
(1968) 08 GAU CK 0007
In the Gauhati High Court

Ram Lakhan Rai Choudhary

APPELLANT

Vs

Raghunath Choudhary and Others

RESPONDENT

Date of Decision : 20-08-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 24, 6
Constitution of India, 1950 — Article 227

Citation : AIR 1969 Guw 81 : (1969) CriLJ 854

Hon'ble Judges : P.K. Goswami, J

Bench : Single Bench

Judgement

P.K. Goswami, J.—This application in revision is directed against an order passed u/s 146 (1B) of the Code of Criminal Procedure by the Magistrate, First Class, Gauhati, in a Proceeding u/s 145 Criminal Procedure Code. The Petitioner earlier unsuccessfully moved the learned Sessions Judge u/s 435/438 of the Code of Criminal Procedure.

2. In this proceeding u/s 145 Criminal Procedure Code, the learned Magistrate passed an order u/s 146 Criminal Procedure Code, referring the matter to the Civil Court for a decision. The Sadar Munsiff in due course, after hearing the parties, held in favour of the first party possession. On receipt of this decision from the Civil Court, the learned Magistrate passed his order declaring the first party to be in possession in conformity with the decision of the Civil Court and it is this order which is being impugned in this revision application and it is also urged by Mr. Lahiri, the learned Counsel for the Petitioner, that the reference itself was bad and that the Sadar Munsiff was not competent to entertain the reference inasmuch as the property was valued more than the pecuniary jurisdiction of that Court.

3. At the outset Mr. Lahiri had to face a preliminary objection, in that it has been urged by the Opposite Party that this application u/s 439 Criminal Procedure Code is not maintainable in view of the provisions u/s 146 (1D), which may be set out:

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

Several decisions of the different High Courts have been very fairly placed by Mr. Lahiri including those against his contention. The first decision to which reference may be made is Raja Singh and Another Vs. Mahendra Singh and Others,

Raja Singh v. Mahendra Singh. This was a case under Article 227 of the Constitution and following observations are relied upon by Mr. Lahiri:

The provisions of Sub-section (1D) of Section 146 bar an appeal, review or revision under the Code of Civil Procedure, and even under the Code of Criminal Procedure, only so long as the Magistrate does not pass his order in conformity with the decision of the Civil Court. This provision does not impose any bar to any review or revision of the order of the Magistrate passed under Sub-section (1B). The High Court can. interfere with the finding of the Civil Court under Sections 435 and 439 of the Code of Criminal Procedure after the finding is adopted by the Magistrate and the final order is passed. When a revision is preferred against the order of the Magistrate under Sub-section (1B), not only the operative order of the Magistrate but the entire proceeding including the findings of the Civil Court are before the Court and, therefore, the High Court can, in appropriate cases, interfere with the findings of the Civil Court, if they are in flagrant violation of the well, recognised Principles of law

The next decision is Rengammal Vs. Rama Subbarayalu Reddiar, Rengammal v. Rama Subbarayalu Reddiar, wherein the following observation is relied upon by Mr. Lahiri to support his contention that this application u/s 439 is maintainable. Referring to Section 146 (1D) his Lordship observed as follows:

This restriction is but proper because the findings get merged in the decision of the Magistrate and all the grounds that can be urged against the finding can be urged against the finalised decision and if there is not such restriction there will be multiplicity of proceedings and possible conflicting revisional orders reducing the whole thing to an absurdity

The first decision which is against Mr. Lahiri is Chokhey Lal Moti Ram and Others Vs. Babulal Behari Lal, This was writ application and the Court held that no such application will lie against an order passed u/s 146 Criminal Procedure Code, His Lordship Bhargava, J. as he then was, observed as follows:

It is clear that neither there can be an appeal nor a revision nor review against order passed u/s 146 Criminal P.C., which means that the Legislature intended these orders to be final. If the Legislature had made those orders final, I do not think that the Petitioners are entitled to challenge that by means of a Writ Petition

The next decision which is cited is Ram Narayan Goswami and Others Vs. Biswanath Goswami, Ram Narayan Goswami v. Biswanath Goswami, where the following observation occurs:

The decision of the Civil Court on a reference u/s 146 of the Criminal Procedure Code cannot even be challenged, Sub-section (1D) of Section 146 of the Code of Criminal Procedure being a bar. The only remedy left would be to go to a Court of competent jurisdiction under Sub-section (1E) of Section 146 of the Code of Criminal Procedure

4. The point which now arises for consideration is whether an application u/s 439 Criminal Procedure Code is absolutely a bar against an order passed by a Magistrate u/s 146 (1B) in view of the provisions u/s 146 (1D). We have already seen that there are two parts in this proceeding u/s 145 Criminal Procedure Code. After the order in the first part viz., when he is unable to decide as to which of the parties at the relevant time was in possession of the subject matter of dispute or when he is of the opinion that none of the Parties was in such possession, the Magistrate in conformity with Section 146 (1) refers all the proceedings to the Civil Court after drawing up a statement of the facts of the case and informing the parties to appear before the Civil Court on a date which he himself fixes. The proceedings thereafter come back to the referring Magistrate with the decision of the Civil Court and then he next passes the final order in the case in conformity with the said decision. Section 146 (1D) had to be advisedly inserted in Section 146 in order to prevent multiplicity of proceedings. The Civil Court's assistance being requisitioned by the Criminal Court as provided for under the law, unless a barring provision is introduced in the way it is done under Sub-section (1D) it would have been open to the party aggrieved by the decision of the Munsiff to agitate about the correctness of that decision in the hierarchy of Civil Courts either by way of appeal or by way of revision. Section 146 (1D), therefore, in terms bars appeal, review or revision of the finding of the Civil Court in specific terms. The word "Review" is also a pointer that Section 146 (1D) refers only to a review before the Civil Court as there is no review as such provided for under the Code of Criminal Procedure. Section 146 (1D) therefore, cannot be invoked to be a bar against a revision application u/s 435 or 439 Criminal Procedure Code. After the final order is passed u/s 146 (1B) by the Criminal Court, it is open to an aggrieved party in an appropriate case to invoke the revisional jurisdiction under Sections 435 and 439 of the Code of Criminal Procedure. Whether such a petition succeeds or not is a different matter, but a petition cannot be said to be not maintainable in law. With respect, I agree with the observations of the Patna High Court in *Raja Singh and Another Vs. Mahendra Singh and Others*, referred to above. The objection as to the maintainability of this application is therefore overruled.

5. Mr. Lahiri's first submission regarding the invalidity of the impugned order is that the Sadar Munsiff is not the Court of competent jurisdiction to which this reference was made u/s 146 (1) of the Code of Criminal Procedure. Here also, he has fairly placed the decisions in his favour as well as those against his contention. Excepting the decision in AIR 1968 P&H 301, *Maharaj Kumar Gajbir Singh v. Maharaja Satbir Singh*, which is in his favour, no other authority could be pointed out. He particularly relies on the following observations of the learned

Judge:

Competent jurisdiction" in that provision refers, in my opinion to the competency as to the territorial jurisdiction as well as pecuniary jurisdiction

This was, however, a case u/s 24 of the CPC and as such this observation appearing in the judgment is not of much assistance to the learned Counsel. On the other hand, the decision in AIR 1964 Mys 195, Hanumappa v. Kondappa, is directly against the proposition advanced. The learned Judge in that case observed as follows:

The proceedings before the Civil Court u/s 146 are not civil proceedings. The competency referred to u/s 140(1) is with reference to territorial jurisdiction and the conception of Pecuniary Jurisdiction is foreign to the Criminal Procedure Code.

To the similar effect is the decision of the Allahabad High Court in Sri Sheonath Prasad Vs. City Magistrate, Varanasi and Others, Sheonath Prasad v. City Magistrate Varanasi, where the following observation appears:

It is impossible to determine the Pecuniary value of the matter which has got to be decided by the Civil Court u/s 146, Criminal Procedure Code. The Civil Court has not to decide as to which party is the owner of the property in dispute or has a right to possession; it has simply to decide as to any, and it so which, of the parties, irrespective of merits, was in possession of the property in dispute at a particular time. A matter like this is incapable of Pecuniary valuation. If there are more than one Court having territorial jurisdiction it is open to a Magistrate to send the reference to any one of those Courts.

The next decision cited by Mr. Lahiri is AIR 1966 SC 1888, Ram Chandra Aggarwal v. State of Uttar Pradesh. This was a case relating to a proceeding u/s 24 of the CPC and the following observations of their Lordships will make it clear:

The decisions of the Privy Council and one decision of this Court which we have earlier quoted would warrant the application of the provisions of the CPC generally to a proceeding before a civil Court arising out of a reference to it by a Magistrate u/s 146 (1) of the Code of Criminal Procedure. The expression "proceeding" used in this section is not a term of Article which has acquired a definite meaning.

This decision is, therefore, not of much assistance to the particular point which arises for consideration in this case.

6. The object of the proceedings u/s 145 Criminal Procedure Code is of a limited character. Chapter XII in which this section appears, relates to disputes as to immovable property. The object of Section 145, Criminal Procedure Code is to prevent likelihood of breach of the peace which exists concerning immovable property. With that end in view, a summary procedure has been laid down, to enable the Magistrate to conclude the enquiry if possible within two months from the date of appearance of the parties before him. At this stage even the

Magistrate in most cases may be able to pass his order after perusal of the documents and affidavits and hearing the parties unless he thinks that it is fit to summon and examine persons whose affidavits have been put in. All this indicates an emphasis on the disposal of the proceeding at an early date. When, however, he is to act u/s 146 Criminal Procedure Code and to refer the matter to the Civil Court, his only limitation is that he has to refer it to a competent Court of Civil Jurisdiction. The expression "competent Court" is not defined in the Code. That being the position, as the Magistrate, has himself to fix a date for appearance of the parties in the Civil Court, he is necessarily required to name the Court where the parties have got to appear on the date fixed by him. The question of pecuniary jurisdiction arises only when the Civil Court has to deal with a suit. Section 6 of the CPC is in the following terms:

6. Pecuniary jurisdiction -- Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits if any of its ordinary jurisdiction.

Section 141 of the CPC may also be read:

41. Miscellaneous Proceeding. -- The Procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction

It will be seen that Section 6 refers to a suit and Section 141 itself uses the expression "as far as applicable". Mr. Lahiri relying on these two sections, contends that since the value of the property is more than, the pecuniary jurisdiction of the Sadar Munsiff, the said Court had no jurisdiction to deal with the matter. It is, however, not shown that in an application u/s 145 Criminal Procedure Code, the value of the property has got to be given. The Magistrate is only required to draw up proceedings, u/s 145 in respect of immovable-property and there is no reference to the value of the property in that section. Even, if therefore it was necessary to find out the pecuniary value of this property, the learned Magistrate was unable to come to any conclusion regarding the same and such Article enquiry is also not permissible under the provisions of Section 145 Criminal Procedure Code. If the competent Court of Civil jurisdiction has anything to do with the pecuniary jurisdiction, the Legislature would have certainly made provisions in the section itself for giving the value of the property about which the dispute is arising. In the absence of any such provision, it is difficult to hold that the Court of competent jurisdiction mentioned in Section 146 has anything to do with the pecuniary jurisdiction. The matter which is investigated u/s 145 or u/s 146 Criminal Procedure Code is only about possession without reference to right to such possession or to any title to the immovable property. That being the position, the narrow point which is the subject matter of the controversy in a proceeding u/s 145 or u/s 146 Criminal Procedure Code does not permit of any differentiation on the basis of valuation of the property. I am, therefore, clearly of opinion that the Magistrate in a

proceeding under Section 145 (Section 146?) of the Code of Criminal Procedure has to refer the case to the Court of Civil jurisdiction which is territorially competent to deal with the matter and in the fitness of things the lowest Court in the hierarchy of the Civil Courts should be the proper Court to which the reference should be made. Mr. Coswami, the learned Counsel for the opposite party, has also drawn my attention to a decision in the case of Ramdutta Trivedi Vs. Shambhu Nath Sinha and Another, and the view I have taken receives support in that case. The contention of Mr. Lahiri is, therefore, devoid of any substance.

7. Mr. Lahiri then submits that the reference to the Civil Court was itself bad as the learned Magistrate did not draw up a statement of the case. I do not think that this objection has any substance. It is clear from the referring order that the Magistrate was unable to decide as to which of the party was in possession of the property and, as such, he was competent to refer the matter to the Civil Court which he did by writing a brief order as well as forwarding all the records of the case to the Civil Court and the Civil Court there after has applied its mind, examined witnesses, heard parties and given its decision. It is not shown how the petitioner is prejudiced by the learned Magistrate having not drawn up a statement of the present case. Although, it is true that u/s 146 Criminal Procedure Code, the learned Magistrate has to draw up a statement of the case, it is always proper that he should do so, but a mere omission to do that cannot per se be fatal to the validity of the proceedings.

8. In the result, the application fails and is accordingly dismissed.