
(1991) 03 AHC CK 0132

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7875 of 1991

Ajab Narain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-03-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1)
Uttar Pradesh Land Revenue Act, 1901 — Section 40, 41, 43, 54, 54(6)

Citation : (1991) 15 ACR 255

Hon'ble Judges : G. Malaviya, J;B.P. Singh, J

Bench : Division Bench

Advocate : V.S. Saxena and R.S. Tripathi, for the Appellant;

Final Decision : Disposed Of

Judgement

G. Malaviya, J.—By the present petition an order dated 14-1-1991, passed by the IV Additional Sessions Judge, Ballia in Criminal Revision No. 271 of 1981, has been challenged.

2. For the disposal of this petition the brief history, which is necessary to be given in respect of this case, is that in the year 1976 proceedings u/s 145 Code of Criminal Procedure were initiated vide Case No. 38 of 1976 by the Sub-Divisional Magistrate, Ballia in respect of 153 bighas of land in village Tewari Chak alias Dhora Chhapra situate in Ballia, which has been described in detail in the preliminary order dated 17-11-1976. By an order dated 13-12-1976 the Sub-Divisional Magistrate, Ballia, being unable to decide as to which of the parties was in possession over the disputed land, got the entire land attached u/s 145(1) Code of Criminal Procedure and directed both the parties to get the question of their possession and title decided by a competent court. On 5-10-1982 the Petitioner applied before the Sub-Divisional Magistrate, Ballia that the disputed land had been held to be in their possession and as such it may be released in their favour. A similar application was again moved before the Sub-Divisional Magistrate, Ballia on 25-10-1982. After issue of notice an application was moved

on behalf of the party of the second part that apprehension of breach of peace still persisted and as such they may be permitted to file an objection to the application of the Petitioner, Ajab Narain. After hearing the Counsel for the parties, the Sub-Divisional Magistrate found that from the side of the Petitioner, Ajab Narain, certified copies of the judgment of the Assistant Record Officer had been filed on the record and an affidavit had also been filed that since no appeal had been preferred by the other side, the said judgment has become final. Noting the fact that after the notice the Counsel for the second party had asked for time but had not tendered any such evidence which could have demolished the case of the Petitioner, Ajab Narain, the magistrate found that since there was an order by the Assistant Records Officer in favour of the party of the first part and since it was a judgment by a competent authority hence acting upon the same the magistrate directed the possession of the property to be handed over to the party of the first part after releasing the said property from attachment. It was further directed that all the money which had been recovered by way of auction of crop of the said property should be released in favour of the party of the first part.

3. This order dated 24-11-1982 was challenged by means of Criminal Revision No. 271 of 1982 before the Sessions Judge. The revision remained pending for a large number of years and seems to have been decided only after the parties went right upto Supreme Court where while dismissing the Special Leave Petition, the Supreme Court had directed the matter to be disposed of expeditiously by the Sessions Judge, himself.

4. We have heard learned Counsel for the parties at the stage of admission at some length.

5. The revisional court had taken the view that the orders passed by the Assistant Records Officer, which are papers 44-Ka to 54-Ka, are not orders which can be treated to be decisions of title by a competent court. Learned Counsel for the Petitioner has drawn our attention to Section 54 of the U.P. Land Revenue Act. A perusal of the said Section makes it clear that when the conciliation efforts between the parties do not succeed before the Naib Tahsildar, then the Assistant Records Officer has to dispose of the question of possession etc. in accordance with the provisions of Section 40, 41 or 43 of U.P. Land Revenue Act. We do not feel that in this matter of Partial the Assistant Records Officer decides any other question except the fact about possession etc. of the parties and it is only then that he passes orders for correcting the record etc. including the question of title as is mentioned in Section 54(6) of U.P. Land Revenue Act. Sub-section (8) of Section 54 makes it clear that an order made by the Assistant Records Officer under Sub-section (6), subject to appeal, shall be final. It is not disputed that no appeal had been preferred against the orders of the Assistant Records Officer which had been filed in the court below in connection with this case. Accordingly, the orders passed by the Assistant Records Officer in connection with the land, which is the subject matter of dispute in the case giving rise to 145 proceedings,

have to be treated as final, and possession of land covered by the order of the Assistant Records Officer has to be given to the party in whose favour the orders have been passed by him in the proceedings pending before him.

6. There does not appear to be any provision, under which while disposing by a criminal revision, the revisional court may have the power to undo the finding of the Assistant Records Officer and substitute his finding in its place. However, the difficulty which arises in the instant case is that neither the magistrate nor the Additional Sessions Judge, who has decided the revision, has given details about the findings of the Assistant Records Officer despite the fact that the judgment shows that papers 44-Ka to 54-Ka, which are orders of Assistant Records Officer, were filed and were on the record of this case. It is also not clear from the judgment of the two courts below whether these orders, which were papers 44-Ka to 54-Ka, covered the entire 153 bighas of land which had been attached by the preliminary order or whether they were governing only a portion of the said land.

7. Consequently, it appears necessary that the court below be directed to reconsider the matter in the light of the observation made herein-before. The court below had also criticised the judgment of the magistrate by saying that the opposite party had not been given due opportunity. The revisional court also observed in para 9 of its judgment that there was an application moved by the second party but it was not clear as to what orders had been passed on that application. The revisional court could have examined the record to come to a positive conclusion whether any orders had been passed on that application or not and should not have just avoided that enquiry with a view to send back the case to the magistrate once again. The history of the case shows that the dispute has been pending since long. Consequently, the efforts should be made by the revisional court to dispose of the matter finally at its own level without sending it back to the court of magistrate for further investigation.

8. Accordingly, while setting aside the order dated January 14, 1991 we direct the Sessions Judge Ballia to get this revision allotted to some Additional Sessions Judge in his Judgeship for deciding the case in the light of the observation made hereinbefore, the court below shall examine the orders passed by Assistant Records Officer, which are papers 44-Ka to 54-Ka and shall release the attached land to the parties who have been found to be in possession over their respective land as mentioned in the said orders of the Assistant Records Officer. If the revisional court, thereafter comes to the conclusion that some land out of 153 bighas which had been attached, is still not found to be in possession of any person or in the title of any person by a competent court, the remaining land shall continue to remain under attachment till the competent court decides as to who is entitled to get possession over the same. The amount of auction money which has been received as sale proceeds of the crop on the plots in dispute, shall also be released to the parties in proportion of the land which shall be released in their favour. The Petitioner shall furnish in the court below security for

the amount, which was withdrawn by him from the court of Sub-Divisional Magistrate, Ballia, by the 8th April, 1991. The parties also undertake to appear before the Sessions Judge, Ballia alongwith a certified copy of this judgment latest by 5th of April, 1991 so that he may nominate the judge who may take up the revision for final hearing in the next week thereafter. The revisional court shall also pass appropriate order for the disposal of the present crop standing on the land in dispute when the parties appear before him and shall decide the revision positively within a month from the date of production of a certified copy of this judgment.

9. At this stage both the parties have agreed that the record had been summoned in the High Court in a Criminal Revision pending here and they undertake to move an application within 24 hours before the court concerned to send back the record to the court below forthwith so that the record reaches the court below latest by the 5th April, 1991.

10. With the observations made above, this writ petition has been finally disposed of.

11. Let a certified copy of this judgment be issued to learned Counsel on payment of usual charges by 3rd of April, 1991.