
(1981) 07 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 205 of 1981

P. Madhava Rao

APPELLANT

Vs

K. Bhagvandass and Another

RESPONDENT

Date of Decision : 13-07-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145, 145(1), 145(4)

Citation : (1981) 2 APLJ 116

Hon'ble Judges : Gangadhara Rao, J

Bench : Single Bench

Advocate : K.R. Kuppuswamy Iyengar, for the Appellant; C. Padmanabha Reddy, for the Respondent

Judgement

1. The petitioner is the President of the Nehrunagar Co-operative Housing Society, East Marredpally, Secunderabad. He is the second party-respondent in M.C. No. B-42 of 1979 on the file of the Special Executive Magistrate, Hyderabad. H. Bhagwandass, son of late Dr. H. N. Dass is the respondent. He was the petitioner-first party in that case.

2. This petition is filed to revise the order of the Special Executive Magistrate dated 30th March, 1981, allowing the petition of the respondent u/s 145 Cr.P.C.

3. The respondent filed O.S. No. 55/1963 in the Court of the III Additional Judge, City Civil Court, Secunderabad against the petitioner and some others for declaration of his title and for possession of 3555 square yards of land in survey number 74/10, East Marredpally Village, Secunderabad Taluk, Hyderabad. That suit was resisted by the petitioner herein and others. The learned III Additional Judge, by his judgment (Ex. B-4) dated 16th February, 1971, held that the respondent had failed to establish his title to the plaint schedule land and also his possession of the land on the date of the suit. He observed that the respondent's documents disclosed that long before November, 1962, the land was in possession of the defendants. He also observed that the defendants had shown by positive evidence that the respondent did not have title and possession for

any land to the north of boundary pillar 98. Here I may add that the suit was filed in 1960 and the plaint schedule land is stated to be situated to the north of boundary pillar No. 98. Aggrieved by the judgment the respondent filed C.C. C.A. No. 152/1972 in the High Court of Andhra Pradesh. It was dismissed by a Division Bench of this Court on 2nd March, 1976. The judgment of the Division Bench shows that no arguments were advanced by the learned counsel for the respondent on the merits of the appeal. The judgment is Ex. B-2. Questioning the judgment of the Division Bench, the respondent filed Civil Appeal No. 929/1976 in the Supreme Court. The Supreme Court dismissed the appeal by its order dated 11th April, 1979. It was observed in that judgment that since no arguments were advanced by the learned counsel for the respondent on merits of the appeal in the High Court, they could not be advanced in the Supreme Court.

4. About a month later, the respondent filed a petition under S. 145 Cr.P.C. before the special Executive Magistrate, Hyderabad, alleging that his father had purchased survey number 74/10 in 1950 and was in possession of the land since then, that in 1975 his father had laid a metal road in the northern portion of the land above boundary pillar No. 98, that after the dismissal of the appeal by the Supreme Court the petitioner and others tried to interfere with his possession on 22nd April, 1979 and, therefore, he filed a petition that the petitioners should not interfere with the possession of his land of 3555 square yards in extent in survey number 74/10, East Marredpally, Secunderabad. That petition as numbered as Miscellaneous Case No. B-42/1979. The Special Executive Magistrate passed a preliminary order under S. 145(1) Cr.P.C. on 10th May, 1979. That petition was resisted by the petitioner and others. On 30th March, 1981, the Special Executive Magistrate passed an order holding that the respondent (that is the first party) was in actual possession of the suit land on the date of the preliminary order i.e., 10th May, 1979 and even within two months before that dated, and therefore, he was entitled to maintain his possession over the suit land, until he was evicted therefrom in due course of law. Questioning that order the petitioner had filed this revision.

5. The learned counsel for the petitioner has submitted that in view of the dismissal of the suit. O.S. No. 55/1963 filed by the respondent for declaration of his title and possession of the suit land and the ultimate judgment of the Supreme Court dated 11th April, 1979, the Special Executive Magistrate erred in holding that the respondent was in possession of the land on the date do the preliminary order i.e., 10th May, 1979 and within two months before the dated of that order. He submitted that the Magistrate is bound by the said judgment of the Civil Court and he cannot go beyond them (sic). On the other hand, it was submitted by the learned counsel for the respondent that the suit was filed in 1960, that the Civil Courts were concerned with the possession of the respondent only in 1960 but not thereafter, that the Magistrate has found on a consideration of the evidence that the respondent was in possession of the land on the date of the preliminary order and within two months prior to the date of that order, that

it is not for this Court to interfere with that order in a revision, that the remedy of the petitioner is only to file a civil suit, for declaration of his title and possession and in these circumstances the revision should be dismissed.

6. Under S. 145(4) Cr.P.C. the Magistrate shall, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute. If it appear to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

7. Under this section, the Magistrate has to decide as to who was in actual possession on the date of the order made by him under sub-section (1). If any party has been wrongfully and forcibly dispossessed within two months next before the date of that order, he may treat the party so dispossessed as if that party had been in possession on the date of his order.

8. In this case, as stated by me already, the respondent filed the suit O.S. No. 55/1963 in the Court of the III Additional Judge, City Civil Court, Secunderabad, for declaration of his title and for possession of 3555 square yards of land in survey number 74/10, (which is the subject matter of the petition under S. 145 Cr.P.C.), against the petitioner and others. The learned Additional Judge by his judgment dated 16th February, 1971 held that the plaintiff failed to establish his title or possession for the suit land. He also held that the land was in possession of the defendant. Hence he dismissed the suit. The appeal filed against that order was dismissed by a Division Bench of this Court on 2nd March, 1976. In fact, no arguments were advanced on the merits of the case. The appeal filed to the Supreme Court was also dismissed on 11th April, 1979. While so, on 7th May, 1979 that means within one month, the respondent has filed a petition u/s 145 Cr.P.C. before the Executive Magistrate and the Magistrate held that the respondent was in possession of the suit property on 10th May, 1979, when he passed the preliminary order. It means, that the learned Magistrate has given a complete go-by to the judgment of the Civil Courts, including that of the Supreme Court, which held that the respondent had no title to or possession of the suit land and it was the petitioner that was in possession on the suit land. Evidently, the respondent has filed the petition under S. 145 Cr.P.C. within one month from the date of the judgment of the Supreme Court, to get over the Civil Court judgment.

9. Proceedings under S. 145 Cr.P.C. are to be taken as a preventive measure to prevent breach of peace when there is a dispute with regard to a land. What the Magistrate concerned is the actual possession of the land. It is for the Civil Court to decide the question of title. When there is a recent decision of the Civil Court,

the Executive Magistrate cannot ignore it. He is bound by the decision of the Civil Court. In fact, if he makes an order under S. 145 Cr.P.C., it is subject to the decision of the Civil Court. In these circumstances I am of the opinion that the learned Magistrate clearly erred in ignoring the effect of the decision of the Supreme Court dated 11th April, 1979 and holding that the respondent was in possession of the suit property on 10th May, 1979, when he passed the preliminary order. But the learned counsel for the respondent submitted that the decision of the Civil Court that the respondent had no title or possession of the suit land on the date of the suit, and the petitioner was in possession, could only be for possession of the property in 1960 when the suit was filed, but not on 10th May, 1979 when the Magistrate passed the preliminary order. According to him the respondent could have come into possession of the suit land in the interregnum, and if he was in possession on 10th May, 1979, when the preliminary order was passed, it was the duty of the Magistrate to protect it. I find it difficult to agree with this submission. It is true that the suit was filed in 1960 and the Supreme Court pronounced the judgment only in 1979. It is not his case that during the interregnum he has come into possession of the property. In fact, a perusal of his petition shows that he was contending that his father was in possession of the suit land all through from 1950. That was his case in his suit also, which was rejected by the Civil Court, when the Civil Court, has held that the respondent had no title or possession and the defendant was in possession of the suit land.

10. It has to be presumed that the defendant continued to be in its possession. It is vacant land. The presumption is that possession follows title. Therefore, it has to be held that till 1979 the plaintiff had no title or possession of the suit land, but it was the defendant that was in possession. It is the duty of the Magistrate under S. 145 Cr.P.C. to protect the lawful possession of a party as declared by the Civil Court. As I understand if such a party is dispossessed within two months prior to the date of his order u/s 145 Cr.P.C. the Magistrate has to restore possession of the land to him.

11. Now I will refer to some of the decisions on this question.

12. In *Havildar Venkatachallam Vs. Sappar Palayam and Another*, it has been held by Somasundaram J., that "in a case where the petitioner after going to civil courts several times and obtaining an order in his favour, is frustrated in his attempts to be in possession by the highhanded action of the counter petitioners, it is the duty of the Magistrate to support the decisions of the Civil Courts and see, as far as possible, that the decrees of the Civil Courts are maintained by declaring the petitioner to be in possession of the property. Otherwise, it would only amount to putting a premium upon the highhanded and unlawful activities of the other side."

13. In *Jang Bahadur Singh Vs. Nazimul Haque and Others*, it was observed by Ray J., that "a Magistrate in exercise of the jurisdiction u/s 145 Cr.P.C. cannot re-agitate a dispute that has been settled by a competent Court and give a

declaration in favor of a party whose claim to file and subsisting possession had already been negated in a very recent contested litigation. To allow this would amount to permitting a criminal court to fly in the face of the decision of a competent civil court being the only Court competent to adjudicate with finally the disputes as to title and possession as between the parties having conflicting claims thereto. The scope and purview of S. 145 does not allow such free and untrammelled interference by Criminal Courts with the final decision of the Civil Court. This may not apply to cases where the Civil Court decision is old enough making room for possibilities of subsequent disturbances of the state of things found and pronounced to have been once existing. But any question of subsequent disturbance of possession within two months of the decision of the civil court does not attract the applicability of S. 145 except upon a complaint of the decree-holder himself for the purpose of being restored to possession within the meaning of the proviso to sub-section (4) of S. 145 read with the latter part of sub-section (6) of that Section. In the absence of such a complaint, proceedings taken by the Magistrate under sub-section (4) within two months of the decision of the Civil Court of highly improper and illegal."

14. In *Masih Uddin Vs. The State and Others*, it has been held that, it was the duty of the Magistrate holding proceedings under S. 145 to maintain the rights of the parties when such rights have been declared by a competent Court within a time not remote from taking proceedings under the Section.

15. In *Bipta v. Dwarka* 1961 All LJ 873 it has been held by W. Broome, J. that where one party has already obtained a clear declaration of possession from the competent civil or revenue Court, there is obviously no necessity for any action by a Magistrate u/s 145, unless the decision is of such a prior date as to render it possible for changes in possession to have taken place in the intervening period.

16. In AIR 1943 410 (Oudh) Bennett J., held that where the Civil Court which was seized already of the matter has disposed of it in favour of one of the parties to proceedings under S. 145 the proceedings under S. 145 should be set aside in revision. It will be open to the Magistrate if he thinks necessary to take proceedings against either or both parties u/s 107.

17. In *Banamali Mohapatra Vs. Bajra Nahak and Others*, Narasimham, C.J., held that :

"In proceedings under S. 145 the decree passed by a Civil Court regarding the possession or an injunction against property in dispute must be respected and losing defendants in the suit should not be allowed to allege their possession in spite of the decree passed against them by suppressing the fact of the previous civil litigation respecting the disputed property. Such a plea even if taken cannot possibly be accepted in view of the judgment in the previous litigation by the High Court, for even if in spite of the decree the opposite party attempted forcibly to take possession that would be in disobedience of the order of injunction of the Civil Court which would be punished according to law. In a case

of this kind the successful party in the civil litigation must be maintained in possession and any attempt to interfere with his possession should be prevented only by taking recourse to proceedings under S. 107 or S. 144 Cr.P.C., if it becomes necessary. The starting of a proceeding under S. 145 Cr.P.C. between parties who had already fought out litigation in the Civil Court would encourage defiance of the decree of the Civil Courts and paralvse the administration of Justice."

18. In *Rajendra Narayan Bhanja Deo Vs. Cahudhuri Chintamani Mahapatra*, it has been held, that when once delivery of possession is proved, and on the day of the delivery of possession the party to whom possession was given was in possession as against the man who was party to that delivery of possession and was bound by the writ, the Magistrate must start with the presumption that the state of things which existed on that day continued to exist thereafter unless the contrary is established, and the judgment-debtor can only succeed if he established beyond doubt that he had completely ousted the man who was put in possession by the Court and was in peaceful possession of the property in dispute.

19. In *Kulada Kinkar Roy v. Danesh Mir*, it was held that the weight to be attached to the previous order of a Civil or Criminal Court relating to the subject of dispute depends upon the facts and circumstances of a particular case.

20. In *Tekchand v. Sabir Husain* AIR 1955 Hyd 65 : 1955 Cri LJ 480 (FB) a Full Bench of the Hyderabad High Court of possession of a very recent date where there is no evidence to show disturbance or change of that possession had occurred, the Magistrate is bound to respect the Civil Court's order and if he does not do so, he would be acting without jurisdiction.

21. In *Imambu v. Hussenbi* AIR 1960 Mys 203 : 1960 Cri LJ 1112 it was held, that if there is a recent decision of a competent Civil Court by which the question of possession as between the contending parties has been decided or possession was delivered to one of the parties through Court, then the Magistrate should not sit on judgment over that decision; on the other hand, he should follow the same. It was observed that the enquiry made by him is of a summary character and his decision on the question of possession is subject to the decision of a Civil Court of competent jurisdiction. It must also be borne in mind that in most cases the Magistrate holding enquiry under S. 145 Cr.P.C. is likely to be an executive officer not having and judicial training. Hence, the Magistrate acting under S. 145 Cr.P.C. ought to respect any recent decision given by a competent Civil Court on the question of possession. This is not the same thing as saying that the decision given by the Civil Court deprives him of the jurisdiction conferred on him by S. 145 Cr.P.C. It is a question of judicial propriety which has now ripened into a question of law. If the Civil Court has given a decision final or interim to that extent the dispute is decided and the Magistrate should enforce law and order on that basis.

22. In *B. Kondayya v. S.D.M., Amalapuram* (1974) 1 Andh WR 76 : (1974 Cri LJ 1148) it has been held by Chennakesava Reddy, J., that it was the duty of the Magistrate to uphold the decree of the Civil Court for possession in respect of the disputed lands, that he cannot go behind the decision of the civil court in the matter and it is open to the petitioners to bring to the notice of the Criminal Court if there is any decision of the civil Court.

23. In *Harijan Yellaiah v. State of A.P.* (1980) 2 APLJ (HC) 237 : (1981 Cri LJ 988) a Division Bench of this Court held, that the pendency of a civil suit between the parties in respect of the disputed land does not take away the jurisdiction of the Criminal Court to initiate proceedings under S. 145 Cr.P.C. if the Criminal Court is satisfied that the dispute is likely to result in the breach of peace. The Magistrate however, should not lightly proceed in the matter, when the same is pending in a Civil Court. It was also held that during the enquiry under S. 145 Cr.P.C., if it is brought to the notice of the Criminal Court that there is an order of the Civil Court in regard to the possession even by way of interim injunction, the same should be given due weight and it is expedient that the Criminal Court should uphold the order of the Civil Court and it makes no difference whether the order of the Civil Court was passed before or after the initiation of the proceedings u/s 145 Cr.P.C. The Criminal Court should better drop the proceedings initiated under S. 145 when there is such an order of injunction issued by the Civil Court in regard to the possession, and if necessary may initiate proceedings under S. 107 Cr.P.C. It was also observed that if the Civil Court has not issued any order with regard to the possession even by way of temporary relief, or where such order is vacated or kept in abeyance by higher Court, that is to say, when such order is not in force and the Criminal Court is satisfied that there is apprehension of imminent breach of the peace, it can proceed with the enquiry under S. 145 Cr.P.C. and pass appropriate orders despite the pendency of the Civil Suit.

24. This decision is binding upon me. The learned counsel for the respondent tried to distinguish it by stating that, in that case, an interim injunction was granted by the Civil Court in favour of the petitioners restraining the respondents from interfering with the possession of the petitioners and it was pending when the Sub-Divisional Magistrate initiated proceedings under S. 145 Cr.P.C. But, in principle, it makes no difference in a case where there was a recent decision of a Civil Court holding that the plaintiff is not in possession, but the defendant is in possession of the lands, the case is much stronger, because the question of possession has been settled by a Civil Court and the Sub-Divisional Magistrate is bound to respect it.

25. The learned counsel for the respondent relied upon *Mst. Hosnaki and Others Vs. State*, and submitted that even if there is a recent decision of the Civil Court, it is not conclusive evidence of possession of the party in an inquiry under S. 145(4), and the Magistrate is not bound to give his finding in accordance with the decision regardless of the actual evidence, and if the evidence satisfied him

that the other party is in actual possession, his is bound by law to declare him to be in possession despite the decision of the Civil Court or the delivery of possession by it. I am afraid that the proposition of law has been too broadly stated by the learned Judges. Any decision regarding possession under S. 145 Cr.P.C. is subject to the decision of the Civil Court. Even if when there is a very recent decision of the Supreme Court, to say that the Magistrate is not bound by it, he can reappraise the evidence that was adduced in the Civil Court and come to a contrary conclusion regarding possession is, in my opinion, defeating the very intendment of S. 145.

26. It is one thing to say that the existence of a recent decision of a Civil Court on question of possession oust the jurisdiction of the Magistrate to start proceedings under S. 145 Cr.P.C., but another thing to say that in effect he could ignore it. I have already referred to a latter decision of the Allahabad High Court in *Bipta v. Dwarka* 1961 All LJ 873 (supra).

27. Reliance was also placed by the learned counsel for the respondent in *Geevarghese Yohannan and Another Vs. P.J. Abraham Kathanar and Others*, where it has been held by the Kerala High Court that the Magistrate who is empowered to act under S. 145 must respect and give due weight to the recent decision of a civil court even if it be an interim order declaring possession of a party. Even in cases where a party might have obtained a decree or an interim order of competent civil court declaring his possession there may still be dispute between the parties regarding possession and other rights, which is likely to lead to breach to peace. When once a Magistrate referred to under S. 145(1) is satisfied on the materials before him that there exist dispute regarding possession of immovable property which will cause or is likely to cause imminent breach of the peace, he is bound to take necessary preventive action either u/s 145 or other relevant sections of the code. In cases where there is a decree or a recent decision of a competent civil court, it may be better that the Magistrate take action under S. 107 or even under S. 144 of the Code. But this is a matter within the discretion of the Magistrate and this will not deprive the jurisdiction of the Magistrate to act either under S. 145 or S. 147. This decision in no way interdicts the opinion I have taken.

28. In this present case, as stated by me already, the Supreme Court dismissed the appeal of the respondent on 11th April, 1979. Hardly within one month, that is, on 7th May, 1979, he filed the petition under S. 145 Cr.P.C. The respondent has not adduced any clinching evidence to show that subsequent to the decision of the civil court, he has trespassed upon the suit land to the knowledge of the petitioner and was in open and continuous possession of the land until he had filed the petition under S. 145 Cr.P.C. As stated by me already, it is vacant land the presumption is that that possession follow title. The learned Magistrate reappraised the evidence that was already considered by the civil courts and came to a contrary conclusion that it was the respondent that was in possession of the suit land. In my opinion he has not given due weight to the decision of the

civil court, including the highest court of the land. Clearly he has exceeded his jurisdiction.

29. Next it was submitted by the learned counsel for the respondent that in any event, the petitioner has filed a suit, O.S. No. 340/1981 in the court of the III Additional Judge, City Civil Court, Hyderabad, for declaration of title, possession and for injunction against the respondent and, therefore, this court should not interfere with the order of the Magistrate. But, it is stated by the learned counsel for the petitioner that the suit had been filed by way of abundant caution and even otherwise, it is only a suit for declaration of title and for injunction and it does not preclude this court from interfering with the order of the Magistrate, if it is wrong. I agree. Because, the order of the Magistrate was adverse to the petitioner, he has filed the suit by way of abundant caution, though on the previous occasion he had succeeded all through in civil suit up to Supreme Court. It does not mean that this court cannot interfere with the order of the Magistrate, if it is otherwise wrong.

30. In the result, I hold that the impugned order of the Magistrate is patently erroneous, and I quash it. Accordingly, the Revision is allowed.

31. Revision allowed.