

(1926) 02 BOM CK 0035

Bombay High Court

Case No: None

In Re: Mallappa Basappa
Kurnahallu

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 10, 1926

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 145

Citation: AIR 1926 Bom 313 : 95 Ind. Cas. 62

Hon'ble Judges: Marten, J; Coyajee, J

Bench: Full Bench

Judgement

Marten, J.

This is an application in revision with reference to a complaint u/s 145 of the Criminal Procedure Code. The First Class Magistrate has gone in great detail into the title of the property in dispute. Indeed the twenty-five typed pages of his judgment are mainly concerned with this question of title. In the result he held that the civil Court was the proper tribunal to decide the real dispute between the parties. He also found that the Hindu family in question was still joint, and that the lands and houses concerned in this proceeding were jointly in the possession and management of the applicant and opponents, and that consequently Sections 145 and 146 did not apply.

2. The grievance now urged before us by the applicant is that the learned Magistrate should not have gone into the question of title, but should have concerned himself only with the question of possession, and that he has consequently Tpproached the case from a wrong angle, as a considerable degree I accept that argument. In the view I personally take Section 145 is frequently misapplied in practice, and Magistrates in criminal Courts occupy a large amount of time in going into questions of title, with which they are not concerned, and which ought properly to be decided by the civil Courts of the land.

3. My brother Coyajee has pointed out that Sub-section (4) of Section 145 recognizes by the use of the words "if possible" that the Magistrate may be unable to decide a case in the summary manner contemplated by that sub-section so as to say who is in possession of the land. Accordingly in the present case we have either got a definite finding that both the parties were in possession of the land, or alternatively the Magistrate has not been able to determine that point. But it is clear that he considers the dispute to be one for the civil Court.

4. Under these circumstances, we think that there is no sufficient cause shown for us to interfere in revision with the actual decision which the Magistrate arrived at. And in saying what I have as regards the improper use of Section 145, I may draw attention to Section 107 which gives Magistrates a general power of binding over parties to keep the peace in certain events. Consequently if it is probable that the parties to a land dispute will break the King's peace before the decision of the civil Court can be given, that danger can be guarded against by an order u/s 107 in an appropriate case.

5. I also wish to add this because. I see so many instances of parties trying to use the criminal Courts for the settlement of what are really civil disputes. In effect, litigants in the civil Courts pay in Court-fees for the costs of the criminal Courts in this country, apart from fines levied in criminal cases. Consequently, when parties endeavour to get the decision of a criminal Court on these questions of title, they are, in fact, shirking the just contribution in fees which they, ought to make towards the civil litigation of this land. This is an additional reason, I think, which should make Magistrates careful not to be induced by the pleaders before them into allowing what is really a civil case to be argued in a criminal Court, with a consequent waste of public time and to the detriment not only of other litigants, but also of the learned Magistrate himself. I would accordingly dismiss this application.

Coyajee, J.

6. I entirely agree with the opinion expressed by my learned brother as to the scope and applicability of Section 145 of the Code of Criminal Procedure.