

Khalawan vs Badri And Anr. on 3 October, 1955

Equivalent citations: AIR1956ALL320, 1956CRILJ571

ORDER

V.D. Bhargava, J.

1. This is a reference by the learned Sessions Judge of Bahraich in a case arising out of proceedings under Section 145, Cr. P. C.

2. Khelawan gave an application under Section 344, Cr. P. C. that there was a 'mahua' tree, about which there was a likelihood of breach of peace that he was in possession and that he was being dispossessed by Badri and Bal Kishen. Khelawan had claimed that this 'mahua' tree was on his plot No. 1730 and he had been in possession of it since long and that without any reason or rhyme the opposite parties, i.e., Badri and Bal Kishen wanted to dispossess him, and since there was a danger of breach of the peace he wanted an order from the Magistrate.

S. O. Kotwali Bahraich on 26-4-1954 also reported that there was a dispute about a 'mahua' tree between one Khelawan on the one hand and Badri and Bal Kishen on the other and that there was a danger of breach of the peace. Notices were issued to Badri and Balkishen who filed their written statements. Both sides produced evidence of possession.

The learned Magistrate came to the conclusion that he was not in a position to arrive at any definite finding as to who was in possession of the tree in dispute. Consequently he ordered that the tree may remain attached under Section 146, Cr. P. C. and the parties were directed to seek their remedy from a civil court.

3. Badri and Balkishen were satisfied with that order of the learned Magistrate but Khelawan filed an application in revision before the learned Sessions Judge. Khelawan relied on a decision of the Munsif in a suit filed by Madho Ram father of Balkishen against the predecessor of Khelawan. That suit related to a 'mahua' tree. Madho Ram said that it belonged to him.

That suit was dismissed on the ground that Madho Ram had failed to establish that the 'mahua' tree was in plot No. 1728. Khelawan urged that there had already been a decision of a civil court in his favour, and since the Magistrate was not in a position to come to a definite finding as to who was in possession, instead of the matter being again referred to civil court, the former decree of the civil court, already passed, should have been respected. This argument found favour with the learned Sessions Judge and he has referred the matter to this Court with the recommendation that as there

has already been a decision in favour of Khelawan the order of the learned Magistrate be quashed and the tree be released in favour of Khelawan.

4. Learned counsel for Badri and Balkishen has urged that this Mahua tree was not in dispute in the previous suit. The suit was filed in 1941. According to the evidence of Balkishen given in these proceedings the 'mahua' tree was purchased in 1937 when he purchased a garden in plot No. 1728 and that 'mahua' tree is mentioned in the receipt, Ex. A19, that is the tree in dispute and there is no other tree of 'mahua' there. With this admission of Balkishen it is very difficult to say that the suit did not relate to this tree.

Apparently, in any event, the learned Sessions Judge thought that the suit related to this tree because this was the tree about which the dispute was as to whether it lay in plot No. 1728 and he has correctly said that since a decision has already been obtained from a Civil Court in the case and the Magistrate was not in a position to find out as to who was in possession, the tree should have been released in his favour.

In case Badri and Balkishen think that either this tree was not in dispute in the previous suit or they had obtained possession of this tree through some other title subsequent to that suit it is open to them to bring a suit for a declaration or possession of this tree from the civil Court. A Magistrate holding proceedings under Section 145, Cr. P. C. cannot come to a finding on the question of title.

5. I accordingly, accept the reference, set aside the order of the learned Magistrate and direct that the tree be released in favour of Khelawan.