State Through Karan Singh And Ors. vs Mukanda Singh on 31 January, 1951

Equivalent citations: AIR1951ALL621

ORDER

Desai, J.

1. This is a reference by the Ses. J. of Muzaffarnagar recommending that an order passed by a Mag. in proceedings under Section 145, Cr. P. C. be quashed & that the appcts. be held to have been in possession of the land in dispute on the date on which the preliminary order under Section 145(1) was passed. A complaint was made before the S. D. M. Jansath by the appct. alleging that there was an apprehension of a dispute relating to some land & that it was likely to cause a breach of the peace This complaint was made on 19-7-1949. The Sub-divisional Mag. passed the following order on it :

> "S.O. to report if there is an apprehension of breach of peace by 9-8-1949 & attach the land if he finds apprehension of breach of peace."

The Station Officer reported that there was an apprehension of breach of peace & attached the land. On receipt of the report the learned Sub-divisional Mag on 9-8-1949, passed the preliminary order recording his satisfaction about the apprehension of a breach of the peace & calling upon the parties to the dispute to file written statements regarding their claims to possession. The inquiry about possession was held by another Mag. who found that the appcts. were in possession up to 27-7-1949 on which date the land had been attached by the Station Officer & that on 9-8-1949, the date on which the preliminary order was passed neither party was in possession. Accordingly the learned Mag. passed an order under Section 146 continuing attachment of the land so long as the question of the rights was not determined by a competent Ct. The learned Ses. J. is of the view that the appcts. must be treated to have been in possession right up to 9-8-1949.

2. The reference must be accepted. In Sub-Section (4) of Section 145, it is laid down that the aim of a Mag. proceeding under Section 145 is to decide which of the parties, if any, was on the date of the preliminary order in possession of the property. Therefore the learned Mag. had to find which of the parties was in possession on 9-8-1949. The trouble is caused because on that date the property was admittedly under attachment & it could be said as indeed it was said by the learned Mag. himself that neither party was in possession. The Legislature never intended such a contingency to happen & never contemplated that there would be any attachment on the date on which the preliminary order is passed. The procedure adopted by the S. D. M. was illegal. He could inquire of the station officer whether the dispute was likely to cause a breach of the peace or not, but he could not order him to attach the property on condition of his finding such a likelihood. A Magistrate derives jurisdiction to order attachment only under proviso (2) to Sub-section (4) & that is after the preliminary order has

been passed. A Mag. has no jurisdiction at all to start proceedings under Section 145 by passing the preliminary order unless he is first satisfied that a dispute concerning land & likely to cause breach of peace exists; unless he assumes jurisdiction, he cannot order any attachment. When the S. D. M. was only making an inquiry from the Station Officer whether the dispute was likely to cause a breach of the peace or not, it means that he had not been satisfied that a dispute likely to cause a breach of the peace existed had not assumed jurisdiction over the case & had no power to order attachment even conditionally. Further he had to decide himself whether the dispute was likely to cause a breach of the peace or not; he could not delegate the power to decide this to the station officer & leave it to his discretion to attach the property. Had the S. D. M. cared to read the provisions of Section 145 he should have learnt that he had to pass an absolute order of attachment & that the proper stage for passing it was after he had issued the preliminary order. Mags. are expected to follow the law as laid down in Cr. P. C. & not to pass an order simply because it is a practice to pass it. I have come across many instances in which Mags, have passed an order similar to that passed by the S. D. M.; such an order is clearly illegal & should never be passed. I hold that the attachment by the station officer on 27-7-1949 was illegal. Under proviso (1) to Sub-section (4) it was open to the learned Mag. to treat the appcts. who were forcibly & wrongly dispossessed by the station officer on 27-7-1949, as if they had continued in possession on 9-8-1949. As the attachment was illegal, the appcts. must be deemed to have been forcibly & wrongly dispossessed. It is true that the word used in the proviso is "may" & not "shall" but this was a case in which the learned Mag. ought to have exercised his discretion in favour of the appcts, because his predecessor was responsible for the forcible & wrongful dispossession of the appcts. It is also possible to take the view that inspite of the attachment the applts. continued in possession in other words that the possession of the Ct. was on behalf of the appcts

3. It is a finding of fact of the learned Mag. that the appcts. were in possession up to 27-7-1949 when they were dispossessed by the station officer. They will be deemed to have continued in possession up to 9-8-1949. I, therefore, accept this reference, set aside the order of the learned Mag. & order under Section 145(6) that the appcts. are entitled to possession until they are evicted from the land in dispute in due course of law & forbidding all disturbance of such possession until such eviction. I further direct that the appcts. be put in possession of the land in dispute at once.