
(1934) 04 PAT CK 0016

In the Patna High Court

Gaya Prasad Singh and Others

APPELLANT

Vs

Ram Sarober Saran Singh and Others

RESPONDENT

Date of Decision : 12-04-1934

Acts Referred:

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

Citation : AIR 1934 Patna 471

Hon'ble Judges : Saunders, J

Bench : Division Bench

Judgement

Saunders, J.—This is a reference made by the Sessions Judge of Monghyr with regard to proceedings u/s 145, Criminal P.C., between persons to whom a Hindu widow surrendered her late husband's estate and other persons who claimed to be in possession of the property. The proceedings relate to the bakast land appertaining to the estate. After the case was started the Magistrate found that the question of the possession of the entire estate had been decided by a Deputy Collector in a land registration case whose decision had been upheld by the Collector on appeal.

2. As evidence had been taken in that case the Magistrate did not consider it necessary to hear evidence in his own Court and he proposed to decide the case in accordance with the Deputy Collector's decision. But as an application for revision of the order of the Deputy Collector was pending the Magistrate adjourned the case for orders until after the date fixed for the disposal of the application by the Commissioner. I should mention that the property which is the subject of the proceedings had been attached under the second proviso to Sub-section (4) of Section 145.

3. The learned Sessions Judge recommends that as there are concurrent findings of the Deputy Collector and the Collector in the land registration case in favour of one of the parties the proceedings u/s 145 should be quashed, and that if there remains any apprehension of a breach of the peace it may be left to the Magistrate to take action against the other party u/s 107 of the Code. The

learned Sessions Judge takes the view that now that the question has been decided by the revenue authorities it cannot be said that the dispute as to possession is bona fide. The decisions of the Calcutta High Court however in which this view was taken were overruled by a Full Bench of that High Court in *Agani Kumar Das v. Momtazuddin* 1928 Cal 610. In this case the question whether the word "dispute" in sub Section (1) of Section 145 refers only to a bona fide dispute as distinct from a dispute that, has already been decided inter partes by a competent Court was considered and it was held by Rankin, C.J., that the words "dispute likely to cause a breach of the peace" do not refer only to bona fide disputes or only to reasonable disputes. The decision of the Full Bench was that the word "dispute" means actual disagreement existing between the parties at the time of the proceedings u/s 145 even, though the question as to the right of possession has already been decided by a civil Court.

4. A Full Bench of the Patna High Court also held in *Parmeshwar Singh v. Kailas Pati* 1916 Pat 292 that the likelihood of the breach of the peace was sufficient to give the Magistrate jurisdiction, that the weight to be attached to a previous order of a civil or criminal Court was a question for the consideration of the Magistrate. In the present case therefore the Magistrate had jurisdiction to proceed u/s 145 and there can be no interference with his discretion even, if, as the learned Sessions Judge supposes, the matter might have been more suitably dealt with u/s 107.

I agree however with the learned Sessions Judge that the case ought not to be kept pending for the decision of the application for revision by the Commissioner. The Magistrate should proceed with the case and decide it without avoidable delay so that the property may be restored as soon as possible to the party which was in possession of it.

5. But as the Magistrate apparently does not intend to take any evidence and as the advocate appearing for the party against which the land registration case has been decided states that it is proposed to adduce evidence on the question of the possession of the land to which the proceedings before the Magistrate relate, it becomes necessary for me to observe that however great may be the weight which he will eventually attach to the decision of the land registration case the Magistrate is nevertheless under a legal obligation, in the terms of the section,

to receive all such evidence as may be produced by the parties respectively and consider the effect of such evidence.

With these observations the reference made by the Sessions Judge is discharged.