

(1923) 03 PAT CK 0024

In the Patna High Court

Kedar Nath Chaubey and Others

APPELLANT

Vs

Jaleswar Ram Tewari and Others

RESPONDENT

Date of Decision : 13-03-1923

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1923 Patna 364 : 72 Ind. Cas. 883

Hon'ble Judges : Adami, J

Bench : Single Bench

Judgement

Adami, J.—This application is directed against an order passed by the Sub-Divisional Magistrate of Bettiah in proceedings u/s 145 of the Code of Criminal Procedure. The dispute related to 23 bighas of land in village Baudhbarwa. It appears that Mr. Coffin, the thicadar, after his lease had expired, sued the recorded tenants of the holdings for rent and obtained an ex parte decree. At the sale held in execution of that decree he purchased the holdings and obtained delivery of possession on the 13th March 1921. At the end of the year i.e., 8th December 1921, Mr. Coffin sold the holdings to the first party to the proceedings. It appears, too, that in 1912 second party purchased 23 bighas from the recorded tenants and thereafter redeemed certain usufructuary mortgages which the tenants had previously executed in favour of other persons and then obtained khas possession of the holdings. The dispute, therefore, between the parties was whether the first party were in possession under their purchase in December 1921 or the second party had remained in possession since their purchase in 1912 on their redemption of the usufructuary mortgages.

2. The learned Sub-Divisional Magistrate went to the locality and examined certain witnesses produced by the first party, but the second party had no chance of cross-examining them. On return to the head-quarters the learned Sub-Divisional Magistrate perused the documents put forward by the first party and thereupon, without hearing either the witnesses of the second party or looking into such documentary evidence as the second party wished to produce,

passed the order against which this application was made. Shortly stated, the order is to the effect that after perusing the documents put forward by the first party, the learned Magistrate found that the first party had been put in possession by the Civil Court under Order XXI, Rule 95 in 1921 and that being so, he was bound to uphold and maintain the possession of the first party. His order runs as follows: "All that remains for this Court is to uphold first party in possession. Following the ruling of Gobind Chunder Moitra v. Abdul Sayad 8 C.L.R. 217, I hold that I have no jurisdiction to pass an order u/s 145, Criminal Procedure Code. Proceedings are accordingly stayed u/s 145(5) Criminal Procedure Code. The Police to release the crop from attachment and make over to the first "party. No order for costs."

3. Now, in the first place, in my opinion, the order passed was wrong. The learned Sub-Divisional Magistrate holds that after proceedings have been taken u/s 145 and it is found that the Civil Court found in favour of, and delivered possession to, one party, the Magistrate has no jurisdiction to pass an order u/s 145. I do not consider that this is right. Proceedings may be taken with jurisdiction u/s 145 before the Magistrate comes to know that one party has a decision of the Civil Court in his favour and the proceedings will not be without jurisdiction. But when in the course of proceedings he finds that there is such an order of the Civil Court it is his bounden duty to maintain that order and possession granted under that order. It will then be proper for him not to stay the proceedings, but to pass an order u/s 145 declaring the party which has the Civil Court decree in his favour, or which has been put in possession by the Civil Court, to be in possession and to forbid the other party to interfere with the possession of that party. The present order does not contain any provision against the second party forbidding them to enter upon the land until a decision has been come to by a competent Civil Court.

4. Apart from this, the procedure followed by the learned Magistrate appears to me to be wrong. The petitioners complained that they had no opportunity of either showing their documents or of proving their possession through their witnesses. It appears from the order of the Magistrate that the decree in execution of which the land was sold to Mr. Coffin was a money-decree and there can be no doubt, I think, that the decree was of that nature. Under that decree only the right, title and interest of the judgment-debtors in the decree would pass. But it appears that the decree-holder made an application to the Munsif for the annulling of all incumbrances, but his application was refused on the ground, I suppose that the decree was merely a money-decree. Thus, it is practically admitted that there were incumbrances and those incumbrances were the prior usufructuary mortgagee which, the present petitioners have in part redeemed. That being so, the Court could only give possession to the decree-holder or the auction-purchaser to the extent of the judgment-debtor's interest : and the judgment-debtors had by that time lost their interest. The mere fact that possession was delivered to the auction-purchaser under Order XXI, Rule 95 would not affect the persons who were not subject to the decree. It is to be

remembered that the suit is a rent suit; it was not a suit for declaration of title and recovery of possession and there had been no; decision of the Civil Court on the question of title and possession. It further appears that: one of the judgment-debtors who was represented as a major was in fact a minor and that the Munsif, in proceedings under Order XXI, Rule 90, came to the conclusion that this minor was not bound "by the decree or the sale. It might well be that delivery of possession was given to the auction-purchaser, but it is to be remembered that about nine months afterwards this auction-purchaser transferred the land by sale to the first party. There is nothing to show whether that first party actually got possession, of the land under their sale. The difficulty is that the documents which the second party wished to produce before the Magistrate were not considered and this-Court can only have regard to the allegations made on behalf of the petitioners as to what those documents contained. It may have been that since the delivery of possession to the predecessor of the first party, the second party had obtained possession of the land or had never been ousted from the possession they held under their purchase or after redemption of the mortgage and I think the Magistrate should have considered both the documents and the oral evidence of their witnesses as to possession before passing the order he has done.

5. It is quite true that a Magistrate in proceedings u/s 145 is bound to maintain the decisions as to title passed, and possession delivered, by a Civil Court in execution of its decree if such possession has been given within a reasonable time from the initiation of the proceedings u/s 145. As has been shown in *Kulada Kinkar Roy v. Danesh Mir* 33 C. 33 : 10 C.W.N. 1057 : 2 C.L.J. 271 : 2 Cri. L.J. 670, this is not an invariable rule and the evidentiary value to be attached to the fact that the Civil Court has given possession to one party must depend, upon the particular circumstances of the particular case. As the Magistrate has not considered the document tary and other evidence produced by the second party and such evidence is not before this Court, it is impossible to say whether the circumstances were such that the Magistrate was bound to uphold the possession given by the Civil Court in this present case.

6. The order must be set aside and the case must be sent back to the learned Sub-Divisional Magistrate with directions that the second party should be given an opportunity of cross-examining the witnesses of the first party and of producing evidence and documentary on their own behalf.