

P L D 1970 Supreme Court 470

Present: Muhammad Yaqub Ali and M. R. Khan, JJ

SHAH MUHAMMAD-Appellant

Versus

HAQ NAWAZ AND ANOTHER-Respondents

Criminal Appeal No. 36 of 1970, decided on 8th July 1970.

(On appeal from the judgment and order of the High Court of West Pakistan, Lahore, dated the 2nd February 1970, in Criminal Revision No. 1116 of 1969).

Criminal Procedure Code (V of 1898)-----

---S. 145-Dispute as to possession of immovable property-Ambit of jurisdiction of criminal Court to attach under S. 145(4) property which is already subject-matter of an order of civil Court regulating its possession during pendency of suit.

A Magistrate cannot under section 145 of the Criminal Procedure Code, act in violation of a decree or the terms of an order passed by a civil Court during the trial of a suit. The proceedings initiated under section 145, Cr. P. C., are subordinate to a decree or orders passed by a civil Court in respect of the property in dispute before the Magistrate. The primary concern of the proceedings under the Criminal Procedure Code is to prevent breach of peace arising out of a dispute concerning 'land' or 'water'. These proceedings though concerning the subject-matter of dispute between the contending parties, do not concern themselves with the adjudication of their rights in the property. The resolution of the dispute lies exclusively in the realm of a civil Court. The orders passed by a Magistrate for attachment of the subject-matter of dispute are therefore of a transitory nature. That is why a Magistrate will not appoint a receiver if the property in dispute is already in the possession of a civil Court through a receiver appointed by it and the receiver appointed by a Magistrate must make over possession to the receiver appointed by a civil Court subsequently. Section 145 therefore proceeds on the premises that the Magistrate will cease to deal with the possession of 'land' or 'water' in dispute before him as soon as a civil Court is seized with the dispute and has passed a decree declaring the rights of the parties therein or has passed an order regulating possession of the subject-matter of the suit. In such a case, if apprehension of breach of peace prevails, the Magistrate can take action under sections 107 and 151, Cr. P. C., and bind down the party threatening to act in violation of the decree of the Court or the terms of an interim order appointing a receiver or requiring the parties to maintain status quo. Different consideration may of course arise in individual cases for example in an action for possession, the decree might not have been executed within the time prescribed by law and the judgment debtor thereby acquires a right to continue in possession. In such a case a 'dispute' may well arise as to possession and attract the jurisdiction of a Magistrate under section 145 of the Criminal Procedure Code. Cases in which a perpetual or temporary injunction has been issued restraining the defendant from interfering with the possession of the plaintiff stand, however, on a different footing. A case in which a civil Court is already seized with the subject-matter of dispute and has passed an order regulating possession thereof or a case in which a decree for possession has been granted or a permanent injunction granted restraining the opposite-party from interfering with the possession of the decree holder fall outside the jurisdiction of a Magistrate under section 145, Cr. P. C. Action can of course be taken always under sections 107 and 151 of the Criminal Procedure Code to prevent breach of peace in case of this nature, but no order for attachment of the property can be made.

A suit was filed by S against H for declaration that he was tenant of H and for permanent injunction restraining H from interfering with his possession. During the pendency of the suit an ad interim injunction was granted by the Court for maintaining status quo i.e. possession of S was not to be disturbed. This order of civil Court was in operation when the Additional District Magistrate passed an order under section 145, Cr. P. C. and directed the police to seal the disputed premises. The order of the Additional District Magistrate, in the circumstances, was held by the Supreme Court to be clearly illegal and was set aside.

Dilbaz Khan v. The State and another P L D 1959 Lah. 264; Mst. Asafa Sultana v. The State and another 1969 Cr. L J 129 ; Muhammad Akbar v. The State and another P L D 1968 S C 281; Diwan Chand and others v. Emperor. A I R 199 Lah. 223; Mst. Makhona Levi v. Kamla Pat Ram A I R 1935 Oudh 255; Brahma Nath v. Sundar Nuth A I R 1919 All. 311; Imtiaz Ali Khan v. Sheikh Badruddin A I R 1943 Oudh 410; Doulat Koer v. Ramshwari Koer alias Dulin Sahiba 26 Cal. 625; Jang Lahadur 6ingh v. Nazimul Haq and others A I R 1947 Pat. 245; Agni Kumar Das v. Mantazaddin and another A I R 1928 Cal. 610; B. N. Aashyap v. The Crown I L R 25 Lah. 408 ; Gogun Chunder Ghose v. The Empress I L R 6 Cal. 247; Raj Kumari Debi v. Bama Sundari Debi I L R 23 Cal. 610 ; Tarapada biswas v. Kalipada Ghose I L R 51 Cal. 849 ; Trailokynath Das v. The Emperor I L R 59 Cal. 139; Genanasi-Gamani Nadar v. Vedamuthu Nadar (1927) 52 Mad. L J 80; Ramanamma v. Appalanasayya I L R 55 Mad. 346; Fanghunath Singh v. King-Emperor I L R 15 Pat. 336; In re: Markur I L R 41 Bom. I ; Kanhaiya Lal v. Bhagwan Das I L R 48 All. 60; Crown v. Bishan Das 33 P R (Cr.) 1910 and Phuman Singh v. Emperor (1927) 106 I C 463 ref.

Aftab Farrukh, Advocate Supreme Court instructed by Abdul Karim Sheikh, Advocate-on-Record for Appellant.

Major Wahid-ud-Din Virk, Advocate Supreme Court instructed by Maqbool Ahmad Qadri, Advocate-on-Record (absent) for Respondent No. 1.

M. B. Zaman, Advocate-General West Pakistan (Dilawar Mahmood, Assistant Advocate-General with him) instructed by M. B. Chowahury, Advocate-on-Record on behalf of Ijaz Ali, Advocate-on-Record for the State.

Dates of hearing : 15th and 16th April 1970.