

(1972) 10 GUJ CK 0006
In the Gujarat High Court

Shanabhai Motibhai

APPELLANT

Vs

H.S. Rathod, P.S.I. Borsad and Others

RESPONDENT

Date of Decision : 26-10-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 107, 145, 145, 146

Citation : (1973) 14 GLR 74

Hon'ble Judges : C.V. Rane, J

Bench : Single Bench

Judgement

C.V. Rane, J.—One Bhupatbhai Prabhatbhai Padhiar has filed a suit being civil suit No. 161 of 1971 in the court of the Civil Judge, Junior Division, Borsad, for obtaining certain declaration in respect of the lands bearing S. Nos. 374, 453, 454, 455 and 456 of the village Ankav taluka Borsad and also for an injunction restraining the defendants from interfering with his possession. The above lands admeasure 7 acres and 34 gunthas. The learned Civil Judge issued ad-interim injunction against the defendants. Thereafter, the injunction was confirmed on 27-10-1971. In the meanwhile, the Police sub-Inspector, Ankav, lodged a complaint in the court of the Sub-Divisional Magistrate, Petlad, for taking action u/s 145 of the Criminal Procedure Code (hereinafter referred to as the Code). Acting on the above complaint, the learned Sub-Divisional Magistrate started proceedings u/s 145 of the Code and on the basis of the evidence adduced before him, he came to the conclusion that, the plaintiff of the aforesaid suit namely Bhupatbhai was in possession of the lands in question. He, therefore, passed the following order on 2-5-1972:

In view of this, I hold that Shri Bhupatbhai opponent No. 1 was in possession of the disputed lands and that he should remain in possession until he is evicted by some of the competent court.

Before the above order was passed, the defendants had preferred an appeal to the District Court at Nadiad to challenge the order of the court of the Civil Judge, Junior Division, Borsad, issuing interim injunction against them. The learned

Extra Assistant Judge, Kaira, who heard the above appeal, took the view that, the plaintiff had failed to show that, he was in possession of the lands in question. He, therefore, allowed the appeal and set aside the order granting injunction passed by the learned Civil Judge. As the learned Sub-Divisional Magistrate had taken the view that, Bhupatbhai was in possession of the above lands, the defendants who were parties to the above proceedings, preferred an application in revision to the court of the District Magistrate. The District Magistrate rejected the application and being aggrieved by his order, the defendants, who were applicants Nos. 1 to 4 in the above revision application No. 3/72, have come in revision to this Court.

2. It is argued by the learned advocate for the petitioners that, while passing the order that he did, the learned Sub-Divisional Magistrate should have taken into consideration the order passed by the learned Extra Assistant Judge. In the present case, there are contradictory findings of the civil Court and the criminal Court. The learned Extra Assistant Judge has taken the view that, the plaintiff had failed to prove that, he was in possession of the disputed lands; whereas the learned Sub-Division Magistrate and the learned District Magistrate have taken the view that, it was the plaintiff who was in possession of the lands in question. Under these circumstances, it is argued by the learned advocate for the petitioners, that, the decision of the civil Court namely the court of the Extra Assistant Judge should prevail over that of the criminal Court. Before the proceedings u/s 145 of the Code were started, the civil Court at Borsad was already seized of the matter and, as observed above, an interim injunction had already been issued to the defendants restraining them from interfering with the possession of the plaintiff. Under these circumstances, it was hardly necessary for the learned Sub Divisional Magistrate to take proceedings u/s 145 of the Code. If he apprehended that, any breach of the peace was likely to be caused, the proper course to follow for him was, to take proceedings u/s 107 of the Code. Moreover, before the final order was passed on 2-5-1972, the learned Extra Assistant Judge had already decided in Civil Misc. Appeal No. 64/71 that, the plaintiff had failed to prove that, he was in possession of the lands in question. As the proceedings u/s 145 of the Code are of quasi civil nature, it was necessary for the learned Sub-Divisional Magistrate to respect the decision of the learned Extra Assistant Judge and to pass appropriate orders in the proceedings that were pending before him, on the basis of that order. The orders passed in proceedings u/s 145 of the code are always subject to the orders of the civil Court. In the present case, the civil Court, that is the court of the learned Extra Assistant Judge, had already given its finding as to the possession of the disputed land and in that case, the learned Sub-Division Magistrate should have paid due regard to the above decision of the court of the Extra Assistant Judge and passed appropriate orders. The above aspect of the case has not been considered by the learned Sub-Divisional Magistrate or the District Magistrate.

3. Relying on the decision in the case of *Imambu v. Hussein* AIR 1960 Mys 203, it is argued by the learned advocate for the respondent No. 2 that, the orders

passed by the learned Sub-Divisional Magistrate and the District Magistrate are proper. 1, however, find that the above decision does, not, in any way, support his contention. The relevant observations of K.S. Hedge J. in the above case are as under:

From the decided cases, three different points of view emerge i.e. (1) a magistrate acting u/s 145 Cr.P.C. is not bound by the decision of a competent civil Court It is obligatory upon him to assume jurisdiction on being satisfied that a dispute likely to cause a breach of peace exists. The decision of a civil Court is just one piece of evidence and nothing more. See *China Thambi v. Virappa* AIR 1937 Rang 202 , *Bishwanath and Others Vs. Jagannath Prasad and Others*, , (ii) though the Magistrate is not bound by the decision of a competent civil Court, the enquiry before him being summary in nature and further his decision being subject to the, decision of a civil Court at a later stage, he should respect any recent decision given by a competent civil Court as regards possession of the property in dispute. See *Bandhoo Singh v. Govind Lal* A.I.R.1954 Pat 31?J *Tekchand v. Sabir Husain (S)* AIR 1955 Hyd 65 (F B.); See *Durgadutta Sarogi and Another Vs. Commr. of Income Tax*, ; (iii) The Magistrate is bound by the decision of a competent civil Court and he must use his power u/s 145 Cri. P. C. to implement that decision and not to act in derogation of same; see *Havildar Venkatachallam Vs. Sappar Palayam and Another*, ; *Mrs. V E Argles v. Chail Behari* AIR 1949 All 230 ; *Jang Bahadur Singh Vs. Nazimul Haque and Others*, ; *Masih Uddin Vs. The State and Others*, ; and *Pahalwan Vs. State and Others*, .

He has also observed:

As a corollary to this rule, it is reasonable to hold that if a civil Court decides the question of possession even for the purpose of giving an interim relief, the Magistrate acting u/s 145 Cri. P. C. should respect that decision as well as be that the decision of the civil Court was arrived at after a summary. Then the decision is that of a civil Court, which is primarily the court to civil disputes.... If the civil Court has given a decision final or interim, that extent the dispute is decided and the Magistrate should enforce law and order on that basis.

Respectfully agree with the above observations which clearly show that, the learned Sub-Divisional Magistrate was not justified in not acting on the basis of the decision of the learned Extra Assistant Judge and in that se the order passed by him cannot be upheld. The learned District Magistrate does not seem to have considered the above aspect of the case while confirming the order of the learned Sub-Divisional Magistrate.

4. The order of the Magistrate u/s 145 of the Code is merely, a provisional police order on the basis of possession. Looking to the spirit of Section 145 and 146 of the Code read together, it becomes evident that, the Magistrate is not expected to sit in judgment over the decision of the Civil court, especially when, it is recorded during the pendency of the proceedings u/s 145 of the Code. But, on the contrary, he should follow it. Section 146 of the Code inter alia provides that,

if the Magistrate is of opinion that, none of the parties was then in 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 a statement of the facts of the case and forward the record of the proceedings 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 the dispute on the date of the order and that the Magistrate on receipt of the findings of the civil Court should proceed to dispose of the proceedings u/s 145 of the Code in conformity with the decision of the civil Court. In the present case, the decision of the learned Extra Assistant Judge was available to the learned Magistrate. The circumstance that, the decision related only to the application for interim relief did not make any difference, in view of the fact that, even proceedings u/s 145 of the Code are of a summary nature. The learned Magistrate should have therefore passed the order in conformity with the above decision of the learned Judge. He should have also considered whether, in view of the fact that, the civil Court was already in seisin of the dispute, the proper step for preventing any likely breach of the peace was to proceed u/s 107 of the Code. The learned Assistant Government Pleader has also submitted that in view of the decision of the learned Extra Assistant Judge, it is difficult to support the order of the learned Sub-Divisional Magistrate. Thus, considering from all points of view, I find that, the order of the Sub-Divisional Magistrate is not proper and hence, it should be set aside. If, it is brought to the notice of the learned Sub-Divisional Magistrate at any time in future that, any of the parties or persons are likely to commit breach of the peace, because of the dispute in respect of the lands in question, it is open to him to take appropriate action in the matter in the light of what is stated above.

5. The revision application is, therefore, allowed. The orders in question of the learned Sub-Divisional Magistrate and the District Magistrate are set aside.