

Jian And Ors. vs Sudhanshu Kumar on 20 November, 1952

Equivalent citations: AIR1953ALL540, AIR 1953 ALLAHABAD 540

ORDER

P.L. Bhargava, J.

1. This is an application in revision. It arises out of proceedings under Section 145, Cr. P. C. The proceedings were initiated by Sudanshu Ku-mar against Jian and others, who have filed this application before me. The complainant alleged that he was in possession of a plot of land No. 140/1, situate in village Dirwa, police station Itaunja, district Lucknow, and the opposite parties were attempting to dispossess him from the said plot.

2. The trial Court found that Sudanshu Ku-mar was in possession of the plot in dispute and directed that he should be put in possession thereof. This order was not properly worded. Having found that Sudanshu Kumar was in possession, the Magistrate should have directed that he should continue in possession of the plot in dispute until eviction therefrom in due course of law and all disturbance of possession should have been forbidden until such eviction.

3. The matter was taken in revision to the Court of Session and the learned Sessions Judge accepted the finding of the trial Court that Sudanshu Kumar was in possession of the plot in dispute. Another question which was raised before the learned Sessions Judge was that there was no proper preliminary, order under Clause (1) of Section 145, Criminal P. C. That objection was also overruled.

4. Jian and others have now come to this Court in revision and it has been argued on their behalf that there was no definite finding by the Magistrate about the existence of any apprehension of a breach of the peace and that the Magistrate should have recorded a finding to that effect before making the final order in the case. Before assuming jurisdiction under Section 145, Criminal P. C., a Magistrate ought to be satisfied from a police report or other information that a dispute likely to cause a breach of the peace existed concerning any land etc., and after he was so satisfied he had to make a preliminary order under Clause (1) of Section 145, Criminal P. C. It appears from the record that there was a report of the station officer of police station Itaunja showing that there was an apprehension of a breach of the peace over the possession of plot No. 140/1 and its crop between two parties. On the basis of that police report the Magistrate had jurisdiction to initiate proceedings under Section 145 and to make a preliminary order under Clause (1) thereof. This he had done; and I can find nothing wrong with the order which had been made.

5. After the preliminary order under Clause (1) of Section 145, Criminal P. C. had been made, the Magistrate had to call upon the parties to file written statements of their respective claims as regards the fact of actual possession of the subject of the dispute and thereafter the question of possession had to be investigated in the manner provided in Clause (4) of Section 145 of the Code. That clause

provides that the Magistrate shall without, reference of the merits or the claim of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence as he thinks necessary and if possible decide whether any and which of the parties was on the date of the order aforementioned in such possession of the subject.

All this the Magistrate has done and determined that Sudanshu Kumar, who had moved the Court for proceedings under Section 145, Cr. P. C., was actually in possession of the plot in dispute. It was not necessary for the Magistrate to consider the question or to record a finding about the existence of any dispute likely to cause a breach of the peace at that stage. That would have been necessary if any party who had been called upon to appear before the Magistrate or any other person interested was able to show that no such dispute as aforesaid existed. There is nothing on the record to show that at any subsequent stage the present applicants made any such assertion or attempted to prove that there was no longer any dispute likely to cause a breach of the peace. That being so, it was not at all necessary for the Magistrate to have recorded any finding to the effect that there was a dispute likely to cause a breach of the peace before making the final order in the case.

6. I can find nothing wrong with the order passed by the trial Court except that it should have been worded in terms of Clause (6) of Section 145, Criminal P. C., that is to say, it should have been declared that Sudanshu Kumar was entitled to retain possession over the land in dispute until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction. As there was nothing on the record to show that Sudanshu Kumar had actually been dispossessed no order was necessary for the restoration of his possession.

7. I, therefore, reject this revision but make an order that Sudanshu Kumar shall be entitled to retain possession over the plot in dispute until evicted therefrom in due course of law and the present applicants will not be entitled to disturb his possession until such eviction.