

Md. Abdul Gafur and Another Vs Mujibar Rahaman Mandal

Court: Calcutta High Court

Date of Decision: June 23, 1989

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 144, 145, 146

Citation: 94 CWN 439

Hon'ble Judges: Manabendra Nath Roy, J

Bench: Single Bench

Advocate: Sandip Kundu, for the Appellant; Priyanath Ghosh for State and Tapendra Nath Basu, for the Respondent

Judgement

Manabendra Nath Roy, J.

This application is directed against the proceeding u/s 145 bearing M.P. Case No. 14 73 of 1988 and order

dated 26/12/88 for attachment, restraining both the parties from entering into the disputed property and appointment of Receiver. Opposite Party

No. 1 has filed a suit bearing Title Suit No. 88 of 1988 in the 1st Court of the learned Munsif at Basirhat for declaration of title, confirmation of

joint-possession in respect of the disputed properties, against the petitioners. The petitioners have duly entered into the appearance in the said suit.

As per order passed by the learned Munsif in that suit, the parties have been directed to maintain the status-quo in respect of the suit property till

disposal of the suit on consent. The Opposite Party No. 1 inspire of the said order of maintenance of status-quo having been passed by the Civil

Court, has moved an application u/s 144 of the Criminal Procedure Code in the Court of the learned Executive-Magistrate at-Basirhat against the

petitioners in respect of the said properties suppressing the fact of the order passed by the Civil Court for maintenance of status-quo by the parties.

2. The learned Magistrate without being informed by the Opposite Party No. 1 about the pendency of the Civil Suit, converted the said proceeding

into a proceeding u/s 145 Cr. P.C. exparte and attached the suit property which has been in possession of the petitioners, u/s 146 Cr. P.C. and

appointed the J.L.R.O., Basirhat-1 as receiver.

3. Being aggrieved by the initiation of the aforesaid proceeding and order passed by the learned Magistrate, the present application has been filed.

4. The petitioners now pray for. quashing of the aforesaid proceeding bearing No. 1473 of 1988 pending before the learned Executive Magistrate,

Basirhat and also the order passed by him restraining the parties from entering into the suit property, attachment thereof and appointment of-

Receiver.

5. The present application is contested by the Opposite Party No. 1 who supports the order passed by the learned Magistrate.

6. It is submitted on behalf of the petitioners that the learned Magistrate was wrong in drawing up the aforesaid proceeding u/s 145 Cr. P.C. and

passing the aforesaid order in that proceeding for appointment of Receiver, attachment of the said property and restraining the parties from entering

into the said property.

7. The learned Lawyer for the petitioners has drawn my attention to the case of Karam Chand Ganga Prasad and Another Vs. Union of India

(UOI) and Others, It has been held in this case that it is a well established principle of law that the decision of the civil Courts are binding on the

Criminal courts.

8. In this case before us no decision has yet been arrived at by Civil Court and it is still pending before the Civil Court. Moreover, the interlocutory

order passed by the Civil Court is dated 10/1/89 and the impugned order passed by the learned Executive Magistrate is dated 26/12/1988. So,

the order passed by the learned Magistrate is earlier than that passed by the Civil Court.

9. It is submitted by the learned Lawyer for the Opposite Party No. 1 that nothing illegal or irregular has been done by the learned Magistrate in

passing the order in question. He acted within his jurisdiction. In suitable cases he can pass such an order as has been done in this case and the

statute authorises the Magistrate to pass an order in a case of the present nature when such an order is required to be passed. He has drawn my

attention to the case of Agni Kumar Das, 1st Party, Petitioner v. Mahtazaddin and Anr., 2nd Party, reported in 32 CWN 1173. It has been held in

this case that the words "actual possession" in Sub-Section(1) of Section 145 mean actual physical possession even though wrongful, e.g., that of a

recent trespasser in actual physical possession at the time of the proceeding u/s 145.

10. It has been further held that the word "dispute" in the same Sub-Section does not mean any dispute, but dispute as to actual possession. It

further means actual disagreement existing between the parties at the time of the proceeding u/s 145 even though the question as to right of

possession has already been decided by Civil Court.

11. The learned Lawyer for the Opposite Party No. 1 has also drawn my attention to the case of Jhunamlal alias Devandas v. State of Madhya

Pradesh & Ors., reported in AIR 1983 SC 1973. It has been held in this case that it is true that in cases of dispute regarding immovable property

a party should not be permitted to litigate before the Criminal Court when a civil suit is pending in respect of the same subject matter. That does

not, however, mean that a concluded order u/s 145 Cr. P.C. made by the Magistrate of competent jurisdiction should be set at naught merely

because the unsuccessful party has approached the civil court. An order made u/s 145 Cr. P.C. deals only with the factum of possession of the

party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil Court.

The unsuccessful party therefore, must get relief only in the civil Court. He may move the civil Court with a properly constituted suit. He may file a

suit for declaration and prove a better right to possession. The civil Court has jurisdiction to give a finding different from that which the Magistrate

has reached.

12. The learned Lawyer for the Opposite Party No. 1 has also drawn my attention to the case of Rabindra Nath De Sarkar v. Nitai Chandra

Adak, reported in 1986 Cr. L.R. (Cal) 215. What happened in this case is that the Sub-divisional Magistrate, after having attached the disputed

plot appointed the O.C. as receiver to look after the property. The said Magistrate also started a proceeding u/s 145 Cr. P.C. for which a revision

was preferred where the Sessions Judge committed an error by entertaining the application on the ground that there was no petition on the record

u/s 146 Cr. P.C.

13. The petitioner being aggrieved came up before the High Court where the questions fell for decision were that the Sessions Judge if could revise

the order without scrutinising the record and the order being interlocutory in nature.

14. It has held that the learned Sessions Judge without scrutinising the record should not have gone on the basis that there was no such petition.

The learned Magistrate has recorded his satisfaction as to the existence of an emergency and the order passed was perfectly legal.

15. The order passed by the Magistrate being in the nature of an Inter-locutory Order, revision would not lie.

16. After hearing both sides and considering the materials on record, I find that the order passed by the learned Magistrate is not liable to be

interfered with as nothing illegal or improper has been done by him. It appears that the learned Magistrate has acted within his jurisdiction in

passing the order in question.

17. Thus it is found that there is no substance in the present case and it fails. The rule is accordingly discharged.

Ad interim order of stay, if any, be vacated.

Let the records be set down to the Court below immediately.