
(2005) 04 AHC CK 0106

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 2286 of 2002

Ram Sharan and Chandra Pal

APPELLANT

Vs

Additional District Judge and Others

RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146(1)

Citation : (2005) 04 AHC CK 0106

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : S.P. Singh, M.C. Chaturvedi and Sushil Kumar, for the Appellant;
Anurag Pathak and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—Heard Sri M.C. Chaturvedi and Sri Satya Prakash Singh learned counsel for the petitioners, learned A.G.A. and Sri Anurag Pathak learned counsel for the respondent No. 4.

2. During the pendency of the petition the respondent No. 4 died. A Substitution Application No. 192595 of 2003 has been filed on 22.10.2003 by the learned counsel for the petitioners to substitute the names of the heirs of the respondent No. 4. The time was granted to the learned counsel for the respondent No. 4 to file objection in the aforesaid substitution application on 12.11. 2003, but no objection has been filed by the learned counsel for the respondent No. 4. The substitution application was allowed on 5.12.2003 by this court and the names of the heirs of the respondent No. 4 namely Charan Lal, Ramesh Chand, Naresh Chand and Smt Prakash the widow of Chauhal were substituted as respondents No. 4/1 to 4/4 respectively.

3. This petition has been filed against the order-dated 18.1.2001 passed by the learned Sub Divisional Magistrate, Nakur, "District Saharanpuf, in Case No. 62, u/s 145 Cr. P. C. Chauhal v. Ram Saran and Ors., whereby the property in dispute

and the amount of the cost of the crops was released in favour of the respondent late Chauhal and the petitioners were directed not to interfere in the peaceful possession of the respondent late Chauhal and the proceedings u/s 145 Cr. P. C, were dropped and the order dated 7.5.2002 passed by the learned 2nd Additional Sessions Judge, Saharanpur in Criminal Revision No. 67 of 2001, whereby the revision filed by the petitioners was dismissed.

4. It is contended by the learned counsel for the petitioners that on the basis of the application filed by the petitioners the proceedings u/s 145 Cr. P. C. were initiated and the order u/s 145 Cr. P. C. was passed by the S.D.M. Nakur on 27.12.1985. Thereafter, the order dated 10.1.1986 was passed by the learned S.D.M., Nakur u/s 146(1) Cr. P. C. and the property in dispute was attached. Thereafter, both the parties appeared before the court and adduced their evidence in support of their claims. Consequently, the learned S.D.M., Nakur came to the conclusion that the respondent late Chauhal was in peaceful possession over the property in dispute prior to two months of the passing of the preliminary order dated 27.12.1985 and 10.1.1996 and the amount of the cost of the crops was released in the favour of the respondent late Chauhal and the proceedings u/s 145 Cr. P. C. were dropped.

5. It is contended by the learned counsel for the petitioners that the impugned order dated 18.1.2001 passed by the learned S.D.M. is illegal because the petitioners were in peaceful possession over the land in dispute and they have successfully proved their claim, but the learned S.D.M. has decided the question of the possession in favour of the respondent late Chauhal on the basis of the conjecture and surmises. It is contended that the petitioners are owner of the land in dispute because the land in dispute was owned by one deceased Gultan. During his lifetime he had executed a sale deed dated 17.1.1981 and 18.2.1981 in favour of the petitioners. Gultan was living with the petitioners and a registered sale deed was also executed by him regarding the share of his property (the property in dispute). During his lifetime the Gultan was in possession and he was living with the petitioners. The petitioners were also in physical possession over the land in dispute on the basis of the sale deed as well as registered will executed by the one Gultan.

6. The learned counsel for the respondents and learned A.G.A. opposed the contention made by the learned counsel for the petitioners by submitting that the respondent late Chauhal was in physical possession over the land in dispute even on the date of police report submitted by the police of the police station concerned, because the proceedings were initiated on the basis of the application given by the petitioners in which it was clearly mentioned that the respondent late Chauhal was not permitting to the petitioners to take the possession of the land in dispute. It shows that the petitioners were not in the possession over the property in dispute on that date, the respondent late Chauhal was in physical possession over the land in dispute, but a false police report was submitted mentioning therein that the respondent late Chauhal was trying to take

possession over the land in dispute from the petitioners, it is a contradictory report. It is further submitted that the petitioners filed a suit against the respondent late Chauhal in the court of learned Munsif Hawaii, Saharanpur along with an injunction application. That injunction application was rejected and subsequently the sale deed executed in favour of the petitioners was also cancelled on 17.12.1982. Against that order the petitioners filed Civil Appeal No. 1 of 1983 which was also dismissed on 18.4.1983 by the learned District Judge, Saharanpur and on the basis of the registered will the names of the petitioners were recorded in the revenue records. It was challenged by the respondent late Chauhal. It was also decided by the Board of Revenue against the petitioners vide order dated 28.5.1993. As such the matter in respect of title has been decided by the civil courts as well as the revenue courts and the petitioners could not succeed from the any court. In such circumstances the petitioners failed to establish their possession-over the land in dispute.

7. In view of the facts and circumstances of the case and the submissions made by the learned counsel for the petitioner, A.G.A. and learned counsel for the respondents and from the perusal of the order dated 18.1.2001 passed by the learned S.D.M., Nakur, Saharanpur and the order dated 10.11.1987 passed by the learned 2nd Additional Sessions Judge, Saharanpur in Criminal Revision No. 124 of 1986, it appears that the petitioners could not prove their physical possession over the land in dispute even at the time of the initiation of the proceedings they were not in possession. The petitioners were claiming their possession over the land in dispute on the basis of the sale deed and registered will executed in their favour, but the sale deed was cancelled by the civil court and on the basis of the registered will the petitioners were mutated in the revenue record, but the revenue courts have decided against the petitioners by recording a finding that their names were wrongly recorded in the revenue record. In such circumstances the petitioners have lost their ways to claim the possession over the land in dispute in the present case, because the revenue courts as well as civil courts had decided the cases between the parties and the learned S.D.M., Nakur came to conclusion that the respondent late Chauhal was in possession of the land in dispute, so it was released in favour of the respondent late Chauhal by dropping the proceedings u/s 145 Cr. P. C.

8. The impugned orders dated 18.01.2001 does not suffer from any illegality or irregularity. The revisional court also passed a detailed order considering all the facts and circumstances of the case and dismissed the Criminal Revision No. 67 of 2001 filed by the petitioners on 11.5.2002, so there is no illegality or irregularity in the order dated 7.5.2002 passed by the learned Additional Sessions Judge, Court No. 2, Saharanpur, so the prayer for quashing the impugned orders dated 18.1.2001 and the order dated 7.5.2002 is refused.

9. Accordingly, the petition is dismissed.