

## CHANDRASEKHAR SINGH &amp; ORS.

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v.

SIYA RAM SINGH &amp; ORS.

September 26, 1978

[JASWANT SINGH, P. S. KAILASAM AND A. D. KOSHAL, JJ.]

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*Code of Criminal Procedure, 1898—Section 146—The finding of the Civil Court under this Section as to possession is final.*

*Code of Criminal Procedure, 1898, Sections 435 & 439—Revisional powers of the High Court—High Court cannot interfere with the findings of fact of the Civil Court in a proceeding under s. 146 Criminal P.C.—Constitution of India, 1950 Art. 227—Power of superintendence of the High Court is limited.*

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In the 145 proceedings converted from the 144 proceedings on a police report dated 29-2-1968, both the appellants—second parties and the respondents first parties claimed title as well as possession of the disputed land with them and filed in support documents and several affidavits. The magistrate referred the matter to the Civil Court for a finding on the issue. On a consideration of the materials placed before him, the munsif by an order dated 22-12-1975 found that the appellants-second parties were in possession. The magistrate passed an order dated 7-4-1976 in accordance with the findings on the issue as to possession by the munsif holding that the appellants-second parties were in possession. The High Court in revision under sections 435 and 439 of the Criminal Procedure Code, 1898, was of the view that the finding as to possession on the basis of documents alone without applying the mind to the affidavits cannot be sustained and set aside the orders passed by the magistrate.

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Allowing the appeal by special leave, the Court.

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**Held :** (1) The finding of the Civil Court given under s. 146(1B) of the 1898 Code regarding possession is final and cannot be challenged by way of appeal, review or revision, though the Civil Court acting under section 146 (1A) and (1B) of the Criminal Procedure Code has not ceased to be a Civil Court. Neither an appeal nor a revision lies against the finding of the Civil Court in the reference because of the express provision in section 146(1D) and not because the proceeding before the Civil Court is not a civil proceeding [951C-D, E]

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*State of U.P. v. Ramachandra Aggarwal* [1966] Supp. SCR 393 followed.

(2) An order passed by the magistrate in conformity with the decision of the Civil Court cannot be challenged under sections 435 and 439 of the code. Sub-section (1B) requires the magistrate on receipt of the findings by the Civil Court to proceed and dispose of the proceedings under s. 145 in conformity with the decision of the Civil Court. If the order of the magistrate is in conformity with the decision of the Civil Court, the magistrate will be complying with the requirements of section 146 (1B) and the order thus passed cannot be challenged. It will of course be open to the High Court to interfere if the order of the magistrate is not in conformity with the finding of the Civil Court. When the order of the magistrate is in conformity with the finding of the Civil Court, the High Court has no jurisdiction to interfere under sections 435 and 439 of

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**A** the Criminal Procedure Code. When there is an express provision namely, sub-section (1D) in the Code against the challenge of the finding of the Civil Court, other provisions of the Criminal Procedure Code cannot be relied on for doing what is expressly prohibited. [952A-D]

**B** (3) The powers conferred on the High Court under Art. 227 of the Constitution cannot in any way be curtailed by the provisions of the Criminal Procedure Code. Therefore the powers of the High Court under Art. 227 of the Constitution can be invoked in spite of the restrictions placed under s. 146 (TD) of the Criminal Procedure Code. [952D-E]

**C** But the scope of interference by the High Court under Art. 227 is restricted to seeing that the tribunal functions within its limits of authority. The power of superintendence cannot be invoked to correct the error of fact which only a superior Court can do in exercise of its statutory power as the Court of appeal and that the High Court cannot in exercise of its jurisdiction under Art. 227 convert itself into a Court of appeal. [952F, G, 953A]

*Waryam Singh v. Amar Nath* [1954] SCR 56; *Nagendra Nath Bora & Anr. v. Commissioner of Hills Division, and Appeals, Assam & Ors.*, [1958] SCR 1240; *Babhtmal Raichand Oswal v. Laxmibai R. Tarts*, AIR 1975 SC 1297 reiterated.

**D** *Raja Singh v. Mahendra Singh*, AIR 1963 Patna 243; *Dewani Choudhary & Ors. v. Chaturi Manjhi & Ors.* 1971 B.L.J.R. 116; *Farzand Ali v. Shaikat Ali & Ors.*, AIR 1971 All. 12; discussed.

**E** In the instant case, the Civil Court has taken into account the affidavits filed on behalf of the parties and rejected them on finding that no weight could be given to the affidavits having been sworn by persons who were interested and belonged to one party or the other. [953D-E]

#### OBSERVATION :

[In view of the coming into force of the Cr. P.C. 1973 (Act II of 1974) and the amendment of Art. 227 of the Constitution by the 42nd Amendment, the question as dealt with in the Judgment will not any longer arise.]

**F** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 148 of 1977.

Appeal by Special Leave from the Judgment and Order dated 10-1-77 of the Patna High Court in Criminal Revision No. 765 of 1976.

**G** *R. K. Jain, R. L. Singh, R. P. Singh and Rajeev Datta* for the Appellants.

*Lal Narayan Sinha and M. P. Jha* for the Respondent.

The Judgment of the Court was delivered by

**H** KAILASAM, J. This appeal is by special leave by the second party in Section 145 of the Criminal Procedure Code proceedings against the judgment of the Patna High Court in Criminal Revision No. 765 of 1976.

On receipt of a Police Report dated 29-2-1968, proceedings under Section 144 of the Criminal Procedure Code were started on 18-3-1968. The appellants in this Court are the Second Party and the respondents the First Party. The proceedings were converted into one under Section 145, Criminal Procedure Code and the lands in dispute were attached on 14-5-1968. Both the parties claimed title as well as possession of the disputed land with them. The First Party, respondents, filed their documents and nine affidavits in support of their claims while the appellants, Second Party, filed several documents and 12 affidavits in support of their case. The Magistrate on a consideration of the material placed before him found himself unable to decide as to which of the parties had been in possession of the disputed land, and referred the matter to the civil court for a finding on the issue. On a consideration of the materials placed before him the Munsif by an order dated 22-12-1975 found that the appellants, Second Party, were in possession and sent back the records to the Magistrate for disposal according to law. The Magistrate passed an order dated 7-4-1976 in accordance with the finding on the issue as to possession by the Munsif, holding that the appellants, Second Party were in possession.

Aggrieved by the order of the Magistrate, the First Party filed a Revision Petition to the High Court. The High Court found that the Munsif had failed to consider the affidavit of either party but decided the question of possession only on the documents. As the Munsif failed to consider the affidavits, the High Court was of the view that the finding as to possession on the basis of documents alone without applying its mind to the affidavits, cannot be sustained. The appellants, Second Party, being aggrieved by the order has come up to this Court by special leave.

The questions that arise for consideration in this appeal are (1) whether the finding of Civil Court under section 146 (1B) can be challenged by way of an appeal or by review or revision, (2) whether an order which is passed by the Magistrate on the receipt of the finding of the Civil Court, in conformity with the decision of the Civil Court, can be challenged before the High Court under Sections 435 and 439 of the Criminal Procedure Code, and (3) whether an order passed by the Magistrate under Section 146 (1B) can be interfered with by the High Court in exercise of its powers under Article 227 of the Constitution of India.

There is conflict of views between various High Courts regarding the points raised. We would content ourselves by referring to three full bench decisions wherein the decisions of all the High Courts are referred to. The two full Bench decisions of the Patna High Court

**A** are reported in A.I.R. 1963 Patna 243 (*Raja Singh v. Mahendra Singh*), *Dewani Choudhary and Ors. v. Chaturi Manjhi and Ors.* (1971 B.L.J.R. p. 116). The full Bench decision of the Allahabad High Court is reported in A.I.R. 1971 Allahabad p. 12 (*Farzand Ali v. Shaukat Ali & Ors.*).

**B** In *Raja Singh v. Mahendra Singh* (supra), the Full Bench of the Patna High Court by a majority of 2 to 1 held that in exercise of its revisional powers under Sections 435 and 439 of the Code of Criminal Procedure, the High Court can, in suitable cases, interfere with the decision of the Civil Court given by it under sub-Section (1-A) upon a reference made to it under sub-Section (1) of Section 146 of the Code after the referring Magistrate has disposed of the proceeding under Section 145 under sub-Section (1-B), and that the bar as to appeal, review and revision imposed by sub-Section (1-D) operates only so long as the Magistrate has not passed his order under sub-section (1-B) of Section 146. The majority view on the other hand, is that the bar of sub-Section (1-D) continues even after the Magistrate has disposed of the proceeding under sub-Section (1D). All the three learned Judges constituting the Full Bench however, agreed that nothing in sub-Section (1-D) affects the power of superintendence which the High Court enjoys under Article 227 of the Constitution. The correctness of this decision was considered by a full Bench of five Judges in the *Dewani Choudhary's case* (supra). The Full Bench upheld the unanimous view in *Raja Singh's case* (supra) that sub-Section (1-D) does not take away the power of judicial interference which the High Court possesses under Article 227 of the Constitution with the decision of the Civil Court given under sub-Section (1A) of Section 146 of the Criminal Procedure Code in cases involving flagrant violation of legal principles or principles of natural justice.

**G** The second question that was considered in *Choudhary's case* was whether the High Court was competent to interfere with the findings of the Civil Court under Section (1A) of Section 146 in the exercise of its powers of criminal revision; the Full Bench held that there is no scope for interference with the findings of the Civil Court in exercise of the criminal revisional jurisdiction of the High Court, not by reason of the bar enacted in sub-Sec. (1D) of Section 146, but upon the express term of Sections 435 and 439 of the Code. The power of the High Court is confined against the final order which the Magistrate is enjoined to pass in conformity with the decision of the Civil Court.

**H** In doing so, the High Court can examine whether the Magistrate passed the final order in conformity with the decision of the Civil Court or not. But it cannot embark upon an enquiry as to the legality or

propriety of the decision of the Civil Court which is the basis of the Magistrate's final order. On this question the full Bench did not accept the majority view in *Raja Singh's* case (supra).

The Allahabad High Court (AIR 1971 All. 12 FB—Supra) considering the question whether the bar contemplated under Section 146 (1B) is a bar against the finding being interfered with in revision even against the order of the Magistrate who decides the proceeding before him in accordance with the finding of the Civil Court, held that even in revision from the ultimate order which disposes of the proceedings in accordance with the findings of the Civil Court, the finding of the Civil Court cannot be interfered with.

An examination of the provisions of Section 146 of Criminal Procedure Code of 1898 would show that the finding of the Civil Court on a reference by the Magistrate regarding possession cannot be appealed against or challenged by way of review or revision. Though the Civil Court acting under Section 146 (1A) and (1B) of Criminal Procedure Code, has not ceased to be a Civil Court, the finding regarding possession given by the Civil Court cannot be challenged by an appeal, revision or review. In other words, the finding given by the Civil Court is final. This Court in *State of U.P. & Anr. v. Ramchandra Aggarwal and Anr.*<sup>(1)</sup> held that neither an appeal nor a revision lies against the finding of the Civil Court in the reference because of the express provision in Section 146 (1D) and not because the proceeding before the Civil Court is not a civil proceeding. The wording of Section 146 (1D) puts the matter beyond any controversy. Sub-Section (1D) reads as follows :—

"No appeal shall lie from any finding of the Civil Court given on a reference under this Section nor shall any review or revision of any such finding be allowed".

The sub-Section makes it clear that the finding of the Civil Court cannot be questioned by way of an appeal. It also prohibits any challenge to the finding by way of review or revision. The answer therefore to the first question is that the finding of the civil court given under Section 146 (1B) regarding possession is final and cannot be challenged by way of appeal, review or revision.

The second question that arises is whether when the Magistrate passes an order on receipt of a finding, from the civil court that order can be challenged by way of revision before the High Court. The plea that was put forward was the bar to the challenge of the finding of the civil court is lifted when the Magistrate passes his order after

(1) [1966] Suppl. S. C. R. 393.

- A** the receipt of the finding of the civil court. Sub-section (1B) requires the Magistrate on receipt of the findings by the civil court to proceed and dispose of the proceedings under Section 145 in conformity with the decision of the civil court. If the order of the Magistrate is in conformity with the decision of the civil court, the Magistrate will be complying with the requirements of Section 146 (1B) and the order thus passed cannot be challenged. It will of course be open to the High Court to interfere if the order of the Magistrate is not in conformity with the finding of the civil court. When the order of the Magistrate is in conformity with the finding of the civil court, the High Court has no jurisdiction to interfere under Sections 435 and 439 of the Criminal Procedure Code. When there is an express provision sub-Section (1D) in the Code against the challenge of the finding of the civil court other provisions of the Criminal Procedure Code cannot be relied on for doing what is expressly prohibited. The answer therefore to the second question is that an order passed by the Magistrate under Section 146 (1B) in conformity with the decision of the civil court cannot be challenged under Sections 435 and 439.

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- The only other question that remains to be considered is whether an order under Section 146 (1B) can be interfered with by the High Court in the exercise of its powers under Article 227 of the Constitution. It is admitted that the powers conferred on the High Court under Art. 227 of the Constitution cannot in any way be curtailed by the provisions of the Criminal Procedure Code. Therefore, the powers of the High Court under Art. 227 of the Constitution can be invoked in spite of the restrictions placed under Section 146(1D) of the Criminal Procedure Code. But the scope of interference by the High Court under Art. 227 is restricted. This Court has repeatedly held that "the power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors vide 1954 S.C.R. 565 (*Waryam Singh v. Amar Nath*). In a later decision, (*Nagendra Nath Bora and another v. The Commissioner of Hills Division, and Appeals, Assam and Others*<sup>(1)</sup>), the view was reiterated and it was held that the power of judicial interference under Article 227 of the Constitution are not greater than the power under Article 226 of the Constitution, and that under Art. 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. In a recent decision, (*Babhutmal Raichand Oswal v. Laxmibai R. Tarts*)<sup>(2)</sup> this Court reiterated the view stated in the

(1) [1958] S. C. R. 1240.

(2) A. I. R. 1975 S. C. 1297.

earlier decisions referred to and held that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the Court of appeal and that the High Court cannot in exercise of its jurisdiction under Art. 227 convert itself into a court of appeal.

The High Court has interfered with the order of the Magistrate which is in conformity with the finding of the civil court regarding possession on the ground that the civil court has failed to consider the affidavits filed by the parties. The High Court on a reading of a passage in the judgment of the civil court came to the conclusion that the Munsif failed to consider the affidavits. In dealing with the affidavits, the civil court observed that as persons who had sworn to the affidavits, are highly interested persons, undue importance cannot be attached upon their oath. After referring to the person on both sides, who had sworn to the affidavits, the civil court stated that "I do not think that these affidavits and counter-affidavits will be of any help to either party". We find that the civil court has taken into account the affidavits filed on behalf of the parties but as the persons who had sworn to the affidavits were interested and belonged to one party or the other, it found that no weight can be given to the affidavits. We do not agree that the rejection of the affidavits under the circumstances can be termed as failure to consider the affidavits. Apart from finding that the reason given by the High Court is not convincing, we are of opinion that the High Court has no power under Sections 435 and 439 of the Criminal Procedure Code to interfere with the findings of the civil court regarding possession in a reference under Section 146 of the Criminal Procedure Code. In the result we hold that the High Court was in error in invoking Sections 435 and 439 for interfering with the finding of the civil court. In fact, Mr. Lal Narain Sinha, learned counsel appearing for the respondent, with his usual fairness conceded that he cannot contend that the High Court can in exercise of its power under Sections 435 and 439 interfere with the finding of the civil court regarding possession.

But Mr. Lal Narain Sinha submitted that the order of the High Court could be sustained as the power of the High Court under Art. 227 cannot be questioned. While there could be no dispute that the power of the High Court under Art. 227 cannot be curtailed under Section 146 of the Criminal Procedure Code, we do not think that the facts of the case would justify the High Court to interfere under Art. 227.

- A** Before concluding the judgment, we may point out that Section 146 of the Code of Criminal Procedure 1898, is no longer in force having been replaced by the Code of Criminal Procedure of 1973 (Act 2 of 1974). Under the new Section, 146(1), if the Magistrate is unable to satisfy himself as to which of the parties was in possession of the subject of dispute he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. Art. 227 has also been since amended by 42nd Amendment further restricting the powers of the High Court to interfere under Art. 227. The question thus dealt with by us can no longer arise after the coming into force of the Code of Criminal Procedure (Act 2 of 1974). In the result the appeal is allowed and the order of the High Court is set aside and that of the Magistrate is restored.
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S.R.

*Appeal allowed.*