

(1982) 10 AHC CK 0005

In the Allahabad High Court

Case No : Civil Misc. Application No. 162 of 1981 & Criminal Misc. Application No. 162 of 1981

Ram Nath

APPELLANT

Vs

Mangala Rai and Others

RESPONDENT

Date of Decision : 04-10-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 145, 147

Citation : (1982) AWC 887

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : N.C. Pandey, for the Appellant; A.G.A. and N.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

M. Wahajuddin, J.—I have heard the parties' counsel. The present Petitioner has preferred an application u/s 145, Code of Criminal Procedure, setting up his title and possession to his house, which is in a dilapidated condition, and maintaining that the present opposite parties are interfering with such peaceful possession of the Petitioner and there is an apprehension of breach of peace. In reply the opposite parties neither claimed any title, nor claimed in possession over the property in respect of which the proceeding was initiated by the present Petitioner. They came forward with a totally different case maintaining that actually on a public passage, through which the opposite side pass from going one house to another, the present Petitioner is placing earth, malba etc. and wants thereby to include that portion also in his house. In nut-shell the pleas raised by the opposite parties are covered u/s 133, Code of Criminal Procedure.

2. After going through the written statement of the opposite parties, filed before the lower court, it is crystal clear that the substance is that there exist a public passage and obstruction on a portion of such passage is being caused by the present Petitioner extending, his house beyond the earlier limits to the passage

itself. The Magistrate passed an order in favour of the pensioner prohibiting the opposite parties from interfering with the Petitioner's possession over the sides of the two walls, i. e., North and Western wall of the Petitioner.

3. The learned Sessions Judge rightly came to a conclusion that the application of Section 145, Code of Criminal Procedure, is not attracted in view of the pleas raised by the two sides. In fact, the opposite parties were not claiming possession over any area of the Petitioner's house. Their stand is that the Petitioner is encroaching upon a public passage. In the circumstances, obviously, the opposite parties have no claim to any portion of the Petitioner's house. At the same time, unless and until any application u/s 133, Code of Criminal Procedure, is preferred before the Magistrate laying down the limits of the public passage, giving prima facie proof, that it is a public passage and also showing the actual extent of obstruction caused over it, it will be impossible for the Magistrate to proceed under that Section. I may also mention that the procedure concerning proceedings u/s 133, Code of Criminal Procedure, is totally distinct and different from the procedure regarding the proceedings under Sections 145 or 147, Code of Criminal Procedure. When that is the position, the present proceedings itself cannot be converted into a proceeding u/s 133, Code of Criminal Procedure suo moto, by the Magistrate ; but the opposite parties are fully at liberty to prefer an application u/s 133, Code of Criminal Procedure. While demarcating the extent of obstruction and encroachment caused, and the Magistrate on his satisfaction will be at liberty to then proceed in the manner laid down u/s 133, Code of Criminal Procedure, and the subsequent sections. I also make it clear that the opposite parties do not claim any land which is a part of the Petitioner's house, nor do they claim any of the old wall of the Petitioner's house, nor there is any dispute about it.

4. In the result, this application is allowed and entire proceedings in Case No. 7 of 1980 Ram Nath v. Mangal Rai and Ors. pending in the court of Addl. S. D. M., Bansdih, District Ballia and the order of the Additional Sub-Divisional Magistrate, Bansdih, in that case as well as the order of the II Additional Sessions Judge, Ballia, in Criminal Revision No. 39 of 1980, are all quashed. But it is made clear that on a proper application being made by any of the opposite parties u/s 133, Code of Criminal Procedure, the Magistrate concerned would immediately adopt the procedure under that Section.