

Shankhta Shukul vs Sm. Govindi Devi on 3 May, 1950

Equivalent citations: AIR1950ALL693, AIR 1950 ALLAHABAD 693

JUDGMENT

P.L. Bhargava, J.

1. The facts which have given rise to this appeal are set out in the order of remand, dated 27th October 1949, by which certain issues were remitted to the trial Court for findings. On the first five issues remitted, the trial Court has returned the following findings :

"All the plots in dispute except 691/1/146 karis were being cultivated by Mt. Govindi, the plaintiff, at the commencement of the Agra Tenancy Act (III [3] of 1926) within the meaning of Section 4, Clause (d) of the said Act. The dastbardari relates to the plots in dispute covering an area of 3652 Karis. It is the total area of 4749 Karis to which the suit relates. Deoki, Badri and Raghubar were not members of a joint Hindu family at the time of the death of Deoki. Badri and Raghubar were separate at the time of the dastbardari. The entire land in dispute was covered by the usufructuary mortgage executed by Badri and Raghubar in favour of Jamuna and Sheo Kunwar, on 18th February 1890 and the mortgagees did not get the actual cultivatory possession but they were paid rent in respect of the same by the ex-proprietors."

2. No objection has been raised by either party to these findings and they are accepted as correct. Learned counsel for the defendant-appellant has conceded that as the plots in dispute other than plot No. 691/1 were recorded in the agricultural year immediately preceding the agricultural year, in which Act III [3] of 1926 came into force as being cultivated by the plaintiff as her khudkasht they will be presumed to be a part of her sir land; but he has contended that the presumption is a rebuttable presumption and it has been rebutted by the evidence on the record. He has argued that Badri having executed a dastbardari in respect of 8 plots and the surrender being in favour of one of the co-sharers, it would enure for the benefit of the entire body of co-sharers, including the appellant. The dastbardari was, however, executed in the year 1910 while the finding is that in the year 1925 the plots other than plot No. 691/1 were being cultivated by the plaintiff-respondent and were recorded as her khudkasht. There was a long interval between 1910 and 1925, and during that interval anything might have happened.

3. Learned counsel for the appellant has further argued that it has been found by the trial Court that the mortgagees from Badri and Raghubar had obtained possession over the mortgaged property which included three of the plots in dispute and which the appellant had redeemed. The trial Court has, no doubt, found that the mortgagees did not obtain actual cultivatory possession, but it also found that they were realising rent from the ex-proprietary tenants. The redemption appears to have taken place a year or two before 1925; consequently, this fact also has no bearing on the question

under consideration.

4. It must, therefore, be held that the plaintiff-respondent is the sir-holder of the plots in suit except plot No. 691/1, measuring 146 karis.

5. Lastly, learned counsel for the appellant has argued that the plaintiff's suit for recovery of possession was barred under Article 47 of Schedule I, Limitation Act, as it was filed more than three years after the order made against her in proceedings under Section 145, Criminal P. C. It has been pointed out on behalf of the plaintiff, and the Courts below have also found, that she (plaintiff) was no party to the said proceedings, and, as such, she was not bound by the order made in those proceedings.

6. Article 47 contemplates a suit by any person bound by an order or by anyone claiming through such person; the order referred to in the article must be one respecting the possession of immovable property made under the Code of Criminal Procedure, 1898, or the Mamlatdars' Courts Act; and the suit to which the article can be made applicable must be one to recover the property comprised in the order. The present suit is to recover possession over the property comprised in the order made under Section 145 of the Code, under which the possession of the appellant over landed property was upheld. The only question for consideration is whether the plain tiff, respondent, who was admittedly not a party to the proceeding under Section 145, Criminal P. C., is or is not bound by the order.

7. As a rule, a person will not be bound by an order made in a proceeding to which he is not a party. Learned counsel for the appellant has argued that the proceedings under Section 145, Criminal P. C., were started by the plaintiff's husband in respect of property of which she was the owner; consequently, the proceedings were taken in her interest and on her behalf. Learned counsel has referred to the allegations in the plaint wherein it was alleged on behalf of the plaintiff that, in the year 1939, there was litigation between the parties, which ended finally with the order of the Commissioner made in her (plaintiff's) favour, on 6th April 1939; that during the pendency of the litigation the plaintiff's possession over the sir land was illegally interrupted, which led to proceedings under Section 145, Criminal P. C., that in the said proceedings an order was made against her (plaintiff); and that the defendant on the strength of the said order had dispossessed her from the land in dispute.

8. It is true that the application by which the proceedings under Section 145, Criminal P. C. were initiated was made by Chhedi Lal, the husband of the plaintiff, but as pointed out by the Courts below there is nothing on the record to show that Chhedi Lal had started the proceedings on behalf of the plaintiff. The application made by Chhedi Lal is not on the record, nor have we got on the record the order made by the Magistrate. There is on the record the judgment of the Sessions Judge in the revision filed by Chhedi Lal against the order of the Magistrate upholding the possession of the appellant. It appears from this judgment that Chhedi Lal's case was that the plots in dispute were "his khudkasht in the name of his wife Mt. Govindi Kunwar and that the opposite party interfered with his possession; therefore, there was a likelihood of the breach of the peace."

It would thus appear that Chhedi Lal had ignored the rights of the plaintiff and had set up his own rights in the land, consequently, it is not possible to say that Chhedi Lal had initiated the proceedings under Section 145, Criminal P. C. on behalf of the plaintiff.

9. The substance of the allegations made by the plaintiff in her plaint was that there were proceedings under Section 145, Criminal P. C. and that in those proceedings an order was made on the strength of which the defendant had dispossessed her from the land in dispute. This order was, in effect against her as she was dispossessed from the land; consequently, no undue importance can be attached to her statement that the order was against her.

10. Therefore, it is not possible to take out the case from the purview of the general rule that a person who is no party to a proceeding is not bound by an order made in that proceeding.

11. Learned counsel for the appellant has relied upon the decisions of this Court in *Ram Sahai v. Benode Behari*, 21 A.L.J. 102 : (A.I.R. (10) 1923 ALL. 161) and *Mt. Jaidevi Kuari v. Dakshini Din*, A.I.R. (24) 1987 ALL. 300 : (169 I. C. 125). He has also relied upon *Bindhyachal Prasad v. Madho Singh*, A.I.R. (33) 1946 Pat. 330 : (47 Cr. L.J. 328) and *Leela Singh v. B. P. Singh*, A.I.R. (33) 1946 Pat. 389 (47 Cr. L.J. 1013), *Satya Charan De v. Emperor*, A.I.R. (17) 1930 Cal. 63 : (31 Cr. L. J. 945) and *Nathubhai Brij Lal v. Emperor*, 2 I. C. 513 : (11 Bom. L. R. 377).

12. The cases reported in *Ram Sahai v. Benode Behari*, 21 A L J 102 : (A. I. R. (10) 1923 ALL. 151) and *Mt. Jaidevi v. Dakshini Din*, A. I. R. (24) 1937 ALL. 300 : (169 I. C. 125), are distinguishable from the facts of the present case, In the former case the order under Section 145, Criminal P. C., was made against Ajodhya Prasad, the father of one of the plaintiffs and the grand-father of the other plaintiff who had instituted the suit, and the question arose whether the suit, which was tiled more than three years after the order was barred under Article 47, Limitation Act. In that case it was pointed out that if Ajodhya Prasad was acting in his personal capacity, as the plaintiffs claimed through him as his next heirs, they would be bound by the order and as such Article 47 would apply, and that even if Ajodhya Prasad was acting as the managing member of the family for the family, he must have taken the proceedings under Section 145 as the managing member of the family on behalf of the family, and as such the whole family would be bound by the order and Article 47 would be applicable. Article 47 itself makes an exception in the case of persons who claim through the persons bound by an order made under the Code of Criminal Procedure. In the present case the plaintiff is not claiming through her husband Chhedi Lal on the other hand, she claims to recover possession in her own right. In the latter case the question was whether the plaintiff, who was the daughter of the person against whom the order had been made, was bound by the order. As she was claiming through her father, she was undoubtedly bound by the order, for the reasons already stated.

13. In *Bindyachal Prasad v. Madho Singh*, A.I.R. (23) 1946 Pat. 330: (47 Cr. L. J. 328), the main question for consideration was whether an order made by a Magistrate under Section 145, Criminal P. C., was bad for non-joinder of a person likely to be affected by the proceedings under that section. The question was answered in the negative with reference to certain earlier decisions of that Court and a Full Bench decision of the Calcutta High Court in *Krishna Kamini v. Abdul Jabbar*, 30 Cal. 155 : (6 C. W. N. 737 F. B.). At p. 333 of the report the following passage appears :

"This question has been examined in great detail in *Inder Deo Singh v. Kesho Singh*, A.I.R. (25) 1938 Pat. 1 : (39 Cr. L. J. 268) with reference to the earlier decisions in *Raghunandan Pandey v. Kishin Mohan Singh*, 10 P. L. T. 685 : (A.I.B. (9) 1922 Pat. 210 : 25 Cr. L. J. 541) and *Jainath Pati v. Ramlakhan Prasad*, 10 P. L. T. 689 : (A.I.R (16) 1929 Pat. 505 : 30 Cr. L. J. 840), it has been held that the two essential conditions for the foundation of the jurisdiction of the Magistrate under Section 145 are that there should be a dispute likely to cause breach of peace and that the dispute should concern land. It is not correct to say that because Section 145 (3) provides for local publication, therefore, the question of possession is set at rest once for all and the final order under Section 145 (6) is binding on the whole world."

14. In the Full Bench case of the Calcutta High Court a similar question as to jurisdiction was raised and decided. In my opinion, these cases are not relevant to the question under consideration in the present case.

15. The case reported in *Leela Singh v. B.P. Singh*, A. I. R. (88) 1946 pat. 889 : (47 Cr.L.J. 1013), is also distinguishable because that was also a case under Section 145, Criminal P. C., and there it was held that the persons whose names are not mentioned in the order under Section 145 (1) but who, on the order being notified, appear and file written statements as being persons interested in the proceedings before the Magistrate become parties and an order passed in their favour is valid.

16. In *Satya Charan De v. Emperor*, A.I.R. (17) 1930 Cal. 63 : (31 Cr. L. J. 945), it was held that the binding character of an order passed under Section 145, Criminal P. C., is not under all circumstances to be confined to persons who were actually made parties to the proceedings but may in certain circumstances extend to persons other than the parties themselves. As a broad proposition of law, I am prepared to agree with the view taken in the above case. A reference has already been made to the decisions of this Court in *Ram Sahai v. Benode Behari*, 21 A. L. J. 102 : (A. I. R. (10) 1923 ALL. 151) and *Mt. Jaidevi Kumari v. Dalahini Din*, A. I. R. (24) 1937 ALL. 800 : (169 I. C. 125), where the persons who were claiming through the persons bound by the order but were not actually parties to the proceedings were held to be bound by the order. There is a provision for such cases in Article 47 itself. There may be other cases where, as in the case reported in *Satyacharan De v. Emperor*, A. I. R. (17) 1930 Cal. 63 : (31 Cr. L. J. 945), the persons who wanted to go behind the order under Section 145, Criminal P. C. "were not only aware of the proceedings under Section 145, Criminal P. C., but they have been found to have acted in collusion with the second party in order to deprive the first party of the fruits of their Section 115 case;"

or whereas in *Nathubhai Brijlal v. Emperor* 2 I. C. 513 : (11 Bom. L. R. 377), it was found that the person challenging the order was actually present during the time the proceedings under Section 145, Criminal P. C., were going on in Court. 17. Learned counsel for the respondent baa relied upon *Mt. Maya Devi v. Diwan Chand*, A. I. R. (22) 1935 Lah. 115 and *Sharif Gul v. Said Gul*, A. I. R. (28) 1911 Pesh 65 : (42 Cr. L. J. 872), where it was held that a person who is not a party to proceedings under Section 145, Criminal P. C., cannot be bound by the order made under that section. These cases lay down the general rule which I have stated in the early part of this judgment.

18. In the circumstances of the present case, it is not possible to hold that the plaintiff was bound by the order made in the proceedings under Section 145, Criminal P. C., started by her husband. That being so, Article 47, Limitation Act had no application and the suit was not barred as alleged.

19. I, therefore, find that the suit was rightly decreed except in respect of plot No. 691/1 measuring 146 Karis.

20. The appeal is, therefore, allowed in part and the decree passed by the lower appellate Court is modified to this extent that the plaintiff's suit in respect of plot No. 691/1, measuring 146 Karis, is dismissed and in other respects the decree made by the lower Court is upheld. The parties will receive and pay costs in proportion to their success and failure in all the Courts.