

(1942) 06 BOM CK 0007

In the Bombay High Court

Case No : Criminal Application for Revision No. 95 of 1942

Thakorlal Vadilal

APPELLANT

Vs

Ambalal Bhikhabhai Patel

RESPONDENT

Date of Decision : 18-06-1942

Acts Referred:

Citation : (1942) 44 BOMLR 761

Hon'ble Judges : Wassoodew, J; John Beaumont, J

Bench : Division Bench

Judgement

John Beaumont, C.J.—This is an application to stay a criminal complaint pending the hearing of a civil suit. It is an application of a very common type, my experience shows that the Magistrate to whom the application is made, almost always refuses the stay; his decision is almost always upheld by the Sessions Judge; the Sessions Judge's decision is nearly always supported by the Government Pleader; and this Court almost always reverses that decision. This Court will consider in cases of this sort where the public interest lies, and not merely where the supposed interest of the particular complainant lies.

2. Now, the civil suit is of this nature. It is alleged that the suit property is joint family property, and that it was improperly sold away. The suit was filed in April, 1940. Subsequently the present applicant is said to have taken wrongful possession of a part of the suit property which, it is said, was in the rightful possession of the complainant who claimed as a tenant and was defendant No. 6 in the civil suit. In April, 1941, this complaint was filed alleging criminal trespass and wrongful restraint in relation to this portion of the suit property. It is perfectly obvious that the ultimate title to the property and the right to possession will be decided in the civil suit, and if it is found that a person has been in possession who ought not to have been in possession, he will be liable to pay mesne profits. So far as the immediate right to possession is concerned, if it be suggested that one of the parties to the civil suit has wrongfully obtained possession of a part of the suit property, the obvious remedy of the party

aggrieved, that is the present opponent, is to apply in that suit for an injunction or receiver. The Judge, before whom the civil suit lies, has jurisdiction to deal with the right to possession of the suit property both on an interlocutory application, and ultimately at the trial. What conceivable advantage is to be gained by allowing this prosecution to proceed pending the determination of the civil suit, I am at a loss to understand. What advantage will be derived by sentencing the applicant to fine or imprisonment at the present moment for an act of trespass? Very probably the result of the civil suit will be to show that the presentation of a criminal complaint was unnecessary, in which case the prosecution of the complaint would involve a waste of public time and a waste of the parties' money. On the other hand, if as a result of the civil suit it is shown that the act of the accused amounted to criminal trespass, the prosecution can afterwards proceed, though it is unlikely that a prosecution will be proceeded with after the rights have been adjusted in a civil suit. I think it unfortunate that subordinate criminal Courts, in dealing with cases of this sort, do not consider that the interest of the public is opposed to multiplicity of proceedings. They seem to regard the matter as a sort of competition between the civil and criminal Courts.

3. I have not the slightest doubt that in this case the proper order is to stay the criminal complaint pending the hearing of the civil suit, with the usual proviso that if the civil suit is not proceeded with diligently, the complainant may make an application for removal of the stay.

Wassoodew, J.

4. I agree.