

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1250 of 2016

ORDER:

1) The present Criminal Revision Case came to be filed under Section 401 Cr.P.C. questioning the very initiation of proceedings under Section 145 Cr.P.C. vide No.L/ 152/ 2016, dated 21.04.2016 by the Sub-Divisional Magistrate/ Special Grade Deputy Collector and Revenue Divisional Officer, Malkajgiri Division.

2) The facts in issue are as under:

The proceedings under Section 145 Cr.P.C. came to be initiated pursuant to a report given to the Inspector of Police, Alwal. A reading of the report show that one P.Prahlada Raju S/o. Venkata Krishnam Raju, filed a petition stating that his brother-in-law K.S.Subramanyam Raju purchased a plot from Raidurga Co-operative House Building Society vide plot No.388/ F in Sy.No.586, Pakalakunta, Alwal Village. In the year 2012 one Raj Kumar approached the brother-in-law of the informant therein and asked him to sell the property which was denied by him. Thereafter, the said Raj Kumar preferred a suit before the L.B.Nagar Court which is pending adjudication. In the year 2014 the said Raj Kumar started development activities in the said plot to which the petitioner filed a suit in Land Grabbing Court, Hyderabad. Meanwhile, the petitioners in the said proceedings filed W.P.No.32540 of 2015 questioning the same. When the petitioners in M.C. went there to question the illegal activities, they were threatened with dire consequences.

Basing on which a report came to be lodged for action. The enquiries made by the Inspector of Police revealed that lands in Sy.Nos. 581, 584, 585 and 586 admeasuring Ac.40.14 gts., of Alwal village was made into plots. Out of the said plots, one plot bearing No.388/ F admeasuring 402 square yards was sold to one S.Prameela vide registered sale deed dated 02.05.1997. The said Prameela, inturn sold the plot to Vishwanadham vide registered agreement of sale-cum-G.P.A. No.3861/ 2005. Later, Viswanadham sold the same to K.Satya Subramanyam Raju, who claims to be in possession of the property now. Having regard to the dispute raised, which is likely to cause breach of peace, proceedings under Section 145 Cr.P.C. came to be initiated. Pursuant thereto, the Sub-Divisional Magistrate, Malkajgiri Division, authorised the Tahsildar to take physical possession of the plot under dispute and see that no activities are taken up by either parties till further orders. The Inspector of Police, Alwal Police Station was directed to provide sufficient police force in vacating the individual or persons who were present in the disputed plot. Thereafter, the case was posted to 30.04.2016 to which date the contesting respondents were directed to appear. Challenging the initiation of proceedings the present revision came to be filed.

3) Learned counsel for the petitioners mainly submits that since the Civil Court is already ceased of the matter, initiating proceedings under Section 145 Cr.P.C. is bad in law. It is his case that the petitioners in this revision are absolute owners of the property. He further submits that as the complainant is a stranger to the property,

he has no locus standi to initiate the proceedings. He also relied upon Section 145 (c) Cr.P.C. to show the circumstances under which the order can be passed under Section 145 Cr.P.C. In support of the same, he relies upon the judgments of the Apex Court in *Amresh Tiwari v. Lalta Prasad Dubey and another*¹ and in *Ashok Kumar v. State of Uttarakhand and others*². The same is opposed by the learned counsel for the un-official respondents contending that the suits which are sought to be relied upon by the learned counsel for the petitioners have nothing to do with the property in question. It is urged that the plot in the said suit and the plot which is subject matter of dispute under section 145 Cr.P.C. are different. He also submits that since the main proceedings under Section 145 Cr.P.C. are still pending, filing of a revision against an interlocutory order is not maintainable.

4) It is not in dispute that the main proceedings are still pending adjudication before the Sub-Divisional Magistrate. The impugned order itself indicates that while issuing notice to the parties, directed the parties to appear before the undersigned in person or through a counsel to adduce evidence in the matter on 30.04.2016 at 11.00 a.m. At the same time it is also to be noted that while issuing notice, the Sub-Divisional Magistrate directed the Tahsildar, Malkajgiri to take possession of the property and also take steps for vacating the individual or persons who are present in the disputed premises.

¹ (2000) 4 SCC 440

² (2013) 3 UC 2310

5) The counsel for the petitioners submits that though it is an interlocutory order, the Sub-Divisional Magistrate has almost decided the issue by directing eviction of the persons present in the disputed land. It is also to be noted that the main ground urged by the learned counsel for the petitioners is with regard to pendency of the suits between the parties and since the civil Court is ceased of the matter, the Sub-Divisional Magistrate ought not to have initiated proceedings under Section 145 Cr.P.C.

6) As pointed out by the learned counsel for the un-official respondents the property which is subject matter of dispute in the impugned proceedings relate to plot No.388/ F situated in Sy.Nos. 581, 584, 585 and 586 of Pakalakunta, Alwal Village, Malkajgiri Mandal. The plaints and orders which are sought relied upon by the learned counsel for the petitioners indicate the dispute therein was with regard to plot Nos.190 and 191 Part. Infact, even the grounds of revision show their ownership in respect of a open plot bearing No.190 situated in Sy.No.13/ part covered under ward No.1, Block No.5 admeasuring 371 square yards situated at Navabarath Co-operative Society, Pakalakunta, Alwal Village. The suit filed for perpetual injunction by the petitioners against K.S Subramanya Raju, who is the fifth respondent herein, relates to plot No.190. Therefore, the plea taken that the matter in issue is pending adjudication before the Civil Court *prima facie* appears to be incorrect.

7) On the other hand, the respondents in their counter categorically stated about their ownership over the plot in dispute

and also their application for regularisation was accepted vide proceedings dated 06.09.2011. It has been specifically stated in the counter that plot No.190 is adjacent to plot No.388/ F and some of the anti-social elements tried to grab the said land, which prompted the respondents to initiate proceedings before the Land Grabbing Court vide L.G.C.No.1 of 2015 and the same is pending. It is stated that since the Land Grabbing Court for the State of Telangana is closed, the anti-social elements are taking advantage of the same and trying to occupy the same, which lead to filing of W.P.No.42540 of 2015. Therefore, *prima facie* at this stage it appears to be a case where there is a dispute with regard to identity of the property. It is to be noted that the order under Section 145 Cr.P.C. refers to plot No.388/ F where as the Civil Suits relate to plot Nos.190 and 190/ 1 Part. As stated earlier, even the grounds of revision refer to plot No.190. Hence, I see no merit in this revision at this stage.

8) Accordingly, the Criminal Revision Case is dismissed. However, the petitioners are at liberty to raise all the grounds before the Sub-Divisional Magistrate, who shall decide the same un-influenced by any of the observations made in this revision. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

12.09.2016
gkv