

(1966) 12 KL CK 0020
In the High Court Of Kerala
Case No : Criminal R.P. No. 323 of 1966

Antony and Others

APPELLANT

Vs

Mathew

RESPONDENT

Date of Decision : 12-12-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145(4)

Citation : (1967) KLJ 185

Hon'ble Judges : K. Sadasivan, J

Bench : Single Bench

Advocate : P. Subramoniam Potti and S.A. Nagendran, for the Appellant; S. Easwara Iyer, L.G. Potti and C.S. Rajan, State Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K. Sadasivan, J.—This revision petition is by petitioners 1 to 25 in M.C. Case 9/64 on the file of the Executive First Class Magistrate of Alleppey. The counter-petitioner to the M.C. was one N.J. Mathew of Nirayathu Veedu, Alleppey Village. A complaint was preferred by these petitioners to the Superintendent of police, Alleppey on 26-3-64 against the counter-petitioner and 8 others alleging that they were in possession as varomdars of the paddy lands known as Kombanathuruthu padasekharam comprised in S. Nos. 351/1, 352/1, 355/1 etc. about 58 and odd acres, of Aroor Village and they had been declared as varomdars in O.S. 294/62 of the Shertalai Munsiff's Court and the court had issued injunction restraining the counter-petitioner from entering upon the property or interfering with their cultivation. It was represented that the counter-petitioners were making preparations to trespass into the land and to take forcible possession thereof. Threats of violence were held out by the counter-petitioners that if the petitioner did not quit the land they would be killed. It was prayed that unless timely action was taken the situation would result in a breach of the peace. The Sub Inspector of Police, Kuthiathodu after investigation, submitted a report stating that both parties were claiming possession and right to cultivate, and

both parties were making preparations to start agricultural operations and if they were allowed to have their way, the situation would precipitate to a breach of the peace. On this report and on other materials placed before court, preliminary proceedings were drawn up by the learned Magistrate and the properties were attached u/s 145 (4) of the Code. The Village Officer, Aroor was appointed the receiver, to be in possession. Written statements and affidavits were filed by both parties. Petitioners 1 to 12 are stated to be cultivating varom tenants, and the extent of the nilam in the possession of each of them has been stated in their affidavit. It was pointed out by them that it was the duty of the landlord to dewater the padasekharam; but that was not done by him and so the entire agricultural operations had to be carried on by them. Petitions were filed before the Land Tribunal by petitioners Nos. 2,5,6,7,8,9,10 and 11 and orders have been obtained in their favor declaring them to be varom tenants. During the pendency of their petitions before the Land Tribunal attempts were made by the counter-petitioner to get possession of the properties. A suit, O.S. 24 of 1964 was also filed by the counter-petitioner before the Sub Court of Alleppey against the present petitioners and others, praying for an injunction to restrain them from entering upon the property. That suit was dismissed upholding, according to the petitioners, their rights. They claimed that they were in exclusive possession of the property on the eve of the passing of the preliminary order. Petitioners Nos. 13 to 24 stated that the land under dispute has a total extent of 58 acres and 59 cents; of this, 26 acres and 25 cents was in the possession of petitioners Nos. 1 to 12, and 32 acres and 36 cents in the possession of petitioners Nos. 13 to 24. Petitioners Nos. 13 to 24 have also filed petitions before the Land Tribunal and obtained orders in their favor.

2. The case of the counter-petitioner is that 133.28 acres of land comprised in S. Nos. 349/1, 359/1, 357/1 etc. belonged to him jointly with his five brothers and he was the receiver in possession of those properties along with certain other items under an order issued from O.S. 12/58 of the Sub Court of Alleppey. The term of his receivership expired by the disposal of the case on 26.9.1960; even then he was in management with the consent of other heirs. The land was being cultivated by him through his nominee one K.A. John in 1962. Some of these petitioners attempted to trespass upon one portion of the padasekharam; but their attempt was foiled by John obtaining an injunction against them from the court. The harvest in September, 1962 was peacefully taken by him. His possession of the properties, according to him, was confirmed in judgment dated 30.6.1962 of the Addl. Sub Court, of Alleppey in C.M. A. 45/52. O.S. 294/62 from which the C.M. A. arose was not further prosecuted by John for the reason that the duration of the agreement had expired by that time. O.S. 294/62 was thus dismissed and after the dismissal of the suit, the present petitioners who were respondents 2 to 34 in the C.M. A. managed to get an injunction against the present counter-petitioner; but that was an order passed by the court in excess of its jurisdiction and it was accordingly quashed by this court in C.R. P. 314/63. In short, the case, put forward by the counter-petitioner is that he has

been in uninterrupted possession of the land since 1958, and in 1962 he had either been in direct possession or through K.A. John and that the crops were raised by him in 1962 which was harvested by him in September the same year. The petitioners' case would rest mainly on the fact that they have been in possession as Varom tenants since 1120, and the counter-petitioner when he became the receiver attempted to dispossess them and his attempts were resisted by the petitioners and the dispute was finally settled by a sharing of the crops. In the years 1959, 1960 and 1961 the crops were raised by them as varom tenants on the basis of agreement executed year after year on the same terms and conditions. The counter-petitioner was in possession of the other portions of the padasekharam and not the disputed area. K.A. John was employed by the counter-petitioner to carry on the fishing in the water-logged portions of the land in the years 1959-60 and 1960. When the petitioners moved the Land Tribunal for fixation of fair rent, a varacheet was taken by John and on the strength of that, O.S. 294/62 was filed by him in the Shertalai Munsiff court and from the suit an injunction was obtained on 25.5.62. This injunction was dissolved on 8.1.1963. It was under the cover of the injunction order that the paddy was harvested by John and his men in September 1962. These petitioners were defendants in O.S. 294/62 and after the dismissal of the injunction on 6.1.1963, they succeeded in obtaining an injunction against John; but that was finally set aside by the High Court on 9.1.1964. The petitioners have also filed various other suits (in all 17 in number) after 9.1.1964. The suits were O.S. Nos. 44 to 60 of 1964 and from all these suits exparte injunctions were obtained by them from the Munsiff's Court of Shertalai and the injunction so obtained continued to be in force till the date of disposal of G.S. 24/64 of the Sub Court of Alleppey.

3. The counter-petitioner's possession of 74.69 acres is admitted by the petitioners. The Land Tribunal petitions were filed by these petitioners after the coming into force of Act 1 of 1964 and the orders passed by the Land Tribunal in their favor are all subject to appeal before the Sub Court. Even granting that the Land Tribunal has found these petitioners to be varom tenants, the further question remains as to whether they were in possession in their capacity as Varom tenants during the relevant period. A mere declaration that they are varom tenants will not give them physical possession of the property. All the 17 suits were filed by them after the injunction was vacated by the High Court on 9.1.64 in C.R. 314/63 and the declaration by the Land Tribunal was rendered on 4.4.64. It is the definite case of the counter-petitioner that possession has never gone out of his hands after 8.1.1963. The fact that suits, as well as petitions before the Land Tribunal, were filed by the petitioners after the order of the High Court vacating the injunction, would also show that the petitioners were out of possession at the time. The declaration by the Land Tribunal and the prior injunction, therefore, cannot help the petitioners to claim actual possession of the; land. The counter-petitioner's further case is that whatever was the position before 1961, since the time the land was entrusted to John for cultivation in

1962 there has never been any interruption in the possession and the injunction obtained by John was in force from 24.4.1962 to 8. 1. 63. Crops raised in 1962 was admittedly harvested by John in September 1962. Of course, in the interval an injunction happened to be obtained by the petitioners on 27.3.1963; but that was vacated by the High Court, as we have already seen, on 9.1.64. There is the definite finding by the learned Magistrate that the crops raised in 1962 was harvested by the counter-petitioner. He has also found that since the injunction was in force from 24.4.1962 to 8.1.63 there was no chance for the petitioners to enter the property or carry on the cultivation. Thereafter, how the property could have passed, on to the petitioners they have not succeeded in showing.

4. It was argued before me that since the civil courts have found possession in favor of the petitioners, the learned Magistrate ought to have upheld that finding and found possession in their favor. It is not correct to say that the civil suits have ended in their favor; as a matter of fact the suits were all dismissed. The findings of the civil court, as far as I can see would only help the counter-petitioner and not the petitioners. The leading judgment was written by the Addl. Sub Judge of Alleppey in O.S. 24/64, which was a suit filed by the present counter-petitioner. There, in paragraph 20 the learned Judge observed; "It has therefore to be held that by virtue of the injunction obtained by K.A. John on 24.4.1962, he was in possession of the entire property from 24.4.1962 to 6.1.1963." The final conclusion reached by the learned Judge in respect of the various suits tried by him was as follows:

Plaintiff in O.S. 24/64 is entitled to get an injunction restraining the defendants from entering upon the portion of the suit property in his direct possession. So also, the defendants who are plaintiffs in O.S.44 to 60/64 are entitled to an injunction restraining defendant 1 in these suits from entering upon or interfering with the cultivation of the portions of the suit property in their possession, as varomdars, but in the nature of the evidence in this case, it is not possible to grant an injunction to either party.....Before the properties comprised in plaint schedules in O.S 44 to 60/64 and the portion in the possession of plaintiff in O.S.24/64 are separately demarcated and located in a plan prepared by a competent person, it is not possible to allow an injunction prohibiting either party from entering upon the properties in the possession of the other party. The prayer for the grant of injunction cannot under the circumstances be allowed.

So saying the learned Judge has dismissed all the suits. So the decision of the civil court is not of any help in the matter. The learned Magistrate, as we have already seen, has, on a careful consideration of the question in all its aspects, come to his own conclusion regarding the possession and I see no reasons to interfere with that finding.

5. Learned counsel appearing for the petitioners invited my attention to the fact that it was the duty of the Magistrate to give effect to the decree passed by the civil court and for this position the learned counsel relied on a decision of the Calcutta High Court in *Kunja Behari Das v Khetra Pal Singh* (I.L. R. 29 Cal. 208).

There, it was held that:

the Magistrate was bound to give effect to the decree of the civil court and to maintain the party in possession, who under the decree had already been put in possession of the property in dispute.

Here there is no decree before us declaring the petitioners' possession and therefore no question of the Magistrate giving effect to the decree can arise. It has been pointed out time and again by the various High Courts that:

S.145 proceedings are purely of a summary nature and it is only very rarely that the High Court interferes in orders made under the Section, firstly because the object of such orders is to preserve peace and secondly because the aggrieved party has always his remedy by a civil suit.

Orders passed under S. 145 or S. 146 are only "provisional" designed to secure a prevention of any possible breach of the peace till the rights of parties are ultimately determined by a civil court." (Vide the decisions in *Kunjukutty Amma v Raghava Kurup*-1965 KLJ 1055 : 1965 KLT 1013-; & *Ganapathi Muthiriyar Vs. Narayanaswami Vaithiar and Others*, . The aggrieved party, therefore, has the remedy open to him in the civil court. I do not, therefore, see any reason to interfere with the order of the court below.

This revision petition is hence dismissed.