

(1960) 12 MAD CK 0037

In the Madras High Court

Case No : Criminal Miscellaneous Petition No's. 968 and 970 of 1960

Kondammal and Others

APPELLANT

Vs

Duraiswami Naicker and Others

RESPONDENT

Date of Decision : 07-12-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Criminal Procedure Code, 1898 (CrPC) — Section 146

Citation : AIR 1961 Mad 384 : (1961) CriLJ 351

Hon'ble Judges : Anantanarayanan, J

Bench : Single Bench

Advocate : C.K. Venkatanarasimhan, P.P, for the Appellant; M. Natesan, for the Respondent

Judgement

Anantanarayanan, J.—These petitions relate to pending proceedings u/s 145 CrI. P. C. in the court of the Ex-Officio First Class Magistrate and Revenue Divisional Officer, Usilampatti. In both these petitions, it appears that the Magistrate made a reference to the civil court for determination of the factum of possession and the right thereto, within the ambit of Section 146 (1) CrI. P. C., but unfortunately, the revision petitioners (A party) appear to have failed to be present in the civil court, upon the relevant occasion, for reasons that we need not now enter into; at any rate, this much is clear that the civil court treated them as ex parte; and proceeded to dispose of the reference to it on that basis.

2. Now, it is obvious that the revision petitioners did not have an opportunity to show cause in the proceeding before the civil court, against any finding adverse to their case as to possession. Certainly, it is in the interests of equity and justice that they should be heard, before a finding is arrived at by the civil court. I am making this as a general observation, and without reference to the merits of the grounds upon which they failed to appear-In any event, it is now clear upon the authority of Kochadai Naidu and Another Vs. Nagayasami Naidu and Others, , that all provisions of the CPC are applicable to such matters as a reference to a

civil court u/s 146 CrI. P. C. This would necessarily involve the further proposition that a party, treated as ex parte in such proceedings, could seek to have that order set aside, and could request the civil court to afford him an opportunity to be heard. In accordance with Order IX, Rule 13 C. P. C., or, any other relevant rule of Order IX C. P. C.

In the present case, it is not clear whether such an application has been filed, or is about to be filed: In whichever contingency, the criminal court is bound to wait till the civil court receives such an application and disposes of it on the merits. If the civil court, after hearing the revision petitioners, arrives at the same finding or at a different finding, the criminal court is bound by it, whichever finding it may be. Hence, all that is necessary at the present stage is to direct that in these proceedings u/s 145 CrI. P. C. the criminal court must wait for the civil court to transmit the orders that it may ultimately pass in the matter, and then act in accordance with those findings.

3. With these observations, which constitute: sufficient guidance for the court seized of the subject matter of dispute u/s 145 CrI. P. C., those miscellaneous petitions are dismissed. The papers will be returned to the civil court for due action.