

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 216 OF 2001

Shri Murlidhar Musal Yadav.
Aged 70 years, Occ: Business.
Residing and doing business
at Pushpa Kunj, Plot No. 192,
Station Road, Wadala (west),
Mumbai 400 031.

... Applicant.

Versus

- 1 The State of Maharashtra.
- 2 Shri Lalbahadur Ramkaran Yadav,
aged about 63 years, Occ.Business,
residing at Dr. Rajendraprasad Road,
Behind Gupta Engineering Company,
Mulund (W), Mumbai-400 081.
- 3 Shri Laltaprasad s/o. Ramkaran Yadav,
aged about 69 years, occ. Business,
residing at Jamnadas Gupta Chawl,
Dr. Rajendraprasad Road,
Mulund (W), Mumbai-400 081.

... Respondents.

Mr. Vaibhav M. Parashurami i/b. Mr. Vikrant V. Parashurami,
advocate for Applicant.

Mr. G.S. Hegde a/w. Mr. U.V. Singh i/b. Mr. I.S. Singh, advocate for
respondent Nos. 2 and 3.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 31, 2015

JUDGMENT :

1 Heard the learned Counsel for the applicant, the learned Counsel for the respondents and the learned APP for State.

2 At the outset, the Counsel for the applicant submits that the original application was filed at Mulund, but since proceedings were part-heard, the matters were transferred to Borivali.

3 The applicant herein had filed an application before the Metropolitan Magistrate, 24th Court, Borivali, Mumbai seeking an action under Section 145 of the Code of Criminal Procedure, 1973. The present Petitioner i.e. original applicant in Case No. 2/N/1994 (old case No. 7/N/1993) had submitted before the Court that he was in actual physical possession of 65 sq. yards of open space, which was described as City Survey No. 845/14, situated at Gupta Plot, Mulund. That the applicant was using the premises for tying his buffaloes.

Initially, it was in possession of Sitaram Yadav the plot measuring 5 kunthas. That Sitaram Yadav was in possession of the said property in the capacity of tenant and was holder of licence issued by the Bombay Municipal Corporation for tethering his buffaloes. That Sitaram Yadav wanted to return to his native village and therefore, he had put the applicant into position of the said open space as well as the business to be conducted as a licensee. It was contended by the present applicant that he was put into possession by virtue of Power of Attorney or rent receipt. That the brother-in-law of the applicant was running the coal business in that property.

4 It was alleged in the application that on 5/11/1979 Lalbhadur Yadav who happens to be the present respondent had threatened the original applicant/Petitioner and his brother-in-law and had forcibly dispossessed them of the said property. The applicant had lodged the report at Mulund Police Station as there was likelihood of breach of peace and thereafter, he had approached the Court. It is observed that initially the preliminary orders were passed on 19/12/1979. The

respondents were called upon to file their written statement. Accordingly, several applications were filed by both the parties and the matter remained pending till 10/6/1996. On 10/6/1996 the learned Magistrate had allowed the application under Section 145 of the Code of Criminal Procedure, 1973 and had given a declaration that the applicant was in possession of the disputed premises i.e. CTS No. 845/16, Gupta Plot on the date on which the application was filed. It was also ordered that the applicant was entitled to restoration of the actual physical possession of the said premises as contemplated under Section 145(6) of the Code of Criminal Procedure, 1973. The respondent herein was directed to hand over actual physical possession of the said property in favour of the applicant.

5 Being aggrieved by the said order, the respondent herein i.e. Lal Bahadur Yadav had filed Criminal Revision Application No. 213 of 1996 before the Sessions Court. One Laltaprasad Yadav had filed an intervention application in the original proceedings.

6 On 18/12/1979 the learned Metropolitan Magistrate had declined to permit him to intervene in the said proceedings and hence, the parties were allowed to be dropped from the proceedings. Said Laltaprasad being aggrieved by the said order had also criminal Revision Application No. 218 of 1996 and both the applications were heard by the learned Sessions Court.

7 The Revisional Court had specifically observed that in fact, on 20th April, 1990 a deed of assignment was executed and Laltaprasad was put into possession of the land bearing CTS No. 845/14. The learned Revisional Court had observed that an application was filed by Sitaram Chikori on 18/4/1990 and 23/4/1990 that the dispute in respect of land was over and therefore, the proceedings be dropped. All these had happened during the pendency of the hearing of the application under Section 145 of the Code of Criminal Procedure, 1973. The learned Revisional Court had rightly observed that the records had indicated that just 15 days prior to the alleged

dispossession i.e. on 5/11/1979 Sittaram Chikori was found to be in possession of the said premises. It was observed that the learned Magistrate had not considered subsequent events while passing the final order after more than a decade.

8 Section 145 of the Code of Criminal Procedure, 1973 contemplates that it is in the nature of an enquiry where an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute, likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he has to make an order in writing, thereby disclosing subjective satisfaction for requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

9 The whole issue was whether the coal business was started on Survey No. 845/14 or 845/16. The Revisional Court has considered intervention application where it has been admitted that Sitaram Chikori was concerned with the Survey No. 845/14 and Laltaprasad was carrying on business from April, 1979 at City Survey No. 845/16.

10 Be that as it may, the learned Revisional Court has rightly held that the applicant therein had not proved that he was dispossessed on 5/11/1979.

11 In fact, in the proceedings under Section 145 of the Code of Criminal Procedure, 1973, action under Section 145 of the Code of Criminal Procedure, 1973 has to be taken in consonance with the Section 144 of the Code of Criminal Procedure, 1973. That Section 144 of the Code of Criminal Procedure, 1973 deals with immediate prevention and speedy remedy and therefore, before invoking such provisions, the statutory authority has to be subjectively/objectively

satisfied regarding the existence of circumstances showing the necessity of an immediate action.

12 Revisional Court had thus allowed the petition by Judgment and order dated 26/2/2001. There is no reason to interfere with the order passed by the Sessions Court after 35 years.

13 Learned Counsel for the Petitioner upon instructions submits that the Petitioner had not approached the civil court and had not filed any other proceedings before any other court. By efflux of time, the prayers in the petition have become infructuous. Hence, the Application stands dismissed. The Revision Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)