

(2017) 05 AHC CK 0136
In the Allahabad High Court
Case No : 2971 of 2005

Bodhan Singh And Others

APPELLANT

Vs

State Of U.P. And Others

RESPONDENT

Date of Decision : 26-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 145](#), [Section 146](#) - Procedure where dispute concerning land or water is likely to cause breach of peace - Power to attach subject of dispute and to appoint receiver

[Uttar Pradesh Land Revenue Act, 1901](#), [Section 54\(6\)](#) -

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951, Section 210, Section 209, Section 229B

Citation : (2017) 05 AHC CK 0136

Hon'ble Judges : Sangeeta Chandra

Bench : Single Bench

Advocate : Durga Singh, C.K.Rai, Faujdar Rai, Dhiraj Singh, S K Misra, S.P.S Parmar

Final Decision : Allowed

Judgement

1. This Criminal Revision has been filed against judgment and order dated 15.06.2005 passed by S.D.M., Lalganj, District Mirzapur under Section 145 Cr.P.C. releasing the attached property in favour of opposite parties No. 2 to 4 in Case No. 7/10/11/14/15 of 1995.

2. I have heard Mr. Durga Singh, counsel for the revisionist and Mr. S.K. Mishra, counsel for the private opposite parties along with Additional Government Advocate for the State. I have also perused the judgment impugned dated 15.06.2015 and the material placed on record by means of various affidavits filed by the petitioner and private opposite parties.

3. The revisionists have set up a case that revisionists - Bodhan Singh, Bharat Singh and Raghu Nandan Singh sons of Shitla Prasad Singh were in peaceful

possession of the plot Nos. 201, 202, 190, 198 and 203, total 14-14-0 Bighas on the basis of adverse possession of their grand-father. In 1333 Fasli i.e. much before Zamindari abolition the grand-father of revisionist was recorded as Class-9 occupant of the aforesaid plots; the recorded tenure-holder of which was Smt. Phoolwanti wife of Ram Sajivan Pal. Under Sections 209 and 210 of U.P.Z.A. & L.R. Act, the revisionist's grand-father and father continued to be in possession of the land of said plots measuring 14-14-0 Bighas and even filed a suit for declaration of their rights under Section 229-B of the U.P.Z.A. & L.R. Act. By a decree dated 14.03.1974 in pursuance of a compromise with Smt. Phoolwati, the recorded tenure-holder, the name of Shitla Prasad Singh, the father of revisionist, was recorded as Bhumidhar over 3-8-0 Bighas land of the said plots in question. Over the rest of the plots adverse possession of Shitla Prasad Singh continued although the recorded tenure-holder continued to be Smt. Phoolwati.

4. Later on in 1987, out of eight plots measuring 14-14-0 Bighas Smt. Phoolwanti has sold half of the property to Raghu Nath Pal illegally and the sale deed in favour of Raghu Nath Pal was against the provisions of the Transfer of Property Act as she was not in possession at the time of sale and the revisionists and before them their father and their grand-father, continued to remain in possession of the plots in question.

5. It has also been alleged that the remaining half of the property was sold by Smt. Phoolwanti wife of Ram Sajivan Pal to six sons of Ram Bharosey namely Awadh Narain and others. It has been alleged by the revisionists that Sangam Pal, Bindra Pal and Triyugi Pal sons of Raghu Nath Pal illegally tried to take over the possession of the disputed property and therefore, the revisionists had submitted a complaint to the District Magistrate, Mirzapur who called for a report from Sub Divisional Officer, Lalganj which report was submitted on 06.09.1995 wherein the Sub Divisional Magistrate had stated that a total of eight plots measuring 14-14-0 Bighas were recorded in the name of Smt. Phoolwanti, but both the parties to the dispute namely Bodhan Singh and others as well as Sangam Pal and others claimed title and possession over the land in question and regarding the title declaration, the matter is pending before the Court of Assistant Record Officer. The Khatauni of 1333 - 1334 Fasli and 1359 Fasli and 1375-1377 Fasli has been submitted by Bodhan Singh and others sons of Shitla Prasad Singh that they have been in continuous possession of the land in dispute; whereas Sangam Pal and others sons of Raghu Nath Pal have submitted Khatauni of 1400 Fasli showing their possession which appears to be forged as the village was under Record operation and there could not have been any recording of the names of Sangam Pal and others, sons of Raghu Nath Pal by the Lekhpal, Tehsil Lalganj during the Record operations. Mutation also in their favour on the basis of the sale deed executed by Smt. Phoolwanti cannot be said to be correct as during the record operation no mutation proceedings can be undertaken. The dispute regarding the possession and title is pending before the Assistant Record Officer.

6. On the other hand, it is the case of private opposite parties - Sangam Pal and others sons of Raghu Nath Pal that Smt. Phoolwanti wife of Ram Sajivan, the recorded tenure-holder, had sold half area of her eight plots admeasuring 8-8-0 Bighas to Sangam Pal, Bindra Pal, Triyugi Pal, Jageshwar, Ashwini Kumar and Kashi Nath sons of Raghu Nath Pal and the remaining half of the land in dispute had been sold by Smt. Phoolwanti to Awadh Narain, Shiv Kishore, Awadh Kishore, Khilari, Jagdish and Ram Narain all sons of Ram Bharose and they are cultivating the land.

7. On the basis of the sale deed executed in their favour possession was delivered to them and mutation was also made in their names in the record of rights and they are also cultivating the land and have sown Arhar and Jowar over it. When the revisionists, sons of Shitla Prasad Singh tried to interfere in their possession leading to a skirmish and a likelihood of breach of peace, the Station officer of Police Station Hallia submitted a Challani report under Section 145 Cr.P.C. leading to registration of Case No. 7/10/11/13/14 in the Court of Sub Divisional Magistrate, Lalganj, District Mirzapur on 17.11.1995.

8. In the Challani report a mention had been made that Sangam Pal and others, sons of Raghu Nath Pal, were claiming possession on the basis of a sale deed made in their favour by Smt. Phoolwanti wife of Ram Sajivan, the recorded tenure-holder of the plots in question; whereas Bodhan Singh and others sons of Raghu Nath were claiming possession of the plots in question on the basis of adverse possession since the time of their grand-father as a Class-9 occupant.

9. The opposite parties have stated on affidavit that the dispute under Section 54 (6) of the U.P. Land Revenue Act has been decided in their favour during the pendency of the Case No. 7/10/11/13/14 of 1995 and they had filed a copy of the judgment and order dated 26.09.1997 in Case No. 116/162/726, which judgment has been reiterated by the Assistant Record Officer in his order dated 31.05.2001. A copy of the order dated 31.05.2001 has been submitted by the private opposite parties in the Court of Sub Divisional Magistrate in the pending case under Section 145 Cr.P.C. and the S.D.M. has rightly concluded in the order impugned that only on the basis of adverse possession of their grand-father and father over the land in dispute, under Section 210 of the U.P.Z.A. & L.R. Act, no right can be said to be created in favour of the revisionists after the death of grand-father and father. The land having been sold by Smt. Phoolwanti, the recorded tenure-holder, to Sangam Pal and others, sons of Raghu Nath Pal, they were in rightful possession of the land as has been mentioned in the Challani report of the Station Officer, P.S. Hallia and also in the report of Naib Tehsildar at the time of passing of preliminary order under Section 145 Cr.P.C.

10. The case set up by the revisionists that the alleged sale deed made in favour of Sangam Pal and others, sons of Raghu Nath Pal, was made out by an imposter and not by Smt. Phoolwanti herself, has been rejected by the Assistant Record Officer as Smt. Phoolwanti had filed her objections before the Assistant Record Officer that she has herself sold half of her land to Sangam Pal and others, sons

of Raghu Nath Pal and remaining half of the land had been sold by her to the sons of Ram Bharosey. In the counter affidavit it has also been stated that in pursuance of the impugned judgment and order dated 15.06.2005 delivery of possession had been given over the land in dispute by the Supurdgar (receiver) on 27.06.2005 in the presence of the police along with three and half quintals of Arhar i.e. the crop sown over the land in dispute on 27.06.2005 itself and this fact was in the knowledge of the revisionists and was not disclosed to the Court when it passed the order dated 30.06.2005 for the respective parties to maintain status-quo over the property in dispute.

11. It is the case of the private opposite parties that they had been in continued possession since the time of sale deed executed in their favour in 1987 and the Assistant Record Officer having decided the case in their favour on 31.05.2001 under Section 54(6) of the U.P. Land Revenue Act, the Sub Divisional Magistrate has rightly decided in the order impugned to hand over the possession of the property to the private opposite parties.

12. The revisionists have also brought on record an order passed in Revision No. 155 of 2000-2001 pending before the Board of Revenue against the judgment and order dated 31.05.2001 in Case No. 130/434 : Bharat Singh and others Vs. State of U.P. wherein the Board of Revenue has stayed the operation of the order passed by the Assistant Record Officer till further orders on 28.07.2001.

13. Shri Durga singh, counsel for the revisionists, has argued that since revision was pending before the Board of Revenue in which the order passed by the Assistant Record officer dated 31.05.2001 has been stayed and this fact was brought to the notice of Sub Divisional Magistrate concerned, he could not have passed the order impugned on the basis of the order passed by the Assistant Record Officer.

14. Also, it has been submitted that once it had been reported by the Sub Divisional Magistrate on 06.09.1995 that the father and grand-father of the revisionists were in occupation of the land in dispute since long, the SDM in his order dated 16.05.2005 could not have taken any other view nor could have observed that since before two months from the date of preliminary order passed in the case on Challani report being submitted by the police of police station Hallia, the private opposite parties were in possession. This order has been passed only on the basis of the report of Station Officer, P.S. Hallia, Tehsil Lalganj, District Mirzapur and the report of Naib Tehsildar.

15. It has also been argued by Shri Durga Singh that indisputably Smt. Phoolwanti had sold only half of the property out of a total admeasuring 14-14-0 Bighas to Sangam Pal and others, sons of Raghu Nath Pal, but the Sub Divisional Magistrate ignoring the facts on record had directed the receiver Ganga Prasad Mishra to hand over the total land in dispute to the private opposite parties.

16. Having considered rival submissions and having perused the impugned order dated 15.06.2005, I am of the considered opinion that the SDM exceeded his

jurisdiction in releasing the attached property in favour of opposite party Nos. 2 to 4 in Case No. 7/10/11/14/15 of 1995. Clearly, the SDM lost sight of the fact that both sides had produced evidence regarding their right over the land in dispute. The proceedings were initiated in 1995 under Section 145 Cr.P.C. and they continued for 10 years. It is the settled law that proceedings under Section 145 Cr.P.C. cannot be used for getting possession over the land for which the most suitable remedy is the filing of civil litigation. Orders passed under Sections 145/146 Cr.P.C. are interim in nature only to avoid imminent danger of breach of peace. It cannot be said that because there was a dispute regarding ownership and title of the land in question, the parties to the dispute continued to fight for 10 years. There may have been some imminent danger of breach of peace when Challani report was submitted in 1995 by the police to the Sub Divisional Magistrate. However, there could not be any imminent danger of breach of peace for a period of 10 years to allow the Sub Divisional Magistrate to continue the proceedings for 10 years and then, pass order for delivery of possession to one party which according to his wisdom was rightfully entitled for possession over the land in question.

17. The Hon"ble Supreme Court in the case of Ram Sumer Puri Mahant Vs. State of U.P., 1985 (1) SCC 427 has observed thus :-

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed."

18. The Hon"ble Supreme Court in another decision rendered in the case of ShantiKumar Vs. Shakuntala reported in 2004 (1) SCC 438 has observed thus:-

"10. Possession is nine points in law. One purpose of the enforcement of the laws is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in sub-section (2) of Section 145 having arisen, causing a likelihood of a breach of the peace, Section 145 of the Code authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by

holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Sections 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in proviso to sub-section (4) of Section 145, and maintain the status quo as to possession until the entitlement to possession was determined by a court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned.

(Emphasis supplied)

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16. In *Bhinka & Ors. Vs. Charan Singh*, AIR 1959 SC 960, this Court held that the Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. His order is a temporary order irrespective of the rights of the parties, which will have to be agitated and adjudicated upon by a competent forum and in the manner provided by law. The life of the said order is coterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court. The orders under Section 145 of the Code are thus merely police orders and do not decide any question of title."

19. The order of SDM dated 15.06.2005 is, thus, set aside. The Criminal Revision is allowed.

20. The parties to bear their own costs.