

Malegowda Vs. Mugaiah and ors.

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Court : Karnataka

Decided On : Mar-31-1969

Reported in : AIR1969Kant315; AIR1969Mys315; 1969CriLJ1251

Judge : B.M. Kalagate, J.

Acts : Code of Criminal Procedure (CrPC) , 1889 - Sections 145, 146(1) and 146(2); Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 - Sections 5, 6 and 9-A; Public Servants (Esquires) Act, 1850; [Constitution of India](#) - Article 134(1)

Appeal No. : Cri. Revn. Petn. No. 124 of 1968

Appellant : Malegowda

Respondent : Mugaiah and ors.

Judgement :

ORDER

1. The short question that arises for consideration in this petition is whether the order made by the Mysore Revenue Appellate Tribunal on 20-12-1966 in favour of the respondents in this petition is an order as contemplated by Section 146(1) of the Code of Criminal Procedure.

2. The facts leading to this question may briefly be stated as follows:--

In the proceedings initiated under Section 145 of the Code of Criminal Procedure, a preliminary order was passed on 4-3-1952. The dispute related to the possession of Inam land bearing Survey Number 237 of Bellekare Inam Village. The Magistrate thereafter made an order on 15-12-1952 to the following effect.

'Both parties submit that they have no evidence to adduce in this court. Hence they are directed to settle their claim in a competent court. The attachment of the schedule property and the receiver appointed to manage the property shall continue under Section 146(1) Cr.P.C. and 146(2) Cr.P.C. respectively pending production of an order from competent Civil Court. Filed the application, Signed 15-12-1952.

Thereafter the first party member filed O. S. 18/1954 for declaration of his title and possession but it was later on withdrawn. In the meanwhile, the Mysore (Personal and Miscellaneous) Inams Abolition Act 1954., (hereinafter referred to as the Act) came into force and the said Inam village vested in the Government as from 2-10-1956. The members of the first and second party initiated proceedings before the Deputy Commissioner for having their names registered either under Section 5 or under Section 6 of the Inam Abolition Act. Ultimately, the Mysore Revenue Appellate Tribunal held by its order dated 20-12-1966 that the members of the second party were in possession of the land. The said order was challenged before this court in a writ petition. But the same was not admitted. Thus the order made by the Revenue Appellate Tribunal on 20-12-1966 became final.

3. Since the property was under attachment and a receiver was appointed, the members of the second party made an application to the Magistrate on 16-10-1967 praying that Receiver may be discontinued and possession of the land should be handed over to them. That application was allowed by the Magistrate on 11-3-1968, directing the Receiver to hand over possession of the disputed property to the members of the second party. He further directed that the balance of the amount in deposit in respect of the disputed land should be paid to the members of the second party.

4. It is the correctness of this order that is being challenged in this petition by the member of the first party.

5. The principal contention urged by Mr. Raghavendra Rao for the petitioner is that the order of the Mysore Revenue Appellate Tribunal is not an order of a competent Court and therefore, the learned Magistrate was in error in directing the Receiver to hand over possession of property to the second party. It is necessary to state here that the order of the Magistrate was made in the year 1952 under S. 146(1) of the Code of Criminal Procedure. Sub-section (1) of Section 146 of the Criminal Procedure Code as it stood then reads:

'If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent court has determined the rights of the parties thereto, or the person entitled to possession thereof.'

Therefore, the attachment and the continuance of the Receiver appointed by him under Section 146(1) and (2) has to continue until a competent court has determined the rights of the parties thereto. The principal question that had to be decided by the Magistrate was the question of possession and if he found himself unable to determine that question, then, he may take necessary steps as contemplated under Section 146(1) and (2) of the Code of Criminal Procedure as it stood prior to its amendment, with which we are concerned.

6. In Section 146 of the Code of 1882, the words 'competent Civil Court' were used. The word 'Civil' was dropped in the Code of the year 1898. The Section again was amended in the year 1955 and under the provisions of Section 146(1) as they now stand no such question as mooted in the present petition would arise since in the event of a Magistrate finding himself unable to determine the question of possession himself he may direct the parties to a competent Civil Court and fix a date for their appearance. But prior thereto, if the Magistrate attaches the property and appoints a Receiver, then it was for the parties to get an order as to who was in possession on the date of the preliminary order and the parties had to obtain that order from a competent court.

7. We are concerned with the provisions of Section 146(1) of the Code as the section stood prior to the amendment of the year 1955 and that is so is clear from Section 116 of the amending Act of 1955 which is a saving section which provides:

'Notwithstanding that all or any of the provisions of this Act have come into force in any State.-- (a) The provisions of S. 14 or S. 30 or S. 145 or S. 146 of the principal Act as amended by this Act shall not apply to, or, effect any trial or other proceedings which on the date of such commencement is pending before any Magistrate and every such trial or other proceeding shall be continued and disposed of as if this Act had not been passed.'

Therefore, the question for decision in this case is whether the order made in favour of the members of the second party is an order made by a competent Court.

8. Now, the word 'Court' has not been defined in the Code of Criminal Procedure, However, there are judicial decisions in relation to the word 'competent' which say that the competency of the court relates to the territorial jurisdiction and not to pecuniary jurisdiction. It was however urged by Mr. Raghavendra Rao the learned counsel for the petitioner that the Revenue Appellate Tribunal is not a court and therefore, no effect could be given to the order made by it.

9. When the Legislature dropped the word 'civil' by amending the section in the year 1898 it is obvious that it

did not intend that the order must be passed by a Civil Court. All that it intended was that the parties should obtain an order from a competent court. But as already stated, the word, 'Court' has not been defined in the Code of Criminal Procedure.

10. However, I am indebted to Mr. Dayananda, the State Public Prosecutor for having brought to my notice a decision of the Supreme Court in *Brajnandan Sinha v. Jyoti Narayan* : 1956CriLJ156 . The question that was raised before the Supreme Court in that appeal was as to whether the Commissioner appointed under Act 37 of 1850, (Public Servants (Esquires) Act), was a Court. That question arose out of contempt proceedings initiated by one of the parties.

11. The High Court of Judicature at Patna took the view that the Commissioner appointed under Act 37 of 1850 was a Court, that the Court was subordinate to the High Court, and that the letter complained against amounted to contempt, Consequently, the appellant was held guilty of such contempt and was sentenced. The appellant having obtained a Certificate under Art. 134(1)(c) of the Constitution, preferred an appeal to the Supreme Court where the question stated above arose for consideration. Their Lordships noted that the word 'Court' was not defined in the Contempt of Courts Act and stated that the expression, 'Courts Subordinate to the High Courts' would prima facie mean the courts of law subordinate to the High Courts in the hierarchy of courts established for the purpose of administration of justice throughout the Union. Their Lordships then considered as to what were the essential attributes which would constitute a court. In that context they noticed the definition of the word 'court' available elsewhere which is as follows:-

'Coke on Littleton and Stroud defined the word 'court' as the place where justice is judicially administered.

According to Stephen, in every court, there must be at least three constituent parts the actor, reus and judex; the actor plaintiff who complains of an injury done; the reus, or defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and by its officers to apply, the remedy.'

The Court then examined the decision cited before it and ultimately reached the conclusion as follows:--

'It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.'

The Court also referred to the proposition summarised in Halsbury's Laws of England, Hailsham Edition, Vol. 8, p. 526, which is as follows:--

'Many bodies are not courts, although they have to decide questions and in so doing have to act judicially in the sense that the proceedings must be conducted with fairness and impartiality such as assessment committees, guardians committees, the court of referees constituted under the Unemployment Insurance Acts to decide claims made on the Insurance funds, the Benches of the Inns of Court when considering the conduct of one of their members, the General Medical Council, when considering questions affecting the position of a medical man.'

12. These are some of the tests which have to be applied while considering whether a particular Tribunal is a court. This then leads me to a consideration of the provisions of law under which the Mysore Revenue Appellate Tribunal made the order.

13. As already stated, the provisions of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954, were extended to the Inam village in question which vested in Government as from 2-10-1956. The result was that all the lands in that village vested in the Government and the relationship of landlord and tenant came to an end. However under Section 5 and 9-A of the Act, the tenants and holders of minor inams were allowed to

have their names entered in the revenue records. Accordingly, the first member of the first party applied to have his name registered as occupant on the ground that he was a permanent tenant whereas the members of the second party applied to have their names registered on the basis of their being quasi-permanent tenants. The Deputy Commissioner accepted the application of the first party member and rejected that of the second party. That decision of the Deputy Commissioner was subject to an appeal under the provisions of Section 28 of the Act to the prescribed authority and the decision of that prescribed authority was to be final. The prescribed authority under the Notification is the Mysore Revenue Appellate Tribunal (sic) as the appellate authority decided and held that the members of the second party were entitled to have their names registered as occupants on the basis of their being quasi-permanent tenants.

The term, 'quasi-permanent tenant' is defined in Section 2(14) of the Act as follows:--

'Quasi-permanent tenant' means a person who has been in continuous possession of any land used for agricultural purposes in an inam by cultivating such land himself with his own stock or by his hired servants or by hired labour or with hired stock on payment of rent to the inamdar for a period of not less than six years prior to the first day of July, 1948.'

14. According to the decision of the Revenue Appellate Tribunal, the members of the second party were held to be in continuous possession of the land at any rate six years prior to 1-7-1948. Thus the revenue Appellate Tribunal is an authority which under the law was competent to decide the question of possession.

15. It is clear from Section 10 of the Act that the Deputy Commissioner to whom an application has to be made under any one of Sections 5 to 9-A of the Act is under an obligation to examine the nature and history of all lands in respect of which a kadim tenant, a permanent tenant quasi-permanent tenant the holder of a minor inam or an inamdar claims to be registered as an occupant. Thus, one of the duties which is cast upon the Deputy Commissioner is to give his decisions or a definitive judgment which is made subject to an appeal to the Revenue Appellate Tribunal and that decision of the Tribunal is or has a finality and authoritativeness. Therefore, the finality and authoritativeness of the decision rendered by a tribunal are some of the essential tests to hold whether a judicial pronouncement is a decision of the Court. Therefore, applying the tests stated by the Supreme Court it has to be held that the decision of the Mysore Revenue Appellate Tribunal is a decision by a competent court within the meaning of Section 146(1) of the Code of Criminal Procedure.

16. It would not be out of place at this stage. if I refer to some of the decisions in which the term 'competent court' in Section 146(1) came for consideration. In the following cases, the decisions rendered by the revenue courts were held to be decisions of a 'competent court' within the meaning of Section 146(1) of the Cr. P. Code. They are:

Ambler v. Sami Ahmad, 1910-11 Cri LJ 372 (Cal); Mt. Ram Sri v. Kishan, AIR 1924 All 777; Ram Ranbijaya Prasad v. Ram Prasad AIR 1939 Pat 348.

The above decisions were referred to with approval by a subsequent decision of the Allahabad High Court in Sheonath Prasad v. City Magistrate : AIR1959All467 .

17. In Sessa Reddy v. Narasimha Reddy : AIR1941Mad803 the question involved was one of trusteeship of a temple. In proceedings started under S. 145 Cr.P.C. a Receiver was appointed under Section 146 Cr.P.C. and properties were handed over to the Receiver. Later, as a result of the enquiry by the Hindu Religious Endowments Board, it recognised and declared the petitioner as the hereditary trustee of the temple. He therefore as a Trustee applied to the Joint Registrar for possession of the property of the temple from the Receiver and the income thereof. The Magistrate rejected the application. The High Court of Madras reversed that order holding that the order made by the H. R. E. Board was a decision of a competent court within the meaning of Section 146 of the Code.

18. Thus the above decisions are in conformity with the principles stated by the Supreme Court in Brajnandan

Sinha's case : 1956CriLJ156 . Therefore, on a consideration of the law and applying the tests stated by the Supreme Court and having regard to the decisions referred to above. I hold that the decision of the Mysore Revenue Appellate Tribunal is a decision of a competent court within the meaning of Section 146(1) of the Code of Criminal Procedure. That being so, I confirm the order made by the Magistrate and dismiss this revision petition.

19. Revision dismissed.

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