

(1973) 09 AP CK 0001
In the Andhra Pradesh High Court

Bodapati Kondayya and Others

APPELLANT

Vs

The Sub-Divisional Magistrate and Others

RESPONDENT

Date of Decision : 07-09-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 145

Citation : (1974) CriLJ 1148

Hon'ble Judges : Chennakesav Reddy, J

Bench : Single Bench

Judgement

Chennakesav Reddy, J.—This is an application filed u/s 561-A, Criminal P.C. praying this Court to quash the proceedings in M. C. No. 5 of 1972 on the file of the Court of the Sub-Divisional Magistrate, Amalapuram on the ground that the identical immovable property involved in the said proceedings is the subject-matter of Civil Suits O. Section Nos. .363 and 364 of 1972 on the file of the Court of the District Munsif. Kothapeta, and that the possession of the petitioners had already been recognised by the Civil Court on 9-11-1972 by granting an interim injunction against the respondents restraining them from interfering with the possession of the petitioners.

2. The facts are not in dispute and may be briefly set out The petitioners are the plaintiffs in the suits O. Section 363 of 1972. and O. Section 364 of 1972 on the file of the District Munsiff's Court, Kothapet. The second and third respondents are defendants in the said suits. The petitioners filed the suits for a permanent injunction restraining the defendants from interfering with the possession of the suits schedule lands. Their case was that the suit lands were leased out to them by the trustees in management of the properties belonging to the deity Sri Tatamma Ammavaru and that they were in possession and enjoyment of the lands as cultivating tenants since March, 1970. The learned District Munsif granted an interim injunction on 9-11-1972 restraining the respondents 2 and 3 from interfering with the possession of the petitioners. The said orders were also served on the respondents.

3. At that stage, proceedings were initiated by the Sub-Inspector of Police, Ambajipet u/s 145. Criminal P.C. in M. C. 5 of 1972 on the file of the Sub-Divisional Magistrate's Court, Amalapuram. The learned Magistrate passed a preliminary order on 15-11-1972. He also attached the properties on 20-11-1972 and directed the village Munsif of Pothavaram to harvest the standing crop, sell the produce and deposit the sale proceeds into Court after deducting the incidental charges. The village Munsif complied with the said orders. On 19th June, 1973 the learned Magistrate appointed the Executive Officer of Sri Tatamma Amavaru temple, the second respondent herein, as the Receiver of the lands in dispute and directed him to take possession of the lands and auction the lease hold right for Fasli 1383 and deposit the amount into Court. The second respondent published the notice of auction on 28-6-1973 fixing 7-7-1973 as the date for public auction of the lease hold right. The petitioners filed this petition on 6-7-1973 seeking to quash the proceedings initiated u/s 145, Criminal P. C.

4. The crucial question that requires consideration in this case is whether the jurisdiction of the Magistrate to proceed u/s 145. Criminal P.C. is taken away by the pendency of the civil suits in respect of the identical immovable property.

5. In *Tikuda Vs. State and Others*, the Full Bench of the Rajasthan High Court dealing with an identical question observed as follows:--

It may be observed that if a dispute about a certain immovable property is pending before a revenue or a Civil Court and if one of the parties to that suit moves a Magistrate to take proceedings u/s 145 of the Criminal Procedure Code about the same immovable property which is involved in the suit, the Magistrate should not lightly proceed in the matter.

He should weigh and consider whether there is a real apprehension of the breach of peace and even if there is such an apprehension whether the same cannot be averted by proceeding u/s 107. Criminal Procedure Code." The learned Judges further observed :

This does not, however, mean that the jurisdiction of the Magistrate to proceed u/s 145 of the Code of Criminal Procedure is ousted simply because a suit about the same immovable property is already pending in a revenue or Civil Court. What we only mean to say is that in such cases the Magistrate must proceed with care and caution, after ascertaining full facts from the party which moves the application, u/s 145, Criminal Procedure Code.

6. A Division Bench of the Allahabad High Court in *Kalap Din v. State* 1970 All LJ 873 after referring to the various decided cases observed as follows:

If a Magistrate is satisfied that a dispute relating to immovable property giving rise to apprehension of breach of peace exists, he can take action u/s 145, Criminal P.C. even when a civil suit relating to the same property and between the same parties is pending in a Court of competent jurisdiction.

7. Another decision in which a similar view was taken is by the Madhya Pradesh

High Court reported in *Iqbal Mohd. Khan v. State of Madhya Pradesh* 1973 MPLJ 78. The learned Judge observed that the jurisdiction of a magistrate to deal with the application u/s 145, Criminal P.C. is not taken away merely because the Civil Court, in the meanwhile, has passed an order of injunction in favour of a party. The proposition that once a Magistrate is satisfied that a dispute likely to cause breach of peace exists it is obligatory on his part to take proceedings u/s 145, Criminal P.C. regardless of every thing else finds support from the observations of the Supreme Court in *R.H. Bhutani Vs. Miss Man J. Desai and Others*, The Supreme Court observed that the section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under Sub-section (11) and thereafter to make an enquiry under Sub-section (4).

8. The learned Counsel for the petitioners placed reliance on a decision of a learned single Judge of the Mysore High Court in *Malkappa Vs. Padmanna*, in support of the proposition. In that case a temporary injunction had been granted in favour of a party after hearing both the parties and the civil suit was still pending. During the pendency of the civil suit, proceedings were initiated by the police u/s 145, Criminal P.C. and the learned Magistrate declared one of the parties. that is, the party in whose favour an injunction had been granted by the Civil Court, to be in actual possession of the property in dispute on the date of the preliminary order. The said order was also confirmed by the District Magistrate in revision. On further revision to the High Court the learned Judge observed as follows:

When, therefore, there is a choice: between Section 145 and Section 107 before a Magistrate by reason of the pendency of civil litigation, it seems to be perfectly obvious that he must choose Section 107 and not Section 145.

9. It is seen that in that case-proceedings u/s 145, Criminal P.C. had been concluded and it was not a case where an application had been filed at the interlocutory stage to quash the proceedings u/s 145, Criminal P.C. as in the present case, Possession of one of the parties to the dispute had been decided by the Civil Court after hearing both the parties. In the circumstance, the learned Judge held that proceedings u/s 107, Criminal P. C. were more appropriate. He had no occasion to consider the question whether the jurisdiction of a Magistrate u/s 145, Criminal P.C. is barred by the pendency of a civil suit-in respect of the same subject-matter.

10. From the discussion devoted above to the decided cases the rules that can be skimmed out for the initiation of proceedings u/s 145, Cr.P.C. as conditions absolutely necessary are (1) The Magistrate must be satisfied that there exists a dispute concerning land or water, (2) there is a reasonable apprehension of the likelihood of the breach of peace unless prompt measures are taken to prevent the same, and (3) the subject-matter of dispute viz.. land or water is within the

local limits of the Magistrate's jurisdiction. When once these conditions are satisfied, the Magistrate should initiate proceedings u/s 145, Criminal P.C. and the mere ; existence of any pending civil suit between the disputants cannot bar the initiation of proceedings u/s 145 Criminal P. C.

11. In this case, the dispute concerning land undoubtedly existed.

The Magistrate was satisfied about the apprehension of breach of public peace calling for prompt action. Applying the above said principles to the facts of this case I have no hesitation in holding that the existence of civil suits O.S. Nos. 363 and 364 of 1972 on the file of the District Munsif's Court, Kothapet, in respect of the same property between the parties cannot bar the continuation of present proceedings u/s 145, Criminal P.C. The section is essentially aimed to prevent breach of peace and to bring to an end by summary process disputes relating to land which are in their nature likely if not suppressed, to end in breaches of peace. The object of the section is to prevent violent self-help even by the true owner. No right or title to property is decided in these proceedings. Under Sub-section (6) of Section 145, Criminal P.C. only the possession is declared and the order is valid only until the actual right of one of the parties to the dispute is determined by a competent Civil Court. The duty of the Magistrate is to uphold the decree of the Civil Court for possession in respect of the disputed lands. He cannot go behind the decision of the Civil Court in the matter. It is therefore open to the petitioners to bring to the notice of the Criminal Court if there is any decision of the Civil Court.

12. In the result the petition is dismissed with the above observations.