

**(1988) 11 AHC CK 0007**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Application No. 8620 of 1981

Lalta Prasad and Others

APPELLANT

Vs

Chandan Deo and Others

RESPONDENT

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**Date of Decision :** 30-11-1988

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 482

**Citation :** (1989) 1 AWC 255

**Hon'ble Judges :** V.P. Mathur, J

**Bench :** Single Bench

**Advocate :** M.B. Misra, for the Appellant; A.G.A. and H.N. Shukla, for the Respondent

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## **Judgement**

V.P. Mathur, J.—The brief facts of the matter are that one Krishna Avtar died issueless leaving behind him about 24-25 bighas of land and trees etc. Two persons Lalta Prasad and Ganesh came forward with the claim that they were heirs and in possession of the properties of Krishna Avtar. A contest was raised by, Smt. Anandi and the present opposite parties Nos. 1 to 10 (out of them opposite party No. 6 Prabhu Datta died during the proceedings and his heirs Rajendra Prasad and Vijai Prasad have been brought on record). The police of police station Vindhyachal submitted a report that there was thus a dispute between Lalta Prasad and Ganesh on the one hand and Smt. Anandi and others on the other, with regard to the property of Krishna Avtar deceased and it was giving rise to an apprehension of breach of peace. The learned Sub-Divisional Magistrate before whom the police report went, felt satisfied and passed the preliminary order on 7-4-1970. Then he also passed an order of attachment on 4-5-1970 and taking on recourse to the provisions of Section 146 of the Code of Criminal Procedure as they existed on that date, he referred the matter for decision to the Civil Courts. The case came up before the Munsif who delivered the judgment holding that none of the parties to the proceedings was in possession of the property of Krishna Avtar and that it should continue to remain under attachment. It appears that the learned Munsif was also of the view that

the property should escheat to the State in the absence of any heir of the original owner. On the basis of this finding, the Sub Divisional Magistrate on 29-1-1975 directed that the property in dispute shall continue to be in attachment and should not be released in favour of any of the parties. The case was consigned.

2. It appears that the present Petitioners then took the matter to the Revenue Court through mutation proceedings but in those proceedings two of the parties to the original proceedings u/s 145 Code of Criminal Procedure namely Deota Prasad and Kamta Prasad were not arrayed as parties and the judgment was obtained from the Board of Revenue on 30-10-1978 that the names of Kedar Nath and Lalta Prasad be mutated in place of Krishna Avtar.

3. On the strength of that order, Kedar Nath and Lalta Prasad moved the Magistrate on 27-6-1978 with the allegations that they have been held to be the heirs of Krishna Avtar by a competent Court and their names have been mutated in revenue papers and as such the property under attachment u/s 145 Code of Criminal Procedure should be released in their favour. It appears that the learned Sub Divisional Magistrate on 19-3-1979 did not dispose of this petition squarely, but simply directed that the proceedings be dropped. Then a revision was filed and it was dismissed on 11-8-1979. After that a fresh application was moved on 26-10-1979 by the present Petitioners again praying for release of the property in their favour on the basis of the order that had been passed in their favour by the Board of Revenue. This petition was rejected by the Sub Divisional Magistrate on 22-9-80 and a revision filed against that order was also dismissed by the Sessions Judge of Mirzapur on 11-9-1981. It is against this order that the present petition u/s 482 Code of Criminal Procedure for quashing it has been moved.

4. It is undoubted and undisputed that two of the original parties of the proceedings u/s 145 Code of Criminal Procedure namely Deota Prasad and Kamta Prasad were not arrayed as parties during proceedings before the Revenue Court and, therefore, the order in mutation obtained by the present applicants will have no force against those two persons namely Deota Prasad and Kamta Prasad. The matter is pending since 1970 and almost 18 years are going to expire, it would have been easier for the applicants to have moved a fresh petition for mutation of their names, this time again Deota Prasad and Kamta Prasad ought to have been arrayed by impleading them as parties in the mutation proceedings. Any way so long as there is no legal order against Deota Prasad and Kamta Prasad, on the basis of mutation order against the rest, the proceedings u/s 145 Code of Criminal Procedure can not be directed to be decided in favour of the applicants and the property cannot be released. The order passed by the learned Magistrate and confirmed by the learned Sessions Judge therefore appears to be justified and the petition u/s 482 Code of Criminal Procedure is hereby dismissed as misconceived.