

with special leave under Section 417(3) Cr. P.C., declined to set aside the acquittal, though it had been proved that there was a deficiency of 0.3 per cent of the Analysis.

(33) The ratio of these decisions applies with greater force to the facts of the instant case.

(34) In the result, the appeal fails and is dismissed.

C. G. SURJ, J.—I agree.

K.S.K.

REVISIONAL CIVIL.

*Before Harbans Singh, C.J.*

HARI SINGH.—*Petitioner.*

*versus.*

MOHAR SINGH.—*Respondent.*

**Civil Revision No. 1177 of 1970.**

May 14, 1971.

*Code of Criminal Procedure (Act No. V of 1898)—Section 145—Proceedings under—Persons interested in the possession of the land in dispute, having notice of the proceedings but not parties thereto—Whether bound by the result of the proceedings—Respondent put in possession as Sapurdar during pendency of such proceedings—Magistrate finding the applicant to be in possession of the land on the date of the application or within two months period thereto—Such Magistrate—Whether can order the delivery of the possession to the applicant.*

*Held, that the binding character of an order passed under section 145 of the Code of Criminal Procedure, is not under all circumstances to be confined to persons who were actually made parties to the proceedings. Persons who are interested in the possession of the land in dispute and have notice of the proceedings even though they were not parties, will be bound by the order.* (Para 5)

*Held, that where during the pendency of proceedings under section 145 of the Code, the respondent is put in possession as Sapurdar and thereafter the Court comes to a conclusion that the applicant was in possession on the*

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date of the application or within two months of that, the only proper procedure that has to be adopted by the Executive Magistrate is to put the applicant in possession and when he is actually so put, the order of the Executive Magistrate cannot be said to be without jurisdiction. (Para 7)

*Petition under Section 44 of Act IX of 1919 and Section 115 of the Code of Civil Procedure for revision of the order of Shri Gorakh Nath, Sub-Judge 1st Class, Rewari dated the 14th July, 1970 decreeing the suit of the plaintiff for possession of 40 Kanals of land comprising in Rect. No. 96, Killa Nos. 3(8—0), 4(8—0), 5(8—0), 6(8—0), and 7(8—0) situate in village Khol as a co-owner and had sown crop in it in Kharif 1968.*

N. L. DHINGRA, ADVOCATE, for the petitioner.

DALIP SINGH, ADVOCATE, for the respondent.

## Judgment.

HARBANS SINGH, C. J.—(1) The facts giving rise to this revision petition against an order passed by the trial Court under section 6 of the Specific Relief Act, directing the restoration of possession to Mohar Singh against Hari Singh, who had obtained possession under an order of an Executive Magistrate, who in proceedings under section 145, Criminal Procedure Code, had held him to be in possession at the disputed time, may be stated in some detail. On 8th July, 1966, Hari Singh brought an application under section 145, Criminal Procedure Code, against Jagmal Singh and others, but not including Mohar Singh, alleging that he had been dispossessed from the land in dispute, included in square No. 96, killa Nos. 3 to 7. This land admittedly belonged to the Panchayat. Both the contesting parties put up the claim that they were in possession thereof on the relevant date or within the prescribed time before that. On 15th July, 1966, the land was attached and notices were issued to the respondents,—vide copy Exhibit D. 5. On 2nd August, 1966, one Bhola Singh was made the Sapurdar of the crops that were standing.

(2) On 13th September, 1966, an application was made by Jagmal Singh that on 4th May, 1966, he had obtained lease from the village Panchayat for Rs. 740, that Mohar Singh was his co-lessee and both of them had cultivated the crop of Bajra worth thousands of rupees and that he should be allowed to cut the crop. A copy of this application is not on the record, but the order (copy Exhibit D. 6) dated 20th September, 1966, passed by the Executive Magistrate; directed that Rs. 2;000 may be deposited by the second party;

namely, Jagmal Singh, etc., and thereupon they be made the Sapurdars of the standing crop of Bajra. This amount was deposited and the second party; i.e.; Jagmal Singh etc., was made the Sapurdar in respect of the standing crop. It is obvious, therefore, that from that date onwards the second party was in possession of the land not on its own right, but merely as a Sapurdar.

(3) On 15th November, 1966, the Executive Magistrate held that it was Hari Singh, i.e., the first party, who was entitled to the possession of the land. He also directed that Rs. 2,000, that had been deposited by Jagmal Singh etc., may be paid to him. The order was challenged before the Additional Sessions Judge, Gurgaon, who issued an order staying the operation of the order of the Executive Magistrate. However, he finally dismissed the revision on 25th March, 1968 (copy Exhibit D. 10). A further revision taken to the High Court was dismissed *in limine* on 15th May, 1968. Thereafter, it appears that Hari Singh made an application to the Executive Magistrate that the possession may be restored to him. The order passed in this case is dated 25th July, 1968, (copy Exhibit D. 7). In execution of this order possession was actually delivered on 12th August, 1968.

(4) The suit, out of which the present revision has arisen, was filed on 28th November, 1968, claiming restoration of the possession on the ground that the plaintiff, Mohar Singh, has not been dispossessed in due process of law. The trial Court held, after recording evidence of the parties, that Mohar Singh, who was admittedly in possession of the land in dispute on 12th August, 1968, was not a party to the proceedings under section 145, Criminal Procedure Code, and, therefore, he was not bound by the order passed therein. The trial Court also held that the final order of the Executive Magistrate dated 15th November, 1966, only made a declaration that Hari Singh was in possession of the land on the relevant date and that the Magistrate could issue warrants of possession if he had come to the conclusion that Hari Singh had been dispossessed within two months of the filing of the application. That finding not being there, the action of the Executive Magistrate in issuing the warrants of possession and in getting delivery of possession from Mohar Singh was without jurisdiction.

(5) The first point urged by the learned counsel for Hari Singh, who has brought this revision being aggrieved by the order of the trial Court, who ordered the possession to be delivered back to Mohar Singh, was that although Mohar Singh was not impleaded as a party in proceedings under section 145, Criminal Procedure Code, yet that order would be binding on him, because he not only fully knew about the pendency of the proceedings, but he took active part therein by filing an affidavit in which he supported the case of Jagmal Singh and, in fact, stated that he, along with Jagmal Singh, was the joint lessee in possession of the land in dispute. As I have already noticed above, the position taken by Jagmal Singh in his application dated 13th September, 1966, was apparently the same, though the exact words cannot be ascertained, because there is no copy of that application on the record. Be that as it may, so far as Mohar Singh is concerned, the definite position taken up by him in his affidavit, Exhibit P. 1, was that he was joint lessee with Jagmal Singh and was in possession of the land as a lessee from the Panchayat. Thus, when Jagmal Singh was the main contestant in the application filed by Hari Singh and Mohar Singh was a joint lessee, then the interests of Mohar Singh were duly represented during the proceedings and Jagmal Singh fully represented such interests. No fault can, therefore, be found so far as the proceedings under section 145, Criminal Procedure Code, are concerned and he would be as much bound by the order passed by the Executive Magistrate as Jagmal Singh. Reference in this respect may be made to *Mst. Alarakhi Bibi and others v. Mst. Jujala Bibi and others* (1), where in headnote (c), it is stated that all persons, who are interested in the possession of the land in dispute and have notice of the proceedings, even though they were not parties, will be bound by the order. Then there is a Division Bench judgment of the Calcutta High Court in *Satya Charan De and another v. Emperor*, (2), headnote (a) of which runs as under :—

“The binding character of an order passed under section 145 is not under all circumstances to be confined to persons who were actually made parties to the proceedings but may under certain circumstances extend to persons other than the parties themselves.”

(1) A.I.R. 1966 Orissa 49.

(2) A.I.R. 1930 Cal. 63.

(6) The circumstances of the present case are such that Mohar Singh must be taken to be bound by the proceedings in which Jagmal Singh was specifically impleaded and in which Mohar Singh had himself put in an affidavit claiming to be a joint lessee with Jagmal Singh.

(7) As regards the question, whether the Executive Magistrate had the jurisdiction to direct the possession being given to Hari Singh, apart from other things, it has to be noticed that as the land was attached, the possession of the land was that of the Court. Even if Hari Singh was, as was found by the Executive Magistrate, in possession, he no longer remained in possession after the order of attachment. Thereafter, under the orders of the Court, dated 20th September, 1966, the possession was actually delivered to Jagmal Singh etc., and this must be taken to be Jagmal Singh with his joint lessee Mohar Singh as Sapurdars. So the actual possession remained with them but merely as Sapurdars. If the Court came to a conclusion that Hari Singh was in possession on the date of the application or within two months of that, as has been found, then the possession had to be delivered to Hari Singh, even if the persons in possession were Sapurdars and possession was actually found with Mohar Singh. There can, therefore, be no earthly objection to it. As a matter of fact this was the only proper procedure that was to be adopted by the Executive Magistrate that in pursuance of his order, which had been confirmed by the Additional Sessions Judge as well as by the High Court, he should restore the possession to the person whom the Court had found to be in possession on the date of the application. Mohar Singh and Jagmal Singh being in possession only under the orders of the Court, could have no objection to deliver possession. If they have got any right to the possession of the property on the basis of any title or if the Panchayat has any right to be in possession thereof, they can take proper proceedings,

(8) For the reasons given above, I accept this revision, set aside the order of the Court below and dismiss the application filed by Mohar Singh, with no order as to costs.

N.K.S.