

(2003) 12 AHC CK 0173
In the Allahabad High Court
Case No : Criminal Revision No. 886 of 1986

Kailash Nath

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2004) CriLJ 2129 : (2004) 3 RCR(Criminal) 175

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : K. Parikh, for the Appellant; R.K. Singh, M.K. Shrivastava, A.K. Gupta and Shitla Prasad and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Umeshwar Pandey, J.—This revision under Sections 397/401 of the Code of Criminal Procedure, is directed against the Judgment and Order of the VI Additional Sessions Judge, Varanasi, dated May 22, 1986,

2. At the instance of revisionist's father, the Senior Superintendent of Police, Varanasi directed the concerned police station to make inquiry in the allegations of his complaint, Thereupon, the Chaubeypur police on inquiry found that there was an apprehension of breach of peace in respect of possession over the disputed land and a report u/s 145, Cr. P. C. was submitted to the Sub-Divisional Magistrate concerned. On that report of the police, preliminary order dated 19-6-1983 was passed and the Magistrate subsequent thereto on 25-6-1983 passed order for attachment u/s 146; Cr. P. C.

3. The first party Sri Ram Chaubey placed his title and possession over the disputed land through a sale deed dated 4-10-1974 executed by one Kamla Rai, the transferee of the original owner Smt. Indrawani Devi.

4. The present revisionist Kailash Nath, the second party presented his claim before the Magistrate stating that the property in dispute originally belonged to

one Smt. Indrawani Devi widow of Ram Adhar. She had executed a Will-dated 1-2-1973 in favour of Sharda Prasad Singh and Nageshwar Prasad Singh. After her death, the aforesaid two persons became the owners of the property in dispute and they executed an agreement to sell dated 11-8-2002 in favour of second party revisionist Kailash Nath. Kamla Rai was not competent to execute a sale deed dated 4-10-1974 in favour of Smt. Indrawati Devi. The sale deed was result of fraud and misrepresentation and accordingly the same was challenged by Smt. Indrawati Devi in a suit for cancellation of sale deed and permanent injunction being Original Suit No. 269 of 1978 Smt. Indrawani Devi v. Kamla Rai in the Civil Court. An ex parte decree in the suit, as back as on 29-8-1981, was passed and the sale deed dated 5-5-1973 executed in favour of Kamla Rai stood cancelled. This decree is binding upon the first party Shri Ram Chaubey.

5. The Sub-Divisional Magistrate concerned after considering the respective cases of the parties and the evidence available on record held that the second party, was in possession over the disputed property at the relevant point of time and passed directions for the release of the said property in his favour. This order of the Magistrate was challenged before the Sessions Judge in Criminal Revision No. 403 of 1985 by the first party Shri Ram Chaubey on different grounds. One of the grounds was that the proceedings of civil suit in respect of the disputed property were pending and the proceedings u/s 145 of the Code would not be maintainable. The learned Addl. Sessions Judge did not however, find it a sufficient and sound legal foundation for dropping the proceedings and thus negated the plea. He allowed the revision and remanded the case to the Sub-Divisional Magistrate concerned for fresh decision.

6. The learned counsel for the opposite party has contended that the revisional Court had decided the merit of the order passed by the Magistrate and as such a second revision before this Court is not maintainable.

7. The learned counsel has referred to the case of Dharampal and others Vs. Smt. Ramshri and others, Reliance has also been placed upon the case Ramesh Chandra Saxena Vs. VIth Additional Sessions Judge and Others, 8. Interpreting the provisions of Section 397(3) of the Code, the Apex Court in the case of Dharampal and others Vs. Smt. Ramshri and others, has held that even within the scope of inherent powers u/s 482 of the Code, a power cannot be exercised by the Court which is expressly barred under the Code and a second revision at the instance of the same party is not maintainable. In the case of Ramesh Chandra Saxena 1998 All LJ 1553 : 1988 Cri LJ 3794 (supra), the learned Single Judge of this Court has followed the same principles. He has, however, with the help of Full Bench decision of this Court in H.K. Rawal and Another Vs. Nidhi Prakash and Another, has also observed that once a revisional power has been exercised on the application of the accused recourse to second revision by exercising power u/s 482, Cr. P. C. cannot be had. In Dharam Pal's case (supra), the Apex Court has laid down the principle that second revision application before the High Court should not be entertained in the garb of a petition for

exercise of its inherent powers u/s 482, Gr. P, C. but at the same time this bar has been created for the party who had moved the revisional Court of Sessions Judge and the second revision is also filed by him before the High Court. It has been observed in para 4 of the Judgment "Hence, the High Court had clearly erred in entertaining the second revision at the instance of first party."

9. In the present case, the first party Shri Ram Chaubey had filed revision against the order of the Magistrate dated 21-12-1985 and the revisionist before this Court is the second party-Kailash Nath; therefore, this revision at the instance of the second party cannot be said to be not maintainable.

10. The other contention which has been pressed by the learned counsel for the revisionist is that when the Original Suit No. 269 of 1978 Smt. Indrawati Devi and Ors. v. Kamla Rai and Ors. for cancellation of sale deed and permanent injunction, had been decreed and the sale deed dated 4-10-1974 and 5-5-1973 had been cancelled, the first party Shri Ram Chaubey could not claim any right of possession, what to say of actual possession over the disputed property through his wife, in whose favour the successor of Smt. Indrawati Devi had executed the said sale deed dated 4-10-1974 and as such when the matter had already been set at rest through a decree of Civil Court which is still in existence, there was absolutely no occasion for the Sessions Judge to remand the case with an observation that the proceedings u/s 145, Cr. P. C. could not be dropped.

11. Learned counsel for the revisionist has placed reliance upon the case law of Madan Pal Singh Vs. State of Uttar Pradesh and Others, Amresh Tiwari Vs. Lalta Prasad Dubey and Another, 12. In the case of Amresh Tiwari (supra), the Apex Court has held as below;--

"It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the Civil Court the proceedings u/s 145 should not be allowed to continue. This is because the Civil Court is competent to decide the question of title as well as possession between the parties and the orders of the Civil Court would be binding on the Magistrate,"

13. In the case of Madan Pal Singh Vs. State of Uttar Pradesh and Others, the learned Singh Judge in paragraph 5 of the Judgment has held as following;--

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding u/s 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the Criminal Court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the Civil Court, the Criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the Civil Court and parties are in position to approach the Civil Court for interim orders such as injunction or

appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation."

14. In another case decided by learned Single Judge of this Court in *Gaya Prasad v. Additional Sessions Judge, Basti*, reported in 1996 RD 430, the same view has been taken and it is laid down that there is no justification for initiating a parallel criminal proceeding u/s 145 of the Code when a civil litigation is pending for appropriate right which also involves the question of possession and the same has been adjudicated upon.

15. In all the aforesaid cases, the Courts have relied upon the leading case of *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, in which the Apex Court has laid down the following principles:--

"Once the Civil Court has passed an order adjudicating the question of possession, even at an interlocutory stage, the Magistrate has no option but to drop the proceeding. The necessary corollary of this legal position, quite obviously, would be that the parties will be governed by the orders passed by the Civil Court."

16. There is no dispute between the parties that the aforesaid Suit No. 269 of 1978 was filed for cancellation of sale deed which the transferee of Smt. Indrawani Devi namely Kamla Rai had executed in favour of the wife (Smt. Indrawati Devi) of first party Shri Ram Chaubey. Since the passing of this decree, the same has not yet been set aside. Even if this ex parte decree is sought to be set aside in proceedings under Order IX, Rule 13, C.P.C., this will hardly have any effect.

17. In view of the aforesaid plethora of case law, it is evident that the proceedings u/s 145, Cr. P. C. are not competent when either the matter of title and possession has been earlier adjudicated upon by a competent Civil Court or is pending adjudication before such Court. To keep alive such criminal proceedings under the teeth of the principles of law laid down by the Apex Court as well as this Court, will be nothing but doing mockery of justice and it appears that both the Courts below, instead of discharging their legal functions, have been all along ignoring the mandate of law and not adhering to the legal course of action,

18. In the aforesaid view and on the facts and circumstances as narrated above, it is quite obvious that the Judgment and Order passed by the learned Addl. District and Sessions Judge cannot sustain in the eye of law and it has to be quashed on the present application of the revisionist-second party.

19. In the result, the revision is allowed and the Judgment and Order dated 22-5-1986 passed by the VI Additional District and Sessions Judge, Varanasi are hereby set aside. The matter shall be placed before the Magistrate to pass suitable orders in accordance with law and in the light of the observations made

in this Judgment.

20. In the peculiar circumstances of the case, I direct the parties to bear their own costs.