

(1970) 08 BOM CK 0018

In the Bombay High Court

Case No : Criminal Revision Application No. 95 of 1970

Khobraji Jairam Masmatar

APPELLANT

Vs

Vijaysingrao Narsingrao Deshmukh

RESPONDENT

Date of Decision : 03-08-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1972) 74 BOMLR 595

Hon'ble Judges : Bhole, J

Bench : Single Bench

Judgement

Bhole, J.—The two applicants and opponent No. 4 Govinda Narayan purchased different portions of land on a Gandhi in village Shebalpimpuri in the district of Yeotmal, belonging to one Vijaysingrao Narsingrao Deshmukh, Party No. I (opponent No. 1 here). They were not made parties to proceedings u/s 145 of the Criminal Procedure Code initiated by Station Officer, Jawala, taluq Pusad, district Yeotmal. There was a dispute between Party No. I (opponent No. 1) and Party No. II (opponents Nos. 2 and 3) over the subject-matter Gadhi. Party No. I is Vijaysingrao and Parry No. II are his wives Vijayamalabai and Vimalabai. The learned Sub-Divisional Magistrate passed a preliminary order on September 19, 1966 and thereafter also passed another order on October 17, 1966 for attachment of the entire Gandhi including the portions purchased by the present applicants. The applicants claim to be in actual possession on the portions of the Gandhi which they purchased. Because the subject-matter of the dispute, after the order of attachment, was attached on November 6, 1966, therefore, the applicants appeared before the Court with an application on November 22, 1906 with a request that they should be made parties to the proceedings u/s 145, Criminal Procedure Code. That application was not decided until the learned Sub-Divisional Magistrate passed the final order on September 26, 1967.

2. The learned Sub-Divisional Magistrate has observed in his judgment that during the proceedings the applicants had objected claiming to be the purchasers

of certain pieces of land from Party No. I; that their objections are outside the purview of these proceedings and that proper forum for the enforcement of sales and possession, if any, is the civil Court, as they have not been impleaded as parties to those proceedings. The learned Sub-Divisional Magistrate also found that Party No. II Vijayamalabai and Vimalabai, the wives of Party No. I, were in peaceful possession of the disputed property on the date of the preliminary order. Therefore, he declared that they were entitled to the possession of the disputed property until evicted therefrom in due course of law. He also forbade all disturbances to their possession until such eviction. Against this order, a revision was filed by the applicants. The learned District Magistrate while disposing of the revision application and the objections of the applicants also agreed with the view of the learned Sub-Divisional Magistrate. According to the District Magistrate, the objections raised by the two applicants were outside the purview of those proceedings and the proper forum for enforcement of sales as well as possession, if any, was the civil Court, because they were not parties to those proceedings. Against this order of the learned District Magistrate, the two applicants have come here in revision.

3. The learned advocate for the applicants contends here that the applicants had purchased certain defined portions of the Gandhi which is the subject-matter of the dispute, by registered sale-deeds from Vijaysingrao Party No. I on September 3, 1963 and June 19, 1965. Three sale-deeds were executed and registered on these dates. It is, therefore, the claim of the applicants that as a result of these sale transactions long before the dispute between the two parties, they purchased some portions of the Gandhi and came to be in a possession of the portions purchased by them. Accordingly, therefore, they ought to have been made parties to the proceedings u/s 145, Criminal Procedure Code when they appeared before the learned Sub-Divisional Magistrate on November 22, 1966 after the date of attachment and wanted to be parties to the proceedings. On the other hand the learned advocate for party No. II contends here that the applicants had waited until the disposal of Section 145 proceedings. According to him, they ought to have seen that there was an order passed by the learned Sub-Divisional Magistrate on their application dated November 22, 1966. Because they have waited until the disposal of the Section 145 proceedings, according to him, the applicants are not now entitled to revise that order. It is further contended by him that u/s 145, Criminal Procedure Code proceedings, it is not always necessary that all the necessary parties should invariably be parties to the proceedings. According to him, therefore, the application by the applicants is not tenable. The learned Government Pleader, however, supports the application by the applicants saying that the State is more concerned with the prevention of offences; that the order passed by the Sub-Divisional Magistrate does not hinder the applicants and that therefore there is bound to be another quarrel between the applicants and Party No. II in whose favour a declaration is made by the Sub-Divisional Magistrate that they were in possession on the date of the preliminary order. According to the learned Government Pleader, the applicants should,

therefore, be given an opportunity to show whether they are in possession of the disputed Gandhi or they are not in possession.

4. Party No. I Vijaysingrao had sold a portion of the Gandhi under a registered sale for a sum of Rs. 2,000 on September 3, 1963. He also sold another specific portion of the Gandhi to the applicants for a sum of Rs. 500 on June 19, 1965. He sold yet another specific portion to another applicant on that date for a sum of Rs. 250. Under these sale transactions, they came to be in possession of the defined portions of the Gandhi which was sold to them on September 3, 1963 and June 19, 1965. These dates admittedly are much before the period when the dispute started between Vijaysingrao Party No. I and his two wives Party No. II Vijayamalabai and Vimalabai. Because the dispute started between the husband and his wives, therefore, proceedings u/s 145 of the Criminal Procedure Code were started by the Police. The result was that an attachment order was passed on June 17, 1965. The entire Gandhi was also attached on November 6, 1966 without the knowledge of the applicants here. The point, therefore, that arises here for consideration is to see whether the applicants who volunteered to be parties in those proceedings because of their interest in the subject-matter of this dispute ought to have been made or ought not to have been made parties by the learned Sub-Divisional Magistrate.

5. u/s 145 of the Criminal Procedure Code, whenever a District Magistrate or Sub-Divisional Magistrate is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land...then 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 person or by pleader...and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute Therefore, u/s 145 of the Code the Sub-Divisional Magistrate should require "the parties concerned" in such dispute not only to attend his Court but also to put in their evidence in the form of written statements, documents, affidavits etc. as regards the fact of actual possession. Section 145 provides for a procedure where a dispute concerning land is likely to cause a breach of the peace. But who are the parties concerned in such disputes, as contemplated by Section 145 ? Are they the parties who were actually fighting because of whose quarrels there was likelihood of breach of peace or are they also parties who are not fighting along with the quarrelling parties but are concerned with the fact of actual possession of the subject-matter of dispute ? The learned Sub-Divisional Magistrate appears to be of the view that it is only the parties who quarrel over the subject-matter of dispute and who are likely to cause breach of peace are the "parties concerned" with such dispute as contemplated u/s 145. But u/s 145(3) a copy of the order has to be served in the manner provided by the Court for the service of summons upon such person or persons as the Magistrate may direct and at least one copy may be published at some conspicuous place at or near the subject of dispute. This provision clearly shows that the Magistrate ought to give notice to all the persons concerned, by the publication of a notice at some conspicuous

place near the subject-matter of dispute. The Legislature was not satisfied only with the parties who might have been reported by the police as parties before the Magistrate; the Magistrate therefore is not only concerned with the parties who are creating trouble and who are likely to create breach of peace but also is concerned with parties who claim actual possession of the subject-matter of dispute.

6. The Magistrate has to hear "those parties concerned" u/s 145(4) and conclude the inquiry and, if possible, decide the question whether any and which of the parties was at the date of the preliminary order in such possession of the said subject. The Magistrate is also empowered to attach the subject of dispute pending his decision under this section.

7. Looking at the question from another angle, Section 145 is a section under Part IV of the Criminal Procedure Code which deals with the prevention of offences. Section 145 is in Chapter XII of Part IV which deals with disputes as to Immovable property. A procedure is laid down in Section 145 to avoid criminal breach of peace. A summary inquiry is to be made as to actual possession. An order thereafter has to be made that a particular party is in possession and that that party has to retain possession until legally evicted. Now, therefore, if two parties quarrel over a property which in fact is in possession of a third party and if proceedings are started only against those two parties u/s 145 and if the third party who is in actual possession of the subject-matter of dispute is not made a party, then, for no fault of the third party his interest would be prejudicially affected. In fact, in a given case, two parties may collude and deprive the possession of a party who is in fact in possession by getting an order in favour of either of those collusive parties u/s 145 of the Criminal Procedure Code. Surely, the Legislators did not intend such results. In my view, therefore, the parties concerned in a dispute before the Sub-Divisional Magistrate would be not only those parties who are likely to create breach of peace but also parties who are in actual possession of the subject of dispute. In this particular case, we have sale transactions by the applicants of the year 1963 as well as of the year 1965. Prima facie, they must have obtained possession of the property under sales in those years. That was a period long before the dispute between the two parties. If, therefore, these applicants appeared before the Sub-Divisional Magistrate at an appropriate time, in my view, they should; in the interests of justice, be made parties for the purpose of finding out who actually was in possession or was not in possession of the subject of dispute. I do not say that the Sub-Divisional Magistrate should hunt for all parties and make them all parties who may be interested in the possession of the subject of dispute. If that is done, then the summary nature of Section 145 proceedings will not be fulfilled. But here is a case where the applicants appeared immediately after the property was attached. The property was attached on November 6, 1966; the applicants appeared on November 22, 1966. Therefore, the learned Sub-Divisional Magistrate has not exercised his jurisdiction properly by excluding the applicants from taking part in the proceedings.

8. This view is also held by the Calcutta as well as the Patna High Court. In *Leela Singh v. B.P. Singh* [1946] AIR Pat. 389, the Patna High Court was of the view that the expression "parties concerned" in Section 145, Criminal Procedure Code means not only persons actually disputing but includes persons concerned in claiming to be in possession. This term according to that Court should not be so narrowly construed as to mean only the persons actually disputing but should be extended to persons who are concerned in claiming to be in possession. In *Ganesh Jalia v. Ayubali Chaudhuri* (1990) 4 C.W.N. 753, the words "concerned in the dispute" were construed. The Calcutta High Court was of the view that these words are not limited to the parties actually concerned in the dispute but include parties concerned in the subject-matter of the dispute who would be affected by the Magistrate's order maintaining the possession of any third party in their absence. In *Krishna Kamini v. Abdul Jubbar* ILR (1902) Cal. 155 also, the Calcutta High Court expressed the same view as above.

9. But the learned advocate for opponents Nos. 2 and 3 contends here that Section 145 proceedings are summary proceedings and under it a summary remedy is provided to avoid criminal breach of peace and, therefore, the proceedings should not fail on account of defect of parties or on the ground of a proper party not being brought on record. He relies on *Sukchand Roy Vs. Sefazuddin Mohammad*, for this proposition. Now, it is true that the proceedings u/s 145 cannot fail if necessary parties or proper parties are not made parties to the proceedings. Here is a case where the applicants had appeared in the proceedings at an appropriate time. These parties were certainly interested in maintaining their present possession. When the learned Magistrate did not implead the applicants as parties, he in my view erred; he has failed to exercise his jurisdiction properly by not granting the request of the applicants. Therefore, the learned Sub-Divisional Magistrate's order is not proper.

10. Therefore, although Section 145 of the Criminal Procedure Code deals with questions of a disputed possession and although the jurisdiction under it is limited, yet, the Magistrate must call upon the parties not only actually engaged in the dispute but must extend his call upon all parties interested in the dispute and parties who claim actual possession of the subject of dispute. The Magistrate, of course, should act with all possible promptness. This is a case where the learned Magistrate ought to have impleaded the applicants as parties because they appeared at an appropriate time. They should, therefore, be impleaded as parties.

11. I, therefore, set aside the order of the learned District Magistrate who confirmed the order of the Sub-Divisional Magistrate and remand the record and proceedings to the Sub-Divisional Magistrate with a direction that the applicants and opponent No. 4 should be impleaded as parties to the proceedings. They should also be given an opportunity to lead evidence as per Section 145, Criminal Procedure Code. If the other parties want to add to their evidence in view of the evidence led by the applicants and opponent No. 4, Party No. 1 and

Party No. 2 (i.e. opponents Nos. 1 to 3) also should be allowed that opportunity. The learned Sub-Divisional Magistrate should thereafter dispose of the proceedings according to law. The attachment will have to be maintained for the purpose of preventing disturbance of peace.