

(1960) 10 MAD CK 0008

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 5261 of 1960

Kochadai Naidu and Another

APPELLANT

Vs

Nagayasami Naidu and Others

RESPONDENT

Date of Decision : 06-10-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Criminal Procedure Code, 1898 (CrPC) — Section 146

Citation : AIR 1961 Mad 247 : (1961) CriLJ 821 : (1961) ILR (Mad) 413 : (1961) 74 LW 111

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : M. Natesan, for the Appellant; V.C. Veeraraghavan, G. Ramanujam, V. Ramaswami, S.V. Padhmanabhaswami and V. Narayanaswami, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Iyer, J.—This application is filed u/s 24 C. P. C. for the transfer of the proceedings in M. C. No. 8 of 1957, on the file of the

District Munsif's Court, Periakulam, to the Sub Court, Dindigul, to be tried along with O. S. No. 35 of 1958 on its file. The petitioners who are

the sons of the third respondent, and respondents 1 and 2 are descended from a common ancestor. The former claimed that they were members if

a joint Hindu family with the latter. Respondents 1 and 2, however, state that the 3rd respondent had been taken in adoption by a divided paternal

grand uncle of theirs, and that there is no such coparcenary as claimed.

Sometime ago disputes ensued between the parties in regard to the possession of certain properties, and they assumed such proportions as to

threaten a breach of the peace. The police, thereupon, initiated proceedings u/s

145 Cr. P. C. against both the parties before the Executive First

Class Magistrate, Usilampatti in M. C. No. 8 of 1957. The Magistrate attached the properties and forbade either party from entering them.

After examining a few witnesses, the Magistrate felt that the matter was one where the questions involved could only be decided by a civil court,

and, accordingly, by his order dated 1-12-1958, directed the parties to establish their respective rights in a suit. Even before the disposal of that

case, the petitioners had instituted O. S. No. 35 of 1958 in the Sub-Court, Dindigul, for partition of the disputed properties.

2. While that suit was pending, there was a change in the personnel of the Executive First Class Magistrate, Usilampatti. The magistrate who

succeeded the one who passed the order dated 1-12-58 was of the view that the disposal of the proceedings u/s 145 Cr. P. C. was not in

accordance with the Criminal Procedure Code as amended; he, therefore, revived the case. Finding however, that it was difficult to decide as to

which of the parties was in possession on the material date, he referred the matter to the District Munsif Periakulam, for a decision u/s 146 Cr. P.

C. This order was passed on 6-11-1939.

3. In the present petition, it is prayed that M. C. No. 8 of 1957, now pending decision in the District Munsif's Court, Periakulam, should be

transferred to the Sub Court, Dindigul, to be tried along with O. S. No. 35 of 1958.

4. There can be no doubt that, having regard to the questions involved, it would be convenient if not desirable that both should be tried together.

The only question to be considered is whether it would be competent to a superior court, acting u/s 24 C. P. C. to transfer M. C. No. 8 of 1957

to a civil court other than the one to which the magistrate referred the case.

5. Before applying to this court, the petitioners approached the District Judge, Madurai, for a transfer of the proceedings, so as to enable a

disposal of the two matters by the same court The learned District Judge, while he realised that it would be convenient to have both the matters

disposed of together, declined to grant the application, as in his view, Section 24 C. P. C. would not authorise the transfer of a quasi criminal

proceeding, namely, the reference u/s 146 Cr. P. C. from the court in which it was pending to another civil court.

6. Section 24 C. P. C. confers a power on the High Court, and the District Court to transfer any suit, appeal or other proceeding pending in a

subordinate court, to another court subordinate to it, which would be competent to try and dispose of the matter. The competence referred to in

the section is with reference to pecuniary and not territorial jurisdiction. In a case where a dispute relating to possession is referred u/s 146 Cr. P.

C. to a civil court, no question of valuation might perhaps arise. Therefore, if it were found that the case would come within the scope of S, 24 C.

P. C. the proceedings can be transferred to any other subordinate civil court. Further it is not disputed that the Sub Court, Dindigul, will be

competent to entertain and decide M. C. No. 8 of 1957.

7. Now a matter referred to a civil court u/s 146 Cr. P. C. is neither a suit nor an appeal. It has to be seen whether it could be comprehended by

the term ""proceeding"".

8. On behalf of respondents 1 and 2 it is contended that a matter referred to a civil court under the provisions of Section 146 Cr. P. C, will not be

a proceeding coming within the terms of Section 24 C. P. C, and even if it were held to be one such it would be a criminal rather, than a civil

proceeding, and that it would not be one within the jurisdiction of a superior civil court to transfer.

9. Before dealing with the arguments, it is necessary first to consider the nature of a proceeding u/s 145 Cr. P. C, and the jurisdiction of the civil

court u/s 146 Cr. P. C. Section 145 Cr. P. C. is enacted with a view to prevent offences relating to Immovable property which are likely to lead to

breach of the peace. The Privy Council characterised such proceedings in *Dinomoni Chowdhurani v. Brojo Mohini*, ILR 29 Cal 187 (PC) as police

proceedings intended to prevent the commission of an offence.

The offences contemplated by the section would often be committed in the assertion or under the colour of a right. A summary adjudication of

what essentially would be a civil dispute would be necessary before any preventive action could be taken. Section 145(4) invests the magistrate

with a right to decide the dispute regarding possession of Immovable property and to ascertain which of the parties was in actual possession on the

date of the preliminary order, or within two months prior thereto in case there was a wrongful dispossession of a party during that period.

The party so found to be in possession will be entitled to be in possession till evicted in due course of law. But adjudication of possessory rights

may not always be easy. Very often questions relating to possession get mixed up with those relating to title. There may be difficulty also in

assessing the nature or quantum of possession sufficient to constitute actual possession. In certain cases a conflict of testimony of witnesses might

itself render the decision difficult.

Section 146 Cr, P, C. provides for such cases. Where the magistrate finds that none of the parties are in possession of the property, or is unable

himself to decide which of the disputants is in actual possession of the property, he can refer the question for the decision of a civil court having

jurisdiction over the subject matter of the dispute. In such a case the magistrate should draw a statement of the case, and forward the record to the

civil court for determination as to whether any or which of the parties was in possession of the disputed property, directing the parties to appear

before the civil court on a date to be fixed by him.

But once the reference is made the civil court will not confine to the record of evidence sent by the magistrate; it can take such further evidence that

the parties may choose to produce (Sub-Section 1-A). After the enquiry, the civil court should record a finding and send the same to the

magistrate who should dispose of Section 145 Cr. P. C. proceedings conformably to such finding (Sub-section 1-B). There is also a provision for

an order as to payment of costs. Sub-section 1-D states that no appeal, revision or review will lie against the finding of the civil court.

10. A dispute about possession of Immovable property is essentially a civil dispute; the nature of the question involved in all such disputes possibly

induced the legislature to invest a Jurisdiction in the civil court. In Rengammal Vs. Rama Subbarayalu Reddiar, , Ramaswami J. likened the civil

court functioning u/s 146 Cr. P. C. to that of an expert referee like the Hindu Pandits and Muslim Muftis whose opinions on Customary law was

resorted to by British Judges in olden times.

The analogy furnished by the learned Judge enabled the Advocate for the contesting respondents to raise a contention that the jurisdiction of the

civil court was merely consultative or advisory. That, however, is not correct. The jurisdiction conferred on the civil court, is by the statute and not

one under the magistrate's own authority assuming that such a reference or delegation could be legal; the civil court will have a duty to decide the question referred by virtue of the statute. The magistrate on his part would be bound by the finding given by the civil court On the question of possession.

11. Section 146(1A) provides for the taking of further evidence by the civil court; that provision cannot be held to be exhaustive of the procedure

to be followed by that court; possibly it was in-vested by way of abundant caution to avoid a contention that the civil court should be confined only

to the materials or record sent up by the magistrate. Having regard to the fact that the section is silent about other matters of procedure and the fact

that the jurisdiction is conferred on the civil court qua a civil court, the well settled rule, namely, that where a statute confers on the ordinary courts

of the land a jurisdiction to decide a particular dispute, such courts would be governed by the ordinary rules of procedure applicable to its own

proceedings under the law (Sic) (should be applied). Section 4 C. P. G. provides that when there is a conflict between the Code and any special

jurisdiction or power or any special procedure prescribed by or under any other law, it is the latter that would prevail; but in the present case, there

is no such conflict and it would follow that a civil court in rendering a decision on a matter referred to It u/s 146 Cr. P. C. would be governed by

the CPC except in so far as it is either inconsistent with or abrogated by Section 146 Cr. P. C. The statute (Criminal Procedure Code) itself

appears to have recognised this principle when it enacted Sub-Section 1-D to Section 146 prohibiting appeals, revisions and reviews evidently for

the reason that if no such provision were made, there would be a right to resort to such proceedings under authority of the Civil Procedure Code.

12. Thus, the following characteristics exist in a matter referred to a civil court u/ s 146 Cr. P. C. (1) The forwarding of the case to and the decision

by the civil court is a definite step in the judicial determination of the question of possession (which, is a civil right) in certain class of disputes

covered by Section 145 Cr. P. C. (2) The jurisdiction of the civil court is by virtue of a statute and it is neither a delegate nor agent of the

magistrate or one whose function is merely advisory; the finding or decision of that court On the question referred would be binding on the

magistrate. (3) The civil court in determining the question would be governed by its own procedure except in regard to matters-provided by Sub-

Section 1-D of Section 146 Cr. P. C.

13. It is then necessary to consider whether these characteristics would be sufficient to constitute the case during its career in the civil court as a

proceeding" in that court so as to render Section 24 C. P, C. applicable. The word "proceeding" is defined in the Shorter Oxford Dictionary as

doing a legal action or process, any act done by the authority of a court of law" In "Words and Phrases" Permanent Edn. vol. 34, a number of

meanings taken from American decisions are given for the word "proceedings". Two of them which I give below bring out the essential import of

the words.

(1) "The word "proceeding" ordinarily relates to forms of law, to the modes in which judicial transactions are conducted", (p. 141).

(2) "The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right and

hence it necessarily embraces the requisite steps by which a judicial action is invoked". (P. 142).

In In Re: Sv.Rm.Ar. Ramanathan Chettiar, , Venkatararnana Rao, J. construing the meaning of the term as it occurred in the Court-fees Act, 1870,

observed that the word had been interpreted in various senses in different statutes according to the intent and scope of the statute, sometime in a

narrow sense and sometime in a wide sense, and the word when used alone had been interpreted to mean "all judicial proceedings".

In Ganga Naicken and Another Vs. A. Sundaram Aiyar, , Krishnaswami Nayudu J. held that the meaning to be given to the word "proceeding

would depend on the scope of the enactment in which it occurred and the context in which the word was used. The learned Judge held that a copy

application which could not be held to be a step in any action, would be a proceeding within the saving clause contained in Section 87(2) of the

Madras Court-fees Act, 1955. Recently, I had to construe the same section in regard to the proceedings before the Collector antecedent to an

award under the Land Acquisition-Act in Firm of M. Ghakravarthi Iyengar and Others Vs. The Collector of Madras, . The following passage at

page 209 stated the rule of interpretation thus:

It is an accepted rule of interpretation, where a statute does not provide an interpretation for a particular term or phrase, in order to arrive at the true meaning of the word or phrase one should have to understand it in connection with its context collocation etc., in accord with the intention of the enactment and that no word or phrase should be understood detached from the context.

Learned counsel for the contesting respondents contended that a proceeding under, the CPC should satisfy two conditions, namely, (1) that it should have been initiated in that court, and (2) that the court should be competent to give relief to the party. In support of the contention reliance was placed on the decision in Sri Sheonath Prasad Vs. City Magistrate, Varanasi and Others, . I shall advert to that decision later. Prima facie the

first of the two Qualifications set out above does not appear to be an essential one. One can refer in this connection to the decision in Ramakka

Vs. V. Nagesam, , a case which in some respects is analogous to the present one.

There in a suit for partition the matter was remitted for enquiry into mesne profits by a commissioner. It was held that proceedings before the

Commissioner would be governed by the provisions of the Code (Order 18 rule 1 in that case) by virtue of Section 141, which made the

provisions of the Code applicable to ""other proceedings"". A matter which was referred to a Commissioner was treated as a proceeding before

him. The second of the qualifications suggested mixes up two distinct ideas.

Authority to entertain a matter and dispose of the same need not necessarily include an authority to grant the relief. For example, if the jurisdiction

of a court to entertain a suit is contested, the court can investigate the matter and if it finds that it is beyond its jurisdiction, it has only to return the

plaint; no final order in the suit could be passed, but yet it cannot be denied that it would be proceedings in that court. I cannot, therefore, agree

that in order that a matter before a court should be held to be part of its proceedings, it should either have commenced in that court or that the

court should have a power to grant relief thereon to a party.

I have already indicated that the term ""proceeding"" is not a technical expression with a definite meaning attached to it, but one the ambit of whose

meaning will be governed by the statute. Essentially the term indicates a prescribed mode in which judicial business is conducted, Section 24 C. P.

C., is a provision in an enactment which is a Code, which is exhaustive on all matters provided for by it. Therefore, the term should have a

comprehensive meaning so as to include all matters of Judicial adjudication to which the Code will apply. As the provisions of the Code will apply

to a matter referred u/s 146, Cr. P. C. that will be a proceeding to which Section 24 C. P. C. would apply.

14. It was next contended --a contention which found favour with the learned District Judge--that the proceedings on a reference u/s 146 Cr. P.

C. were criminal proceedings, and that the provisions of Section 24 C. P. C. could not be invoiced for enabling a transfer thereof from one court

to another. I cannot agree with the contention. Section 24 is not in terms restricted to civil proceedings alone, but it is wide enough to include all

proceedings that may be pending in a subordinate civil court.

That consideration apart, the proceedings so long as they remain in the civil court should in my opinion be regarded only as a civil proceeding.

Reliance is, however, placed on two decisions that have taken a contrary view. Bodh Narain Prasad Vs. Deo Narain Singh and Others, was the

first of the cases cited. It was held in that case that a reference to a civil court by a Magistrate u/s 146(1) Cr. P. C. was not a suit or a proceeding

coming u/s 141 C. P. C. and that therefore, limitations as to pecuniary jurisdiction of the civil court will not apply.

The same view was taken in the next case on which reliance was placed, namely, Sri Sheonath Prasad Vs. City Magistrate, Varanasi and Others, .

In neither of the two cases did any question arise as to the powers of transfer, whether it could be made u/s 24 C. P. C. or under any appropriate

provisions (e.g. Section 561-A) of the Criminal Procedure Code. In the latter case Sri Justice Jagdish Sahai observed that the proceedings u/s 146

Cr. P. C. on reference to the civil court retained its old moorings and did not change its character from criminal to civil proceedings, and that they

could not become proceedings instituted in that court.

The learned Judge considered that, as the initiation and final disposal of the matter was in the criminal court, and as the function of the civil court

was of a limited character (the title to the properties not being adjudicated on), the proceedings could not be considered as a suit or one coming

u/s 141 C, P. C. With great respect to the learned Judge, I cannot agree with

some of the observations in the judgment.

I have pointed out earlier that a matter in order to constitute a proceeding of a court need not be initiated in it nor that the court should be

competent to make a final order thereon. It is not necessary either that the court should be competent to adjudicate the title of the parties. There

are several matters, e.g. claim proceedings; objection proceedings, a suit u/s 9 of the Specific Relief Act, etc, in which title cannot be

adjudicated. It cannot be denied that they are civil proceedings.

That a proceeding, though criminal in nature could be regarded as civil, if it were to be adjudged by a civil court, has been recognised in

Kumaravel v. Shanmuga Nadar, ILR 1940 Mad 762 : (A.I.R. 1940 Mad 465) , It was held in that case that a civil court did not cease to function

as a civil court when it considered an application made to it u/s 476 Cr. P. C, and that in regard to such applications, the CPC would apply.

Adopting the principle of the Full Bench decision, I would hold that the proceeding in the Instant case would be a civil proceeding in so far as the

decision of the issue referred to the court is concerned.

15. A case where the civil court was by statute entrusted with the decision of an issue arising between the parties in a proceeding before the

Revenue Court arose in Basant Lal Vs. Mt. Chiranjeevi , where it was held that the issue so referred was an original matter in the former court and

would be proceedings in that court so as to attract the operation of Section 141 C. P. C. In Maha Ram and Another Vs. Harbans , a Full Bench

of the Allahabad High Court held that a civil court to which an issue relating to a proprietary right was submitted by a revenue court acting u/s 271

of the Agra Tenancy Act was entitled to follow the CPC in determining the issue and refer the matter to arbitration.

In my opinion, the true principle is that, where the legislature confers a special jurisdiction on a recognised court and is silent as to the manner in

which that jurisdiction is to be exercised, it will only be an addition to the existing jurisdiction of that court, and all rules of procedure that apply to

its ordinary jurisdiction will be attracted in regard to the special jurisdiction as well. That rule would apply to a civil court determining an issue as to

possession on a reference u/s 146 Cr. P. C. To such a proceeding all provisions of the CPC except those relating to costs, appeals, reference,

review, etc., would apply so far as they are not inconsistent with the nature of those proceedings. It would follow that provisions of Section 24 C.

P. C, would apply to such proceedings.

16. The petitioners have as stated earlier made out a case for the necessity for a transfer. The proceedings in M. C. No. 8 of 1957, on the file of

the District Munsif Court, Periakulam, will, therefore, be transferred to the Sub Court, Dindigul, to be tried along with O. S. No. 35 of 1958. No

order as to costs.