
(1987) 10 AHC CK 0048

In the Allahabad High Court

Case No : Criminal Misc. Application No. 7930 of 1982

Sheo Raj Singh and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-10-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 397, 401, 438

Citation : (1988) 12 ACR 16

Hon'ble Judges : S.I. Jafri, J

Bench : Single Bench

Advocate : A.B.L. Gaur, for the Appellant; R.H. Zaidi, for the Respondent

Final Decision : Dismissed

Judgement

S.I. Jafri, J.—Sheo Raj Singh, Desh Raj Singh, Bir Singh, sons of Kaley, Chandraman, Birbal and Bhagwana sons of Nanki filed revision No. 2209 of 1982 in this Court praying that the operation of the order dated 7-9-82 passed by the Sub-Divisional Magistrate, Sikandrabad, District Bulandshahr in proceedings u/s 145/146 Code of Criminal Procedure in case No. 1 of 1981 be set aside and also the aforesaid proceedings be quashed. The revision was admitted by this Court and the operation of the aforesaid order was stayed on 10-12-1982. Thereafter, the applicants filed an application u/s 482 Code of Criminal Procedure praying that the revision be converted into an application u/s 482 Code of Criminal Procedure. The application was allowed and the aforesaid revision was converted and treated as an application u/s 482 Code of Criminal Procedure on 10-12-1982 by this Court.

2. The facts giving rise to the present application u/s 482 Code of Criminal Procedure as admitted by the parties are that the land in dispute was owned by Ramzani, Alim Uddin and Allah Diya who were brothers. Upon the death of Allah Diya, the name of his widow Smt. Saiyeddan was mutated in his place. The dispute regarding the actual possession over the land in question arose between Smt. Sayeedan on one hand and Alim Uddin and Ramzani on the other hand

which resulted into initiation of the proceedings u/s 145 Code of Criminal Procedure on 16-5-1966 by Sub-Divisional Magistrate. The land in dispute was also attached on 19-5-1966, and it was given in the supurdagi of the Supurdar. Ultimately, the Sub-Divisional Magistrate concluded the proceedings by holding that Ramzani and Alim Uddin were in actual possession over the land in dispute and the disputed property was directed to be released in favour of Ramzani and Alim Uddin and as such, the land in dispute was delivered to Ramzani and Alim Uddin on 20-10-1969. Aggrieved by the aforesaid order of the Sub Divisional Magistrate, Smt. Sayeedan and her two sons Amir and Nura preferred revision before the Sessions Judge. The revisional Court took the view that the land in dispute was the joint property and the parties were in joint possession of the same and, therefore, the revisional Court referred the matter to the High Court u/s 438 Code of Criminal Procedure (Old Code) for setting aside the order passed by Sub Divisional Magistrate as the proceedings u/s 145 Code of Criminal Procedure were not maintainable, The High Court accepted the reference by its order dated 9-1-1982 and had set aside the aforesaid proceedings as not maintainable. However, during the pendency of the aforesaid revision, circumstances underwent a complete change inasmuch as Smt. Sayeedan alienated her share in the land in dispute through a sale deed dated 29-4-1970 in favour of Smt. Ram Sakhi, Smt. Santosh Devi and Smt. Usha Devi, but the name of Smt. Sayeedan continued to be recorded in the revenue records. Again by executing another registered sale deed dated 21-1-1981, Smt. Sayeedan sold the entire property including the shares in the property owned by Ramzani and Alim Uddin in favour of the applicants Shiv Raj Singh and others. Consequent to alienation of the property in their favour, applicants Sheo Raj Singh and others applied for mutation of their names in the said property but the mutation proceedings were abated as by the time, the village Sikandrabad came under the operation of U.P.C.H. Act. Alimuddin, however, died thereafter, leaving Ramzani as his heir and legal representative.

3. It appears that applicants Sheo Raj Singh and others started interfering with the possession of Ramzani over the land in dispute on the basis of the aforesaid sale deed dated 21-1-1981 and consequently, Ramzani filed an application u/s 145 Code of Criminal Procedure before the Sub Divisional Magistrate, Sikandrabad, District Bulandshahar. On the said application, a report from the police was called for by the Magistrate. The Police reported on 2-1-1982 that there existed a dispute between the parties over the question of possession of land and there was also imminent danger of breach of peace between them. The Magistrate having satisfied himself from the material on record about the existence of the apprehension of breach of peace in respect of the land in dispute between the parties, passed a preliminary order on 6-1-1982 attaching the land and the crops standing thereon. The land and the crops were given in the Supardagi of one Bhagwana. The applicants thereafter, filed criminal revision No. 17 of 1982 against the order dated 6-1-1982. The revision was ultimately dismissed by the 2nd Addl. Sessions Judge, Bulandshahr by his order dated 20th

March 1982 holding that there was sufficient material before the Magistrate for coming to the conclusion that there existed dispute regarding possession over the land and also there was imminent danger of breach of peace between the parties. The learned Sessions Judge, however, was also of the view that the order attaching the land in dispute was interlocutory and against the same revision was not maintainable.

4. The applicants raised objection before the Sub Divisional Magistrate that proceedings u/s 145 Code of Criminal Procedure were not maintainable and liable to be dropped in view of the earlier order passed by the High Court on 9-4-1982, dropping the proceedings u/s 145 Code of Criminal Procedure in Criminal Revision No. 179 of 1970, Smt. Sayeedan v. Alim Uddin. On the other hand, Smt. Ram Sakhi and others who were also claiming their right and possession over the land in dispute on the basis of sale deed dated 21-4-1970 (which was earlier than the sale deed in favour of applicants Shiv Raj Singh and others) also applied for their being impleaded as a party in the proceedings and the Sub Divisional Magistrate by his order dated 9-8-1982 impleaded Smt. Ram Sakhi and others as parties to the proceedings. The Sub Divisional Magistrate after hearing the argument of the parties dismissed the objection raised by the applicants on 7-9-1982, holding that the parties to the present proceedings were different and the land in dispute was rightly attached by the learned Magistrate.

5. The applicants had, therefore, challenged the validity of the order dated 7-9-1982 passed by the learned Magistrate by filing the present application u/s 482 Code of Criminal Procedure which was originally filed u/s 397/401 Code of Criminal Procedure by way of revision (Criminal Revision No. 2209 of 1982). As stated above, the said revision was subsequently converted and treated as an application u/s 482 Code of Criminal Procedure by the High Court. This Court while admitting the aforesaid revision No. 2209 of 1982, had stayed the operation of the order dated 7-6-1982 passed u/s 145 Code of Criminal Procedure by the Magistrate, directing the parties to file their respective written statements on 21-9-1982. However, the disputed property continued to remain with the supurdagi of Bhagwana son of Madan till now.

6. I have heard the learned Counsel for the parties and have also gone through the material on record very carefully, and I am of the view that the present application filed by the applicants u/s 482 Code of Criminal Procedure is devoid of any merit and deserves to be dismissed.

7. It was contended by the learned Counsel for the applicants that the land in dispute had already been held to be joint property and also the proceedings u/s 145 Code of Criminal Procedure as not maintainable by the High Court on 9-4-1982 in Criminal Reference No. 179 of 1970 arising out of revision filed by Smt. Sayeedan and others against Alim Uddin and others. The learned Counsel therefore, submitted that the present proceedings u/s 145 Code of Criminal Procedure initiated by the Sub Divisional Magistrate by his order dated 7-6-1982 regarding the same disputed property is res-judicata and not maintainable. The

learned Counsel for the applicants has filed a photo copy of the order dated 9-4-1982 passed in Criminal Reference No. 179 of 1970 Smt. Sayeedan v. Alim Uddin whereby, the impugned order passed by Sub Divisional Magistrate Sikandrabad on 25-10-1969 was set aside in proceedings u/s 145 Code of Criminal Procedure were quashed. The aforesaid photo state copy of the order dated 9-4-1982 passed by the High Court was kept on the record of this case.

8. It was also submitted by him that the view taken by the Sub Divisional Magistrate in his order dated 7-6-1982 that the parties in the present proceedings are different from that of the parties in the earlier proceedings u/s 145 Code of Criminal Procedure decided by High Court on 9-4-1982, does not hold water as applicants Sheo Raj Singh and others had stepped into the shoes of Smt. Sayeedan by the sale deed executed by Smt. Sayeedan on 21-1-1981 in their favour.

9. It is pertinent to note that Smt. Sayeedan had executed the sale deed in favour of the applicants of the entire disputed property including the shares of Ramzani and Alim Uddin. It is, thus, quite apparent that the applicants have been claiming exclusive possession over the entire disputed property. Moreover, the applicant did not claim joint possession over the land in dispute. Under the circumstances, I hold that the present proceedings u/s 145 Code of Criminal Procedure pending before Sub Divisional Magistrate are legally maintainable.

10. The learned Counsel for the Opposite party No. 2 has contended that having executed the sale deed in favour of Smt. Ram Sakhi and others Smt. Sayeedan had no right to execute the sale deed subsequently regarding the entire property in favour of applicants Sheo Raj Singh and others and such the sale deed executed in their favour was void abinitio and on the basis of the same Sheo Raj Singh and others cannot rightly claim either the ownership or the possession at any point of time over the disputed property. It was also pointed out by the learned Counsel that neither applicants Sheo Raj Singh and others nor Smt. Ram Sakhi and others Respondents 3, 4 and 5 were parties to the earlier proceedings u/s 145 Code of Criminal Procedure decided by High Court on 9-4-1982, and, therefore, the order of the High Court dated 9-4-1982 passed in the aforesaid criminal reference No. 179/70 will not be a bar for initiating subsequent proceedings by the Magistrate regarding the same property between the present parties.

11. As shown above, the present case is one of actual possession over the entire property in dispute and not a case of joint possession. It is also note worthy that there is nothing on record to show that the applicants had claimed joint possession over the property in dispute. Moreover, the satisfaction recorded by the Magistrate regarding apprehension of breach of peace in the impugned order dated 7-6-82 does not appear to be malafide or motivated. I, therefore, further held that the learned Magistrate has rightly initiated proceedings u/s 145 Code of Criminal Procedure between the parties.

12. In the result, the application u/s 482 Code of Criminal Procedure (converted from Criminal Revision No. 2209 of 1982 to Criminal Misc. Application No. 7930 of 1982) is dismissed as devoid of merit. The interim order granted by this Court on 10-12-1982 staying further proceedings in case No. 1 of 1982 u/s 145 Code of Criminal Procedure and also the operation of the order dated 7-6-1982 passed by Sub Divisional Magistrate Bulandshahr in Criminal Revision No. 2209 of 1982 filed by the applicants in this Court are vacated.

13. The office is directed to send a copy of this order to the Court below for necessary action. The learned Magistrate is directed to proceed with the case in accordance with law expeditiously.