
(1957) 09 AP CK 0027
In the Andhra Pradesh High Court

Venna Mallaiah and Others

APPELLANT

Vs

Venna Laxmi Reddi

RESPONDENT

Date of Decision : 11-09-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 435

Citation : AIR 1958 AP 624

Hon'ble Judges : Manohar Pershad, J

Bench : Single Bench

Judgement

Manohar Pershad, J.—This revision on behalf of Vina Malliah and others arises out of proceedings u/s 145, Cr.PC The respondent filed a petition u/s 145, Cr.PC before the Revenue Divisional Officer Markapur against the present petitioners. The learned Revenue Divisional Officer after calling for the police report passed a preliminary order u/s 145, Cr.PC on 5-2-1957, calling upon the present petitioners to file their written statements regarding their claims. Subsequently the matter was transferred to the First Class Magistrate, Markapur by the Additional District and Sessions Judge, Kurnool.

2. The allegations in the petition are that he owns the entire survey No. 96 of Ganjwaripalli, a hamlet of Venkatadripalem, that Survey No, 96 adjoins survey No, 97 on" the north of the latter survey number, that one Kasulapati Lakshmi Narasama owned 0-88 cents of survey No. 97 adjoining Ac. 1-76 cents of his land which he cultivated as tenant, that respondent 1 (the first petitioner herein) purported to have purchased 0-88 cents of land of Lakshmi Narasama and took possession thereof and separated it by metes and bounds and ploughed his land i.e., survey No. 97 whereupon he filed C.C. 774/56 against the respondents in the Second Class Magistrate's Court which was dismissed as a civil dispute, that subsequently owing to differences at the time of elections, the respondent wanted to disturb the possession of the petitioners in the northern portion, ac. 76 cents of the land in survey No. 97 which is likely to cause disturbance or annoyance to public peace and safety.

The petitioner therefore prayed for orders u/s 145, Cr.PC. The first respondent (the first petitioner, herein) filed his written statement which was adopted by the other petitioners. It was stated in the written statement that neither the petitioner nor his father had ever enjoyed Ac. 1-76 cents of land in survey No. 96 as contended, that neither the petitioner nor his father had any land at all in survey No. 97, that the petitioner and his father were only cultivating A. 0-88 cents of and of Lakshminarasama as tenants, that he purchased the land from Lakshminarasama and took possession of the same and raised crops, that the respondents have been in possession of the entire survey No. 97, and not the petitioner. It was further stated that the petitioner admitted in the criminal complaint that the respondents cultivated the land and therefore the present petition was barred by time and was not maintainable.

3. The court below held that the respondent herein was in physical possession of the northern portion 1.76 cents of land in survey No. 97 on the date of the preliminary order. It is this order that is now challenged in this revision.

4. Relying on the case of *Ramayya v. Venkata Seshavatharam* (S) AIR 1956 Andh 97 : 1955 Andh WR 44 the learned Counsel for the respondent raised a preliminary objection that revision u/s 435, Cr.PC should not be entertained in the High Court unless the petitioners moved the Sessions Court in the first instance. The learned Counsel for the petitioners argued that u/s 435, Cr.PC the High Court and the Sessions Judge have concurrent jurisdiction and that it is at the option of the aggrieved party to file a revision either in the Sessions Court or in the High Court as he thinks fit. It was further contended on behalf of the respondents that no special, exceptional or extraordinary grounds have been shown by the petitioners to move this Court without approaching the inferior court.

The learned Counsel for the petitioners contended that having regard to the fact that the District Judge was on leave when this revision was filed in this Court, and the fact that the Addl. District Judge was not empowered to entertain such petitions, and the petitioners wanted interim relief and they had no knowledge that the District Magistrate was functioning, this revision was filed in this Court. He next urged that when this revision had been admitted, it could not now be dismissed on the ground that no revision lies to this Court. In this connection the learned Counsel drew my attention to the cases of *Shailabala Devi Vs. Emperor L Ajudhia Puri Vs. Brij Bhukhan and Others*, *Abdul Matlab v. Nanda Lai Khatel* ILR 50 Cal 423 : AIR 1923 Cal 674.

5. On the merits, Shri Narayan Rao contended first that the respondent had filed a similar petition on 30-10-56 u/s 145, Cr.PC and the report was called on 7-11-56 and after going through the report, the Revenue Divisional Officer on 19-12-56 rejected the petition on the ground that there were no circumstances to apprehend a breach of the peace and the present petition u/s 145 being identical in terms the First Class Magistrate, Markapur was not competent to take up the matter and decide the question of possession as no fresh circumstance

was alleged.

The previous order, he urged, was binding on the parties unless it was set aside by a competent court and the unsuccessful party could not be allowed to disregard it and disturb possession of the other party. In this connection, the learned Counsel drew my attention to his petition dated 8-7-57 accompanied by certain documents and supported by an affidavit requesting this Court to admit those documents in evidence.

It is next contended that the court below has erred in coming to the conclusion that the respondent was in possession on the date of the order. He urged that from the depositions of the respondent and his witnesses Exs. B-1 to B-3, it is evident that the respondent was not only out of possession on the date of the order, but long prior to that. Lastly, it is contended that the order of the court below is wrong inasmuch as there is no finding of the court as to whether any breach of the peace exists and unless the court comes to the conclusion that there was a breach of the peace, it does not get jurisdiction to start the proceedings under Sec, 145.

6. On behalf of the respondent in reply it is contended conceding that the first petition of 3-10-56 was identical in terms and was practically the same as the present one Section 145 does not debar the Magistrate from taking proceedings again on the report of the police. Reliance was placed on the case of *Koshi Varghese v. State* AIR 1954 Tra Co 102, *Benoy Chandra Bose and Others Vs. Kala Chand Bhumali and Others*, ; *Khubi Singh Vs. Darbari Mahton, Baidanath Majumadar v. Nibaran Chunder Ghose* ILR 29 Cal 242 *Joynal Abedin v. Nawab* AH 52 Cal WN 251.

Adverting to the argument relating to the admission of the documents filed in this Court, it is urged that from the affidavit of the petitioner, it does not appear as to why these documents were not filed in the lower court. When the petitioner had knowledge of those documents and those documents were not filed in the lower court, the same could not be admitted in this Court. It was next urged that out of the documents filed by the petitioner in this Court one is the statement recorded by the police, which he urges, is inadmissible in evidence. It was further urged that if the court is of the view that these documents should be admitted in evidence the case will have to be remanded to the court below for rebuttal evidence and the finding of the court.

With regard to the argument relating to Exs. B-1 to B-3, the alleged dispossession of the respondent and his witnesses, it is contended that those statements were recorded in a criminal case which did not relate to the land in dispute and the alleged admission of dispossession, therefore, he urges, does not help the petitioner. Lastly, it is contended that the court below on the material on record has held the possession of the respondent as proved and no interference could be made in the finding of the court below in revision.

7. Before discussing the arguments of the learned Counsel with regard to the

merits of the case, I would straightway dispose of the preliminary objection, What is contended on behalf of the respondent is that in as much as the High Court and the Sessions Court have concurrent jurisdiction the petitioners could not file a revision petition directly to this Court, So far as this point is concerned, it is conceded by the learned Counsel for the petitioner that this Court and the District Court have concurrent jurisdiction, but what is contended on their behalf is that at the time when this revision was filed in this Court, the District Judge was en leave, that the petitioners had no knowledge that the District Magistrate was functioning and that the Additional District Judge was not empowered to deal with such petitions and that the petitioners wanted an interim relief.

In the case relied upon by the respondent (S) AIR 1956 Andh 97 : 1955 Andh WR 44 this very question had come up for discussion before a Bench of this Court. Their Lordships observed;

The salutary practice to be followed in Andhra High Court should be that ordinarily the High Court will not entertain a revision unless the aggrieved party approached an inferior court in the first instance and will not deviate from that practice except on special, exceptional or extraordinary grounds. When there are no such grounds, the mere fact that a revision has been admitted by the High Court cannot make any difference in the enforcement of the rule of practice, for the party, who with open eyes ignored the practice and filed a revision direct in the High" Court, cannot take advantage of his deviation from the rule of practice.

It would follow that only on special, exceptional and extraordinary grounds, revision could be entertained in this Court, though ordinarily the practice to be followed would be to approach the inferior court first. In the present case, reasons given by the petitioners are that the District Court was not functioning, that the Addl. District Judge was not empowered, that the petitioner had no knowledge that the District Judge was functioning, and that the petitioner wanted interim relief. The respondent has not challenged these facts and it is also stated before me that this revision petition was admitted by my learned brother Satyanarayana Raju after satisfying himself with regard to the statements made by the petitioner. As I find that special and exceptional grounds exist in this petition, I do not wish to go into a detailed discussion of the other points raised and authorities cited On behalf of the petitioner that once a revision is admitted, it could not be rejected. I therefore do not find any force in the preliminary objection raised by the learned Counsel for the respondent.

8. On the merits of the case, I feel that this case has to be remanded to the court below. The petitioners have filed certain documents and pray that they may be admitted in evidence. It is stated in the affidavit that the petitioners had no knowledge of these documents. This fact has not been challenged. The documents filed have a direct bearing on the case. I therefore admit them in evidence and as there is no finding of the lower court and the other party has no chance of rebutting, the case has to be remanded to the court below.

9. Revision is allowed, the order of the court set aside and the case is remanded with the direction that it should dispose of the case taking into view the documents filed and admitted here after giving the other side opportunity to rebut them. In the result Crl. M. P. 898/57 is also allowed.