

(1927) 03 BOM CK 0026

In the Bombay High Court

Case No : Criminal Application for Revision No. 435 of 1926

In Re: Anya Shidya Patil

Date of Decision : 17-03-1927

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 147
Evidence Act, 1872 — Section 42

Citation : (1927) 29 BOMLR 715

Hon'ble Judges : Patkar, J;Fawcett, J

Bench : Division Bench

Judgement

Fawcett, J.—This is an application for revision of an order passed by the Sub-Divisional Magistrate, North Kolaba, rejecting an application made by the applicants for taking certain action u/s 147 of the Criminal Procedure Code. There is a dispute between the petitioners, who are the villagers of Belpada, and the opponents, who are the villagers of Sheve, as to a right of fishing in a creek known as Lagachee Khar, The applicants moved the Magistrate to take action u/s 147 on the ground that they had a right to fish in this creek, and that on May 23, 1926, they were fishing as usual there, when the opponents with about one hundred persons from Sheve came to attack them, assaulted some of them, and stopped the fishing forcibly. On the other hand, the opponents, when they appeared before the Magistrate, relied upon a decree of this Court passed in their favour in 1915, in which in a suit between certain representatives of the villagers of Sheve and certain representatives of the villagers of Gavan, the former obtained a decree declaring that they were entitled to exclusive fishery in this particular creek from February 1 to July 31 in each year. On behalf of the petitioners it was contended before the Magistrate that that decree did not bind them, because they are residents of Belpada and not of Gavan. Whether that is a proper plea or not, there are no sufficient materials for us to say. But it has been pointed out that in the petition it is apparently admitted that at one time Belpada was considered to be a part of the village of Gavan. The Magistrate, after hearing some legal arguments in connection with this decree, finally decided that there was no sufficient ground for proceeding further u/s 147. This is partly based

upon the ground that it was admitted by both sides that there was no likelihood of any breach of the peace up to January 31, 1927, after which the right of the Sheve people to the exclusive fishery that they claim, would come in. On the other hand, Mr. Desai for the petitioners contends that this was an improper disposal of the application, and that reading the provisions of Section 147 with Section 145, it was incumbent upon the Magistrate to make a proper inquiry into the alleged rights of the applicants, and only to dispose of the matter after he had taken evidence in accordance with the provisions of Section 145. On the other hand, it is urged for the opponents that in the face of the decree the Magistrate's action was perfectly proper.

2. It is, I think, important to bear in mind that Section 147 deals with disputes as to a right of user of any land or water, and, therefore, the particular matter that the Magistrate would have to enquire into is whether or not the petitioners have the right of fishing in this creek all the year round, as against the claim of the opponents that they have an exclusive right to fish in it between February 1 and July 31 in each year. It is, therefore, not quite on the same footing as a dispute which comes u/s 145 where the Magistrate has to make an inquiry as to possession, which may be quite contrary to title supported by a decree of a civil Court. If the matter which is in dispute u/s 147 has actually been adjudicated upon by a civil Court, then clearly a Magistrate has no jurisdiction to enquire into a claim which is entirely contrary to that Court's decree; and this has been very clearly ruled in *In re Balkrishna Amrit Pradhan* ILR (1887) 11 Bom. 584. In that case the judicial determination was subsequent to the actual petition for action u/s 147, and it was a judicial determination by a Magistrate and not by a civil Court. It seems to me that the principle I have just mentioned applies a fortiori to a case where there has been a prior judicial determination about the right in dispute by a competent civil Court; and if this decree is one that is conclusive on the point, I think that there can be no question about it. No doubt, it may be said that it is not conclusive in the present case as against the petitioners, because of their being residents of Belpada and not of Gavan. On the other hand, there are some indications in the judgments of the High Court and the two lower Courts in that litigation that the exclusive right extended down to the creek where it comes opposite to this village of Belpada, and, therefore, there would be some ground for thinking that any rights that the people of Belpada might have would not be any greater than the rights of the neighbouring villagers of Gavan in regard to fishing in this creek. Again, the judgments show that the decision was mainly based on a decree of 1816, and that the Courts then held that these villagers of Sheve had an exclusive right to fish in this creek during a part of the year. The High Court decree also declares that the plaintiffs are entitled to exclusive fishing from February 1 to July 31 in each year. That is a very extensive declaration, and u/s 42 of the Indian Evidence Act, the judgment, although it is not necessarily conclusive, is a relevant fact; while u/s 13 it is also a very important piece of evidence. It seems to me that, in these circumstances, it would be beyond the Magistrate's jurisdiction to go into the dispute about this right; and if the

petitioners have any grievance, their proper remedy would be to bring a suit in the proper civil Court. I am not in any way satisfied that the Magistrate was wrong in refusing to make an inquiry, and I think it would be taking up magisterial time improperly, having regard to the decree that I have referred to.

3. Therefore, in my opinion, the application should be dismissed.

4. I may add that this is entirely without prejudice to the question, whether, if in fact there is an actual assault on people fishing in this creek, the decree of 1915 necessarily protects the assailants from being criminally prosecuted.

Patkar, J.

5. I agree.