

(1992) 08 AHC CK 0105

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19722 of 1992, Miscellaneous Case No. 530 of 1992, Criminal Revision No. 698 and 883 of 1992 and Criminal Miscellaneous Application No. 743 and 7178 of 1992

Dr. Anirudh Nath Misra

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 24-08-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 482

Citation : (1993) 17 ACR 619

Hon'ble Judges : Surya Prasad, J

Bench : Single Bench

Advocate : S.N. Shukla, for the Appellant;

Final Decision : Disposed Of

Judgement

Surya Prasad, J.—The facts emerging from the evidence on record briefly stated are that one Gaya Prasad had three sons including Tribhuwau Lal and Vindhyachal Srivastava. Tribhuwan Lal Srivastava had his son named Shriman Lal Srivastava, who was issueless. Smt. Savitri Devi was his wife. It is alleged that Tribhuwan Lal Srivastava executed a will dated 29-8-89 in favour of his nephew Ram Asrey Srivastava son of Vindhyachal Srivastava in respect of the House No 141/261 situate in Mohalla Andhyaribagh, police station Towaripur, District Gorakhpur. Smt. Savitri Devi is, on the other hand, alleged to have executed a Mukhtarnama in favour of Atul Kumar Srivastava in respect or" the said house. The Station House Officer of police station Tewaripur submitted a report dated 12-1-91 to the City Magistrate, Gorakhpur mentioning therein; inter alia that there was apprehension of breach of peace between the first party Ram Asrey Lal and the second party Atul Kumar Srivastava over the possession of the aforesaid House No. 141/261. Consequently the City Magistrate passed an order u/s 145(1) Code of Criminal Procedure. Subsequently, Atul Kumar Srivastava moved an application to the effect that there was apprehension of breach of peace

between the aforesaid parties. The police also submitted its report dated 13-5-91 to the effect that there could be breach of peace at any time. Therefore, the City Magistrate after perusing the police report dated 12-1-91 the application moved by Atul Kumar Srivastava and the police report dated 13-5-91 arrived at the conclusion that the house in dispute should be given in the Supurdgi of some impartial Supurdar. Consequently he directed vide his order dated 13-6-91 to the S.O.P.S. Tewaripur to appoint some one as Supurdar of the house. In compliance with that order the S.O. appointed Digya Vijai Nath as Supurdar and submitted his report dated 24-8-91 to that effect. Digya Vijai Nath being Supurdar started misusing his position by changing the nature of the house in dispute and by putting his brother Anirudh Nath Misra in possession over it. Not only this but a nursing home was also to be opened therein. Consequently the police of the police station Tewaripur reported the matter to the City Magistrate on 5-12-91, whereupon the City Magistrate vide his order dated 5-12-91, changed Digya Vijai Nath and directed that the house in dispute should remain in the Supurdgi of the S.O.P.S. Tewaripur himself until the question of possession was decided by a competent court. That order was complied with by the police, as is clear from its report dated 9-12-92. Anirudh Nath Misra filed a Criminal Revision No. 4 of 1991 *Anirudh Nath Misra v. State of U.P.*, in the court of Sessions Judge, Gorakhpur for setting aside the order dated 5-12-91,

2. The Incharge Sessions Judge, Gorakhpur vide his order dated 3-1-92 ordered for the opening of the lock put on the nursing home.

3. Ram Asrey Srivastava filed in the Hon'ble Court a Crl. Mise Application No. 530 of 1992 *Ram Asrey Srivastava v. State of U.P. and Ors. Respondents*, for quashing all the proceeding of Crl. Revision No. 4 of 1991 *Anirudh Nath Misra v. State of U.P. and Ors.*, including the order dated 3-1-92 passed there in. This Court vide its order dated 9-1-92 stayed the operation of the order dated 3-1-92.

4. The Sessions Judge, Gorakhpur vide his order dated 10-1-92 recalled the order dated 3-1-92 passed by the Incharge Sessions Judge in the aforesaid Cr. Revision No. 4 of 1991.

5. Anirudh Nath Misra filed a Criminal Miscellaneous Petition No. 743 of 1992 u/s 482 Code of Criminal Procedure *Anirudh Nath Misra v. State of U.P. and Ors.*, in this Court for the setting aside of the order dated 10-1-92 and the order dated 3-1-92. This Court vide its order dated 17-1-92 stayed further proceedings in Criminal Revision No. 4 of 1991 *Anirudh Nath Misra v. State of U.P. and Ors.*

6. Atul Kumar Srivastava filed a Criminal Revision No. 238 of 1991 *Atul Kumar Srivastava v. State of U.P.* in the court of Sessions Judge against the order dated 5-12-91 passed by the City Magistrate. This criminal revision and the Criminal Revision No. 4 of 1991 *Anirudh Nath Misra v. State of U.P. and Ors.*, were connected with each other and were disposed of by the Sessions Judge vide his order dated 5-5-92. He allowed both the criminal revisions while setting aside the order dated 5-12-92 and directing Digya Vijai Nath Misra to continue to act

as receiver.

7. Anirudh Nath Misra filed a Civil Misc. Writ Petition No. 19722 of 1992 Anirudh Nath Misra v. District, Judge, Gorakhpur and Ors. for the issue of writ, order or direction in the nature of mandamus commanding the Respondent No. 2 to open the lock and that in the nature of certiorari quashing the order of the Magistrate dated 5-12-91 and 5-5-92 directing (he Respondent No. 2 to ensure the functioning of the nursing home till 17-7-92 under the supervision of Supurdar already appointed.

8. Ram Asrey Srivastava filed a Criminal Revision No. 698 of 1992 Ram Asrey Srivastava v. State of U.P. and Ors. in this Court for the setting aside of the order dated 5-5-92 passed by the Sessions Judge in Criminal Revision No. 238 of 1991 and Criminal Revision No. 4 of 1991. This Court passed an order dated 12-5-92 staying the operation of the order dated 5-5-92 till 2nd September, 1992.

9. Anirudh Nath Misra filed a Criminal Misc. Application No. 7178 of 1992 u/s 482 Code of Criminal Procedure Anirudh Nath Misra v. City Magistrate and Ors. in this Court for quashing of the proceedings u/s 145 Code of Criminal Procedure State v. Ram Asrey and State v. Atul Kumar Srivastava pending in the court of the City Magistrate, Gorakhpur and for the opening of the lock put on the nursing home. This Court passed the order dated 26-6-92 directing the Respondent No. 1 to open the lock of the nursing home.

10. Ram Asrey Srivastava filed a Criminal Revision No. 883 of 1992 Ram Asrey Srivastava v. State of U.P. and Ors., against the order dated 20-6-92 passed by the City Magistrate in Case No. 57 of 1992 u/s 145 Code of Criminal Procedure State v. Ram Asrey whereby seeking direction from this Court for opening the lock of the accommodation in dispute.

11. It is not out of place to mention that Anirudh Nath Misra filed a Civil Suit No. 1418 of 1991 Anirudh Nath Misra v. Atul Kumar Srivastava in respect of the disputed accommodation. That suit appears to have been compromised as is clear from the copy of the compromise decree filed. It is further alleged that another Civil Suit No. 2028 of 1991 is pending.

12. A perusal of the record would show that Anirudh Nath Misra has not disclosed an} where on what date he came in possession over the disputed accommodation, on what basis and at whose instance. He has also not disclosed any where on what date he actually opened the nursing home. He is real brother of Digya Vijai Nath Misra, who was initially appointed as Superdar of the disputed accommodation. It was alleged that he misused his position as Supurdar.

13. The question of title is determined by the competent civil court only. The civil court has jurisdiction to pass an ad-interim injunction, to appoint receiver etc. and to finally decide the question of title and possession. This cannot be disputed. The police report on the point of possession cannot be perused. The police has to maintain only law and order.

14. Abuse of the process of the Court has already occurred in the instant case. Contradictory and inconsistent orders have also been passed. The learned Session Judge recalled the order passed by the Incharge Sessions Judge dated 3-1-92. The orders already passed in all the above cases/proceedings create confusion in one way or the other. No final order has been passed by the City Magistrate in the matter of possession over the disputed accommodation. Anirudh Nath Misra does not appear to have been a party to the proceedings initiated u/s 145 Code of Criminal Procedure although in fact he appears to be keenly interested in the accommodation in suit. The compromise decree in the civil suit appears to have been obtained behind the back of Ram Asrey Srivastava. There is multiplicity of suit/proceedings in the instant case. There is possibility of multiplicity of proceedings in future as well. The parties have already been put to unnecessary harassment for a pretty long time and yet no final order about the possession has been passed in favour of one party or the other.

15. Taking into consideration all the facts and circumstances of the case and the pendency of the Civil Suit No. 2028 of 1991 and the possibility of the parties being put to harassment in future, I arrive at the conclusion particularly in the interest of justice that the proceedings u/s 145 Code of Criminal Procedure should be quashed. The proceedings u/s 145 Code of Criminal Procedure giving rise to all the aforesaid cases, are consequently quashed and all the earlier orders passed therein stand vacated. The parties, are, however, directed to work out their right in the civil court. From the point of view of the safety and protection to the accommodation in question and the Articles lying therein, they (parties) are further directed to maintain status quo over the disputed accommodation until the order regarding the possession etc. is passed by the civil court. It is made explicitly clear that this order will not put any bar in any manner whatsoever to the civil court proceeding further to decide the aforesaid civil suits on merits in accordance with law. All the criminal revisions, miscellaneous applications, miscellaneous case and writ petition stand merged in this order. All the cases referred to above stand disposed of accordingly.