Sant Ram, son of Wadhawa Ram through L. Mehr Chand, Mukhtar-i-am
v.
Ghasita Ram and others

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the attesting witnesses whose names are mentioned in the entry in the register. It is to be noted that in the case *Hafiz Muhammad Suleman and others* v. *Hari Ram and others* (1), the learned Judges held that counterfoils of the receipts were admissible as secondary evidence, though such counterfoils are not always exact copies of the original receipts. On the whole I am of the opinion that an entry in a deed-writer's register which contains all the essential particulars contained in the document itself and is also signed or thumb-marked by the person executing the document amounts to a copy within the meaning of the 3rd clause in section 63 of the Evidence Act and that therefore the learned District Judge wrongly rejected the entry in this case. I am, therefore, of the opinion that the plaintiff's suit for possession against the sons of Gharibu was within time and was rightly decreed by the trial Court and I accordingly accept the appeal and restore the decree of the trial Court with costs throughout.

REVISIONAL CRIMINAL

Before Bhandari, C. J.

RANA UTTAM SINGH, ETC.,—*Petitioners.*

versus

KIDAR NATH, ETC.,—*Respondents.*

Criminal Revision No. 267 of 1954.

1955

March, 4th

Code of Criminal Procedure (Act V of 1898)—Section 145—Object and scope of—Points to be determined by Court in proceedings under section 145—"Forcibly dispossessed"—Meaning of—Trespasser's possession—Nature and extent of.

Held, that section 145 of the Code of Criminal Procedure was enacted with the object of securing that a person in actual physical possession of property should not

(1) A.I.R. 1937 Lah. 370

be evicted therefrom by force or show of force. If, therefore, any such person is turned out by violence or terror, even by a person with a superior title, he is entitled to claim that he should be put back in possession of the property. It is not necessary for the Court either to examine documents of title or to decide the actual condition of the title to, or the right of possession of, the property except in so far as the decision of these questions is necessary for ascertaining the name of the person who is in possession or the extent or right of possession or the intent with which the entry was made. The only points which a Court is called upon to decide in a case under section 145 of the Code of Criminal Procedure are—

(a) whether a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof; and

(b) whether the party complaining of disturbance of his possession was in possession on the date of the preliminary order or whether he was wrongfully and forcibly dispossessed by the opposite party within two months of the date of the preliminary order.

Held, that the expression "forcibly dispossessed", although not defined in the Code of Criminal Procedure, refers to a dispossession which is accomplished by the actual use of physical force in and upon the premises or by violence directed or threatened against the person in possession. It signifies only such entry as is made with a strong hand with unusual weapons, or with an unusual number of servants or attendants or with menace to life or limb.

Held, that a trespasser cannot be allowed to take advantage of his own wrong and cannot by the very act of trespass, not acquiesced in by the party in possession, acquire the possession which the law contemplates. In any case, one or two isolated instances of trespass do not constitute possession of the wrong-doer as against the rightful owner in possession. The possession of a mere trespasser is restricted to the area actually occupied by him and does not extend to the balance of the tract entered upon.

Mahabir Singh and others v. *Emperor* (1), *Ranchi Zamindari Co., Ltd.*, v. *Pratab Udainath Sahi Deo and another* (2), referred to and relied upon.

Petition under section 439, Criminal Procedure Code, for revision of the order of Shri J. N. Kapur, Sessions Judge, Hoshiarpur, Camp Dharamsala, dated the 12th December, 1953, affirming that of Shri M. R. Bhagat, Magistrate 1st Class, Kangra, ordering to restore the possession to the Kangra Valley Slate Company, Kanyara, which was wrongfully dispossessed, with regard to the cutting of slates only from the surface stones of the Naddi Nullahs in dispute of Tika Chak Ban, till it is lawfully evicted in due course of law.

M. L. SETHI, for Petitioners.

D. K. MAHAJAN, for Respondents.

JUDGMENT

Bhandari, C.J. BHANDARI, C. J. This controversy arises out of a scramble for the possession of certain streams passing through village Kaniara of the Kangra District.

The history of this case goes back to the year 1867 when certain *zamidars* of village Kaniara of the Kangra District executed a deed by virtue of which they transferred all their rights over all slate and other quarries or mines within the limits of the village to one Mr. Shaw in lieu of a promise on the part of the latter to pay annually a sum of Rs. 1,700 towards the Government and other revenues payable by the village. Mr. Shaw promptly set up a concern known as the Kangra Valley Slate Company which started removing slates from quarries and mines in respect of which the lease was granted. In or about the year 1919 the Company extended its operations to areas beyond

(1) A.I.R. 1934 Pat. 565
(2) A.I.R. 1939 Pat. 209

the limits of the area for which the lease had been granted, and in the year 1928 the *zamindars* brought a suit for ejectment of the Company and for the issue of a permanent injunction restraining it from the exclusive use and possession of the area in suit against the will and consent of the proprietary body. The Senior Sub-Judge decreed the plaintiffs' claim but the parties came to a compromise in the High Court and it was agreed that the terms of the lease would be binding on the parties on condition that in future the Company would pay the entire land revenue and cesses of the village instead of a sum of Rs. 1,700 only which was specified in the original deed.

In the year 1945 the *zamindars* formed themselves into a Co-operative Society known as the Kaniara Forest Society under the aegis of the Forest Department. On the 26th May 1952 the Society auctioned the surface stones of *naddi nullahs* to one Devi Singh for Rs. 8,100 and issued a permit authorising the purchaser to remove the stones. Devi Singh commenced removing surface stones from the beds of streams on the 16th June and continued to do so till the 21st June when the Forest Department cancelled the permit. Taking advantage of the situation which had arisen the Company sent a number of its employees to a stream in the village and on the 2nd, 3rd and 4th July they started removing surface stones from the bed thereof. The Society promptly issued notices to these employees requiring them to discontinue these operations on pain of criminal proceedings being initiated against them. The Conservator of Forests who was called upon to resolve the disputes which had arisen between the parties expressed the view that the terms of the *wajib-ul-arz* appeared to confer a complete right on the Company to remove slates whether they were found above or below the surface of the soil and

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on the 26th August he issued a provisional order authorising the Company to continue its work of removing stones from the streams until such time as the matter was decided by the State Government. A struggle for possession now ensued and each of the contesting parties endeavoured to steal a march over its opponent by endeavouring to obtain a foothold on the coveted property. On the 1st September the employees of the Company were engaged in removing stones from the bed of a certain stream when the *zamindars* appeared on the spot and started removing stones from another portion of the same stream. Both the Company and the *zamindars* kept working in the bed of the stream on the 2nd and 3rd September at a short distance from each other. On the 3rd September the Company presented three complaints under sections 145 and 147 of the Code of Criminal Procedure against the *zamindars* of Kaniara on the allegation that although a perpetual lease had been granted to them in the year 1867 and although the Conservator of Forests had passed an order in their favour on the 26th August, the villagers had started removing stones from the beds of certain streams which were in the possession of the Company and had threatened to use violence against the persons in occupancy. The learned Magistrate was satisfied that a dispute likely to cause a breach of the peace was in existence and on the 23rd September, 1952 he passed a preliminary order under section 145 (1) restraining the *zamindars* from removing stones from the *khasra* numbers mentioned in the order. After recording the evidence which was produced by the parties the learned Magistrate held that the lease of 1867 conferred no rights on the Company to remove surface stones from the beds of streams ; that the Company had produced no reliable evidence to show that they had ever removed such stones prior to the 2nd July

1952; that the *zamindars* on the other hand had established by unimpeachable evidence that they were the owners of *naddi nullahs,* that they were entitled to remove surface stones therefrom and that they had always been exercising this right; that the letter of the Conservator of Forests dated the 26th August 1952 was the only document which appeared to have conferred any rights on the Company to collect stones from the streams till the matter concerning the ownership of these stones was decided by higher authorities; that as both the parties were working side by side on the 1st of September 1952 it was impossible to determine whether any and if so which of the parties was in exclusive possession of the property on the date of the preliminary order; that the Company had been forcibly and wrongfully dispossessed within two months immediately preceding the date of the order and consequently that in view of the first proviso to sub-section (4) of section 145 the Company must be deemed to have been in possession at the date of the preliminary order. In view of these findings the learned Magistrate confirmed the preliminary order under section 145 and restored the possession of the beds of the streams to the Company. This order was later confirmed by the learned Sessions Judge in appeal. The *zamindars* are dissatisfied with the orders of the Courts below and have come to this Court in revision.

Section 145 of the Code of Criminal Procedure was enacted with the object of securing that a person in actual physical possession of property should not be evicted therefrom by force or show of force. If, therefore, any such person is turned out by violence or terror, even by a person with a superior title, he is entitled to claim that he should be put back in possession of the property. It is not necessary for the Court either to examine

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documents of title or to decide the actual condition of the title to, or the right of possession of, the property except in so far as the decision of these questions is necessary for ascertaining the name of the person who is in possession or the extent or right of possession or the intent with which the entry was made. The only points which a Court is called upon to decide in a case under section 145 of the Code of Criminal Procedure are—

(a) Whether a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof; and

(b) whether the party complaining of disturbance of his possession was in possession on the date of the preliminary order or whether he was wrongfully and forcibly dispossessed by the opposite party within two months of the date of the preliminary order.

It is common ground that a dispute concerning the beds of certain streams which was likely to cause a breach of the peace was in existence and that the first of the two conditions mentioned above is fully satisfied. The only question which requires determination is whether the Company was in actual physical possession of the property on the date of the preliminary order. The answer to this question is clearly in the negative. It is admitted that the *zamindars* had no rights whatsoever in the beds of streams passing through village Kaniara in the year 1867, that the rights of ownership in the beds of these streams vested exclusively in the Crown, that the Crown transferred these rights of ownership to the *zamindars* in the year 1921 and that on the date of the preliminary order these rights vested in the *zamindars*. If the *zamindars*

had no rights whatsoever in the beds of streams in the year 1867 it is obvious that they could not transfer them to the Company by virtue of the deed which was executed by them in favour of Mr. Shaw. A perusal of this deed makes it quite clear that the *zamindars* granted all their rights over all slate and other quarries or mines, but they did not grant any rights over any stones which were lying on the beds of streams and did not form part of any quarry or mine. It has been established by the evidence on record that whereas the *zamindars* have always been exercising their right of removing stones from beds of streams the only two occasions on which the Company exercised its so-called right were on the 1st to the 3rd July 1952, and the 1st and 2nd September, 1952. A trespasser cannot be allowed to take advantage of his own wrong and cannot by the very act of trespass, not acquiesced in by the party in possession, acquire the possession which the law contemplates. In any case, one or two isolated instances of trespass do not constitute possession of the wrong-doer as against the rightful owner in possession (*Mahabir Singh and others* v. *Emperor*) (1). Assuming for the sake of argument that the Company took actual physical possession of a portion of the stream on the 1st September, 1952, even then it seems to me that it can be deemed to be in possession only of that portion of the stream and no other, for the possession of a mere trespasser is restricted to the area actually occupied by him and does not extend to the balance of the tract entered upon (*Ranchi Zamindari Co., Ltd.* v. *Partap Udainath Sahi Deo and another*) (2). If the owner of property is said to be in possession thereof and if possession obtained by trespass cannot be deemed to be possession in the eye of law, it seems to me that the *zamindars* who were the owners of the streams

(1) A.I.R. 1939 Pat. 209

(2) A.I.R. 1934 Pat. 565

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on the date of the preliminary order must be deemed to have been in possession of the said streams on the said date.

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As *zamindars* were in actual possession of the property on the date of the preliminary order, it is not necessary to see whether the Company was dispossessed within two months next before the date of the said order. Assuming for the sake of argument that it is within the competence of this Court to examine this question, it seems to me that the result of the enquiry cannot be favourable to the Company. It is argued on behalf of the Company that a number of employees of the Company went to a stream in the village and removed surface stones therefrom on the 2nd, 3rd and 4th July, 1952. The Society issued notices to the employees to discontinue these operations failing which the employees would be prosecuted under the appropriate provisions of the Forest Act. It is said that the threat of these challans impelled the Company to give up its possession and consequently that the Company must be said to have been wrongfully and forcibly dispossessed. I regret I find myself unable to concur in this contention. The expression "forcibly dispossessed" has not been defined in the Code of Criminal Procedure, but there can be no manner of doubt that it refers to a dispossession which is accomplished by the actual use of physical force in and upon the premises or by violence directed or threatened against the person in possession. "It signifies only such entry as is made with a strong hand with unusual weapons, or with an unusual number of servants or attendants or with menace to life or limb." As the Company were not dispossessed of the property by the use or threatened use of violence, it seems to me that they cannot be said to have been forcibly dispossessed, and the provisions of the proviso cannot come into play.

For these reasons I would accept the petition, set aside the order of the Courts below and direct that the possession of the streams be restored to the *zamindars* of the village.

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REVISIONAL CIVIL.

Before Bhandari, C. J.

NIRANJAN SINGH,—*Petitioner.*

versus

MURTI SHRI BHAGWAN RAM, installed in the temple, known as Mandir SHRI BHAGWAN RAM at Ambala,—*Respondent.*

Civil Revision No. 298 of 1954

1955

March, 24th

East Punjab Urban Rent Restriction Act (III of 1949)—Section 4—Protection afforded by the Act—Whether can be waived by agreement—Section 4—Fair rent fixed by agreement—Subsequent proceedings for fixation of fair rent—Previous order, whether operates as a bar to subsequent proceedings.

Held, that the protection afforded by the East Punjab Urban Rent Restriction Act, 1949, cannot be waived by agreement.

Held further, that when a Controller proceeds to determine the fair rent of a premises, not on the basis of an inquiry under the provisions of section 4 but on the basis of an agreement between the landlord and tenant, and in a subsequent proceeding an objection is taken that the rent as determined originally is excessive, it is open to the Controller to refuse to be constrained by the previous consent decree if he is satisfied that the said consent decree was contrary to the provisions of the Rent Restriction Act.

Barton v. *Fincham* (1), *Brown* v. *Draper* (2), *Solle* v. *Butcher* (3), *Griffiths* v. *Davies* (4), and *Punamchand Mohta* v. *S. Mukherjee* (5), relied upon.

(1) (1921) 2 K.B. 291
(2) 1944 K.B. 309
(3) (1950) 1 K.B. 671
(4) (1943) 1 K.B. 618
(5) 56 C.W.N. 15