
(2010) 07 BOM CK 0007

In the Bombay High Court

Case No : Criminal Revision Application No. 11 of 2010

Shri Yeshwant Toraskar

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146

Citation : (2010) 07 BOM CK 0007

Hon'ble Judges : N. A. Britto, J

Bench : Single Bench

Advocate : V. A. Lawande, for the Appellant; C. A. Ferreira, Public Prosecutor for Respondent Nos.1 and 3 and Shri A. D. Bhohe, Advocate for Respondent No.2, for the Respondent

Final Decision : Dismissed

Judgement

N. A. Britto, J.—Heard. This Criminal Revision Application is directed against Order dated 17-11-2009 of the learned Additional Sessions Judge, Panaji.

2. There is a dispute between the applicant who was arrayed as Party No.1, and Respondent No.2 who was arrayed as Party No.2, before the Sub Divisional Magistrate, Mapusa, in proceedings initiated upon a police report u/s 145 of the Code of Criminal Procedure, 1973. The Sub Divisional Magistrate by Order dated 23-4-2008 appointed a Court Receiver in respect of the said property. The said dispute is as regards possession of house bearing No.16/11 situated in property survey no.273/9 of Colvale Village.

3. Thereafter, Respondent No.2 filed a suit on 5-8-2008 with an application for temporary injunction, and on the same day, filed another application before the Sub Divisional Magistrate for dropping the proceedings. The applicant filed his reply on 25-8-2008 and the learned SDM dropped the proceedings on 10-10-2008 which Order has attained finality. The learned SDM by the said Order dated 10-10-2008 had also directed the Court Receiver to hand over the

possession of the disputed property to the applicant/Party No.1 which Order was challenged by Respondent No.2/Party No.2 before the learned Additional Sessions Judge. Thereafter, on 30-9-2009, the learned Civil Judge, Senior Division came to the conclusion that Respondent No.2 was in possession of the disputed property and granted injunction in favour of Respondent No.2.

4. This revision is filed by the applicant/Party No.1 against that part of the Order by which the learned Additional Sessions Judge has reversed the Order of the SDM to hand over the possession of the disputed property/house to the applicant/Party No.1. In fact, the learned Additional Sessions Judge has come to the conclusion that the Civil Court had prima facie found that Respondent No.2 was in possession and enjoyment of the suit property, and accordingly had restrained the applicant/Party No.1 in whose favour the SDM had passed an Order to hand over the possession which order was contrary to the Orders passed by the Civil Court. The learned Additional Sessions Judge has further observed that it is settled law that the Order of the Civil Court should prevail over the Order passed by any Criminal Court under the Code of Criminal Procedure, and thus the SDM was wrong in directing handing over possession of the property to Party No.1 when he came to the conclusion that the proceedings were required to be dropped.

5. Shri V. A. Lawande, the learned Counsel on behalf of the applicant/Party No.1 has, firstly, submitted that no revision was maintainable before the learned Sessions Court against the Order of the SDM dated 10-10-2008.

6. However, it is pointed out by Shri A. D. Bhole, the learned Counsel appearing on behalf of Respondent No.2 that this point was not raised by the applicant before the learned Sessions Judge. Since the applicant had not raised the point of maintainability of the revision application before the learned Sessions Judge, I am not inclined to entertain it either in this Criminal Revision Application filed on behalf of the applicant, though, I am of the prima facie view that the Order dated 10-10-2008 is a final Order, against which a revision would lie, as there was nothing more required to be done in the said proceedings u/s 145 of the Code.

7. Next, Shri Lawande, the learned Counsel on behalf of the applicant has pointed out to the Order dated 10-10-2008 of the learned SDM and has submitted that the learned SDM had come to a prima facie conclusion that it is the Applicant/Party No.1 who was in possession of the disputed property, and, therefore the disputed property which was given to the Court Receiver had to come back to the applicant/Party No.1. Shri Lawande, has also submitted that the learned Sessions Judge ought not to have taken into account the Order of the Civil Court dated 30-9-2009, and had to go strictly by the position which prevailed on 10-10-2008 when the proceedings were dropped and the possession was handed over to the applicant/Party No.2.

8. On the other hand, Shri Bhole, the learned Counsel appearing on behalf of Respondent No.2 has submitted that the Sessions Judge by the impugned Order

has only corrected jurisdictional error committed by the learned SDM in handing over the disputed property from the custody of the Court Receiver into the hands of the applicant/Party No.1, and that being the position, there is no room for interference with the impugned Order.

9. I am not inclined to accept the submissions made by Shri Lawande, the learned Counsel appearing on behalf of the applicant. The learned Sessions Judge was bound to take into consideration the subsequent events which had taken place after the Civil Court had passed Order dated 30-9-2009 by which the possession of Respondent No.2 as regards the suit property was recognized and the applicant was restrained from interfering with the possession of the disputed property.

10. As rightly submitted by Shri Bhobe, the learned Additional Sessions Judge has rightly corrected the jurisdictional error committed by the learned SDM. Once, the Civil Court had come into picture and passed Orders, it is those Orders which had to be respected and obeyed since otherwise there would be conflict in the Orders passed by Executive Magistrates and the Civil Court. In this context reference could be made to a three Judge decision of the Apex Court in Jhummal alias Devandas Vs. State of Madhya Pradesh and Others, wherein the Apex Court has held that a party should not be permitted to litigate before the Criminal Court when the Civil Suit is pending in respect of the same subject matter. An order made u/s 145 Cr. P. C. deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to the decision of the Civil Court. The unsuccessful party therefore must get the relief only in the Civil Court. In Dharampal and others Vs. Smt. Ramshri and others, the Apex Court has stated that when a Civil Court passes an order of injunction or receiver, it is the Civil Court which is seized of the matter and any breach of its Order can be punished by it in accordance with law. Although the learned SDM has observed in passing that Party No.1 was in possession of the suit property, he proceeded to appoint a receiver u/s 146 of the Code thereby clearly suggesting that he was unable to satisfy himself as which one of them was in possession of the suit property. Once the Civil Court had come to the prima facie conclusion that Respondent No.2 was in possession of the suit property the learned Additional Sessions Judge was right in correcting the Order dated 10-10-2008 of the learned SDM by taking note of the Order dated 30-9-2008 and bringing the former in line with the latter, so that there was no conflict in the Orders passed by Executive Magistrate and the Civil Court.

11. In my view, the decision of the learned Additional Sessions Judge in directing the Court Receiver to hand over the possession to Respondent No.2 in accordance with the Order of the Civil Court and in quashing that part of the Order which would come in conflict with the Order of the Civil Court, cannot be faulted. I find there is no merit in this Criminal Revision Application, and, consequently the same is hereby dismissed.