
(1966) 11 AHC CK 0014
In the Allahabad High Court
Case No : Writ Petition No. 753 of 1965

Syed Hasan

APPELLANT

Vs

Munsif Havali and Others

RESPONDENT

Date of Decision : 15-11-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 146(1D), 435
Criminal Procedure Code, 1898 (CrPC) — Section 145, 146(1D), 435
Criminal Procedure Code, 1898 (CrPC) — Section 145, 146(1D), 435

Citation : (1967) 37 AWR 448

Hon'ble Judges : Lakshmi Prasad, J

Bench : Single Bench

Advocate : Md. Husain, for the Appellant; K.S. Verma, for Opp. Party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Lakshmi Prasad, J.—This is a petition under Article 226 of the Constitution praying for the quashing of a finding recorded by Munsif Havali, Lucknow, opposite party No. 1, in a case referred to him u/s 146, Code of Criminal Procedure.

2. Each of opposite parties Nos. 3 and 4 applied u/s 145, Code of Criminal Procedure in respect of the disputed plots. The Petitioner contested the applications moved u/s 145, Code of Criminal Procedure. Opposite parties Nos. 5 to 8 are the sons of the Petitioner. The magistrate seized of the case failed to come to a conclusion on the basis of the evidence on the record as to which of the contesting parties was in possession of the disputed plots on the relevant date. Accordingly, he referred the case to the Civil Court u/s 146, Code of Criminal Procedure. It is in these circumstances that opposite party No. 1 came to a finding that opp. party No. 3 was in possession of the disputed plots on the relevant date and none other. Before a final order could be passed in the case u/s 145, Code of Criminal Procedure on the basis of the aforesaid finding recorded by

opposite party No. 1, the Petitioner has come to this Court challenging the finding recorded by opposite party No. 1, mainly on the ground that it proceeds on the basis of the oral and documentary evidence led by the parties before opposite party No. 1 without taking into consideration the affidavits filed by the parties in respect of their respective cases before the Magistrate. Hence, the prayer is that the finding recorded by opposite party No. 1 be quashed and a direction be given to opposite party No. 1 to decide the question of possession afresh after taking into consideration the entire evidence on record including the affidavits filed by the parties as expressly required by the provisions of Section 146(1-A) of the Code of Criminal Procedure.

2. The petition is opposed by opposite party No. 3. I have heard learned Counsel for the parties. One of the preliminary objections raised by the learned Counsel for opposite party No. 3 is that the petition deserves to be rejected on the ground that there is an effective alternative remedy open to the Petitioner which he should avail himself of rather than invoke the extraordinary writ jurisdiction of this Court. The argument is that the remedy of revision under the provisions of the Code of Criminal Procedure against the final order to be passed in the case by the Magistrate will be open to the Petitioner when the final order has been passed and it shall then be possible for the Petitioner to challenge the particular finding in that revision on the score he seeks relief in this petition. Another argument in this behalf is that, at any rate, the alternative remedy by way of a regular suit will always be open to the Petitioner and as such he may not be permitted to seek remedy by a writ petition. In support of this latter contention learned Counsel places reliance on the case of Ghansham Das v. Sub-Divisional Magistrate Muzaffarnagar 1964 AWR 550. The contention of the learned Counsel for the Petitioner is that the consistent view of this Court has been that in view of the provision contained in Section 146(1-D) of the Code of Criminal Procedure, it is not possible to challenge the finding recorded by Civil Court u/s 146(1-A) in a revision filed against the final order passed in the case u/s 145, Code of Criminal Procedure even though it has no doubt to be passed in accordance with the finding recorded by the Civil Court. In support of his contention he places reliance on certain observations made in the case of Badri Nath Pandey v. UP State 1965 AWR 772. It may be mentioned at the very outset that the observations are made in the case as contended by the learned Counsel, but having regard to the decision given in the case, those observations are in the nature of obiter. Moreover, it is also pertinent to notice that but for those observations no reference is made to a single decided case to support the view contended for by the learned Counsel. Nor, even the learned Counsel is able to cite any case of this Court to support that view. Reading the relevant provisions of the Code of Criminal Procedure, I am not inclined to accept the contention that in a revision, which it is open to a party in a case u/s 145, Code of Criminal Procedure to file from the final order passed in it, it will not be possible to challenge the finding on the question of possession if it has been recorded by a Civil Court on a reference being made to it u/s 145, Code of Criminal Procedure,

though had that finding been recorded by the Magistrate himself it would have been open to the party aggrieved by it to challenge it in revision. Prima facie there appears to be no basis for such a distinction. The purpose of Section 146(1-D) simply is to shut an appeal or revision from the finding as such, but it goes no further. By no means it has any effect on the scope of a revision u/s 435, Code of Criminal Procedure from a final order passed u/s 145, Code of Criminal Procedure. So, once a final order is passed incorporating that finding as if it were the finding given by the Magistrate himself and it cannot be disputed that such a final order is open to revision under the provisions of Section 435, Code of Criminal Procedure, I am unable to see any reason as to why such a finding should be any more sacrosanct than that recorded by the Magistrate himself. On principle it should be as much revisable as the one recorded by the Magistrate himself. Such a view is not, in my opinion, in any way inconsistent with the provisions of Section 146(1-D) which, as already indicated, has to be confined to a revision or appeal to be filed from the finding itself. As laid down by Tripathi, J. in the case cited above, the alternative remedy by way of a suit is certainly open to the Petitioner and that by itself is a sufficient basis to refuse discretion in favour of the Petitioner in a writ petition, even though it may be that the impugned order suffers from the infirmity contended by the Petitioner. It is well settled that when an alternative remedy is open to a party aggrieved by an order, it should be referred to that alternative remedy rather than be allowed to seek relief by means of a writ petition. I accordingly uphold the preliminary objection and hold without entering into the merits of the case that the petition must fail.

4. The petition is dismissed. In the circumstances of the case parties are directed to bear their own costs.