(1961) 06 CAL CK 0001

Calcutta High Court

Case No: Criminal Revision No. 1575 of 1960

Sahebali Mondal		APPELLANT
	Vs	
Amirali Mondal		RESPONDENT

Date of Decision: June 1, 1961

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 145, 146, 146(1B)

Citation: (1962) 2 ILR (Cal) 37

Hon'ble Judges: Debabrata Mookerjee, J

Bench: Single Bench

Advocate: Rajendra Kumar Bhattacharya and Jitendra Kumar Bhattacharya, for the Appellant; H.N. Das Gupta, Satyendra Chandra Sen and Sukumar Mukherjee, for the Respondent

Judgement

Debarata Mookherjee J.

1. This is an application for revision of an order made by a Magistrate declaring the opposite party first party to be in possession of certain lands which were the subject-matter of a proceeding u/s 145 of the Code of Criminal Procedure.

2. It appears that dispute as regards possession of lands described in the old khatian No. 633 and comprised in dag No. 255/ 342 arose threatening a breach of the peace when at the instance of the opposite parties the present proceedings were commenced. The Petitioner who represented the second party contested the proceedings. The learned Magistrate directed the parties to file written statements and put in affidavits in respect of their respective cases. After perusal of the papers and documents field the Magistrate felt that a reference was required to be made u/s 146 of the Code of Criminal Procedure; he accordingly drew up a statement of facts and forwarded the records to the Munsif with a request to decide the question whether any and which of the parties was in possession of the subject of dispute on the relevant date; the parties were also directed to appear before the civil court.

3. The learned Munsif who dealt with the matter heard the parties and on a consideration of the materials before him recorded his findings which were reported to the Magistrate, who thereafter made an order declaring that opposite party first party to be in possession of the lands till evicted therefrom in due course of law.

4. On behalf of the Petitioner it has been argued that even after the findings recorded by the civil court, the identity of the disputed land has been left in doubt. I cannot accept this contention. The learned Munsif who dealt with the matter was at pains to fix the identity and there can, in my opinion, be no question of confusion arising as to the extent or the boundary or the description of the lands involved. In the order made by the Magistrate by which the proceedings were drawn up the lands in dispute were described as under:

Police Station (Baraset, Mouza Sinthi, Old Khatian No. 633 Dag No. 255/342, now khatian No. 846, Dag No. 255/ 366.

5. The Munsif while dealing with the question of identity of the lands, observed that it would be safe to go by the district settlement plot No. 355/342 and that the Sub-divisional Magistrate fell into an error in describing the plot in the way he did. It may be that there was some error in the description of the lands in the initial order by which the proceedings were initiated; but unless it could be shown that such error has misled the parties, it would be idle to contend that the proceedings have not been properly disposed of. The civil court''s finding clearly is that the plot described in the district settlement records as No. 255/342 of khatian No. 633 of mouza Sinthi is the subject-matter of dispute. In view of this finding it is impossible to say that there is any scope for confusion as regards the identity of the lands involved in the dispute.

6. The question of possession was gone into in some detail by the civil court with reference to the materials placed before it and I do not think any just exception can be taken to the findings. Those findings must, therefore prevail.

7. It was then, argued that the Magistrate who finally disposed of the proceedings and made the order declaring the opposite party first party to be in possession of the disputed lands erred in not giving an opportunity to the Petitioner to be heard further in the matter after the reference had been received back from the civil court. I do not think the law requires the Magistrate to give further opportunity to the parties so as to be able either to support or to contest the findings recorded by the civil court. Section 146(1B) provides that the civil court shall, on a reference being made to it, conclude the inquiry and transmit its findings 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. The language used leaves no room for doubt that the decision of the civil court in a matter of this kind must prevail. Section

146 properly read shows that when the Magistrate is unable to make up his mind as to which of the parties was in possession of the disputed lands on the relevant date, he will make a reference to the civil court to decide the question whether any and which of the parties was in possession. Provision is then made that upon a reference the parties have to be referred to the civil court, which on hearing them shall decide the question of possession referred to it. Thus there is opportunity provided to the parties to canvas the question of possession before the civil court which hears and decides the reference. There can thus be no meaning for a second or subsequent hearing before the parties, taking evidence and deciding the question of possession. The scheme of Section 146 repeals the contention that the Magistrate is required to allow the findings of the civil court to be canvassed over again before him upon fresh materials. Indeed, if the Magistrate is allowed to do so, it would amount to sitting in judgment over the decision rendered by the civil court. Obviously that is not the scheme of the section. It is only when the Magistrate feels unable to decide the question of possession that a reference is required to be made; and when such reference has been disposed of by the civil court upon hearing evidence and considering all relevant materials, the Magistrate cannot surely be said to have the overriding power to cancel the findings of the civil court. I have no Hesitation to negative the contention that even after the reference had been received back from the civil court the Magistrate was still required to hear the parties in the matter and then make his order. The Rule is accordingly discharged.