
(1968) 04 AHC CK 0021
In the Allahabad High Court
Case No : Criminal Rev. No. 2162 of 1967

Khushi Ram

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-04-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(6)

Citation : (1968) 38 AWR 444

Hon'ble Judges : J.N. Takru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.N. Takru, J.—This revision by Khushi Ram arises out of proceedings u/s 145 Code of Criminal Procedure.

2. It is common ground that there is a plot of land measuring 77 bighas two biswas in village Tilwara police-station Thankaur in the district of Buiandshahr. A dispute involving an apprehension of breach of peace regarding the said plot having arisen between the parties to this revision, the SDM concerned passed a preliminary order and pending his decision ordered its attachment. Thereafter the parties filed written statements, affidavits etc. in support of their respective claims as regard the fact of actual possession of the subject of dispute. The SDM after considering them held that the opposite party was in possession of the said land on the date of the preliminary order and within two months next prior thereto. Khushi Ram went up in revision against that order to the Sessions Court and when he failed to get redress there, he filed Criminal Revision No. 1013 of 1967 in this Court. The revision was admitted on 16-6-1967 and on the same day an order was passed directing that the property in question shall remain in the custody of the supurdar. Thereafter on 24-7-1967, the opposite party moved an application praying for the vacation of the aforesaid order and for a direction that the supurdar and Khushi Ram, the Applicant, be ordered to deposit Rs. 61,460/- on account of the price of the crops grown on the subject of dispute.

This application was filed after serving a copy of it on Sri Swami Dayal, the Learned Counsel for Khushi Ram. It came up for final hearing before me on 16-8-1967 and the same day I set aside the stay order dated 16-6-1967 and directed the possession of the subject of dispute to be made over to the opposite party at an early date. So far as the prayer for a direction to the Supurdar and Khushi Ram to deposit Rs. 61,460/- was concerned, I rejected it on the ground that this Court was not the proper forum for deciding what amount was payable on account of the price of the crops in question and to whom. Armed with this order the opposite party approached the SDM concerned and prayed that the possession of the subject of dispute as well as the crop grown, on it or its price might be delivered to him. The SDM issued notice to Khushi Ram and in reply to it Khushi Ram filed an application stating, (1) that the opposite party had filed a case u/s 209 of the UP Zamindari Abolition Act in the court of the Judicial Officer, Sikandrabad, (2) that the said case was decreed exparte, (3) that on the basis of that exparte decree the opposite party obtained possession of the subject of dispute from the Applicant (i.e. Khushi Ram), (4) that it was on the basis of this possession that the Section 145 Code of Criminal Procedure proceedings terminated in his favour, (5) that thereafter the exparte decree was set aside and possession of the subject of dispute was restituted to Khushi Ram u/s 144 CPC on 23-8-1967 through court and (6) that after obtaining possession Khushi Ram moved an application u/s 561-A of the Code of Criminal Procedure in the High Court for the quashing of the proceedings u/s 145 Code of Criminal Procedure which had given rise to Cr. Revision No. 1013 of 1967 and was pending in this Court then. On these allegations Khushi Ram, prayed that further proceedings u/s 145 Code of Criminal Procedure be allowed to remain stayed till his application u/s 561-A Code of Criminal Procedure was disposed of by this Court. The SDM did not accede to this prayer and relying upon the order of this Court dated 16-8-1967 he passed an order on 7-10-1967 ordering delivery of possession of the subject of dispute to the opposite party.

3. On 22-11-1967, Cr. Revision No. 1013 of 1967 came up for hearing before Rajeshwari Prasad, J., and as was to be expected, reliance was placed on behalf of Khushi Ram on the allegations contained in his Section 561-A Code of Criminal Procedure application, which were in more or less the same terms as those in his application before the SDM just referred to above. As on the same date Khushi Ram had also filed the aforesaid revision, i.e. Cr. Revision No. 2162 of 1967 against the order of the SDM dated 7-10-1967 and was admitted the same day by Rajeshwari Prasad, J., he did not consider it proper to consider the Subsequent developments contained in Khushi Ram's application u/s 561-A Code of Criminal Procedure in Cr. Rev. No. 1013 of 1967 and held that they could "rightly and legitimately be considered" in the fresh revision which Khushi Ram had filed i.e. in Cr. Revision No. 2162 of 1967. So far Cr. Revision No. 1013 of 1967 was concerned he held that as two courts had found the opposite party in possession it was not proper to interfere with their order. It might be mentioned here that while admitting the present revision Rajeshwari Pd., J. ordered the status quo

with regard to the possession of the property to remain undisturbed. The short question which falls for consideration in this revision therefore is, whether as a result of the subsequent development which has taken place in consequence of the order passed by the Judicial Officer u/s 144 CPC the order under revision can be sustained.

4. On behalf of the Applicant Sri Swami Dayal contended that as the effect of the order u/s 144 CPC whereby the Applicant was ordered to be put back in possession of the property in dispute on 23-8-1967, amounted to the ejectment of the opposite party "in due course of law", the provisions of Section 145(6) of Code of Criminal Procedure were attracted to the present case and consequently the SDM was in error in passing the order under revision. On behalf of the opposite party his Learned Counsel Sri Girish Chandra, however, contended that as the affect of the dismissal of Cr. Revision No. 1013 of 1967 was that the opposite party was found in possession of the subject of dispute during the material period, the SDM had no option but to implement that finding. After hearing the Learned Counsel for the parties I am however of the opinion that the contention advanced by Sri Swami Dayal is to be preferred both on the plain language of Section 145(6) Code of Criminal Procedure as also the object and purpose underlying proceedings u/s 145 Code of Criminal Procedure. I shall, therefore, proceed forth-with to give my reasons for coming to that conclusion.

5. Now there can be no manner of doubt that the effect of the dismissal of the Cr. Revision No. 1013 of 1967 was that the opposite party of that, as also the present revision, must be held to have been in possession of the subject of dispute on the date of the preliminary order and within two months" next prior thereto. u/s 115(6) Code of Criminal Procedure the party found in possession of the subject of dispute is entitled to remain in possession of it "until evicted therefrom in due course of law" and the unsuccessful party is forbidden to disturb the formers possession until a competent court orders his eviction therefrom. Thus u/s 145(6) the farthest point of time upto which a party in whose favour an order u/s 145(6) Code of Criminal Procedure has been made can remain in possession of the subject of dispute is the date on which a competent court orders his eviction therefrom and for this purpose it is immaterial, whether the order passed by the competent court is a final order or only an interlocutory order and this is precisely what has happened in the present case. At first when the opposite party's suit u/s 209 of the UP ZA Act was decreed exparte he succeeded in obtaining possession on the basis of that decree and as that possession was within two months next prior to the date of the preliminary order he was held to be entitled to remain in possession in Cr. Revision No. 1013 of 1967. Subsequently when Khushi Ram the Applicant succeeded in getting the exparte decree set aside and in obtaining an order for the redelivery of possession in his favour u/s 144 CPC and also succeeded in obtaining possession on the basis of that order through court, there can be no manner of doubt that he obtained possession of the subject of dispute in "due course of law". The SDM was, therefore, not right in ignoring this crucial

circumstance which had the effect of setting at naught the order passed in favour of the opposite party in Cr. Revision No. 1013/1967. I am supported in the view taken by me above by the decision of this Court in *B. Gajadhar Singh v. State* 1953 AWR 484. It was held in this case that:

Ordinarily, a person against whom an order is passed u/s 145(6) will go to a Civil Court for getting the other party evicted; but if he can get him evicted by a court of another jurisdiction, as of a criminal Court in proceedings u/s 447, Penal Code, he can Certainly do so. When the Criminal Court has u/s 522 ordered the opposite party to be put in possession of the property in dispute, it amounts to eviction of the Applicant and as that order has been passed in due course of law, that amounts to the Applicant's eviction in due course of law.

5. It will be noticed that the instant case is much stronger on facts than the decision cited above, In that case there was only an order of a criminal court directing, that the opposite-party be put back in possession of the property in dispute whereas in this case apart from the order u/s 144 Code of Civil Procedure, possession was also delivered to the Applicant on 23-8-1967 through court.

6. The Learned Counsel for the opposite party contended that as the SDM had not given any finding on the question whether the possession of the subject of dispute had been, restituted to the Applicant as a result of the order u/s 144 Code of Civil Procedure, it would not be right to use that circumstance against the opposite-party and in favour of the Applicant. This contention does not appear to be correct, for the order of the SDM shows that after narrating the facts of the earlier proceedings u/s 145 Code of Criminal Procedure he went on to say that "the only circumstance in the present case is the pendency of revenue suit u/s 209 UP ZA and LR Act filed by Ganesh Shankar in respect of the land in dispute against Khushi Ram in which at some stage after setting aside the ex parte order in favour of Khushi Ram the judicial Officer had restored the possession of Khushi Ram u/s 144 Code of Civil Procedure." The passage quoted above clearly shows that the SDM recorded a finding that "the Judicial Officer had restored the possession of Khushi Ram u/s 144 CPC at some stage after setting aside the ex parte decree in favour of the opposite party. It is true that the SDM has not given any reason for his holding "that possession had been restored to Khushi Ram" but that is not the same thing as saying that he did not record any finding on that question. I am, therefore, satisfied that the SDM was in error in not giving effect to the order passed by the Judicial Officer u/s 144 CPC which was an order passed "in due course of law" as required by Section 145(6) Code of Criminal Procedure. As soon as this order was passed, the previous order which was in favour of the Applicant and was affirmed in Cr. Revision No. 1013 of 1967 ceased to have any effect. But even if for the sake of argument it be taken that the Applicant did not get actual possession of the subject of dispute, it would not make any difference to the legal position because once a competent court had passed an order in his favour, the SDM was bound to

give effect to it. Thus in any view of the matter the impugned order is not justified.

7. On behalf of the opposite party his Learned Counsel contended that I might at least pass an order directing the Supurdar to hand over the price of the crops for the period in respect of which the Applicant was held to have been in possession of the subject of dispute to the Applicant i.e. for; the year 1966-67. I am, however, not prepared to pass any such order for the simple reason that I have already held while passing my order dated 16-8-1967 that this Court is not the proper forum for passing such an order. It is common ground that a suit in respect of the subject of dispute is pending before the Judicial Officer Sikandrabad in which the question whether the Applicant or the opposite party was the owner and entitled to the possession of the said land would be decided. If in that suit the opposite party is held to be the owner and entitled to the possession of the said land, he would get the price of the crops from the Supurdar for the period that that land was in the possession of the Supurdar and the mesne profits from the Applicant for the period that he is found to have wrongly remained in possession over it and vice-versa. In case, however, the question as to who is entitled to the price of the crops in the hands of the Supurdar and the question of mesne profits for the subsequent period fall outside the scope of the suit u/s 209 of the ZA and LR Act, then it is open to the parties concerned to take such action for their recovery as they may be advised to take.

8. Thus as a result of the discussion attempted above the revision succeeds and is allowed.