

Hakim DIn Vs. Chatroo and ors.

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Court : Jammu and Kashmir

Decided On : Dec-02-1994

Reported in : 1995CriLJ3080

Judge : A.M. Mir, J.

Acts : Agrarian Reforms Act, 1977; ;Agrarian Reforms Rules - Rule 58; ;Jammu and Kashmir Code of Criminal Procedure (CrPC) , 1989 Smvt. - Sections 145, 145(1), 145(4), 145(5) and 435(4A); ;Hindu Law

Appeal No. : Cr. Revision No. 61/91

Appellant : Hakim Din

Respondent : Chatroo and ors.

Advocate for Def. : R.S. Thakur and; Hafiz-ur-Rehman, Adv.

Advocate for Pet/Ap. : S.A. Salaria, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

A.M. Mir, J.

1. This petition calls in question two orders passed by Sub divisional Magistrate, Reasi. One passed on 24-5-1991 and the other on 23-9-1991.
2. An application in terms of Section 145 of Code of Criminal Procedure before the trial Magistrate was moved by one Chatroo S/o Chardtoo. On this application having been put up before the Magistrate, he passes an order on 24-5-91 on finding that a dispute in respect of property situate within the local limits of his jurisdiction existed, the trial Magistrate, records his satisfaction with respect to exigencies of a likelihood of breach of peace on such dispute. He by virtue of this order directs the other side (petitioner herein) to attend his Court 29-5-1991 and to put up his written statements of his respective claims. After almost four months having passed this order, a fresh application was moved by the respondent Chatroo standing that the dispute had assumed large dimension and would cause dangerto the peace and tranquillity on spot. On being satisfied that the matter was one of emergency, the subordinate Magistrate exercised his powers in terms of proviso to Sub-section 4 Section 145 and attached the land. The petitioner aggrieved of both these orders has come to this Court for setting aside of these orders on the following grounds:-
 - 1) That there existed no dispute which could have fallen within the purview of Section 145 as it is no where indicated that the dispute related to the possession.
 - 2) That the orders do not conform to the procedure contemplated in section 145.
 - 3) That the proceedings in terms of Section 145 have been taken just to frustrate civil liability which has arisen out of a transaction between the parties.
3. Learned counsel for the respondent Chatroo has prefaced his arguments with a preliminary objection that it is only in respect of order D/- 24-5-1991 that the revision can lie. As far order dated 23-9-91 is concerned, no revision against the same can lie, because, of an express bar created by Section 435-(4A). He has in this behalf referred to an authority reported in 1979 K.LJ. 377: AIR 1980 NOC 55. He has refuted the grounds raised by the petitioner by contending that the grounds are not tenable as the preliminary order conforms to the requirements of Section 145. He has tried to draw a distinction between the facts of the cases referred to

by Mr. Salaria and those of the case in hand in respect of non-maintainability of the proceedings. The matter here was concluded by the Civil Court while as in the case referred the matter was Subjudice before Civil Court and the pendency of proceedings under Section 145 Cr. P.C. was dis-approved, because this would open a parallel bout of litigation; beside this the main argument advanced by Mr. Thakur is that the Civil lis has been decided by the Civil Court wherein the petitioner was not a party, therefore, a finding in such civil proceedings or in other proceedings in terms of Agrarian Reforms Act would not debar the respondents herein, to invoke the jurisdiction of the subordinate Magistrate in terms of Section 145 of Cr. P.C.

4. I have heard learned counsel for the parties at length, considered the matter and noticed the law they have referred to. Admittedly the order passed on 24-5-1991 is the one passed by the trial Magistrate in terms of Sub-section 1 of Section 145. This order was assailed by Mr. Salaria on the ground that it did not satisfy the requirements which were laid by this court in Krishen Singh v. Romesh Kumar and Ors reported in 1991 KLJ 425. In my opinion this order does not fall short of any requirement on the touchstone of this ruling or 1971 JKLR 411. (sic) The order recorded the satisfaction of the Magistrate. It starts to proceed with the grounds on which the Magistrate assumes satisfaction. It requires the other side to attend the Court on a date and also asks them to file their written statements etc. The grounds of challenge with respect to existence of dispute are illusory.

5. I do not find any infirmity in this order. As per the order passed on 23-9-1991 is concerned, this has been passed at much a belated stage. Proviso to Sub-section (4) of Section 145 empowers the Magistrate to pass orders of attachment in respect of subject of the dispute if he finds the matter to be of emergent nature. He has exercised the same power. The contention of the learned counsel with regard to non-maintainability of the revision petition against this order pales into inconsequence, because, the preliminary order has also been assailed.

6. Does the earlier adjudication of the matter by a Civil Court debar initiating of proceedings before the trial Magistrate To answer this question the first and foremost consideration before me is that the respondent Chatroo has not been a

party in the proceedings before the Civil Court nor is he a party in the proceedings which are pending adjudication in terms of Rule 58 of Agrarian Reforms Act, 1977. All the documents produced by the petitioner as Annexures, even if at their face value taken to be correct point out that the same came into existence through the father of respondent Chatroo. Admittedly the respondent is a Hindu by religion. He is governed by Hindu Law.

7. Under Hindu law, then a son has an independent right in the property. In case a matter has been decided by Civil Court between his father and the respondent, son is not debarred from invoking the power of a Magistrate in terms of Section 145 of Code of Criminal Procedure. The adjudication of the matter by a Civil Court between the father and the respondent will not bar proceedings under Section 145. This is so because the object of Section 145 Supra is prevention of breach of peace and in order to accomplish this purpose the Magistrate hands over possession to a person who was found to be in possession on the date when the preliminary order is passed or within two months of such order. Section 145 Supra does not determine rights of the parties. A finding arrived at by the Civil Court while adjudicating a cause between the father and the respondent may have a persuasive value for a magistrate to determine the factum of position, but such finding cannot preclude the son from seeking help from Section 145.

8. I have gone through the judgment of the Hon'ble Supreme Court reported in : AIR 1985 SC472 . It does not give out any facts of the case. The ratio laid in this judgment is that alternate proceedings in a criminal court should not be allowed when the lis is pending in a Civil Court as the aggrieved parties can safely go to a civil remedy in the nature of an interim injunction from the Civil Court. That rule will not apply in this case. Simply, because, that no lis is pending is and the one which has been concluded by the Civil Court would not find the respondent to be a party.

9. I, therefore, find no occasion to interfere in the orders passed by the trial Magistrate and, therefore, dismiss the revision. However, even after dismissal, I find that, in a case like this unnecessary delay cannot be brooked. Section 145 is a provision of law which is protective in nature. It should work as a shield for those

who are dispossessed or sought to be disposed. It should not, however, work as sword to cut those who were in possession, because if that is allowed, it may result in abuse of power. In my opinion the legislature has been very alive to such an exigency. Sub-section (5) of Section 145 makes room for such a situation and provides as under:

'Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order and all further proceedings thereon shall be stayed, but subject to such cancellation the order of the Magistrate under Sub-section (1) shall be final.'

If the petitioner feels that no real dispute exists, he can approach the Magistrate in terms of Sub-section 5 and if that is done the latter will pass appropriate orders, but the same will be done only after hearing the other side and the matter will be adjudicated on the strength of the material of the documentary evidence produced before him. The observation made herein are meant only for purpose of disposal of this revision petition and should not be taken as a reflection on the rights of the parties or those of the petitioner and his father inter se. These observations shall also not stand in the way of the trial Magistrate in arriving at a conclusion of his own.