Nerbadaprasad Vs. Beniprasad and the State

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Court : Mumbai

Decided On : Jul-12-1950

Reported in : 1951CriLJ807

Judge : Hembon Ag, C.J.

Appellant : Nerbadaprasad

Respondent : Beniprasad and the State

Judgement :

ORDER

Hembon Ag, C.J.

1. The Sub-Inspector, Sihora, reported that there was an apprehension of a breach of the peace between Nerbadaprasad (party l) & Beniprasad (party 2) with regard to 7 fields in Marha, Sihora tahsil, Jabalpur district: & the Sub-Divisional Mag. Sihora, passed a preliminary order Under Section 145, Cr. P.C. on 3-5-1947.

2. Party 1's case was that ho had bought the fields on 13 4-1946 by a regd. sale-deed for Rs. 1300 from Lakhan Singh & had been in absolute possession of them from that date. Beniprasad (party 2), who had an 0-8-0 share of the village, had, according to party 1, manoeuvred to buy the fields for a nominal consideration but without success. He had also sought to induce party 1 to transfer them, but here also his tactics were infructuous.

3. Party 2 based his claim on the fact that his uncle Chowdhury Nerbadaprasad had taken possession of the fields in 1898 & bad remained in possession of them until 1920 when he died. Party a then inherited them as his sole heir, sold fields khasra Nos. 52-54 to Fakira in 1927 & fields khasra Nos. 56 & 343 in 1913 to Dadoo Ram & Mihilalrespectively. With regard to the remaining fields, viz. khasra Nos. 316 & 317, this party declared that they had sown them in September & October 1946 & that party 1 had never been in possession of them.

4. Seven witnesses including Nerbadaprasad were examined for party 1, & nine witnesses including Beniprasad for party 2. The Sub-Divisional Mag. Sihora, eventually held that the dispute was confined to fields khasra Nos. 316 & 817 &, after a turgid survey of the evidence, decided that party 3 was in possession of them on the relevant date. Party 1 then sought revn. of that order, but his appln. was dismissed by the 2nd Addl. Ses.J. Jabalpur, & he has now come up in revn. to this Ct.

5. Interference in revn. with orders passed Under Section 145, Cr. P. C is rare. In

Fakir Chand v. Madar Mandal : AIR1931Cal619 . of which Rankin C.J. was a member held that in the case of such orders, which are mere police orders to be made by Mags, to quiet disputes, even if it should appear from the order of the Mag. that there is an error of law, references should not be made unless it appears that the error of law is of such a character as to call for interference by a higher authority. This view demonstrates the sanctity, if I may use the term, which should be attached to a magisterial order Under Section 145, Cr. P.C. The reasons for this are that the object of the section is to inhibit blemishes of the peace & that the order itself is in no way final.

6. Interference in revn. with such orders is necessarily rare, & this applies a fortiori to a case such as that before me in which the order was maintained by the revisional Ct. Nevertheless, there must be interference here, for the simple & cogent reason that neither of the lower Cts. appeared to be fully aware of the significance of the provisions of Sub-section (4) of Section 145, Cr. P.C. although Judges of this Ct. & of the Judicial Comr's Ct. have explained them in numerous cases. Once the Mag. is satisfied that a dispute likely to cause a breach of the peace exists, he is required to pass a preliminary order under Sub-section (1) of the section. A copy of the order is then duly served as required by Sub-section (3); & under sub-section 4) the Mag. is required, without reference to the merits of the claims of any of the parties to a right to possess the subject of dispute, to peruse the written statements of the parties, bear the parties, receive evidence, if any, adduced by them & take such further evidence (if any) as he thinks necessary.

7. After this, he is required, if possible, to decide whether any & which of the parties was at the date of the preliminary order in actual possession of the subject of dispute. If it appears to him that any party had within two months next before the date of the preliminary order been forcibly & wrongly dispossessed, it is open to him under the first proviso to Sub-section (4) to treat the party so dispossessed as if he had been in possession on the date of the preliminary order.

8. The salient importance of the position of the parties on the date of that order is, therefore, abundantly clear, so clear in fact that it is astonishing to find that many Mags. when dealing with proceedings under the section, seem to think that they are obliged to examine in detail the rights of the parties to possession, although the question of possession at the material time can be effectively decided without such examination. This does not mean that questions relating to title should never be consd. in proceedings Under Section 145, Cr. P.C. It merely connotes that questions of that kind should only be consd. where consideration is. necessary for the purpose of determining who is in possession.

9. To quote Sultan Ahmad J. in Bam Saroop v. ML Darsano Koer, I. P. L. T. 387 at p. 388 : A.I.R 1920 Pat. 499 : 21 Cri. L. J 748.

A Mag. in proceedings Under Section 145 is entitled to look into the question of title only to arrive at a satisfactory conclusion on the question of possession. He has got no-power to decide the question of title or look into it apart from the question of possession. If he wanted to go into the question of title in order to effectively decide the question of possession, he would be perfectly justified in doingbe. On the other hand, if the question of possession could be effectively decided without a decision on the question of title, he would not be entitled to go into the title of the parties.

These observations were quoted with approval by a D. B. in Ranchi Zamindari Co. Ltd. v. Pratab Udainath : AIR1939Pat209 Bose J. as he then was, also pointed out in. Pusaram v. Deorao that Section 143 was not concerned with the niceties of title but with the. persons in actual possession who are likely to create a breach of the peace.

10. The order in the present case is marred by periphrastic reference to nutters which ware-largely irrelevant to the task of deciding the question of possession on the relevant date, which was 3-5-1947. On 27-2-1947, Hariharsingh (P. W. 2), head constable, had visited the village in question & found that members of the two rival parties had gone to the fields in order to reap the crop therein. He accordingly attached the standing crop & gave it to Jiwanlal on a supratnama. Evidence concerning the question of possession after that date was jejune or non-existent; & I am clear that the Sub. Divisional Mag. had not sufficient material before him to justify the finding that party 2 was in possession of the fields in question on the relevant date. This was an aspect of the case which escaped the attention of the learned 2nd Addl. Ses, J. Jabalpur; & he appeared to have founded his order on the fact that as party 1 had stated in his report of 21-2-1947 that party 2 had obstructed him from taking possession, party 1 was, therefore, unable to secure possession of the fields & must have been out of possession on the data of the preliminary order. This, however, did not necessarily follow & the simple question for determination related to the identity of the party in actual possession of the fields on the relevant data.

11. The best course in the circumstances would be to set aside the order of the Sub -Divisional Mag. & to return the case to him for decision in the light of my remarks. It will be open to both parties to adduce further evidence & to have the witnesses already examined by them further examined, if they so elect. Thereafter the Sub -Divisional Mag. shall pass an order according