
(1961) 11 KAR CK 0012
In the Karnataka High Court

Madivala Thimmiah

APPELLANT

Vs

Sivarudriah and Others

RESPONDENT

Date of Decision : 17-11-1961

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146 (1), 24

Citation : (1962) CriLJ 708

Hon'ble Judges : A. Narayana Pai, J

Bench : Single Bench

Judgement

A. Narayana Pai, J.—The First Magistrate of Bangalore having started certain proceedings u/s 145 of the Code of Criminal Procedure made a reference to the Munsiff at Doddaballapur u/s 146 (1) of the same Code. Thereafter when one Ramaiah made an application to the Magistrate for being added as a party to the proceedings on the ground that he was in possession of one of the items of land in dispute, the Magistrate referred him to the court of the Munsiff. The Munsiff thought that his powers were confined to the reference and rejected the application. On a revision petition filed by the said Ramaiah before the learned Sessions Judge, Bangalore Division, he has made this reference exercising an opinion that the Munsiff's view as to his competence to entertain the application of Ramaiah is wrong in law and recommending that the said application be granted and he be added as a party to the proceedings.

2. The basis of the learned Munsif's view appears to be that he is not competent to entertain the application of Ramaiah for the reason that his powers are limited by the reference made to him by the Magistrate. If this view is correct, a Civil Court to which reference is made by the Magistrate u/s 146(1) would be in the position of a mere delegate or agent of the Magistrate. Such a view appears to me to be unacceptable. The power which the Civil Court exercises on a reference being made to it as aforesaid is a statutory power conferred upon it directly by the Statute itself. The civil court does not derive its power from the order of the Magistrate.

That is also the view taken by Ramachandra Iyer, J, of the Madras High Court in Kochadai Naidu and Another Vs. Nagayasami Naidu and Others, , with which I respectfully agree. His" Lordship further points out that the jurisdiction conferred on the Civil Court u/s 146 of the Code of Criminal Procedure is in the nature of a special jurisdiction and the statute conferring that jurisdiction not having prescribed any special procedure for the exercise of that jurisdiction, the Civil Court in respect of that special jurisdiction may follow its own ordinary procedure, that is to say, the procedure as prescribed by the Code" of Civil Procedure, except to the extent to which the provisions relating to its ordinary procedure are inconsistent with any of the provisions of the statute conferring that special jurisdiction.

Now Section 146 of the Code of Criminal Procedure does not require the Civil Court to follow any particular procedure. The provision of Sub-section (i-A) in regard to the taking of further evidence by the Civil Court is not suggestive of any limitation or restriction placed upon the powers of the civil court. On the contrary, it actually suggests that the civil court is not limited to the evidence recorded by the Magistrate. The only provision of Section 146 of the Code of Criminal Procedure which may be said to be inconsistent with the ordinary procedure followed by civil courts is that contained in Sub-section (i-D), according to which no appeal shall lie from any finding of the civil court given on a reference under that Section nor shall any review or revision of any such finding be allowed. The obvious purpose of this provision is that the final order is to be passed by the Magistrate whereafter the parties have substantial remedy by way of suit to establish their rights.

3. In the decision of the Madras High Court referred to above, the question was whether a reference received by a Civil Court u/s 146 (1) of the Code of Criminal Procedure is amenable to powers of transfer u/s 24 of the Code of Civil Procedure. His Lordship held that it was a civil proceeding within the meaning of Section 24 of the CPC and therefore capable of being transferred by an order made under that section.

4. The effect of this decision therefore is that except to the extent to which the application of the CPC is excluded/ .by, Sub-section (i-D) of Section 146 of the Code of Criminal Procedure, a Civil Court dealing with a reference by a Magistrate under its first sub-section can exercise all powers vested in it by the Code of Civil Procedure. Consequently, it would have the power to add parties to the proceedings if it considers necessary to do so for the purpose of completely adjudicating upon the question before it. Such a power is not only not inconsistent with any of the provisions of Section 146 of the Code of Criminal Procedure but actually appears to subserve the main purpose of that section. The occasion or the reason for the Magistrate to make a reference u/s 146 is that the Magistrate entertains an opinion either that none of the parties before him was in possession of the property in dispute on the date of the preliminary order or that is unable to decide as to which of them was then in such possession. In either

event, there is the possibility of a person other than the contending parties having been in possession of the disputed property on the date of the preliminary order. It should, therefore, be quite proper for such a party to come before court claiming to have been in possession and proper for the court to hear him and consider whatever evidence he might produce in order to come to a just and correct finding on the dispute as to possession referred to it for decision.

5. The contending respondents before me have relied upon the judgment of Das, J. of Patna High Court reported in Purnendu Narayan Vs. Akhouri Jagannath Prasad and Others, in support of the proposition that where an enquiry u/s 145 had reached a stage when evidence of witnesses of one party had already been recorded and some of the witnesses of other party also examined, a third party cannot, as of right, claim to be added as a party to the enquiry. This position, however, does not derogate from the power of a Court to add a party which power is not lost" if a particular stage in the proceedings ha? been reached or crossed. The question is not whether Ramaiah is, as of right, entitled to come on record but whether the Munsiff has or has not the competence to allow his application if he considers necessary to implead him, hear him and take his evidence with a view to make a complete and proper adjudication of the dispute referred to him.

6. I, therefore, accept the reference, set aside the order of the Munsiff and direct him to entertain the application of Ramaiah, consider the same on merits and deal with it in accordance with law.