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Court : Karnataka

Decided On : Sep-18-1963

Reported in : AIR1964Mys177; 1964CriLJ313

Judge : H. Hombe Gowda, Offg. C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 145, 145(1), 145(4), 439 and 539-B

Appeal No. : Criminal Revn. Petn. No. 210 of 1963

Appellant : Appayya Naika and anr.

Respondent : State of Mysore and anr.

Advocate for Def. : Bheemasenachari Ashrit, Govt. Pleader and ;K.R.D. Karanath, Adv.

Advocate for Pet/Ap. : P. Ganapathi Bhat, Adv.

Judgement :
ORDER

1. This revision petition is directed against the order passed by the Executive First Class Magistrate, Puttur, South Kanara, in M.C. 20 of 1962 declaring that the second respondent--'A Party' -- was in possession of the disputed items of immoveable properties, two months prior to the date of the preliminary order and

that he is entitled to continue to be in possession, thereof until duly evicted therefrom by an order of the competent Civil Court, in a proceeding started, under Section 145 of the Code of Criminal Procedure.

2. On the basis of a report from the Station House Officer, Puttur Station, that there was a dispute between the members of A and B parties which is likely to cause breach of peace regarding the possession of a thatched house measuring Order 18 cents comprised in S. No. 294 /1-C, field measuring 1 acre 26 cents comprised in S. No. 294/2 and Kumki land in S. No. 244/1-A statute in Narimogru village Puttur Taluk, the Executive Magistrate, Puttur, passed a preliminary order under Section 145 (1) of the Code of Criminal Procedure on 1-11-1962 and attached the disputed properties and directed the Receiver to take possession and manage the same. By the same order, the learned Magistrate called upon the petitioners --B Party and the respondent 'A' party -- to put in their written statements, affidavits and documents, if any in support of their respective contentions.

3. The parties appeared through their counsel, filed their written statements and also their affidavits in support of their respective contentions. The learned Magistrate heard the Counsel for the parties. It appears from the order sheet of the learned Magistrate that when the arguments in the case were almost concluded, a suggestion was made by one of the counsel appearing for the parties that the learned Magistrate may conduct a local inspection to properly appreciate the evidence. The learned Magistrate accepted the suggestion and fixed a date for inspection of the local area.

He inspected the area on 5-3-1963 in the presence of the parties and their counsel and he prepared notes or memorandum of inspection. The notes or memorandum of inspection prepared by the learned Magistrate indicate that in addition to these persons, the village officers, the Revenue Inspector and some others were also present at the place during the inspection. The learned Magistrate appears to have enquired from some of the persons present at the spot and heard the counsel appearing for the parties who were present at the spot on 5-3-1963 and thereafter he has passed this impugned order.

4. Mr. Ganapathy Bhat, learned Counsel appearing for the petitioner (B. Party) attacks the order on the following grounds:

(1) that the learned Magistrate committed an illegality in relying upon the extra judicial information that he collected during the local inspection in arriving at the conclusion that the respondent was in possession of the disputed properties

(2) that the learned Magistrate has allowed the impression created in his mind during the local inspection to influence his conclusion that the respondent was in possession of the properties

(3) that the learned Magistrate has freely made use of certain revenue records which were not part of the records of the proceedings in as much as they had not been produced by any one of the parties to reach the conclusion that the respondent was in possession of the disputed property and that he has done so without affording an opportunity to the petitioners to rebut that evidence or to offer their explanation about the entries found in those revenue records and therefore the order passed is illegal and is liable to be set aside;

(4) that the learned Magistrate based his conclusion that the respondent was in possession of the disputed items of immoveable property solely on the ground that the title deeds produced by the respondent indicated that he had a valid title to the property;

(5) that the learned Magistrate has failed to record any finding on the question which of the parties is in possession of the kumki land bearing S. No. 244/1-A, which was one of the items attached; and

(6) that the learned Magistrate's order is unsupportable inasmuch as he has not at all 'perused' the statements made by the several witnesses in their affidavits filed on behalf of the parties and the non-consideration of the affidavit-evidence has led to miscarriage of justice and to an erroneous decision. Having heard the arguments advanced by the learned Counsel for the Petitioners and also by Mr. Karanth, learned Counsel for the respondent, I am fully convinced that there is considerable force I in every one of these contentions, advanced by Mr. Ganapathi

Bhat and they should be upheld.

5. The learned Executive Magistrate has not at all referred to the statements made by the several persons who had filed affidavits and his order does not indicate that he carefully considered the statements made by the witnesses in their affidavits and then he came to the conclusion that the respondent was in possession of the properties. As a matter of fact, there is very little reference to the statements made by the several witnesses who had filed affidavits in the order passed by the learned Magistrate. What all the Magistrate has done is to notice the arguments advanced by the learned Counsel appearing for the parties with regard to the several points raised in support of their respective claims and then to pass the following order:

'Having heard the arguments adduced by both the counsel, I have come to the following conclusion. The Counsel for the A party has produced all documentary proofs and the sale deed and the settlement deed and the affidavits filed and the persons who have sworn, are weighty men. The alibi put forward by the B party's counsel centres round the registered notice issued which only demanded the rent due from the B Party, to the' former Pattadar. No documentary evidence, and much less any lease deeds, have been filed by the B Party in support of his claim. From the local inspection I conducted on 5-3-1963, I was convinced that only in the thatched but the B party was dwelling and contentions put forward by the B Party's counsel that the A Party had pushed back the big poramboke thodu cannot be accepted and appears very fantastic. The. documentary evidence filed by the A Party and the opinion of the Village Officers, the neighbouring ryots, prove that the A party was cultivating the lands and had raised the paddy crop in the year 1961. Further from the verification of the Revenue Records, they have proved beyond any doubt that the said A Party, K. Dharmasamaraj was and is in possession of the disputed lands S. Nos. 294/2 and 294/1 C of Narimoguru village'.

It is clear from the above that the learned Magistrate has made use' of the material that was not placed on record and has relied upon extrajudicial information that he gathered from the village Officers who were present during the local inspection to reach the conclusion that the respondent was in possession of the disputed

property. It is also clear from the above that the learned Magistrate has largely though not mainly, depended upon the several observations that he made during the local inspection to arrive at the conclusion that the respondent was in possession of the disputed property.

6. The undesirability of a Magistrate yielding to the temptation of conducting local inspection and basing his conclusion solely on the observations made by him, has been pointed out in many decisions of the several High Courts. I may in this connection refer to a decision of this Court in Katappa v. Serappa Sakalathi AIR 1955 Mys 131, wherein, after considering the decisions of the several High Courts, I deprecated the habit of Magistrates making a local inspection and basing their conclusion solely on their observations. The said decision was approved by another Bench of this Court in Deva Setty v. State of Mysore AIR 1959 Mys 170.

Mr. Ganapathi Bhat, learned Counsel for the petitioners has also referred to several other decisions of several High Courts in support of his contention that the Magistrate is not entitled to make use of the observations made by him during a local inspection to the prejudice of the parties and urged that the order passed by the Magistrate prima facie indicates that he has been solely influenced from the materials he gathered and observed at the local inspection the order is liable to be set aside. (Vide Ram Sahai Singh v. Dwarka Singh AIR 1920 Pat 749, Mohd. Hussain v. Sheikh Mohd. Hussain, 48 Cri LJ 428 (Lab) and Sohan Mushar v. Kailash Singh AIR 1962 Pat 249. Mr. Bhatt also referred to the decision of Pritam Singh v. State of Punjab : 1956 CriLJ805 .

The one principle that emerges from the several decisions cited above is that the Magistrate must, first of all, decide whether it is necessary for him to inspect the local area under Section 539-B of the Code of Criminal Procedure; that it is only after he decides that for the proper appreciation and understanding of the evidence such local inspection is necessary, that ha should pass an order to that effect and then only he should proceed to inspect the local area in the presence of the lawyers and the parties concerned.

In the instant case there is absolutely nothing on record to indicate that the learned Magistrate decided that it was necessary to inspect the spot for proper

appreciation or understanding of the evidence placed on record. As a matter of fact, the only question that he had to decide was whether it was the 'A Party' or the 'B Party' that was in possession of the properties in dispute. A local inspection cannot in the very nature of things enable any Magistrate to decide this question regarding possession of the properties. The learned Magistrate in the circumstances disclosed was not at all justified in inspecting the place even though the parties or their counsel were agreed for such an inspection by him.

7. A perusal of the memorandum or notes Of inspection prepared by the learned Magistrate on 5-3-1963 makes it clear that the same largely influenced the mind of the Magistrate against the petitioners' case, The learned Magistrate as already stated, inspected the spot not only in the presence of the lawyers and the parties to the litigation but also in the presence of the village officers and Revenue Inspector. The learned Magistrate appears to have taken the measurements of the lands and fixed up the boundary stones to find out whether certain arguments advanced on behalf of the B party were correct of not. He appears to have enquired the local village officers and also looked into the Patta and the revenue records to satisfy himself about the correctness or otherwise of the contentions advanced on behalf of the parties. The Magistrate has made use of these factors found during the inspection and has allowed them to influence his decision to a large extent. The order of the learned Magistrate is, therefore, vitiated and cannot be supported.

8. There is also considerable support for the contention that the learned Magistrate relied upon the extra judicial information that he gathered from the village officers. The learned Magistrate has referred to the opinion expressed by the village officers relating to the possession of the properties by the 'B' party. He has also referred to the revenue records which were admittedly not placed on record by any one of the parties and he has allowed them to influence his decision relating to the possession of the disputed properties by the respondent.

As rightly contended by Mr. Ganapathi Bhat, there is very little or scant reference to the statements made by several witnesses, who had filed affidavits, in the order. The only reference, to the affidavit-evidence is 'that the persons who had filed

affidavits on behalf of the respondent are weighty persons'. There is no reference to the affidavit evidence placed on record on behalf of the petitioners. The order passed by the learned Magistrate declaring that the materials placed before him clearly established that the respondent was in possession of the disputed property on the date of the preliminary order, i.e., on 1-11-1962 and that he is entitled to be put in possession of the disputed property and also entitled to continue to be in possession until he is duly evicted by competent civil Court, cannot be supported and is liable to be set aside.

9. In the result, therefore, for the reasons stated above, this revision petition is allowed. The order passed by the learned Executive Magistrate, Puttur, declaring that the respondent was in possession of the disputed, property on 1-11-1963 and that he is entitled to continue to be in possession of the disputed lands until duly evicted by the competent Civil Court, is set aside. The records of the case are directed to be sent back to the learned Executive Magistrate, Puttur, to hold a fresh enquiry in accordance with the provisions of Section 145(4) of the Code of Criminal Procedure and pass suitable orders after hearing the counsel for the parties.

10. Revision allowed.

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