

(1999) 11 AHC CK 0066
In the Allahabad High Court
Case No : Criminal Revision No. 286 of 1999

Dayanath Pandey

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1999) 11 AHC CK 0066

Hon'ble Judges : Krishna Kumar, J

Final Decision : Dismissed

Judgement

Krishna Kumar, J.—Heard learned Counsel for the parties.

2. Learned Counsel for the revisionist brought my attention to police report (Annexure 1) wherein it was mentioned that there was apprehension of breach of peace between the parties in respect of partition of plots of Gate No. 10 area 4.731. Again the preliminary order (Annexure No. 2) was passed in respect of property of Gate No. 10 area 4.731. The property was also attached in this case and the attachment order (Annexure No. 3) shows that all the plots of Gate No. 10 were attached. From the order by this Court (Annexure No. 5) it is also clear that there was dispute between the parties about partition. Annexure No. 1 with supplementary affidavit is all the more clear when it is held by this Court that there was no question of quashing the proceedings under Section 145, Cr PC and the writ petition was dismissed. Learned Counsel for the revisionist, thereafter, brought my attention to the impugned order wherein instead of all the plots measuring 4.731, the learned Magistrate passed order only in respect of Plot No. 208 area 10 Biswa. Learned Magistrate must have decided the actual possession during relevant period of either of the parties in respect of all the plots of Gate No. 10. Illegality has been committed by the learned Magistrate deciding the actual possession in respect of only one plot. The learned Counsel for the opposite parties contended that there was no apprehension of breach of peace existing. If it was so to learned Magistrate could have dropped the proceedings

was this Court refused the quash the proceedings, the learned Magistrate was bound to pass final order in respect of property mentioned in preliminary order. Learned Counsel for the revisionist further, contended that one revision was filed against the impugned order by opposite parties also and they have challenged the impugned order. Learned Counsel for the opposite parties neither contended that they have challenged the impugned order on the ground that even the plot about which order has been passed by the learned Magistrate, was not in actual possession of the revisionist. Thus, it is clear that opposite parties' revision was on different point. However, the impugned order has been challenged in both revisions and because it was very clear that the learned Magistrate committed gross illegality in not deciding the matter in respect of all the Gata No. 10. Learned Magistrate committed gross illegality in over looking the order passed by this Court on 1971996 (Annexure No. SA1). The impugned order dated 2811999 is, set aside and the learned Magistrate is directed to decide the actual possession of either of the parties in respect of all the plots mentioned in preliminary order during relevant period. Both revisions are decided accordingly. Order accordingly.