title and my own decision on the point it is not necessary for me to pass such a decree. The plaintiffs' title as co-sharers has never been questioned.

The decree passed by the court below is maintained and the appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL

Before Mr. Justice J. R. W. Bennett

SHAHZADA DALJIT SINGH (APPLICANT) v. MIYAN TEJ SINGH (COMPLAINANT-OPPOSITE-PARTY)*

1939
August, 18

Criminal Procedure Code (Act V of 1898), section 145—Preliminary order under sub-section (1) of section 145—Attachment of property—Magistrate subsequently coming to conclusion that there was no danger of breach of peace—Magistrate whether can subsequently cancel preliminary order—Attached property, whether can be delivered to one of the parties.

The District Magistrate has power under sub-section (5) to cancel the preliminary order issued under sub-section (1) of section 145 of the Code of Criminal Procedure where the circumstances justify it. *Manindra Chandra Nandi* v. *Barada Kanta Chowdhry* (1), followed.

Where a Magistrate attaches property which is the subject of dispute under section 145, Criminal Procedure Code and subsequently comes to the conclusion that there is no danger of a breach of the peace and on that ground files the proceedings, he has no jurisdiction to direct that the attached property should be delivered to one of the parties. The proper order is to direct that the property should remain in his custody and management pending decision of a civil court on the question of title. *Dashrath* v. *Tarachand* (2), relied on. *Chenga Reddi* v. *Ramasamy Gounden and others* (3) and *Pigot* v. *Ali Mohammad Mandal* (4), referred to.

Dr. *J. N. Misra*, for the applicant.

Messrs. *S. Kalbe Abbas* and *H. G. Walford*, for the opposite-party.

*Criminal Revision No. 52 of 1939, of the order of B. K. Topa, Esq., Additional Sessions Judge of Bahraich, dated the 29th May, 1939.

(1) (1902) I.L.R., 30 Cal., 112. (2) (1925) A.I.R., Nagpur, 297.
(3) (1915) 27 I.C., 152. (4) (1921) I.L.R., 48 Cal., 522

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BENNETT, J.:—This is an application in revision against the order of the Additional Sessions Judge, Bahraich, dated the 29th May, 1939, upholding the order of the District Magistrate, Bahraich, dated the 31st March, 1939, in proceedings under section 145 of the Code of Criminal Procedure.

Bennett, J.

These proceedings were initiated by the applicant Shahzada Daljit Singh, a minor, under the guardianship of his mother, Rani Rajendra Pal Kuar Sahiba, on the 22nd December, 1938. In his application it was stated that in the previous September the applicant's mother had brought into her possession four villages which had been granted by way of jagir to Shahzada Jagjaut Singh and Shahzada Fateh Singh. The grantees had only a life interest in the villages, and on their death they reverted to the applicant as proprietor of the Pipri Estate. The opposite-party Miyan Tej Singh had, however, obtained a deed of gift in respect of these villages from Shahzada Jagjaut Singh and Shahzada Fateh Singh, and was claiming the property in virtue thereof, though whatever rights he may have had under the gift deed ceased on the death of the donors. The applicant claimed that the villages had come into his possession peacefully and that the tenants had been willingly paying their rents to him.

Reference was also made in this application to the fact that in one of the four villages referred to there was a temple dedicated to Mahadeoji in which the offerings and *tah-bazari* dues on *mela* occasions were realized on behalf of the applicant. The opposite-party Miyan Tej Singh disputed his right to do so, and on the 20th November, 1938, the police had attached the offerings and dues.

Consequently the applicant prayed that proceedings might be taken under section 145 in respect of the four villages as well as in respect of the temple offerings and *mela* dues, and the applicant's possession be upheld.

A police inquiry was ordered on this application, and the sub-inspector of police who made the inquiry

reported on the 16th January, 1939. The general conclusion at which the sub-inspector arrived was that there was no apprehension of a breach of the peace from the side of Miyan Tej Singh such as would justify proceedings against him under section 145. It was also stated in the report that Miyan Tej Singh had produced documentary evidence in support of his possession which was corroborated by the patwaris. There was no evidence of any quarrel between Miyan Tej Singh and the Rani Sahiba.

The Deputy Superintendent of Police submitted the papers to the Superintendent of Police and expressed the opinion that there would be trouble between the parties until one party was declared to be in possession and the other directed to establish his rights in the civil court. The Superintendent of Police concurred and recommended action accordingly to the District Magistrate. The District Magistrate, who was then Mr. Badri Prasad, noted on the 6th February, 1939, that he was satisfied on this report and notes that a dispute existed between the parties which was likely to cause a breach of the peace, and he therefore required the parties to attend in person or by pleader on a certain date before a certain Magistrate and file written statements.

Subsequently an application was made by Miyan Tej Singh asking for reconsideration of the order. The application was made before Mr. Badri Prasad, but he was shortly afterwards succeeded by Mr. Stubbs. Mr. Stubbs reconsidered the matter and passed the order which is primarily the subject of the present application. He heard counsel for the parties and expressed the opinion in his order of 31st March, 1939, that the report and other papers on the record merely established the existence of a dispute and did not establish the need for action under section 145. He accordingly cancelled the notice issued to the parties. He also ordered that the property which had been attached should be released in favour of Miyan Tej Singh and he warned the Rani of Pipri and her servants and adherents not to attempt

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to interfere illegally with his possession. If they did so, action would be taken against them under section 107 of the Code of Criminal Procedure. Presumably the order for release from attachment of the property referred to the offerings and dues which had previously been attached by the police as well as to the immovable property which was the principal subject of the application of the 22nd December.

An application in revision against the District Magistrate's order was preferred in the Sessions Court and disposed of by the Additional Sessions Judge in the order of the 29th May, against which this present application in revision has been filed. The Additional Sessions Judge saw no reason to interfere with the District Magistrate's order.

Two questions arise from the District Magistrate's order, the first being whether he had power under sub-section (5) to cancel the preliminary order issued under sub-section (1) of section 145, and the second whether he had power to order delivery of the property to Miyan Tej Singh.

On the first point there are numerous authorities to the effect that the matter is entirely within the Magistrate's discretion, save where the order is passed without any material to justify it. It cannot be said in this case that there was no basis for the Magistrate's order, for the report of the Sub-Inspector who made inquiry on the original application was that proceedings under section 145 were not necessary. His superior officers and Mr. Badri Prasad, who was then the District Magistrate, thought that they were necessary, but on application being made for reconsideration by Miyan Tej Singh, Mr. Stubbs came to a different conclusion. In *Manmdra Chandra Nandi* v. *Barada Kanta Chowdhry* (1), it was held that the Magistrate has jurisdiction to cancel the original order where the circumstances justify this.

(1) (1902) I.L.R., 30 Cal., 112.

It is more difficult to defend the order of the District Magistrate for delivery of the property to Miyan Tej Singh. I take the following passage based on various rulings from page 701 of *Chitaley's Commentary* on the Code of Criminal Procedure:

> "On the making of an order dropping the proceedings, the Magistrate is *functus officio* and has no 'jurisdiction' thereafter to pass any order relating to the claims of the parties or to the disposal of the property or the crops thereon and the parties should be left to settle their rights in a competent court or in any manner they choose. Any attachment effected in the course of the proceedings automatically ceases, and the position of the parties is precisely the same as if no proceedings had been instituted at all under this section. Where the profits, rents or realizations from the attached property are in court deposit, the proper course to adopt, on the cancellation of the preliminary order, would be to keep the amount in court deposit, until the party entitled to it has established his rights in a proper proceeding; the Magistrate has no power to pass an order under section 517."

It has been argued in support of the Magistrate's order releasing the property in favour of Miyan Tej Singh that the circumstances and the evidence on the record are such as to warrant it, but, however strong the case of one party may appear to be, a Magistrate is not justified in coming to any conclusion in regard to the rights of the parties when a dispute admittedly exists, as that would be in effect deciding the question at issue between them. So far as the question of possession is concerned that can only be decided under section 145 after taking all such evidence as the parties may adduce: while the question of title can be decided only by a civil court. This part of the Magistrate's order cannot therefore be upheld.

The question remains what is the proper order to pass in the circumstances of the case with respect to the property.. Two courses are possible. One is to order release of the property from attachment without directing delivery to either party and the other is to order that the attachment shall continue until the

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question of title has been decided by the civil courts. It may be mentioned here that an order was passed by this Court when the application in revision was filed that the attachment should continue in force pending orders on the application, unless possession had already been handed over. It was stated by the applicant's counsel during the hearing of the application that possession had not been handed over, and therefore the *ad interim* order for the attachment to remain in force still holds good.

It was frankly admitted by counsel for the parties that if the property is released from attachment and no order is passed for its delivery to either party, a breach of the peace would certainly ensue. Consequently there can be no doubt that whatever justification there may have been for the view taken by the District Magistrate that there was originally no apprehension of a breach of the peace, it could not be considered now in view of the subsequent developments that there would still be no apprehension of a breach of the peace on such release of the property from attachment. The District Magistrate would then have to take action either under section 107 or under section 145, and he would probably have to pass orders for the attachment of the property again. Learned counsel for the applicant has suggested that in these circumstances the proper order for this Court to pass would be that the property should remain under attachment pending decision of the question of title. In support of such an order he has referred me to the ruling in *Dashrath* v. *Tarachand* (1). In this case it was held that where a Magistrate attaches property which is the subject of dispute under section 145 and subsequently comes to the conclusion that there is no danger of a breach of the peace and on that ground files the proceedings he has no jurisdiction to direct that the attached property should be delivered to one

(1) (1925) A.I.R., Nagpur, 297.

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of the parties. The proper order is to direct that the property should remain in his custody and management pending decision of a civil court on the question of title.

The same view has been taken by other High Courts. In *Chenga Reddi* v. *Ramasamy Gounden and others* (1) the Madras High Court held in similar circumstances that the Magistrate had no jurisdiction to direct that the attached properties should be delivered to one of the parties and that he should keep them or their sale-proceeds, if perishable, in deposit until one of the parties establishes its right in a civil court.

Bennett,

In *Pigot* v. *Ali Mohammad Mandal* (2) the Calcutta High Court held that it had inherent power to give directions as to disposal of property attached and dealt with by a Magistrate in the course of proceedings instituted without jurisdiction under section 145 of the Code. Statutory effect has since been given to this decision by the enactment of section 561-A of the Code whereby nothing therein shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

It seems clear therefore that this Court has power to pass an order that the attachment shall continue, and in the circumstances of the case this appears to be the more appropriate order to pass, since release from attachment might result in a conflict between the parties or their servants before action to prevent it could be taken by the authorities.

While therefore upholding the order of the District Magistrate cancelling the preliminary order under sub-section (1) of section 145, I set aside his order directing delivery of the property to Miyan Tej

(1) (1915) 27 I.C., 152. (2) (1921) I.L.R., 48 Cal., 522.

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Singh and direct that the property, including both the immovable property and the temple offerings and *tah-bazari* dues, shall remain under attachment until the question of title has been determined by the civil courts.

Application partly allowed.

MISCELLANEOUS CIVIL

Before Mr. Justice Radha Krishna Srivastava

1939 *September*, 1

KAZIM HUSAIN, NAWAB, SYED (APPLICANT-JUDGMENT-DEBTOR) *v.* PEAREY LAL SETH (OPPOSITE-PARTY-DECREE-HOLDER)*

Civil Procedure Code (Act V of 1908), section 151 and Order XXII—Revision application—Limitation applicable to application for substitution of legal representative of a deceased party in a revision application—Order XXII, whether applicable to application for substitution in a revision application.

Order XXII of the Code of Civil Procedure is not applicable to an application for substitution of the name of a legal representative in place of a deceased party in a revision application. It follows that there is no rule of limitation governing an application for substitution of parties in a revision application.

An order to bring a legal representative on the record of a revision application can be passed under section 151 of the Code of Civil Procedure. *Baksho* v. *Piaro*, (1), referred to and relied on.

Messrs. *Ram Bharosey Lal* and *Murli Manohar*, for the applicant.

Mr. *Ghulam Hasan*, for the opposite-party.

RADHA KRISHNA, J.:—This is an application purporting to be under section 151 of the Code of Civil Procedure by the applicant judgment-debtor praying that the name of Mst. Mangala Devi, the widow of the deceased decree-holder, Seth Pearey Lal, be substituted in place of her deceased husband.

*Civil Miscellaneous Application No. 255 of 1939, in section 115 Application No. 29 of 1937—Application under section 151, C. P. C. and section 5 of the Indian Limitation Act.

(1) (1924) 80 Ind. Cas., 456 (Sind.)