

(1960) 03 PAT CK 0002
In the Patna High Court
Case No : Criminal Revision No. 995 of 1959

Narain Ganjhu

APPELLANT

Vs

Mt. Pancho Gaunjhin and Others

RESPONDENT

Date of Decision : 04-03-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 146, 146(1A)

Citation : AIR 1960 Patna 519 : (1960) CriLJ 1487

Hon'ble Judges : Kanhaiya Singh, J

Bench : Single Bench

Advocate : Sunil Kumar Chaudhuri, for the Appellant; R.P. Katriar, for Opposite Party 1, for the Respondent

Final Decision : Allowed

Judgement

Kanhaiya Singh, J.—This application in revision arises out of a proceeding u/s 145 of the Code of Criminal Procedure. This proceeding was started at the instance of Mt. Pancho Gaunjhin, opposite first party. Notices were issued to the parties concerned in the dispute as provided in Section 145 of the Code, and both parties appeared, filed written statements, affidavits of evidence and documents in support of their respective claims. By his order dated 18-2-1958, the Sub-divisional Magistrate attached the properties in dispute u/s 146(1) of the Code of Criminal procedure, and forwarded the record of the proceedings to the Civil Court having jurisdiction to decide the question whether any and which of the parties was in possession of the subject of the dispute. His order is in the following terms :

"There is no sufficient or reliable evidence before me to decide as to which party was in actual physical possession of the lands at the time this proceeding was started, I am, therefore, unable to decide the issue of possession over the disputed lands. The lands are, therefore, attached u/s 146 (1) Cr. P. C. and the case is referred to the Civil Court to decide the question of possession."

The records were accordingly placed before the Munsiff, Ranchi but the parties did not appear before him on the date fixed. The learned Munsif gave them several adjournments but of no avail. The parties failed to appear before the learned Munsiff. In these circumstances, the learned Munsif returned the records to the Sub-divisional Magistrate on 17-3-1959, with the following observation :

"Neither party takes any steps even today. Several dates have been given to the parties but no one turns up on their behalf. I have no alternative but to return the record to the learned Magistrate concerned for the needful. The miscellaneous case is accordingly disposed of."

Having come to know of the reference being returned to the learned Sub-divisional Magistrate, the petitioner made an application to the learned Sub-divisional Magistrate on 30-5-1959, praying for appointment of a receiver till the decision of the case and also for suitable action for decision in accordance with law. The learned Sub-divisional Magistrate declined to pass any order and disposed of this application with the following observation:

"Heard. The party can go in revision if he so desires against the order of the Munsif. File."

It is this order for the revision of which the parties have moved this Court.

2. Learned counsel appearing for the petitioner put forward the argument that after the receipt of the reference u/s 146(1) of the Code of Criminal Procedure, the Munsif is bound to give a decision on the question of possession, and that it was incompetent for the Munsif to return the records back to the Magistrate. Learned counsel pointed out that u/s 146 or for the matter of that under any other section of the Code of Criminal Procedure, there is no provision for return of the reference by the Munsif to the Magistrate concerned. His further contention was that if the parties did not choose to adduce any evidence in, spite of the opportunity being afforded to them, the proper course for the Munsif was to decide the question of possession on the materials already on the record, and deliberate refusal by the parties to contest before the Munsif, or default of their appearance before him will not involve either rejection of the reference or its return to the Magistrate concerned.

3. Mr. R. P. Katriar, appearing for the opposite party, however, contended that in the circumstances the course adopted by the learned Munsif was the only proper course that could have been adopted, and the Court should not be kept at the mercy of the parties. If the parties did not choose to adduce any evidence, it was not necessary for the Munsif to record any decision on the reference made to him by the learned Magistrate. He further submitted that the primary object of the proceedings u/s 145 of the Code of Criminal Procedure was prevention of the breach of the peace, and this object was amply fulfilled in view of the attachment of the disputed properties and accordingly the Magistrate should have left the Parties to seek their remedy in Civil Court. On the plain language of Section 146, the contention of Mr. Katriar does not appear to be sustainable. Section 146 of

the Code of Criminal Procedure is as follows :

"146(1) If the Magistrate is of opinion that none of the parties was then in such possession, or is unable to decide as to which of them was then in such possession, of the subject of dispute, he may attach it, and draw up a statement of the facts of the case and forward the record of the proceeding to a Civil Court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained in Sub-section (4) of Section 145; and he shall direct the parties to appear before the Civil Court on a date to be fixed by him :

Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time, if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(1A) On receipt of any such reference, the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively, consider the effect of all such evidence, and after hearing the parties, decide the question of possession so referred to it.

(1B) The Civil Court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding together with the record of the proceeding to the Magistrate by whom the reference was made, and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding u/s 145 in conformity with the decision of the Civil Court.

(1C) The costs, if any, consequent on a reference for the decision of the Civil Court, shall be costs in the proceedings under this section.

(1D) No appeal shall lie from any finding of the Civil Court given on a reference under this section nor shall any review or revision of any such finding be allowed,

(1E) An order under this section shall be subject to any subsequent decision of a Court of competent jurisdiction."

It would be observed that under the amended provision of Section 145 the parties are not required to adduce any oral evidence in support of their respective possessions unless the Magistrate wants it. Subsection (1) of Section 145 requires the parties to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims. Therefore, under the amended provision of Section 145 the decision may be given purely on evidence by means of affidavits and oral evidence is not absolutely essential. Section 146 of the Code of Criminal Procedure provides for cases where the Magistrate is of opinion that none of the parties was in possession or is unable to decide as to which of them was in possession on the date of the initiation of the proceeding u/s 145 of the Code of Criminal Procedure.

In case of such uncertainty or "inability of the Magistrate to come to any precise conclusion about possession, a reference to the Civil Court for the limited purpose of deciding the question of possession becomes necessary. In all cases where the Magistrate is unable to give any definite decision about possession on the evidence in the record or considers the evidence insufficient to establish the possession of either party, he will require the help of the Civil Court in deciding the question of possession and refer the dispute for that limited purpose to a Civil Court of competent jurisdiction. Sub-section (1A) of Section 146 lays down the procedure which the Civil Court will adopt on receipt of any such reference from the Magistrate.

The Civil Court on receipt of such reference shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively. Thereafter, it will hear the parties. After hearing the parties the decision will be given upon the evidence that is on the record as also on the evidence that the parties adduce before the learned Munsif. The question that falls for consideration is--what the Civil Courts will do in case the parties do not appear before him. It will be recalled that u/s 146, while making a reference to the Civil Court, the Magistrate shall fix a date for the appearance of the parties before the Civil Court. It is not necessary for the Civil Court to issue any summons for the appearance of the parties or their witnesses.

That preliminary work has been done by the Magistrate himself and the date has already been fixed. Now, on the date fixed by the Magistrate the parties do not appear. What the Civil Court in the circumstances will do? Will the Civil Court issue processes for the appearance of the parties and their witnesses or the Civil Court will decide the question of possession on the evidence on record. The further question that arises in this connection is whether it is incumbent on the Civil Court to take fresh evidence before deciding the question, of possession. The answer of these questions is in the negative. Under Sub-section (1A) of Section 146 it is not open to the Civil Court to call for further evidence.

The initiative u/s 146 (1A), after the reference has been received in the Civil Court is with the parties and they have to decide whether or not they would adduce further evidence in support of their respective possessions. If, however, they choose not to adduce any evidence, it is not necessary for the Munsif to call for additional evidence, I do not mean to suggest that the Civil Court is powerless and cannot call for further evidence, if it considers necessary in the interest of justice. It is, however, not obligatory upon the Civil Court to insist upon further evidence being adduced in support of possession of the parties. This position is made perfectly clear by the opening words of Section 146 (1A):

"On receipt of any such reference, the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively."

The production of further evidence, according to the above provision, is,

therefore, discretionary. It is obvious that after a reference is made to the Civil Court, when the Magistrate finds it difficult to decide the question of possession on the materials as required by Section 145 of the Code of Criminal Procedure, there is always some evidence of possession before the Civil Court. In my judgment the provisions of Section 146 are clear. On receipt of the reference the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties.

If the parties do not choose to produce any evidence, there is no obligation upon the Civil Court to take that evidence. If the parties, however, produce evidence and the Civil Court refuses to accept the evidence, it will be an illegality. Where, however, the parties do not choose to adduce any evidence, it is, in my opinion, competent for the Civil Court to give a decision on possession on the evidence which is already on record after hearing the parties. Here also the parties may choose not to address the Court on the evidence on record. All that is necessary u/s 146 is that the parties must be given ample opportunity to place their respective cases before the Civil Court.

If, however, they do not avail of this opportunity and do not address the Court, the Civil Court is, in my opinion, within the jurisdiction in giving a decision upon the question of possession on the evidence that is already on the record. I do not find any warrant for the contention that on failure of the parties to adduce evidence before the Civil Court, the latter will return the record to the Magistrate concerned. If that contention were to prevail, the proceedings of the Court will depend, therefore, on the sweet will of the parties which, in my opinion, could, not be in contemplation of the Legislature.

The provisions of Section 146 make it rather obligatory upon the Civil Court to give a decision on the evidence that is on record, and as will appear from Sub-section (1D) of Section 146 of the Code of Criminal Procedure, no appeal lies from any finding of the Civil Court given on a reference under that section nor any review or revision of any such finding is allowable under the law. Therefore, it is obligatory on the Civil Court to give a decision. It is not obligatory to require further evidence. The position is, therefore, perfectly clear on refusal of the parties to adduce further evidence, the Civil Court must proceed at once to decide the question of possession on the evidence on record. The course adopted by the learned Munsif has no support either on principle or on merit.

The contention that the existence of the attachment excluded the possibility of a breach of the peace has no relevancy at all. It is not required by Section 146 that after attachment no action should be taken either by the Magistrate or by the Munsif, and the only course open to the parties was to take recourse to the Civil Court. Even after the attachment some decision about possession has to be given under the amended provisions of Section 146.

If an attachment alone were sufficient to entitle the parties to seek the help of the Civil Court, it was not at all necessary for the provision u/s 146 to seek the

decision of the Civil Court on the question of possession. Therefore, this contention in my opinion is not tenable. In my opinion, the contention of the learned counsel for the petitioner is right and must be accepted as correct. It must be held, therefore, that the order of the learned Munsif returning the record to the Magistrate concerned was wholly illegal and without jurisdiction. The Munsif has to decide the question of possession in accordance with the provisions of Section 146.

4. In the result, this application is allowed, the order of the Magistrate dated 30-5-1959, and the order of the Munsif dated 17-3-1959, returning the record to the Magistrate are set aside. The case will go back to the Civil Court concerned for decision in accordance with law.