

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.21 OF 2018
(Arising out of SLP(Crl.)No.3507 of 2015)

AALAM

.....APPELLANT

VERSUS

THE STATE OF RAJASTHAN & ORS.

.....RESPONDENTS

O R D E R

Leave granted.

Heard Mr.P.S.Datta, learned senior counsel for the appellant and Mr.Bhushan M.Oza, learned counsel for respondent No.2.

The present appeal, by special leave, calls in question the legal propriety of the order dated 04.02.2015, passed by the learned Single Judge of the High Court of Judicature for Rajasthan at Jodhpur in S.B.Criminal Misc.Petition No.2773 of 2014 whereby the High Court has declined to interfere with the order passed by the Executive Magistrate in exercise of power under Section 482 of the Criminal Procedure Code.

The facts which are requisite to be stated in brief are that a civil suit was filed by the plaintiff-appellant and

in the said suit, counter claim was filed by the defendant-respondent. The trial court dismissed the suit of the plaintiff-appellant but allowed the counter claim and had declared that the defendant-respondent had right, title and interest over the property and was also in possession of the property. On an appeal being preferred under Section 96 of the Code of Civil Procedure, the First Appellate Court came to hold that the defendant did not have any right, title and interest over the property and the decree passed by the trial court allowing the counter claim of the defendant was untenable. Thus, there is no finding with regard to possession by the First Appellate Court.

The parties litigated before the Executive Magistrate under Section 145 of the Code of Criminal Procedure and the learned Magistrate returned a finding that the father of respondent Nos.2 and 3 was in possession of the disputed property. The said order was challenged before the High Court but the High Court, by the impugned order, observed that the Executive Magistrate has not committed any illegality in passing the said order.

Having heard learned counsel for the parties, and upon perusal of the orders passed by the Executive Magistrate and the High Court, we are of the considered opinion that there has to be a thorough enquiry by the Executive Magistrate

to find out who was in possession of the property on the relevant date.

Needless to say, the Executive Magistrate is required to compute the date on the basis of language employed in Section 145 of the Code of Criminal Procedure.

Resultantly, the appeal is allowed to the extent indicated above, the orders passed by the Executive Magistrate and that of the High Court are set aside and the matter is remitted to the Executive Magistrate for disposal in accordance with law.

.....CJI.
(DIPAK MISRA)

.....J.
(A.M.KHANWILKAR)

.....J.
(Dr.D.Y.CHANDRACHUD)

NEW DELHI;
JANUARY 5, 2018.

ITEM NO.44

COURT NO.1

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).3507/2015

(Arising out of impugned final judgment and order dated 04-02-2015 in CRLMP No.2773/2014 passed by the High Court of Judicature for Rajasthan at Jodhpur)

AALAM

Petitioner(s)

VERSUS

THE STATE OF RAJASTHAN & ORS.

Respondent(s)

Date : 05-01-2018 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr.P.S.Datta, Sr.Adv.
Mr.Abdul Qadir, Adv.
Ms.Anwesha Saha, Adv.
Mr. Fuzail Ahmad Ayyubi, AOR

For Respondent(s) Mr.Bhushan M.Oza, Adv.
Mr. Seshatalpa Sai Bandaru, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed to the extent indicated in the signed order. The orders passed by the Executive Magistrate and that of the High Court are set aside and the matter is remitted to the Executive Magistrate for disposal in accordance with law.

(Chetan Kumar)
Court Master

(H.S.Parasher)
Assistant Registrar

(Signed order is placed on the file)