
(1968) 08 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 541 of 1967

Chanan Singh Kishan Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 19-08-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(1), 439

Citation : AIR 1969 P&H 101 : (1969) CriLJ 506

Hon'ble Judges : R.S. Sarkaria, J

Bench : Single Bench

Advocate : J.S. Rakhi, for the Appellant; T.S. Mangat, for the Respondent

Judgement

1. This is a revision u/s 439 of the code of Criminal Procedure , against an order, dated 23-5-1967, of the District Magistrate, Bhatinda, upholding an order, dated 17-10-1966, of the Executive Magistrate 1st Class, Mansa. It arises out of the following circumstances.

2. There was a dispute over some land and other immovable property. Situated in the area of village Nangal Kalan, Tehsil Mansa. Apprehending a breach of the peace. Mansa Police made a report for proceedings u/s 145, Criminal Procedure Code, against Chanan Singh and 5 others as party No. 2 The case was first put up before the Sub-Divisional Magistrate. Mansa, who after satisfying himself from the police report that a dispute likely to cause a breach of the peace existed concerning the land measuring 307 Kanals and 4 Marlas, situated in the area of village Nangal Kalan, made a preliminary order in writing on 12-4-1965, requiring both the parties to attend his court, and to put in written statements of the respective claimants regarding the fact of actual possession. In July, 1965, Sarup Dass as party No. 3 also joined the proceedings before the Sub-divisional Magistrate. He made an application claiming to be in possession of the land in question . Prem Dass, party No. 2, withdrew from the case and did not prosecute his claim further. Thus, two parties, namely, Chanan Singh etc., party No. 1. And Sarup Dass, party No, 2 , were left in the field. Both these parties submitted

there written statements, claiming to be in possession of the land in dispute at the material time. Party No, 1 also submitted affidavits o\lf Ram chand, Gurdial Singh, and Chanan Singh, Counter-affidavits were put in by Sarup Dass, party No. 2 , who also furnished a copy of the Roznamcha, dated 5-12-1964, kept by the Patwari . He also produced a copy of an order of the District Judge, Bhatinda.

3. The learned Executive Magistrate First Class, Mansa, to whose Court the case was transferred came to the conclusion that the affidavits of the parties , which were of formal type and amounted to an effort ro rebute each other"s claim, were not very reliable. He, however, placed "more reliance" on the copy of the Roznamcha, dated 5-12 -1964, and the order of the District Judge, Bhatinda, He came to the conclusion that at the material time, party No. 2 Sarup Dass, was in actual possession of the land., He, therefore, passed an order that Sarup Dass be maintained in possession till evicted under the order of a competent Civil Court. Against hat order, dated 17-10-1966, of the Executive Magistrate, Bhatinda, who dismissed it by an order, dated 23-5-11967. Hence this revision by party No.1.

4. Mr. J. S. Rekho, the learned Counsel for the petitioner has canvassed these points:--

(1) No clear-cut finding has been recorded by the courts below, that Sarup Dass respondent was in possession of the disputed land either on 12-4-1965 (the date of the preliminary order) or had been forcibly and wrongly dispossessed by the petitioner within two months preceding that date.

(2) That the Magistrate and the District Magistrate have not discussed the affidavits of the parties at all, and dismissed the affidavits furnished by one party contradicted those of the other.

(3) That the Courts below have misread the Roznamcha, dated 5-12-1964, of the Paatwari, and have completely ignored the Khasra Girdawari produced by the petitioner.

(4) Sarup Dass respondent, in whose favour the final order has been made by the Magistrate , was an Intervener who came into the picture long after the date (12-4-1965) of the making of the preliminary order, and no order in his favour could be made without going through all the formalities prescribed by Section 145, Criminal Procedure Code.

(5) The Courts below have misunderstood and misinterpreted the judgment of the District Judge.

(6) The Magistrate has made a palpably wrong observation, inasmuch as he says that in the litigation before th Sikh Gurdwaras Tribunal, Sarup Dass has been recognised as Chela of Sawan Dass.

5. None of these contentions holds water. The preliminary order was made by the magistrate on 12-4-1965. He has very clearly recorded the finding that Sarup Dass, party No. 2 , has been in constant possession of the land in dispute since

5-12-1964, when possession of the land was delivered to him in compliance with an order, dated 3-9-1964, of the sub-Divisional Officer, Mansa. In other words, it was clearly held that at the date of the preliminary order also, Sarup Dass was in actual physical possession of the disputed land. Further there is nothing to show that the Magistrate did not scrutinise the affidavits submitted by one party contradicted the affidavits were not of much assistance. He rightly attached more importance to the report, dated 5-12-1964, in the Patwari's Roznamcha. This report evidenced that in compliance with an order of the Sub-Divisional Officer, Mansa, passed on 3-9-1964, the actual physical possession of the disputed land was delivered by the Patwari and other revenue functionaries to Sarup Dass on 5-12-1964. Chand Singh, who had initially entered into possession as Chakotadar, was ousted. There is nothing on the record to show that after his ouster, Chanan Singh regained that possession. That is why, the Court below did not attach much importance to the entries in the subsequent Khasra Girdawaris.

6. It is well settled that in revision, the High Court rarely interferes with findings of fact arrived at by a Magistrate on an enquiry u/s 145. Criminal Procedure Code. It is rule of Practice that the High Court seldom goes into the evidence in revision unless it is necessary to do so by reason of exceptional circumstances, or by reason of a manifest error of law. Certainly, the impugned order cannot be said to be an order passed on no evidence.

7. Nor do I find any force in the contention that the Magistrate was not competent to pass an order in favour of Sarup Dass, simply because he was not a party to these proceedings at the date of the preliminary order. True, he was accepted as a party to these proceedings sometime in the middle of July, 1965 when he appeared and put in his affidavit, asserting that he was in actual possession of the land. There is ample authority in support of the proposition, that if during an enquiry u/s 145. Criminal Procedure Code, the persons who had moved the Magistrate to start the proceedings or the persons against whom the proceedings were initiated, drop out and the person really concerned in the dispute appears before the Magistrate at a date subsequent to the making of the preliminary order, the dispute on account of which apprehension of a breach of the peace had arisen would still be there, and the Magistrate would have to make an order to prevent the same. The dispute being the same and still subsisting, it is not at all necessary for the Magistrate to issue a fresh order under sub section (1) of Section 145, Criminal Procedure Code. See *Mt. Kulsumunnisa Vs. Rex and Another*; *Leela Singh and Others Vs. B.P. Singh and Others*; and *Krishna Kamini v. Abdul Jabbar* ILR (1903)Cal 155.

8. True, that Section 145, Criminal Procedure Code, does not contain any express provision for addition of parties after the commencement of enquiry except with regard to the bringing of the legal representatives of a deceased party on the record, but there is also nothing in Section 145, which prohibits the Magistrate from adding the parties even after the initiation of the proceedings. On general principles, the Magistrate will have the power to add all the parties who were

originally concerned in the dispute, which is the foundation of the proceedings. However, it may not be proper for the Magistrate in a particular case to add a party to such proceedings after the conclusion of the enquiry at the stage of final arguments. In the case before me, however, the preliminary order, as amended subsequently, required the parties to produce their affidavits on 2-6-1965. The record further shows that this preliminary order was published in the village on 1-6-1965. The order, dated 2-6-1965, shows that Sarup Dass was present before the Magistrate on that date. He requested for extension of the time for putting in affidavits and claims. The parties were consequently asked to put in their affidavits and claims. The parties were consequently asked to put in their affidavits on 16-6-1965. On 16-6-1965 also, Sarup Dass and others were present, but Chanan Singh, etc., had not been served. Process was issued to them. On subsequent dates, i.e., 26-6-1965, 3-7-1965 and 15-7-1965, before the actual commencement of the enquiry under sub-sec (4) of S. 145, Sarup Dass joined as a party before the start of the enquiry.

9. The courts below have mainly relied on the report of the Patwari's Roznamcha on the delivery of possession to Sarup Dass in compliance with an order of the Sub-Divisional Magistrate, on 3-9-1964. It may be noted that on 7-12-1964, Chanan Singh instituted a Civil suit claiming injunction to restrain Sarup Dass etc., from disturbing his possession. By means of the said judgment, the District Judge declined to issue an injunction in his favour. Thus, there was no misreading of the evidence of the District Judge.

10. There is no doubt, some force in point No. 6 canvassed by Mr. Rekhi. He has produced for my perusal a certified copy of an order, dated 7-11-1963, of the Sikh Gurdwaras Tribunal, Punjab, by which the petition of Sawan Dass u/s 8 of the Sikh Gurdwaras Act, 1925, was dismissed on the ground that he had failed to show that he was a hereditary holder of its office. The point whether or not Sawan Dass was the duly constituted Chela of Bala Dass was not directly or substantially in issue in that case. Thus it is true that Sawan Dass had described himself in his petition as Chela Bala Dass. But even if the Magistrate has misinterpreted that order of the Tribunal, then also it will not make any difference so far as the finding of fact recording by the Magistrate with regard to the actual possession of Sarup Dass is concerned.

11. For reasons aforesaid, I would dismiss this revision petition, No costs.

12. Revision dismissed.