
(1986) 02 PAT CK 0007

In the Patna High Court

Case No : Criminal Miscellaneous No. 11792 of 1983

Kripal Chaudhary @ Ram Kripal Chaudhary

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 12-02-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 482

Citation : (1987) 35 BLJR 25

Hon'ble Judges : S.H.S. Abidi, J

Bench : Single Bench

Judgement

S.H.S. Abidi, J.—Petitioner Kripal Choudhary has filed this application u/s 482 of the Code of Criminal Procedure for quashing the order dated 3-12-1983 passed by the learned Sub-Divisional Magistrate, Arrah Sadar, District Bhojpur in Case No. 535/83 (Smt.) Vidyawati Mishra v. Kripal Chaudhary asking the parties to file show cause in a proceeding u/s 145 of the Code

2. The facts as given out are that the petitioner and Chhathu Choudhary were the two brothers and they were in joint possession over the ancestral culturable lands for which there was no partition by metes and bounds. Chhathu Choudhary transferred her half share in joint family property in favour of Smt. Vidyawati Mishra (opposite party No. 2) executing two registered gift deeds on 13-5-1981 and 10-2-1982. She came in possession of the gifted land and her name was recorded in register II and the rent receipt was granted on 9-7-1983. A petition was filed before the learned Sub-Divisional Magistrate incorporating therein that there was a bona fide dispute between the parties, whereupon the Sub-Divisional Magistrate called a report from the Police of Udwanagar Police Station and also directed the parties to maintain peace. On 12-7-1983 the police recommended for initiation of a proceeding u/s 144 of the Code. On the basis of the said police report 144 proceeding was started and the same was converted into 145 proceeding, as there was a bona fide dispute between the parties. Both parties, were restrained from going over the lands. On 19-7-1983 notices were served on

both parties. Kripal Choudhary petitioner filed a Criminal Revision being Criminal Rev. No. 205/1983 before the Learned Sessions Judge, Bhojpur, against the order dated 16-7-1982 initiating a proceeding, but the same was dismissed on 28-7-1983. Thereafter both the parties filed their show cause on 3-8-1983 the proceedings were dropped on the ground that no specific details of the land had been given.

3. Again on 8-11-1983 a fresh petition was filed by Chhathu Choudhary and Smt. Vidyawati Mishra (opposite parties 2 and 3) for starting a proceeding u/s 144 of the Code in respect of 10 acres of land of Khata No". 342 of Village Belapur Police Station Udwanthnagar on which a proceeding was started and both parties were asked to show cause by 28-11-1983. On 18-11-1983 an application was filed before the learned Sub-Divisional Magistrate for direction to the police to maintain peace, as there was imminent apprehension of breach of the peace for harvesting the crop. The court below on 24-11-1983 ordered for filing the show cause by 29th November, 1983, but the parties appeared on 28-11-1983 as already fixed and filed their show cause. On 29-11-1983 the first party i.e. opposite party Nos. 2 and 3 were heard on 29-11-1983 when they filed their affidavits, gift deeds and the original rent receipts of Khata Nos. 336 and 346. The parties were heard and on 3-12-1983 the proceedings were converted from 144 to 145 proceeding and both parties were asked to show cause against which order the second party-petitioner has filed this application u/s 482 of the Code of Criminal Procedure in this Court.

4. The petitioner has stated in the petition that he and Chhathu Choudhary were the two brothers and that Smt. Vidyawati Mishra (opposite party No. 2) claimed herself to be the only daughter of Chhathu Choudhary and he (petitioner) and Chhathu Choudhary are in joint possession of the ancestral property and there was no partition by metes and bounds and that even after registration of two gift deeds dated 15-5-1981 and 10-2-1982 the petitioner is in possession of the lands, and that earlier an application was filed on 9-7-1973 for starting a proceeding u/s 144 in which it was said that there was no partition by metes and bounds between the parties and that a legal notice was given to the petitioner for partition of joint family property by metes and bounds on behalf of the opposite party No. 2 and as such there was no separate identity of the landed properties claimed by opposite party Nos. 2 and 3.

5. "It was submitted that the Sub-Divisional Magistrate is not required to decide the question of the joint possession and the matter is out of the ambit of Section 144 of the Code. It was further submitted that earlier proceeding had been dropped on 13-8-1983 in case No. 543/83 and there is no fresh material available before the learned Magistrate in. the instant proceeding i.e. Case No. 535/83 for initiation of a proceeding u/s 145 of the Code. Hence it was submitted that the impugned order dated 3-12-1983 should be quashed.

6. On behalf of opposite party Nos. 2 and 3 an application for vacating the stay order was filed stating therein that the application u/s 482 of the Code is not

maintainable and the order of the court below dated 3-12-1983 is perfectly valid and legal and there was partition between the petitioner and opposite party No. 3 and the opposite party Nos. 2 and 3 were in possession of their defined share and are cultivating to the extent of separate share. Opposite party No. 3 has died. The name of opposite party No. 2 has been mutated by the Anchal Adhikari and rent receipts were granted in her name in respect of the lands in question and she is in separate possession, as has been mentioned in Schedule A appended to the petition dated 8-11-1983 on the basis of which the second proceeding was started. Further from the police report it was also apparent that there was apprehension of breach of the peace between the parties. It was also submitted that the earlier revision of the petitioner was dismissed and the earlier proceedings were dropped because the lands in dispute were not described and so earlier dropping of the proceeding will not be a bar to second proceeding, and as such the order of the court below dated 3-12-1983 converting 144 proceeding into 145 and directing the parties to show cause is perfectly valid and legal.

7. The learned Counsel for the petitioner raised the contention that in view of the fact that the properties are in joint possession a proceeding u/s 145 cannot be started, and as such the earlier proceedings had been dropped, two months back, there was no ground for maintaining second proceeding. learned Counsel for the petitioner relied on decisions of this Court as well as other High Courts in respect of his contention that Section 145 does not apply to a case where the parties are found in constructive possession.

8. In this case it appears that the petitioner and opposite party No. 3 being the brothers were entitled to one and half share each. Now opposite party No. 3 is dead. In his life-time he had executed two gift deeds in favour of Vidyawati Mishra. There is dispute between the parties whether Vidyawati is daughter of opposite party No. 3 or she is daughter of brother-in-law (Sala) of Chhathu, although there had been a mutation in her name and receipts had been issued in her favour and her name has been recorded in Register-II. Though the earlier proceedings were started u/s 144 of the Code being Case No. 343/83, but the same were dropped on 3-8-1983 as there was no specific details of the land and that a fresh application dated. 8-11-1983 had been filed being Case No. 535/83 in respect of 10 acres of Khata No. 342 and the parties had been ordered by the court on 3-12-1983 to show cause against which this application has been filed. The claim of the petitioner is that it is joint property and there is no partition; whereas on behalf of opposite party Nos. 2 and 3 it has been said that there had been partition to the extent of their share and the properties are in their possession. The petitioner is claiming joint possession whereas the opposite party Nos. 2 and 3 are saying that there has been partition and they are in possession of their separate share.

9. u/s 145, Cr.PC the Court has decided about the actual possession of the parties and has not to decide as to who is entitled to possession. If the Court comes to the conclusion that in a joint property the parties are in joint

possession, then u/s 145 no order has to be passed in favour of any of the parties or against the other. But if in a case where a party is claiming joint possession and the other is claiming exclusive possession to the exclusion of the other, then in that case there is a disputed question of possession and so proceedings u/s 145, Cr.PC are maintainable, as held in various decisions of the Courts, including the following decisions relied and referred to by the learned Counsel for the parties:

ILR 38 Cal 889 Guru Das Kundu Choudhry v. Kedar Nath Kundu Choudhry;

ILR 40 Cal 962 Basanta Kumari Dasi v. Mahesh Chandra Das;

AIR 1915 Mad 396 Mohd. Koolayaffa v. Abdul Khadi

Kesheo Prasad Singh Vs. Ram Baran Chaubey,

Syed Zafar Ahsan and Others Vs. Babu Jugeshwar Bux Roy and Another,

AIR 1941 Oud 515, Mohd. Beg v. Ehsan Beg;

AIR 1945 Oudh 62 Bishram v. Kamta Pd.;

AIR 1948 130 (Oudh)

AIR 1953 Pat Kapildeo Narain Singh v. Ramdhin Singh;

Abhoypada Banerjee Vs. Dhanesh and Others,

Mt. Sudamawati Kuer Vs. Ram Chandra Singh and Others,

Nahar Singh Vs. The State,

Santokh Singh Vs. Delhi Administration, , Khem Chand Vs. Balwant,

Khem Chand Vs. Balwant,

1974 BBCJ 170 S.K. Ibrahim v. S.K. Sahni.

10. In the instant case, the first party Vidyawati Mishra and her late father Chhathu Choudhary had been claiming exclusive possession over the specific area of the property in dispute, while petitioner Kripal Choudhary is claiming possession jointly with first party. Thus, there is a dispute of possession and in case of such a dispute, the jurisdiction of the court is not ousted for a proceeding u/s 145, Cr.PC

11. In the result, the application of the petitioner fails and the order of the court below is found to be correct. The case, as it appears to be an old one, is sent back to the court below for expeditious disposal in accordance with law.