
(2008) 01 AHC CK 0093
In the Allahabad High Court

Bhagwati Prasad	Vs	APPELLANT
State of U.P. and Rajdeo Yadav		RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 145, 146

Citation : (2008) 119 FLR 1084 : (2008) 3 UPLBEC 2742

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—The petitioner contends that the Magistrate as well as the revisional court have erred by dropping the proceedings in view of the fact that the petitioner is in possession and that in view of the History of the litigation, the proceedings for attachment ought to have been continued as there was a continuous existence of an apprehension of breach of peace and there was a serious dispute with regard to possession.

2. In order to appreciate the aforesaid contention of the petitioner, it is to be noticed that the property in dispute which is an agricultural land appears to have been recorded in the name of the father of the petitioner Gaya Prasad and the same continued during consolidation operations. After the consolidation was over, the petitioner alleges that his father Gaya Prasad and his brother Bhawani had departed from the village and were living elsewhere for the past 15 or 16 years and that he was the exclusive owner of the said property. To assert his aforesaid rights, he filed a Suit for declaration before the revenue court being original Suit No. 285 of 1989 u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act, 1952; a copy of the plaint is on record as Annexure-1 which was verified on 7.6.1989. This Suit was filed by the petitioner against his own father Gaya Prasad and his real brother Bhawani Prasad. Under the provisions of the U.P.

Zamindari Abolition and Land Reforms Act, the Court also has the power to grant a temporary injunction u/s 229-D which appears to have been invoked on 2.6.1990 in favour of the petitioner. The petitioner alleges that since the property in question was ancestral property, and since his father was simply the Karta of the family, therefore, his name had been recorded only in a representative capacity and that the petitioner as well as the other members had separate shares in the property to the extent of 1/3 each. The declaration, therefore, was, thus, sought on the strength of the said allegation. The said temporary injunction was, however, vacated on contest by the father of the petitioner on 19.1.1991. Against the said order, a revision is alleged to have been filed in which a stay was granted on 22.1.1991 and ultimately the revisional authority made a reference to the Board of Revenue for setting aside the order dated 19.1.1991. This reference was answered by the Board of Revenue on 26.5.1997 whereby the order vacating the injunction was quashed and the matter was remanded for a decision afresh. This order was passed on 26.5.1997.

3. Pending these proceedings, the petitioner's father Gaya Prasad is said to have executed a sale-deed of the said property by a registered document in favour of the contesting respondent - Rajdev Yadav and the other members of the family on 31.7.1991. The petitioner asserts that he came to know about the execution of the sale-deed later on and, therefore, he instituted an original Suit No. 962 of 1995 before the civil Court praying for a permanent injunction in respect of the same property. The plaint of the said Suit is also on record which indicates that the petitioner had also expressed an intention to the effect that the said sale-deed deserves to be cancelled to the extent it was void. It also appears from the pleadings that some amendment was sought for adding the relief for cancellation of the sale-deed which application was initially rejected against which the petitioner approached this Court in which some interim order had been passed at that point of time. In the said Suit, an injunction was also prayed for as a temporary measure and the said application was pending consideration before the Civil Court.

4. Pending both these proceedings before the revenue court and the civil Court, a police report was submitted apprehending breach of peace on 27.12.1995 and for drawing proceedings u/s 145 Cr.P.C. A preliminary order was drawn on 9.1.1996 and pursuant thereto notices were issued. After a lapse of almost 13 months, on the basis of some police reports dated 16.2.1996, 29.3.1996, 4.2.1997 and a report of the Naib Tahsildar dated 7.1.1997, an order of attachment was passed u/s 146(1) Cr.P.C. Since then the property continued under attachment. A revision, filed by the respondent No. 2 against the same, was dismissed on 10.12.1997 and a writ petition arising out of the proceedings u/s 145 was dismissed on 30.10.1998, wherein an observation was made that this shall continue till orders are passed by the civil court for which the parties are at liberty to obtain appropriate orders in respect of the possession of the property from the civil Court. These judgments dated 10.12.1997 and 30.10.1998 are Annexures-6 and 7 to the writ petition.

5. It is, thus, clear from the aforesaid facts that the property was brought under attachment through proceedings u/s 145 Cr.P.C. in spite of the orders being passed both by the revenue court as well as by the civil court. In between in some misc. proceedings, it appears that there was a stay of further proceedings in the Suit by this Court as well which is evident from the order dated 21.11.2002 in Writ Petition No. 49354 of 2002. However, the said interim order does not in any way take away the impact of the orders passed by this Court on 10.12.1997 and 30.10.1998 nor do the same find reference in the said order.

6. The sum and substance of this entire litigation, therefore, reflects that the proceedings u/s 145 Cr.P.C. had been initiated after the institution of the civil Suit as also the revenue Suit. Upon the directions contained in the judgments of this Court dated 10.12.1997 and 30.10.1998 calling upon the parties to approach the civil Court, the matter appears to have been contested before the civil court and ultimately vide order dated 12.1.1999 the civil Court rejected the application for interim injunction filed by the petitioner against his father Gaya Prasad and also the contesting respondent No. 2. It need not be repeated that the Respondent No. 2 is a party to the said civil Suit. The civil Court recorded findings on prima facie case, balance of convenience and irreparable injury and while doing so also came to the conclusion that the petitioner cannot be presumed to be in exclusive possession of the property and hence the application filed by the petitioner seeking an interim injunction was rejected. It is admitted to the petitioner that an appeal against the said order dated 12.1.1999 is still pending before the appellate court being misc. Appeal No. 10 of 1999. The petitioner, therefore, does not appear to have any injunction order in his favour from the civil Court.

7. The aforesaid facts appear to have been brought to the notice of the Magistrate, who proceeded with the matter and during the pendency of these proceedings before him, an application was moved by one Sri Ram Sahai that he should also be impleaded as he has entered the fray on the strength of some sale-deed in his favour. The learned Sub-Divisional Magistrate, Bhadohi, after taking notice of the aforesaid fact, came to the conclusion that Mr. Ram Sahai could not be impleaded and in view of the order passed by the civil Court dated 12.1.1999, there was no reason to continue with the proceedings under Sections 145/146 Cr.P.C. in the matter. Accordingly, the proceedings were dropped against which the petitioner preferred a revision before the learned Addl. Sessions Judge, who also affirmed the orders passed by the learned Magistrate on the said ground.

8. I have heard Sri R.C. Srivastava, learned Counsel for the petitioner at length, Sri A.K. Yadav for the respondent No. 2 and the learned A.G.A. for the State.

9. From a perusal of the facts as brought forth herein above, it is evident that the Civil Court has passed the order dated 12.1.1999 in a Suit which had been instituted prior to the initiation of the proceedings u/s 145 Cr.P.C. The order has been passed after taking notice of all the facts pertaining to the dispute between

the parties. The petitioner has already preferred an Appeal against the said order which is stated to be pending. If that is so, then the remedy of the petitioner lay by approaching the civil Court for the redressal of his grievances, if any, in respect of the finding of possession which has been returned against him in the order dated 12.1.1999. The Magistrate in the proceedings u/s 145 cannot sit in Appeal over the said inference drawn by the civil Court. In case the petitioner wants to establish his possession then the same can now be done only by way of the reversal of the finding recorded in the order dated 12.1.1999 and not by a finding by the Magistrate, who will have no authority to proceed with the matter keeping in view the law laid down by the Apex Court in the case of *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, followed in the case of *Amresh Tiwari v. Lalta* reported in AIR 2000 SC 1504. The Magistrate, therefore, cannot be said to have erred in dropping the proceedings as all such remedies including redressal on account of violation of an order or the restitution of the possession of a property can always be had from the concerned court. The civil Court has all powers under Order 39 Rule 2 and Rule 2-A for either granting appropriate orders or ensuring the compliance thereof. The civil Court in view of the provisions of Section 144 C.P.C. also have the power of restitution and in view of the provisions of order 40 CPC, the civil Courts also has the power to appoint a receiver in case the occasion so arises. Similarly, the revenue court entertaining a Suit u/s 229-B has the power to pass orders of interim injunction as is evident from the provisions of Section 229-D of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Not only this, in view of the provisions of Section 341 of the said Act, the provisions of the CPC in so far as they are not expressly excluded shall apply to the proceedings in a revenue Suit as well. Thus, there is a complete machinery available both before the civil Court as also before the revenue court for the redressal of the grievances of the petitioner, if any, on the facts as alleged. So far as the breach of peace or the existence of an emergent situation is concerned, it is evident that the order under 146(1) was passed almost after 13 months of the drawing of the proceedings. There is nothing on record to indicate any apprehension of breach of peace and even if it were existing, then the remedy of the petitioner is to approach the concerned court as noticed herein above for appropriate orders.

10. In the light of what has been stated above, it cannot be said that the Magistrate has proceeded erroneously or has failed to exercise the jurisdiction vested in him in accordance with law. For the same reason, the order passed in revision also does not call for any interference by this Court in the exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India. The parties are at liberty to approach the concerned court for the redressal of their grievances and the observations made herein above shall in no way impede the proceedings before either the civil Court or the revenue Court who shall be free to pass orders untrammelled by any of the observations made herein above.

The writ petition is, accordingly, dismissed.