

Parmeshwar Din And Ors. vs Sheo Moorat And Anr. on 4 February, 1952

Equivalent citations: AIR1952ALL918, AIR 1952 ALLAHABAD 918

ORDER

Misra, J.

1. This is a reference under Section 438, Criminal P. C., by the learned Civil and Sessions Judge of Partabgarh in a case under Section 145, Criminal P. C. The recommendation of the learned Judge is that the order passed by the Sub-Divisional Magistrate on 13-7-1950, be set aside and Parmeshwar Din, Ishwar Din, Bachai and Bhagwati Din the second party be allowed to remain in possession of the plots in dispute. The proceedings were initiated by Sheo Murat and Triloki Lal (called the first party) on the allegation that they were in possession of 14 specified plots measuring 12 bighas in village Jalalpur Kithauli under a patta executed by the zamindar on 1-3-1949 and registered on 24-4-1949. The patta was to begin from 1357F, that is to say from 1-7-1949. Sheo Murat and Triloki Lal stated that there was an apprehension of breach of the peace from the second party (Parmeshwar Din and others) inasmuch as the second party was likely to interfere with their possession and they were threatening that they would not allow the first party to cultivate the lands. They further prayed that the Court may pass necessary orders to enable them to cultivate their lands as soon as the rains begin.

This was scarcely an application under Section 145, Criminal P. C., but it was treated as such. Attachment was ordered on the report of the police and the standing crops were put in possession of a sapurdar. Thereafter the parties set up their respective claims before the learned Magistrate ; but on a consideration of the evidence produced by the parties, the learned Magistrate was unable to satisfy himself as to which of the parties was in possession on the date of the commencement of the proceedings or on the date of the attachment. In consideration of the fact, however, that there was a likelihood of a breach of the peace, he considered it necessary to proceed under Section 146, Criminal P. C., and ordered the attachment to continue and the fields in dispute to be cultivated by the sapurdar who was to keep a proper account and deposit the sale proceeds and the produce in Court until the rights of the parties were determined by civil Court.

2. The learned Civil and Sessions Judge, Partabgarh, who was moved in revision by the second party carefully surveyed the entire oral and documentary evidence and came to the conclusion that the evidence clearly established the actual possession of the second party at the relevant time. For the purpose of assessing the value of the oral and documentary evidence of possession, the learned Judge took into consideration also the evidence of title. This is not usual in proceedings under Section 145, Criminal P. C., but there is no doubt that he could do so in order to decide effectively the question of possession which was before him as the oral evidence in that regard was equally

balanced. There was also the consideration that the rights of Sheo Murat and Triloki Lal under the patta dated 1-3-1949, could commence only from 1357F, that is to say, 1-7-1949. The allegation of possession prior to that date as set up in their application of Sheo Murat and Triloki dated 30-6-1949, in view of the statement that interference with their future possession and cultivation were threatened could scarcely carry conviction.

The learned Magistrate made a reference to the evidence on the record but there was no serious attempt on his part to bring judicial consideration to bear on the question of actual possession in the light of the material before him. As remarked in *Ram Bahal Singh v. Rang Bahadur Singh*, A. I. Rule 1924 Pat. 804, in a case under Section 145, Criminal P. C., a Magistrate should be extremely reluctant to attach the property in dispute and if he has done so, the attachment should be terminated as soon as considerations of safety might allow its withdrawal but where as here the land is cultivated from year to year and season to season it would normally be possible either on the evidence on the record or on admission of further evidence to ascertain as to which party was in possession at the relevant date, instead of admitting his weakness and relegating the parties to the civil Court. He had before him both the parties ready with the information. The information which they gave may be true or may be false but it was his duty to sift it and not to take the easy way by having recourse to Section 146, Criminal P. C. There are no doubt cases, for example, disputes relating to parti lands or jungle lands or other immoveable property where the evidence of possession may not be clear and the continuance of attachment may not occasion much hardship. The present case was not of that nature. There was ample evidence on the record which could lead the Court to a reasonably correct conclusion and the learned Civil and Sessions Judge was justified in holding that the second party was in possession.

3. I accordingly accept the reference, set aside the order of the learned Magistrate and order that the property should be delivered to the second party, namely, Parmeshwar Din, Ishwar Din, Bachai and Bhagwati Din. The attachment will be withdrawn and the crop and the money with the sapurdar will also be delivered to them.