
(1975) 03 AHC CK 0039
In the Allahabad High Court

Nawab Singh and Others

APPELLANT

Vs

Kanhai and Others

RESPONDENT

Date of Decision : 20-03-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 141

Criminal Procedure Code, 1973 (CrPC) — Section 1, 145, 146, 147, 482

Citation : (1975) AWC 360 : (1975) CriLJ 1571

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.N. Bakshi, J.—An application u/s 145 of the Code of Criminal Procedure was filed by Kanhai and Gulzari on 18th March, 1972. A report of the police was submitted on 26th March, 1972 in which it was mentioned that there was apprehension of breach of peace over the land in dispute. It appears that a preliminary order was passed on 16th June, 1972, that is, more than two months after the submission of the police report. The parties were directed to file their written statement and documentary evidence in support of their respective case. The Magistrate on a consideration of the evidence on the record was unable to decide as to which party was in possession of the land in dispute, he, therefore, made a reference to the civil court u/s 146(1) of the Code of Criminal Procedure. The Munsif recorded a finding that Kanhai first party was in possession prior to 19th March, 1972 and that Nawab Singh second party was constructing a house on the land in dispute which shows that he had forcibly dispossessed Kanhai on the 18th March, 1972. The Munsif was of the opinion that a fraud had been played upon the Court inasmuch as the report of the police was not placed before the Magistrate who passed the preliminary order, till after the expiry of two months from the date of the application. The first party would be deemed to be in possession within two months from the passing of the preliminary order on 26th March, 1972 : that is, to say, that though the first party was dispossessed on 18th March, 1972, yet they would be deemed to be in possession two months

prior to the passing of the preliminary order. This finding of the Munsif has been returned to the S.D.M. concerned for disposal but so far he has not passed any order u/s 1(b) in conformity with the decision of the Civil Court.

2. Nawab Singh, second party, has filed an application invoking the jurisdiction of this Court u/s 561-A of the Code of Criminal Procedure and the prayer is that the proceedings u/s 145, Cr. P. C. pending in the court of S.D.M. Mainpuri in case No. 24/1972 Kanhai Singh v. Nawab Singh and others be quashed.

3. I have heard the learned Counsel for the parties at great length and also perused the affidavits and annexures filed by the parties. It is true that Kanhai and Gulzari had filed an application u/s 145, Cr. P. C. on 18th March, 1972. It is further correct that a report of the police was submitted on 26th March, 1972. From a perusal of the referring order, it appears that office staff had played a fraud upon the Court by not placing these papers before the Magistrate concerned for passing a preliminary order in time. Be that as it may, the factual position further is that on 6th June, 1972, another application was filed by Kanhai before the S. D. M. In this application even though there is mention of the earlier application having been filed by him yet even on this date, he had made a grievance that the opposite parties were interfering with his possession which is likely to cause an apprehension of breach of peace. The Magistrate called a fresh police report on this application which was submitted on 8th June, 1972. Eight days thereafter the preliminary order was passed by the Magistrate that is, on 16th June, 1972. There was nothing in Law to prevent Kanhai from filing a second application u/s 145, Cr. P. C. when he found that no action was being taken on the first application or that the (papers were being deliberately withheld by the staff of the Court. On this subsequent application dated 6th June, 1972, the Magistrate had sent for a report of the police and it was on this application that the preliminary order has been passed.

4. The learned Counsel appearing on behalf of the petitioners has submitted that even though the preliminary order was passed on 16th June, 1972, yet from the finding of the Munsif it appears that Kanhai had been dispossessed from the land in question by Nawab Singh and others on 18th March, 1972. As such he submits that since that date Nawab Singh would be deemed to be in continuous possession and on 16th June, 1972, which is the date of the drawing up of the preliminary order, he would still be deemed to be in possession of the disputed land. The counsel appearing on the other side has submitted that it is not possible for this Court to go into those questions in exercise of inherent powers u/s 561-A, Cr. P.C. It is submitted that no order has yet been passed by the Magistrate in conformity with the finding of the Civil Court u/s 146(1B), Cr. P. C. The learned Counsel has placed reliance on a decision of a Single Judge of this Court reported in Kailash Nath Agarwal Vs. Amar Nath Agarwal and Others, in which it has been held that the proceedings arising on a reference u/s 146(1) of the Code being a proceeding in the Civil Court u/s 141 of the Code of Civil Procedure, the provisions of Order 19 of that Code... will also be applicable. His

contention is that the finding that has been returned by the Civil Court being a proceeding in a civil court it is not amenable to jurisdiction of this Court u/s 561-A, Cr. P. C. and if at all the appropriate section to invoke was Section 115 of the Code of Civil Procedure.

5. The learned Counsel appearing on behalf of the applicants has brought to my notice a Division Bench decision of this Court in the case of Abdul Wahid and Others Vs. State of Uttar Pradesh and Others, and on its basis, he has submitted that it is open to this Court u/s 561-A, Cr. P. C. to interfere with the finding of the Munsif although the Magistrate has not passed an order in conformity with the order of the Munsif u/s 146(1-B), Cr. P. C. In this Division Bench case the situation was that a reference had been made to the Civil Court in proceedings u/s 147, Cr. P. C. The Magistrate was of the opinion that Section 146 would apply to the proceedings u/s 147, Cr. P. C., and therefore, he was competent to make a reference to the civil court. The High Court held that there was no power of reference invested in the Magistrate while he was dealing with the case u/s 147, Cr. P. C. As such when the entire reference was without jurisdiction, the whole proceedings would be without jurisdiction. The order of reference was passed by the Magistrate u/s 147, Cr. P. C. Such an order could certainly be quashed by the High Court in exercise of its inherent powers u/s 561-A, Cr. P. C. In the present case, however, it cannot be said that there was any inherent lack of jurisdiction in the reference being made to the civil Court by the Magistrate concerned. So long as the finding of the Munsif on the question of possession remains and has not been confirmed by the Magistrate, it must be repeated that it continues to be a finding of the civil court to which provisions of the CPC would apply. It is only after the said finding has been confirmed by the Magistrate u/s 146(1-B), Cr. P. C. that the finding of the Civil Court merges in the order of the Magistrate, and thereafter this Court would certainly have the jurisdiction u/s 561-A, Cr. P. C. which is equivalent to Section 482, Cr. P. C., 1973, to interfere with the impugned order of the Magistrate, if it is required, in order to prevent an abuse of the process of the Court, or in the interest of justice.

6. The result is that I am not inclined to interfere with the findings which have been recorded by the Munsif in the proceedings u/s 146(1-B), Cr. P. C., nor I am inclined to quash the proceedings u/s 145, Cr. P. C. which are pending before the Sub-Divisional Magistrate concerned. After passing of the final order by the Magistrate, the applicant may seek his remedy in the proper forum. This application u/s 561-A, Cr. P. C. is dismissed.