

Durvijay Singh And Ors. vs Munni Narain And Ors. on 28 September, 1955

Equivalent citations: AIR1956ALL119, AIR 1956 ALLAHABAD 119, 1956 ALL. L. J. 42

JUDGMENT

Upadhyaya, J.

1. This is a defendants' appeal arising out of a suit for damages. The plaintiffs alleged that they were the tenants and in cultivatory possession of certain agricultural plots and after they had collected the harvest of 1351F., on the threshing floor, the defendants took it away. In the next year i. e., 1352F., proceedings under Section 145, Criminal P. C., are said to have been started at the instance of the defendants.

The learned Magistrate passed an order attaching the plots in dispute, and the plots having remained under attachment for sometime, the plaintiffs could not cultivate them during 1352F., and thereby they suffered a loss which is claimed in this suit. The damage assessed by the plaintiffs amounted to Rs. 600/- each year, and a total claim of Rs. 1200/- for the two years mentioned above, was made by the plaintiffs. The trial court dismissed the suit.

On appeal by the plaintiffs the lower appellate court found that the claim put forward by the defendants to the plots in dispute had not been proved, and the learned Judge held that the plaintiffs were the tenants, that the plots had been cultivated by them in 1351F., and that the defendants had taken away the 'harvest after the plaintiffs had collected it on the threshing floor.

He also took the view that the loss relating to the year 1352P., was due to the action taken by the defendants, and he, therefore, held that the plaintiffs were entitled to the damages and assessed the damages to be Rs. 800/- for the two years. He accordingly decreed the suit for that amount.

2. Defendants have now come up to this Court. So far as the claim for damages relating to the year 1351F., is concerned, the finding of the court below that the plaintiffs were the tenants and in cultivatory possession of the plots in that year and that it was their harvest which they had collected on the threshing floor and that the defendants had taken away that harvest are findings of fact and they conclude the matter.

I find no ground to differ and I affirm the decision of the lower appellate court that the plaintiffs are entitled to damages in respect of the crop of 1351F.

3. The claim for the loss which the plaintiffs are alleged to have suffered in 1352F. stands on a different footing. It appears that the defendants had made a report that there was a danger of a breach of the peace, and on the report of the Station Officer of police, the learned Magistrate, who took cognizance of the case, issued an order under Section 145, Cr. P. C. attaching the plots in dispute. Ultimately the proceeding terminated in favour of the plaintiffs and possession was restored to them.

The plaintiffs' case is that they were unable to cultivate the plots in question because of the action taken by the defendants and the loss that they had suffered is attributed to that action. The lower appellate court has omitted to consider the important fact that after the defendants had moved in the matter, the order that was passed under Section 145, Cr. P. C., was an order of a judicial nature passed by the Magistrate. Section 145, Cr. P. C lays down "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 or.....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.....

(2)

(3)

(4)

Provided also, that, if the Magistrate considers the case one of emergency, he may at anytime attach the subject of dispute, pending his decision under this section".

4. The attachment, therefore, was made after the Magistrate was satisfied that a dispute likely to cause a breach of the peace existed, and that he considered it to be a case of emergency in which it was proper for him to attach the plots in dispute. After the defendants had lodged a report alleging that there was a danger of a breach of the peace, it was open to the Magistrate to be satisfied or not to be satisfied as provided in Section 145, Cr. P. C. He had the jurisdiction to decide as to whether he would take action under that provision of law. His decision, therefore, intervened or came in as it were between the report made by the defendants and the attachment which was subsequently made and due to which the plaintiffs were unable to cultivate the plots. A similar case came up before a Division Bench of the Calcutta High Court in -- 'Mina Kumari v. Surendra Na-

rain', 14 Cal WN 96 (A).

In that case also proceedings under Section 145, Cr. P. C. had commenced and as subsequently an order was passed under 146, Cr. P. C. and a dispute remained pending for sometime, the plaintiff remained but of possession of the agricultural land in dispute, and he could not cultivate it. In a suit for damages for loss sustained due to such ouster, the learned Judges, after considering as large number of English cases, observed:

"A court of justice is not the agent or servant of the litigant who sets it in motion, so as to make that litigant responsible for the errors of law or fact which the Courts commits. Every party is entitled to rely absolutely on the pre-

sumption that the Court will observe the limits of its own jurisdiction and decide correctly on the facts and law".

Proceeding further, the learned Judges held:

"The substance of the matter is that the opinion and judgment of a judicial officer interpose between the complaint and the prohibitory order".

The learned Judges, therefore, refused in that case to award damages. Another case which went up before a Bench of the Madras High Court is

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"Ammani Animal v. Sellayi Animal", 6 Mad 426 (B). In that case a dispute having arisen regarding the possession of certain land, an order was passed by a Magistrate, forbidding both the plaintiff and the defendant to interfere with the land until either established his title in a Civil Court.

In consequence the land remained uncultivated in the following year. The plaintiff sued for damages for the loss of profits resulting from non-cultivation of the land, and the learned Judges held that damages were not the result of the defendant's act being the consequence of the order of the Magistrate. With these observations I respectfully agree. The loss suffered by the plaintiffs in the year 1352P. may be attributed to the order passed by the Magistrate but it cannot be said to be the result of the report made by the defendants which was followed by the proceedings under Section 145, Cr. P. C. and the attachment.

5. In view of the above observations, I allow the appeal in part. The plaintiffs' suit shall stand decreed for Rs. 400/- only with proportionate costs in the trial court and the lower appellate court. In the circumstances of the case I direct that parties should bear their own costs of this appeal.

6. Leave to appeal is refused.