who has decided this application under Section 145 Cr.PC. It has been frankly conceded by Mr Kachhawaha, the learned Counsel for the petitioner that copies of the judgment and the decree that have been passed by the learned revenue court were never brought to the notice of the learned Sub-Divisional Magistrate. When that has not been done and nobody appeared neither on behalf of the petitioner to give evidence nor any body appeared on behalf of the non-petitioners, the learned lower court had no option but to pass an order under Section 146 Cr PC. Once an order under Section 145(1) Cr.PC is passed then that order can be vacated- or cancelled by the Court only when any party interested in the dispute or who is required to attend the proceedings or any other person interested can show to the Court that no such dispute concerning the breach of peace existed in relation to the land in dispute and it is only on the basis of that contention that the Court can either stay the proceedings or cancel the proceedings and if that is not done, the order of the learned Magistrate under Section 145(1) Cr PC becomes final. In this case, no such evidence has been led and, therefore, the preliminary, order under Section 145(1) Cr.PC and the attachment order passed under Section 146(1) Cr.PC became final. It is nobody's contention that those orders were passed on insufficient grounds. What is now sought to be challenged is that this particular order which has been passed on 1612-1985 should not have been passed by the learned Magistrate on account of the decision of the revenue court, which was never brought to its notice. Once an order Section 145(1) Cr.PC is passed and it is not rescinded or cancelled under Section 145(5) Cr.PC and nobody comes forward to lead evidence in such circumstances, the Court is unable to satisfy itself

as to which of the party was then in possession of the subject matter of dispute, the safest and reasonable course available to the Court is to maintain the order of attachment and direct the parties to get their rights decided by a competent civil or revenue court. In this respect, I place reliance on a decision of the Assam High Court in *Karamat Ali v. Abdul Matlib Ali* AIR 1956 Assam 119. This was also a case in which after the preliminary order under Section 145(1) Cr.PC was passed, both the parties defaulted in coming to the Court and there was no evidence before the Magistrate on the basis of which he could determine whether any of the parties was in possession of the property or not and, therefore, when he was unable to satisfy himself about the respective possession of the parties, it was held that an order under Section 146 Cr.PC could be passed by the Magistrate.

6. My attention was also drawn to a decision of the Mysore High Court in *Venkategowda v. Appajigowda* AIR 1952 Mysore 4, where in it was observed that if the parties do not appear or if they appear and do not file written statements within the time fixed or within such time as the Court in its discretion extends, nothing comes in the way of a court passing an order straightway under Section 146 Cr.PC as in such a case he is unable to satisfy himself as to which of the parties was in possession of the subject matter of the dispute. He cannot, however, pass any order under Section 145 Cr.PC unless he has material to come to the conclusion that one of the parties is in possession either on the evidence taken by him or if such a course is found possible and feasible, though the parties have failed to file any statements and to adduce evidence. It was further observed as under:

If parties or any one of them do not appear before the Court and adduce evidence even after having one or two chances, the Magistrate is at liberty to consider the evidence available and to pass an order under Section 145 Cr.PC. However, if no evidence is forth-coming even after one or two chances are given, nothing comes in his way of passing an order under Section 146 Cr.PC, since he is in such cases unable to satisfy himself as to which of the parties was in possession of the property.

In *S. Pitchamma v. L. Nabasamma* : AIR 1959 AP425 , a learned Single Judge of the Andhra Pradesh High Court observed as follows:

The Criminal Procedure Code provides for the dropping of proceedings by the Court only when it could, on the appraisal of the situation, whether by itself or brought to its notice by parties or persons interested, reach the conclusion that the dispute likely to cause a breach of peace no longer exists. The Court cannot, therefore, dismiss these proceedings for the default of the appearance of parties. When parties do not turn up at the time of hearing, though a court placed in such a situation cannot imagine evidence in the absence of it, still it can be definite about its inability to come to a conclusion as to possession. It has then to proceed to state a case to the civil court as required under Sub-section (1) of Section 146.

A Division Bench of the Calcutta High Court in *Sheobalak Rai v. Bhagwat Pandey* VLR (1913) XL Calcutta Series-105 has held that it is only when the Magistrate decides that none of the parties was in possession or is unable to satisfy himself as to which of them is in possession that he can attach property under Section 146 Cr.PC.

7. All these authorities categorically support the order which has been passed by the learned Magistrate in this case. In this case too, none of the parties came forward to lead evidence and, therefore, the Court had no option but to pass this order that the land shall remain under attachment and it will be looked after by the receiver till the parties get their rights decided by a competent civil court because proceedings under Section 145 Cr.PC could not have been dropped after the preliminary order under Section 145(1) Cr.PC was passed. The requirements of Section 145(5) Cr.PC has not been complied with hence that order has become final. Under these circumstances the impugned order dated 16-12-1985 was the only the appropriate order which has been passed in the facts and circumstances of this case.

8. The result is that I find no force in this petition and it is hereby dismissed.