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For the reasons stated above I set aside the order of the District Judge challenged in revision. It will, of course, be open to the District Judge to pass such order on the application of the guardian or otherwise which is justified by the provisions of the Guardians and Wards Act. The parties shall bear their own costs.

REVISIONAL CRIMINAL

Before Mr. Justice Rachhpal Singh

1934
September, 17

MEHARBAN SINGH AND OTHERS *v.* BHOLA SINGH*

Criminal Procedure Code, section 145(4) *proviso—Application within a few days of dispossession—Preliminary order passed after delay, so as to be more than two months after the dispossession—Whether applicant entitled to benefit of section.*

On a correct interpretation of the proviso to sub-section (4) of section 145 of the Criminal Procedure Code the result is that a person who has been forcibly dispossessed more than two months before the date of the preliminary order passed under sub-section (1) can not derive any benefit under section 145. Where the Magistrate finds that the dispossession took place more than two months before the date of the preliminary order, then the only course open to him is to maintain the possession of the other party. This may, no doubt, be hard upon a man who applies within a few days after his forcible dispossession but has to be deprived of his speedy remedy under section 145 simply because the court to which the application was made did not make a preliminary order for a long time, but this is the only conclusion to be drawn from the language of the section.

Messrs. *K. D. Malaviya* and *Babu Ram Avasthi,* for the applicants.

Mr. *G. S. Pathak,* for the opposite party.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

RACHHPAL SINGH, J.:—This is a reference by the learned Sessions Judge of Farrukhabad recommending that an order passed by a Magistrate of first class in that district, directing that one Bhola Singh be put in posses-

*Criminal Reference No. 564 of 1934.

sion of the plot in question under the provisions of section 145 of the Criminal Procedure Code, be set aside.

Bhola Singh made an application under section 145 of the Criminal Procedure Code on the 15th of March, 1933, in which he alleged that Munshi Singh and Meharban Singh had forcibly dispossessed him of a plot of land by erecting a building over it and by cutting some trees, and that, therefore, there was an apprehension of the breach of the peace. It may be stated here that in his application Bhola Singh alleged that he had been dispossessed seven or eight days before the date of his application. The Sub-Divisional Magistrate asked the police to make a report, and it was not till the 11th of May, 1933, that he issued a notice to the opposite party. The learned Magistrate who tried the case came to the conclusion that Bhola Singh's possession continued undisturbed till lately, when he was forcibly ousted from the plot. He did not, however, specify the exact date on which, according to him, Bhola Singh had been dispossessed. He further found that it was made out that there was an apprehension of the breach of the peace, and therefore he made an order that Bhola Singh should be put in possession and the opposite party be prohibited from disturbing his possession.

Against the order passed by the learned Magistrate a revision was preferred to the learned Sessions Judge. Two points were urged before him. The first related to the alleged illegality of the notice issued by the learned Magistrate. But in view of a decision of this Court in the case of *Kapoor Chand* v. *Suraj Prasad* (1), this point was abandoned. The second point urged was that as Bhola Singh, according to the evidence in the case, had been dispossessed more than two months next before the date of the notice (11th of May) the order passed by the Magistrate was incompetent, having regard to the provisions of proviso 1, sub-clause (4) of section 145 of the Criminal Procedure Code. This

(1) (1933) I.L.R., 55 All., 301.

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is the only point which I have to consider in this reference.

Section 145, clause (1) enacts that whenever a Magistrate is satisfied from a police report that a dispute likely to cause a breach of the peace exists concerning any land, etc., then he shall make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his court in person or by pleader and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. Clause (4) of this section runs as follows: "The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence if any as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject." One of the provisos to this section runs thus: "Provided 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."

The contention of the applicants (Munshi Singh, Gurdatta Singh and Meharban Singh) which has been accepted by the learned Sessions Judge is that in view of the proviso referred to above, a Magistrate cannot make an order under section 145 if it is found that the person making an application under that section had been dispossessed more than two months before the date on which the Magistrate issued a notice as required by the provisions of section 145, clause (1). For the purpose of deciding this question I will assume that the finding of the learned Sessions Judge that Bhola Singh had been dispossessed more than two months before the

date on which the order under section 145, clause (1) of the Criminal Procedure Code was made is correct. On behalf of Bhola Singh it is argued that he had made his application within about a week after his dispossession and he should not suffer because the court did not issue a notice until nearly two months after the date of his application.

The only question for determination in this case is whether the contention which has been put forward on behalf of Munshi Singh, Gurdatta Singh and Meharban Singh is well founded. I have heard the learned counsel appearing on both sides and am of opinion that the view taken by the learned Sessions Judge in his order of reference is correct and must be accepted. Having regard to the provisions of the proviso to sub-clause (4), section 145, no other view is possible. Action can only be taken under section 145 in those cases where a party has been dispossessed within a period of two months next before the date on which the Magistrate issues an order as contemplated under the provisions of clause (1), section 145. The proviso further provides that in deciding the question of possession the Magistrate may draw a presumption that a party who is proved to have been in possession within two months next before the date of the order was the person in possession. But once the Magistrate finds that an applicant has not been in possession of the disputed land within this period, then the only course open to him is to put the other party in possession. The learned counsel appearing for Bhola Singh relied on *Srinivasa Reddy* v. *Dasaratha Rama Reddy* (1). In that case it was held by a learned Judge of the Madras High Court that when an application was made to a Magistrate under section 145 by a person complaining of forcible dispossession, if, for no reason or fault of the applicant, the Magistrate was not able to pass a preliminary order within two months of the dispossession, the party complaining should not, on

(1) (1928) I.L.R., 52 Mad., 66

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a proper construction of the first proviso to clause (4) of section 145, be made to suffer by reason of such delay on the part of the Magistrate and was entitled to an order under that section. The learned Judge also held that though the words of the proviso were capable of the interpretation that the dispossession must be within two months of the preliminary order, yet the intent and object of the section must be taken into consideration before such an interpretation was put upon it. The learned Judge in that case counted the period of two months not from the date of the preliminary order but from the date on which the applicant had filed his complaint. This view certainly supports the case of Bhola Singh. But a different view, however, was taken in the other reported cases on the point. In *King-Emperor* v. *Baijnath* (1), STUART, C.J., disagreed with the view expressed in the Madras case, and held that "two months from the date of the order" mean two months from the date of the order and not two months from the date of complaint. In this case STUART, C.J., remarked that the provisions of section 145 were directed to enable a Magistrate to pass orders as to retention of possession with the object of preventing a breach of peace and that a special exception was made in favour of persons who have been recently dispossessed.

In a recent Nagpur case, *Emperor* v. *Parashram* (2), the view taken was that a person complaining of forcible dispossession under section 145 could not claim the benefit of that section if the dispossession took place more than two months prior to the date of the preliminary order under clause (1) of that section. The Madras view in the above mentioned case was not followed. I agree with the following remarks passed by the learned Judge in this Nagpur case: "The object of the section is to prevent a breach of the peace, and not to prevent a party, who has been forcibly dispossessed, from being obliged to have recourse to a civil court." It appears

(1) (1929) I.L.R., 5 Luck., 440. (2) A.I.R., 1931 Nag., 38.

to me that on a correct interpretation of the proviso to sub-section (4) of section 145 the only conclusion that can be drawn is that a person who has been dispossessed forcibly more than two months before the date of the preliminary order passed under that section cannot derive any benefit under section 145. Where he claims to have been dispossessed and the court finds that the dispossession took place more than two months before the date of the preliminary order, then the possession of the opposite party must be maintained. As pointed out in the aforesaid Madras case, it may be that the legislature did not contemplate such a result and at first sight it seems hard that a man who applies within a few days after his forcible dispossession should be deprived of this speedy remedy simply because the court to which the application was made did not make a preliminary order for a long time. The remedy, however, lies in the hands of the legislature.

For the reasons given above I accept the reference made by the learned Sessions Judge and set aside the order passed by the learned Sub-Divisional Magistrate and direct that the possession of Meharban Singh, Munshi Singh and Gurdatta Singh over the plot in question be maintained until evicted therefrom in due course of law.