

B.G. Thimmappaiah and ors. Vs. Gurusiddappa and ors.

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Court : Karnataka

Decided On : Feb-21-1977

Reported in : 1977CriLJ1544

Judge : D.B. Lal, J.

Appellant : B.G. Thimmappaiah and ors.

Respondent : Gurusiddappa and ors.

Judgement :

ORDER

D.B. Lal, J.

1. This is a petition Under Sections 482 of the Criminal Procedure Code and is directed against the order of the Sub-Divisional Magistrate, Bangalore causing attachment of the disputed land and appointment of a receiver in respect thereof, presumably Under Section 146 of the said Code. As the order of the learned Magistrate indicates, the Police Sub-Inspector, Yeshawanthapur filed a report Under Section 145 of the Criminal Procedure Code, stating that in respect of Survey numbers 37, 38 and 41 of that village a dispute likely to cause breach of the peace existed between the petitioners who were the second party and respondents 1 to 5, who were the first party before him. It was mentioned that one of the parties applied to the Land Reforms Tribunal for conferring occupancy rights and besides that several complaints were filed by the respective parties claiming

possession in their favour. There were also standing crops of Ragi, Avare and Jowar and the learned Magistrate considered that there is likelihood of breach of the peace and upon satisfaction by the report of the Police Sub-Inspector, attached the lands as well as the crops. She also appointed a receiver of the property. The said order of the learned Sub-Divisional Magistrate is being sought to be quashed by the present application.

2. It is more than clear from the scheme of Sections 145 and 146 of the Criminal Procedure Code, that the Executive Magistrate has to be satisfied from a report of a Police Officer or upon other information that a dispute likely to cause a breach of the peace exists and upon that satisfaction he makes an order in writing stating the grounds of his reasons of so satisfying and requiring the parties to attend the Court in person or by pleader on a specific date and time and to put in written statement as respects the fact of actual possession of the subject-matter of dispute. Instead of making that preliminary order, the Executive Magistrate, in the instant case, has straightway passed the order of attachment and also appointment of a receiver. That order was made Under Section 146 of the Criminal Procedure Code of which the opening words are : that it is only after the Magistrate passes the preliminary order Under Sub-section (1) of Section 145 of the Criminal Procedure Code, that he can make an order of attachment and appointment of a receiver. In a case where the preliminary order is not passed, the very order of attachment and appointment of receiver shall be vitiated. There is an affidavit filed by one of the petitioners that no order besides the impugned one is passed by the learned Sub-Divisional Magistrate.

3. That being the position, any amount of persuasion on the part of Police Sub-Inspector would not have authorised the Magistrate to order for attachment or for appointment of receiver. The learned Sub-Divisional Magistrate could however apply her mind for the preliminary order Under Section 145(1) of the Cr. P.C., and in case she thought that a preliminary order was required to be passed, she should have passed that order in the first instance. Only thereafter certain conditions being made out, she could make the order of attachment or appointment of receiver. Obviously, she has not done so and her order is *prima facie* illegal.

4. Since the abuse of the process of the Court has resulted and ends of justice have got to be preserved, in my opinion, the order of the Magistrate need be set aside. Accordingly, I allow the petition and set aside the order of the Magistrate and send the case back to her for de novo consideration Under Section 145 of the Criminal Procedure Code, and in case she feels that a preliminary order is required to be passed, she may do so. Only thereafter if proper conditions are made out, an order for attachment or appointment of receiver can be made.

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