



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Fifth day of January Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice D. BHARATHA CHAKRAVARTHY

CRIMINAL MISCELLANEOUS PETITION No.4763 of 2021

IN CRL.R.C.NO.83 of 2013

MARTIN SELVAM

[PETITIONER/2nd RESPONDENT]

Vs

1 JEROME RAYAPPAN

[1st RESPONDENT/PETITIONER]

2 THE REVENUE DIVISIONAL OFFICER,
THIRUVARUR, THIRUVARUR DISTRICT.

[2nd RESPONDENT]

3 STATE REP.BY
THE INSPECTOR OF POLICE,
NANNILAM POLICE STATION,
NANNILAM TALUK,
THIRUVARUR DISTRICT.

[3rd RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.R.C.NO.83 of 2013 on the file of the High Court, the High Court will be pleased to permit the petitioner to adduce further evidence by Cross Examine in the Advocate Commissioner on the report submitted by him in Cr.R.C.No.83 of 2013 IN CRL.MP.NO.4763/2021.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.R.C.NO.83 of 2013 on the file of the High Court and upon hearing the arguments of MR.GEORGE GRAHAM FOR MR.DEVADASON AND SAGAR Advocate for the petitioner and of MR.V.MEGANATHAN Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

On 13/01/2013, the Inspector of Police, Nannilam Police Station, registered a case in Cr.No.09 of 2013, to the effect that in respect of lands admeasuring Hectares 11.22.00 in Selvapuram hamlet, Moolangudi Village, Nannilam Taluk, one Mr.Jerome Royappan, S/o.M.S. Royappan (A-Party) is contending that the same belongs to him and that he is cultivating the same through one D. Divakaran S/o.Dellibabu; and

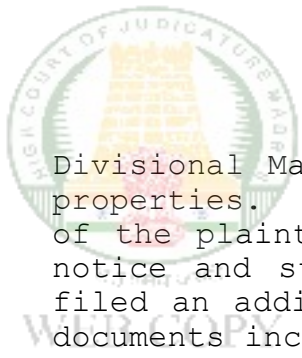


currently the paddy, cultivated for the Samba crop, is ready for harvest and while so, on 11/01/2013, when they attempted to harvest the same, Mr.Martin Selvam, S/o.Edward Thamarai Selvam (B-Party) had threatened them at gun point and therefore, a case was registered in Cr.No.8 of 2013 under Sections 341, 506 (ii) of Indian Penal Code. A counter complaint was lodged by the above said Mr.Martin Selvam, stating that the lands belong to him and that he has cultivated the same and that Mr.Jerome Royappan is trying to cultivate the same and the said complaint is given Petition No.436/2012 on 13/12/2012. Martin Selvam has also filed a suit in O.S.No.68 of 2012 on 25/07/2012 and the same is pending. However, both sides are claiming rights and attempting to harvest and therefore, there is an imminent likelihood of breach of law and order.

2. The Sub-Divisional Magistrate, taking the said petition under Section 145 of the Code of Criminal Procedure on file, conducted an inquiry with both A & B parties and by order, dated 18/01/2013 bearing ref: Na.Ka.No.95 of 2013/A-5, had in respect of 24 items of lands of a total extent of 13.94.25 hectares and cultivated extent of 11.27.00 hectares, had in exercise of powers under Section 145(8) of Cr.P.C., appointed one Ganesan, Tahsildar, Nannilam Taluk to be the receiver for the property, directing him to harvest the paddy and sell the paddy at the Direct Purchase Center of Tamil Nadu Civil Supplies Corporation Limited.

3. Aggrieved by the said Order, Mr. Jerome Royappan, the A-party, filed Crl.R.C.No.83 of 2013 on 21/01/2013. It is his contention that the properties were originally owned by his grand father, Sir A.T. Paneerselvam, which was inherited and partitioned by his four sons. One among them Mr.L.G. Selvam, thus, came to be possessed of about 70 acres and thereafter, was inherited by his 5 children, including Mr. A.T. Panner Selvam. The said A.T. Panneer Selvam, took the help of B-party for cultivation, when he was in Chennai, upto the year 2009, when he passed away. The Petitioner/A-Party's father was married to the sister of L.G. Selvam and has also purchased about 20 acres of land. After the passing away of A.T. Panneer Selvam, the A-party was cultivating the said lands on behalf of himself and the family and whileso, the B-party is attempting to trespass. He had produced the first information reports filed in the police station on various dates in the year 2012 and Chitta Extracts to show that he and his other family members were in cultivation.

4. Aggrieved by the same order, Mr. Martin Selvam, the B-party filed Crl.R.C.No.108 of 2013 on 23/01/2013. It is his contention that there is a dispute between him and the A-party in respect of 47 items of properties in respect of which he has filed a suit in O.S. No. 68 of 2012, on the file of the District Munsif Nannilam. However, of the 24 items mentioned in the order passed under Section 145 Cr.P.C., only 1, 2 and 24 are mentioned in the suit schedule and disputed properties. But item Nos.3 to 23 in the list mentioned by the Sub-



Divisional Magistrate are willfully included as if they are disputed properties. In support of his contentions, he had produced the copies of the plaint and affidavit filed in the above suit and the earlier notice and statement given by him to the police etc. He has also filed an additional volume of papers on 26/03/2013 producing several documents including chittas etc.

5. When, Crl.R.C.No.83 of 2013, came up for admission on 24/01/2013, this Court had passed an ad-interim exparte order in Crl.M.P.No.2 of 2013, permitting Mr. Jerome Royappan, the A-Party, to cultivate the lands and directed police protection be given for his cultivation and also since ad-interim exparte order is passed, so as to safeguard the interests of the B-party, also appointed an Advocate Commissioner (Mr. N. Swaminathan, Advocate, Mannagudi) to supervise the harvest by Mr. Jerome Royappan with respect to the number of bags of paddy harvested and all the details of the entire harvest to this court.

6. On 24/01/2013, the B-Party, Mr. Martin Selvam, filed M.P. No. 3 of 2013 in Crl.R.C.No.83 of 2013, praying to permit him to harvest the paddy in respect of the property mentioned in the Schedule to O.S. No.68 of 2012, in which orders were passed calling for records etc., but, however, the same is pending consideration.

7. The Advocate Commissioner has filed a report dated Nil, whereby, he has stated that pursuant to the warrant, he issued notice to both parties, fixed the harvest date on 29/01/2013 and ascertained the lands with the help of Village Administrative Officer and Village Assistant and the Tahsildar reached the spot about 9 A.M. After duly ascertaining the lands, harvest was done in the extent of 11 Hectares and 27 acres and the harvest completed on the same day at 5 P.M. Totally 502 bags, each bag containing 62 kgs were harvested and was handed over to A-party, Mr. Jerome Royappan. Police protection was granted for the harvest and one Mr. Arunkumar Son of Stalin, of Dass Studio videographed the harvest and DVD cassette is said to be enclosed along with the report. Along with the report, the commissioner also filed an objection letter submitted by the B-Party Mr. Martin Selvam on 29/01/2013 stating that lands there are being harvested include the lands in his possession, enjoyment and long cultivation.

8. On 12/02/2013, the B-Party Mr. Martin Selvam, filed M.P.No.4 of 2013 in Crl.R.C.No.83 of 2013 to direct the A-Party to deposit the paddy and haystack to the Advocate Commissioner appointed by this Court, stating that he is harvesting crops from lands which is not under his possession and cultivation.

9. On 26/03/2013, the B-Party Mr. Martin Selvam, filed M.P. No.5 of 2013, whereunder he levelled allegations against the advocate commissioner of taking sides with A- party and stating that the B-



Party Mr. Jerome Royappan had as a matter of fact harvested crores in 78 acres of land and harvested about 2000 bags of paddy weighing 61 kgs each, which is way beyond even the 11 Hectares and 27 ares directed by the Court and therefore directed deposit of entire sale proceeds of 2000 bags of paddy to the credit of the Criminal Revision Case. On 26 /04/2013, the Advocate commissioner filed an affidavit denying the allegations levelled against him and stating that he had filed his report after serving due notice on B-Party Mr. Martin Selvam. On 25/04/2013, a counter affidavit is filed by A-Party Mr. Jerome Royappan, stating that the claim of 2000 bags of paddy as illogical. The said application is pending consideration.

10. While the matters were pending, now, the B-Party Mr. Martin Selvam, had on 07/04/2021 filed Crl.M.P.No.4763 of 2021 in Crl.R.C.No.83 of 2013, to permit the petitioner to adduce further evidence by cross examining the Advocate Commissioner on the report submitted by him in Crl.R.C.No.83 of 2013. It is the specific case of the petitioner that the A-Party harvested the paddy in 78 acres of land, which is the subject matter of O.S. No. 68 on the file of District Munsif Court, Nannilam and stating that the report of the commissioner that the paddy was harvested only from 11.27hectares is false. A counter affidavit is filed by the A-Party Mr. Jerome Royappan stating that Advocate Commissioner conducted the harvest as per the order and that such an application is not maintainable.

11. When he matters came up for hearing now, this Court heard Mr. V. Selvaraj, the learned Counsel appearing for B-Party and Mr.R.Vivekanandan, the Learned Counsel appearing for A-Party and Mr. L. Baskaran, the Learned Government Advocate (Criminal Side) on behalf of the first respondent/Sub-Divisional Magistrate and the third respondent police.

12. Mr. V. Selvaraj, the Learned Counsel submitted that this is a case wherein, high handedly exparte ad-interim direction order was obtained and thereafter, without carrying out the order in letter and spirit, the A-Party had harvested more than the 11.27 hectares and as a matter of fact totally 78 acres. That B-Party has filed an album containing photographs of the harvest which was done beyond the scope of the order and he has also produced video graphs. Hence, it is just and necessary that the Advocate Commissioner be permitted to cross examined by him. He would submit that being the party aggrieved by the commissioner's report he is entitled to cross examine the commissioner. Further he would submit that the B-party has filed the application for the larger relief of leading evidence, has he will adduce such evidence before this Court to prove his allegations and also cross examine the commissioner. Without passing final orders on the commissioner's report and rendering justice to parties, no final orders could be passed in the main revision petition as B-Party is put into irreversible position of losing the entire harvest and paddy by virtue of interim orders of this Court, while the Order of the Sub-



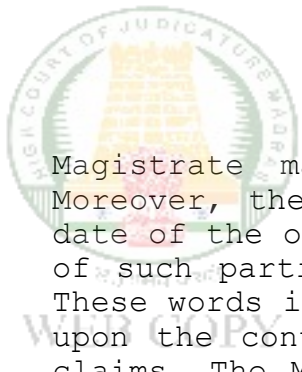
Divisional Magistrate was to permit the receiver to harvest and deposit, which would have been fair to both parties. Now, the civil court cannot also decide on the correctness or otherwise about the happenings by virtue of the interim order of this Court permitting A-Party to harvest under the supervision of the commissioner and hence it is just and necessary an inquiry to be conducted by this Court in these proceedings and so that appropriate findings/reliefs can be granted by this Court, while finally disposing of the Criminal Revision Cases.

13. Mr.R.Vivekanandan, the learned Counsel for the A-party would submit that main Criminal Revisions themselves have become infructuous in view of the efflux of time and the matter is pending in civil court. No further adjudication is necessary. Examination of Advocate Commissioner cannot be done in this Criminal Revision Case and it is only to call for and examine the correctness of the orders passed under Section 145 Cr.P.C. and the B-Party has to work out his rights elsewhere and prayed that the main petitions themselves be closed. He submitted that the Advocate Commissioner had filed his application in the year 2013 for which now, very belatedly in the year 2021, application is filed for cross examination and therefore he would pray that the miscellaneous application be dismissed.

14. Mr. L. Baskaran, the Government Advocate, Criminal Side, would submit that the Order was passed under Section 145 in view of the imminent danger of breach of peace and considering that the paddy would wither away and thereafter, Advocate Commissioner was appointed and due protection was granted as per the Order of this Court.

15. First, the nature of power, manner of exercise and effect of the Order passed under Section 145 Cr.P.C. has been clearly and categorically restated by the Constitution Bench of the Hon'ble Supreme Court of India in M. Siddiq through legal representatives Vs. Mahant Suresh Das and Others (Ram Janmabumi Temple Case)1 in paragraphs 295 to 300 which are gainfully extracted hereunder :

"295. Section 145 is recognised to be a branch of the preventive jurisdiction of the Magistrate. [Commentary on the Criminal Procedure Code by Ratanlal and Dhirajlal, 20th Edn. (2016) at p. 426.] Section 145(1) can be invoked on the satisfaction of the Magistrate that "a dispute likely to cause a breach of the peace exists...". The provision relates to disputes regarding possession of land or water or its boundaries which may result in breach of the peace. The function of the Magistrate is not to go into questions of title, but to meet the urgency of the situation by maintaining the party in possession. The Magistrate is empowered to call upon the parties to put in written statements in support of their claim to "actual possession". Such an order is to be served as a summons upon the parties. The Magistrate is to peruse the statements, hear the parties and weigh the evidence, in order to ascertain who was in possession at the date of the order. The

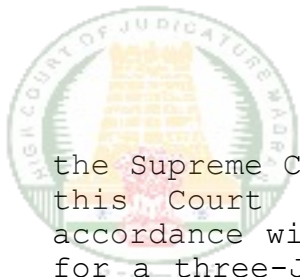


Magistrate may make that determination "if possible" to do so. Moreover, the determination is about the factum of possession on the date of the order "without reference to the merits of the claim of any of such parties to a right to possess the subject of the dispute". These words indicate that the Magistrate does not decide or adjudicate upon the contesting rights to possess or the merits of conflicting claims. The Magistrate is concerned with determining only who was in possession on the date of the order. If possession has been wrongfully taken within two months of the order, the person so dispossessed is to be taken as the person in possession. In cases of emergency, the Magistrate can attach the subject of the dispute, pending decision. The action ultimately contemplated under Section 145 is not punitive, but preventive, and for that purpose is provisional only till a final or formal adjudication of rights is done by a competent court in the due course of law. Thus, nothing affecting the past, present and future rights of parties is contemplated under the provision.

296. The object of the provision is merely to maintain law and order and to prevent a breach of the peace by maintaining one or other of the parties in possession, which the Magistrate finds they had immediately before the dispute, until the actual right of one of the parties has been determined by a civil court. The object is to take the subject of dispute out of the hands of the disputants, allowing the custodian to protect the right, until one of the parties has established her right (if any) to possession in a civil court. [Commentary on the Criminal Procedure Code by Ratanlal and Dhirajlal, 20th Edn. (2016) at p. 427.] This is evident from the provisions of sub-section (6) of Section 146. The Magistrate declares the party which is entitled to possession "until evicted therefrom in due course of law". While proceeding under the first proviso, the Magistrate may restore possession to A-party which has been wrongfully and forcibly dispossessed. No party can be allowed to use the provisions of Section 145 for ulterior purposes or as a substitute for civil remedies. The jurisdiction and power of the civil court cannot in any manner be hampered. [Commentary on the Criminal Procedure Code by Ratanlal and Dhirajlal, 20th Edn. (2016) at p. 451.]

297. This Court has analysed the nature and scope of proceedings under Section 145 in the following cases:

297.1. In *Bhinka v. Charan Singh* [*Bhinka v. Charan Singh*, 1959 Supp (2) SCR 798 : AIR 1959 SC 960 : 1959 Cri LJ 1223], the respondent, claimed the lands in dispute "to be his sir", while the appellants claimed to be in possession of the lands as hereditary tenants. The Magistrate initiated proceedings under Section 145, attached the lands in dispute and directed them to be placed in possession of a superdgidar pending disposal of those proceedings. After enquiries, the Magistrate concluded that the appellants were entitled to be in possession until evicted in due course of law. Thereafter, the respondent filed a suit before the Revenue Courts. The appeal before



the Supreme Court arose from that proceeding. One of the issues before this Court was whether the appellants had taken possession in accordance with the provisions of Section 145. Subba Rao, J. speaking for a three-Judge Bench of this Court, held thus : (AIR p. 966, para 16)

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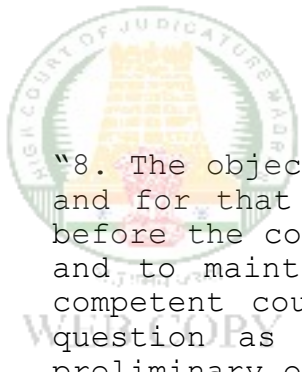
"16. ... Under Section 145(6) of the Code, a Magistrate is authorised to issue an order declaring A-party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide A-party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is on apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is co-terminus with the passing of a decree by a civil court and the moment a civil court makes an order of eviction, it displaces the order of the criminal court. The Privy Council in *Dinomoni Chowdhrani v. Brojo Mohini Chowdhrani* [*Dinomoni Chowdhrani v. Brojo Mohini Chowdhrani*, 1901 SCC OnLine PC 32 : (1901-02) 29 IA 24] , at IA p. 33 tersely states the effect of orders under Section 145 of the Code of Criminal Procedure thus : (SCC OnLine PC)

'... These orders are merely police orders made to prevent breaches of the peace. They decide no question of title...'

We, therefore, hold that a provisional order of a Magistrate in regard to possession irrespective of the rights of the parties cannot enable a person to resist the suit under Section 180 of the Act."

(emphasis supplied)

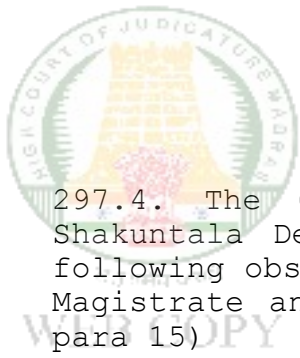
297.2. In *R.H. Bhutani v. Mani J. Desai* [*R.H. Bhutani v. Mani J. Desai*, (1969) 1 SCR 80 : AIR 1968 SC 1444 : 1969 Cri LJ 13] , the appellant entered into a leave and licence agreement with the first respondent to occupy a cabin owned by her. When a dispute over increase in compensation arose between the parties, the first respondent sought to evict the appellant and also hand over the possession of the cabin to the second and third respondents. Thereafter, the appellant filed an application under Section 145 and the Magistrate commenced the proceedings. While the proceedings were pending, the respondent filed a civil suit. The Magistrate concluded that the appellant was in actual possession of the cabin and had been forcibly dispossessed. In the revision petition before the High Court, the Magistrate's order was set aside and it was held that the Magistrate had breached the scope of his powers under Section 145. The order of the High Court was assailed before this Court, which set aside the order of the High Court and restored the order of the Magistrate. J.M. Shelat, J. speaking for a three-Judge Bench of this Court discussed the scope of proceedings under Section 145 in the following terms : (AIR pp. 1447-48, para 8)



"8. The object of Section 145, no doubt, is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined by a competent court. ... The enquiry under Section 145 is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties."
(emphasis supplied)

297.3. In *Shanti Kumar Panda v. Shakuntala Devi* [*Shanti Kumar Panda v. Shakuntala Devi*, (2004) 1 SCC 438 : 2004 SCC (Cri) 320] , there was a dispute between the parties regarding a shop. Proceedings under Section 145 were commenced on the basis of a complaint filed by the appellant and the Magistrate attached the property. The respondent, who claimed to be interested in the subject-matter of the dispute was not allowed to be impleaded in the proceedings. The final order under Section 145 was in favour of the appellant. Revision petitions against the order were dismissed. Thereafter, the respondent filed a civil suit and secured an injunction. The injunction was however, vacated by the District Court on the ground that since Section 145 proceedings had terminated in the appellant's favour, the trial court was not justified in issuing the injunction unless and until the order of the Magistrate was superseded by a civil court's decree and no injunction could be granted while the property was "custodia legis". The High Court reversed [*Shakuntala Devi v. District Judge, Jaunpur*, 1996 SCC OnLine All 131 : (1996) 2 AWC 953] the District Court's order. The decision of the High Court was assailed before this Court. A three-Judge Bench of this Court dismissed the appeal and dealt with the nature of proceedings under Section 145. J.M. Shelat, J. speaking for the Court held : (SCC p. 447, para 10)

"10. The proceedings under Sections 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in the proviso to sub-section (4) of Section 145 and maintain the status quo as to possession until the entitlement to possession was determined by a court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter...."



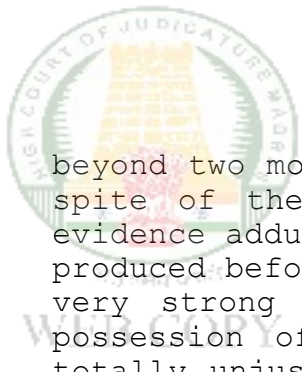
297.4. The Court in Shanti Kumar Panda [Shanti Kumar Panda v. Shakuntala Devi, (2004) 1 SCC 438 : 2004 SCC (Cri) 320] , in the following observations dealt with the interplay between the order of a Magistrate and the jurisdiction of a civil court : (SCC pp. 448-49, para 15)

"15. It is well settled that a decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. (See Sarkar on Evidence, 15th Edn., p. 845.) A decision given under Section 145 of the Code has relevance and is admissible in evidence to show : (i) that there was a dispute relating to a particular property; (ii) that the dispute was between the particular parties; (iii) that such dispute led to the passing of a preliminary order under Section 145(1) or an attachment under Section 146(1), on the given date; and (iv) that the Magistrate found one of the parties to be in possession or fictional possession of the disputed property on the date of the preliminary order. The reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court and the competent court is [Ed. : The matter between two asterisks has been emphasised in original.] not bound [Ed. : The matter between two asterisks has been emphasised in original.] by the findings arrived at by the Magistrate even on the question of possession though, as between the parties, the order of the Magistrate would be [Ed. : The matter between two asterisks has been emphasised in original.] evidence of possession [Ed. : The matter between two asterisks has been emphasised in original.] . The finding recorded by the Magistrate does not bind the court. The competent court has jurisdiction and would be justified in arriving at a finding inconsistent with the one arrived at by the Executive Magistrate even on the question of possession."

(emphasis supplied)

297.5. The Court in Shanti Kumar Panda [Shanti Kumar Panda v. Shakuntala Devi, (2004) 1 SCC 438 : 2004 SCC (Cri) 320] held that the order passed by the Magistrate will not be treated as binding even the interlocutory jurisdiction of the civil court under Order 39 of the Code of Civil Procedure : (SCC p. 451, para 22)

"22. ... The civil court shall also respect such order and will be loath to arrive at an interim arrangement inconsistent with the one made by the Executive Magistrate. However, this is far from holding that the civil court does not have jurisdiction to make an order of injunction inconsistent with the order of the Executive Magistrate. The jurisdiction is there but the same shall be exercised not as a rule but as an exception. There may be cases such as one where the order of the Executive Magistrate can be shown to be without jurisdiction, palpably wrong or containing self-contradictory findings. For example, the Magistrate may have made an order treating the party dispossessed



beyond two months to be as in possession. There may be cases where in spite of the order made by the Executive Magistrate based on the evidence adduced before it, the competent court, based on the material produced before such court, may be inclined to hold that prima facie a very strong case for retaining or placing one of the parties in possession of the suit property is made out or where it will be totally unjust or inequitable to continue one party in possession of the property as ordered by the Executive Magistrate. In such exceptional situations, the competent court (which will mostly be a civil court) may have jurisdiction for granting an order of injunction in departure from the findings recorded and the declaration made by the Executive Magistrate under Section 145 of the Code of Criminal Procedure. The order under Section 146 of the Code would not pose a problem of that magnitude. Inasmuch as the property is under attachment and is placed in the hands of a Receiver, the civil court can comfortably examine whether it would be just and expedient to continue with the attachment and with the same Receiver or to appoint another Receiver or to make some other interim arrangement during the pendency of the civil suit."

(emphasis supplied)

297.6. In *Surinder Pal Kaur v. Satpal* [*Surinder Pal Kaur v. Satpal*, (2015) 13 SCC 25 : (2016) 1 SCC (Civ) 544 : (2016) 1 SCC (Cri) 409] , reliance was placed upon the decision in *Shanti Kumar Panda* [*Shanti Kumar Panda v. Shakuntala Devi*, (2004) 1 SCC 438 : 2004 SCC (Cri) 320] . Dipak Misra, J. (as the learned Chief Justice then was) speaking for the two-Judge Bench, held thus : (*Surinder Pal Kaur* case [*Surinder Pal Kaur v. Satpal*, (2015) 13 SCC 25 : (2016) 1 SCC (Civ) 544 : (2016) 1 SCC (Cri) 409] , SCC p. 28, para 10)

"10. ... It is a settled position of law that the observations made in the proceedings drawn under Section 145 CrPC do not bind the competent court in a legal proceeding initiated before it."

298. Section 145 proceedings do not purport to decide A-party's title or right to possession of the land. The property held in attachment in proceedings under Section 145 is "custodia legis". Hence, it is not necessary to secure possession from A-party who is not in possession and is hence, not in a position to deliver possession. This Court has analysed the nature of the property under attachment in the following decisions:

298.1. In *Deo Kuer v. Sheoprasad Singh* [*Deo Kuer v. Sheoprasad Singh*, (1965) 3 SCR 655 : AIR 1966 SC 359] , a three-Judge Bench of this Court, held that property held under attachment under Section 145 is "custodia legis". The appeal arose out of a suit brought by the appellants in 1947 for a declaration that the respondents had acquired no right or title to a property under certain deeds and that the deeds were inoperative and void. The suit was decreed by the trial court, but on appeal, the High Court set aside the decree. The High Court held that as the appellants were not in possession of the property at



the date of the suit, their suit must fail under the proviso to Section 42 of the Specific Relief Act as they had failed to ask for the further relief of recovery of possession from the respondents. On the date of the suit, the property in dispute had been attached by the Magistrate, exercising his powers under Section 145 and was not in the possession of any party. The issue that arose before this Court was whether in view of the attachment, the appellants could have in their suit, sought the relief for delivery of possession to them. Speaking for the three-Judge Bench, A.K. Sarkar, J. held thus : (AIR pp. 360-61, paras 4-5)

"4. In our view, in a suit for declaration of title to property filed when it stands attached under Section 145 of the Code, it is not necessary to ask for the further relief of delivery of possession. The fact, if it be so, that in the case of such an attachment, the Magistrate holds possession on behalf of the party whom he ultimately finds to have been in possession is, in our opinion, irrelevant. On the question however whether the Magistrate actually does so or not, it is unnecessary to express any opinion in the present case.

5. The authorities clearly show that where the defendant is not in possession and not in a position to deliver possession to the plaintiff it is not necessary for the plaintiff in a suit for a declaration of title to property to claim possession : see *Sunder Singh-Mallah Singh Sanatan Dharam High School Trust v. Sunder Singh-Mallah Singh Rajput High School* [*Sunder Singh-Mallah Singh Sanatan Dharam High School Trust v. Sunder Singh-Mallah Singh Rajput High School*, 1937 SCC OnLine PC 89 : (1937-38) 65 IA 106] . Now it is obvious that in the present case, the respondents were not in possession after the attachment and were not in a position to deliver possession to the appellants. The Magistrate was in possession, for whomsoever, it does not matter, and he was not of course A-party to the suit. It is pertinent to observe that in *Nawab Humayun Begam v. Nawab Shah Mohammad Khan* [*Nawab Humayun Begam v. Nawab Shah Mohammad Khan*, 1943 SCC OnLine PC 8 : AIR 1943 PC 94] it has been held that the further relief contemplated by the proviso to Section 42 of the Specific Relief Act is relief against the defendant only. We may add that in *K. Sundaresa Iyer v. Sarvajana Sowkiabi Virdhi Nidhi Ltd.* [*K. Sundaresa Iyer v. Sarvajana Sowkiabi Virdhi Nidhi Ltd.*, 1939 SCC OnLine Mad 124 : ILR 1939 Mad 986] it was held that it was not necessary to ask for possession when property was in custodia legis. There is no doubt that property under attachment under Section 145 of the Code is in custodia legis. These cases clearly establish that it was not necessary for the appellants to have asked for possession."

298.2. In *Shanti Kumar Panda* [*Shanti Kumar Panda v. Shakuntala Devi*, (2004) 1 SCC 438 : 2004 SCC (Cri) 320] , this Court formulated the legal principles governing the effect of the order of a Magistrate under Sections 145/146 when legal proceedings are instituted before a court of competent jurisdiction : (SCC pp. 452-53, para 23)



"(1) The words "competent court" as used in sub-section (1) of Section 146 of the Code do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession over the property forming the subject-matter of proceedings before the Executive Magistrate;

(2) A party unsuccessful in an order under Section 145(1) would initiate proceedings in a competent court to establish its entitlement to possession over the disputed property against the successful party. Ordinarily, a relief of recovery of possession would be appropriate to be sought for. In legal proceedings initiated before a competent court consequent upon attachment under Section 146(1) of the Code it is not necessary to seek relief of recovery of possession. As the property is held custodia legis by the Magistrate for and on behalf of the party who would ultimately succeed from the court, it would suffice if only determination of the rights with regard to the entitlement to the possession is sought for. Such a suit shall not be bad for not asking for the relief of possession.

(3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and weight before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence.

(4) The court will be loath to issue an order of interim injunction or to order an interim arrangement inconsistent with the one made by the Executive Magistrate. However, to say so is merely stating a rule of caution or restraint, on exercise of discretion by court, dictated by prudence and regard for the urgent/emergent executive orders made within jurisdiction by their makers; and certainly not a tab on the power of court. The court does have jurisdiction to make an interim order including an order of ad interim injunction inconsistent with the order of the Executive Magistrate. The jurisdiction is there but the same shall be exercised not as a rule but as an exception. Even at the stage of passing an ad interim order the party unsuccessful before the Executive Magistrate may on material placed before the court succeed in making out a strong prima facie case demonstrating the findings of the Executive Magistrate to be without jurisdiction, palpably wrong or self-inconsistent in which or the like cases the court may, after recording its reasons and satisfaction, make an order inconsistent with, or in departure from, the one made by the Executive Magistrate. The order of the court – final or interlocutory, would have the effect of declaring one of the parties entitled to possession



and evicting therefrom the party successful before the Executive Magistrate within the meaning of sub-section (6) of Section 145.”
(emphasis supplied)

The above formulation is essentially a restatement of the principles which emerge from a consistent line of precedent of the Court. [See also Jhummal v. State of M.P. [Jhummal v. State of M.P., (1988) 4 SCC 452 : 1988 SCC (Cri) 974]]

299. Where a suit is instituted for possession or for declaration of title before a competent civil court, the proceedings under Section 145 should not continue. This Court has analysed the above proposition of law in the following cases:

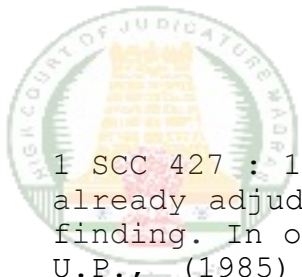
299.1. In Amresh Tiwari v. Lalta Prasad Dubey [Amresh Tiwari v. Lalta Prasad Dubey, (2000) 4 SCC 440 : 2000 SCC (Cri) 806] , S.N. Variava, J. speaking for a three-Judge Bench of this Court held thus : (SCC p. 445, para 12)

“12. ... The law on this subject-matter has been settled by the decision of this Court in Ram Sumer Puri Mahant v. State of U.P. [Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427 : 1985 SCC (Cri) 98] In this case it has been held as follows : (SCC pp. 428-29, para 2)

‘2. ... 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. ... parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of Receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue...’ ”

299.2. The Court in Amresh Tiwari [Amresh Tiwari v. Lalta Prasad Dubey, (2000) 4 SCC 440 : 2000 SCC (Cri) 806] rejected the submission that the principle in Ram Sumer Puri Mahant v. State of U.P. [Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427 : 1985 SCC (Cri) 98] will apply only after the civil court has adjudicated on the issue : (SCC p. 445, para 13)

“13. We are unable to accept the submission that the principles laid down in Ram Sumer case [Ram Sumer Puri Mahant v. State of U.P., (1985)



1 SCC 427 : 1985 SCC (Cri) 98] 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 case [Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427 : 1985 SCC (Cri) 98] 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."

300. Dealing with the issue as to when the proceedings under Section 145 should not be pursued any further on the institution of a suit for adjudication, this Court in Amresh Tiwari [Amresh Tiwari v. Lalta Prasad Dubey, (2000) 4 SCC 440 : 2000 SCC (Cri) 806] held : (SCC p. 446, para 14)

"14. Reliance has been placed on the case of Jhummamal v. State of M.P. [Jhummamal v. State of M.P., (1988) 4 SCC 452 : 1988 SCC (Cri) 974] It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 of the Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145 of the Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 of the Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An order of status quo had already been passed by the competent civil court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumer case [Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427 : 1985 SCC (Cri) 98] fully applies. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. 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 that 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." (emphasis supplied)"

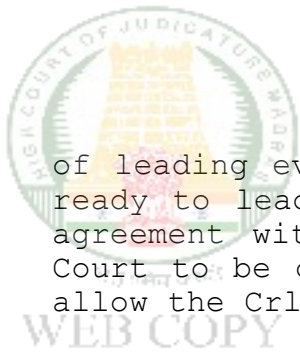


16. Thus, the parties cannot take advantage or plead possession only by virtue of the Order passed under 145 Cr.P.C. They have to independently establish their possession and entitlement before the Civil Court. In this case, proceedings were pending in Civil Court as B-party has also filed a suit in O.S. No. 68 of 2012 for protection of his possession and enjoyment and the very initiation of proceedings pending civil proceedings by itself is erroneous and therefore, both sides filing two revisions impugning the same order, both revisions have to be allowed by setting aside the Order passed by the first respondent/Sub-Divisional Magistrate.

17. But however, one party ,that is, A-Party was permitted to carry on the harvest by ex-parte ad-interim order of this Court. Even that, if the quantum of paddy bags as claimed by A-Party and the Advocate Commissioner is agreed, as 502 bags, then liberty can be given to the B-Party to work out his rights in the manner known to law. However, in this case, B-party alleges that taking advantage of the interim order, with the help of the commissioner, totally 78 acres were harvested. Therefore, it is just and necessary, that before passing final orders in the revision, this Court has to either accept the report of the commissioner or give a finding on the allegations of B-party in his favour. Therefore, it is just and necessary to consider the report of the Advocate Commissioner first for acceptance. In this regard, since, B-Party is objecting to the report of the Advocate Commissioner, an opportunity has to be granted to them to cross examine. The law on this aspect is again made clear by the Constitution Bench in Ram Janmabumi Temple Case , in paragraph 661 which is as follows :

"661. In principle, we are of the view that A-party to a suit is not foreclosed from raising objections to the report of a Commissioner or from leading the evidence of its own witnesses to controvert the findings merely because it has not requested the court to summon the Commissioner for the purpose of examination. But, A-party which fails to take recourse to the enabling power which is conferred by Rule 10 (2) to request the court to allow the examination of the Commissioner in court, may in a matter touching upon the expertise of the Commissioner face a peril."

18. Thus, I hold that the petitioner/B-Party is entitled to cross examine the Advocate Commissioner. But this court has to ensure that the allegations are more than prima facie correct. The affidavit of the B- Party does not contain any proper description of the 78 acres and which of the photographs and videos submitted by him depict lands which do not form part of 11-27 hectares which was permitted by this Court. To a query to the said effect posted by this Court during the Course of the hearing, the Learned Court for B-Party, submitted that as a matter of fact this application was filed for the larger relief



of leading evidence, including cross examination and that B-party is ready to lead evidence first to establish his allegations. I am in agreement with the said course, before allowing the Officer of the Court to be cross examined by the petitioner/B-party. I, therefore, allow the Crl.M.P.No.4763 of 2021 on the following terms :

(i) That the petitioner shall lead such evidence in such form as he thinks fit to substantiate his allegation that (a) harvest was carried on beyond the 11.27 Hectares of land; (b) that it was not 502 bags of paddy which is harvested but about 2000 bags. It is needless to state that the respondent A-Party will be entitled to cross examination and let in evidence on their part also;

(ii) Upon consideration of such evidence, this Court will decide and permit cross examination of the Advocate Commissioner thereafter.

(iii) Post the Main Crl.R.C.Nos.83 and 108 of 2013 for evidence of Petitioner/B-Party on 08/02/2022.

-sd/-
25/01/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT MUNSIF JUDGE
NANNILAM.

2 REVENUE DIVISIONAL OFFICER
THIRUVARUR, THIRUVARUR DISTRICT.

3 THE INSPECTOR OF POLICE,
NANNILAM POLICE STATION,
NANNILAM TALUK, THIRUVARUR DISTRICT.



4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

WEB COPY

+1C.C. to M/S.DEVADASON AND SAGAR Advocate on payment of
necessary charges SR.No.1166

Order
in
CRL MP.4763/2021
in
CRL.RC.83/2013
Date :25/01/2022

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

CSK 04/02/2022