

B. Gajadhar Singh vs State Through Sadhe on 21 April, 1953

Equivalent citations: AIR1953ALL684, AIR 1953 ALLAHABAD 684

ORDER

Desai, J.

1. This is an application in revision against an order of the Sessions Judge of Banaras rejecting the applicant's application for being restored to possession of property attached in proceedings under Section 145, Cr. P. C.
2. The applicant started proceedings under 3. 145, Cr. P. C. against the opposite party some time in February, 1945, in respect of the property in dispute. That property was attached during the pendency of those proceedings.
3. The Magistrate holding the proceedings passed an order under Section 145(6), Cr. P. C. on 18-5-1945 holding that the applicant was in possession of the property on the date on which the preliminary order under Section 145(1) had been passed, (its date is not known) and declaring him to be entitled to remain in possession until evicted therefrom in due course of law. The exact order passed by the Magistrate is not before me, but it should have been in the form mentioned by me. The Magistrate also ordered that the property should be released from attachment in the applicant's favour.
4. It appears that immediately after the passing of this order, the opposite party filed a case under Section 447, I. P. C. against the applicant. He must have alleged in the case that he had been in possession of the property in dispute and had been dispossessed by the applicant on a certain date; that date is not known.
5. The Court trying the complaint convicted the applicant under Section 447, I. P. C. on 1-2-1946.
6. It appears that, while the case was pending, the release in favour of the applicant of the property attached in the proceedings under Section 145, Cr. P. C. had been stayed and the applicant had not been restored to possession. On conviction of the applicant, the opposite party obtained an order under Section 522, Cr. P. C. on 14-6-1946 from the Court convicting the applicant; under that order the opposite party was to be restored to possession over the property in dispute from which he had been proved to have been dispossessed by the applicant through the commission of the offence under Section 447, I. P. C. The applicant did not challenge that order passed under Section 522, Cr. P. C. He made an application before the Magistrate who had passed the order under Section 145(6) that he should be restored to possession over the property in pursuance of the order. The learned

Magistrate dismissed his application on the ground that the opposite party had acquired an order in his favour under Section 522, Cr. P. C. The applicant challenges that order in revision.

7. The order under Section 145(6) was, or should have been, that the applicant was entitled to possession of the property in dispute "until evicted therefrom in due course of law." After that order, an order under Section 522, Cr. P. C. was passed by a Court putting the opposite party into possession of the property. Both the orders cannot be executed, and one has to give way to the other. The question is which should give way. Obviously the earlier order passed under Section 145(6), Cr. P. C. should give way, because it expressly purports to be subject to an order of eviction in due course of law. Under that order the applicant was entitled to be in possession not permanently but until he was evicted in due course of law. There is no such condition in the order of possession passed under Section 522, Cr. P. C. It is an order putting the opposite party into possession absolutely and regardless of everything. There is no justification for saying that eviction of the applicant under that order is not eviction "in due course of law." The real question is whether eviction under Section 522, Cr. P. C. is eviction in due course of law within the meaning of Section 145(6), Cr. P. C. or not. Mr. Rajeshwari Prasad could not cite any authority laying down that it is not. He relied on -- 'Ambika Thakur v. Emperor', AIR 1939 Pat 611 (A); -- 'Elimuddin Sarkar v. Umed Ali Bepari', AIR 1936 Cal 859 (B); -- 'Debi Dayal v. Annu Singh', AIR 1943 Oudh 231 (C) and -- 'Kunj Behari Das v. Emperor', AIR 1936 All 322 (D) but none of them is of any assistance in the disposal of the dispute before me. In none of them did the words "evicted therefrom in due course of law" come up for interpretation. Not only did none of them decide that eviction in execution of an order under Section 522, Cr. P. C. is not eviction in due course of law but also none of them decided that eviction in pursuance of a decree passed by a civil Court is the only eviction in due course of law. None of them purported to decide how a person can be evicted in due course of law. Undoubtedly in some of them it was stated that the remedy of a party aggrieved by an order under Section 145(6), Cr. P. C. is to go to a civil Court, but that does not mean that that is the only remedy and that eviction in execution of a decree passed by a civil Court is the only eviction in due course of law.

Ordinarily, a person against whom an order is passed under Section 145(6) will go to a civil Court for getting the other party evicted; but if he can get him evicted by a Court of another jurisdiction, he can certainly do so. When the Court has ordered the opposite party to be put in possession of the property in dispute, it amounts to eviction of the applicant and as that order has been passed in due course of law, that amounts to the applicant's eviction in due course of law. Therefore, the applicant had a right to be entitled to remain in possession until the restoration of the opposite party to possession in execution of the order under Section 522, Cr. P. C. In --'Dinomeni v. Brajo Mohini'. 29 Cal 187 (E), their Lordships of the Judicial Committee observed at p. 199 that although an order under Section 145(6) confers no title, the fact of possession remains, and that the person in possession can only be evicted by a person who can prove a better right to the possession himself. A better right to the possession can be proved not only in a civil Court but also in a criminal Court in proper proceedings. Here the opposite party proved a better right to the possession in a criminal Court by proving that he had been in possession previously and had been wrongly and forcibly dispossessed by the applicant. Therefore, his right to the possession was better than that acquired by the applicant through the commission of the offence under Section 447, I. P. C. When the opposite party proved a better right to the possession, he could evict the applicant and he could do so under

Section 522, Cr. P. C.

8. The order passed by the Court below is correct and the application is dismissed.