

Pahalwan vs State Through Nihore Nonia And Ors. on 14 December, 1950

Equivalent citations: AIR1951ALL620, AIR 1951 ALLAHABAD 620

ORDER

P.L. Bhargava, J.

1. In this revn. an order passed by a Mag. of the first class of Ghazipur, in a proceeding under Section 145, Cr. P. C., is being challenged. The order was made after an inquiry as regards possession over the land in dispute, in the manner laid down in Sub-section (4) of Section 145 of the Code. Having considered the effect of the evidence produced before him, the learned Mag. found that the second party was in possession of the land & the first party was not in possession on the relevant date; and made the order under Sub-section (6) of the same section. The order has been affirmed in revn. by the learned Ses. J. of Ghazipur.

2. Learned counsel for the first party has, in this revn., argued that the Mag. ignored two decrees of a competent revenue Ct, under Section 59, U. P. Tenancy Act in favour of the first party; and that in face of those decrees the order in question could & should not have been made. The decrees were merely declaratory in nature; and it was admitted before the Mag. that they had been obtained ex parte & an appln. for setting aside the decrees was pending. The Mag. had to consider the effect of the evidence produced before him; and, in the circumstances, he was entitled to ignore the decrees.

3. It has, however, been pointed out by the learned counsel that the appln. for setting aside the ex parte decrees has since been rejected; but that does not alter the situation. Having found that the second party was in possession on the relevant date, the Mag. had to make an order, under Sub-section (6) of Section 145, Cr. P. C., declaring the second party entitled to possession of the land, releasing the same (along with the crops) in their favour & directing that they shall remain in possession until evicted therefrom in due course of law. So far the second party have not been evicted from the land in dispute. Consequently, the order is still operative.

4. Learned counsel for the appct. has invited my attention to certain observations of a learned Single Judge of this Ct. in *Makhan Lal v. Mangal*, I. L. R. (1943) ALL. 150. In that case, at p. 153 the following observations appear:

"It has been held in various cases that 'where there is a decree of a civil Ct. for possession in respect of the disputed land, the duty of a criminal Ct. proceeding under this section is to find which party held such civil Ct. decree & then to maintain that party in possession.' "

There can be no doubt that if there is a decree of a civil Ct. for possession in respect of the disputed land, the criminal Ct. must uphold the possession of the party in whose favour the decree stands. There is no such decree in favour of the first party.

5. Another observation upon which reliance is placed begins at p. 153. It is as follows:

"Again it has been said that 'it is the duty of the Mag. to maintain any order which has been passed by the civil Ct.; and therefore to take proceedings which must necessarily have the effect of modifying or cancelling such order or of interfering with the rights of the parties determined by a civil Ct. is to assume a jurisdiction that the law does not contemplate."

It is true, a Mag. has no jurisdiction to start proceedings which are likely to produce such an effect; but the order of the civil Ct. must determine the rights of the parties, including the right to enter into possession of the subject-matter in dispute. In the present case, there was no such order.

6. The next observation to which reference has been made is as follows:

"Similarly it has been held that 'when the rights of the parties have been determined by a competent Ct., the dispute is at an end, & it is the duty of the Mag. to maintain the right of the successful party. & the defeated party will not be allowed to invoke the aid of the Mag. & the police to neutralise the effect of the decree of the competent civil Ct.' "

The rights of the parties referred to above are those rights the determination of which really put an end to the dispute, which is likely to cause the breach of peace. If the rights of the parties as regards possession have not been determined by a competent Ct., it cannot be said that there is an end of the dispute. In my opinion, therefore, the decision reported in Makhan Lal's case, (I. L. R. (1943) ALL. 150) does not help the first party.

7. Reference has also been made to another decision of this Ct. in *Mrs. V. E. Argles v. Chhail Behari*, A.I.R. (36) 1949 ALL. 230: (50 Cr. L. J. 345). That case is also distinguishable, because in that case a decree for possession had been obtained in a suit under Section 217, U. P. Tenancy Act, 1939.

8. In a suit under Section 59 of the Tenancy Act, the pltf. may sue the landlord for a declaration that he is a tenant or for a declaration of his share in joint tenancy, even though he is not in actual possession of the tenancy land; for example, in a case where any other person is in actual cultivatory possession of the land as a sub-tenant or otherwise, & he alleges that such person is in possession on his behalf & he is a tenant of the land. In such cases, there will only be a declaratory decree, without any determination of the question of possession, which may still continue to be in dispute, & the dispute may be likely to cause the breach of peace. Consequently, a declaratory decree, under Section 69 of the Tenancy Act, cannot always be accepted as a guide in cases under Section 146, Cr. P. C., where the Mag. is really concerned with the question of possession.

9. Lastly, it has been urged that, in any case, the Mag. had no justification for making an order in respect of plot No. 341/3, which was never claimed by the second party. It appears that in the appln. filed by the first party, three plots were mentioned Nos. 57, 328/2 & 341/3 & out of these three plots the second party laid claim to possession over plots Nos. 57 & 328/2 only. The order in question will, therefore, be effective so far as the plots 57 & 328/2 are concerned. The first party will be entitled to retain possession over plot No. 341/3.

10. With this modification, the revn. is rejected.