

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.25183 OF 2009

ORDER:

The case of the petitioner is that he is the owner and possessor of the property admeasuring Ac.3.33 cents in Survey No.373/7, situated at Yenugondapalem Village, Kalakada Mandal, Chittoor District and he was issued D-Form patta dated 16.05.2006. Thereafter, the revenue authorities having considered petitioner's possession and enjoyment over the subject land also issued Adangals and the pattadar pass book and title deeds to the petitioner. The petitioner was also issued enjoyment certificate by the 2nd respondent. While so, when the 3rd respondent-unofficial respondent tried to interfere with petitioner's possession, the petitioner filed OS.No.160/2009. He also filed IA.No.659/2009 for injunction in the said suit and the Court below granted ad-interim injunction on 02.09.2009 and the same was extended from time to time and later extended until further orders. Thus, the petitioner is in possession and enjoyment of the above said lands. In spite of injunction orders, when the 3rd respondent tried to attack the petitioner in the fields, the petitioner made a representation to the Revenue Divisional Officer, Madanapalli for protection and the RDO vide letter dated 03.11.2009 called for report from the 2nd respondent-Tahasildar. But the 2nd respondent without

considering the petitioner's representation and injunction orders passed by the Court below, issued proceedings in ROC.No.B/320/2009, dated 07.11.2009 under Section 145 Cr.P.C. prohibiting the petitioner and the 3rd respondent from entering into the subject land till the District Collector passed orders. Aggrieved by the same, present writ petition is filed.

The respondents 1 and 2 filed counter affidavit along with vacate petition stating that the 3rd respondent made a representation to the 2nd respondent stating that an extent of Ac.3.33 of dry land situated in Survey No.373/4 of Enugondapalem Village was assigned to her husband who died and that the petitioner is objecting her from entering into the lands and to take necessary action. It is also stated that the petitioner has also made representation stating that he was granted patta to an extent of land admeasuring Ac.3.33 acres in Survey No.373/7 of Enugondapalem Village and that the 3rd respondent is objecting him and requested to take necessary action. It is stated that both the parties are claiming ownership and possession of the subject land. It is admitted that petitioner obtained injunction in IA.No.659/2009 in OS.No.160/2009 and that personal inspection was also done. It is further stated that the 3rd respondent on 02.11.2009 along with Mandal Deputy Surveyor, Mandal Revenue Inspector and Village Revenue Officer personally visited the subject property and that the

petitioner knowing about the visit of the 2nd respondent to the fields, removed all bushes, trees, boulders etc and leveled the land over night with JCB machine and that the villagers stated that the petitioner is in the habit of creating problems in the village and also quarreling with adjacent pattadars for each and every issue unnecessarily and that at the time of enquiry both the parties quarreled with each other, as such, proceedings under Section 145 Cr.P.C were issued.

Though notice is issued to the 3rd respondent the same was returned with an endorsement 'addressee refused', as such notice is deemed to be served. There is no appearance on behalf of the 3rd respondent.

This Court on 19.11.2009 granted interim order and the same is continuing as on today.

Learned counsel for the petitioner relied on the Judgment rendered by the Supreme Court in ***Kunjbihari v. Balram and another***¹. He submits that when once the Civil Court is seized of the matter it is not open for the respondents to initiate proceedings under Section 145 Cr.P.C.

In this case admittedly, the petitioner obtained injunction orders on 02.09.2009 in IA.No.659/2009 in OS.No.160/2009

¹ (2006) 11 Supreme Court cases 66

and the same was extended from time to time until further orders. The 3rd respondent is a party to the same and it is stated that the said suit is pending as on today. When once the Civil Court is seized of the matter, the revenue authorities cannot adjudicate upon the same and issue proceedings under Section 145 Cr.P.C as held by the Apex Court in ***Kunjbihari case (supra 1)*** which reads as follows;

“2. It is not disputed that the property forming the subject-matter of proceedings under Section 145 of the Code of Criminal Procedure (Cr.P.C) was the subject-matter of civil suit between the parties. The rights of the parties have been adjudicated upon by the civil court. An execution petition filed by the respondents herein was also dismissed in view of the adjudication of rights by the civil court based on a compromise. Inasmuch as the rights of the parties stand settled by a compromise decree taken on record of the court during the pendency of civil proceedings inter parties, none of the parties is justified in reagitating the same issue. The parties must respect the decree of the court. In spite of the civil proceedings having achieved finality, it appears that proceedings under Section 145 Cr.P.C were initiated. The appellant sought the proceedings being dropped in view of the civil court’s decree. As that prayer was not acceded to, the appellant approached the High Court under Section 482 Cr.P.C seeking quashing of the proceedings under Section 145 Cr.P.C. the petition has been rejected by the High Court forming an opinion that in spite of the civil court’s decree, proceedings under Section 145 Cr.P.C. may continue.

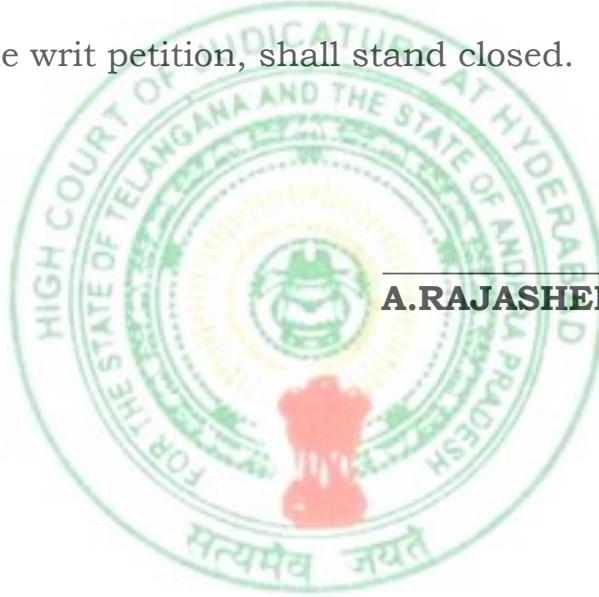
3. Having heard the leaned counsel for the parties, we are satisfied that the proceedings under Section 145 Cr.P.C are an abuse of the process of the court in the facts of the

present case. The rights of the parties have already been adjudicated upon. If any party claims to be in possession of the property and seeks its protection, it is for that party to approach the civil court and get an appropriate order. The proceedings under Section 145 Cr.P.C cannot be allowed to be continued in the facts and circumstances of the case.”

In view of the above facts and circumstances, the impugned order is quashed and the writ petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

18.11.2016
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A.RAJASHEKER REDDY, J