
(2002) 12 AHC CK 0033
In the Allahabad High Court
Case No : Criminal Revision No. 261 of 1994

Ram Lakhan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 452, 453, 454

Citation : (2003) 1 ACR 409

Hon'ble Judges : Y.R. Tripathi, J

Bench : Single Bench

Advocate : R.K. Pandey and S.K. Shukla, for the Appellant; Shree Ram Gupta and A.G.A., for the Respondent

Judgement

Y.R. Tripathi, J.—This revision is directed against an order dated 18.1.1994 passed by Sri S. N. Singh, the then Sessions Judge, Banda, whereby he having allowed the Revision No. 93 of 1993 Ayaz Ahmad and Anr. v. Daya Ram and 8 others, has set aside the order dated 13.10.1993, passed by the then S.D.M., Banda and has further held the Appeal No. Nil of 1993, Ram Vishal v. Ayaz Ahmad and Ors. filed by the revisionists to be not maintainable.

2. The skeleton facts necessary to get hang of the controversy involved in this revision are that on an application of Afaq Ahmad predecessor-in-interest of Respondent Nos. 2 and 3 about there being an apprehension of breach of peace from one Sheokanth Singh, predecessor-in-interest of revisionists with respect to possession of plot Nos. 319 area 3.27 acres and 315 area 3.34 acres situated in village Laumar within police circle Chilla of district Banda, the then Executive Magistrate, Banda, drew a preliminary order u/s 145 of the Code of Criminal Procedure requiring the parties to put in their written statements of respective claims as respects the facts of their actual possession over the aforesaid plots. As it appears, both the parties to the proceeding appeared before the learned Magistrate, filed their respective claims of possession and adduced evidence in support thereof. The learned S.D.M., Banda, having failed to decide the

possession of either party on the date of preliminary order, attached the plots in question till the decision of a competent court and placed them into supurdgi of a supurdar. As it transpires, while the aforesaid plots were still in custodia legis i.e., in the supurdgi of the supurdar, Respondent Nos. 2 and 3 got themselves mutated in revenue records by an order of Naib Tahsildar, Papreda in a proceeding under Sections 33 and 34, L. R. Act in Case No. 66, Afaq Ahmad and Anr. v. Sardar Singh and Ors. and made an application to the S.D.M., Banda, for release of the disputed plots in their favour. The learned S.D.M., Banda, through his order dated 30.9.1993 released the disputed plots in favour of the Respondent Nos. 2 and 3. After the revisionists came to learn about the said order of 30.9.1993, they moved an application on 13.10.1993 for cancellation or recall of the said order on which the learned S.D.M., Banda, issued notice to Respondent Nos. 2 and 3 fixing 16.10.1993 for disposal. Aggrieved from this order of the learned S.D.M., Respondent Nos. 2 and 3 preferred a Revision No. 93 of 1993. The revisionists also preferred an appeal challenging the order of S.D.M., Banda, dated 30.9.1993 directing the release of the disputed plots in favour of Respondent Nos. 2 and 3. The learned Sessions Judge heard the said Revision No. 93 of 1993 filed by the Respondent Nos. 2 and 3 and the appeal preferred by the revisionists against the order of the S.D.M., dated 30.9.1993 together and passed the impugned order, dissatisfied from which the revisionists have come up in this revision.

3. I have heard learned Counsel for the parties and the learned A.G.A. and have also gone through the materials on record.

4. It was strenuously urged by the learned Counsel for the revisionists that the learned court below has committed an illegality in accepting the Revision No. 93 of 1993, Ayaz Ahmad and Anr. v. Daya Ram and 8 others, as the order dated 30.9.1993 was passed on their back and was illegal and violative of natural justice. It would be found that after attachment of the disputed plots, concerned parties had litigated before the revenue court for getting their names mutated and after a keen contest between them, the names of the Respondent Nos. 2 and 3 was recorded in the revenue records and it was thereafter that on the basis of the order passed by the revenue court, Respondent Nos. 2 and 3 made an application to the S.D.M., Banda, for release of the disputed plots in their favour. True, that the proper course for the S.D.M., Banda, was that he should have decided the application of Respondent Nos. 2 and 3 after giving the revisionists an opportunity of hearing, but no prejudice appears to have been caused to the revisionists as they had unsuccessfully contested the proceeding under Sections 33 and 34 of the L. R. Act and the revenue court had directed the mutation to be made in favour of Respondent Nos. 2 and 3. In a proceeding under Sections 33 and 34 of the L. R. Act, the possession of a party is also looked into and considered. Even till date, the revisionists have failed to prove that they are in any way entitled to possession over the disputed plots. Thus, despite the fact that the order dated 30.9.1993 was passed at the back of the revisionists without affording them an opportunity of hearing, still no prejudice appears to

have been caused to them and it would be a futile exercise to open the matter after such a long interval when the revisionists can get their title in respect of the disputed plots decided by a competent court and if found entitled to possession, can also be put into possession. It is settled law that revision does not lie against an interlocutory order. The learned court below thus by entertaining the revision and quashing the order dated 13.10.1993 was though not legally justified but no purpose would be served by quashing the impugned order on this point as it will unnecessarily open fresh futile litigation between the parties without any result. So far as the second part of the impugned judgment of the Sessions Judge is concerned, whereby he has held the appeal filed by the revisionists to be not maintainable, I see no infirmity or illegality in it.

5. u/s 454 of the Code of Criminal Procedure, an appeal could have been filed against the orders made under Sections 452 and 453 of the said Code. The order of learned S.D.M., Banda, dated 30.9.1993 by which he withdrew the attachment and directed the release of the disputed plots in favour of Respondent Nos. 2 and 3 had purportedly been passed in exercise of his powers u/s 146 of the Code of Criminal Procedure. Thus, apparently the order dated 30.9.1993 was not appealable u/s 454 of the Code of Criminal Procedure, and the learned Sessions Judge has rightly held so and dismissed the appeal. Thus, on an overall consideration of the facts of the case, I find no justification for any interference in the order of the Sessions Judge sought to be revised.

6. This revision, thus being devoid of any merit, deserves to be dismissed and, is accordingly, dismissed.