

APPELLATE CRIMINAL

Before Man Mohan Singh Gujral and D. S. Tewatia, JJ.

SARDUL SINGH, ETC.,—Appellants.

versus

THE STATE,—Respondent.

Cr. A. No. 208 of 1971.

January 28, 1974.

Penal Code (XLV of 1860)—Section 97—Code of Criminal Procedure (Act V of 1898)—Section 145—Proceedings under—Dispute over land—Accused party declared to be in actual possession—Fight on the disputed land in which complainant party injured—Accused party taking the plea of right of private defence in the subsequent criminal case—Order under section 145—Whether can be challenged in such subsequent case—Complainant party—Whether can take the plea that it had continued in possession despite the order or it regained the possession surreptitiously—Accused party—Whether entitled to defend their possession.

Held, that although where there have been proceedings under Section 145 of the Code of Criminal Procedure, 1898, on the dispute over land and the Magistrate holds the accused party to be in actual possession of the land, there is no binding rule of evidence to preclude the Court in a subsequent criminal proceedings to consider and give its findings on any relevant fact in issue, but the Court will not in such subsequent criminal proceedings entertain the plea of the party which was one of the parties to the proceedings under section 145 of the Code that it had taken possession of the land either surreptitiously or through force or that it had continued in possession of the land despite the order. If such a plea is entertained in subsequent proceedings, then the very object of enacting the provision like 145 of the Code will stand frustrated and such a course will result in the complete erosion of the finality of the order. Hence where the complainant and the accused parties come in violent contact with each other, over the disputed land and the accused party takes the plea of right of private defence, the possession of the land declared to be with the accused in proceedings under section 145 of the Code shall be treated to be of the accused party. They are entitled to defend their possession in exercise of the right of private defence.

Appeal from the order of Shri O. P. Saini, Additional Sessions Judge, Ludhiana, dated 15th February, 1971 convicting the appellants.

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J. N. Kaushal, Advocate with Ashok Bhan, Advocate, for the appellants.

R. S. Palta, Advocate for the State, respondent.

M. S. Jain, Advocate, for the complainant.

JUDGMENT

TEWATIA, J.—Eight persons, namely, Sardul Singh, his three sons Joginder Singh, Kulwant Singh and Jaswant Singh, Kasturi Lal and his brother Jaswant Lal; Balwant Singh and Jagir Singh were brought to trial for offences under section 307 read with section 149, section 325 read with section 149, sections 148 and 447 Indian Penal Code. Two of them, i.e., Balwant Singh and Jagir Singh were acquitted while rest of them were convicted under section 307/149 of the Indian Penal Code for the injuries caused to Niranjana Singh P.W. and sentenced to three years' rigorous imprisonment each; they were further convicted for an offence under section 307/149 of the Indian Penal Code for the injuries caused to Ganga Singh and each of them was sentenced to three years' rigorous imprisonment; they were also convicted of an offence under section 307/149 of the Indian Penal Code for the injuries caused to Sarwan Singh and each of them was sentenced to three years' rigorous imprisonment; they were convicted for the same charge for the injuries caused to Naginder Singh, P.W., and each of them was sentenced to three years' rigorous imprisonment. All these accused were also convicted of an offence under section 148 of the Indian Penal Code and each of them was sentenced to one year's rigorous imprisonment. They were further convicted of an offence under section 447 of the Indian Penal Code and each of them was sentenced to two months' rigorous imprisonment. All these sentences were, however, directed to run concurrently. These accused were acquitted of the charge framed against them under section 325/149 of the Indian Penal Code.

(2) The convicted ones came up in appeal to this Court through Criminal Appeal No. 208 of 1971. Their appeal, in the first instance, came up for hearing before Gujral, J. before whom the principal argument advanced on their behalf was that they could be held liable for the offences with which they had been charged and convicted only if they were to be labelled as the aggressors which, in

turn, would depend on the finding as to whether the land regarding the possession whereof the parties came in violent contact with each other, was, on the date of occurrence, in the possession of the appellants or the complainant party and that they (appellants) having been already declared by the Executive Magistrate during the course of proceedings under section 145 of the Code of Criminal Procedure at their instance, to be in actual possession of the land in dispute with effect from 18th April, 1968, by his order dated 27th July, 1968, and the said order having been upheld by the High Court on 28th August, 1969, and also by the Supreme Court on 30th September, 1969, the question as to which party was in possession on the date of occurrence could not be gone into in the present criminal proceedings—there being no evidence, on the record, of the fact of the complainant party having regained possession of the same from the appellants in due course of law. His attention was invited by the appellants to a decision of the Patna High Court reported in *Ambika Thakur and others v. Emperor* (1) in support of the submission abovesaid, while the State, for their contrary submissions, drew support from a decision of the Calcutta High Court reported in *Rakhal Dolui and another v. Makham Lal Ghose* (2). Due to the conflicting views expressed by the two High Courts and there being no decision of this Court on the point, the matter was considered by Gujral, J. to be deserving of a consideration by a larger Bench. He, thus, referred this case by his order dated 23rd December, 1971, for decision by a larger Bench and it is how that this appeal has been placed before us.

(3) In order to appreciate the contention advanced on behalf of the appellants, it is but necessary to notice only a few relevant facts.

(4) A piece of land measuring 522 *kanals* and 16 *marlas* situated in the area of village Kaneja was being owned by an absentee landlord named Bhim Sen son of Bodh Raj. The land was being managed on his behalf by his attorney Shri Chaman Lal Chopra. This land was being cultivated by Niranjan Singh, Ganga Singh, P.Ws. and other tenants since the year 1964. On 25th March, 1968, Kasturi Lal, Jaswant Lal and Jaswant Singh, accused, along with Satish

(1) A.I.R. 1939 Patna 611.

(2) A.I.R. 1927 Cal. 701.

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Kumar son of Harkishan Lal and Gurbachan Kaur wife of Sardul Singh accused purchased the abovesaid land from Shri Chaman Lal Chopra, the attorney of Shri Bhim Sen. On 18th April, 1968, the vendees initiated proceedings under section 145 of the Criminal Procedure Code against the complainant party claiming that they had purchased the said land on 25th March, 1968, of which mutation was sanctioned by Tehsildar on 1st April, 1968 and of which they were given possession by Niranjani Singh and other tenants on 9th April, 1968 after having received a sum of Rs. 20,000 as compensation from them. The Executive Magistrate, on 27th July, 1968, found the appellants to be in possession on the date of the filing of the application under section 145 of the Criminal Procedure Code, i.e., 18th April, 1968, and the operative part of his order is in the following terms:—

“From the above discussion, I arrive at the conclusion that party No. 3 and 4 Kasturi Lal, Satish Kumar, Jaswant Lal, Jaswant Singh, Gurbachan Kaur and Satwant Kaur, were in actual possession of the land in dispute and the crops standing therein on the date of issue of the preliminary order by this Court, i.e., on 18th April, 1968. Under section 145(6), Criminal Procedure Code, I declare the said persons to be in actual physical possession of the land in dispute and to be entitled to the possession thereof until evicted therefrom in due course of law (sic) and forbid all disturbance of possession until such eviction.

The attachment of the standing crops made *vide* order of this Court dated 20th April, 1968 is hereby released in favour of Party No. 3 and 4 (Kasturi Lal, Satish Kumar, Jaswant Lal, Jaswant Singh, Gurbachan Kaur and Satwant Kaur above mentioned). Order be issued accordingly to the Tehsildar, Ludhiana, who is the official receiver.”

This order was affirmed by the High Court on 28th August, 1969 and by the Supreme Court on 30th September, 1969. The complainant had, in the meantime filed a suit in the civil Court seeking a declaration to the effect that the order of the Executive Magistrate dated 27th July, 1968, declaring the vendees-appellants to be in possession of the land purchased by them from Bhim Sen was wrong and that they, in their capacity as tenants, continued to be

in possession thereof till the filing of the said suit. They secured an injunction against the appellants from the said Court on 30th April, 1968, which was vacated by the District Judge on 22nd June, 1968, in appeal. A civil revision in the High Court against the said order of the District Judge was finally dismissed by the High Court on 13th November, 1968, and it was thereafter on 24th November, 1968, that the parties came in violent conflict with each other regarding the possession of the land in question in which occurrence Niranjn Singh and his five other companions sustained firearm and blunt weapon injuries. It is unnecessary to go into the facts of the occurrence as the occurrence has been admitted by the appellants who have pleaded that they were in possession of the land and they caused injuries to the complainant party in the exercise of right of defence of property when the said party sought to take forcible possession of the land in question.

(5) Before reverting to the consideration of the principal contention, it may be mentioned at this stage that on 10th January, 1974, the appellants moved an application — Criminal Miscellaneous No. 98 of 1974 in Criminal Appeal No. 208 of 1971 — under section 428 read with section 561-A of the Criminal Procedure Code for permission to place on the record of this case documents, Annexures 'A' to 'D' as additional evidence. Annexure 'A' is the application moved by Niranjn Singh and other complainants in the Civil Court on 15th May, 1973, seeking to withdraw the declaratory suit filed by them against the vendees-appellants, wherein they had mentioned that they were not in actual possession of the land in suit on 18th April, 1968. Annexures 'B' and 'C' are the copies of the statements made before the civil Court by Niranjn Singh, Karnail Singh, Naginder Singh, Mohinder Singh, Sarwan Singh and Jaswant Singh, on 15th May, 1973, wherein they reiterated the stand that, in fact, it were the vendees-appellants who were in possession of the suit land on 18th April, 1968. Annexure 'D' is the copy of the order of the trial Court dismissing the suit as having been withdrawn.

(6) Since order Annexure 'D' passed by the Civil Court dismissing the suit of the complainant party as having been withdrawn has an important bearing so far as the finality of the order dated 27th July, 1968, of the Executive Magistrate passed in proceeding under section 145 of the Criminal Procedure Code is concerned and the other side having not objected to our acceding to the prayer of the

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appellants for placing the above-said documents on the record, so we gave the requisite permission.

(7) Now, coming to the consideration of the principal contention of the appellants, we may observe at the very outset that while there is no binding rule of evidence to preclude the Court in a subsequent criminal proceeding to consider and give its findings on any relevant fact in issue, the Court, in our opinion, however, should never entertain the plea of a party which was one of the parties to section 145 proceedings in which the other side had been found to be in actual possession of the land in dispute (the possession regarding whereof happens to be in issue in subsequent criminal proceedings between the same parties) and had been prohibited by the Magistrate from disturbing the possession of the other party over the land otherwise than through due process of law, that it had taken possession of the land either surreptitiously or through force or that it had continued in possession despite order in section 145 proceedings for, if such a plea is entertained by the criminal Court in subsequent proceedings, then the very object of enacting a provision like that of section 145 of the Criminal Procedure Code would stand frustrated, as such a course would result in the complete erosion of the finality of the order passed under section 145 proceedings.

(8) The learned counsel for the parties have again relied for their respective contentions on the two decisions that were earlier cited before my learned brother Gujral, J. In *Rakhal Dolu and another v. Makham Lal Ghose* (2), Cuming, J. took the view that order under section 145 proceedings furnished only a piece of evidence to be taken into consideration in determining the issue of possession, but it would be open to one of the parties to show that despite the orders under section 145 proceedings, he was actually in possession or had regained possession after the said order from the other party.

(9) With very great respect to the learned Judge of the Calcutta High Court, we find ourselves unable to concur in his view and express our respectful dissent which we cannot express in words better than it has been done in the following observations of Mohamad Noor and Dhavle, JJ. of the Patna High Court in *Ambika*

Thakur and others v. Emperor (1) :—

This judgment of Cuming J. appears to have been given in Court without much consultation with his colleague Graham J. who on that date observed as follows :

With great respect for my learned brother's opinion as to the effect of the order under section 145, Criminal Procedure Code, I feel at present some doubt upon the point. I propose therefore to reserve my judgment. As Monday and Tuesday next will be holidays I propose to deliver my judgment on Wednesday next.

This doubt of the learned Judge continued, but as his colleague wanted to remand the appeal for re-hearing, Graham J., did not stand in the way and said as follows :

I have further considered this case and speaking for myself, I must confess that I feel considerable doubt as to the effect of the order under section 145, Criminal Procedure Code, and as to whether in all the circumstances the possession claimed by the accused in this case can be said to have been lawful possession, or possession which the Court could in any way recognize as a defence to the charges. As the order which my learned brother proposes to make however is to send the case back for re-hearing the appeal, and as it appears from the judgment of the trial Court that there is evidence as to possession apart from the order under section 145, Criminal Procedure Code, I do not feel disposed to deliver a dissenting judgment, and I concur in the order which has been made.

With all respect to Cuming J., we are unable to agree in his view of an order under Section 145. The whole object of the Section is to stop a breach of the peace by deciding which party is to remain on the land and which party is to seek his remedy in the Civil Court. Breaches of the peace will continue, and the object of the Legislature will be frustrated if the party who has, on the finding that he is not in

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possession, been forbidden to disturb the possession of the successful party until eviction in due course of law, is allowed to interfere with the possession of the successful party and to plead once more that whatever the order might have been, he is still in possession or has been able to regain possession by force, and thus either compel the successful party to go to the Civil Court or to coerce a Magistrate to proceed again under Section 145, Criminal Procedure Code. This will be a definite encouragement to disobedience of orders under the Section.

There has been some difference of opinion as to whether once the possession of a party has been declared under Section 145, Criminal Procedure Code, a second proceeding under the Section is permissible. It was held by Jwala Prasad J. in *Raghumandan Pandey v. Kishin Mohan Singh* (3) that an order under Section 145, Criminal Procedure Code, is binding on everybody, whether he was a party to the proceeding or not, and that a Magistrate has no jurisdiction to start a second proceeding. A similar view was taken by Wort J., in *Jainath Pati v. Ramlakhan Prasad* (4). It was however held by one of us in *Indradeo Singh v. Keso Singh* (5) that a Magistrate has jurisdiction to start a fresh proceeding, but whether he should do so or not will depend upon the circumstances. In the last mentioned case, the previous proceeding under Section 145, Criminal Procedure Code, was between one Indradeo Singh as the first party and the servants of the junior Rani of Deo as the second party, and the former was declared to be entitled to possession. Then there was a second proceeding under Section 145, Criminal Procedure Code, between three parties. The Junior Rani and her servants were one party, the senior Rani another and Indradeo the third party. Indradeo was ordered not to go over the land in dispute. The

(3) (1922) 9 A.I.R. Patna 210—10 P.L.T. 685.

(4) (1929) 16 A.I.R. Patna 505—10 P.L.T. 689.

(5) (1938) 25 A.I.R. Patna 1—18 P.L.T. 886.

District Magistrate of Gaya referred the case to this Court, and it was held that the proceeding was not without jurisdiction.

Though both of us agree in the view taken in this last case, the general principle which we have enunciated above remains the same. A third party, not bound by the order in a proceeding under the Section is in a different position from a party who has been definitely prohibited from disturbing the possession of the successful party. It may also be that the position of the parties to a Section 145 proceeding has changed since the passing of order under the Section. For instance, if in a proceeding under the Section, A was prohibited from interfering with the possession of B who was held to be in possession, and A afterwards comes forward with the allegation that he has since then obtained possession under, say, a lease or a purchase from B, this may be a good ground for the Magistrate to start a second 145 Criminal Procedure Code proceeding in case there be apprehension of a breach of the peace. But the party prohibited from interfering with the possession of another party cannot, in our opinion, be heard to say against that party that he has disobeyed the order and has thus been able to retain or obtain possession. To allow such a plea will be to defeat the object of the Legislature in enacting Section 145, Criminal Procedure Code. There will be no end to disputes and apprehensions of breach of the peace which the Section is designed to stop."

(10) Apart from the fact that the Court would not entertain the plea that the order of the Executive Magistrate under section 145 proceedings was wrong or despite that order they had continued to be in possession or that the possession had been regained surreptitiously or through force subsequent to that order, in the present case, the possession of the appellants, who had been found in actual possession of the land in dispute under section 145 proceedings stands established, as a challenge to that order even in the civil Court had come to an end when on 15th May, 1973, the suit filed by the complainant challenging the correctness of

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the said order was dismissed as withdrawn. Hence, for the reasons stated, the possession of the land in question shall be treated to be that of the accused party. In that case, they would be well within their right to defend their possession against the appellants and short of causing the death, they could inflict any injury on the intruders on the said land.

(11) In the above view of the matter, the appellants who inflicted injuries on the complainant party while defending their (appellant's) possession committed no offence. Hence appeal is allowed and their sentence and convictions are quashed.

GUJRAL, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Bal Raj Tuli, J.

MANGAL DASS,—Petitioner.

versus

NAUNIHAL SINGH, ETC.,—Respondents.

Civil Revn. No. 321 of 1969.

February 5, 1974.

Suit Valuation Act (VII of 1887)—Sections 3, 8, 9 and 11—Punjab High Court Rules & Orders Volume I, Chapter 3-C, rule 8—Suit for partition—Jurisdiction value of—Whether the value of the whole property—Valuation of suit not challenged in the trial Court—Appellate Court—Whether can entertain objections regarding such valuation.

Held that according to rule 8 of Chapter 3-C of Punjab High Court Rules and Orders, Volume I, the jurisdictional value of a suit for partition of property has to be determined on the value of the whole of the property in accordance with the provisions of Sections 3, 8 and 9 of the Suits Valuation Act, 1887. The plaintiff has to value the suit for purposes of jurisdiction on the value of the property and not of his own share and it is the duty of the Court to find out whether the proper value has been complied with or not.