
(2008) 01 UK CK 0012

In the Uttarakhand High Court

Case No : Criminal Revision No. 97 of 2002

Mahant Ashok Prapanna Sharma

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 145(4), 145(5), 146

Citation : (2008) NCC 604 : (2008) 8 UC 1217

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Advocate : L.K. Tiwari, for the Appellant; M.A. Khan, Brief Holder for State for Respondent No. 1 and J.P. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Dharam Veer, J.—This criminal revision, preferred by the revisionist u/s 397/401 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Code of Criminal Procedure), is directed against the judgment and order dated 09-08-2002 passed by Sessions Judge, Tehri Garhwal.

2. The case, in brief, is that the revisionist-Ashok Prapanna Sharma moved an application before the Executive Magistrate on 11-12-1989 with the prayer that he was in possession over the land in dispute and was also the owner of the said land and the Respondent No. 2-Mastan Singh was trying to take the possession over the said land in dispute forcibly. It was also stated that there were chances of breach of peace and he prayed for initiation of the proceedings u/s 145 Code of Criminal Procedure and also prayed for the attachment of the said property u/s 146 Code of Criminal Procedure. On the said application, the learned Executive Magistrate on the same day i.e. on 11-12-1989 directed the S.O., Muni-ki-Reti to submit the report after the investigation. The S.O. Muni-ki-Reti on the same day i.e. 11-12-1989 submitted the report, on the basis of which the learned Executive Magistrate passed a preliminary order on 12-12-1989 u/s 145(1) Code of Criminal Procedure and u/s 146 Code of Criminal Procedure for the attachment

of property measuring about 1200 sq. yards, in the north of which the Floor Mill of Natha Singh and Indra Singh was there, in the South of which there was a drain, in the east there was a road and in the west, there was a drain and there were seven rooms constructed over the said land. The Executive Magistrate also ordered to S.O., Muni-ki-Reti to appoint some person as a Receiver. In compliance of that order dated 12-12-1989, S.O., Muni-ki-Reti attached the above-said property on 13-12-1989 and Satya Prasad was appointed as Receiver and the property was given in the Supurdgi of Satya Prasad. Thereafter, both the parties filed their respective written statements against the order dated 12-12-1989 passed u/s 145(1) Code of Criminal Procedure.

3. Respondent No. 2 Mastan Singh filed his written statement on 24-3-1990 and stated that he is in possession over the land in dispute since last 25 years and seven rooms were constructed by him over the land in dispute and out of those seven rooms, five rooms were constructed by him eighteen years before. He further stated that in the notification dated 23-3-1978, his possession was shown in the plot Nos. 18 to 41 and 51. He further stated that in two rooms, Jay Shankar Prasad Maithani was his tenant and he was paying rent of Rs. 200/- per month since 1985. He further stated that the revisionist-Ashok Prapanna Sharma also tried to take possession over the land in dispute in December, 1989 but he (Mastan Singh Panwar) stopped the revisionist in doing so and lodged the FIR in the police station. It was further averted that till the date of attachment of the property, he was in continuous possession over the said land from last 25 years.

4. The present revisionist-Ashok Prapanna Sharma also filed his written statement wherein he stated that the said property belongs to Bharat Mandir, Rishikesh and he is the Mahant of that temple. He further stated that the construction was done by him and the said property was in his physical possession on 11-12-1989. He further stated that on 12-12-1989 and before two months of 12-12-1989, he was also in possession over the said land in dispute and Bharat Mandir, Rishikesh is the owner and was in possession over the said land in dispute.

5. In oral evidence, Respondent No. 2-Mastan Singh got examined P.W.1 Jugal Kishore who has stated that Mastan Singh was in possession over the land in dispute and he has also stated that he was a contractor and he had constructed two shops over the said land in dispute and the shops were got constructed by Mastan Singh and the construction was completed in the month of September, 1989.

6. P.W.2 is Puran Singh Aswal who has stated that Mastan Singh was in possession over the land in dispute and he was residing 60 feet away from the land in dispute where he has a shop and his own house.

7. P.W.3 is Rajendra Prasad Dobhal who has stated that in the property in dispute, 6-7 rooms were got constructed by Mastan Singh and he had seen Mastan Singh while in possession over the land in dispute from 1968 to 1989.

After that the property was attached and he also proved the possession of Mastan Singh over the land in dispute.

8. P.W.4 is Nain Singh Negi who was a Tax Inspector in Nagar Panchayat, Muni-ki-Reti. He has also stated that he had seen the land in dispute. The house tax of the above said property was fixed in the name of Mastan Singh and Mastan Singh was paying the tax. He has proved the certificate of the house tax.

9. P.W.5 is Shiv Kumar, who is the Survey Lekhpal, has stated that the land in dispute comes in his area and in Khatauni 1401 to 1406 Fasli in Khata No. 111, Khasra Nos. 18 to 41 and 51 area about 600 sq. meters, the name of Mastan Singh was recorded as a Bhumidhar, the extract of Khatauni was issued by him, i.e. Ex.Ka-1. He had taken the original Khatauni with him and proved the extract as a genuine document. He further stated that the above-said numbers are the numbers of the land in dispute.

10. P.W.6 is Mastan Singh and he had given his own statement on oath wherein he stated that he is the owner and is in possession over the land in dispute and he has constructed seven rooms over the said land and also one ramp for washing the vehicles was constructed by him. These rooms were got constructed by him before 15-20 years. The boundary wall was also there over the land in dispute.

11. The revisionist-Ashok Prapanna Sharma was also examined as D.W.1 and he has stated that Plot Nos. 18 to 41 and 51 was the land of temple and the land in dispute belongs to a temple and for that land in dispute, he has filed a suit against Balraj for eviction in the Court of Munsif, Tehri. The suit was decreed on 31-10-1987 and he also filed the certified copy of the same, i.e. Ex.Kha-2. After that he filed the execution of the order and in the execution, he received the possession of the above-said land on 15-4-1991 and Bhola Singh Gusain, who was his employee, had received the possession on his behalf of the land in dispute. He also filed the document of receiving the possession as Ex.Kha-4. He also filed the report of Ameen which he has submitted in the court, i.e. Ex.Kha-5. He further submitted that the land in dispute was attached from his possession.

12. In documentary evidence, the Respondent No. 2-Mastan Singh filed a Non Encumbrance Certificate issued by Sub-Registrar, Deoprayag (Tehri Garhwal) in which it was stated that the property in dispute was free from all encumbrances and the area of that property was mentioned as 520 sq. yards. He also filed a copy of the Gazette Notification dated 23-3-1978 for proving his ownership over the land in dispute. He also filed an agreement of tenancy between him and Jay Shankar Maithani in which it was stated that Jay Shankar Maithani had taken a shop on rent from Mastan Singh in the above said property. He also filed the house tax certificate dated 25-9-1990 issued by Secretary, Notified Area Committee, Muni-ki-Reti, Tehri Garhwal.

13. The learned SDM, Narendranagar after appreciating the material available on record vide his judgment and order dated 29-1-2000, quashed the attachment

order as well as order of Supurdgi dated 12-12-1989 and directed that the possession will remain with the present revisionist-Ashok Prapanna Sharma until any other order is not passed by a competent court. Against the said judgment and order-dated 29-1-2000, the present Respondent No. 2-Mastan Singh preferred a revision before Sessions Judge, Tehri Garhwal. The learned Sessions Judge, Tehri Garhwal vide his judgment and order dated 9-8-2002 allowed the revision preferred by Respondent No. 2-Mastan Singh and set aside the order dated 29-1-2000 passed by SDM, Narendra Nagar. The SDM, Narendra Nagar was also directed to deliver possession of the disputed property to Mastan Singh-Respondent No. 2 within a month. Feeling aggrieved, the present revision has been preferred before this Court.

14. The present revision has been preferred on the grounds that the learned Sessions Judge has wrongly held that the present revisionist was not in possession on the date of preliminary order or prior to that order. Another ground is that the learned Sessions Judge has wrongly held that the revisionist forcibly obtained possession from Supurdgar while the possession was handed over to him by Amin and he had received the possession on the basis of order passed by Munsif, Tehri. On the basis of the above said grounds, the revisionist has preferred the present revision against the judgment and order dated 9-8-2002 passed by Sessions Judge, Tehri Garhwal.

15. The Respondent No. 2 has filed a counter affidavit in which he has stated that on the application of the revisionist dated 11-12-1989, the proceedings u/s 145 Code of Criminal Procedure were initiated. He has further stated that in the application dated 11-12-1989, the revisionist has mentioned his property as an open plot. He has further stated that the revisionist has said to have taken the possession due to the decree passed by Civil Court in Original Suit No. 48 of 1981, Ashok Prapanna v. Balraj Kumar in which the Respondent No. 2-Mastan Singh was not a party and as such the said decree is not binding on Respondent No. 2-Mastan Singh. When this fact came into the knowledge of Supurdgar that revisionist has unauthorizedly broken the locks of the property, then he reported this matter to Executive Magistrate, Narendra Nagar and on the complaint of Satya Prasad, Receiver, the Executive Magistrate directed the Naib Tehsildar, Narendra Nagar and Inspector, PS. Muni-ki-Reti to enquire the matter and submit the reports. The said order was passed on 23-4-1991 and those orders have been annexed as Annexures CA3 and CA4 to the counter affidavit respectively. After receiving the report from the above-mentioned officials, the Executive Magistrate issued notice on 15-5-1991 to the revisionist, the copy of said notice has been annexed as CA5 to the counter affidavit. Thereafter, the revisionist moved an application Under Sections 145(5) and 146 Code of Criminal Procedure with the allegations that he had received the possession as per the order of Munsif Magistrate in the Original Suit No. 48 of 1981 and as such he prayed that the proceedings may be dropped. The said application was rejected by the order of Executive Magistrate on 14-1-1993, that order has been annexed as CA6 to the counter affidavit. Another application which was moved by the revisionist was

also rejected by the Executive Magistrate by his order dated 29-1-1993, that order has been annexed as CA7 to the counter affidavit. It has further been averted that against the orders dated 14-1-1993 and 29-1-1993, the revisionist filed a Criminal Revision No. 617 of 1993, before High Court of Judicature at Allahabad and the High Court has dismissed the revision preferred by the present revisionist vide order dated 5-5-1998, that order has been annexed as CA8 to the counter affidavit. It has further been averted that about 700 sq. yards of the land was purchased by the Respondent No. 2 vide registered sale deed dated 23-9-1991 and that sale deed has been annexed as CA9 to the counter affidavit. In the sale deed, it was averted that purchaser/Respondent No. 2 was in possession over the land in dispute from the last 20 years.

16. Against the counter affidavit filed by Respondent No. 2, the revisionist also filed a rejoinder affidavit and has denied the contents made in the counter affidavit. It has also been stated that the revisionist received the possession on 15-4-1991 as per the order of Munsif, Tehri.

17. I have heard Sri L.K. Tewari, learned Counsel for the revisionist and Sri M.A. Khan, learned brief holder for the State/Respondent No. 1 as well as Sri J.P. Joshi, learned Counsel for Respondent No. 2 and perused the entire material available on record.

18. Before further discussion, it is pertinent to mention Section 145(4) of Code of Criminal Procedure, which is reproduced as under:

145(4)-The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and if possible, decide whether any and which of the parties was, at the date of the order made by him under Sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under Sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under Sub-section (1).

19. As per the evidence discussed above, it is clear that the revisionist-Ashok Prapanna Sharma moved an application before the Executive Magistrate on 11-12-1989. On the said application, the learned Executive Magistrate on the same day i.e. on 11-12-1989 directed the S.O., Muni-ki-Reti to submit the report after the investigation. The S.O., Muni-ki-Reti submitted his report on the same day i.e. on 11-12-1989 and on the basis of that report, the learned Executive Magistrate passed a preliminary order on 12-12-1989 u/s 145(1) Code of Criminal Procedure and u/s 146 Code of Criminal Procedure for the attachment of

property and also directed S.O., Muni-ke-Reti to appoint some person as a Receiver. In compliance of that order-dated 12-12-1989, S.O., Muni-ki-Reti attached the above-said property on 13-12-1989 and Satya Prasad was appointed as Receiver and the property was given in the Supurdgi of Satya Prasad on 13-12-1989 and both the parties were directed to submit their written statements as mentioned in the said order passed u/s 145(1) Code of Criminal Procedure Thereafter, both the parties filed their written statements and adduced their oral evidences and also produced their respective documentary evidences before the trial court i.e. Executive Magistrate, Narendra Nagar. In the oral evidence, the present revisionist was examined as D.W.1 and he also filed the copy of Original Suit No. 48 of 1981, Ashok Prapanna Sharma v. Balraj Kumar. Respondent No. 2-Mastan Singh was examined as P.W.6 and in support of his case, he produced P. W. 1 Jugal Kishor, P.W.2 Puran Singh Aswal, P.W.3 Rajendra Prasad Dobhal, P.W.4 Nain Singh Negi and P.W.5 Shiv Kumar. In documentary evidence, he filed Non Encumbrance Certificate issued by Sub-Registrar, Deoprayag (Tehri Garhwal), copy of the Gazette Notification dated 23-3-1978, agreement of tenancy between him and Jay Shankar Maithani and a house tax certificate dated 25-9-1990 issued by Secretary, Notified Area Committee, Muni-ki-Reti, Tehri Garhwal. Along with the counter affidavit, the Respondent No. 2 also filed a sale deed dated 23-9-1991 by which he has purchased about 700 sq. yards of land and it was also stated that the possession was handed over to him 20 years back. After considering all the facts and circumstances, the learned SDM, Narendra Nagar vide his judgment and order dated 29-1-2000 has held that the present revisionist had received the possession in the year 1991 in view of the decree passed in O.S. No. 48 of 1981, Ashok Prapanna Sharma v. Balraj Kumar and directed the possession will remain with him. Against that order, Mastan Singh-Respondent No. 2 preferred a revision before Sessions Judge, Tehri Garhwal. The Sessions Judge, Tehri Garhwal vide his judgment and order dated 9-8-2002 set aside the judgment and order dated 29-1-2000 passed by SDM, Narendra Nagar and directed the SDM, Narendra Nagar to deliver the possession of the disputed property within a month to Respondent No. 2 and on the basis of that judgment and order, the possession was transferred to Respondent No. 2-Mastan Singh on 19-8-2002.

20. During the pendency of the case before SDM, Narendra Nagar, the present revisionist moved an application Under Sections 145(5) and 146 Code of Criminal Procedure for dropping of the proceedings on the ground that he had received the possession on the basis of the suit filed against Balraj in which the Respondent No. 2-Mastan Singh was not a party. The learned Executive Magistrate has rejected the said application on 14-1-1993. The revisionist again moved an application which too was rejected by Executive Magistrate, Narendra Nagar on 29-1-1993. Against the said order, the present revisionist preferred a criminal revision before High Court of Judicature at Allahabad. The said revision was also dismissed on 5-5-1998.

21. Learned Counsel for the revisionist submitted that the present revisionist has

received the possession on 15-4-1991 in Original Suit No. 48 of 1981, Ashok Prapanna Sharma v. Balraj Kumar. The suit of eviction was filed by Ashok Prapanna Sharma against Balraj, hence the Respondent No. 2 is not entitled for possession. He further submitted that due to this reason, the order passed by learned Sessions Judge is not as per law. On the other hand, learned Counsel for Respondent No. 2 argued that the revisionist himself moved an application on 11-12-1989 with the averments that he is in possession over the land in dispute but he has not mentioned whether any room was constructed over the land in dispute or not, however actually seven rooms were constructed over the land in dispute which is an admitted fact between both of the parties as well as in the police report. He further submitted that Original Suit No. 48 of 1981 was filed by the present revisionist against Balraj Kumar and in that suit, Respondent No. 2-Mastan Singh was not a party, hence the decision in that suit is not binding on him. He further submitted that with the same prayer, the revisionist moved an application before Executive Magistrate for dropping of the proceedings but the learned Executive Magistrate has rejected his applications twice i.e. on 14-1-1993 and 29-1-1993 and against the said order, the revisionist preferred a criminal revision No. 617 of 1993 before High Court of Judicature at Allahabad and he has relied on the under noted para of the said judgment:

Ordinarily when the rights are decided by a Civil Court the proceedings u/s 145 Code of Criminal Procedure cannot go on. However, in the instant case the decree is against Balraj Kumar and the present dispute is between Ashok Prapanna Sharma on the one hand and Mastan Singh Panwar on the other hand. It is rightly argued by the learned Counsel for the opposite party No. 2 that Mastan Singh Panwar is not bound by any decree passed against Balraj Kumar.

22. On the basis of the above said evidence and in view of the judgment and order dated 5-5-1998 passed by High Court of Judicature at Allahabad, learned Counsel for Respondent No. 2 argued that the Allahabad High Court has also held in its judgment and order dated 5-5-1998 that Mastan Singh Panwar is not bound by any decree passed against Balraj Kumar. He further submitted that in Original Suit No. 48 of 1981, since Mastan Singh-Respondent No. 2 was not a party, hence decree passed in O.S. No. 48 of 1981, Ashok Prapanna Sharma v. Balraj, is not binding on him. He further submitted that since the said judgment and order dated 5-5-1998 passed by Allahabad High Court has not been challenged by the revisionist before the Hon"ble Supreme Court, hence that order has now become final.

23. Learned Counsel for Respondent No. 2 further argued that Original Suit No. 48 of 1981, Ashok Prapanna v. Balraj Kumar was decided by Munsif, Tehri on 31-10-1987 and this fact was not mentioned in the application moved by the revisionist before the Executive Magistrate on 11-12-1989.

24. From the above-said discussion, it is clear that in the Original Suit No. 48 of 1981, Respondent No. 2-Mastan Singh was not a party, hence the decree passed in the above-said case is not binding against the Respondent No. 2-Mastan Singh

as has been held by the High Court of Judicature at Allahabad in its judgment and order dated 5-5-1998. In the present case, the Executive Magistrate had to decide the case as per the provisions of Section 145(4) Code of Criminal Procedure. As per Section 145(4) Code of Criminal Procedure, the Magistrate has to decide that which of the party was in possession on the date of the preliminary order passed u/s 145(1) Code of Criminal Procedure after recording the evidence of both the parties. Sri J.P. Joshi, learned Counsel for Respondent No. 2 argued that learned Sessions Judge has decided the case on the basis of merits and the evidence adduced by both the parties. From the evidence discussed above, it is proved by the oral evidence as well as from the documentary evidence that Mastan Singh-Respondent No. 2 was in possession on the date of preliminary order passed u/s 145(1) Code of Criminal Procedure dated 12-12-1989 and prior to two months of that date. It is also clear from the statement of P.W.6 Mastan Singh and also from the evidence of P.W.1 Jugal Kishore, P.W.2 Puran Singh Aswal and P.W.3 Rajendra Prasad Dobhal that Respondent No. 2-Mastan Singh was in possession over the land in dispute on the date of preliminary order i.e. 12-12-1989 and prior to two months of said order. It is also proved that in 500 sq. yards of land, Respondent No. 2-Mastan Singh was in possession which is also proved by the Gazette Notification dated 23-3-1978 and 700 sq. yards of the land he has purchased by a sale deed in which it was mentioned that Mastan Singh-Respondent No. 2 was in possession over the land in dispute since 20 years back and the Municipal Board's certificate also shows that Respondent No. 2 was paying the house tax as he had constructed the rooms over the land in dispute and also the non-encumbrance certificate about the said property which was issued to him on 2-8-1985 by Sub-Registrar, Deoprayag (Tehri Garhwal). These oral evidence as well as documentary evidence prove that Respondent No. 2-Mastan Singh was in possession over the land in dispute on 12-12-1989 and prior to two months of that date. The learned Executive Magistrate rejected the applications moved by the revisionist for dropping of the proceedings on 14-1-1993 and 29-1-1993 twice. The revisionist filed a revision against the above-said order and the criminal revision was dismissed by the High Court of Judicature at Allahabad on 5-5-1998 and it was held that the said decree is not binding upon Mastan Singh Respondent No. 2. The revisionist himself moved an application on 11-12-1989 in which he stated about the land in dispute as an open land and he had not mentioned about the construction of the rooms and he had also not mentioned in the above-said application dated 11-12-1989 that Original Suit No. 48 of 1981 for eviction was decreed against Balraj. However, in the oral evidence, he himself was examined as D.W.1 and no other witness was examined in support of his evidence and that is why he could not prove his possession over the land in dispute on the date of preliminary order dated 12-12-1989 or before two months of that order passed u/s 145(1) Code of Criminal Procedure. Hence, it is proved that the present revisionist-Ashok Prapanna Sharmawas not in possession over the land in dispute on 12-12-1989 or prior to two months to that date. It is further proved from the evidence discussed above that Respondent No. 2-Mastan

Singh was in possession over the land in dispute on 12-12-1989 or prior to two months to that date.

25. On the basis of the above said discussion, I do not find any illegality, incorrectness or impropriety in the above-said judgment and order dated 9-8-2002 passed by Sessions Judge, Tehri Garhwal. Hence, the criminal revision is devoid of merit and is hereby dismissed. Interim order dated 19-10-2002 stands vacated.