

(1957) 11 PAT CK 0003

In the Patna High Court

Case No : Criminal Revision No. 299 of 1957

Ram Krishna Jhajharia and Others

APPELLANT

Vs

Mt. Tetri Sahun and Others

RESPONDENT

Date of Decision : 13-11-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(1), 145(4)

Citation : AIR 1959 Patna 476 : (1958) 6 BLJR 174 : (1959) CriLJ 1205

Hon'ble Judges : Kanhaiya Singh, J

Bench : Single Bench

Advocate : S.N. Sahay and R.M. Mishra, for the Appellant; S.K. Mazumdar, for the Respondent

Final Decision : Allowed

Judgement

Kanhaiya Singh, J.—This application in revision is directed against the order of Mr. A. Wadood, Magistrate 1st Class, dated 2-6-55, in a proceeding u/s 145 Cr. P. C. by which he declared the possession of the 1st party and forbade all interference with the same by the 2nd party. The dispute related to 385 bighas odd, out of which 370 bighas odd are comprised in one plot, namely, plot No. 196 situate in Mahal Pataura. The 1st party claimed 12 annas interest in the disputed land, the 3rd party claimed 2 annas interest therein and the 2nd party claimed possession over the entire area in dispute. The learned Magistrate declared the possession of the 1st party with respect to 12 annas interest in the disputed land.

Mr. S. N. Sahay appearing for the petitioners contended that the order passed by the learned Magistrate was wholly illegal and contrary to the provisions of Section 145 Cr. P. C. and cannot be maintained. I think, his contention is well founded and must be accepted. I am afraid the order of the learned Magistrate cannot be maintained. His order is in the following terms :

"I therefore, hold that the first party is entitled to possession of the disputed

lands in Patoura Mahal to the extent of 12 annas interest "Darpatni of Tetri Sahun until evicted therefrom in due course of law. All disturbances of such possession until such eviction is forbidden."

2. It will appear from the above that the Magistrate has not found the 1st party to be in actual possession of the disputed land. His decision is that the 1st party was entitled to possession of the disputed land to the extent of 12 annas interest. This is exactly contrary to what is enjoined upon a Magistrate u/s 145 Cr. P. C. As will appear from Sub-section (1) of Section 145 read with Sub-section (4), what the Magistrate is to decide in such a proceeding is the fact of actual possession of the subject of dispute at the date of the order.

The expression "actual possession" obviously means actual physical possession of the disputed land. What will amount to "actual possession" will certainly differ according to the circumstances of each case. It does not necessarily mean bodily personal "possession. It does mean, however, that the person claiming possession must have actual dominion over the property and it should be capable of such possession as the circumstances of a particular case require. Any way, it is necessary for a correct decision u/s 145 that the Magistrate should come to a definite conclusion about actual possession of the property

It is not enough in a proceeding u/s 145 to say that a particular person was in possession of an undivided share. The very foundation of a proceeding u/s 145 is maintenance of peace and order and it is manifest that to attain that object the Magistrate should specify as accurately as possible the land which is the subject-matter of dispute. In absence of clear specification, it will be difficult for the Court or for the parties, to determine what they are forbidden to do.

A vague order like the one passed by the Magistrate in this case will frustrate the very object of the proceeding under this section. When the parties are laying claim not to the actual possession of the disputed land, but to specific shares therein, then obviously the provisions of Section 145 has no application. Sub-section (6) of Section 145 really requires that the disputed land should be described as accurately as possible with reference to the survey plot number or its boundaries. Several persons may be jointly interested in common land and may have a valid right to possess the subject of dispute but this consideration is quite foreign to a proceeding u/s 145.

The Magistrate has to decide the question of actual possession, irrespective of the merits of the claims of any of the parties to the proceedings, and if in such a case one of the cosharers is in possession to the exclusion of others, it is incumbent upon the Magistrate to declare his possession, regardless of the rights of other cosharers to possess. Where (the dispute relates to possession of an undivided share, it does not come within the ambit of Section 145 Cr. P. C., for the simple reason that the subject of dispute cannot be ascertained definitely.

If in a particular case the Magistrate is not able to satisfy himself as to which or the parties is in actual possession of the property, for instance, where the parties

are found to be in joint possession on the date of the preliminary order, or where the land in dispute does not admit of accurate specification the proper course for the Magistrate is to attach the subject of dispute under Section 146 Cr. P. C., instead of declaring as in the present case, the right of one of the parties to possession of an undivided share a course repugnant to the nature and scope of such a proceeding.

3. The order of the Magistrate was thus clearly illegal.

4. In the result, the order of the learned Magistrate is set aside, and the case is remanded for a fresh decision according to law, provided he is satisfied that an apprehension of the breach of the peace still subsists.