
(1964) 01 AP CK 0007

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1647 of 1963

Janga Reddy

APPELLANT

Vs

Hafezunnisa Begum

RESPONDENT

Date of Decision : 23-01-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 2, 141, 146

Citation : AIR 1965 AP 17 : (1965) CriLJ 8

Hon'ble Judges : Sharfuddin Ahmed, J

Bench : Single Bench

Advocate : E. Ramanadham, for the Appellant; D. Srirama Sastry, for the Respondent

Judgement

(1) The question that requires consideration in this C. R. P. is whether the provisions of Sec. 141 C. P. C. are attracted to a reference made by the criminal court under Sec. 146 Cr. P. C. to a civil Court.

(2) It appears that in the court of the 8th City Magistrate proceedings were instituted under Sec. 145 Cr. P. C. The criminal Court was unable to arrive at a conclusion on the question of possession and therefore made a reference to the City Civil Court under Sec. 146 of the Cr. P. C. for a finding thereon. After the records were received, the petitioner filed an application under O. 19 R.2 C. P. C. praying for the production of all the deponents whose affidavits have been filed by the other side for cross-examination. That application was allowed. Thereupon another petition was filed for reviewing the said order. It was dismissed and when the matter went in revision to the High Court, while dismissing the said petition, it was observed that it was open to the petitioner to raise objections before the lower Court whether the provisions of C. P. C. are applicable to a proceeding of this nature. The matter was considered by the Lower Court and it came to the conclusion that the provisions of Sec. 141 C. P. C were not attracted to a reference under Sec. 146 Cr. P. C. as it was not a proceeding within the meaning of the word used in Sec. 141 C. P. C. It is against this order that this

revision has been filed.

(3) The learned Counsel for the petitioner relying on the two decisions of the Madras High Court viz., Kochadai Naidu and Another Vs. Nagayasami Naidu and Others, and Kondammal and Others Vs. Duraiswami Naicker and Others, , has urged that the provisions of C. P. C. are available to a reference under Sec. 146 Cr. P. C. Unfortunately both the decisions seem to have been overruled by a subsequent decision of the said Court in Periyakarupa Thevar and Others Vs. Vellai alias Ocha Thevar and Others, .

(4) To attract the provisions of Sec. 141 of C. P. C. to a proceeding, it must be a proceeding within the meaning of the word used in that section. The Judicial Committee as long back as 1895 in Thakur Prasad v. Fakirullah 22 Ind App 44 (PC) held that the proceedings spoken to in Sec. 647 (corresponding to Sec. 141 C. P. C.)include original matters in the nature of suit such as proceedings in probates, guardianships and so forth and do not include executions. The same view has been followed by almost all the High Courts in interpreting the word "proceedings" in the section. Vide Ma Than Sein v. Ma Hla Yi, AIR 1941 Rang 201, Seshasayee v. Govinda Pillai, AIR 1935 Mad 612 and Jagannath Vasudev v. Maharajah of Kolhapur, AIR 1921 Bom 463 (1). It has been consistently held that the provisions of Sec. 141 C. P. C. are meant to include original matters in the nature of suits namely matters which originate in themselves and not those which spring up from a suit or from some other proceeding or arise in connection therewith. Therefore the view taken by the Madras High Court in the two decisions cited earlier by the learned counsel for the petitioner viz., Kochadai Naidu and Another Vs. Nagayasami Naidu and Others, and M.K. Sivagaminatha Pillai Vs. Nataraja Pillai and Others, and which have subsequently been overruled by a Bench of the said court, cannot be followed.

(5) The lower Court was justified in holding that the application under O. 19, R. 2 C. P. C. was not maintainable. In the result the C. R. P. is dismissed with costs.

EH/ VRB/ D. V. C.

(6) Petition dismissed.