

(1968) 05 PAT CK 0001
In the Patna High Court
Case No : Criminal Rev. No. 355 of 1968

Kamo Sharma and 7 Others

APPELLANT

Vs

Jagdambi Mahto

RESPONDENT

Date of Decision : 08-05-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144, 145, 145(4)

Citation : (1968) 05 PAT CK 0001

Hon'ble Judges : B.N. Jha, J

Bench : Single Bench

Advocate : K.K. Sinha and Nagendra Prasad Singh No. I, for the Appellant; Lala Deokinandan Prasad and Lakshmi Narain Misra, for the Respondent

Final Decision : Allowed

Judgement

B.N. Jha, J.—This application by the first party in a proceeding u/s 145 of the Code of Criminal Procedure is directed against the order dated January 16, 1968, passed by the Sub-divisional Magistrate, Banka, starting the proceeding in question and attaching the disputed land u/s 145 (4) of the Code. The Sub-divisional Magistrate, Banka, started a proceeding u/s 144 of the Code of Criminal Procedure (hereinafter referred to as the Code) on November 30, 1967 on the basis of a police report dated November 29, 1967, as there was an apprehension of the breach of peace and restrained the petitioners and the opposite party from going upon the disputed land. As in the opinion of the Sub-divisional Magistrate a bonafide land dispute existed between the parties, the proceeding was converted into one u/s 145 of the Code on January 16, 1968. The disputed land appertains the khata no. 171 of village Pabey, police station Amarapore district Bhagalpur. The total area of the land of khata no. 171 was 23.83 acres which belonged to the family of the petitioners. The entire land of khata no. 171 was sold in an auction on June 16, 1931 and was purchased by three persons; namely, Kotuhal Rai, Gharo Rai and Bhoura Mahto. The petitioners got back 4.98 acres of land from the three auction purchasers by a sale-deed

dated November 19, 1955. Again the petitioners obtained two-third share of Kotuhal Rai and Gharo Rai in respect of the remaining area of 18.87 acres of land by a registered Kebala dated July 2, 1958. Bhoura Mahto had one-third interest in the remaining area of 18.87 acres and this area of land i.e. 18.87 acres of khata no. 171 is the subject matter of dispute in the proceeding u/s 145 of the Code. According to the case of the petitioners, their family continued in possession of the entire land of khata no. 171 though the land was sold to the auction purchasers in an auction sale. The petitioners obtained registered sale-deeds in respect of substantial portion of the land of khata no. 171. Only the interest of Bhoura Mahto i.e. one-third in 18.87 acres of land could not be purchased by the petitioners but as the land belonged to the family of the petitioners they continued in possession in spite of the auction sale. The opposite party is the descendant of Bhoura Mahto who claims title and possession in respect of one-third share of the disputed land measuring 18.87 acres.

2. Opposite party, Jagdambi Mahto filed Title (Partition) suit no. 93 of 1966 in the court of Subordinate Judge, Bhagalpur, on July 19, 1966, for the partition of his one-third share in respect of the disputed land. He filed an application for the appointment of a receiver on November 13, 1967 on the ground that the petitioners were going to cut paddy from the joint land. The petitioners appeared and filed rejoinder objecting to the appointment of the receiver and asserted exclusive possession over the entire disputed land. The learned Subordinate Judge held that the plaintiff was not in actual cultivating possession of the land and the paddy crop had been grown by the petitioners and in view of this finding, he did not think it desirable to appoint a receiver and dispossess the petitioners from the suit land by ordering the appointment of a receiver in the case. He, accordingly, rejected the application of the plaintiff i.e. the opposite party for the appointment of a receiver by his order dated December 5, 1957. The opposite party has filed an appeal in the court of the District Judge, Bhagalpur against the aforesaid order of the learned Subordinate Judge, rejecting the application for appointment of a receiver, which is still pending there. The petitioners alleged that having failed to obtain possession by appointment of a receiver in respect of the disputed land, the plaintiff opposite party came before the Criminal Court for obtaining possession over the disputed land. It was further alleged that Bhoura Mahto had not obtained delivery of possession nor he ever came in possession and after his death his heirs also never came in possession of the disputed land. On these allegations the petitioners have come up before this Court for the quashing of the proceeding u/s 145 of the Code, pending in the court of the Sub-divisional Magistrate, Banka, in respect of the disputed land which is the subject matter of partition in the title (partition) suit before the Subordinate Judge, Bhagalpur.

3. Learned counsel for the petitioners submitted that as the matter is pending before the Civil Court and even according to the case of the plaintiff, the disputed land is the joint property of the plaintiff and the defendants in which the plaintiff claimed one-third share, the Criminal Court had no jurisdiction to start a

proceeding u/s 145 of the Code. Learned counsel submitted that the Civil Court had decided the question of exclusive possession in respect of the suit land in favour of the petitioners in the receivership matter and the Criminal Court should respect the order of the Civil Court. The plaintiff has already filed a miscellaneous appeal against the order of the Subordinate Judge in receivership matter before the District Judge and unless that order is set aside, it must be held that the petitioners are in possession of the suit land and in such circumstances, the Criminal Court should keep off its hands from the disputed land. Learned counsel further submitted that the order of the Magistrate converting the proceeding u/s 144 into one u/s 145 of the Code does not show that an apprehension of the breach of peace existed in respect of the possession of the disputed land and, therefore, the order is erroneous in law.

4. Learned counsel urged that when the second party himself came forward with the story of joint possession, it was not possible for the Criminal Court to prevent one party or the other from going upon the land and exercise the act of possession over the same. Therefore in his submission, the matter could be decided in the Civil Court only and the remedy in such circumstances lay in partition of the joint land and converting the joint possession into separate and exclusive possession of the properties which remedy the opposite party has already taken recourse to in the Civil Court. In my opinion, the contention of learned counsel for the petitioners is well founded and must prevail.

5. The order of the Sub-divisional Magistrate, Banka converting the proceeding u/s 144 into one u/s 145 of the Code reads as follows:--

... ..Materials on record amply suggest that a bonafide land dispute is involved between the parties and hence this proceeding is converted into a proceeding u/s 145 Cr. P.C. Lands in dispute will remain attached u/s 145(4) Cr. P.C. Issue notice accordingly. Parties to file written statements and affidavits by 13.2.1968.

The aforesaid order does not show that the Magistrate was satisfied that there existed an apprehension of the breach of peace in respect of the disputed land even on January 16, 1968, when the proceeding u/s 144, started on November 30, 1967, was converted into one u/s 145 of the Code. It may be mentioned that the receivership matter had been decided by the Civil Court on December 5, 1967. The first condition for starting a proceeding u/s 145 of the Code, as provided in that section is that the District Magistrate, Sub-divisional Magistrate or Magistrate of the first class must be satisfied from a notice report or other information that a dispute likely to cause a breach of the peace existed concerning any land or water or the boundaries thereof within the local limits of his jurisdiction and that he shall make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his court. In this case, as stated above, the Magistrate has not given any reason that there existed an apprehension of the breach of peace. After the matter was decided by the Civil Court in the receivership matter, there could not be any apprehension of the breach of peace. Hence, the order of the Magistrate

starting a proceeding u/s 145 of the Code is not a proper order. Admittedly, according to the case of the plaintiff second party, the disputed land is the joint land and in such a case even if his case is accepted as true, it is not possible for the Magistrate to give relief to him because Section 145(6) provides that if the Magistrate decides that one of the parties was or should under the second proviso to Sub-section (1) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction in due course of law. Therefore, in the case of joint possession, no effective order forbidding the other side to go upon the land can be passed.

6. Learned counsel for the other side drew my attention to a Bench decision of this Court in (1) *Mt. Sudamawati Kuer Vs. Ram Chandra Singh and Others*, wherein the question arose that when the matter was referred to a Civil Court to determine the possession of the parties and the Civil Court recorded a finding that both parties were jointly in possession, the proper order in such a case should be by disposal of the proceeding holding the parties to be jointly in possession and in view of the existence of a dispute causing apprehension of the breach of peace, the Magistrate may start a proceeding u/s 107 of the Code against both or one of the parties as may be deemed expedient. It was also pointed out in that case that if the parties found it inconvenient to carry on joint cultivation, they may resort to the Civil Court for necessary relief. In the present case the plaintiff opposite party has already come before the Civil Court for the partition of the joint land on the allegation that the joint cultivation was not convenient to the parties and therefore the share of the parties should be separated and be divided into two blocks. The plaintiff also prayed for appointment of a receiver in the case which was refused by the Civil Court holding the possession of the petitioners in respect of the disputed land. In such circumstances, when the matter is already pending in the Civil Court it is desirable that the parties should seek appropriate remedy before the Civil Court.

7. A similar case came up for consideration before his Lordship the Chief Justice in (2) *Criminal Revision Nos. 1579 & 1461 of 1963 and 749 of 1964 (Harikant Prasad Singh and others versus Chandrika Singh and others, decided on November 29, 1955)*. In that case a partition suit had been filed for the partition of the joint lands and an application for the appointment of a receiver was filed which was dismissed and no appeal was preferred against the order refusing to appoint a receiver in the partition suit. A proceeding u/s 145 of the Code was also started at the instance of the plaintiff and the defendants filed the aforesaid criminal Revisions for quashing the said proceeding. It was observed by Narasimham, C.J., as follows:--

The primary object of initiating a proceeding u/s 145 of the Criminal Procedure Code is to prevent breach of peace and hold a summary inquiry for the purpose of ascertaining which of the rival parties is in actual possession of the property

and to maintain the possession of that party until the rival party seeks appropriate relief in the Civil Court. But when the parties have already applied to the proper forum for the purpose of effectively giving final relief to them, there is no point in subsequently starting a proceeding u/s 145 of the Criminal Procedure Code. It must be left to the parties to seek an appropriate interim relief by way of injunction, appointment of a receiver or otherwise, in the very Civil Court where the litigation is pending. Here such an interim relief was actually asked for and was, refused to Musammat Tejwanti Kuer.

In the aforesaid circumstances, the proceeding u/s 145 of the Code was quashed. I respectfully agree with the aforesaid observations of my Lord the Chief Justice. Learned counsel for the opposite party submitted that in the aforesaid case the decision in the matter of receivership became final as no appeal was preferred but in the present case an appeal has been preferred which is pending before the District Judge. It is true that the matter is pending before the District Judge but so long the order of the Subordinate Judge, holding the possession of the petitioners in respect of the suit land is not set aside, that order must be respected by the Criminal Court. The plaintiff, if so advised, may pray for appropriate relief before the Subordinate Judge in such circumstances and the matter could not be agitated in the Criminal Court.

For the reasons stated above, the application in revision is allowed and the proceeding between the parties u/s 145 of the Code of Criminal Procedure in miscellaneous case no. 375 of 1967, pending before the Sub-divisional Magistrate, Banka, is quashed.