

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.2620 OF 2014

ORDER:

Heard the learned counsel for the petitioners. Pursuant to the orders of this Court, the personal notice taken out on the respondents 4 to 11 have been served and proof of service is filed before this Court vide U.S.R.No.974 of 2015. In spite of service of notice, the respondents 4 to 11 have not chosen to appear either in person or by engaging any counsel.

The present Criminal Revision Case is filed questioning the proceedings under Section 145 of Cr.P.C. in Rc.No.A/902/2013, dated 12.11.2014 on the file of the Tahsildar & Mandal Executive Magistrate, Venkatapuram-2nd respondent herein prohibiting any unauthorised procession or unlawful assembly of 5 or more persons at Nuguru(Z) village of Venkatapuram Mandal with effect from 12.11.2014 in respect of the lands to an extent of Ac.0.45 and Ac.1.21 in Sy.Nos.23/3P and 23/4 respectively, situated at Nuguru(Z) Revenue village.

The facts in brief are that the petitioners herein are the owners and possessors of the subject-lands situated at Nuguru(Z) Village, Venkatapuram mandal, Khammam District. As far as the respondents 4 to 11 are concerned, they are totally strangers and nothing to do with the subject-lands. Since there was interference by the unofficial respondents herein, the first petitioner filed a suit in O.S.No.369 of 2014 on the file of the Court of Sub-Divisional Magistrate & Special Assistant Agent, Mobile Court, Bhadrachalam seeking injunction simplicitor against the respondents 4 to 11

herein. Pending the suit, an application in I.A.No.255 of 2014 has been filed whereunder, the Sub-Divisional Magistrate granted interim injunction on 10.10.2014.

The learned counsel for the petitioners contended that when once the competent Court has already seized of the matter in respect of the subject-land, the second respondent cannot issue the impugned proceedings. To support his contention, he relied on a judgment of this Court reported in **Vaddu Rama Pulla Reddy v. State of Andhra Pradesh and others**¹. While dealing with the similar issue, this Court held as under:

“7) *Point:* As can be seen, in the impugned order itself, learned Executive Magistrate mentioned that issue was pending before the Junior Civil Judge Court, Nandyal. When the competent civil court is already in *seisen* of the dispute touching subject property, the Executive Magistrate will have no jurisdiction to pass any order under Section 145 Cr.P.C. This has been held by the Honourable Apex Court successively.

8) In **Ram Sumer Puri Mahant v. State of U.P.**² 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.”

9) The principle laid down in **Ram Sumer Puri Mahant**’s case (2 supra) was upheld by the Apex Court in its another decision reported in **Amresh Tiwari v. Lalta Prasad Dubey**³. It was observed thus:

“Para 13: *We are unable to accept the submission that the principles laid down in Ram Sumers' case would only apply if*

¹ (2018 (1) (CrI.) 940)

² AIR 1985 SC 472

³ AIR 2000 SC 1504

the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumers' 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)

10) 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.”

Having heard the learned counsel for the petitioners and from the perusal of the material on record, the undisputed facts are that the petitioners filed the above said suit against the unofficial respondents 4 to 11 herein and obtained interim injunction against them. It is brought to the notice of this Court that the said injunction order is still in force. When a competent civil Court has already seized of the matter in respect of the very same subject-land, the second respondent cannot issue the impugned proceedings invoking the provision under Section 145 of Cr.P.C.

This Court and the Apex Court dealt with this issue time and again and held that when the dispute touching the same subject

property is already pending consideration in a Civil Court, parallel proceedings under Section 145 Cr.P.C. are not maintainable before an Executive Magistrate. In the case on hand, admittedly, the proceedings are pending before the Court of Sub-Divisional Magistrate & Special Assistant Agent, Mobile Court, Bhadrachalam. In these circumstances, this Court is of the opinion that the proceedings initiated by the respondent No.2 in Rc.No.A/902/2013, dated 12.11.2014 are not maintainable.

Accordingly, the Criminal Revision Case is allowed in setting aside the proceedings in Rc.No.A/902/2013, dated 12.11.2014.

Pending miscellaneous petitions, if any, shall stand closed.

29th AUGUST 2018.
Tsr



P.KESHA VA RAO,J