

THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No.12097 OF 2013

ORDER:

Heard the learned counsel appearing for the petitioner and the learned Government Pleader appearing for respondents 1 to 3.

In this writ petition, the petitioner is assailing the proceedings of the 4th respondent in Roc.A/788/2013, dated 08.04.2013 prohibiting the petitioner from entering into and occupying in respect of the property to an extent of 1440 sq.ft. in Sy.No.11/2B, 2A, No.9, Upadhyaya Nagar, Akkarampalli Village Accounts, Timminaidupalem Village Panchayat, Tirupati Urban Mandal.

During the course of hearing, the learned counsel appearing for the petitioner informed the Court that the petitioner filed a suit in O.S.No.86 of 2013 against the 5th respondent restraining him from interfering with her peaceful possession and enjoyment in respect of the scheduled property. After full-fledged trial, the said suit was decreed in the year 2016 and the same has attained finality since no appeal has been preferred by the 5th respondent.

While dealing with the similar issue in **Vaddu Rama Pulla Reddy v. State of Andhra Pradesh and others**¹, 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

¹ (2018 (1) (CrI.) 940)

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 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.”

² AIR 1985 SC 472

³ AIR 2000 SC 1504

Time and again, this Court and the Apex Court dealt with this issue 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 seized before the competent civil Court in O.S.No.86 of 2013. In these circumstances, this Court is of the opinion that the impugned proceedings initiated by the 4th respondent are liable to be set aside.

Accordingly, the Writ Petition is allowed setting aside the proceedings of the 4th respondent in Roc.A/788/2013, dated 08.04.2013. No costs.

Pending Interlocutory Applications, if any, shall stand closed.

06th NOVEMBER 2018.
Tsr

P.KESHAVA RAO,J

