

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.17170 OF 2016

ORDER:

Heard learned counsel for the petitioner and learned Additional Public Prosecutor representing the State of Andhra Pradesh.

This criminal petition is filed under Section 482 of Cr.P.C to quash the order dated 19.12.2016 under Section 145 Cr.P.C. passed in MC.No.753 of 2016 by the Mandal Executive Magistrate, Kamalapuram, Kadapa District directing the respondent in 'A' party and 'B' party with their family members not to enter into the scheduled lands in Survey No.74/3, admeasuring Ac.01.36 cents, Survey No. 171/1, admeasuring Ac.0.67 cents and Survey No.172/2, admeasuring Ac.0.60 of Meerapuram Village of Kamalapuram Mandal until further orders.

The main ground urged before this Court is when a civil suit is pending, the order passed under Section 145 Cr.P.C. cannot be continued.

During the course of hearing, Sri S.S.Bhatt, learned counsel for the petitioner drawn the attention of this Court of the judgment of the Apex Court in **Amresh Tiwari v Lalta Prasad Dubey and another¹**.

Whereas, learned Additional Public Prosecutor representing the State of Andhra Pradesh contended that the order under challenge was passed on strict adherence

¹ AIR 2000 SC 1504

requirement of Section 145 Cr.P.C., hence, the same cannot be interfered with while exercising power under Section 482 Cr.P.C.

The core issue before this Court is that when a civil suit is pending, the proceedings initiated under Section 145 Cr.P.C. can be continued or not?

The case of the petitioner is that he purchased the property under registered sale deed on 06.05.2016, whereas 'B' party is claiming purchase of the property under agreement of sale and filed O.S.No.85 of 2016 pending on the file of Junior Civil Judge, Kamalapuram for declaration of right and title and for consequential permanent injunction restraining the petitioner and his men from interfering with the peaceful possession and enjoyment of the schedule property and that he also filed I.A.No.214 of 2016 under Order 39 Rules 1 and 2 C.P.C., but till date, no order has been passed by the trial Court against the petitioner's vendor. Thus, admittedly, O.S.No.85 of 2016 was filed on 07.09.2016, whereas, the order under challenge was passed on 19.12.2016. Thus, by the date of passing of order in M.C.No.753 of 2016, the suit was filed and pending.

The Apex Court in **Amresh Tiwari's** case referred supra, clarified that where a civil suit is filed, the proceedings under Section 145 Cr.P.C would never lie and it is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the

property concerned can be applied for and granted by the civil Court the proceedings under Section 145 should not be allowed to continue. This is because the civil Court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate.

If the above principle of the Apex Court applied to the present facts of the case, the proceedings under challenge were passed during pendency of the civil suit. Therefore, the order passed by the 2nd respondent is liable to be quashed.

In the result, the criminal petition is allowed quashing the order dated 19.12.2016 under Section 145 Cr.P.C. passed in MC.No.753 of 2016 by the Mandal Executive Magistrate, Kamalapuram, Kadapa District at the admission stage.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

28.12.2016

Note: issue c.c. by Monday

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