

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.940 of 2013

ORDER:

Aggrieved by the order dt:16.03.2012 in M.Rc.No.6/2012/LDT passed by the Sub-Divisional Magistrate, at Paderu under Section 145 Cr.P.C. restraining both parties to keep the disputed land vacant and not to undertake any activity till the case is decided by him, the petitioners filed the instant petition under Sec.482 Cr.P.C to quash the aforesaid order.

2 a) The case of the petitioner is that the petitioners 1 and 2 are the son and daughter-in-law of the 3rd petitioner and 3rd petitioner is the absolute owner and possessor of an extent of 0-0.45 cents in Sy.No.25/3 of Paderu Village and Mandal in Visakhapatnam District along with other lands in other Sy.Nos. being his ancestral property and recognizing his title, the Special Tahsildar, Agency Settlement, Paderu granted a Ryotwari patta in favour of 3rd petitioner in respect of his lands including an extent of 0-0.45 cts by his order dt:09.12.1976 in Case No.7887/76 and ever since the petitioners have been in exclusive and peaceful possession and enjoyment of the aforesaid lands. The revenue authorities also issued pattedar passbook and title deed in favour of 3rd petitioner in respect of those lands.

b) The further case of petitioner is that Landa Manikyal

Rao, the husband of R.2 with the instigation and support of one Gollur Matsya Raju, S/o. Mahalaxmi, R/o. Guduru village, Paderu Mandal designed an evil intention to drive the petitioners off their peaceful possession and enjoyment of the aforesaid lands and they threatened to forcibly dispossess the petitioners. Therefore, the 3rd petitioner filed a suit AOS No.15/2003 on the file of Court of Agency Subordinate Judge, Paderu against the said Gollur Matsya Raju and Landa Manikyal Rao and obtained an interim injunction restraining the defendants therein and their men from interfering with the peaceful possession and enjoyment of the plaint schedule properties by the 3rd petitioner herein.

c) While-so, the Landa Manikyal Rao got filed a petition through his wife Landa Ratnaveni i.e, R.2 herein under Sec.145 Cr.P.C in M.Rc.No.6/2012/LDT falsely alleging that the petitioners herein were threatening to interfere with her possession and enjoyment of the very same land i.e, 0-0.45 cents in S.No.25/3 in respect of which the 3rd petitioner herein had already obtained interim injunction against the husband of the R.2. The Sub-Divisional Magistrate, Paderu passed a preliminary order dt:16.03.2012 directing that until the matter is decided by him, the land in question shall remain vacant and no activity would be permitted on it and any violation of the said order would attract penal provisions. It was further directed that the Tahsildar, Paderu should see that no person entered in the land and no activity is taken up until further

orders. The petitioners appeared through their counsel and filed their written statement before the Sub-Divisional Magistrate, Paderu appraising all the relevant facts relating to their title and possession of the disputed land. However, the Sub-Divisional Magistrate, Paderu is not disposing of the case and he has been adjourning the same indefinitely and thereby the petitioners are put to much hardship as they are restrained from entering in their own land in view of the prohibitory order passed by the learned Sub-Divisional Magistrate.

Hence the instant petition.

3) Heard arguments of Sri K. Sai Rama Murthy, learned counsel appearing for Sri K.V.Subrahmanya Narusu, learned counsel for petitioners and learned Public Prosecutor for the State (AP).

4) Challenging the order learned counsel argued that when the civil suit is pending and an interim injunction was already passed therein in respect of same property, the Executive Magistrate should not have exercised jurisdiction to pass an order under Sec.145 Cr.P.C. In the instant case, the petitioners through their statement have already brought to the notice of the learned Executive Magistrate about the pendency of the civil suit and the interim order passed therein and inspite of it, learned Magistrate has been postponing the matter instead of closing the case and directing the parties to decide their rights before the Civil Court. Learned counsel

vehemently argued that in view of the prohibitory order, the petitioners who are the owners and possessors of the disputed property are unable to enjoy their property and the proceedings before the Executive Magistrate which are abuse of process of Court are liable to be quashed.

He relied upon the decision reported in ***Ram Sumer Puri Mahant vs. State of U.P and others***^[1].

5) Per contra, learned Public Prosecutor argued that in view of the likelihood of breach of peace due to the disputes between both the parties in respect of the disputed property, the Executive Magistrate passed the prohibitory order and therefore, the said order is well within the jurisdiction of the Executive Magistrate and the same need not be quashed. He thus prayed to dismiss the petition.

6) In the light of above rival arguments, the point for determination is:

“Whether the impugned order of the learned Executive Magistrate is legally sustainable?”

7) **POINT**: The Executive Magistrate gets jurisdiction to act upon, when the dispute between the parties concerning land or water is likely to result in breach of peace. Section 145 Cr.P.C. envisages and guides an Executive Magistrate how to react in such instances. The object of the section is mainly to maintain law and order and to prevent the breach of peace.

The business of the Magistrate is not to go into the question of title but to meet the urgency of situation by maintaining the party in possession of the dispute property. The *sine quo non* for the Magistrate to embark upon is the report of police officer and other credible information that a dispute concerning any land, water or the boundaries is likely to cause breach of peace within his local jurisdiction. Upon receiving such information, the Executive Magistrate shall make an order in writing stating the grounds being so satisfied, call upon the concerned parties to such dispute to attend his court in person or by a pleader on a specified date and time and put-forth their statements or their respective claims in respect of the disputed property. The Magistrate then, without reference to the merits or claims of any of the parties right to possess the subject property in dispute, peruse the statements, hear the parties, receive all such evidence and decide whether any and which of the parties was at the date of the order passed by him under Section 145 Cr.P.C. was in possession of the property of the dispute. Further, during the course of enquiry, if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1). Thus, after deciding the possession of a party, the Magistrate shall treat

that party in such possession of the subject property and issue an order declaring such party entitled to possession thereof until evicted there from in due course of law and forbid all disturbances of such possession until such eviction.

8) A perusal of copy of the order in AOS No.15 of 2003 passed by the Court of Agency, Subordinate Judge, Paderu shows that 3rd petitioner herein filed the said suit against the Gollur Matsya Raju and Landa Manikyal Rao, the husband of R.2 wherein the Court granted the injunction restraining the defendants therein from interfering with the peaceful possession and enjoyment of the plaint schedule property by the petitioner/ plaintiff. Then a perusal of the order dated 16.03.2012 in M.Rc.No.6/2012/LDT passed by the Sub-Divisional Magistrate, Paderu shows that in respect of the same property, the R.2 herein filed a petition, basing on which, the learned Executive Magistrate passed the prohibitory order under Sec.145 Cr.P.C. The trite law is that when the competitive Civil Court has already seized the dispute touching the subject properties, the Executive Magistrate will have no jurisdiction to pass any final order under Sec.145 Cr.P.C. This legal point has been held by the Apex Court successively.

a) In ***Ram Sumer Puri Mahant***'s case (1 supra) the Apex Court observed thus:

“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a

parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us.”

b) The principle laid down in **Ram Sumer Puri Mahant's** case(1 supra) was upheld by the Apex Court in its another decision reported in **Amresh Tiwari vs. Lalta Prasad Dubey**^[2]. It was observed thus:

“Para 13: We are unable to accept the submission that the principles laid down in Ram Summers' case would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Summers' case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.”(Emphasis supplied)

c) So, from the above rulings of the Supreme Court, when the dispute touching the same subject property is already pending in Civil Court, parallel proceedings under Section 145 Cr.P.C. are not maintainable before an Executive Magistrate. Since in the instant case, the Civil Court has already seized the matter and passed an injunction order, the impugned order passed by the Executive Magistrate is not sustainable and its continuance will be nothing but abuse of process of Court, in my considered view. The parties concerned shall vindicate their rights before the Civil Court only.

9) Accordingly, this Criminal Petition is allowed and the proceedings in M.Rc.No.6/2012/LDT on the file of Sub-Divisional Magistrate, Paderu against the petitioners are hereby quashed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 04.04.2016

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[\[1\]](#) AIR 1985 SC 472 = 1985 CriLJ 752 (1) (SC)

[\[2\]](#) AIR 2000 SC 1504