

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE NO. 2603 OF 2014

ORDER:

1. Heard the learned counsel for the petitioners, learned counsel for respondent Nos. 4 and 5 as well as the learned Public prosecutor appearing for respondent Nos. 1 to 3.
2. The present Criminal Revision Case is filed questioning the orders passed in M.C.No.118 of 2014 dated 22.11.2014 on the file of the Mandal Executive Magistrate, Yerraguntla, YSR Kadapa district whereby the SHO, Yerraguntla was directed to promulgate the proceedings under Section 145 of Cr.P.C. restraining the parties from entering into the land admeasuring Ac. 5.53 and Ac.2.55 in Sy.No.441/7 and 422/3 respectively situated at Hanumanagutti village.
3. The facts in brief are that respondent Nos. 4 and 5 herein filed a suit in O.S.No.216 of 2014 on the file of the Court of the Senior Civil Judge, Proddutur, YSR Kadapa district for declaration and permanent injunction against the petitioners herein. In the said suit, the application filed for injunction, has been negatived. Aggrieved by the same, respondent Nos. 4 and 5 filed a Civil Miscellaneous Appeal before the II.Additional District and Sessions Judge, Proddutur, which is pending consideration. During the pendency of the said proceedings,

respondent No.2 herein issued proceedings M.C.No. 118 of 2014 dated 22.11.2014 stating that a report has been placed by the Sub-Inspector of Police, Yerraguntla to the effect that on account of a dispute in the ownership of land, the parties referred to therein are quarrelling and resulted in causing hindrance to peace and public tranquillity. Therefore, taking into consideration, the circumstances reported and as requested by the Sub-Inspector of Police, Yerraguntla, Section 145 Cr.P.C. proceedings have been initiated from the date of the order till issuance of further orders or till the decree of ownership is passed by the competent Civil Court, whichever is earlier.

4. Aggrieved by the said proceedings, the petitioners have filed the present Criminal Revision Case.

5. Learned counsel appearing for the petitioners would contend that the petitioners are the absolute owners of the lands mentioned in the impugned proceedings. However, respondent Nos. 4 and 5 are also setting up a rival claim resulting in filing of O.S.No.216 of 2014 for declaration and injunction on the file of the Court of Senior Civil Judge, Proddutur, YSR Kadapa district. When a competent Civil Court has already seized of the matter in respect of the subject property, respondent No.2 is barred from issuance of the

proceedings under Section 145 of Cr.P.C. To support his contention, he relied on the judgment in the case of *CHELLA VENKATA RAMANA REDDY AND ANOTHER vs. STATE OF ANDHRA PRADESH AND ANOTHER*¹. In the above said judgment, this Court had an occasion to consider the scope of Section 145 Cr.P.C. and held as under:

“7. On perusal, the impugned order reads that so far the Executive Magistrate has not passed any final order by calling upon the written statements of both parties but it appears, he has passed only a preliminary order restraining both the parties which is now challenged. It must be noted that in the impugned order itself learned Magistrate mentioned about the pendency of civil suits between the parties. When the competitive civil Courts are already seizing of the disputes touching subject properties, the Executive Magistrate will have no jurisdiction to pass any final 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.*, AIR 1985 SC 472, 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* (supra) was upheld by the apex Court in its

¹ 2015 (1) ALD (CrI) 927

another decision reported in *Amresh Tiwari v. Lalta Prasad Dubey*, 2000 (2) ALD (CrI.) 238 (SC) = AIR 2000 SC 1504.

It was observed thus:

“13. We are unable to accept the submission that the principles laid down in *Ram Sumer's* case (supra), would only apply if the civil court has already adjudicated on the dispute regarding the property and given a finding. *In our view Ram Sumer's case (supra) 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.*”

6. Per contra, learned counsel for respondent Nos. 4 and 5 would contend that respondent Nos. 4 and 5 are the owners of the subject property. Since there is a dispute, they were constrained to file a suit for declaration and permanent injunction. Against rejection of the interlocutory application seeking injunction, a Civil Miscellaneous Application was filed before the District and Sessions Judge, Proddutur and the same is pending consideration. Therefore, he supported the issuance of the impugned proceedings on the ground that there is disturbance to the peace and tranquillity in the village.

7. Having heard both the counsel and from the perusal of the material on record, it is an admitted fact that respondent Nos. 4 and 5 and the petitioners herein are disputing for their legitimate claim over the subject property in O.S.No.216 of

2014. Admittedly, when a competent Civil Court has seized of the matter with regard to the ownership and injunction, as contended by the learned counsel for the petitioners, the proceedings under Section 145 Cr.P.C. cannot be initiated.

8. This Court and the Hon'ble 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.

9. In the case on hand, admittedly, the proceedings are pending before a competent Civil Court.

10. In these circumstances, this Court is of the opinion that the proceedings initiated by respondent No.2 in M.C.No.118 of 2014 dated 22.11.2014 are not maintainable.

11. Accordingly, the Criminal Revision Case is allowed in setting aside the proceedings in M.C.No.118 of 2014 dated 22.11.2014.

Pending miscellaneous petitions, if any, shall stand closed.

P. KESHAHA RAO,J

Date: 29.8.2018

KPM