
(1975) 11 DEL CK 0010

In the Delhi High Court

Case No : Civil Revision Appeal No. 341 of 1973

Amir Singh

APPELLANT

Vs

Chaudhry etc.

RESPONDENT

Date of Decision : 06-11-1975

Acts Referred:

Citation : (1975) RLR 125

Hon'ble Judges : P.S. Safeer, J

Bench : Single Bench

Advocate : Baldev Raj and D.R. Sethi, for the Appellant;

Judgement

P.S. Safeer, J.

(1) This petition is directed against an order made by an Additional Sessions Judge, on the 18th of May, 1973, whereby he confirmed the finding by the trial Magistrate which in turn was based on the answer given to a reference by a civil court which reference had been made u/s 146(1) of the Code of Criminal Procedure, 1898 (hereafter called "the Code"). The trial court's decision was dated the 11th of August, 1972.

(2) In the proceedings initiated u/s 145 of the Code the Magistrate was unable to decide as to which of the parties was in possession of the land in dispute as within two months next before the preliminary order. He acted in accordance with section 146 of the Code and made a reference to the civil court. Section 146 is :-
(.....)

(3) The civil court after receiving the reference did not dispose it of expeditiously and ultimately answered the reference by its order dated the 30th of July, 1969, which is reproduced in extenso :-

VIDE my judgment of even date recorded in suit No. 587/67, Amir Singh Vs. Ram Devi and others. Ram Devi defendant No. 1 has been found to be in actual possession of khasra nos. 20/21 and 20/22 on 1.4.66 when she sold her share in

the land measuring 18 bighas and 10 bids was to the extent of 1/3rd share to Chandrey, Rameshwar, Mohan Lal and Dharm Singh. She was in actual possession of the land in khasra nos. 20/21 and 20/22 at the time of the sale and delivered them its possession. There is no evidence on the file to show that these persons were dispossessed. Thus on 12.5.66, party no. 2 was in possession of the disputed land and they were never dispossessed within two months of the passing of the preliminary order of the learned Sub-Divisional Magistrate, Delhi. A copy of my judgment mentioned above be also placed on the file of this case for ready reference. The file may be sent to the learned Sub-Divisional Magistrate for further necessary action."

(4) It is urged before me that the civil court had not acted in accordance with the provisions of section 146 and that in spite of sub-section (1) (D), this court can interfere with the order passed by the Sub-Divisional Magistrate on the basis of the answer given to the reference which it had made. I find that there is good deal of merit in the submission and that the reference which it had made remains unanswered. Section 146(1) provides that the Magistrate is to draw up a statement of facts of the proceeding to a civil court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained in sub-section (4) of section 145 of the Code. Sub-section (1 A) in section 146 prescribes that on receipt of such reference the civil court is to peruse the evidence on the record which may have been transmitted to it by the Magistrate and is empowered to take such further evidence as may be produced by the parties respectively. The civil court is then to consider- "all such evidence" and after hearing the parties is to decide the question as to who was in possession in terms of section 145 (4) of the Code. The reference is comprised of the statement of facts drawn by the Magistrate and the entire record of the proceedings which he may have held till then. The civil court is to take into consideration the reference which may be containing the affidavits which the parties to the litigation may have filed as also their written statement. It may also be containing some oral evidence. The civil court is given the power to record further evidence. The terms employed in section 146(1A) make it clear that the civil court is to deal with "such reference". What is it that the civil court can take into consideration for answering the reference ? It can take into consideration :

(A) the reference forwarded by the Magistrate to it :

(B) the evidence which the Parties may produce before it :

The reference made to it and the evidence produced by the parties before the civil court will within the postulation of sub-section (1A) in section 146 constitute "all such evidence" in respect of which the civil court is to hear the parties before deciding the question as to which of the parties was in possession. Sub section (1D) in section 146 clearly raises the bar that no appeal shall lie from any finding of the civil court given on a reference u/s 146 nor shall any review or revision of any such finding be allowed. What was the object which the

Legislature wanted to achieve by enacting section 146 (ID) ? The legislative intent was that the answer by the civil court to the reference made u/s 146(1) should have finality in it and no party aggrieved by it may be able to file any appeal against it or apply for its review or revision. The aim was that the party aggrieved by the answer given to the reference by the civil court should not be able to set up a confrontation before the Magistrate stating that the answer given to the reference had been subjected to appeal, review or revision and should for that reason be not acted upon. After receiving the answer to the reference, as prescribed by section 146 (1B) the Magistrate was placed under an obligation to act in conformity with the decision of the civil court. The civil court which had to deal with the reference had to bear in mind that it was dealing with a matter of which it had become seized on account of an order passed by a criminal court. Such a reference could never be mixed up with a civil suit. No judgment made in a civil suit could be utilised for disposing of a reference made u/s 146 of the Code which was to be treated distinctly apart from all other litigation.

(5) As is visible from the order made on the 30th of July, 1969, which purports to answer the reference the civil court disposed of the reference by the judgment by which it recorded its finding in suit No. 587 of 1967. Such a course was not permitted by law. The civil court acted against the express provisions contained in section 146 of the Code. Ram Devi was never a party to the proceeding u/s 145 of the Code. While deciding the civil suit filed by Amir Singh against Smt. Ram Devi and others the civil court returned findings with which it sought to answer the reference. The order answering the reference is most cryptic, ambiguous and empty. It does not at all discuss the affidavits which the parties may have filed before the criminal court u/s 145 (I) of the Code. It does not discuss any of the written statements filed under that provision. It does not discuss the terms of reference. It does not discuss any evidence concerned with the reference and it is in a perfunctory manner that the order purports to dispose of the reference. Had the civil court acted in accordance with the obligations imposed by section 146 the answer given to the reference could have been called as such. I find that the civil court acted against section 145 of the Code and the reference remained unanswered. In that situation, the Magistrate had nothing before him in conformity with which he should have recorded a decision as required by section 146 (1B) of the Code.

(6) Apart from the revisional jurisdiction exercising the power given by Article 227 of the Constitution of India. I hereby set aside the impugned orders which have followed the answer contained in the order made by the Sub-Judge on the 30th of July, 1969. That order does not constitute any answer to the reference made u/s 146. The order made by the criminal court on the basis of the illegal answer to the reference is hereby quashed. Case remanded