
(1972) 02 AHC CK 0050
In the Allahabad High Court

Budhu Ahir and Others

APPELLANT

Vs

Ishwar Chand Pandey and Others

RESPONDENT

Date of Decision : 24-02-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1972) 42 AWR 341 : (1972) CriLJ 1377

Hon'ble Judges : C.D. Parekh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.D. Parekh, J.—This revision arises out of the order dated 20th February. 1970. passed by Shri R.S. Mishra S.D.M. Ballia in proceedings u/s 145 Criminal Procedure Code in the Criminal Case No. 1 of 1967 Ishwar Chand Pande and others v. Budhhoo and other P. S. Kotwali district Ballia. The magistrate declared the first party i. e. Ishwar Chand Pandp and others to be in possession of the disputed property and restrained Budhhoo and others from interfering with the possession of Ishwar Chand Pande and others till they were evicted in due course of law. The magistrate has further directed that the property in question which was under attachment be delivered to Ishwar Chand Pande and others.

2. Briefly stated the facts of the case are that on 30th January. 1965 police report was made from P. S. Kotwali stations that there was apprehension of breach of peace between Ishwar Chand and others on the one hand and Budhhoo and others on the other regarding the land of village Shahpur Dighwara lying within the jurisdiction of P. S. Kotwali Ballla. A preliminary order was passed on 29-1-1967 by the magistrate and both the parties were called upon to file their written statements, affidavits and documents in support of their respective claims. After perusal of the written statements and the affidavits and documents on 28th of February. 1967 the then Sub-Divisional Magistrate declared Buddhoo and others to be in possession of the plots and ordered delivery of possession to them and Ishwar Chand and others were restrained from interfering with the

possession of Budhhoo and others till they were evicted in due course of law. Ishwar Chand and others were aggrieved by that order and filed revision before the ADM (J). Ballia. who held that the proceedings were void ab initio and recommended to this Court for setting aside the order dated 28-2-1967 passed by the then S. D. M. This Court accepted the reference and returned back the record with the observation that the question of jurisdiction should be decided first and if it is found that village Shahpur Dighwara lies in the district of Ballia. the magistrate should further decide the case u/s 145 Cr. P.C. and decide the proceedings according to law.

After the case was received before the magistrate 56 persons other than those who were parties along with Budhoo made an application to be impleaded as parties in the case and they are also parties in the case. They have filed written statements and their affidavits. The magistrate by the order under revision has held that village Shahpur Dighwara lies in the district of Ballia. He has also held that Ishwar Chand Pandev and others were in actual possession of the disputed land on the relevant date and has restrained Budhoo and others from interfering with his possession till they be evicted in due course of law and has directed that the property attached be delivered to Ishwar Chand Pande and others. Budhoo and others filed revision before the Sessions Judge and the Additional Sessions Judge. Ballia by order dated 6th of May 1970 rejected the revision application and upheld the order passed by the magistrate. Against this order Budhoo and others have preferred this revision.

3. It was contended before me by the learned Counsel for the applicant that the magistrate should have decided the question of jurisdiction first whether the disputed land lies within the district of Ballia or not and thereafter he should have decided the question of possession. According to the learned Counsel the magistrate has not followed the directions of this court in deciding the case after remand I have gone through the order passed by this Court and in my opinion the order remanding the case to the magistrate does not direct that the case be decided in two parts. In my opinion the magistrate has been given direction to decide the Question of jurisdiction and also to decide the question of possession provided he comes to the conclusion that the land lies in the district of Ballia. It was also contended in this connection that the applicant had no opportunity to adduce further evidence in support of his contention. I have some through the affidavits filed on behalf of the applicants after the case was remanded and on the perusal of those affidavits it appears that the affidavits not only relate to the point of territorial jurisdiction but it also covers up the point of possession and in my opinion no prejudice has been caused nor the magistrate can be said to have violated in any manner the direction given by this Court. The point therefore, has no force.

4. It was next contended that village Shahpur Dighwara lies within the district of Shahpur forming part of the State of Bihar and the courts at Ballia have no jurisdiction to decide the dispute in the case. Admittedly this village lies on the

bank of river Ganga which was formerly forming the boundary of the two States and the two districts viz. Ballia and Shahabad. Due to erosion of the bank by the river and change in course of the midstream and the bank it led the authorities of both the States i. e. U. P. and Bihar to prepare a map known as Deep Stream Verification Map of river Ganga The map is on the record filed on behalf of Ishwar Chand Pande and others relating to the years 1964-65 and 1965-66. Copy of register D which is a revenue record maintained by the State of Bihar shows that village Shahpur Dighwara having Tauji No. 14207 was transferred to the district of Ballia vide Bihar Government's purported letter No. 108/IR/Govt. 3 dated 3-2-1947 no such letter has been filed except a typed copy of some letter without any endorsement of it being a certified copy From these set of documents it is abundantly clear that the boundaries of this village lie in the State of U. P. and not in the State of Bihar. The Deep Stream Verification Map is jointly prepared by the officers of both the States and finally signed by the Collectors of Ballia and Shahabad.

In this connection reference may be made to Paragraphs 1613 and 1620 of the Revenue Manual. The Revenue Manual relates to the manual of the orders of the Government of Uttar Pradesh in the Revenue Department which run thus: 1613. The deep-stream of the Ghogra is the boundary between the Ballia District in the United Provinces and the Saran District in Bihar up to the point where the boundary line between mauza Ibrahimabad Naubarar in Ballia and mauza Shitab Diara in Bihar meets the river; and the deep-stream of the Ganges is the boundary between the Ballia District in the United Provinces and the Shahabad District in Bihar up to the point where the boundary lying between mauza Mahazi Kindarha in Ballia and mauza Shitab Diara in Bihar meets river.

The boundary between the village of Ibrahimabad Naubarar and Mahazi Kundarha on the one side and Shitab Diara on the other is the provincial boundary across the doab between the United Provinces and Bihar from the easternmost point of the Ghogra river-face of mauza Ibrahimabad Naubarar i.e. the point where the Ghogra ceases to flow between Saran and Ballia on the north to the easternmost point of the Ganges river-face of mauza Mahazi Kundarha i. e. the point where the Ganges ceases to flow between Shahabad and Ballia on the south.

1620. The Collector on receipt of the reports of the Tahsildars will if the course of the "deep-stream" has changed have a map prepared for his district attest the map recording the date of attestation and report the fact to the Commissioner. The map thus attested will limit the boundary of the district for that year and the jurisdiction of the civil criminal and revenue courts the police the excise etc. will be thereby defined beyond question.

Reliance has been placed by the magistrate on these two orders to show that the criminal courts at Ballia had jurisdiction to decide the case u/s 145. Cr. P. C as according to the map of Deep-Stream of river Ganges signed by the Collectors of both the districts i.e. Ballia and Shahabad. the courts at Ballia had the

jurisdiction to decide the same. In my opinion as well so far as the jurisdiction of the magistrate was concerned he was competent to decide the case u/s J44. Cr. P.C. in view of the man prepared and in view of the government orders. Even if that territory may lie for other purposes in the State of Bihar but for the purposes of the jurisdiction of the Court it lay within the jurisdiction of the magistrate and in my opinion he has committed no error of law in deciding the dispute. For the purposes of the jurisdiction of the magistrate the territory lay in the district of Ballia and in the State of U. P.

5. It has further been contended on behalf of the revisionist that the magistrate has not decided the Question of possession over the disputed land in a manner in which it should have been done. According to the learned Counsel the documentary evidence stated by the magistrate as showing the possession of the first party i.e. Ishwar Chand Pande and others, could not have been utilised by the magistrate to determine the fact of actual possession on the date of preliminary order.

According to the learned Counsel the recital in the sale deed dated 4-0-1965 executed by the Maharaja of Dumraon in favour of Ishwar Chand Pande and others also does not show that the applicants were in actual possession over the disputed property on the relevant date. The copy of the Khatauni for non-ZA area for 1364 F also does not show that Ishwar Chand and others were in actual possession over the disputed land on the relevant date. Learned counsel for the applicants stated that the oral evidence brought on the record on behalf of Ishwar Chand and others by way of affidavits of Ishwar Chand Pande. Satva Narain Nagesar Sheo Shanker Singh. Srikishun Rai. Mahendra Raj Moti Gond Pares Nath Narain Singh. Ramdeo Singh and Trilok Rai said to be independent witnesses were not reliable inasmuch as they were residents of a different village other than the village in dispute and that the possession stated by them is against the documentary evidence that was brought on the record on behalf of the other side. The submission is that in view of the documentary evidence no reliance should have been placed on their oral testimony. He has also placed reliance to support the possession of the other side viz. Budhhoo and others on documentary evidence that was brought on the record and also on the affidavits filed on their behalf.

6. The learned magistrate found the possession of the first party on the basis of the certified copy of the sale deed dated 4-6-1965 executed by the Maharaia of Dumraon I have myself gone through this document. At best it is a document of title but not of possession. This document was executed on behalf of Maharaia of Dumraon by on Gobardhan Singh holding the power of attorney. It contains the statement that Ishwar Chand and others were in possession of the properties sold by the sale deed from before. Neither Gobardhan Singh has filed any affidavit nor any one else has supported the contents of the sale deed on behalf of the Maharaja of Dumraon that first party was in possession prior to the execution of the sale deed. From the sale deed also it does not appear as to from

when the possession of the first party had started over the disputed property. It is a vague statement that has been made in the sale deed admitting the prior possession of the first party. In my opinion that document does not in any way help the applicants. On their own showing the dispute had started when they had taken the sale deed and if they had been in possession of the land prior to the execution of the sale deed there was no Question of the dispute arising about the actual possession of the land in dispute. The document contains admission of the predecessor in title of the first party Ishwar Chand and others and is of no consequence to prove possession. The magistrate has also relied upon Register D-I. This document also does not show the possession of the first party i. e. Ishwar Chand Pande and others. Revenue receipts for the years 1925. 1932 and 1936 have been filed to show that in those years the property in dispute was in the possession of Ishwar Chand Pande and others but from the Register D-I it appears that in. the year 1936 the property was auctioned and it was purchased by the Maharaia of Dumraon. That means the possession if at all was there of the first party was till 1936 and thereafter they were not in possession.

There is a copy of a map of the year 1839-40 of the village in question. That does not in any way show the possession or the title of the first party. The first party also filed the statement dated 27-9-1965 of Budhhu Chaudhari in the proceedings started earlier in which Budhhoo Chaudhari had stated that the lands in dispute lie in the jurisdiction of the courts at Ballia. It also does not show the possession of the first party. The first party has also filed Khatauni of non-ZA area for 1364-F. This Khatauni does not show the possession of the first party. The Khatauni at best will show the title of the person and not the possession. According to the first party if the land in dispute was transferred to the State of U. P. some record about the possession over the disputed land should have been maintained by the Revenue Department of the State of U. P. but no document except the Khatauni of 1364 F has been filed to show the name of the occupant and the Khatauni of 1364 F about the non-ZA area does not even show as to who was the Numberdar of this village. It therefore appears that in the year 1364 F the State of U. P. mentioned it as a non-ZA area in their record but did not treat this village as forming part of their territory for the purposes of maintenance of separate revenue record, The revenue record as it appears was always maintained by the State of Bihar. It is another matter that for purposes of jurisdiction of courts under the orders of the Government of U. P. in the Revenue Department quoted above the territory may have been included in the State of U. P. but the revenue records were not maintained by the State of U. P. the State of U. P. as it appears did not even assess the land revenue or collect from any of the occupants the rent payable over this land. The receipts relating to the years 1925. 1932 and 1936 show that the Bihar Government realised the land revenue from Sheo Sahar Pandey. father of Ishwar Chand and his three brothers.

The Khatauni of 1364F only mentioned that it was treated as a non-ZA area but that does not mean that the zamindari of this village was not abolished. The reasonable meaning that can be assigned to this document would be that the

zamindari of this village was not abolished by any notification of the Government of U. P. but all the more it cannot be said that it was not abolished at all. The document was filed on behalf of Budhhoo and others. He has referred to a notification issued by the Governor of Bihar dated 6th November, 1951, which goes to show that the Governor of Bihar in exercise of the power under Sub-section (1) of Section 3 of the Bihar Land Reforms Act, 1950, declared that the estate belonging to the proprietors of this village would on the application of the notification vest in the State of Bihar under the provisions of the Act. In view of this notification it appears that the interest of Maharaia of Dumraon who was the then holder of the estate in this village vested in the State of Bihar in the year 1951. If there had been any letter from the State of Bihar as stated purported to have been issued in the year 1947 this notification would not have been issued by the Government of Bihar. Secondly assuming for the sake of argument that a letter indicating that the village has been transferred to the State of U. P. was issued by the Government of Bihar and was received by the Government of U. P. that by itself was not treated to be effective and sufficient by both the governments for the transfer of the territory. The U. P. Government did not record or maintain record of rights in respect of this village in its Revenue Department and the Government of Bihar issued declaration under the Bihar Land Reforms Act, 1950 go to show that although that letter was issued but it remained a paper transaction and nothing effective was done nor the territory said to be transferred was treated to have been taken over and given to by both the governments and abolition of the proprietary estate of Maharaia of Dumraon and the notification are such documents which cannot be said to have been procured by the second party with the collusion of the officials of the Bihar Government.

The second party also filed 11 certified copies of Khatauni of 1370 F of the village which related to the areas in dispute when the preliminary order was passed. They have also filed rent receipts and certified copy of Bal Panchat Chitha of 1370 and 1371 F which go to show that the name of the second party was entered as occupants of the land in the revenue records that were maintained by the Bihar Government pertaining to the relevant years i. e. when the dispute arose in respect to the possession of this land. The documentary evidence that has been filed on behalf of the second party and the affidavits that have been filed were sufficient to hold that the second party were in possession of the disputed property.¹ The learned magistrate relied upon the sale deed executed in favour of the first party and held that since the Maharaia of Dumraon was the proprietor of the village and since he had admitted the prior possession prior to the execution of the sale deed of the first party therefore they were in possession, In my opinion the finding of the magistrate is incorrect. When the second party had filed documentary evidence to show that the Bihar Government which was maintaining the revenue records of the village in dispute had mentioned the names of the second party in the revenue records correctly there was a presumption of law of the correctness of the record.

The learned magistrate has held that the second party could not produce any lease patta or Kabuliat of the land in dispute and. therefore they could not be in possession. The magistrate has expressed his opinion that in the absence of lease Patta or Kabuliat the land cannot be said to have been settled with the second party. Here also the magistrate is wrong in drawing his inference. When the name of the second party was in the revenue records as occupiers of the land they were not required to produce any further evidence nor it was a civil litigation wherein title was required to be proved. The second party was only required in these proceedings to show either from the documents or from the oral evidence or by both that they were in actual possession of the disputed property which they had successfully done. in my opinion by producing the revenue records maintained by the Bihar Government in respect of this property. The absence of any revenue record of the U. P, Government also goes a long way to suggest the fact that the U. P. Government was satisfied with the maintenance of the revenue records by the Bihar Government and at no point of time the State of U. P. made any demand of land revenue or rent from either the owners or occupiers of the land and the Bihar Government as it appears from the receipts filed by the second party realised the rent or revenue from them and granted receipts to them. Those receipts and documents cannot be said to have been procured by collusion with the officials of the revenue department of the State of Bihar. As for the adjustment of the proprietary right over this land inter se between the Governments it was for both the governments to adjust their mutual interest amongst themselves and that as it appears has influenced to a large extent the finding of the magistrate and he has held that no officer of the Bihar Government has been produced or filed any affidavit to the effect showing the possession of the second party. The alteration of boundaries between the two States i. e. Bihar and Uttar Pradesh. was finally settled by Bihar and Uttar Pradesh Alteration of Boundaries Act. 1968 Act No. XXIV of 1968 which Act came into force much after the passing of the preliminary order. The magistrate has also observed that the second party has not produced any evidence to show that the entry in the Khatauni of 1370 F existed prior to it. In my opinion that was not the requirement of the second party to do so. If the magistrate for his own satisfaction wanted these documents he could have summoned it from the authorities of the Bihar Government. The second party filed documents showing their possession on the date of the preliminary order and two months prior to the same. That is what was required of the second party and which they have done. The finding by the magistrate that the receipts issued by the Karamchari of the Bihar Government are manipulated in collusion with the second party is not only per-verse but is incorrect in law as well. When a revenue record prepared by the department of a Government has been produced a legal presumption arises about the genuineness of the document so produced and when there is nothing on the record to show that the document is not genuine it is incorrect to hold that the record is a collusive one. The learned magistrate has gone to the extent of holding that the Karamchari of the Bihar State could not issue any receipt in favour of the second party. I have not been able to appreciate the finding. If the

Bihar government realised the rent or revenue from the second party the Karamcharis were competent to issue the receipts for the amount realised by them. The amount realised could not have been pocketed by the Karamchari of State of Bihar and must have been deposited in the Treasury of the Government. The receipts therefore are quite genuine documents and they by themselves were sufficient to show that the rent and revenue of the land had been paid by the second party to the State of Bihar.

7. The learned magistrate has compared the two sets of affidavits one filed by the first party and the other by the second party, and he has stated that there are affidavits of independent persons filed on behalf of the first party who are resident of adjoining village May be so but there are affidavits filed on behalf of the second party which have been rejected on the simple test that they are residents of Bihar. There are adjoining villages separated by river Ganges and if one set of persons confirm the possession of the one party while the other set of persons confirm the possession of the other party and if there is oral evidence and the documentary evidence in the case which was clinching in my opinion it should have been utilised by the magistrate instead of rejecting the oral evidence on insufficient grounds.

8. The finding therefore by the magistrate in my opinion is incorrect and perverse, so far as the possession of the second party is concerned. Learned counsel for the second party argued that his clients tried to assail the finding of the magistrate on the point of possession and wanted to bring documents referred to above in this judgment to the notice of the first Additional Sessions Judge. Ballia that he should consider those documents and make a reference to this Court but the learned Sessions Judge as it appears insisted that he was not sitting in appeal and would not give any finding on merit. However. I have not been able to appreciate the reasoning of the Sessions Judge. If the finding was perverse and if the documentary evidence had been rejected without sufficient reasons or for no reasons the learned Judge could have taken into consideration and have considered the documents not as an appellate court but as a court of revision and should have made a reference to this Court.

9. In the circumstances I hold that the second party were in possession on the relevant date of the disputed Property and were so two months prior to the passing of the preliminary order and the first party has tried to build up a case only on the basis of a sale deed which they could obtain from the Maharaja of Dumraon finding that the U. P. Government has not maintained any record of this property. Their claim cannot be maintained about the possession over the disputed property. I. therefore, find the second party in possession of the disputed property and direct that the first party shall not interfere with the possession of the second party over the disputed land till the second party is evicted under the orders of a competent court. The land in dispute with the attached crop or the sale proceeds thereof be released in favour of the second party.

10. Let the file of the case be sent back to the magistrate concerned to deliver possession and the attached crop or the sale proceeds thereof to the second party Budhhoo and others according to the revenue records maintained by the State of Bihar and filed in the case.

11. With the above observations the revision application is allowed. The order of the magistrate and the Sessions Judge are set aside. The file be sent to the magistrate or his successor-in-office to deliver the property as directed.