
(1979) 02 AHC CK 0013
In the Allahabad High Court
Case No : Criminal Reference No. 448 of 1974

Azhar Ullah Khan

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 14-02-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 146(1B)
Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 146(1B)
Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 146(1B)

Citation : (1979) AWC 396

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : M.A. Qadeer, for the Appellant; S.A. Shah, for the Respondent

Judgement

P.N. Bakshi, J.—Hamid Hasan Khan filed an application u/s 145 Code of Criminal Procedure on the allegations that he had been residing in House No. 48-D-10 situate in Mohalla Kanth Darwaza in in the city of Moradabad. He had gone out to attend a function after locking his house. When he came back he found the lock of the house broken and his household effects missing. On inquiry he was told that the opposite parties namely Mohammad Ahmad Khan and others had taken possession of the same. There was likelihood of the apprehension of the breach of peace. It is, therefore, prayed that proceedings u/s 145 Code of Criminal Procedure be initiated. After perusing the evidence on the record the City Magistrate was unable to decide the question of possession on the disputed property at the relevant point of time. As such he referred the case to the civil court by his order dated 9th August, 1971. The Munsif, Moradabad returned a finding on 26th September, 1972 that at the time of the preliminary order and within two months prior to it, Mohammad Ahmad Khan opposite party was in possession of the upper portion of the disputed house, whereas Azhar Ullah Khan was in possession of the ground floor of the said house. In other words, the learned Munsif held that Hamid Hasan Khan first party was not in possession of the house in dispute at the date of the preliminary order. The Magistrate by his

order dated 17th May, 1973 referred the case back again to the Munsif bringing to his notice the fact that Azhar Ullah Khan was not a party to the proceedings u/s 145 Code of Criminal Procedure, as such he directed the Munsif to decide the question afresh. Aggrieved thereby a revision was filed by Azhar Ullah Khan before the Sessions Judge, Moradabad, who has made the instance reference.

2. I have heard Learned Counsel for the parties and have also perused the impugned order. The ground on which the reference is made is that after a reference has been made u/s 146(1) Code of Criminal Procedure and a finding of the civil court returned to the Magistrate, the latter has to pass a final order in conformity with the decision of the civil court u/s 146(1B) u/s 146(1) Code of Criminal Procedure when a reference is made by a Magistrate to the civil court, the said court is required to decide the question whether any and which of the parties was in possession of the subject matter in dispute on the date of the preliminary order passed under Sub-section (1) of Section 145 Code of Criminal Procedure. In other words the civil court is required to decide the question of possession qua the parties to the proceedings. He has to record a finding as to which of the parties if any, it is in possession of the disputed land. If he is of the opinion that none of the parties are in possession or that only one of the parties is in possession of a part of the property in dispute, then such a finding should be returned by him. He is not required to record a finding upholding the possession of a stranger to the proceedings u/s 145 Code of Criminal Procedure. The result of recording such a finding would be that the Magistrate who is duty bound to pass an order in conformity with the finding of the civil court would also have to uphold the finding recording possession of the stranger, who has nothing to do with the proceedings u/s 145 Code of Criminal Procedure. In my opinion, therefore, the Munsif acted in excess of his jurisdiction in recording a finding that Azhar Ullah Khan was in possession of the ground floor of the disputed house. The proper finding for him to record in the aforesaid circumstances was that neither of the parties to the proceedings u/s 145 Code of Criminal Procedure was in possession of the ground floor of the house. I do not think it was necessary for the Magistrate to have referred the case back to the Munsif for deciding this question afresh between the parties to the proceedings. The Magistrate could have accepted the finding recorded by the Munsif with respect to the ground floor of the disputed house as a finding to the effect that none of the disputing parties to the proceedings u/s 145 Code of Criminal Procedure was in possession of the ground floor of the house. The Magistrate is now directed to pass an order in accordance with law in conformity with the judgment of the Munsif whose finding shall be taken as a finding upholding the possession of Mohammad Ahmad Khan with respect to the upper portion of the disputed house and holding none of the parties to the proceedings to be in possession of the lower portion of the disputed house.

3. In this view of the matter, this reference is hereby accepted. The impugned order of the Magistrate dated 17th May, 1973 is set aside and the City Magistrate is directed now to proceed in accordance with law in the light of the observations

made by me above.