
(1981) 01 AHC CK 0040
In the Allahabad High Court

Hausala Bux Singh and Another

APPELLANT

Vs

Smt. Prembala and Another

RESPONDENT

Date of Decision : 15-01-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 147

Citation : (1981) CriLJ 1077

Hon'ble Judges : Mahavir singh, J

Bench : Single Bench

Judgement

Mahavir Singh, J.—This petition has been moved by the applicants to quash the proceedings u/s 147, Cr.P.C. pending in the Court of City Magistrate, Lucknow against them at the instance of opposite party No. 1.

2. The relevant facts are that the applicants and opposite party No. 1 are in possession of two adjoining portions which were initially part of one house but later on, the heirs of the original owner transferred their respective half shares to the two sides. The applicant's wife purchased the eastern portion while the husband of the opposite party No. 1 purchased the western portion. There was an intermediary wall between the two. The applicants are father and son. In their portion there was a Barotha (portico). It was through this Barotha that the main door of the portion of opposite party No. 1 opened and thereafter they went out through the northern door.

3. According to the case of the applicants, a latrine of the old type, i.e. service latrine existed in this Barotha but as a sewer line was made available to this area, the applicants decided to convert it into flush latrine. Accordingly they converted the latrine into flush latrine, and dug a soak pit and connected the same with the sewer line passing just outside the main door. It is said that opposite party No. 1 was not reconciled to their converting the latrine into a flush one and so she initiated proceedings u/s 147 Cr.P.C. against them.

4. It was contended on their behalf that actually the opposite party No. 1 had no

right in the Barotha in which latrine existed and that it was their right to use it in any manner they liked. They filed copies of the two sale deeds. They also filed copy of the agreement entered into between the husband of opposite party No. 1 and the owner of the other portion. The purchaser of the applicant's portion gave no right to opposite party No. 1's husband in the portion of the applicants. It was, therefore, contended on their behalf that the proceedings u/s 147, Cr.P.C. were merely an abuse of the process of law and that it had been initiated by opposite party No. 1 by taking advantage of her position. She was said to be an employee of the Collectorate Department at Lucknow.

5. On the other hand the case of the opposite party No. 1 was that she had every right to use this "Barotha for passage and she has been doing so since her husband purchased this portion. There was no other door except the present one through this Barotha and then through it on the main road. It was also alleged that no old latrine existed in this Barotha and the applicants had constructed a new latrine and a soak pit just in front of her door and thus obstructed her passage through this Barotha. The proceedings u/s 147, Cr.P.C. were, therefore, rightly initiated.

6. Section 147, Cr. P.C. is attracted in proceedings where there is a dispute about user of any land and the dispute is of such a nature that it raises an apprehension of breach of peace.

7. It is clear that there is such a dispute between the parties. While the opposite party No. 1 claims that she had right of passage through the Barotha which was in the portion of the house of the applicants, the applicants allege by means of this petition that the Barotha is their exclusive property and they had right to use it in any manner they liked and the opposite party No. 1 or her husband had no right on this Barotha land.

8. The learned Counsel for the applicants has, however, raised two contentions. One is that the sale deeds and the agreement of which copies have been filed and which are binding on the two sides, did not give any right to opposite party No. 1 or her husband in this Barotha land and so it was merely an abuse of the process of law by having such proceedings. I need not express any opinion on this aspect of the case, for, the present position as it stands, shows that prima facie there is some truth in the case of opposite party No. 1. The site plan An. 1 filed by the applicants themselves shows that there is no other passage to O. P. except through this Barotha land.

9. It is then contended by the learned Counsel for the applicants that assuming that opposite party No. 1 had such a right of passage, even then the proceedings u/s 147, Cr.P.C. were not attracted as the right of passage had not been obstructed. He refers in this connection to the reports of the police officer who had visited the spot. I think that this contention is misconceived. When the applicants had been clearly alleging that opposite party No. 1 had no such right of passage, how it could be said that it had not been denied to her?

10. So the petition has no force and is dismissed.