
(2012) 09 AP CK 0009

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 6377 of 2010

Kola Durga Prasad

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151, 94
Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 482

Citation : (2013) 3 ALT(Cri) 61

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : P. Radhika, for the Appellant; K. Suresh Reddy for Respondent Nos. 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sri R. Kantha Rao, J.—This criminal petition is filed by the petitioner-accused u/s 482 Cr.P.C. to quash the proceedings in Miscellaneous Case No. 127 of 2010 in Crime No. 47 of 2010 of Gudlavalleru Police Station, Krishna District. Heard the learned counsel appearing for the petitioner-accused and the learned counsel appearing for the respondents 2 and 3 and the Additional Public Prosecutor representing the first respondent-State.

2. According to the petitioner, he is the tenant of the respondents 2 to 4 in the building bearing door no. 5-129. The father of the respondents 2 to 4 executed a lease agreement in favour of the petitioner for a period of 20 years i.e., from 08.05.1992 to 08.05.2012 for conducting the business. Initially the father of the petitioner did business in the said premises and after his death, the petitioner has been running business in the property. He obtained a license for doing liquor business in the name and style of Sri. Rama Durga Wines. Respondents 2 to 4 demanded the petitioner to vacate even before the expiry of the lease period. The petitioner requested them to allow to continue the business, since the lease agreement is in force till 08.05.2012. To the surprise of the petitioner, the 5th

respondent got issued a publication in Eenadu daily newspaper stating that he is going to purchase the property from the respondents 2 to 4. On that the petitioner issued notice dated 21.06.2010 to the respondents 2 to 5 which was received by them on 24.06.2010.

3. It is submitted that the respondents 2 to 5 hatched a plan to dispossess the petitioner highhandedly and forcibly. Thereupon the petitioner filed O.S.No. 132 of 2010 before the Principal Junior Civil Judge, Gudivada. He also filed an Interlocutory application in the said suit under Order 39 Rule 1 CPC to grant an order of temporary injunction restraining the respondents and their men from interfering with his peaceful possession and enjoyment over the property in question. While the suit was pending adjudication, the 6th respondent-Mandal Executive Magistrate, Gudlavalleru Mandal, Krishna District, issued proceedings u/s 145(1) Cr.P.C. basing on the report of the S.I., Gudlavalleru Police Station. It is mentioned by the learned Executive Magistrate in the said order that on being satisfied that the dispute existing between the parties is likely to cause breach of peace and tranquillity, he thought that there are sufficient grounds to promulgate orders u/s 145 Cr.P.C. in relation to the building mentioned and both parties are directed not to enter the subject building till the suit-O.S.No. 132 of 2010 is disposed of by the Principal Junior Civil Judge, Gudivada. Subsequently, on the same lines, the learned Mandal Executive Magistrate passed a final order prohibiting both parties from entering into the premises of the schedule mentioned building till the disposal of the suit-O.S.No. 132 of 2010 by the Principal Junior Civil Judge, Gudivada.

4. The said order is sought be quashed in the present criminal petition filed u/s 482 Cr.P.C.

5. The point for determination in this criminal petition, therefore, is: Whether the Mandal Executive Magistrate is competent to pass an order u/s 145 Cr.P.C. when a civil dispute is existing between the parties in relation to the building in question and when the matter was pending consideration by a competent civil Court?

6. The learned Mandal Executive Magistrate proceeded on the premise that Section 145 Cr.P.C. provides for executive interference by a summary process in disputes relating to property with a view to preventing breach of peace. Orders under this section, according to the learned Mandal Executive Magistrate, therefore are mere executive in nature. The section is mainly meant for preventing breach of peace and the jurisdiction of the Executive Magistrate is not ousted to initiate proceedings u/s 145 Cr.P.C. even if a civil suit is pending between the parties in respect of the property. His view seems to be that in the absence of any order passed by the civil Court, the criminal Court can proceed with the enquiry u/s 145 Cr.P.C. when there is an apprehension of breach of peace.

7. It is the contention of the learned counsel appearing for the petitioner that

since the lease period, as per the lease agreement executed between the parties, is upto 08.05.2012 and as the petitioner has been conducting business in the schedule premises, more particularly when a civil suit is pending before a competent civil Court, the Mandal Executive Magistrate has no jurisdiction to restrain both parties from entering into the schedule premises and the order is illegal.

8. On the other hand, it is the contention of respondents 2 to 4 that even if a civil dispute is pending, since there is no dispute as to title between the parties and when the breach of peace occurred on account of the petitioner erecting a tent in front of the suit building and as the third respondent demolished the said tent on the plea that the Gram Panchayat had issued notice to remove the encroached portion of the Gram Panchayat road, the Mandal Executive Magistrate, in exercise of jurisdiction u/s 145 Cr.P.C., can pass an order prohibiting both parties from entering into the possession of the subject property pending final disposal of the suit by the civil Court, to prevent breach of peace in the locality.

9. The learned counsel appearing for the petitioner relied on *Mahar Jahan and Others Vs. State of Delhi and Others*, wherein the Supreme Court held as follows:

The house property, which is the subject-matter of these criminal proceedings is also the subject-matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possession would be determined by the civil court. The criminal proceedings have remained pending for about a decade. There is no propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings u/s 145 Cr.P.C. may terminate, the order of the criminal court would always be subject to decision by the civil court. Inasmuch as the parties are already before the civil court, it is proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit.

Therefore, the criminal proceedings initiated u/s 145 Cr.P.C. are directed to be quashed. The parties are allowed liberty of approaching the civil court and of filing any application for interim relief therein although the suit is only for issuance of permanent injunction. The civil court would be the most appropriate forum to take care of the grievances of the parties and pass such interim order as would reasonably protect the interests of both the parties. The civil court may issue an ad interim injunction, may appoint a Commissioner or Receiver or may make any other interim arrangement as to possession or user of the property which is the subject-matter of proceedings in the civil court exercising the power conferred on it by Sections 94 and 151 CPC.

10. In the instant case also the suit filed by the petitioner is for the relief of permanent injunction. In view of the afore referred judgment of the Apex Court

even though the relief prayed for by the petitioner is for permanent injunction, the civil Court is competent to issue any interim order in the nature of injunction, appointment of Commissioner or appointment of Receiver in relation to the possession or usage of the property which is the subject matter of the suit. Therefore, in the instant case, it is not open for the respondents to contend that since there is no order passed by the civil Court, the Executive Magistrate can pass an order prohibiting both parties from entering into the subject property till the matter is finally decided by the civil Court.

11. The learned counsel appearing for the respondents 2 to 4 relied on judgment in Prakash Chand Sachdeva Vs. The State and another, wherein the Supreme Court held as follows:

The proceedings u/s 145 Cr.P.C. need not be dropped on the ground of pendency of civil suit. When there was no dispute about title, the rule that a suit or remedy in civil court for possession or injunction normally prevents a person from invoking the jurisdiction of the criminal Court would not apply. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition, one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Whether the dispute is not on the right to possession, and the question of possession, the Magistrate is empowered to take cognizance u/s 145 Cr.P.C.

12. The facts of the case relied on by the learned counsel appearing for the respondents 2 to 4 (2nd cited supra) are distinguishable from the facts of the present case. In the instant case, the petitioner came into possession of the subject property under a lease agreement executed by respondents 2 to 4, to continue in possession of the property as a tenant for a period of 20 years. Claiming to be tenant of the property, the petitioner filed O.S.No. 132 of 2010 on the file of Principal Junior Civil Judge, Gudivada for permanent injunction. He asserted in the said suit that he is entitled to continue in possession of the property by virtue of the lease agreement and to continue the business in the said property.

13. The learned Mandal Executive Magistrate, in my view, is not justified from removing him from the possession of the property under the guise of preventing breach of peace. As observed by the Hon''ble Supreme Court in the judgment (1st cited supra) relied on by the learned counsel appearing for the petitioner, even though the relief prayed for by the petitioner is for permanent injunction, the civil Court before which the suit is pending, is competent to pass an order in relation to possession of the property by way of granting temporary injunction, appointing a commissioner or appointing a receiver. Since the dispute is purely of civil nature and is pending adjudication before the civil Court, the civil Court only can pass appropriate orders in relation to possession of the said property. Mandal Executive Magistrate, on the pretext of preventing breach of peace, cannot deprive the petitioner of his possession over the property, if he is otherwise entitled in law to continue in possession of the property.

14. For the foregoing reasons, the order passed by the learned Executive Magistrate purportedly u/s 145 Cr.P.C. is illegal and without jurisdiction. It virtually amounts to interfering with the powers of the civil Court in determining the rights of the parties relating to the subject-matter of the suit. If the order passed by the Mandal Executive Magistrate is allowed to continue, it will result in miscarriage of justice, the order is passed in utter abuse of process of law, and is liable to be quashed. Consequently, the order passed by the learned Executive Magistrate in Miscellaneous Case No. 127 of 2010 in Crime No. 47 of 2010 of Gudlavalleru Police Station, is quashed.