

(1969) 01 KAR CK 0001

In the Karnataka High Court

Case No : Criminal Revision Petition No. 372 of 1968

Shankarappa Gurappa Kirahagi

APPELLANT

Vs

Ramanagowda Sahebagowda Patil

RESPONDENT

Date of Decision : 27-01-1969

Acts Referred:

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

Citation : AIR 1969 Kar 297 : (1969) CriLJ 1250 : (1969) 1 MysLJ 420

Hon'ble Judges : C. Honniah, J

Bench : Single Bench

Judgement

1. This revision petition is directed against the preliminary orders dated 31-8-1968, u/s 145(1) of the Code of Criminal Procedure, passed by the Sub-Divisional Magistrate, Bijapur Division, Bijapur in Misc. Sr. 5/68. By the aforesaid orders, the learned Magistrate came to the conclusion that there existed a dispute between the two parties about possession of C. B. No. 415 of Bhairwadgi measuring 14 acres 26 guntas; that there was likelihood breach of peace and therefore directed of both the parties to attend his court in person or through counsel to put in their respective claims in regard to actual possession of the land in question and also as he came to the conclusion that it was a case of emergent nature, he attached the standing crops in an area of about 6 acres in the disputed land and appointed the Tahsildar Bagewadi as receiver to take possession of the entire disputed land, including the standing crops.

2. The facts which are not very much in dispute are these: C. B. 415 of Bhairwadgi village in Bagewadi taluka measuring 14 acres 26 guntas belonged to two persons viz., Basawantraya and Shivashankareppa. An area of 12 acres within the survey number was sold for Rs. 19,000 to party No. 2 (petitioner) and possession was handed over to him. One person by name Basappa Irappa Kiranagi had filed a criminal case against Party No. 2 on the ground that he was obstruction the former in the enjoyment of the remaining portion of the land in that survey number. No action seems to have been taken on that complaint.

Subsequently, the owners of this survey number filed a suit against party No. 2 in the court of the Munsiff at Bagewadi for a permanent injunction. The Court issued an order of temporary injunction against party No. 2. It appears that the suit was withdrawn by the owners of the land. Thereafter, the II Party and his father filed a suit in the same Court for a permanent injunction against the I Party (respondent). The Court granted an injunction against the I party and ultimately on 30-1-1968 passed a decree in favour of the II Party, restraining the I Party from interfering with the peaceful possession and enjoyment of party No. 2. Thereafter, party No. 1 filed another suit in the same court against Party No. 2 for setting aside the decree obtained by the II Party for a permanent injunction, on various grounds, subsequent to the passing of the orders in question.

3. The learned Sub-Divisional Magistrate, having notice of all these facts which are not disputed, has still proceeded to take action u/s 145 of the Code of Criminal Procedure. From the above facts it is clear that the Civil Court, a couple of months before these proceedings were instituted, declared that party No. 2 was in actual possession and in that behalf passed a decree against party No. 1. It is no doubt true, that there is no prohibition, when a Civil Suit is pending with respect to the property between the same parties, to take action u/s 145 of the Code of Criminal Procedure, if there is danger of breach of peace, which could be averted by summary proceedings under it. But, even in these circumstances, it would be waste of public time to allow parallel proceedings to go on simultaneously in civil and criminal Courts. Where a Civil Court has come to a definite finding that the land in dispute was in possession and enjoyment of Party No. 2, the policy of the law is to give preference, in matters of this nature, to the decision of the Civil Court. It is well established that it is the duty of the Magistrate to give effect to the decisions of the Civil Courts and see, as far as possible, that the decrees of the civil Courts are maintained. Otherwise, it would only amount to putting a premium upon the high-handed and unlawful activities of the other side. The object of Section 145 of the Code of Criminal Procedure undoubtedly is to compel the parties to go to the Civil Court to settle their disputes and to get adjudication of their rights to immovable properties. When that is done by a competent Civil Court, there is no breach of peace between the parties, the Magistrate ought not to exercise his powers u/s 145 of the Code of Criminal Procedure, if peace between two parties in such a situation as this, the proper course open to the Magistrate is to take action u/s 107 of the Code of Criminal Procedure.

4. It is undisputed that the Civil Court passed a decree against party No. 1 (Respondent) restraining him permanently from entering upon the disputed land on 30th January 1968. By this decree, party No. 2 was in possession and in normal course, must have raised the crops. In these circumstances, the learned Magistrate was not justified in attaching the disputed land and directing the Tahsildar, Bagewadi to be the Receiver of the property.

5. For the above reasons, I set aside both the orders of the Sub Divisional

Magistrate passed u/s 145(i) of the Code of Criminal Procedure and direct the Sub Divisional Magistrate, Bijapur Division, Bijapur to put the II Party, in possession of the disputed land and to hand over the corps attached therefrom or the sale proceeds thereof to the II Party,

6. Order accordingly.