

ALLAHABAD HIGH COURT

Nihal Singh

Vs

Emperor

(M Ismail, J.)

21.06.1939

ORDER

Mohammad Ismail, J.

1. This is a reference by the learned District Magistrate of Muttra recommending that the order of the Magistrate for restoration of possession of certain immovable property be set aside. It appears that one Salig Ram brought a complaint against Nihal Singh and other under Sections 447 and 352, I.P.C. On 30th September 1938, Nihal Singh was convicted under only one count, namely Section 447, I.P.C., and sentenced to a fine of Rs. 15. The other accused were acquitted. On 10th October 1938, i.e. within one month of the order of conviction, Salig Ram applied for restoration of possession of property to the Magistrate. No orders were passed till 5th November when the application was granted and possession was restored to the complainant. Salig Ram is now in possession. The present application was made by Nihal Singh on the ground that the order of restoration passed by the Magistrate was beyond his jurisdiction not being within one month of the date of conviction. Under Section 522, Sub-section (1), any person who has been dispossessed of any immovable property may be restored to the possession of the same by the Court concerned either at the time of convicting the accused or at any time within one month from the date of the conviction. As the order of the Magistrate was beyond time, it must be set aside as recommended by the learned District Magistrate. I however feel that it will be anomalous to place Nihal Singh in possession of the property which, according to the decision of the Magistrate, belonged to Salig Ram. Nihal Singh apparently was satisfied with the order of the Magistrate and did not move the higher Courts to have the order reconsidered. It does not appear that he has brought any civil suit for a declaration of his right. Under these circumstances it appears to me desirable that in the exercise of my revisional jurisdiction I should order Salig Ram to be restored to the possession of the immovable property which was the subject-matter of dispute in the case before the Magistrate. This is permissible under Section 522, Sub-section (3), which provides : "An order under this Section may be made by any Court of Appeal, confirmation, reference or revision." There is no limitation of one month for an order under Sub-section (3). This view is in full accord with the observations of Jwala Prasad J. in Rameshwar

Singh v. Emperor (1925) 12 A.I.R. Pat. 689. In the abovementioned case the learned Judge observed:

...Thus where a Magistrate passes an order under Section 522 beyond the prescribed one month, though the order by the Magistrate is illegal, yet it is competent to the High Court as Court of Revision to order the restoration of possession to the person dispossessed.

2. I therefore set aside the order of the Tahsildar Magistrate dated 5th November 1938. I further direct that Salig Ram be restored to the possession of the property from which he was wrongfully dispossessed by Nihal Singh. Let the record be returned.