

Dominic Vs. the State and ors.

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Court : Kerala

Decided On : Jan-22-1987

Reported in : 1987CriLJ2033

Judge : P.K. Shamsuddin, J.

Appellant : Dominic

Respondent : The State and ors.

Judgement :

ORDER

P.K. Shamsuddin, J.

1. The 'B' party in M.C No. 90/86, on the file of the Sub-Divisional Magistrate, Palghat, is the petitioner in the above Criminal M.C. The order under challenge is one passed by the learned Magistrate under Section 145(1) of the Cr. P. C. It is alleged in the Memorandum of Cri. M.C, that the proceedings were initiated at the behest of respondents 2 and 3. According to 'B' party, the properties in question along with other properties were acquired by the petitioner and the father of the 2nd respondent and the 3rd respondent in the name of M/s. United Planters, which was a partnership firm. In the year 1979, there was an oral partition of the assets of the above said firm and thereafter a registered partition deed was executed on 9-10-1984. 'A' schedule was set apart to the petitioner, 'B' schedule was set apart to the 3rd respondent and 'C' schedule was set apart to the father of the 2nd

respondent in the said partition deed. According to 'B' party there are clear natural boundaries. It appears that the 2nd respondent filed O.S. No. 236/86 in the Court of Subordinate Judge, Palghat, on 8-9-1986, alleging that there were clear boundaries, but some of the boundaries were obliterated by the reason of rain and other natural causes. In the suit the reliefs sought for were fixation of the boundary and issue of a permanent injunction restraining the defendant from trespassing into 'A' schedule property as fixed by the Court. In the suit, the 2nd respondent herein also filed LA. No. 1954/86 praying to issue an order of injunction restraining the defendant from altering the character of the suit property. Thereafter, the second respondent filed I .A. No. 3344/86 for issue of a commission to demarcate the boundaries in terms of the partition deed and also another petition LA. No. 3345/86 for issue of a temporary injunction restraining the petitioner herein from trespassing into the property. In LA. No. 3344/86, the Court passed an order appointing a commission to identify and demarcate the boundaries. No order was passed on other petitions. In the meanwhile the second respondent appears to have filed a complaint before the police, presumably alleging that the 'B' party was making attempts to trespass into the property and in that event they would resist their attempt and there would be likelihood of breach of peace.

2. The Sub-Inspector of Police, Malampuzha, filed a report in which it was mentioned that there is a dispute relating to 10 acres of rubber estate between the two parties, that it is not possible to decide who is in possession, that if 'A' party enters into this disputed property 'B' party and their people would resist and in that event there would be likelihood of breach of peace and loss of life and therefore lit is necessary to initiate proceeding a under Section 145 to avert such a situation. On 'hear basis of this report, the learned Magistrate passed a preliminary order ,under Section 145(1) pointing out the report of the police to the effect that there would be likelihood of breach of peace and stating that in the circumstances he was satisfied that there is likelihood of breach of peace, and requiring both the parties to attend the Court in person or by pleader on 1-124986, and put written statements as to the fact of actual possession of the above land which is the subject-matter of this dispute.

3. The 'B' party has filed this Criminal M.C. challenging the above order of the learned Magistrate.

4. The learned Counsel for the petitioner strenuously argued that a civil litigation is pending before the Court of Subordinate Judge, Palghat and in the instant case there is no likelihood of breach of peace and therefore the learned Magistrate has acted illegally and in excess of jurisdiction in initiating proceedings under Section 145 of Cr. P. C. The learned Counsel brought to my notice a recent decision of the Supreme Court in Ram Sumer Puri v. State of U. P. : AIR 1985 SC472 where their Lordships of the Supreme Court observed as follows:

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. Counsel for respondents 2-5 was not in a position to challenge the proposition that 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.

5. But it may be noticed that it was a case where civil court passed a decree in favour of one party and an appeal filed by the other party was pending and it was in this context the Supreme Court observed that initiation of proceedings under Section 145 was not justified. In the instant case though a civil litigation is pending before the Court of Subordinate Judge of Palghat, it is not resulted in a decree. No interim order also has been passed by the learned Subordinate Judge though an application for interim injunction is pending. The question that falls for consideration in this case is whether in such circumstances the learned Magistrate's jurisdiction is ousted by reason of the pendency of the civil litigation.

6. The Supreme Court in *Bhinka v. Charan Singh* : 1959 CriLJ1223 had occasion to consider the scope of Section 145 in the context of pendency of civil litigation. In paragraph 16 of the judgment their Lordships stated thus :

This leads us to the consideration of the legal effect of the order made by the Magistrate under Section 145 of the Code of Criminal Procedure. 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 an 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 conterminous 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 Chowdhri v. Brojo Mohini Chowdhri*, (1901) 29 Ind App 24(33) tersely states the effect of orders under Section 145 of the Cr. P. C. thus : 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.

7. This Court had occasion to consider a similar situation in *Mathai Varghese v. Kuriacko Chacko*, 1970 Ker LT 102: (1970 Cri LJ 1170). The order was attacked on the ground that there was a civil suit filed in respect of the same subject-matter. After noticing the decisions on the point, this Court observed thus :

Ordinarily, whenever there is dispute involving rights of parties leading to a breach of peace there is nothing to prevent the Magistrate from taking the recourse to Section 145 in a suitable case even when a civil suit is pending between the rival parties in respect of the same subject-matter.

8. In *G. Yohannan v. Abraham Kathanar*, 1975 Ker LT 32: (1975 Cri LJ 985) also this aspect of the question was considered. It was held:

On a consideration of all the decisions referred to above, with due respect, I am of the view that the decision reported in AIR 1960 Mys 203 : (1960 Cri U 1112) and of this Court in 1968 Ker LT 503 : (1969 Cri LJ 331) which has relied on the decisions of the High Courts of Orissa, Allahabad and Mysore represent the correct and reasonable views on the matter. The Magistrate who is empowered to act under Section 145 of the Code must respect and give due weight to the recent decision of a civil court even if it be an interim order declaring possession of a party. Even in cases where a party might have obtained a decree or an interim order of a competent civil court declaring his possession, there may still be dispute between the parties regarding possession and other rights, which is likely to lead to breach of peace. When once a Magistrate referred to under Section 145(1) of the Code of Criminal Procedure is satisfied on the materials before him that there exists a dispute regarding possession of an immovable property which will cause or is likely to cause imminent breach of the peace, he is bound to take necessary preventive action either under 5. 145 or other relevant sections of the Code. In cases where there is a decree or a recent decision of a competent civil court, it may be better that the Magistrate takes action under Section 107 or even under Section 144 of the Code. But this is a matter within the discretion of the Magistrate and this will not deprive the jurisdiction of the Magistrate to act either under Section 145 or Section 147 of the Code. In the present case, admittedly both parties have filed civil suits in respect of the properties involved in the proceedings under Section 145 of the Code and in one case A party has obtained a temporary injunction against the B party. The materials available before this Court do not clearly or sufficiently disclose the exact points which are in dispute or raised in these two suits. A copy of the order of injunction is also not before this Court to know what exactly was the ambit and nature of that order. Taking of action under Section 145 of the Code will not bar a Magistrate in an appropriate case from taking action under Section 107 of the Code. The parties have filed statements, documents and affidavits and it is said that the only thing that remains for rendering the final decision is the arguments on either side. Under Section 145(5) of the Code, it is open to any of these parties and even to a third party to convince the Magistrate that no dispute exists or existed.

9. The learned Counsel for the petitioner brought to my notice to a recent ruling in Abdul Azeez v. Pappu, 1986 Ker LT 288 where Sreedharan J. held :

The conclusion arrived at by the Civil Court whether in disposing of the suit finally or in disposing of interlocutory applications will have to be honoured and respected by Criminal Court because Civil Court alone is competent to adjudicate upon the claims of possession in respect of properties.

10. It may be noticed that in the case which was dealt with by my brother Sreedharan, J. an order of injunction was passed and it was in those circumstances the learned Judge observed that the Criminal Court must respect the finding of the Civil Court, whether it be by way of final decree or by way of interim order and it will not be proper to ignore the finding and initiate proceedings under Section 145 of the Cr. P.C. But in the instant case there is no such order passed by the civil court. Therefore, this decision has no application to the facts of this case.

11. The learned Counsel for the respondents brought to my notice an unreported decision of Thomas, J. in Criminal M. C. No. 1055/86. The learned Judge observed :

If the Civil Court has already adjudicated the dispute and that matter was brought to the notice of the Sub Divisional Magistrate, perhaps there would have been force in the contention that the Magistrate ought not have initiated proceedings. In this case the civil court has not yet adjudicated the dispute. It has only passed an interim ex parte order of injunction.

12. The above discussion would show that pendency of a civil litigation will not oust the jurisdiction of the Magistrate to proceed under Section 145 of the Cr. P.C. Of course, if a final decree is passed or even an interim order is passed the Criminal Court will respect the decree or order by the Civil Court and in such cases it will not be proper to initiate proceedings under Section 145 of the Cr. P.C.

13. I understand that after the passing of the preliminary order under Section 145(1) the learned Magistrate passed an order under Section 146 and the

disputed property was put in the possession of the Village Officer. It is now open to the parties to approach the court and press for disposal of the interim applications for injunction or suit itself and then move the Magistrate to get appropriate orders in the light of the order or decree passed by the Civil Court.

14. For the reasons stated above I do not find any reason to interfere with the order passed by the Magistrate.

15. In the result, Criminal M. C. fails and it is dismissed.

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