
(1978) 02 AHC CK 0021

In the Allahabad High Court

Case No : Criminal Misc. Application No. 2542 of 1976

Phulia and Others

APPELLANT

Vs

Kashi Nath and Others

RESPONDENT

Date of Decision : 09-02-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(6), 482

Citation : (1978) ACR 210

Hon'ble Judges : M.B. Farooqi, J

Bench : Single Bench

Advocate : S.K. Verma, for the Appellant; R.P. Singh, for the Respondent

Judgement

M.B. Farooqi, J.—The dispute in this case relates to plot No. 159 (area 4 bighas) of village Razdevpur and plot No. 4 (area 3 bighas and 5 biswas) of village Slawalpur, district Ghazipur. According to the affidavits the admitted facts are that in the year 1972 these very plots were the subject matter of proceedings u/s 145 Code of Criminal Procedure between opposite party No. 2, who was first party, and the applicants, who were the second party in the court of Sub-Divisional Magistrate, Ghazipur. The proceedings ended in favour of the applicants. On 23rd September, 1974 the learned Magistrate declared that the applicants were entitled to the possession of these plots until evicted in due course of law. On 4-2-975 he even released these very plots in favour of the applicants. Thereafter two applications under Sections 145 Code of Criminal Procedure were filed against Kunwar, applicant No. 2 and several other persons in respect of the aforesaid plots one by Kashi Nath, opposite party No. 1, and the other by Smt. Chanwa, opposite party No. 2 in the Court of the Sub-Divisional Magistrate, Ghazipur. Kashi Nath, opposite party No. 1 alleged that he had purchased Gobhi crop of these plots from Smt. Chanwa Kunwar and several other persons named in the application were obstructing him from removing the crop. The learned Magistrate called for a report from the Police Station Kotwali and thereafter drew upon a preliminary order on 22-2-975 and called upon the

parties to file written statements of their claim as also documents and affidavits in support thereof. On 5-1-1976 Smt. Phulia, applicant No. 1 made an application for her impleadment as a party and also filed her objection to the applications of Kashi Nath but no orders were passed thereon by the Magistrate. Instead, by his order dated 12-2-1976 the learned Magistrate attached the land and directed the parties to get their rights settled through a Civil Court. Aggrieved by the order the applicants went up in revision to the Sessions Judge, Ghazipur, who by his order dated 25-3-1976, rejected the same. By means of this application u/s 482 Code of Criminal Procedure the applicants have challenged the orders dt. 12-2-1976 and 25th March, 1976 and prayed that the same may be quashed.

2. Learned Counsel for the applicants contended that since the property and the parties were substantially the same in the two sets of proceedings u/s 145 Code of Criminal Procedure the present proceedings were barred. In support of his argument he relied on two decisions in the cases of Baburam Rajeshwari Prasad Ojha and Others Vs. Deo Narain Sao and Others, and Elimuddin Sarkar Vs. Umed Ali Bepari and Others, .

3. In Baburam's case (supra) it was held that the possession of a successful party in a proceeding u/s 145 Code of Criminal Procedure cannot be put an end to by the unsuccessful party by mere violence or surreptitious invasions. The object of the Legislature will be frustrated if the party who has, on the finding that he is not in possession, been forbidden to disturb the possession of the successful party until evicted by due course of law, is allowed to interfere with the possession of the successful party and pleads once more that whatever the orders might have been, he is still in possession or has been able to regain possession. Initiation of proceedings u/s 145 Code of Criminal Procedure for the second time between the same parties and over the same subject matter is not sustainable in law.

4. In Elimuddin's case (supra) it was held that as provided by Section 145(6) Code of Criminal Procedure the party declared to be entitled to possession in the former dispute is entitled to be protected against disturbance of such possession until evicted there from in due course of law; otherwise it would be possible for the opposite party to continue to harass his opponents by instituting successive proceedings u/s 145 Code of Criminal Procedure. The party alleging that it was aggrieved has its remedy in a civil court, where the questions to title and possession could be settled as between contending parties.

5. On the basis of these decisions, the principle of law with which I agree, is that an unsuccessful party or a party deriving interest from an unsuccessful party cannot maintain an action u/s 145 Code of Criminal Procedure against the successful party or parties deriving interest from such successful party over the same subject matter.

6. On behalf of the opposite parties reliance was placed for a contrary view on the decisions in Kalapdin v. State 1970 AWR 410, Mst. Hosnaki v. State 1955

AWR 654 and R.H. Bhutani Vs. Miss Man J. Desai and Others, . These cases lay down the principle that if the Magistrate is satisfied that the dispute relating to immovable property giving rise to apprehension of breach of piece exists he can take action u/s 145 Code of Criminal Procedure. But it is nowhere laid down that he can take such action for the second time even where the parties and the property are the same. Consequently the view taken in these cases cannot be said to be in conflict with the view taken in the cases cited on behalf of the applicants.

7. In the instant case the dispute was between Smt. Chanwa and Kashi Nath on one side, and Kunwar and Phullia and persons through Kunwar, on the other. Kashi Nath claimed his interest through Smt. Chanwa. In the earlier proceedings the parties to the dispute were Smt. Chanwa and Kunwar on one side, and (sic), on the other. The subject of dispute in both the cases was the same. Thus both the sets of proceedings concerned the same land and were substantially between the same parties. On the principle stated above the present proceedings were, therefore, barred.

8. In the view taken above this petition must succeed and is allowed. The impugned orders are quashed.