

(1942) 07 PAT CK 0009
In the Patna High Court

Nandkishore Prasad Singh

APPELLANT

Vs

Radhakishun

RESPONDENT

Date of Decision : 13-07-1942

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144, 145

Citation : AIR 1943 Patna 124

Hon'ble Judges : Manohar Lall, J; Chatterji, J

Bench : Full Bench

Judgement

Chatterji, J.—This is an application by the first party for revision of an interlocutory order passed in a proceeding u/s 145, Criminal P.C., which is still pending. The subject-matter of the dispute is 760 bighas of land in village Amousi, police-station Khagaria, district Monghyr. On receipt of a police report, which disclosed that there was a serious apprehension of breach of the peace, the Sub divisional Officer, Monghyr Sadar, drew up on 28th October 1941 a proceeding u/s 144, Criminal P.C., against both parties concerned asking them not to go upon the disputed land. They were called upon to show cause, if any, on 12th November 1941.

2. On that date both parties being absent, the case was adjourned to 24th November. On this date the second party filed a petition showing cause, but the first party was absent. The case was ordered to be put up on 14th December. The parties, however, were ultimately heard on 19th December 1941 and on that date the learned Magistrate passed the following order:

Heard parties at length. It appears that both parties have documentary evidence in support of title and possession and this matter should be properly thrashed in a proceeding u/s 145, Criminal P.C., and not in a proceeding u/s 144, Criminal P.C. About 700 bighas of lands are involved and there has been compromises at different stages.

I attach all the crop u/s 145(4), Criminal P.C., and direct the S.I. to sell the crop

of the land to the highest bidder and deposit the sale proceed into the Treasury. Both parties should file their w/s by 2nd January 1942. The land will be settled to the highest bidder if need be for a period of one year.

3. In pursuance of this order the khesari crop which was then standing on the land was sold and it was purchased by the first party. On 2nd January 1942 the following order was passed:

I find that proper identification of the lands have not been given. Will the S.I. give full details of the land in order to draw up the proceeding properly?

After the full details of the disputed land were obtained the proceeding u/s 145, Criminal P.C., was formally drawn up and signed on 14th February 1942. On 25th February 1942 the following order was passed:

Second party files petition for time. First party is absent. S.R. of proceeding not received. Put up on 14th March 1942. Takid for S.R. Let both party bid for the settlement of the land for one year.

4. On 14th March 1942 the Magistrate passed two orders of which the later with which we are concerned is as follows:

Both parties are present and there is a third party too. I resume the bid. Sold 693 bighas of land to the highest bidder for Rs. 5000 which is sufficient for crop of one year. Earnest money of Rs. 1250 tendered for deposit.

5. It is against this order that this application in revision is directed. The highest bidder was one Kapileshwari Prasad. The first point taken on behalf of the petitioner is that the order of attachment passed on 19th December 1941 was without jurisdiction in as much as the proceeding u/s 145 was not drawn up until 14th February 1942. But the order of 19th December 1941 shows that it was really an order passed u/s 145(1). The proceeding could not be formally drawn up and signed until 14th February 1942, because there was some delay in obtaining the necessary details regarding the identification of the land. The petitioner himself purchased the standing Khesari crop in pursuance of the order dated 19th December 1941. At best there was an irregularity in the procedure adopted by the Magistrate, and the petitioner, having himself taken the benefit under the order, cannot be heard to complain of it. The next and the main point urged on behalf of the petitioner is that the learned Magistrate had no jurisdiction to settle the land. Though the order of attachment dated 19th December 1941 says "I attach all the crop u/s 145(4), Criminal P.C.," it has been accepted by both the parties to mean that what was attached was the land with the standing crop. The standing crop was khesari which, as I have already stated, was sold to the petitioner. The real objection taken on his behalf before us is that the Magistrate, though he could attach the land u/s 145(4), had no power to settle the land. The attachment was made under the last proviso to Section 145(4) which runs as follows:

Provided also, that if the Magistrate considers the ease one of emergency, he

may at any time attach the subject of dispute, pending his decision under this section.

6. It is not disputed that the effect of an attachment under this proviso is to bring the property under the control of the Magistrate. According to Stroud's Judicial Dictionary "'Attach," is a taking or apprehending by Command or Writ." By attachment the land comes into the custody or control of the Magistrate. The parties have no longer any control or possession over the land. Otherwise the above quoted proviso to Section 145(4) would be meaningless. That proviso authorises an attachment only in case of emergency, that is to say, in case where the apprehension of breach of the peace is so imminent that without an immediate attachment breach of the peace cannot be averted. Such object can only be gained by preventing both the parties from going upon the land, and this is the effect of the attachment. If after attachment the parties are still left free to go upon the land, the very object of the attachment will be defeated. If by the attachment the land comes under the control or custody of the Magistrate, he may take such steps as he thinks fit for its proper custody and management. Obviously he cannot be expected himself to manage the property. He must, therefore, put somebody in charge of the management. In this particular case the land measures about 700 bighas and the proceeding may occupy some months before it can be finally disposed of. In the meantime is the Magistrate to keep the land fallow? It is to the interest of both parties concerned that the Magistrate should make some arrangement for the cultivation of the land during the pendency of the proceeding. The Magistrate, in my opinion, adopted the most prudent course by settling the land with the highest bidder. The highest bid was Rs. 5000 which the Magistrate considered to be sufficient for the crop of one year.

7. In my opinion it would be sheer perversion of justice if we were to hold that the settlement made was beyond the competence of the Magistrate. The view I take in no way militates against Sub-section (8) of Section 145, Criminal P.C., which runs as follows:

If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

8. This provision is quite independent of the above quoted proviso to Sub-section (4). Sub-section (8) is a special provision for cases where there is crop or other produce which is subject to speedy and natural decay. There may be cases in which there is no attachment under the proviso to Sub-section (4) and yet some order of the Magistrate is necessary if there is any crop or other produce of the land which is subject to speedy and natural decay. Sub-section (8) is primarily intended to provide for such cases. If the land with the crop is attached, the

Magistrate has full power to deal with the crop apart from the provisions of Sub-section (8).

9. On behalf of the petitioner reliance is placed on *Mewa Lal and Others Vs. Emperor*, and *Emperor v. Diwan Chand* AIR 1929 Lah. 223. In both these cases it was held that though u/s 145(4) a Magistrate has in cases of emergency the power to attach the subject of dispute, he has no power under that sub-section to appoint a receiver of the attached property. It was pointed out that the power to appoint a receiver could be exercised only under the provisions of Section 146(2) of the Code. On the analogy of these cases, it is argued that if the Magistrate has no power to appoint a receiver u/s 145(4), he has no power to settle the land either. But the appointment of a receiver who has got certain powers is quite different from settling the land. Section 146(2) expressly gives power to the Magistrate to appoint a receiver who shall have all the powers of a receiver appointed under the Code of Civil Procedure. Section 145(4) contains no such provision and the view may well be maintained that it gives no power to appoint a receiver. But this is not the point for consideration before us. Therefore the above cases are of no assistance to the petitioner. In the *Patna* case, however, *Mullick J.*, while dealing with the effect of an attachment u/s 145(4), *Criminal P.C.*, observed:

The order of attachment which the law empowers him to make has no greater force than any civil Court attachment, the effect of which is generally to restrain alienations.

10. But *Jwala Prasad J.* who gave a separate judgment, agreeing to the order proposed by *Mullick J.*, said:

As said by my learned brother, an attachment u/s 145 may have the same effect as an attachment under the Civil Procedure Code. It may possibly amount to something more than that, that is to say, after attachment the Magistrate may take steps for the proper care and custody of the property and prevent the removal of the property by any of the rival claimants or strangers.

11. With all respect I must say that the observation of *Mullick J.*, which was a mere obiter does not seem to be correct. The purpose of a civil Court attachment is quite different from that of an attachment u/s 145(4), *Criminal P.C.* Attachment of immovable property under the CPC is a preliminary step to be taken to make the property available for sale for satisfaction of the decree. The purpose of the attachment is to prohibit the judgment-debtor from transferring or charging the property in any way. Such purpose is wholly foreign to the scope of a proceeding u/s 145, *Criminal P.C.* The Magistrate acting u/s 145 has nothing to do with the title to the property and is concerned with maintaining actual possession with a view to prevent breach of peace. The observation of *Jwala Prasad J.* rather seems to be correct. In *Gopala Aiyar v. Krishnaswamy Iyer* AIR 1920 Mad. 209 *Burn J.*, with whom *Sadasiva Aiyar J.* agreed, said:

When an attachment is made u/s 146, the taking and keeping of possession is

contemplated. I see no reason to suppose that attachment u/s 145 has any other meaning. One object of the provision appears to be to keep effective control of the subject in dispute so as to prevent the contesting parties from creating a breach of the peace in their attempts to obtain physical possession. A mere restraint on alienation would generally be of no use in preventing a breach of the peace, and this is the object with which Section 145 is enacted. In order to keep possession a Magistrate must ordinarily act through some agent appointed by him in this behalf.

12. This view of Burn J. was followed by Bhide J. in *Prem Kuar v. Banarsi Das* AIR 1933 Lah. 409. In *Maung San U v. Maung Lu Gale* A. I. R. 1938 Ran. 88 Mackney J. sitting alone, said:

The word "attach" merely means to bring under the control of the Court, and the Magistrate is entitled to effect that object in any way which is within his power. Certainly, the appointment of a receiver with the powers of a receiver under the CPC is not one of those ways, because unless that power is expressly given, a Magistrate cannot exercise it.

He further said:

Whilst I think it advisable not to employ the term "receiver" owing to the possibilities of misunderstanding that may arise, yet I think that it is clear that if the Magistrate's attachment is to be effected he must put some person into possession of the property, who will have authority to maintain his possession.

13. In my opinion this is the correct view. In *Srinivasa Pillay v. Sathayappa Pillay* Cri. L. J. 295 Sankaran Nair J. said:

The receiver appointed under that Section 146 has got the power of a receiver appointed under the Code of Civil Procedure. He is invested by law with powers which he can exercise himself. But the receiver appointed under this Section 145 may not have such powers. He will only be an agent or servant of the Magistrate acting under his order. It is an administrative order passed for the management of property which he has attached. The right to attach carries with it the right to take the necessary steps for its custody and management.

14. The view expressed here that a receiver can be appointed u/s 145, being in conflict with the aforesaid Division Bench decision of this Court, *Mewa Lal and Others Vs. Emperor*, , may for the present purpose be put aside. But I have no doubt that Sankaran Nair J. is right when he says that "the right to attach carries with it the right to take the necessary steps for its custody and management." In *Faizur Rahman v. Sheikh Ladley* 42 C.W.N. 351 decided by Mukherjea and Biswas JJ. the following observation of Biswas J. is pertinent:

Strictly speaking, it is a matter which is arguable whether or not a "receiver" can be appointed in any proceeding under Chap. 12 except u/s 146. It seems to me, however, that even though a receiver may not be appointed consequent on an attachment made under the last proviso to Sub-section (4) of Section 145, a

Magistrate is competent to make suitable arrangements for the custody of the property attached.

15. These decisions clearly establish that a Magistrate, attaching the subject of dispute u/s 145(4), Criminal P.C., is competent to make suitable arrangements for the custody of the attached property. In the present case the Magistrate in the presence of both parties settled the attached land with the highest bidder for Rs. 5000 for one year. It cannot be doubted that this is a suitable arrangement. It is suggested that the highest bidder is a creature of the second party and therefore the effect of the settlement is really to put the second party into possession of the disputed land. But the highest bidder Kapileshwari Prasad, who was impleaded in the proceeding in this Court, has filed an affidavit stating that he is neither a servant nor a creature of the second party. On the materials before us, it is difficult to hold that Kapileshwari Prasad is really a creature or servant of the second party. But assuming that he is, the settlement cannot be said to be improper. Both parties were given the option to bid, and if at open auction one party offered the highest bid, the other party cannot have any grievance. The highest bidder tendered one-fourth of the amount on the very date of the auction, that is, 14th March 1942 and later he deposited the remaining three-fourths. After having paid the entire money he has already begun cultivation operations upon the land and it will not be just and proper to deprive him of the land at this stage.

16. During the course of hearing of this case before us it was suggested that after disposal of the proceeding u/s 145 the highest bidder might create difficulty by refusing to vacate the land. But after the termination of the proceeding the Magistrate will no doubt see that possession is handed over to the successful party. However, to obviate the difficulty we impleaded the highest bidder in this proceeding. He has entered appearance through Mr. K.N. Varma, Advocate. It should be made clear that the highest bidder Kapileshwari Prasad will make over possession of the land to the successful party after the proceeding is disposed of, even though it be within the period of one year from the date of the settlement, subject of course to the condition that he will be given a reasonable time to remove the crop that may be standing at the time of disposal of the proceeding.

17. In the result I would dismiss the application.

Manohar Lall, J.

I agree