
(2012) 02 GAU CK 0073
In the Gauhati High Court
Case No : Criminal Petition No. 535 of 2011

Brahmaputra Iron and Steel Company Pvt. Ltd. (M/s) and APPELLANT
Another

Vs

Premchand Tolaram Bafna Charitable Trust and Another RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 146, 482

Citation : (2012) 4 GLT 495

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : A.K. Bhuyan, Mrs. B. Bhuyan, Ms. A. Saikia, Ms. P. Pathak, Ms. I. Krishnatraiya, Ms. N. Choudhury and N.D. Sarma, for the Appellant; P.P. Assam, Md. S. Ali, N. Bharali, Ms. J. Begum, P. Bhagawati and Mr. G Bordoloi, for the Respondent

Judgement

B.D. Agarwal, J.—This application u/s 482 of the Code of Criminal Procedure, 1973, has been filed by the opposite party, praying for quashing of Case No. 15m of 2010, under Sections 145/146 of the Code of Criminal Procedure, 1973 ("CrPC", in short), now pending before the learned Executive Magistrate, Amingaon, Kamrup (Rural), Guwahati. Heard Sri A.K. Bhuyan, learned counsel for the petitioners as well as Sri S. Ali, learned counsel for the respondent No. 1. Also heard Sri B.B. Gogoi, learned Additional Public Prosecutor for the State of Assam. I have also perused the documents annexed with the Criminal Petition.

2. The criminal case has been filed by the respondent No. 1, alleging that the petitioners attempted to occupy/encroach the suit land on 10.03.2010, which led to law and order situation. On the basis of the said application, the proceeding u/s 145 CrPC was drawn up vide order dated 12.03.2010. By the same order, the learned Executive Magistrate also attached the disputed land in exercise of powers conferred u/s 146, (1) Cr.P.C. Initially, one M/S Brahmaputra TMT Bar Pvt. Ltd was impleaded as the opposite party. After taking cognizance of the case, the petitioner, namely M/S Brahmaputra Iron and Steel Company Pvt. Ltd,

filed a petition before the learned Executive Magistrate stating that the land is in their possession and, in fact, they are the necessary party. Accordingly, the petitioner No. 1 was also impleaded in the aforesaid criminal proceeding.

3. Sri Bhuyan, learned counsel for the petitioners submitted that having learnt about the criminal proceeding, the petitioner No. 1 has filed a Title Suit, being T.S. No. 352 of 2011 in the Court of Munsiff No. 1, Kamrup, Guwahati, praying for a decree of possession and also permanent injunction against the defendant, i.e., the first party in the criminal case. According to the learned counsel, on the basis of the application filed under Order XXIX CPC, the learned Munsiff has passed ad-interim injunction restraining the defendant from dispossessing the plaintiff from the suit land vide order dated 02.09.2011. According to the learned counsel, since the dispute of possession has been carried to the Civil Court, the criminal proceeding may not be allowed parallelly as it will multiply the proceedings. The learned counsel also submitted that any order or decree passed by the Civil Court will prevail over any order passed by the Criminal Court and in support of the said submission, the learned counsel has relied upon several decisions from the Hon'ble Supreme Court.

4. On the other hand, Sri Ali, learned counsel for the respondent No. 1 submitted that in the Title Suit, the plaintiff has nowhere pleaded that the plaintiff is the owner of the land, inasmuch as, no prayer for passing a decree for title has been made. Sri Ali further submitted that there is no bar to continue with the criminal proceeding simultaneously as the objective behind the criminal proceeding is different from the civil suit. In support of this submission, the learned counsel relied upon a Judgment of the Apex Court, rendered in the case of Devendra and Others Vs. State of U.P. and Another, .

5. u/s 146 Cr.P.C., an Executive Magistrate may attach the subject of dispute "until a competent Civil Court has determined the rights of the parties thereto" with regard to the person entitled to the possession thereof. The issue as what would be the implication of passing an interim injunction order by a competent Civil Court upon an attachment order passed by a learned Executive Magistrate u/s 146 Cr.P.C. came to be considered before the Apex Court, in the case of Dharampal and others Vs. Smt. Ramshri and others, . Their Lordships took the following view:

9. It is obvious from sub-section (1) of Section 146, that the Magistrate is given power to attach the subject of dispute "until the competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. The determination by a competent Court of the rights of the parties spoken of there has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent Court passes an order of interim injunction or appoints a receiver in respect of the subject-matter of the dispute pending the final decision in the suit. The moment the competent Court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end. Otherwise, there

will be inconsistency between the order passed by the Civil Court and the order of attachment passed by the Magistrate. The proviso to sub-section (1) of Section 146 itself takes cognizance of such a situation when it states that "Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of any breach of peace with regard to the subject of dispute". When a Civil Court passes an order of injunction or receiver, it is the civil Court which is seized of the matter and any breach of its order can be punished by it according to law. Hence on the passing of the interlocutory order by the civil Court, it can legitimately be said that there is no longer any likelihood of the breach of the peace with regard to the subject of dispute.

6. Permissibility of parallel proceeding u/s 145 CrPC in a civil suit also came up for consideration before the Hon'ble Supreme Court in the case of Amresh Tiwari Vs. Lalta Prasad Dubey and Another, . While disallowing the criminal proceeding, Their Lordships relied upon the judgment of the Apex Court rendered in the Case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, wherein the following observations were made.

When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding u/s 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil Court is binding on the criminal Court in a matter like the one before us. Counsel for Respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue...

7. While closing the criminal proceeding, Their Lordships clarified that it is not necessary that the Civil Court should have already adjudicated the dispute. It has been held that if a competent Civil Court is in seisin of the dispute during pendency of the criminal proceeding, it would amount to multiplicity of litigation if criminal proceeding is allowed to go, which should be avoided.

8. An identical view has been taken by the Apex Court in the case of Mahar Jahan and Others Vs. State of Delhi and Others, . In this case, their Lordships have also observed that whichever way, the criminal proceeding u/s 145 CrPC is decided, it would always be subject to the decision of the Civil Court. Having found that the subject matter of both the proceedings were identical in nature, the criminal proceeding was quashed.

9. In the case before me, there is no dispute that the property covered in the

criminal proceeding is the same property in dispute in the title suit. It is true that the plaintiff has not prayed for any decree of title, however, that would not make much difference in view of the principle of law laid down by the Hon''ble Supreme Court. In my considered opinion, a proceeding u/s 145/146 Cr.P.C. is basically to maintain the status quo of the disputed land and after hearing both the parties, the possession of either party is declared by the Executive Magistrate. In the Title Suit of the petitioner, a decree for possession of the same disputed land has been sought for. Besides this, it was stated at the Bar that the defendant/respondent No. 1 has also filed a counter claim seeking various reliefs including recovery of khas possession of the suit land.

10. With regard to the Judgment of the Apex Court in the case of Devendra (supra), I am of the view that Their Lordships' observation that a proceeding u/s 144/145 Cr.P.C., would be maintainable even if a parallel civil suit is pending is in different context. In that case, the civil suit was not related to possession of any property. However, in the case before me, not only the criminal proceeding but also in the civil suit, the issue of possession is the main prayer of both the parties. Be that as it may, the submission of the learned counsel for the respondent No. 1 that a right of a party to resort to Sections 144 and 145 CrPC cannot be altogether wiped out in the event of filing a civil suit is equally acceptable. It would depend upon the nature of the civil suit and the nature of the interim order passed by the Civil Court. Besides this, there is also a distinction between Sections 144 and 145 Cr.P.C. Section 144 Cr.P.C. is basically to maintain law and order and to tame the disturbance of the public tranquility at large, whereas, a proceeding u/s 145 Cr.P.C. is essentially between two private parties. Hence, even after an order of the Civil Court if there is any disturbance in the public at large, the District Magistrate or any other Executive Magistrate of the area may invoke Section 144 Cr.P.C. However, the parameters for Section 144 Cr.P.C. can not be applied with Section 145 Cr.P.C., if a competent Civil Court is seized with the same dispute.

11. In the result, I hold that if the criminal proceeding is allowed to continue it would amount to abuse of the process of law. Consequently, the Case No. 15m of 2010, u/s 145/146 of the Code of Criminal Procedure, 1973, now pending before the learned Executive Magistrate, Amingaon, Kamrup (Rural), Guwahati, is hereby quashed. With the aforesaid observations and directions, this Criminal Petition stands disposed of.