

PRESENT: SRI P. NIDIPPANNA, M.A.O.,

M.C. 2/97

Wdren 17/8/97
A.D.H.

Between:

Station House Officer,
Rampachodavaram Police Station.

... Complainant.

A N D

1. Karam Ve kanna Dora S/o Thammannadore.
2. Kangala Chellannadore S/o Pentannadore.
3. Konyala Abbaidore S/o Nagannadore.
4. Kangala China Nagannadore S/o Mangannadore.
5. Panca Sharam S/o Radgannadore.
6. Kangala Ramrao S/o Mangannadore.
7. Kangala Somannadore S/o Gangannadore.
8. Chidem Jegidore S/o Venam Dore.
9. Kangala Abbaidore S/p Pontannadore.
10. Chedem Jaygarao S/o Jegidore.
11. Kangala Baludore S/o Somannadore.
12. Kangala Thammannadore S/o Jegidore.
13. Chedem Subbanna Dore S/o Jegidore.
14. Kangala Ganjalaju Dora S/o Pontannadore.

*A party
Respondents.

All are from
Cheedipalem village.

Vs.

1. Ponda Malludore S/o Chinnaidore.
2. Charapu Bapannadore S/o Jagannadore.
3. Peda Rajannadore S/o Veerapudore.
4. Charapu Ravrao S/o Jaggannaedore.
5. Ponda Verreja S/o.
6. Charapu Venkannadore.
7. Charapu Tatabbai.

*B party
Respondents.
All are from
Pandiriveedi
village.

The proceeding is Under section 145 Cr.P.C. in M.C. 1/97
of Mandal Executive Magistrate, Rampachodavaram and subsequently
numbered as M.C 2/97 in the court of Sub Divisional Magistrate,
Rampachodavaram coming on for final hearing before me on 17.7.97
in the presence of Ch.rinivasarao Advocate for 'B' party re-
spondents and P.bullikrishna, Advocate for 'A' party respondents
heard the arguments and this court upon perusing the material
evidence on record and having stood over this day for considera-
tion delivered the following:

O R D E R

The facts of the case is brief are as follows:

The Station House Officer, Rampachodavaram filed petition
before Mandal Executive Magistrate, Rampachodavaram for issue of
orders Under section 145 r.P.C. in connection with dispute
between two tribal groups of Cheedipalem and Pandiriveedi villa-
ge on the fishing rights in the Fish Tank situated at Cheedipalem
village Rampachodavaram Mandal.

whereas the Mandal Executive Magistrate, and Mandal Revenue Officer, Kanchipuram are satisfied that there was imminent danger to the co-operative fishing rights over the tank promulgated orders under section 145 Cr. P.C. in T.O. 1/97 dated 10.3.97 restraining both all the interested parties, and order under section 146 Cr.P.C. appointing the Mandal Revenue Collector, as a receiver.

Whereas the T.O. 1/97 in the court of Mandal Executive Magistrate, and Mandal Revenue Officer, Kanchipuram would not be finalised even after (4) months of time and there is eminent danger law and order situation and to finalise the case on merits the case was transferred to this court andumbered as T.O. 2/97 and notices were issued to both the parties to attend the court on 10.5.97, 16.5.97 and 17.5.97.

- The advocate filed written statements on behalf of the party respondents stating that 1) the village of Thoodipalayam is a part of Pandirikamidi Palkkai, that the Mokhasadar of Pandirikamidi granted petition schedule land to the tribal respondents and issued land revenue receipts. 2) that the petitioners filed orders in L.T.C.R.No.339/78 dated 23.4.79, O.S.17/86 dated 11.6.95 and O.P. 1153/96 dt. 6.3.95 are no way concerned with the petition schedule land and that the petitioners misrepresenting the Hon'ble Court.
- 3) that the Mokhasadar of Pandirikamidi is only got the right over the petition schedule land as Mokasamk granted by the Sircar and unless or until the Kokka taken over by the Govt., there is no Jurisdiction to the Government on the Mokhasa land without the consent of the Mokhasadar concerned.
- 4) that the Mokhasadar of Pandirikamidi is only got the right over the petition Schedule land and that the Hon'ble Court has no jurisdiction to evict the tribal respondents from the petition schedule land.
- 5) that the petitioners filed recorded evidence are not concerned with the petition schedule land and misrepresented the Hon'ble Court.
- 6) that the Hon'ble court has no jurisdiction to decide the present petition as the petition schedule land is a part of Pandirikamidi Palkkai.
- 7) that in view of the above circumstances the Hon'ble court may kindly be dismissed the petition filed against the respondents.

- The advocate on behalf of 'B' party respondents filed written statement stating
- 1) that the Petition Schedule land 1.00 tank is in the possession of the 'C' party tribal respondents until the crop was auctioned by the Mandal Revenue Officer, Khammamdevaran in the years even until today.
 2. that the Petition Schedule land 1.00 Tank is in the possession of tribal 'B' party respondents more than 40 years, that all surrounding lands of the tank are in the possession of 'B' party respondents and having good title over them, and that in support of that 'B' party respondents has filed L.T.R.P. 339/78 dated 25.4.79 O.S. 17/86 dt. 11.6.95 and W.P. 11153/95 dated 6.5.95 all the above judgments declared the title of the possession of schedule land and surrounding lands.
 3. that the Mokhasadar is no way concerned over the petition schedule Land and he did not collect any taxes from the petition schedule land. It is clear that the Mokhasadar not a party in the above cited judgement and not claiming any title over the petition schedule lands or surrounding lands, and that the Mokhasadars abolished by the court very long back.
 4. that the 'A' party respondents are in possession and enjoyment of the lands 1.00 tank, that the voluntary organisation called Sakthi gave Rs. 10,000/- loan last year to the 'A' party respondents for the development and cultivating fish crop, and repairs of the tank.
 5. that the 'A' party respondents with the money given by Sakthi organisation got repaired the tank and cultivating fish crop and that the Malefide intention to get the fish tank crop the 'A' party respondents falsely claiming the petition schedule land and willfully created disputes.
 6. that upon perusing the above circumstances 'A' party respondents pray the Hon'ble court may be pleased pass favourable orders in favour of 'B' party respondents. The advocate filed the photocast copies of judgment of L.T.R.P. 339/78 judgement of O.S. 17/86 W.P. No. 11153/95 High Court of A.P. Hyderabad and copy of representation filed by Chavalam Krishnamurti and 5 others of Pendiri-mandi village which reads that they were financed by Sakthi organisation for repairs of the tank which raised during Cyclone in November 1996 and after they raised fish crop in the tank with the financial help of Sakthi organisation, that while they are granting the fish from tank on 16.3.97, one Andra Veeraju non-tribal came to the

fish tank and obstructed they by saying that the tank was leased out to him by the Mokhasadar for 3 years and that the Mokhasadar without having any kind of right on the land made complaint with Mandal Revenue Officer, Nampachodavaram and that the Mandal Revenue Officer, Nampachodavaram, without consulting the 'B' party respondents got the fish through Mandal Revenue Inspector, Nampachodavaram and sold the fish in public auction for Rs.5,150/- causing loss of Rs.7,000/- even after they won the case as they have invested Rs.12,000/- for raising and safe gaurding the fish in the tank.

The Mokhasadar of Padirrimandi Ponds Bapiraju filed a representation before the Sub Divisional Magistrate and Revenue Divisional Officer, Nampachodavaram stating he is having full right over the certain Schedule lands like tank in Chendipalem village that until lifting the Mokhasadar no one has jurisdiction over the lands in his Koldasa that he also get right over the deposited amount of auction and that he requested to dismiss the case.

Having hear the arguments of the both petitioners and advocates and upon perusing the documents, material evidence, filed before this court the court made the following order.

that the 'B' party respondents informed in their written statements and orally that they havn't got repaired the tank and raised fish seed in the tank with the financial help of the 'Shakthi' Voluntary organization and they have invested Rs 12,000/- for raising the fish crop and safe gaurding the fish and while granting the fish from the tank on 16.3.97 they were obstructed and the prohibitory orders Under section 145 Cr.P.C. were promulgated on 19.2.97 and that till then they were in the possession of the tank. The 'A' party respondents or say other interested person have not presented that they were in the possession of fish tank situated in Chendipalem village on the date of orders Under section 145 Cr.P.C. Thus it establish that the 'B' party respondents ar in the possession of the Petition Schedule tank as on the date of promulgating orders Under section 145 Cr.P.C. by Mandal Executive Magistrate, Nampachodavaram.

The 'A' party respondents argued that the fish tank was leased out to them by the Mokhasadar of Padirrimandi and they are only having right over the fish tanks.

The Mokhasadar filed petition that the Govt. have no jurisdiction on the lands situated in his Mokhasadar and he is the rightfull owner of the property situated in the limits of Padirrimandi Mokhasadar.

However it is not for this court in the proceeding under 145 Cr.P.C. to get into the merits of the title of any of those parties in this dispute. It is for the competent court to decide on the title.

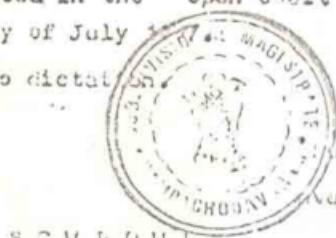
As per the opinion of the Supreme Court of India published in A.V.S.J. 13/95 at page No.691 in the case of Manu vs. B.S. Noki, in criminal Revision No.95/84 the enquiry under section 145 Cr.P.C. is limited to the only question as to who was in actual possession on the date of the preliminary order, irrespective of rights of the parties.

Having in view of the opinion of the Supreme Court of India referred above regarding the enquiry under section 145 Cr.P.C. it is proved that the 'L' party respondents are in the possession of Petition Schedule tank situated in Choodipalem village on the date of the preliminary orders issued under section 145 Cr.P.C. 14M.C.1/97 dated 19.3.97 of Mandal Executive Magistrate, Nampachodavaram and subsequently numbered as 14.2/97 on the file of the Sub Divisional Magistrate, Nampachodavaram and shall be continued in possession till they are duly evicted by due course of law.

The orders that were issued under section 145 Cr.P.C. in 14M.C.1/97 dt. 19.3.97 in the court of Mandal Executive Magistrate, Nampachodavaram subsequently transferred to this court and entered as 14.2/97 on the file of the Sub Divisional Magistrate and Revenue Divisional Officer Court, Nampachodavaram are hereby withdrawn.

Pronounced in the open court on the seventeenth day of July

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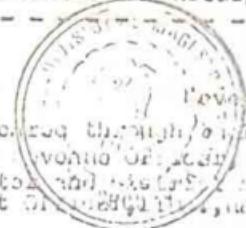


Sub Divisional Magistrate,
and
Revenue Divisional Officer,
Nampachodavaram.

SCHEDULE

District: East Godavari Mandal: Nampachodavaram.
Village: Choodipalem.

---- Fish Tank situated in Choodipalem village. ----



Sub Divisional Magistrate, &
Revenue Divl. Officer, Nampachodavaram.

To The parties concerned through their advocates.
Copy to the mandal revenue officer, Nampachodavaram.
Copy to the Collector and Sub Divisional Magistrate, M.G.Kakinada.
Copy to the Project Director, Nampachodavaram.