REVISIONAL CRIMINAL

Before H. R. Sodhi, J.

NIRANJAN SINGH AND OTHERS,—*Petitioners.*

versus

KASTURI LAL AND OTHERS,—*Respondents.*

Criminal Revision No. 42-R of 1969

August 22, 1969

Criminal Procedure Code (V of 1898)—Section 145—Proceedings under --Object, nature and scope of—Stated—Finding of the magistrate as to possession—Such finding—Whether can be challenged in civil Courts—Judgment of the magistrate—Whether operates as res judicata.

Held, that the principal object of the proceedings under section 145, Criminal Procedure Code, is to prevent breaches of peace which commonly arise when there is a dispute relating to immovable property. The magistrate is not called upon to settle any question of title or even of possession as may affect the right of a party in a civil Court. He just settles the matter temporarily as to who is in actual physical possession on a particular date which according to section 145, of the Code is the date on which he passes the preliminary order calling upon the parties to file their respective claims. It is just a sort of police action and no finality can be given in a civil Court to the findings of the magistrate in regard to possession. The magistrate by declaring a person to be in possession intends to give a direction only to the effect that the person declared by him as such can continue in possession thereof and any one interested in it should not take the law in his own hands. Law recognises remedies both on the basis of title and also possessory ones. A person having a title to the property or possession of the same can go to a civil Court and have the question determined properly and effectively there irrespective of what the finding of the magistrate under section 145, Criminal Procedure Code, be. Summary proceedings of the nature of a police action which are intended to prevent breach of peace cannot possibly oust the jurisdiction of a civil Court to decide both questions of title and possession. (Paras 6 and 7)

Held, that a judgment or order of a magistrate under section 145 of the Code is not a judgment or order which operates as *res judicata* between the parties. It may be relevant under section 42 of Evidence Act, but only to show that between the parties a dispute as to possession arose which was decided by a Criminal Court in a particular manner and not that the decision of the said Court becomes final. It is the fact of the judgment only that is relevant and the decision contained therein and not that the decision operates as a bar for deciding the same matter by a civil Court. (Para 7)

Case reported under Section 438 of the Code of Criminal Procedure by Shri Gurcharan Singh Dhaliwal, 2nd Additional Sessions Judge, Ludhiana for revision of the order of Shri Gurdev Singh Brar, Magistrate, 1st Class Ludhiana, dated 27th July, 1969.

M. S. JAIN, ADVOCATE, for the Petitioners.

J N. KAUSHAL, K. S. THAPAR, M. R. AGNIHOTRI, AND ASHOK BHAN, ADVOCATES, for the Respondents.

ORDER

SODHI, J.—This is a recommendation by the Additional Sessions Judge, Ludhiana, to the effect that the order of the Executive Magistrate, 1st Class, Ludhiana, passed on 27th July, 1968, under section 145(6), Criminal Procedure Code, be set aside and the case sent back to him or to any other Magistrate for fresh hearing and disposal of the issues arising between the parties.

(2) Kasturi Lal and others described as parties 3 and 4 (hereinafter called purchasers) are alleged to have purchased 65 killas of land from one Bhim Sain, son of Bodh Raj, situate in village Kaneja, Tahsil and District Ludhiana, by a registered sale-deed, a mutation in pursuance of which is supposed to have been sanctioned in their favour on 1st April, 1968. It is a common ground between the parties that Naranjan Singh and others described as parties 1 and 2 (hereinafter called tenants) were in cultivating possession of the land. It is alleged that the purchasers paid a sum of Rs. 20,000 to Naranjan Singh, the main tenant, on 9th April, 1968, as compensation for the standing crops in an area of about 53 killas of land in order to obtain possession thereof. Naranjan Singh, according to the purchasers, executed a receipt, sworn an affidavit to that effect before the Magistrate 2nd Class, Phillaur, and voluntarily delivered possession to the purchasers. Naranjan Singh and his party claimed that they never received Rs. 20,000 as compensation for the standing crops, nor was any receipt or affidavit executed by the said Naranjan Singh. The local police, apprehending that a dispute concerning the land between the parties was likely to cause a breach of peace, submitted a report under section 145, Criminal Procedure Code, to the Magistrate concerned. The Magistrate issued a preliminary order on 18th April, 1968, requiring the parties to put in, before 26th April, 1968, written statements of their respective claims as regards the factum of actual physical possession of the subject matter of the dispute and also such documents or affidavits on which they intended to rely.

(3) Naranjan Singh and his party (tenants) filed several affidavits, a copy of the report of the Kanungo regarding certain Nishandehi, a copy of the order passed on 30th April, 1968, by a Civil Court, and some Khasra Girdawaris from Kharif 1963 to Rabi 1968. Similarly the purchasers produced affidavits and also a photostat copy of the receipt dated 9th April, 1968, which was said to have been executed by Naranjan Singh after having received a sum of Rs. 20,000 as compensation for the standing crops and as a consequence whereof he delivered possession of the land voluntarily. A copy of the order passed by the Additional District Judge, Ludhiana, on 22nd June, 1968, and a copy of the Nishandehi dated 15th April, 1968, by Tahsildar, Ludhiana, in order to show that possession had actually been taken by them in pursuance of the agreement as contained in the receipt and the affidavit, were also filed by the purchasers. There is also a copy of the Roznamcha, dated 10th April, 1968, and a report of the Tahsildar, Ludhiana, dated 22nd May, 1968, produced by the purchasers in support of their claim.

(4) The Magistrate wrote a very elaborate order mentioning the various contentions as raised by the counsel for the parties. He made a correct approach in having before his mind as to what issue was to be decided by him. The sole question for determination was as to which of the parties was in actual physical possession of the land in dispute and the standing crops on it on 18th April, 1968, which was the date of the preliminary order. The controversy mainly rested on the question as to whether Naranjan Singh had really executed the receipt on having received a sum of Rs. 20,000 as compensation of the standing crops, and surrendered possession of the land voluntarily. If the execution of the receipt on the payment of the said amount and voluntary surrender of possession were proved the purchasers were obviously in possession of the suit land on the date of the preliminary order unless they had been dispossessed during the period in between by Naranjan Singh and his party. There was no allegation to that effect by the tenants who claimed that they had actually been in possession throughout and that the story of the purchasers that Naranjan Singh had surrendered possession was false and a concocted one. Affidavits were filed by the tenants in order to establish their continuous possession. They filed affidavits of Jiwan Dass Lambardar, Kanshi Ram, member Panchayat, Buta Singh, Sarpanch Harnam Singh and Pritam Singh. I have seen their affidavits and they are word by word to the same effect. It is stated in those affidavits that Naranjan Singh and his other co-tenants did not compromise or sell their rights to the purchasers as alleged by

them. It is also stated that the standing crops of wheat, Bajra, sugarcane, etc., which were sown by Naranjan Singh and others as tenants were in their possession and they alone were entitled to harvest the same. These are bald allegations but what is implied therein is that the tenants have been holding continuous possession. The Magistrate does not seem to have put much faith in the affidavits on either side since he did not make any specific reference to them. He proceeded to determine the truth of the version as to whether the receipt was executed by Naranjan Singh and he received Rs. 20,000 as compensation for the standing crops or surrendered possession of the land to the puchasers. The conclusion arrived at by him is that the receipt was executed and Naranjan Singh did receive Rs. 20,000 as a result whereof he surrendered possession. It was pleaded before him that the receipt was a forgery and could not be executed by Naranjan Singh as the latter was not at Goraya on 9th April, 1968, when the receipt is said to have been executed. He referred to the Khasra Girdawaris produced by the tenants showing their continuous cultivating possession of the land in dispute even on the date when the preliminary order was made. As a matter of fact, it clearly appears from the findings of the Magistrate that if the Khasra Girdawaris stood by themselves, continuous possession of the tenants was proved but he relied mainly on the receipt and the affidavit by Naranjan Singh and also the Nishandehi report made subsequently on 15th April, 1968, showing that possession had been transferred in pursuance of the agreement evidenced by the receipt of Naranjan Singh and his simultaneous affidavit executed on the same date and attested before a Magistrate 2nd Class. Since the Magistrate accepted the version of the purchasers, he declared them to be persons in actual physical possession of the land in dispute on the date the preliminary order was passed and directed that they could not be evicted from the land except under a due process of law. In the course of proceedings before him, the Magistrate appointed Tahsildar, Ludhiana, as Official Receiver to have the harvest cut and sold in the market. It is admitted before me by the learned counsel for the parties that the amount of money received by the sale of the harvest was deposited in the Court of the Magistrate and has now been received by the purchasers.

(5) The tenants being aggrieved by the order of the Magistrate moved the Additional Sessions Judge, Ludhiana, for calling for the records of the case and making a recommendation to this Court for the exercise of its revisional powers in order to set aside the order of the Magistrate. The Additional Sessions Judge had made the

recommendation on the ground that the Magistrate did not comply with the requirements of section 145(4), Criminal Procedure Code, which is reproduced hereunder for facility of reference:—

> "(4) The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documents and affidavits, if any, so put in, hear the parties and conclude the inquiry as far as may be practicable, within a period of two months from the date of the appearance of the parties before him, and, if possible, decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the subject:
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> Provided that the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in as to the facts contained therein:
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> Provided further that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:
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> Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section."

(6) In the opinion of the Additional Sessions Judge, the Magistrate should have properly examined and considered the evidence of the tenants which they had given by way of affidavits in order to establish as already stated, their continuous possession of the land in dispute. The Additional Sessions Judge took exception to the Magistrate not having critically dealt with the affidavits of certain persons which deposed to the continuous cultivating possession of the tenants. There can be no manner of doubt that the principal object of the proceedings under section 145, Criminal Procedure Code, is to prevent breaches of peace which commonly arise when there is a dispute relating to immovable property. The Magistrate is not called upon to settle any question of title or even of possession as may affect the rights of a party in a civil Court. He just settles the matter temporarily as to who is in actual physical possession on a

particular date which according to section 145, Criminal Procedure Code, is the date on which he passes the preliminary order calling upon the parties to file their respective claims. No doubt, in this enquiry, he is to give a finding as to possession and will not recognise the possession of a trespasser who has forcibly taken the same by ousting another in an unlawful manner. At the same time, it is just a sort of police action and no finality can be given in a civil Court to the findings of the Magistrate in regard to possession. The Magistrate by declaring a person to be in possession intends to give a direction only to the effect that the person declared by him as such can continue in possession thereof and any one interested in it should not take the law in his own hands. Law recognises remedies both on the basis of title and also possessory ones. A person having a title to the property or possession of the same can go to a civil Court and have the question determined properly and effectively there irrespective of what the findings of the Magistrate under section 145, Criminal Procedure Code, be.

(7) The learned counsel for the petitioner has argued relying on *Sewa Dass* v. *Ram Parkash* (1), that the civil Court will not give him any relief and treat the decision of the criminal Court relating to actual possession under section 145, Criminal Procedure Code as final. With greatest respect I cannot persuade myself to agree with the learned Judge who decided *Sewa Das's* (1), case that a civil Court cannot question the findings under section 145, Criminal Procedure Code, as to possession. The learned Judge has not referred to any authority on which he is relying in support of the view held by him. Summary proceedings of the nature of a police action which are intended to prevent breach of peace cannot possibly oust the jurisdiction of a civil Court to decide both questions of title and possession. The statement of law in *Sewa Das's case* (1), cannot be held to be correct in view of the observations of their Lordships of the Supreme Court in *Bhinka and others* v. *Charan Singh* (2), where it is stated that life of the order of the Magistrate passed under section 145, Criminal Procedure Code, is coterminous with the passage of the decree in Civil Court and the moment a Civil Court makes an order it displaces the order of a Criminal Court. Their Lordships styled such an order as a police order, deciding no question of title. The judgment of the Magistrate is not relevant as a previous judgment barring a second suit and trial within the meaning of section

(1) A.I.R. (34) 1947 Lah. 173.

(2) A.I.R. 1959 S.C. 960.

40, of the Indian Evidence Act, 1872. In other words, it is not a judgment or order which operates as *res judicata* between the parties. It may be relevant under section 42 of the same Act, but only to show that between the parties a dispute as to possession arose which was decided by a Criminal Court in a particular manner and not that the decision of the said Court becomes final. It is the fact of the judgment only that is relevant and the decision contained therein and not that the decision operates as a bar for deciding the same matter before a civil Court.

(8) Mr. J. N. Kaushal, learned counsel for the respondents, has invited my attention to *Sadhu Ram and others* v. *Charan Singh and others* (3), where a similar view was taken by Shamsher Bahadur, J., and the decision of Abdur Rahman, J., in *Sewa Das's case* (1), was dissented from. I must hold that the apprehensions of the petitioners that the civil Court will treat the decision of the criminal Court as final and their frame of suit will be affected are not well founded.

(9) The Additional Sessions Judge is right to some extent in saying that the Magistrate has not pointedly discussed in his judgment some of the affidavits of the tenants but the latter has not done so even in respect of some of the affidavits filed by the purchasers. The approach of the Magistrate, as already stated, has been entirely different. The affidavits of the tenants could show, if believed, that they were in continuous possession of the land and in that context the Magistrate critically considered and examined better evidence in the form of Khasra Girdawaris. He has, however, accepted the version of the purchasers and held that though the tenants were shown to be in continuous possession of the land, there came into being an agreement between Naranjan Singh and the purchasers whereby the tenants on receipt of Rs. 20,000 as compensation for the standing crops surrendered the land. It will be for the civil Court to determine as to whether the finding on this issue which is bound to arise there is correct or not. For the purposes of the present recommendation, all that is to be seen is whether some error of law has been committed by the Magistrate in not stating in his judgment in so many words that he perused the affidavits of the parties. With the approach that the Magistrate had made, any reference of this sort would not have made any difference.

(3) 1963 P.L.R. 526.

(10) It cannot be disputed that section 145(4), Criminal Procedure Code, enjoins upon a Magistrate who is called upon to make an enquiry to peruse the statements, documents and affidavits, if any, and to come to a conclusion after hearing the parties. But what it to be looked at in each case is the substantial compliance with this provision of law. No particular manner in which the documents, statements or affidavits are to be perused, is prescribed by law, and I have no doubt in my mind that all these matters were present to the mind of the Magistrate when he passed the order under reference. The Magistrate, acting judicially in a summary enquiry, has to make an overall assessment of the evidentiary value of the material before him, bearing in mind that he does not ignore the assertions of the parties as made before him. It may be that in a particular case he does not write as exhaustive a judgment as one would expect but from this alone it cannot be inferred that he has not applied his mind judicially and considered the data before him. It is the cumulative effect of the entire evidence that has to be examined and considered. The expression "peruse" means "to read carefully or critically; to examine closely as if by reading". There may be cases where no documents or any other evidence is produced by the parties except the affidavits on each side. In such a situation, the Magistrate must critically examine each affidavit and he cannot reject them simply by saying that it is a case of just an oath against an oath. One of the modes of giving evidence in proceedings under section 145, Criminal Procedure Code, is by means of affidavits, and to brush aside the facts stated in such affidavits on the short ground of an oath against an oath is no proper consideration of the evidence. There may, however, be cases where in addition to affidavits, there are documents and other evidence which have a greatest probative effect and the Magistrate attaches more weight to them. When a case falls in this category, the value of affidavits has to be assessed in the light of such documentary and other evidence including the circumstances of the case. The Magistrate may in a proper case be justified in not giving weight to an affidavit and be guided in his decision by documents and other evidence which he considers to be of higher evidentiary value. No hard and fast rule can be laid down as to how an affidavit filed by a party is to be examined in a particular case. Each case will depend on its own facts and circumstances. The requirement of law in each case is that the order of the Magistrate must show that he has applied his judicial mind to the assertions contained in the affidavits.

(11) In the instant case, as already stated, the Magistrate wrote a very exhaustive order, referred to the affidavits of the parties, but

did not give reasons for rejecting each of the affidavits of the tenants. He does not seem to have done so purposely because the assertions in the affidavits were quite stereotyped giving no details and he on the other hand had to determine the truth or otherwise of the version placed before him by the purchasers that on payment of Rs. 20,000 they had actually taken possession of the land in dispute surrendered voluntarily by the tenants. He accepted this version on consideration of the receipts, affidavit of Naranjan Singh, documentary evidence and the circumstances of the case. In such a view of the matter, the case of the tenants that they were continuously holding possession of the land in dispute as tenants even on 9th April, 1968, or thereafter, automatically stood discredited. It was, therefore, not necessary for him to give reasons for rejecting each of the affidavits which gave the same assertions that were present to his mind and had been negatived by him in the light of other evidence on the record.

(12) The Additional Sessions Judge in recommending that the order of the Magistrate be quashed since he had not given reasons for rejecting the affidavits of the tenants relied on *Mt. Sarfi* v. *Mt. Sugo and others* (4), *Chandradip Singh and others* v. *R. B. B. Verma and others* (5), *Naina Sah and another* v. *Ramrup Sah and others* (6), *Murali Patel* v. *Purusottam Bhati and another* (7), and *A. Narayanan Kutty Menon and others* v. *Elayat Sekhara Menon and another*, (8).

(13) In *Mt. Sarfi's case* (4), there is nothing to show that there was any evidence before the Magistrate except the affidavits which he did not consider separately and rejected the same by dealing with them in what was considered to be more or less a mechanical way. It was in these circumstances, that it was held that the Magistrate did not apply his mind to each affidavit as he should have done and the order passed by him was, therefore, not in conformity with law.

(14) In *Chandradip Singh's case* (5), the parties filed various documents and affidavits in support of their respective claims but the Magistrate, without considering any of the material before him, straightway took action under section 146(1), Criminal Procedure

(4) A.I.R. 1962 Pat. 253.
(5) 1962(2) Crl. L.J. 577.
(6) A.I.R. 1965 Pat. 104.
(7) A.I.R. 1965 Orissa 208.
(8) A.I.R. 1964 Kerala 308.

Code, and referred the decision on the question of possession to a civil Court. The Magistrate in drawing up the statement of facts for forwarding the case to the civil Court stated that the documents are contradictory and highly confusing and that the affidavits of many persons appear to him to be only oath against oath which could be of no help in determining the question of possession. The Civil Court then gave its decision. It was in this context that the learned Judge of the High Court commented upon the conduct of the Magistrate in not applying his mind to the material before him and instead having recourse to section 146 only to shift his responsibility. The observations in this case cannot, therefore, be of much assistance.

(15) The observations in *Naina Sah's case* (6), do not support the proposition as urged by the petitioner that the order of the Magistrate stands vitiated on account of his not having given reasons for rejecting each affidavit when we find that the assertions made in those affidavits were not only noticed by the Magistrate but formed their main case in suport of which they produced Khasra Girdawaris as well. The revenue records showed continuous possession of the petitioners as tenants and to the same effect were the affidavits. The Magistrate was called upon to decide if the version of the purchasers that there was voluntary surrender of possession was correct or not. The learned Judges of the Patna High Court while giving the various classes of cases observed that no inflexible rule could be laid down as to the manner in which a Court should peruse the affidavits. The cases that normally arise were categorised into three classes and on the facts of that case where there was documentary and other evidence relied upon by the Magistrate, the rejection of affidavits was held to be justified on the ground that the statements of the opposite party regarding possession were consistent with documentary evidence and circumstances of the case. It may be recorded that no reasons for rejecting each affidavit had been given. The Additional Sessions Judge was led away by some of the observations made in that case without bearing in mind the context in which this had been made.

(16) In *Murali Patel's case* (7), the facts are clearly distinguishable. There the Magistrate did not read the affidavits correctly and rejected the same by saying that they did not refer to actual cultivation of land. It appears that the Magistrate just brushed aside those affidavits without any jurisdiction. In the case before us, the

version as given in the affidavits was actually dealt with in the order of the Magistrate.

(17) In *A. Narayanan Kutty Menon's case* (8), the Magistrate had fallen into the error of directing his attention to the question of title instead of caring to decide the factum of actual possession. He considered documents of title and did not make even a reference to any of the affidavits which related to actual possession. In such a situation, the order of the Magistrate had to be set aside. In the case before me, a reference to the affidavits has been made and to the contention based on the version as given therein.

(18) In my opinion, there has been substantial compliance with the provisions of law as contained in section **145(4) of the** Criminal Procedure Code, and no injustice has been caused to the petitioners, warranting the setting aside of the order of the Magistrate. There is another reason why I do not propose to interfere with the order of the Magistrate. He has not decided any question of title of the right to possession of the land in dispute, nor could he do so under the law. It was only to prevent an apprehended breach of peace that in a summary enquiry he passed a temporary order declaring the respondents to be in possession of the suit land. It is all provisional, subject to the decision of a civil Court. It is a common ground between the parties that both of them have filed civil suits which are pending adjudication and the issue of possession, including the genuineness, validity or otherwise of the transaction, evidenced by the alleged receipt, and the affidavit of Naranjan Singh, have to be considered. If the recommendation of the Additional Sessions Judge is accepted, order of the Magistrate set aside and he is asked to reconsider the case afresh, it is bound to take more time. All this is inexpedient when the matter to be settled by him is before a civil Court in two suits filed by the parties. The parties have been asking for a temporary injunction each claiming to be in possession of the land in dispute. Instead of having the matter decided afresh before a Magistrate, it is desirable that the parties render assistance to the civil Court and get the decision in their suits expedited. The civil Court must also see that in a situation as the present one, no unnecessary delay is caused and it must decide the issue as to possession of the parties as early as possible.

(19) For the foregoing reasons, the reference made by the Additional Sessions Judge, Ludhiana, is declined.

R.N.M.