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**(1999) 09 AHC CK 0001**  
**In the Allahabad High Court**  
**Case No : Criminal Revision No. 1413 of 1984**

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|-----------------------------------|------------|
| Swami Nitya Gopal Das and Another | APPELLANT  |
| Vs                                |            |
| State of U.P. and Another         | RESPONDENT |

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**Date of Decision :** 29-09-1999

**Acts Referred:**

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

**Citation :** (1999) 3 ACR 2069

**Hon'ble Judges :** M.C. Jain, J

**Bench :** Single Bench

**Advocate :** D.S. Tewari, for the Appellant; A.G.A. and G.P. Dixit, for the Respondent

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## Judgement

M.C. Jain, J.—A dispute regarding possession of certain property having its origin in the year 1972 is the subject-matter of adjudication in this revision. A brief resume of the case history is being given for appreciation of the controversy.

2. On 11.8.1972 the police of Police Station Laxman Jhoola, district Pauri Garhwal made a report to the Sub-Divisional Magistrate, Lansdown that there was apprehension of breach of peace over the question of possession in respect of plot Nos. 1014, 1015, 1016, 1017 and 1018 situated in Village Jaunk, Patti Talla Udaipur, P.S. Laxman Jhoola between Swami Kailashanand (Respondent No. 2) and Swami Ram Kishore Das (revisionist No. 2). The preliminary order was passed by the Sub-Divisional Magistrate, on 16.8.1972 and the plots in question were attached also and given in the supurdgi of one Bajrangbali. The Sub-Divisional Magistrate could not decide as to which of the parties was in possession of the disputed plots on the date of preliminary order and two months preceding thereto. Accordingly he referred the matter to Civil Court (Munsif Lansdown) as per Section 146(1) of the old Code of Criminal Procedure by order dated 19.1.1974. Munsif Lansdown decided the reference on the basis of the evidence as regards the question of possession by judgment dated 22.9.1977 holding that Swami Nitya Gopal Das was in possession of plot Nos. 1014 to 1017

and P.W.D. was in possession of plot No. 1018 on the date of issue of preliminary order and within two months prior to that. It may be mentioned here that Swami Nitya Gopal Das had been impleaded as a party to the dispute before the making of the reference by the Sub-Divisional Magistrate to the civil court. He himself had made an application for being impleaded as a party to the proceedings. It appears that Civil Misc. Writ Petition No. 2212 of 1974 was also filed by the present O.P. No. 2 Swami Kailashanand, which was ultimately dismissed on 13.7.1983.

3. O.P. No. 2 Swami Kailashanand made applications to the Sub-Divisional Magistrate dated 31.10.1983 and 10.2.1984. It was stated that Prabhu Das and Ram Kishore Das had come to Laxman Jhoola for some time in 1972 and thereafter they started living at Ayodhya. It was represented by him that the apprehension of breach of peace no longer existed over the question of possession in respect of disputed plots. A report was called for by the Sub-Divisional Magistrate from Station Officer of Police Station Laxman Jhoola whose report supported the contention of Swami Kailashanand. Though no actual notice of such applications was served on the other party (present Applicants), by order dated 14.2.1984, the Sub-Divisional Magistrate dropped the proceedings of Section 145, Code of Criminal Procedure and directed for return of the possession of the disputed plots to the party from whose possession they were attached. A date was fixed for this purpose for the presence of the parties before him. Ultimately, by the impugned order dated 30.5.1984, he recorded a finding that Swami Kailashanand, O.P. No. 2 was in possession of the said plot Nos. 1014, 1015, 1016, 1017 and 1018 at the time of attachment and he accordingly directed for their release in his favour. A direction was made to the S.O. of Police Station Laxman Jhoola accordingly to get the possession delivered from the supurdgar of Bajrang Bali to O.P. No. 2 Swami Kailashanand. It is relevant to mention here that the Fard of attachment dated 21.8.1972 whereby the possession over the plots in question was given to the supurdgar Bajrangbali did not mention as to from whose possession they were attached but the Sub-Divisional Magistrate recorded such a finding in his impugned order dated 30.5.1984 on the basis of the statement made before him by the Supurdgar Bajrangbali in proceedings held by him (subsequent to 14.2.1984) to decide the factum as to from whose possession the plots in question had been attached. After passing of the impugned order dated 30.5.1984, the possession was got delivered also from the supurdgar Bajrang Bali to Swami Kailashanand. O.P. 2 on 31.5.1984. Aggrieved, the Applicants Swami Nitya Gopal Das and Swami Ram Kishore Das have challenged the impugned order dated 30.5.1984 passed by the Sub-Divisional Magistrate.

4. It may be stated for the sake of clarity that Swami Ram Kishore Das, Applicant No. 2 was the first party in the proceedings u/s 145, Code of Criminal Procedure right from the beginning and the Applicant No. 1 Swami Nitya Gopal was impleaded subsequently on his application (as he claimed his possession) before the reference had been made by the Sub-Divisional Magistrate to the civil court.

5. I have heard learned Counsel for the Applicants, learned A.G.A. for O. P. No. 1 and learned Counsel for O.P. No. 2 and have gone through the record of the case with care.

6. The argument of the learned Counsel for the Applicants is that the Sub-Divisional Magistrate could not pass an order contrary to the finding recorded by the civil court on the reference and the impugned order passed by him, regarding possession being delivered to O.P. No. 2 Swami Kailashanand is patently illegal. On the other hand, the submission from the side of the O.P. No. 2 is that even after the receipt of the finding of the civil court in respect of possession, the Magistrate could drop the proceedings under the proviso to Sub-section (1) of Section 146, Code of Criminal Procedure (old) in case he found that there did not exist apprehension of breach of peace any longer. Reliance has been placed of the case of Brij Lal v. State 1973 ACR 472. Learned Counsel for the O.P. No. 2 has also placed reliance on the case of Amol Singh v. Mohan Lal 1978 ACR 94, to back his contention that to find out the person who was best entitled to the possession of the property the Magistrate had to hold an enquiry, which he did as he called upon the parties to lead evidence as to from whose possession the property had been attached. Yet another argument of the learned Counsel for O.P. No. 2 is that Swami Nitya Gopal Das was not a party to the proceedings when the property in question had been attached on 21.8.1972 and as such, there could be no question of delivering back the possession to him.

7. On careful consideration of the respective contentions of the learned Counsel for the parties in the light of the relevant provisions of law. I am in judgment that the impugned order dated 30.5.1984 passed by the Sub-Divisional Magistrate is patently illegal and cannot be sustained. I proceed to state the reasons for my this conviction.

8. To take up the last contention of the learned Counsel for O.P. No. 2 first that the possession could not be delivered to Swami Nitya Gopal Das (Applicant No. 1) as he was not a party to the proceedings when the attachment was made on 21.8.1972, it has no "legs to stand. The Fard of attachment itself does not state as to from whose possession property had been attached on 21.8.1972. But it is a fact that Swami Nitya Gopal Das (Applicant No. 1) was impleaded as a party to the dispute before the reference had been made by the Sub-Divisional Magistrate to the civil court as per Section 146(1), Code of Criminal Procedure (old) as he was claiming his possession on the disputed plots. He had been contesting the proceedings throughout after his impleadment and it was on weighing the evidence of the parties including the said Swami Nitya Gopal Das that the learned Munsif recorded finding in the reference on 22.9.1977 that he (Swami Nitya Gopal Das) was in possession of plot Nos. 1014 to 1017 and P.W.D. was in possession of plot No. 1018 on the date of issue of preliminary order and within two months prior to it. It would, therefore, be a myth to say that Swami Nitya Gopal Das should be treated as a stranger so far as the question of delivering back of the possession of disputed property forming subject-matter of reference

by civil court was concerned. The course of justice could not be obstructed on the basis of unfounded hyper technically.

9. The Apex Court has laid down in the case of Chandrasekhar Singh and Others Vs. Siya Ram Singh and Others, , that the finding of the civil court given u/s 146(1B) of old Code of Criminal Procedure regarding possession was final and could not be challenged by way of appeal, review or revision. After the reference had been answered by the civil court, it was incumbent upon the Sub-Divisional Magistrate to have proceeded to dispose of the proceedings u/s 145, Code of Criminal Procedure in conformity with the decision of the civil court. He had no other option. Moreover, no appeal, review or revision could lie against such finding of the civil court. Sub-sections (1B) and (1D) of Section 146, Code of Criminal Procedure (old) are relevant to be quoted which read as under:

(1B) The civil court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding together with the record of the proceeding to the Magistrate by whom the reference was made; and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding u/s 145 in conformity with the decision of the civil court.

(1D) 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.

10. So far as the power of the Magistrate to drop the proceedings even after the decision of the reference by the civil court was concerned with regard to which learned Counsel for O.P. No. 2 has relied on the case of Brij Lal v. State (supra) to support his first argument, it is relevant to state that such powers could not be exercised by him at the behest and saying of one contesting party at the back of the other. It is apparent that O.P. No. 2 Swami Kailashanand did a great deal of manoeuvring and manipulations after the reference had been answered by the civil court against him. The record itself shows that it was he who made an application to the Magistrate stating that there had ceased to be any apprehension of breach of peace over the question of possession of the disputed plots. It is also clear from the record that no notice had been served on the Applicants (the first party) before passing of the order dated 14.2.1984 whereby the proceedings were dropped by the Magistrate on the ground that there had ceased to be apprehension of breach of peace. It simply so happened that O.P. No. 2 Swami Kailashanand made an application in this behalf and the local police supported him. At the back of the Applicants, the Magistrate accepted the case put forth by O.P. No. 2 that there had ceased to be any apprehension of breach of peace over the question of possession in respect of disputed land and passed order dated 14.2.1984. It spills beyond comprehension as to how could there be cessation of apprehension of breach of peace when Applicant No. 1 Swami Nitya Gopal Das had contested the proceedings throughout and was staking his claim of possession even in the proceedings purportedly held by the Magistrate subsequent to the passing of the order dated 14.2.1984 to decide the factum as

to from whose possession the property had been attached. In his impugned order dated 30.5.1984, he has placed reliance on the statement of supurdgar Bajrang Bali that the attachment had been made from the possession of O.P. No. 2 Swami Kailashanand. It would be recalled that the Fard of attachment does not make any mention as to from whose possession the attachment had been made. It is apparent that the supurdgar Bajrang Bali crossed over to the side of the O.P. No. 2 Swami Kailashanand to state a fact which was not there in the Fard of attachment itself. The inference cannot be escaped that O.P. No. 2 Swami Kailashanand, the local police and the supurdgar Bajrang Bali joined hands and the ulterior object was to defeat in an indirect and circumlocutory manner the finding recorded on reference by the civil court.

11. O.P. No. 2 Swami Kailashanand created an artificial ground by pleading cessation of the apprehension of breach of peace so that a so-called enquiry could be made by the Magistrate to find out as to from whose possession attachment had been made. This was all a device to frustrate the finding recorded by the civil court on the reference, which had the binding effect. Great sanctity was to be attached to the finding recorded by the civil court on the reference and the Magistrate was bound to dispose of the proceedings in conformity with the decision of the civil court. Such a finding was to hold the field till the person found in possession on the date of the preliminary order and two months prior to it was to be evicted in due course of law. The crucial date was that of the passing of the preliminary order and two months prior to that. The Magistrate could not proceed to draw a different conclusion on the alleged premise that the attachment had not been made from the possession of Applicant No. 1 Swami Nitya Gopal (in whose favour civil court recorded finding of possession on the date of preliminary order and within two months in respect of plot Nos. 1014 to 1017 and in favour of P.W.D. in respect of plot No. 1018). The O.P. No. 2 Swami Kailashanand is the prime actor who has been successful in manipulating the whole fictitious show ultimately resulting in the impugned order dated 30.5.1984 which is perfectly illegal and unsustainable. In great haste, he managed to obtain possession too on the very next day 31.5.1984.

12. In view of the foregoing discussion the revision is allowed. The impugned order dated 30.5.1984 passed by Sub-Divisional Magistrate, Lansdown is quashed. It is directed that the Magistrate concerned shall give effect to the finding recorded on reference by the civil court on 22.9.1977 and shall pass order accordingly to dispose of the proceedings in question in conformity with the decision of the civil court. As a result, possession over plot Nos. 1014 to 1017 shall be delivered back to the Applicant Swami Nitya Gopal and over plot No. 1018 to P.W.D.

The compliance of this order shall be made by the Sub-Divisional Magistrate within fifteen days from the date of the production of a certified copy of this order before him.