Durga Din vs Smt. Rani Udai Kunwar on 8 January, 1954

Equivalent citations: 1954CRILJ1257

ORDER

Randhir Singh, J.

1. This is an application in revision against the order of the Additional Sessions judge of Sitapur dismissing an, application in revision against the order passed under Section 145, Criminal P. C., by the Sub-Divisional Magistrate, district Sitapur.

2. It appears that Smt. Rani Udai Kuar was in possession of certain plots in lieu of maintenance and in which she had "sir" rights. Durgk Din applicant was in possession of these plots. sometime before 1945, but he was ejected under a decree of the Court and possession was delivered to Rani Udai Kuar. In February, 1950, Rani Udai Kuar made an application to the Sub-Divisional Magistrate complaining that Durga Din was trying to cut away the crop from the plots which belonged to her and that there was a likelihood of a breach of the peace. The Sub-Divisional Magistrate then asked the Station Officer to make an inquiry and report. He also directed the Sub-Inspector to make an attachment of the crop and plots if he found that there was an apprehension of a breach of the peace.

The Sub-Inspector reported that there was a likelihood of a breach of the peace and he had, therefore, attached the crops and plots. On receipt of this report, notice was issued to both the parties and after they had turned up the learned Magistrate passed an order that as he was satisfied that there was an apprehension of a breach of the peace, the parties should file written statements. Thereafter both the parties filed written statements. The case of the applicant was that it was he who was in actual physical possession in spite of the ejectment and that Rani Udai Kuar was not in possession. Both parties then produced evidence, oral and documentary. After hearing the evidence the Sub-Divisional Magistrate came to the conclusion that Rani Udai Kuar was in possession of the plots and the crops and directed the applicant not to disturb her possession.

The applicant then went in revision to the learned Sessions Judge and it was argued that the order of the Magistrate directing the Station Officer to make the attachment if he found that there was an apprehension of a breach of the peace was illegal and as such the proceedings which- followed were also irregular and illegal and should be set aside. The learned Sessions Judge agreed with the contention that the learned Magistrate's order delegating his powers to the Sub-Inspector to decide whether attachment should or should not be made was illegal taut as an order under Section 145(1) had been passed by the Magistrate subsequently expressing : his satisfaction that there was a likelihood of a breach of the peace, and before the parties had been called upon to file written statements, the subsequent proceedings were neither illegal nor irregular.

3. The grounds, taken up before the learned Sessions Judge have been reiterated in this Court and the first point which has been raised : is that the proceedings which followed the attachment were irregular and invalid. In support of this contention, two rulings have been cited by the learned Counsel for the applicant, - 'Basdeo v. Badri Narain' AIR 1952 All 186 (A) and - 'State v. Mukanda Singh' AIR 1951 All 621 (B). In both these reported cases, it was held that it was not open to a Magistrate to direct the Sub-Inspector to make an attachment if he found that there was an apprehension of a breach of the peace and that it was the duty of the Magistrate to satisfy himself if there was a likelihood of a breach of the peace and then to pass an order of attachment.

There can be no doubt that a Magistrate acquires jurisdiction to take proceedings under Section 145, Criminal P. C., only after he expresses his satisfaction, either on a police report or otherwise, that there was a likelihood of a breach of the peace. The option of attachment given to the Sub-Inspector in the present case, and the subsequent attachment made by him, were therefore certainly illegal. It remains, however, to be seen if this illegal attachment affected the subsequent proceedings. On 20-5-1950, the Magistrate passed an order in which he mentioned that he was satisfied that there was an apprehension of a breach of the peace and directed the parties to file written statements. No order for filing written statements was made before this order was made, although the Magistrate had asked notice to issue to both parties and both parties had turned up.

It was not necessary for the Magistrate to have issued notice to both parties, but if he did so, the subsequent order will not become invalid on that score. If a Magistrate is very cautious and chooses to call the parties in order to be satisfied as to whether there was or was not an apprehension of a breach of the peace, and passes ,an order only after hearing them, or in their presence, the order cannot be said to be invalid. It was, therefore, on 20-5-1950, that the Magistrate validly assumed jurisdiction to proceed under Section 145. If the earlier attachment was invalid, it would mean that there was no attachment of the property.

4. It is not necessary for a Magistrate to pass an interim order of attachment in every case under Section 145, Criminal P. C. The attachment has to be made only if there is an emergency or if the Magistrate thinks it fit so to do. Even, therefore, if there had been no valid attachment in this case, and the Magistrate had assumed jurisdiction by making an order such as the one which was passed on 20-5-1950 he was perfectly competent to proceed with the inquiry, and if he came to the conclusion that the applicant was in possession of the property on the date when the application was made, he was empowered to pass an order directing the party found in possession on the date of the application to be put into possession and to restrain the other party from disturbing the possession of the applicant.

In the case mentioned above, 'State v. Mukanda Singh (B)', the final order passed by the Magistrate was that as he was not satisfied that any of the parties to the dispute was in actual possession, he directed the attachment to continue till the question was decided by a competent Court. It was held that there being no valid attachment the order was invalid. In the present case, however, the non-existence of a valid attachment did not affect the final order in the case which could have been passed even if there had been no attachment. I, therefore, agree with the view taken by the learned Sessions Judge that the illegality of the attachment did not affect the subsequent proceedings.

5. Another point which has been pressed to arguments is that the applicant was not found in actual physical possession of the plots and as such she should not have been given possession of the plots by the Magistrate. Both the Courts below have found it as a matter of fact that Smt. Rani Udai Kuar had been in possession on the date when the application under Section 145, Criminal P. C. was made. The Magistrate as also the learned Judge have discussed the evidence and have come to a conclusion on a finding of fact and it is not open to me to disturb that finding of fact in the absence of any compelling or sufficient reasons. The applicant had been ejected from the plots in due course and had no valid title to the plots in dispute nor did he claim any lawful right to possession. The High Court would be loath to interfere with a finding of fact in such a case.

There is nothing in the judgment of the Courts below to show that on the date when the application was made, Rani Udai Kuar had not been in actual physical possession of the plots but had been in possession through sub-tenants. There is no doubt some evidence to show that about a year before the application had been made some of her sub-tenants had been in possession of some plots for some time on 'batal'. This evidence was evidently led to prove that the applicant had been in possession all through but did not go to show that on the date when the application was made the plots were in the possession of sub-tenants. The question, therefore, whether the words "actual possession" mentioned in Section 145 would cover cases in which a person claims to be in possession through subtenants or tenants does not arise.

6. Lastly, it has been argued that the decree for possession had been obtained by the Court of Wards and there was nothing on the record to show as to how Rani Udai Kuar claimed to be in possession of the plots. It appears that the plots had been in the possession of Smt, Rani Udai Kuar in lieu of maintenance. This question was also not raised in any of the two Courts below and the contention has no force.

7. No other point has been pressed in arguments. The application for revision is, therefore, rejected.