

(1960) 03 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Ref. No. 66 of 1959

The State		APPELLANT
	Vs	
Kr. Keshva Sen and Another		RESPONDENT

Date of Decision : 09-03-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 146

Citation : AIR 1960 Raj 279 : (1960) CriLJ 1497 : (1960) RLW 367

Hon'ble Judges : L.N. Chhangani, J

Bench : Single Bench

Advocate : R.A. Gupta, Dy. Government Advocate, for the Appellant;

Final Decision : Allowed

Judgement

L.N. Chhangani, J.—This is a reference by the Civil Judge, Beawar u/s 243 of the Rajasthan Tenancy Act and the only point which calls for determination in this reference is whether the expression "a civil court of competent jurisdiction to decide the question whether any and which of the parties was in possession of the subject-matter in dispute" should be interpreted to include a revenue court also.

2. The facts which have given rise to this reference may be briefly slated as follows:

In criminal proceedings u/s 145 Cr. P. C. State v. Keshav Sen and Raghunath, the S. D. M, Beawar being unable to decide as to which of the parties was in possession of the property in dispute, which is admittedly an agricultural holding, referred the matter to the Sub Judge First Class, Beawar u/s 146(1) Cr. P. C. which ultimately came on the file of the Civil Judge, Beawar. On the extension of the Rajasthan Tenancy Act to the Ajmer area in the year 1958, the Civil Judge held that the findings referred to by the criminal court can be determined only by a revenue court, and passed an order on 21-7-1958 transferring the case to the court of the Assistant Collector and S. D. O., Beawai u/s 206(3) of the Rajasthan

Tenancy Act.

The S. D. O., Beawar did not agree with the opinion expressed by the Civil Judge. He observed that the words "Civil Court" u/s 146 Cr. P. C. cannot under any circumstance include a revenue court, and the civil court's jurisdiction u/s 146(1) Cr. P. C. cannot be ousted under Clause (2) of Section 207 of the Rajasthan Tenancy Act. He also pointed out that a reference by a criminal court cannot be considered a suit or application as mentioned in the Rajasthan Tenancy Act and that it is not a case of instituting a suit or application but is a mere reference. He accordingly, drew up the order of reference and forwarded the case to the Collector, Ajmer for sanctioning the making of the reference and submitting the case to the High Court.

The Collector, Ajmer agreed with the conclusion of the S. D. O. Beawar and further derived support from the definition of the words "revenue court" as given in the Rajasthan Tenancy Act. However, instead of making a reference, he resolved the conflict of jurisdiction himself and holding that the case was triable by a civil court, forwarded the case to the District Judge for transferring it to the Civil Judge. The Civil Judge, consequently, has made the present reference.

3. None of the parties appeared before me. The Deputy Government Advocate supported the reference made by the Civil Judge. The Civil Judge has very rightly pointed out that the Collector, Ajmer did not act in accordance with law in omitting to forward the reference of the S. D. O., Beawar to this court and instead sending the case direct to the District Judge. However, it will be unnecessary to emphasise this aspect of the case as the reference is now before me and it will be quite proper and fair that this court should determine the question raised in the reference.

4. Now, the word "civil" is a very elastic expression and is used in a number of senses. It is some times used in contrast with the word "military" and in that sense, which is the widest, a civil court includes a criminal court as well. Some times, the word "civil" is used as opposed to criminal and in that wider sense, it includes a revenue court. In its narrowest sense, a civil court is used in contradistinction with criminal and revenue courts. The question that emerges for consideration is, in what sense the words "civil court" have been used in Section 146 Cr. P. C. The widest sense in which the words "civil court" can be used, so as to include even a criminal court, can easily be over-ruled. It is, however, a point worthy of serious consideration whether the words "civil court" should be contained only to what are known as civil courts as contrasted with the revenue and criminal courts.

In this connection, it will be proper to deal with some of the reasons given by the S. D. O. and the Collector in support of their conclusion that the words "civil court" do not include a revenue court. The S. D. O. has based his conclusion on the ground that the reference by a criminal court cannot be equated with a suit or application. He meant to suggest that the Rajasthan Tenancy Act and its

schedule providing that certain kinds of suits and applications are exclusively triable by revenue courts, cannot be invoked in connection with references by criminal courts u/s 146 Cr. P. C., as a reference cannot be considered either a suit or an application. This, however, in my opinion, is not very conclusive. The words "of competent jurisdiction to decide the question whether any or which of the parties was in possession of the subject-matter in dispute" following the words "civil court" cannot be ignored and they have a material bearing upon the decision of the case. Under the provisions of the Rajasthan Tenancy Act, suits against trespassers in respect of tenants' holdings are exclusively triable by a revenue court.

It follows that the determination of a question as to who was in possession of a tenant's holding on a particular date, which obviously is the main question in suits for trespass must be treated one exclusively triable by a revenue court and a civil court, in the narrowest sense, is, therefore, incompetent to decide this question. This absence of jurisdiction must be taken into consideration while interpreting the words "civil court" appearing in Section 146 Cr. P. C. It cannot be reasonably suggested that the Code of Criminal Procedure seeks to amend the provisions of the Rajasthan Tenancy Act and its schedule and to create an exception that a question relating to possession of agricultural property of the kind mentioned above, which is not ordinarily determinable by a "civil court" is made so determinable simply because the question is raised in a reference by a criminal court.

I, therefore, feel inclined to hold that on a proper emphasis on the words following "civil court" quoted in full earlier, a "civil court" in the narrow sense is not competent to entertain a reference u/s 146 Cr. P. C. involving a determination of the question of possession of property described earlier. Naturally then, it becomes necessary to interpret the words "civil court" in the wider sense so as to include a revenue court. The acceptance of an interpretation that the words "civil court" do not include revenue courts will lead to a situation where there will be no forum for such references.

The lack of jurisdiction of the revenue court is assumed on a narrow interpretation of the words "civil court" and obviously, as shown above, a civil court is not competent to entertain a reference involving determination of such questions. The legislature cannot be presumed to have intended such a situation. The necessity of interpreting an enactment so as to avoid absurd consequences, the use of the words "civil court" in Cr. P. C. very presumably as contrasted with the "criminal court" and the proper consideration of the words "of competent jurisdiction to decide the question whether any or which of the parties was in possession of the subject-matter in dispute" following the words "civil court", induce me to accept the wider interpretation of the words "civil court" so as to include revenue court.

The definition of the words "revenue court" given in the Rajasthan Tenancy Act relied upon by the Collector is, in my opinion, not very relevant.

The definition of the words "revenue court" given in the Raiasthan Tenancy Act cannot be imported while interpreting and construing the provisions in the Code of Criminal Procedure.

5. On the above considerations, I hold that the words "civil court" have been used in Section 146 Cr. P. C. in a wider sense so as to include a revenue court.

6. The reference is consequently allowed and the Civil Judge is directed to transfer the case to the revenue court, which will entertain the same and decide it in accordance with law.