Deoki Nandan Vs. Baij Nath

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Court : Rajasthan

Decided On : Feb-02-1973

Reported in : 1973CriLJ1636; 1973()WLN150

Judge : S. Mehta, J.

Appellant : Deoki Nandan

Respondent : Baij Nath

Judgement :

ORDER

S. Mehta, J.

1. There was a dispute in regard to a 'Nohra in the town, of Sultana, District Jhunjhunu. Party No. 1 Bilas Rai moved an application on April 5, 1972, in the Court of the District Magistrate, Jhunjhunu, alleging therein that the 'Nohra' had been in his possession and that there was every possibility of breach of the peace at the instance of Deoki Nandan, Party No. 2. Bilas Rai, therefore, prayed that proceedings under Section 145, Criminal Procedure Code, be initiated. The above application was transferred by the District Magistrate to the First Class Magistrate, Jhunjhunu. On April 5, 1972, the First Class Magistrate first passed an order that he would like to inspect the spot. Thereafter he went to the spot the same day and from spot inquiry he came to know that party No. 2 Deoki Nandan had been in possession of the 'Nohra' for the last 2 or 3 years. He also learnt that the 'Nohra had been cultivated by Deoki Nandan in the month of July last. Learned Magistrate further discovered that Deoki Nandan had collected stones on the land in dispute for constructing a house in the 'Nohra'. However, the Magistrate expressed the opinion that there was likelihood of breach of the peace between the two rival factions in respect of the 'Nohra'. With a view to ward off such a breach he issued a preliminary order under Sub-section (1) of Section 145, Criminal Procedure Code and thereafter he also issued an attachment order under proviso (3) of Sub-section (4) of Section 145, Criminal Procedure Code, appointing the Tehsildar, Chirawa, as the receiver of the property. Against that order, dated April 5, 1972, party No. 2 Deoki Nandan went up in revision to the court of the Sessions Judge, Jhunjhunu. Learned Sessions Judge observed in his order that when the Magistrate had reached the conclusion on the basis of the spot inquiry that party No. 2 had been in possession of the property for the last 2 to 3 years and that that party had also cultivated the land in dispute in the month of July last, besides his having collected stones on the land, there was no justification for him to initiate proceedings under Section 145, Criminal Procedure Code. According to learned Sessions Judge there was no material whatever on the basis of which the First Class Magistrate could have drawn up the preliminary order or could have put the property

under attachment. He has, therefore, submitted this reference to this Court, recommending that the impugned order of the First Class Magistrate, Jhunjhunu, dated April 5, 1972, be quashed.

2. I have heard learned Counsel foi Deoki Nandan. Nobody has put in appearance on behalf of Bilas Rai. Under Sub-section (1) of Section 145, Criminal Procedure Code, whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute and further requiring them to put in such documents or to adduce evidence, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims. Sub-section (4) of Section 145, Criminal Procedure Code, lays down that after the parties have submitted their replies and evidence the Magistrate shall, without reference to the merits of the claim of any of the parties to the right of possession of the subject of dispute, decide the question whether any and which of the parties was at the date of the passing of the preliminary order in possession of the subject of dispute. Proviso (2) to Sub-section (4) reads that if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date. The second proviso to Sub-section (4) of Section 145, Criminal Procedure Code, is clear and unambiguous. When the language of the statute is clear, unambiguous and is in the express terms, then all that is required is to expound it in its natural and ordinary sense, unless in doing so some absurdity or repugnancy or inconsistency to the rest of the provisions of the statute would result, in which case it will be permissible to modify the construction for avoiding that absurdity or ambiguity.

3. The provisions of law referred to above are manifest on the point that under Sub-section (4) of Section 145, Criminal Procedure Code, what the court has got to determine is as to which party was in possession of the property on the relevant date. The Legislature has further enacted proviso (2) to Sub-section (4) and under that proviso if a party was found to be in possession of the property within two months next before the passing of the preliminary order and has been forcibly and wrongfully dispossessed, then he may treat the party so dispossessed, as if he had been in possession of the property at such date. In passing an order under Section 145, Criminal Procedure Code, the Magistrate does not purport to decide a party's right or title to possession of the property. That question is reserved to be decided in due course of law. The foundation of the jurisdiction of the Magistrate under Section 145, Criminal Procedure Code, is an apprehension of the breach of the peace, and with that object, he makes a temporary order in respect of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. In other words, the orders under Section 145, Criminal Procedure Code, are merely police orders and they do not decide the question of title. The life of such order is conterminous with the passing of a decree by a Civil Court. The Privy Council in Dinomoni Chowdhrani v. Brojo Mohini Chowdhrani, (1901) 28 Ind App 24 (PC) tersely states the effect of orders under Section 145, Criminal Procedure Code, thus:

These orders are merely police orders made to prevent breaches of the peace. They

decide no question of title.

The inquiry under Section 145, Criminal Procedure Code, thus is limited to the question as to who was in actual possession of the property in dispute on the date of the passing of the preliminary order, irrespective of the rights of the parties. If the party in de facto possession is found to have obtained possession by forcibly and wrongfully dispossessing the other party within two months next preceding the date of the preliminary order, the Magistrate can treat the dispossessed party as if he was in possession on such date, restore possession to him and prohibit the dispossessor from interfering with that possession until eviction of that person in due course of law. The proviso is founded on the principle that forcible and wrongful possession should be discouraged. Even where a person has a right to possession but taking the law into his own hands makes a forcible entry otherwise than in due course of law, it would be the case of both forcible and wrongful dispossession: vide Edwick v. Howkes, (1880-81) 18 Ch D 199 and Bai Jiba v. Chandulal AIR 1926 Bom 91 : (27 Cri LJ 661). Similarly in Amritlal N. Shah v. Nageswara Rao AIR 1947 Mad 133 : (48 Cri LJ 435), it was held that merely because there has been no further Violence it cannot be said that there cannot be a breach of the peace and the proceedings should be dropped. At the same time the opposite party has got a right to prove that dispossession had taken place more than two months next preceding the date of the order and in that case the Magistrate will have to cancel his preliminary order: see R. H. Bhutani v. Mani J. Desai : 1969CriLJ13 .

4. In the instant case the Magistrate felt convinced, after the spot inquiry, that party No. 2 Deoki Nandan had been under the possession of the property for the last 2 to 3 years and that in the month of July last the land had been cultivated by him and that he had also collected stones on that land. In these circumstances, the Magistrate could not have initiated proceedings under Section 145, Criminal Procedure Code, much less to have passed an order of attachment under proviso (3) to Sub-section (4) of Section 145, Criminal Procedure Code. If the Magistrate held the opinion that there was apprehension of breach of the peace, he could have pressed into service the provisions of Section 107/117 of the Code of Criminal Procedure.

5. In the light of the above discussion, the reference submitted by learned Sessions Judge, Jhunjhunu, merits consideration. It is accordingly accepted and the order of the First Class Magistrate, Jhunjhunu, dated April 5, 1972, is set aside.