

(1959) 08 MAD CK 0017
In the Madras High Court

Rengammal

APPELLANT

Vs

Rama Subbarayalu Reddiar

RESPONDENT

Date of Decision : 03-08-1959

Acts Referred:

Citation : (1960) CriLJ 489

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Judgement

Ramaswami, J.—These are two connected revisions preferred against the orders made by the learned Ex-Officio First Class Magistrate,

Cheranmahadevi, in M. C. Nos. 36 of 1957 and 2 of 1958 and the opinion of the learned Subordinate Judge of Tirunelveli in C. M. P. 2 of 1958.

2. The facts are short: There has been a land dispute regarding possession between Rengammal and Rama Subbaraya Reddiar. The Ex-officio

First Class Magistrate, Cheranmahadevi on account of the complicated questions of law, which arose, proceeded u/s 146(1) CrIPC This Section

has been newly introduced and states that if the magistrate is of opinion that none of the parties was then in such possession, or is unable to decide

as to which of them was then in such possession, of the subject of dispute, he may attach it and draw up a statement of the facts of the case and

forward the record of the proceeding to a civil court of competent jurisdiction to decide the question whether any and which of the parties was in

possession of the subject of dispute at the date of the order as explained in Sub-section (4) of Section 145, and he shall direct the parties to

appear before the civil court on a date to be fixed by him.

In this case that procedure was adopted and the learned Subordinate Judge,

Tirunelveli on receipt of the reference perused the evidence on record and took further evidence produced by the parties respectively, considered the effect of all such evidence, and decided the question of possession so referred to it. The learned Subordinate Judge has sent his findings to the magistrate. The magistrate on receipt of these proceedings has disposed of the matter u/s 145 in conformity with the decision of the civil court. That decision was that the counter petitioner was in possession of the lands in dispute on the relevant date and which conclusion was on a consideration of all the circumstances of the case and after preferring the affidavits filed on behalf of the counter petitioner to those of the petitioner.

3. Two applications are now preferred, first against the order of the magistrate dismissing the petition and secondly against the opinion of the learned Subordinate Judge transmitted to the magistrate and in conformity of which the magistrate has decided the case.

4. So far as the merits of the case are concerned, the revision petitioner has no case. On acceptable and relevant evidence it has been found that the counter petitioner was in possession of the fends in dispute on the relevant date prescribed Under Sections 145 and 146 CrIPC This finding is of course subject to adjudication in the civil court. I am unable to see how the conclusion set out can be held to be not in accordance with the evidence in the case. Therefore, the dismissal of the petition was quite proper.

5. In regard to the revision which is sought to be preferred against the proceedings of the learned Subordinate Judge, one has only to look at Section 146(l)(d), which lays down that 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. In other words, the Parliament in the exercise of its undoubted and unquestionable powers has limited the revisional powers of this Court to this extent, viz., that in case of findings given u/s 146 CrI. P. C. no revision shall lie and has thereby provided against mischievous consequences and duplicated wasteful court work.

6. This point also is concluded by authority 12½ vide Muthu Sethurayar and Another Vs. Louduswami Odayar and Others, .

7. This restriction is but proper because the findings get merged in the decision of the magistrate and all the grounds that can be urged against the finding can be urged against the finalised decision and if there is no such

restriction there will be multiplicity of proceedings and possible conflicting revisional orders reducing the whole thing to an absurdity. This wise restriction has been conceived in the best public interests and involves no invasion of the fundamental right or diminution of the paternal and supervisory jurisdiction of this Court.

8. This provision is akin to and an improvement on the old system of the Hindu Pandits and Muslim Muftis who furnished opinions to the courts

expounding the Hindu and Muslim law applicable to the cases referred to them and courts gave decisions in accordance with those expositions.

(For an interesting discussion of this topic see Rt. Hon"ble Sir George Rankin, sometime C. J. Calcutta High Court, Background to Indian law,

(Cambridge University Press) pages 4-5).

9. The objective of Parliament was to harmoniously combine the intimate revenue knowledge of the Executive magistrate in actual touch with the

locality, with the sound legal knowledge of the fundamental principles of jurisprudence regarding title and possession by the munsif.

10. Therefore, this civil revision petition also has got to be dismissed and it is hereby dismissed.