

(1958) 02 MAD CK 0028

In the Madras High Court

Case No : Criminal Revision Case No. 573 of 1957 and Cri. Revision Petition
No. 558 of 1957

Muthu Sethurayar and Another

APPELLANT

Vs

Louduswami Odayar and Others

RESPONDENT

Date of Decision : 20-02-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 146(1), 146(1D), 435, 439

Citation : AIR 1959 Mad 111 : (1959) CriLJ 335 : (1958) 2 MLJ 619

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : G.R. Jagadisan, P.P, for the Appellant; R. Santhanam and T.S.
Kuppuswami Aiyar, for the Respondent

Final Decision : Dismissed

Judgement

Somasundaram, J.—This is a revision petition against the order of the Ex-Officio First Class Magistrate at Mannargudi in M. S. No. 1 of

1957 on his file. The petitioners herein are A party, and the respondents B party. A party, that is, the petitioners herein, asked for an order u/s

145, Criminal P. C., in respect of the properties which are subject-matter of dispute and which are mentioned in the schedule annexed to the petition.

In accordance with the procedure laid down, affidavits and also documents were filed by both parties. As the lower court was unable to decide as

to who was in possession of the properties, the matter was referred to the Subordinate Court. Tanjore, under Clause 1 of Section 146, Criminal

Procedure Code. The Subordinate Court, after perusing the affidavits and the documents, gave a finding that B party was in possession of the

lands and transmitted the findings together with records of proceedings to the Magistrate who made the reference.

The magistrate, thereupon, disposed of the petition in conformity with the decision given by the Subordinate Court and found that B party was in possession of the lands. Against that order A party has filed this revision.

2. Mr. Santhanam, appearing for B party raised a preliminary objection to the maintainability of this revision against the order passed by the Magistrate. His contention is based upon Clause 1-D of Section 146, which is as follows:

No appeal shall lie from any finding of the civil court given on a reference under this section nor shall any review or revision of any such finding be allowed.

He contends that this revision does not lie in view of the above clause. But Mr. Jagadisan, appearing for A party, points out that this clause is confined only to the appeals or reviews or revisions against the findings of the civil court. I agree with his contention that the Sub-clause 1-D, refers only to an appeal, or review or revision against the finding of the civil court, that is, no appeal or review or revision lies on the civil side against the finding of the Civil Court.

But certainly it is open to file a revision under Sections 435 and 439 against the order of the Executive First Class Magistrate at least to show that the order of the lower court is not in conformity with the decision of the civil Court and it cannot be said that no revision at all lies against the order of the Sub-Magistrate. I, therefore, overrule the preliminary objection and hold that revision lies against the order of the trial court under Sections 435 and 439.

3. The contention of Mr. Jagadisa Aiyar is that this court has jurisdiction to go into the correctness or legality or otherwise of the findings of the civil court. I do not think that what is prohibited in the section in one way can be gone into in another way. As pointed out by their Lordships at page 627 in *Madden v. Nelson and Fort Shephard Railway*, 1899 AC 626, "it is a very familiar principle that you cannot do that indirectly which you are prohibited from doing directly.

The above decision has been followed in *A. G. of Saskatchewan v. A. G. of Canada*, AIR 1949 PC 190 and the observations are at paragraph

14 in page 193. Therefore, for this court to go into the correctness of the findings of the civil court would be to do a thing indirectly what is directly

prohibited. What utmost this court can do in revision is to ascertain whether the criminal court has implemented the decision of the civil Court.

To this limited extent only a revision can lie. It is fairly conceded by Mr. Jagadisan that the criminal court has followed the decision of the civil

court. Therefore, there is no scope for interference, as it is a statutory duty imposed upon the criminal courts to follow the findings of civil courts,

and pass orders in accordance with that. This the trial court has done. Therefore, there are no grounds for interference in revision, and this revision

petition is dismissed.