

(1984) 01 RAJ CK 0010
In the Rajasthan High Court
Case No : Criminal Revision No. 221 of 1982

Smt. Mohan Kanwar

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-01-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146
Penal Code, 1860 (IPC) — Section 147, 323, 325, 36, 427

Citation : (1984) WLN 254

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.M. Kasliwal, J.—This revision by Smt. Mohan Kanwar w/o Gordhan Singh is directed against the order of learned Sessions Judge, Jaipur District Jaipur, dated 16th September 1982, setting aside the order of learned Sub-Divisional Magistrate, Amer, dated 3rd August, 1982, passed u/s 146(1) Cr. PC.

2. Smt. Mohan Kanwar submitted a complaint on 13th March, 1982 in Police Station, Chandwaji to the effect that her husband Gordhan Singh had died long back and Khatedari of Khasra Nos. 646 and 650 measuring 27 Bighas 19 Biswas had been recorded in her favour. She was getting the land cultivated through her brother-in-law Bhagirath Singh. It was further mentioned that her another brother-in-law Hanuman Singh and his sons Prabhu Singh, Bhawani Singh Mahaveer Singh and their Hali Gheesa were interfering in her possession and used to take away the crop by force. The Station House Officer recorded the statement of Smt. Mohan Kanwar and Bhagirath Singh and submitted a complaint in the court of Sub-Divisional Magistrate, Amer on 5th July, 1982. The Station House Officer in his report submitted that the land in question was in the Khatedari of Smt. Mohan Kanwar. Gordnan Singh had no son. He had one daughter Bhanwar Kanwar and she was married during the life time of Gordnan Singh. After the death of Gordhan Singh, the Khatedari of the land was recorded

in the name of Smt. Mohan Kanwar. Party No. 2 i.e. Prabhu Singh was taking a stand that after the death of Gordhan Singh turban was tied on his head and as such he was the heir and successor of the land left by Gordhan Singh. This fact was denied by Smt. Mohan Kanwar. It was further mentioned in the report by the Station House Officer that with regard to this very land cases No. 62/80 u/s 147, 447, and 427 IPC, 49/81 under Sections 147 and 323 IPC and 36/81 u/s 325 IPC were pending trial. Thus, there was a continuous dispute between the parties with regard to the land in question since 1980 and both the parties were bent upon killing each other. It was further submitted in the report that time for sowing the crop was coming very near and there was a possibility of some untoward incident being committed with regard to the possession over the land in question. On this complaint a preliminary order was drawn by the learned Sub-Divisional Magistrate on 9th July, 1982 u/s 145(1) Cr. PC. The parties were directed to put forth their claims on 28th July, 1982. In the mean time on 26th July, 1982 the Station House Officer submitted a report that there was imminent danger as to breach of peace between the parties and as such he prayed that an order of attachment should be passed u/s 146(1) Cr. PC. No order was passed on that day as the case was already fixed for 28th July, 1982 and this application was also kept for orders on 28th July, 1982. On 28th July, 1982, the notice had not returned after service. The learned Sub-Divisional Magistrate took into consideration the material on record as well as report of the Station House Officer and passed an order attaching the land in dispute u/s 146(1) Cr. PC on 3rd August, 1982. The non-applicant Prabhu Singh aggrieved against the aforesaid order submitted a revision before the learned Sessions Judge Jaipur District, Jaipur. The learned Sessions Judge set aside the order of the learned Sub-Divisional Magistrate taking in view that the Station House Officer took no steps for getting the summons served on the non-applicants and further that no untoward incident had taken place between 13th March, 1982 to 26th July, 1982 as such there was no ground or justification for attaching the land in dispute. It was further observed by the learned Sessions Judge that though the Station House Officer in his report had mentioned that the time for sowing the crop was coming very soon but it remained undisputed that at the present moment crop was standing on the land in question.

3. It was contended by Mr. Pareek, learned Counsel for the petitioner, that the learned Sub-Divisional Magistrate was the competent officer to consider the question regarding maintenance of peace and he had taken into consideration the report of the concerned Station House Officer that there was imminent danger as to breach of peace over the land in question and the learned Sessions Judge has no jurisdiction to interfere with such an order. It was further submitted that according to the report of the Station House Officer it was clear that criminal cases were pending between the parties with regard to this very land and if the Sub-Divisional Magistrate was satisfied on the material available on record that there was emergency then in that case it was not necessary for him to await the service of notice on the party No. 2. It was also submitted that all along after the

death of Gordhan Singh, the land has been shown in revenue records in the possession of Smt. Mohan Kanwar Girdawaris are done in the name of Smt. Mohan Kanwar and she is paying the land revenue and Khatedari of the land is also recorded in her favour. It was also submitted that the passbook of the land was also in the name of Smt. Mohan Kanwar and at no point of time the land in question was ever shown in possession of Prabhu Singh in the Revenue record.

4. On the other hand, Mr. S. D. Sharma, appearing for Prabhu Singh contended that the Sessions Judge has considered the entire material on record after bearing the arguments of both the sides had passed the order on 16th September, 1982 and there is nothing wrong or illegal in the said order so as to call for any interference by this Court.

5. I have considered the rival submissions made by learned Counsel for both the parties and have also perused the record.

6. It remains undisputed that the land in question belonged to Gordhan Singh. Smt. Mohan Kanwar is the widow of Gordhan Singh and after the death of Gordhan Singh, the land has been recorded in the Khatedari of Smt. Mohan Kanwar. Prabhu Singh is claiming his right in the land on the basis of the turban tied on his head after the death of Gordhan Singh. He is also claiming himself to be an adopted son of Gordhan Singh. However, there is no document to show the fact of adoption in favour of Prabhu Singh. Though Mr. S. D. Sharma submitted that a civil suit for declaration that Prabhu Singh is the adopted son of Gordhan Singh has been filed, but this fact is disputed by the learned Counsel for the petitioner. In spite of opportunity being granted to Mr. S. D. Sharma, no material has been placed on record to show that any suit for declaration has been filed by Prabhu Singh in the Civil Court. Mr. Sharma was also unable to place any record before this Court so as to show prima facie that cultivatory possession has been shown in revenue records in favour of Prabhu Singh after the death of Gordhan Singh. Be that as it may, this Court has to consider the propriety of the order of the learned Sessions Judge on the basis of the material so far placed on record. It cannot be disputed that originally it is the Magistrate on the spot, who has jurisdiction to consider the question of maintaining peace if there is any dispute with regard to possession over an immovable property. The Magistrate can be satisfied on the basis of report of a Police Officer or upon other information that a dispute likely to cause breach of peace exists concerning any land within his local jurisdiction and in that case he can take opportunity proceeding u/s 145 and 146 Cr. PC. In the present case, a preliminary order was drawn u/s 145(1) Cr. PC on 9th July, 1982 2nd parties were called upon to put forth their claims on 28th July, 1982. The notices had not returned after service and the Station House Officer had prayed that there was imminent danger as to breach of peace and there were number of criminal cases pending trial between the parties. It was also mentioned that the time for sowing the crop was very near and on that account there was possibility of any serious offence being committed by parties. The learned Sub-Divisional Magistrate took into consideration all these circumstances

and after applying his mind, considered it a case of emergency and as such passed an order attaching the land in dispute u/s 146(1) Cr. PC and appointed Tehsildar as receiver. The learned Sub-Divisional Magistrate while drawing the preliminary order had also taken into consideration that there was danger as to breach of peace over the land in dispute and as such had passed a preliminary order on 9th July, 1982. In these circumstances, it was not a case where there was no material on record before the learned Magistrate or that the Magistrate has not applied his mind to the question of emergency. The learned Sessions Judge in these circumstances was not right in invoking his powers of revision in interfering against such an order passed by the learned Sub-Divisional Magistrate. The proceedings u/s 145 Cr. PC do not decide any title and are primarily meant for maintaining peace with regard to dispute over the land or some other immovable property.

7. In view of these circumstances I am clearly of the opinion that the learned Sessions Judge illegally exercised his powers of revision in setting aside the order of the learned Sub-Divisional Magistrate.

8. In the result, this revision is allowed, the order of the learned Sessions Judge, Jaipur District, Jaipur dated 16th September, 1982 is set aside and the order of the learned Sub-Divisional Magistrate, Amer, dated 3rd August, 1982, is restored. In case the non-petitioner Prabhu Singh has cultivated the land in question, the Tehsildar Jamuva Ramgarh shall take proceeding for attaching the land in dispute after the present crop is removed by the non applicant Prabhu Singh. However, Prabhu Singh will be allowed to take away the crop provided he will furnish a solvent security for the value of the crop in favour of Tehsildar, Jamuva Ramgarh. The value of the crop would be determined by the Tehsildar Jamuva Ramgarh.