

CASE NO.:
Appeal (crl.) 613 of 1994

PETITIONER:
BADRI PRAKASH SONI

RESPONDENT:
PRAHALAD SONI AND ORS.

DATE OF JUDGMENT: 05/09/1994

BENCH:
K. RAMASWAMY & N. VENKATACHALA

JUDGMENT:
JUDGMENT

1994 SUPPL. (3) SCR 100

The following Order of the Court was delivered:

Leave granted. Heard the counsel on both sides.

We do not propose to go into the entire controversy. Suffice to state that the Executive Magistrate exercising the power under Sec. 145 sub-s. (2) of the Criminal Procedure Code was unable to decide as to who was in possession of the disputed premises on the date of initiation of the proceedings under sub-s. (1) of Section 145, Therefore, he passed an order on may 1994 attaching properties and directing the parties to go to the Civil Court and establish their rights since there is dispute as to possession, though not for title to possession, existing as on that date. The Executive Magistrate is justified to pass that order even though suit for injunction had been filed by the appellant.

Since the said order was passed when the Civil Suit No. 48 of 1994 was pending in the Court of Shri N.K. Kaushik, Sub-Judge the High Court held that the Magistrate should have held back his hands pending decision in the suit. This Court by the order dated June 13, 1994 suspended the operation of the High Court's order and passed the following order :

The order made by this Court on June 6, 1994 shall continue to operate. The learned Subordinate Judge, before whom the proceedings are pending, is directed to dispose of the pending interlocutory applications before the end of July 1994 in accord-ance with law, after hearing the parties."

At the hearing it was brought to our notice, that Sub Judge dismissed the said suit on July 13, 1994 but the respondent, has filed the appeal No. 178 of 1994 which is pending in the Court of Senior Sub Judge.

In view of the fact that the Magistrate has stated that he was not in a position to decide as to which of the contesting parties are in possession of the disputed property, we also decline to decide the question as to who is in possession of the disputed property. However, the dispute shall be decided by the Senior Sub Judge pending in appeal before him. Yet in the interest of the utilisation of the Cork Splitting Machine (German Make) and smooth running of the factories during the pendency of the appeal directions are given.

(1) The respondent is at liberty to continue to utilise the machinery in disputed property and run the factory,

(2) Mr. Rakesh Kumar, Advocate practising in this Court is ap-pointed as an advocate to Commissioner, He should after giving a notice to the counsel for the parties, make immediate inspection of the sealed portion of the

property, that is, the factory. The Executive Magistrate is directed to open the seals put on the disputed property. The Advocate Commissioner with the assistance of the expert Engineer or Valuer shall assess the condition of the machinery and also its value. He should also made an inventory of the machinery existing outside the factory. He would submit a report in that behalf to the Senior Sub-Judge. He should also take the signature of counsel for the parties before submitting the report to the Senior Subordinate Judge.

(3) A sum of Rs. 10,000 is fixed initially as Commissioner' fees subject to his claiming any additional amount as his fees and of the expert Engineer or Valuer, which will be determined by the Senior Sub-Judge after submission of his report.

(4) As soon as the report is submitted 'by him, the Senior Sub Judge should direct the Executive Magistrate to raise and attachment made in respect of the disputed properly permit the respondent to run the factory.

(5) The respondent shall not remove the machinery within the disputed property as well as the machinery kept outside the factory. From the date on which the respondent starts running the factory, he shall for every working day deposit to the credit of the appeal a sum of Rs. 20,000. The learned Senior Subordinate Judge is directed to dispose of the appeal as expeditiously as possible within a period of six weeks from the date of receipt of this order. If the respondent before the Senior Subordinate Judge succeeding in his contention and on the Court finding that he is the owner, then he will be entitled to withdraw the amount deposited by the respondent herein and the appellant in the appeal pending before the Senior Subordinate Judge.

(6) In the event of the findings going against the respondent herein and if any damage to the machinery is caused contrary to noted conditions by the Commissioner, after taking delivery of the possession, the appellant herein is entitled to claim damages that may be caused to the machinery. The Commissioner shall give his report within a week to the Senior Subordinate Judge.

In the event of the appellant herein succeeding the respondent shall give all the costs of the litigation, and payment of the amounts deposited by him with the assistance of the parties, it is open to the Commissioner to take photographs of the existing machinery and put identification marks to the machinery so taken in the presence of the parties with their Signatures. The parties shall bear the costs of the Commissioner as well as an expert or a valuer in equal proportion.

The appeal is accordingly disposed of.