Ayodhya Nath And Ors. vs Ganga Prasad And Ors. on 20 April, 1953

Equivalent citations: AIR1953ALL751, AIR 1953 ALLAHABAD 751

ORDER

Bej, J.

1. This criminal reference arises out of an application, under Section 145, Criminal P. C. given by two persons, namely, Ganga Prasad & Sham Behari who were the first parties in the case. The second parties in the case were Lala Ajodhia Nath, Tiloki Nath, Shambhu, Jogai, Dularey Kori, Nanha Kumar and Ashraf. The application related to a large area of land not less than 58 bighas and 13 biswas situate in village Barwalia in the district of Lucknow. The allegations of the applicants were that the land in question was a pasture land, a lease for which, had been taken by their ancestors for a nominal rent of Re. 1/- from the landlord.

2. The opposite parties Nos. 1 and 2 were the landlords. They alleged that they were the owners of the said land and had been in rightful possession of the same. They had given portions of it for cultivation to other parties. There were, however, certain proprietary groves of theirs on this land in which grass used to grow, and the applicants used to graze their cattle in the said groves.

3. After the parties were summoned in the case, written statements were filed by them, and a large amount of evidence was adduced on behalf of both of them. After the conclusion of the entire evidence, the learned Magistrate passed a short order on 16-5-1951, to the following effect :-

> "From the evidence on the record I am unable to satisfy myself as to which of the party was in possession of the subject of dispute when, order of attachment and notice under Section 145, Cr. P. C. was ordered. The subject of dispute shall, therefore remain attached until a competent Court has determined this question of possession between the two parties. The attached property shall remain in the custody of present supurdar till a receiver is appointed by the competent Court."

It may be mentioned that he had appointed the applicants as supurdars of the said property.

4. The second parties went up in revision against the said order, and the learned Sessions Judge of Lucknow has recommended that the order in question be set aside.

5. Having heard the learned Counsel appearing for the parties, I am of opinion that this reference must be accepted. A perusal of the record indicates that the parties had adduced voluminous evidence in the case. The parties had produced not only oral evidence but also documentary

evidence in support of their cases. The order of the Magistrate is too cryptic. It does not indicate that he had made any serious attempt to apply his mind to the facts of the case. In proceedings under Section 145, Criminal P. C., the Court should first make every attempt to come to a conclusion on the merits of the case with a view to ascertain which of the contesting parties is actually in possession. It is only when he finds the evidence equally balanced, and is unable to make up his mind, that he is absolved of the responsibility of coming to a definite conclusion in the matter. There is nothing in the order of the Magistrate to indicate that he found the evidence equally balanced. In fact, there is no reference to any evidence whatsoever in the order of the Magistrate. There should be some reasons in the order of the Magistrate to indicate the grounds as to why he found it impossible to come to any definite conclusion in the matter. Such grounds are clearly wanting in the impugned order. The order itself need not be long, but it should contain sufficient material to indicate to the revisional court that the Court of enquiry had applied its mind to the case, and had made a genuine attempt to give a decision in the matter, and, in spite of it, had found itself unable to come to any definite conclusion in favour of either party, and hence it was taking action under Section 146, Cr. P. C. 5a. The only case cited by the learned Counsel for the first parties which can have an application to the facts of the present case is that reported in -- 'Kanai Lal v. Hyder Ali Khan', A. I. R. 1923 Cal 483 (1) (A). In that case, their Lordships of the Calcutta High Court held that it was impossible to lay down a hard and fast rule when a High Court should interfere on the grounds of the brevity of an order passed in a proceeding under Section 146, Criminal P. C. I am in entire agreement with the proposition of law laid down therein. I am, however, of opinion that this was not a case in which a brief order of the type passed by the Magistrate would be a proper order. The case was a highly contested one, & a good deal of evidence both documentary and oral was adduced by the parties. In such a case the order should contain some reasons to indicate that the Magistrate had applied his mind to it, and had not shirked his responsibility in the matter.

6. I accordingly accept this reference and set aside the order passed by the learned Magistrate. The file of the case should be sent to the District Magistrate concerned to be forwarded to any Magistrate competent in law to dispose of the same.