
(1964) 09 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1941 of 1962

Ghanshiam Das

APPELLANT

Vs

Sub-Divisional Magistrate and Others

RESPONDENT

Date of Decision : 04-09-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 6

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1898 (CrPC) — Section 145, 146(IA)

Citation : AIR 1965 All 442 : (1965) CriLJ 337

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant; S.N. Mulla, K.C. Agarwal and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

H.C.P. Tripathi, J.—This writ petition is directed against an order of the Munsif Muzaffarnagar in a case u/s 146 of the Code of Criminal Procedure.

2. On a report made by the police in July 1961 that there was a dispute between the petitioner and respondent No. S in respect of certain plots of land situate within the municipal limits of Muzaffarnagar which was likely to cause the breach of the peace, proceedings u/s 145, Criminal P. C. were started in the Court of the Magistrate and the parties concerned were required to put in written statements of their respective claims regarding the fact of actual possession over the land. Documentary evidence was filed by the parties. Ten persons on behalf of the petitioner and seven persons for the respondent No. S filed affidavits before the Magistrate in support of their respective claims. As the Magistrate was unable to decide as to which of the two parties was then in such possession of the land, he drew up a statement of the facts of the case and forwarded the record of the proceedings to the Munsif to decide the question of possession.

3. In the Court of the Munsif three witnesses were examined on behalf of the

petitioner and affidavits of Tota Ram, Ratan Lal and Sher Singh were filed from the, side of the respondent No. 3. The learned Munsif by his order dated 2-6-62 decided the question of possession of the disputed plots in favour of Roshan Lal, respondent No. 3. This writ petition, as indicated earlier, is directed against that order.

4. Learned counsel for the petitioner has urged that the impugned order is wholly illegal inasmuch as the finding given by the learned Munsif is based on affidavits of persons who were not tendered as witnesses for cross-examination. Learned counsel contends that no evidence u/s 146, Criminal Procedure Code could be given by means of affidavits and the Munsif has acted illegally in permitting the respondent No. 3 to give such evidence and in relying on the same for giving his findings. I do not find any substance in these arguments.

5. Proceedings u/s 146 (IA) are in continuation of proceedings u/s 145 of the Code. Section 145 makes a provision for evidence being led in the proceedings by affidavits and authorises the Magistrate, if he so thinks fit, to summon and examine any person whose affidavit has been put in as to the facts contained therein. Section 146 (IA) provides that :

"on receipt of any such reference, the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively, consider the effect of all such evidence, and after hearing the parties, decide the question of possession so referred to it."

It is, therefore, obvious that under the law it was the duty of the Munsif to have perused all the evidence including the affidavits which were filed by the parties before the Magistrate in the proceedings u/s 145, Cri P. C. Therefore, the contention of the learned counsel that the Munsif had erred in law in taking into account the affidavits filed by the parties before the Court of the Magistrate for deciding the question of possession has no force.

6. Before the Munsif three persons, Tota Ram, Ratan Lal and Sher Singh, on behalf of respondent No. 3 filed their affidavits and the affidavit of Ratan Lal who was the Lekhpal of the Circle has been relied upon by the Munsif. No objection was raised by the petitioner before the Munsif about the admissibility of their evidence on affidavits. The petitioner did not ask the Munsif to get them summoned and tendered for cross-examination. In my opinion, therefore, it is not open to him now to assert that their evidence on affidavits is inadmissible because they had not been tendered for cross-examination.

7. To my mind, there appears no legal bar on the part of the Civil Court to take evidence on affidavits for deciding the limited question of possession only u/s 146 (IA) of the Code. The proceedings before the Civil Court under this section are not in the nature of a suit as contemplated by Section 6 of the Civil Procedure Code. They are, on the other hand, in continuation of proceedings u/s 145 wherein specific provision has been made for leading evidence on affidavits with certain safeguards. There is no reason why the civil Court while

deciding a part of that proceeding should not have the power in law to take evidence on affidavits.

8. Even if the proceedings u/s 146 (IA) are held to partake the nature of civil proceedings, there is no legal bar for the Civil Court to entertain evidence by affidavits on any particular fact. Order 19 of the CPC invests a Civil Court with a power to order any particular fact or facts to be proved by affidavit and authorises the Court at the instance of either party to order the attendance for cross-examination of the deponent. In this view of the matter, I am of opinion that no illegality has been committed by the Munsif in entertaining evidence on affidavits of the parties for deciding the limited question of possession.

9. There is another aspect of the question. Even if the three affidavits which were filed on behalf of the respondent No. 3 before the Munsif are excluded from consideration, there still remains documentary and oral evidence on the record on which the finding of possession is based. It is, therefore, not a case where the impugned order can be said to be based on no evidence at all.

10. The Legislature by providing that no appeal review or revision shall lie from any such finding of the Civil Court has given a finality to these proceedings. In my opinion, therefore, it will not be expedient to allow the finding of the Munsif to be challenged in these proceedings specially when an alternative remedy is available to the petitioner by way of a civil suit.

11. The petition is dismissed with costs. The stay order dated 13-7-1962 stands vacated.