
(1991) 09 MAD CK 0052
In the Madras High Court

K. Selvaraj

APPELLANT

Vs

State by Inspector of Police and Others

RESPONDENT

Date of Decision : 23-09-1991

Acts Referred:

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

Citation : (1991) 2 MLJ 571

Hon'ble Judges : Arunachalam, J

Bench : Division Bench

Judgement

Arunachalam, J.—In this petition, preferred u/s 482, CrI.P.C. invoking the inherent powers of this Court, the prayer is to call for the records in M.C. No. 3 of 1989 which culminated in the order dated 8th July, 1989, signed by the 4th respondent, the Executive I Class Magistrate and Revenue Divisional Officer, Dharapuram on 10.7.1989 and the amended order in the same miscellaneous case dated 8.7.1989 and signed on 11.7.1989 and quash the entire proceedings therein, initiated u/s 145, CrI.P.C.

2. The petitioner and the 3rd respondent are brothers, the petitioner being the elder. Their father Karuppasamy Gounder died on 15.1.1965. The family owned considerable landed property and during the life time of Karuppasamy Gounder, there was a partition, by means of a Registered Partition Deed, dated 30.11.1959, whereby Schedule B properties which are the subject matter of the present dispute, were allotted to the petitioner. The 3rd respondent was born subsequent to the partition. The 3rd respondent filed a suit for partition in O.S. No. 87 of 1982 on the file of Sub Court, Dharapuram. The 3rd respondent had made the authorised officer also a party to the suit. He has stated therein that he was in his mother's womb on the date of the registered partition made on 30.11.1959 and therefore in law, he was entitled to a specific share. The petitioner was shown as the 1st defendant in the suit. He claims to have remained ex-parte, in pursuance of an arrangement arrived at between the members of the family, leaving the Authorised Officer alone, as the contesting defendant. This

arrangement was made to obviate the proceedings under the Land Reforms Act, since the petitioner owned lands in excess of the ceiling limit under the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act and the Authorised Officer had initiated recovery proceedings. O.S. No. 87 of 1982 was decreed, on 18.8.1982. The 3rd respondent was allotted a 5/12th share in the property. However, the 3rd respondent chose to prefer A.S. No. 887 of 1982 before this Court against the preliminary decree. On 18.1.1989, the said appeal was dismissed as withdrawn. Before withdrawal of A.S. No. 887 of 1982, the petitioner preferred I.A. No. 450 of 1989 in O.S. No. 87 of 1982, to set aside the ex-parte preliminary decree. Final decree proceedings are pending in I.A. No. 466 of 1989. The 3rd respondent has also filed I.A. No. 467 of 1989 for interim injunction and I.A. No. 468 of 1989 for appointment of a receiver. While these petitions were pending, the impugned order u/s 145(1), CrI.P.C, was passed by the Executive Magistrate on 8.7.1989, though stated to be signed on a different date.

3. This petition was admitted on 2.8.1989 and in CrI.M.P. No. 8994 of 1989, Bhaskaran, J. directed interim stay of all further proceedings. On 21.9.1989, S.T. Ramalingam, J. heard CrI.M.P. No. 8994 of 1989 and CrI.M.P. No. 10657 of 1989 preferred by the 3rd respondent to vacate the order of stay made in the earlier petition, and directed continuation of stay already ordered in CrI.M.P. No. 8994 of 1989, until further orders. For further hearing the petitions were directed to be posted on 29.9.1989, but nothing further happened. The petitioner preferred CrI.M.P. No. 10652 of 1989 in CrI.M.P. No. 8994 of 1989 for issue of necessary directions to the Tahsildar, Dharapuram and the Executive I Class Magistrate and Revenue Divisional Officer, Dharapuram to realise and recover the sale proceeds of Rs. 1,50,000 towards the sale of sugarcane harvested from his lands, from the Special Officer, Amaravathy Cooperative Sugars, Udumalpet and pay the same to him, under a valid receipt. Bhaskaran, J. disposed of this petition on 1.11.1990 by directing the Tahsildar, Dharapuram and the Executive Magistrate-cum-Revenue Divisional Officer, Dharapuram to recover the sale proceeds from the Special Officer, Amaravathy Cooperative Sugars and credit the same in the account of O.S. No. 87 of 1982, on the file of the Sub Court, Dharapuram. In or about December, 1990, one Vijayakumar claiming himself as the lessee of the petitioner, preferred CrI.M.P. No. 18118 of 1990 in CrI.M.P. No. 8993 of 1989, pleading for permission to harvest the paddy crops raised by him, by paying Rs. 45,000 the amount of lease to the Receiver, and further allowing him to continue as a lessee of the properties, pending disposal of CrI.M.P. No. 8993 of 1989. It must be stated that Vijayakumar, the petitioner in CrI.M.P. No. 18118 of 1990, got himself impleaded as the 5th respondent in CrI.M.P. No. 8993 of 1989, on his petition in CrI.M.P. No. 13289 of 1990 pleading for such a course being allowed.

4. Padmini Jesudurai, J. disposed of CrI.M.P. No. 18118 of 1990 preferred by the 5th respondent in CrI.M.P. No. 8993 of 1989, by an order dated 6th March, 1991. The learned Judge observed as follows:

A receiver has already been appointed by the Executive I Class Magistrate and Revenue Divisional Officer, Dharapuram (5th respondent) to manage the properties, pending disposal of Section 145, CrI.P.C, proceedings. It is stated by both the sides that the Receiver had already harvested the previous crop, after his appointment as Receiver. As rightly contended by the learned Counsel for the 1st respondent (Petitioner in CrI.M.P. No. 8993 of 1989), the petitioner (Vijayakumar) has yet to establish his status as a cultivating tenant and his claim to be in possession of the property as a tenant under the petitioner. While so, this Court u/s 482, CrI.P.C, cannot go into this disputed question. Since the Receiver has already taken possession of the properties, and has harvested the previous crops, and has deposited the sale proceeds in Court, it is but proper that the same arrangement should continue till the main proceedings u/s 145, CrI.P.C. are concluded. Under these circumstances no permission can be granted to the present petitioner to harvest the crops. The Receiver Tahsildar shall harvest the standing crops and deposit the sale proceeds in Court. This petition is accordingly dismissed.

5. Mr. M.V. Krishnan, learned Counsel appearing on behalf of the petitioner contended, that the subject matter of the property, in the proceedings initiated u/s 145, CrI.P.C, was restricted to those lands which the petitioner had obtained by a Registered Partition Deed on 30.11.1959, of which the petitioner was in possession. This property has been shown as Schedule-A property in the suit. The final decree is yet to be passed. Even in the final decree proceedings, applications filed by the 3rd respondent for an injunction and for appointment of a Receiver are pending. Further the application filed by the petitioner to set aside the ex-parte decree was yet to be decided by the civil Court. In this background, there cannot be two independent parallel proceedings one in the civil Court and another before the Executive Magistrate and on that sole ground, the pending proceedings are liable to be quashed. He then contended that the impugned order does not conform to the mandatory provisions of Section 145, CrI.P.C, and therefore it must be held unsustainable in law. He pointed out that neither the initial order nor the amended order had stated about the materials considered and the resultant satisfaction about the existence of a dispute which was likely to lead to breach of the peace. He then contended that the preliminary order contained a factual statement of actual possession by the petitioner and therefore steps ought to have been taken to protect his possession rather than initiating action u/s 145, CrI.P.C. He then argued that the Executive Magistrate had no power u/s 145, CrI.P.C, to restrain both the parties from entering into the property in dispute. Further yet another serious infirmity in the preliminary order is that it had not called upon the contesting parties to put in writing their claims regarding the fact of actual possession of the disputed property. Finally he submitted that the preliminary order u/s 145(1), CrI.P.C, cannot be sustained.

5-A. On these contentions, Mr. K. Ramasami, learned Counsel representing the 3rd respondent submitted, that though the jurisdiction of the civil Court was wide regarding title and possession of the property, jurisdiction of the Executive

Magistrate was restricted to possession alone. He urged that it would be too broad a proposition to hold that parallel proceedings ought not to be initiated in the civil and criminal courts for, the civil and Criminal proceedings can run parallel only to some distance and not all the way. He pointed out that if a party chooses to file a civil suit subsequent to initiation of action, u/s 145, CrI.P.C., that party can effectively nullify the criminal proceedings. He went on to argue, that only when in a civil suit the dispute between the parties had been adjudicated, then proceedings u/s 145, CrI.P.C., may not be possible. But even that proposition must depend upon the facts of each case. In other words, he argued that pendency of a civil suit will not oust the jurisdiction of the Executive Magistrate u/s 145, CrI.P.C. If the Executive Magistrate is not allowed to exercise his power u/s 145, CrI.P.C., chaos would be the result. Section 145, CrI.P.C., should not be allowed to become a dead letter and that jurisdiction should be sought to be conserved. He then contended that there was no prohibition u/s 145, CrI.P.C., to restrain both parties from entering into the disputed property and there would be nothing wrong or illegal in such course being followed for, the ultimate object was to prevent breach of the peace. He submitted that the sentence in the preliminary order stating that the petitioner was in possession of the disputed land was not the finding or observation of the Executive Magistrate, but was an averment made by the police agency, while pleading for initiation of a proceedings u/s 145, CrI.P.C. Finally he argued that once the essential requisite which furnishes jurisdiction to the Magistrate under Section 145, CrI.P.C., had led to his arriving at a satisfaction that there was likelihood of breach of the peace concerning land or water or the boundaries thereof, the subsequent action would only relate to procedure and not jurisdiction and therefore even if there are certain infirmities in the preliminary order, the petitioner cannot take advantage of the same to halt the pending salutary proceedings.

6. Both the counsels have relied upon several decided cases to seek support for their respective contentions. They will be referred to at the relevant context.

7. I have carefully considered the rival contentions with great care, in view of conflicting case law, placed before me.

8. In *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, , the Apex Court observed as follows:

When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel Criminal Proceeding u/s 145 of the Code, would not be justified. The 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 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.

On the basis of this decision, Padmini Jesudurai, J. in *K.S. Magdoo v. N.S. Jalal* 1988 L.W. 89, K.M. Natarajan, J. in *R.M. Govindaswamy Pillai v. Sub-Inspector of Police, Law and Order, Arantangi* 1987 L.W.111 and 112, and in *Karthikeyan v. State by Inspector of Police* 1990 L.W. 49, took the view that parallel proceedings u/s 145, CrI.P.C., ought not to be conducted when civil litigation was pending, wherein directions for appointment of a Receiver and other interim reliefs could be obtained. These cases were decided on the facts concerned. However, Sengottuvelan, J., in *Vallimalai v. Ayyannan Ambalam* 1986 L.W.110, after referring to the decision of the Supreme Court in *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, , stated," that the decision of the Supreme Court in the said case would only be taken to mean, that when a litigation was pending regarding title and possession before a civil Court an inquiry, regarding title and possession in Section 145, CrI.P.C., proceedings should be avoided, since the civil Court is the ultimate authority regarding title. But it cannot be contended, on the strength of the above decision, that when once there is a civil court Proceeding, no Proceeding u/s 145 can be instituted. The said decision cannot be said to be an authority for the proposition that Section 145 proceedings cannot be started when civil proceedings are pending." Janarthanam, J. without referring to the judgment of the Supreme Court reported in *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, , Venkatakrishnan v. *State of Tamil Nadu* 1989 Cri.L.J. 1836, held "that pendency of civil proceedings in respect of that immovable property was not a bar to criminal proceedings. However, if the civil Court decides question of possession, it will be binding on the Criminal Court and the Magistrate cannot proceed u/s 145, CrI.P.C." M.N. Moorthy, J. in *P. George v. M. Narayanan Nair* 1983 L.W. 47, stated, that the nature of the proceedings u/s 145, CrI.P.C., were such that the Magistrate was primarily responsible for maintenance of law and order. The main purpose of the proceedings was to maintain peace and secondly, whoever was aggrieved by the order so made had recourse to get remedy in a civil Court. Parallel proceedings in civil and Criminal Courts were not warranted. S. Natarajan, J., (as he then was) in *Thayammal v. Krishna Chetty* 1978 L.W.128, held that jurisdiction of Criminal Court to pass appropriate orders for avoiding breach of peace was not ousted. The learned Judge observed that civil Court's decree and judgment was not a bar to the jurisdiction of Criminal Court, where it had no bearing on the question of present possession. That was a case where preliminary decree for partition had been obtained in a civil suit.

9. As far as the other High Courts are concerned, in *Jagdish v. Sub-Divisional Magistrate, Panipat* 1987 Cri.L.J. 1198, the Punjab and Haryana High Court, held that, the mere pendency of a civil suit regarding the same subject-matter between the parties did not bar the criminal court from exercising jurisdiction under Sections 145 and 146, CrI.P.C. The judgment of the Supreme Court in *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, , was referred to and thereafter the following observation was made:

It has not been ruled by the Supreme Court that in every case where a civil Suit

is pending regarding the same subject-matter, Criminal proceedings u/s 145 of the Code cannot continue. The plaintiffs suit had been dismissed and the appeal against dismissal was pending. Question of possession was involved which had already been adjudicated upon by the trial Court. It is in these circumstances that the Supreme Court observed that the initiation of Criminal proceedings u/s 145 at the instance of the close relations of the plaintiff could not be permitted. This judgment of the Supreme Court is, therefore, of no help to the petitioner. In the instant case none of the parties is found to be in prima facie possession of the land in dispute by the civil Court.

In *Mst. Shamrati Kuer and Others Vs. Janki Saran Singh*, , a Division Bench of the Patna High Court observed, that the pendency of a civil Suit between parties cannot be a bar to initiation of proceedings u/s 145 CrI.P.C., and that there could be no uniform rule. Rajasthan High Court in *Udmi Ram and Others Vs. Dharam Singh and Others*, stated, that when litigation between the parties was pending in a civil Court, the question of possession of the disputed property was involved and therefore parallel Criminal proceedings under Sections 145 and 146, CrI.P.C. cannot be permitted. In that case the Revenue Board had passed an order to maintain the status quo. The Madhya Pradesh High Court, in *Mangilal Vs. Bangmal and Another*, held that keeping in view the object behind Sections 145 and 146, CrI.P.C., mere pendency of a civil litigation may not furnish any justification for dropping the proceedings initiated before a Criminal Court. The Allahabad High Court in *Sachchida Nand Misra and Others Vs. State of Uttar Pradesh and Others*, observed, that the language of Section 145, CrI.P.C., was plain and clear and that even if the land in dispute was held by co-sharers of co-tenants, proceedings under Sections 145 and 146, CrI.P.C. can be initiated in respect of such land. Kerala High Court in *Dominic Vs. The State and Others*, after referring to the judgment of the Supreme Court in *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, , held, that mere pendency of a suit did not oust the jurisdiction of the Magistrate to proceed u/s 145, CrI.P.C. and that if a final decree or interim order had been passed by the civil Court, the Criminal Court must respect it. After extracting the enunciation of law by the Supreme Court, it was stated as follows:

But it may be noticed that it was a case where civil court passed a decree in favour of one party and an appeal filed by the other party was pending and it was in this context the Supreme Court observed that initiation of proceedings u/s 145 was not justified. In the instant case though a civil litigation is pending before the court of subordinate Judge of Palghat, it has not resulted in a decree. No interim order also has been passed by the learned Subordinate Judge though an application for interim injunction is pending.

It was stated that adjudication of the dispute by a civil Court will have a bearing on the litigation of proceedings u/s 145, CrI.P.C., and mere pendency of a civil litigation will not oust such jurisdiction. Dr. A.S. Anand, Chief Justice, J. and K. High Court, as he then was in *Ghani Shamdass Anand v. Shakti Prakash* (1988) 1

Crimes 40, observed that the abstract question whether mere filing of the civil suit is any bar to the continuation of the proceedings u/s 145, CrI.P.C. in his opinion, had to be answered in the negative. It was only in those cases where the civil court had returned a finding, interim or final, regarding the possession between the same parties in respect of the same subject matter that the criminal court will be called upon to consider, the advisability of continuing the proceedings and not otherwise. That was a case, where the civil suit was instituted after the determination of the proceedings by the Judicial Magistrate initiated u/s 145, CrI.P.C. The learned Judge took note of the judgment of the Supreme Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, , and laid stress on the words "has been adjudicated" in the following passage found in the judgment of the Supreme Court.

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 proceedings u/s 145 of the Code.

The learned Judge referred to the judgment of Division Bench of the same Court in CrI.R.P. No. 78 of 1984 and CrI.R.P. No. 90 of 1982, dated 17.3.1987 wherein also the import of t,he judgment of the Apex Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, , had been considered. Again Kerala High Court in P.C. Khader Vs. P.K. Khader and Others, held that when the civil court was not adjudicating question of possession between the parties or in favour of one party and the parties were not in a position to seek interim order from a civil court as no proceeding was pending, the Magistrate had jurisdiction and must arrive at a finding, in accordance with Section 145, CrI.P.C. The law laid down by the Supreme Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, , was taken note of and stress was laid upon the word "adjudicated". The Delhi High Court in Ashrafi Lal v. Labh Singh 1981 Cri.L.J. 1172, stated that the jurisdiction of he Magistrate under Sections 145 and 146, CrI.P.C., to maintain peace will prevail over the orders of the civil court, except where (i) the determination of rights by the civil court has become final, or (ii) the civil court has appointed a receiver vide Sub-section (2) of Section 146. The requirements of peace were paramount, the orders of the civil court notwithstanding.

10. The decision of the Andhra Pradesh High Court in P. Madhava Rao v. K Bhagavandass 1981 Cri.L.J. 1673, shows an extreme case, where the Executive Magistrate chose to ignore two recent decisions of the civil courts, including that of the Apex Court, In that case the civil courts in exercise of their vertical jurisdiction held that the petitioner therein had no title to or possession of the suit land and it was the respondent that was in possession of the suit land. The Supreme Court dismissed the appeal of the petitioner on 11.4.1979. But hardly within one month, on 7.3.1979, the petitioner invoked the jurisdiction of the Executive Magistrate u/s 145, CrI.P.C. The Andhra Pradesh High court observed as follows:

Even if when there is a very recent decision of the Supreme Court, to say that

the Magistrate is not bound by it, he can reappraise the evidence that was adduced in the civil Court and come to a contrary conclusion regarding possession is defeating the very intendment of Section 145. The magistrate clearly erred ignoring the effect of the decision of the Supreme Court dated 11th April, 1979 and holding that the petitioner was in possession of the suit property on 10th May, 1979, when he passed the preliminary order. It was the duty of the Magistrate u/s 145, CrI.P.C. to protect the lawful possession of a party as declared by the civil Court.

...

proceedings u/s 145, CrI.P.C. are to be taken as a preventive measure to prevent breach of peace when there is a dispute with regard to a land. What the Magistrate concerned is the actual possession of the land. It is for the civil court to decide the question of title.

11. Yet another case decided by the Supreme Court in Jhummal alias Devandas Vs. State of Madhya Pradesh and Others, , is significant in that the effect of its earlier pronouncement in Ram Sumer Puri Mahant Vs. State of U.P. and Others, , has been explained. That was a case where the executive Magistrate had passed an order u/s 145, CrI.P.C. The High Court quashed the order passed u/s 145(6), CrI.P.C. merely on the ground that the unsuccessful party had filed a civil suit. The Apex Court stated that Section 145, CrI.P.C, cannot be set at naught merely because the unsuccessful party had approached the civil court. The Apex court went on to add, that from the order of the High Court, it was obvious that the decision in Ram Sumer Puri Mahant Vs. State of U.P. and Others, , the Supreme Court stated as follows:

The ratio of the said decision is that a party should not be permitted to litigate before the criminal Court when the civil suit is pending in respect of the subject matter. That does not mean that a concluded order u/s 145, CrI.P.C, made by the Magistrate of competent jurisdiction should be set at naught merely because the unsuccessful party had approached the civil court. An order made u/s 145, CrI.P.C. deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil court. The unsuccessful party therefore must get relief only in the civil court. He may move the civil court with properly constituted suit. He may file a suit for declaration and prove a better right to possession. The civil court has jurisdiction to give a finding different from that which the Magistrate has reached.

12. The object of Section 145, CrI.P.C. has been succinctly stated by the Supreme Court in R.H. Bhutani Vs. Miss Man J. Desai and Others, . It will be relevant to extract the observations:

The object of Section 145, no doubt is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the court and ascertaining who of them was in actual possession and to maintain status quo

until their rights are determined by a competent court. 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 (1) and thereafter to make an enquiry under Sub-section (4) and pass a final order under Sub-section (6).

...

The Magistrate has first to decide who is in actual possession at the date of his preliminary order. If, however, the party in defacto possession is found to have obtained possession by forcibly and wrongfully dispossessing the other party within two months next proceeding the date of his order, the Magistrate can treat the dispossessed party as if he was in possession on such date, restore possession to him and prohibit the dispossessor from interfering with that possession until eviction of that person in due course of law,...

To say otherwise would mean that if a party who is forcibly and wrongfully dispossessed does not in retaliation take the law into his hands, he should be at disadvantage and cannot have the benefit of Section 145.

13. The case law referred to above does indicate divergence in judicial opinion. At the same time it is fairly apparent that almost all the decisions were pronounced on the particularity of facts available therein. It looks reasonable to hold on the basis of case law, that, a mere filing of a civil suit cannot totally bar initiation or continuation proceedings u/s 145, CrI.P.C. Cases are not wanting, wherein after initiation of a proceeding u/s 145, CrI.P.C. purely with a view to nullify the said proceeding, civil suits are sought to be filed, without any intention to obtain any interim order. The Supreme Court by its Judgments in R.H. Bhutani Vs. Miss Man J. Desai and Others, , Ram Sumer Puri Mahant Vs. State of U.P. and Others, , and Jhummal alias Devandas Vs. State of Madhya Pradesh and Others, , has clearly explained, not only the scope of proceedings u/s 145, CrI.P.C. but also when a proceeding could be said to be parallel to a civil proceeding. I have extracted the views expressed by various High Courts and the Supreme Court, since Mr. K. Ramasami, learned senior Counsel strenuously contended, that effective guidelines were not available to the Executive Magistrates. The High Court, exercising its power u/s 482, CrI.P.C. will always take note of the facts placed before it, while considering whether the criminal proceedings u/s 145, CrI.P.C. were parallel to a civil proceeding in respect of the same property. I do not want to dwell on this question at greater length though on facts, it has sufficient force since a decision in this petition can be arrived at, on the other grounds, referable to the non-compliance with the provisions of Section 145(1), CrI.P.C. by the Executive Magistrate, while choosing to initiate the impugned proceedings.

14. Section 145, CrI.P.C. is intended to provide a speedy remedy for the

prevention of breach of peace, arising out of disputes relating to immovable property, by maintaining one or other of the parties, in possession. The object of the Section is to enable a magistrate to intervene and pass a temporary order in regard to possession of a property in dispute having effect, until the actual right of one of the parties gets determined by a competent civil court. Proper guard or precaution will be necessary to prevent the purpose of the section being abused by persons using it, with the object of getting possession of the property to drive the other side to go to the civil Court as the plaintiff. The Legislature keeping in view, that a breach of the peace must be prevented, thought that the best way of doing it was to maintain the party in possession by forcing the other party to go to a civil court. The power u/s 145, CrI.P.C. being exceptional, its exercise must be strict, and implicit adherence to the relevant provision will be essential. Where the Magistrate relies upon the police report, application of judicial mind to the contents of the said report must be apparent.

15. Steering clear of the controversy of the dates on which impugned orders 1 and 2 were signed a look at the detailed order shows that on the basis of the report of the Inspector of Police, Law and Order, Dharapuram, the Executive Magistrate was satisfied that there was a likelihood of breach of the peace and therefore there was a need to initiate proceedings u/s 145, CrI.P.C. After stating so, the learned Magistrate has extracted the report of the Inspector of Police, Law and Order, Dharapuram. The impugned order shows, that it was the result, of the scrutiny by the Executive Magistrate, of the report forwarded by the Inspector of Police. The report which has been considered by the Executive Magistrate, and which forms part of the impugned order itself, clearly shows, that by a registered partition deed dated 30th November, 1959 Karuppasamy Gounder, the father of the petitioner and the 3rd respondent and the petitioner had partitioned the property, and the petitioner in pursuance of the partition deed was in possession of the property, which is the subject matter of the proceeding initiated, u/s 145, CrI.P.C. The report extracted also shows, that a civil suit for partition in O.S. No. 87 of 1982 had ended in a preliminary decree on 18.10.1982, in pursuance of which the 3rd respondent was entitled to a 5/12th share. Since an amicable atmosphere did not exist between the petitioner and the 3rd respondent in respect of the civil litigation, there was a need to institute an inquiry u/s 145, CrI.P.C. The order further shows, that the Inspector of Police, Dharapuram chose to pray for initiation of security proceedings u/s 107, CrI.P.C. But the Government Advocate, Dharapuram expressed an opinion, that there can be no legal hurdle to initiate action u/s 145, CrI.P.C. On this basis, the operative portion of the impugned order reads as follows:

In further reads as follows:

16. The word refers to the petitioner and the third respondent in M.C. No. 3 of 1989 being, Inspector of Police, Law and Order Dharapuram. In effect by the impugned order the Executive Magistrate had prohibited both parties from entering into the disputed property. This prohibitory order is not restricted to any

particular period. It appears to be operative either till the proceedings get finally terminated or probably till revoked, at the instance of any of the parties to the proceedings.

17. The legality of the preliminary order restraining both the parties from entering into the property, till the petition was decided according to law by the Executive Magistrate, was considered by this Court in CrI.M.P. No. 1093 of 1987 and by his order dated 10.3.1987, Maheswaran, J. held, that restraining both the petitioner and the counter petitioner from entering into the property in question was not warranted by the provisions of Section 145(1), CrI.P.C, It was further observed that there was no provision in Section 145(1), CrI.P.C., empowering the Executive Magistrate to restrain both the parties from entering into the said property. P.K. Sethuraman, J., in Janaki Ramachandran v. State 1988 L.W.147. referred to the view expressed by Maheswaran, J. on this aspect and expressed his consonance. Janarthanam, J. in Venkatakrishnan v. State of Tamil Nadu 1989 Cri 1836, expressed his opinion, that the order of the Magistrate prohibiting both parties from entering into property without deciding the question of possession was manifestly illegal and suffered from want of jurisdiction. The impugned order in that case was quashed. In Karthikeyan v. State by Inspector of Police 1990 L.W. (CrI.) 49, after referring to the aforesaid case law, I took the view, that this infirmity of restraining both the parties from entering into the subject matter of a dispute was a serious one sufficient to vitiate the preliminary order in the impugned proceedings. However, Mr. K. Ramaswami, brought to my notice the decision of the Calcutta High Court in Tarak Chandra Paik and Others Vs. Naim Mondal and Others, wherein A.N. Banerjee, J. held that the order of converting proceedings u/s 144 to one u/s 145 and restraining both the parties from entering into the disputed land was justified under the circumstances of the case. That was a case in which the petitioner therein had obtained an ex-parte order of injunction against the (sic) party and his brothers who were claiming (sic) in respect of the disputed lands. The opposite party had applied for vacating the aforesaid ex parte order of injunction and the matter was still pending. It was also noticed that prior to the filing of the suit the principal opposite party and his brothers had their names recorded as bargadars in an application filed under the West Bengal Land Reforms Act. The petitioner had moved the Calcutta High Court against such order and that matter too was pending. The learned Judge did not deem it necessary to exercise the revisional powers, holding that he did not think that the learned Executive Magistrate had erred in converting the proceedings u/s 145, CrI.P.C. and restraining both the parties from entering into the disputed land. The learned Judge had certainly added the words, such circumstances.

18. The object of Section 145, CrI.P.C. being aimed at maintaining one or other of the (parties in possession, it does not appear to stand to reason, that both parties should be prevented, without any time limit, from entering into the disputed property. The purpose contemplated u/s 145, CrI.P.C. would then become a dead letter. On this ground, the impugned order cannot be allowed to

operate any longer.

19. The Executive Magistrate u/s 145(4), CrI.P.C. will have to ultimately decide whether any and which of the parties, at the date of the order made by him under Sub-section (1) was in possession of the subject of dispute. Under the proviso, if any party had been wrongfully and forcibly dispossessed 2 months before the date on which the report of a police officer or other information had been received by the Executive Magistrate or after that date and before the date of his order under Sub-section (1), he may have to trust the party so dispossessed as if that party had been in possession on the date of his order under Sub-section (1). The preliminary order clearly showing, that in pursuance of the partition, the petitioner was in possession, the appropriate remedy, if there was likelihood of breach of peace, was to initiate proceedings u/s 107, CrI.P.C. as originally contemplated and not u/s 145, CrI.P.C. Even otherwise, the detailed facts narrated earlier indisputably show that a preliminary decree had been passed in the civil suit and applications for appointment of a receiver and injunction are also pending. Similarly at the instance of the petitioner, a petition to set aside the ex parte decree is also in cold storage. The petitioner and the 3rd respondent, who are brothers, seem to be more interested in dragging on litigation rather than attempting to terminate proceedings expeditiously, either by approaching the civil court for quick disposal or settling the disputes between themselves. If the brothers are interested in creating a breach of the peace, on the long pending dispute in the civil court, the only answer is security proceedings u/s 107, CrI.P.C.

20. There is one another serious infirmity in the impugned order, passed u/s 145(1), CrI.P.C. The parties to the proceedings have not been directed to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. The operative portion of the order shows, that the petitioner and the third respondent should appear either in person or through their advocate and file their statements in writing against the impugned order. A proceeding u/s 145, CrI.P.C. relates to actual possession. In the event of a dispute regarding that issue, was likely to cause a breach of peace, the Executive Magistrate should draw the attention of the opposite parties to put forth their case, as regards the fact of actual possession of the subject of dispute. That obviously has not been done by the Executive Magistrate.

21. However, Mr. K. Ramasami contended, on the basis of a judgment of a Division Bench of this Court in T. Kamalkutti and 3 Ors. v. Uthayavarma Raja Vali Raja of Chirakkal ILR (1913)Mad. 275, that once the essential requisite to give jurisdiction to the Magistrate, that a dispute existed, which was likely to cause a breach of the peace concerning land or water or boundaries thereof, his jurisdiction was complete and his subsequent action must be considered in relation to procedure and not jurisdiction. In that case decided by the Division Bench of this Court, there was an omission to set forth in the preliminary order the grounds of the Magistrate's satisfaction and in that context, it was observed

that it did not affect his jurisdiction. The question that has arisen in the instant case, was not posed for decision, in the said case. Further it is not the law laid down by the Division Bench, that procedure contemplated u/s 145, CrI.P.C., could be thrown to the winds. I have already stated, that jurisdiction u/s 145, CrI.P.C. is exceptional and therefore its exercise must be strict and implicit adherence to the relevant provision will be essential.

22. We can look at this issue from a different angle too. The purpose of promulgating an order u/s 145(1) is to put on notice the rival parties of the satisfaction of the Magistrate, about a dispute regarding possession of property, which was likely to cause a breach of the peace. If that be so, the object behind the order is to communicate the same, to the parties concerned. When an order is communicated, the parties must be in a position to understand the case they have to meet. If the preliminary order does not indicate, that they were expected to put in their claims, Regarding the fact of actual possession of the subject of dispute, there is a serious lacuna and the parties would be in a quandary, as to what exactly was expected of them. This serious defect cannot be easily got over by contending, that the parties had already filed written statements and no non-following of this procedure, cannot be held to have prejudiced the parties concerned. The preliminary order has been challenged at the earliest point of time. If there is a serious lacuna, either on account of jurisdiction or violation in regard to procedure, affecting the very purpose of the provision, it would be futile to contend, that in spite of the infirmity the impugned proceedings should be allowed to continue. The words used in Section 145(1), CrI.P.C. are "put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute". The word "actual possession" means "actual physical possession" irrespective of any right or title to possess. This is obvious for, u/s 145(4) the Magistrate is not expected to determine the claim of a right to possess. The parties must be put on notice that, what the Executive Magistrate was concerned, was evidence regarding the fact of actual physical possession. That not having been done, on this ground as well, the pending proceedings cannot be allowed to survive.

23. The provisions u/s 145, CrI.P.C., are complementary to the provisions u/s 146, CrI.P.C. The object of attachment u/s 145, CrI.P.C. is to keep the property in custodia legis so as to prevent the disputants from causing a breach of the peace, while attempting to obtain actual possession of property. Section 146, CrI.P.C. takes in the following contingencies

(A) a case of emergency, (B) none of the parties was in possession, and (C) no decision was possible as to possession.

If the preliminary order cannot legally exist for continuation of further proceedings, in law, an order u/s 146, CrI.P.C. will be a non-est. Even otherwise, some of the contingencies, contemplated u/s 146, CrI.P.C. is available on facts. The report of the police officer, considered and appended to the preliminary order shows actual possession with the petitioner.

24. This petition has to be necessarily allowed. Accordingly it is allowed and all further proceedings in M.C. No. 3 of 1989 on the file of the Executive First Class Magistrate and Revenue Divisional Officer, Dharapuram shall stand quashed. It will be open to the contesting parties to obtain quick orders from the civil Court and it will equally be open to the Executive Magistrate, in the event of likelihood of a breach of the peace, to initiate proceedings u/s 107, CrI.P.C. After pronouncement of orders, Mr. K. Ramasamy learned Counsel made an oral plea for leave to appeal to Supreme Court. This order is based on the law laid down by the Supreme Court and I do not find any ground, made out to grant leave. The oral request for leave shall stand negatived.