

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.3985 of 2018

ORDER:

Aggrieved by the promulgation order dt:03.02.2018 in Rc.B.33/2018 passed by the Mandal Executive Magistrate and Tahsildar, Gadivemula under Section 145(1) Cr.P.C, the petitioner filed the instant petition under Sec.482 Cr.P.C to quash the aforesaid order.

2) The case of the petitioner is that he is the absolute owner and possessor of the land admeasuring Ac.3-77 cents in Sy.No.568 of Koratamaddi village, Gadivemula Mandal, Kurnool District, having purchased the same from its lawful owners through registered sale deed on 05.05.2007. There was an issue with regard to surrender of excess land by his vendor's husband/father by name Y.Suryanarayana Reddy, which was subject matter before Land Reforms Tribunal in LRA No.36/1982 and by order dated 22.01.1983, the Land Reforms Tribunal declared that there is no excess land as decided by the original authority and to that effect, revenue proceedings were issued and later it was sold to the petitioner, whose name was mutated in the revenue records. The petitioner further submitted that when respondents 2 and 3 without any right tried to interfere with his land by damaging the crop, he filed suit in O.S.No.521/2016 before the Principal Junior Civil Judge, Nandayal, seeking permanent injunction against respondents 2 and 3 herein and pending suit, initially temporary injunction was granted in I.A.No.916/2016 on 03.08.2016 and

the same was extended until further orders vide order dated 08.11.2016 in I.A.No.2387/2016 which is subsisting as on today.

Hence the instant criminal petition.

3) Heard arguments of Sri K. Rathanga Pani Reddy, learned counsel for petitioner and learned Addl. Public Prosecutor for the State (AP).

4) Challenging the order learned counsel for petitioner argued that when the civil suit is pending and an interim injunction was already passed therein in respect of same property, the Executive Magistrate should not have exercised jurisdiction to pass an order under Sec.145 Cr.P.C. In the instant case, the petitioner brought to the notice of the learned Executive Magistrate about the pendency of the civil suit and the interim order passed therein and inspite of it, learned Magistrate erroneously observed that the dispute may lead to breach of peace in the village. Learned counsel vehemently argued that in view of the impugned order, the petitioner who is the owner and possessor of the disputed property is unable to enjoy the property and the proceedings before the Executive Magistrate which are abuse of process of Court are liable to be quashed.

He relied upon the decision reported in ***Ram Sumer Puri Mahant vs. State of U.P and others***¹.

5) Per contra, learned Addl. Public Prosecutor argued that in view of the likelihood of breach of peace due to the disputes between both the

¹ AIR 1985 SC 472 = 1985 CriLJ 752 (1) (SC)

parties in respect of the disputed property, the Executive Magistrate passed the order and therefore, the said order is well within the jurisdiction of the Executive Magistrate and the same need not be quashed. He thus prayed to dismiss the petition.

6) In the light of above rival arguments, the point for determination is:

“Whether the impugned order of the learned Executive Magistrate is legally sustainable?”

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.

a) 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.”

² AIR 1985 SC 472

b) The principle laid down in ***Ram Sumer Puri Mahant***'s case(1 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)

c) 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.

³ AIR 2000 SC 1504

8) Accordingly, this Criminal Petition is allowed and the impugned order dt:03.02.2018 in Rc.B.33/2018 passed by the Mandal Executive Magistrate and Tahsildar, Gadivemula under Section 145(1) Cr.P.C, is hereby quashed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 18.04.2018
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