

PRESENT: SRI P. BHIPPANNA, M.A.,

Water rights
2/9/97

M.C. 2/97

Between:

Station House Officer,
Rampachodavaram Police Station.

... Complainant.

A N D

1. Karam Ve kanna Dora S/o Thammannadora.
2. Kangala Chellannadora S/o Pontannadora.
3. Kangala Abbaldora S/o Nagannadora.
4. Kangala China Nagannadora S/o Mangannadora.
5. Panda Bharam S/o Rajannadora.
6. Kangala Ramarao S/o Mangannadora.
7. Kangala Somannadora S/o Mangannadora.
8. Chidem Jogidora S/o Konam Dora.
9. Kangala Abbaldora S/o Pontannadora.
10. Chodem Jaygarao S/o Jogidora.
11. Kangala baludora S/o Somannadora.
12. Kangala Thammannadora S/o Jogidora.
13. Chodem Subbannadora S/o Jogidora.
14. Kangala Ganjajaju Dora S/o Pontannadora.

'A' party
Respondents.

All are from
Choodipalem village.

Vs.

1. Panda Malludora S/o Chinnaudora.
2. Charapu Bapannadora S/o Jaggannadora.
3. Panda Rajannadora S/o Veerapudora.
4. Charapu Ramarao S/o Jaggannadora.
5. Panda Verraju S/o.
6. Charapu Venkannadora.
7. Charapu Tatabba.

'B' party
Respondents.

All are from
Pandiriveedhi
village.

The proceedings 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. R. Rivasarao Advocate for 'B' party respondents and P. H. I. Akhmad, 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 consideration delivered the following:

ORDER

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 Cr.P.C. in connection with dispute between two tribal groups of Choodipalem and Pandiriveedhi village on the fishing rights in the Fish Tank situated at Choodipalem village Rampachodavaram Mandal.

whereas the Municipal Executive Magistrate, and Municipal Revenue Officer, Hampachodavaram satisfied that there was imminent danger to be to remaining fishing rights over the tank promulgated orders under section 145 Cr. P.C. in P.O. 1/97 dated 19.3.97 restraining both and the interested parties and order under section 146 Cr.P.C. appointing the Municipal Revenue Officer, Hampachodavaram as receiver.

whereas the P.O. 1/97 in the court of Municipal Executive Magistrate, and Municipal Revenue Officer, Hampachodavaram 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 and numbered as P.O. 2/97 and notices were issued to both the parties to attend the court on 10.5.97, 16.7.97 and 17.7.97.

The advocate filed written statements on behalf of 1st party respondents stating that 1) the village (neediparam) is a part of Pandirimeidi Moksasa, that the Mokhasadar of Pandirimeidi granted petition schedule land to the tribal respondents and issued Land Revenue receipts. 2) that the petitioners filed orders in L.P.O. No. 339/78 dated 23.4.79, P.O. 17/86 dated 11.6.95 and P.O. 1153/95 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 Pandirimeidi is only got the right over the petition schedule land as Mokasam granted by the Sircar and unless or until the mokasa 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 Mokasadar of Pandirimeidi 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 Pandirimeidi Moksasa.

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 i.e. tank is in the possession of the 'B' party tribal respondents until the crop was auctioned by the Mandal Revenue Officer, Nampuchedavaram in the year, even until today.
2. that the Petition Schedule land i.e. 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.N.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 judgements declared the title of the possession of schedule land and surrounding lands.
3. that the Mohhasadar is no way concerned over the Petition schedule land and he did not collect any taxes from the petition schedule lands it is clear that the Mohhasadar not a party in the above cited judgement and not claiming any title over the Petition schedule lands or surrounding lands, and that the Mohhasadars abolished by the court very long back.
4. that the 'B' party respondents are in possession and enjoyment of the land i.e. tank, that the voluntary organisation called Sakthi gave Rs.10,000/- loan last year to the 'B' party respondents for the development and cultivating fish crop, and repairs of the tank.
5. that the 'B' party respondents with the money given by Sakthi organisation got repaired the tank and cultivating fish crop and that the Malafide intention to grant 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 'B' party respondents pray the Hon'ble court may be pleased pass favourable orders in favour of 'B' party respondents. The advocate filed the photostat copies of judgement of L.T.N.P.339/78 judgement of O.S.17/86. W.P.No.11153/95 of High Court of A.P. Hyderabad and copy of representation filed by Chavalam Krishnamoorthy and 5 others of Madirimandi village, which reads that they were financed by Sakthi organisation for repairs of the tank which rained during Cyclone in November 1996 and later 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 Sada Veeraju non-tribal came to the

fish tank and obstructed them by saying that the tank was leased out to him by the Mokhasadar for 3 years and that the Mokhasadar without having any right of sight on the land made complaint with Mandal Revenue Officer, Hampachodavaram and that the Mandal Revenue Officer, Hampachodavaram, without consulting the 'B' party respondents got the fish through Mandal Revenue Inspector, Hampachodavaram and sold the fish in public auction for Rs. 5,750/- causing loss of Rs. 7,000/- even after they won the case as they have invested Rs. 12,000/- for raising and safe guarding the fish in the tank.

The Mokhasadar of Paddiramanidi Ponds Bapiraju filed a representation before the Sub-Divisional Magistrate and Revenue Divisional Officer, Hampachodavaram stating he is having full right over the Petitioner Schedule lands i.e. tank in Cheedipalem village that until lifting the Mokhasa no one has jurisdiction over the lands in his Mokhasa that he also got right over the deposited amount of auction and that he requested to dismiss the case.

Having heard 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 have 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 guarding 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 19.3.97 and that till then they were in the possession of the tank. The 'A' party respondents or any other interested person have not proved that they were in the possession of fish tank situated in Cheedipalem village on the date of orders under section 145 Cr.P.C. Thus it is established that the 'B' party respondents are in the possession of the Petitioner Schedule tank as on the date of promulgating orders under section 145 Cr.P.C. by Mandal Executive Magistrate, Hampachodavaram.

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

The Mokhasadar filed petition that the Govt. have no jurisdiction on the lands situated in his Mokhasa and he is the rightful owner of the property situated in the limits of Paddiramanidi Mokhasade.

However it is not for this court in the proceedings under 145 Cr.P.C. to get into the merits of the title of any of these 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.P.C.S. 13/95 at page No.691 in the case of Hanu Vs. B.S. Nohi, in Criminal Religion 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.

According 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 'B' 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. 194.C.1/97 dated 19.3.97 of Mandal Executive Magistrate, Hampachodavaram and subsequently numbered as P.C.2/97 on the file of the Sub Divisional Magistrate, Hampachodavaram and shall be continued in possession till they are duly evicted by due course of law.

The orders and order issued under section 145 Cr.P.C. in P.C.1/97 dt. 19.3.97 in the court of Mandal Executive Magistrate, Hampachodavaram and subsequently transferred to this court and numbered as P.C.2/97 on the file of the Sub Divisional Magistrate and Revenue Divisional Officer Court, Hampachodavaram are hereby withdrawn.

pronounced in the open court on the seventeenth day of July

Typed to dictat



[Signature]
Sub Divisional Magistrate,
and
Revenue Divisional Officer,
Hampachodavaram.

SCHEDULE

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

Fish Tank situated in Choodipalem village.



[Signature]
Sub Divisional Magistrate, &
Revenue Divl. Officer, Hampachodavaram.

To The parties concerned through their advocates.
Copy to the Mandal Executive Magistrate, Hampachodavaram.
Copy to the Collector and District Magistrate, G.Kakinada.
Copy to the Project Officer, Hampachodavaram.