

(2016) 02 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition Nos. 11588 and 11707/2014(GM-CPC)

Lakshminarayana Puranika

APPELLANT

Vs

K. Venkatesha Bhat and Others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 40 Rule 40, Section 151

Citation : (2016) 02 KAR CK 0056

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : K.G. Sadashivaiah, Advocate, for the Appellant; T. Mohandas Shetty, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Budihal R.B., J.—1. These petitions are filed by the petitioner-plaintiff challenging the order passed by the Senior Civil Judge, Kundapur in M.A. No. 9/2012 dated 7.2.2014 produced as per Annexure "H".

2. Heard the arguments of learned counsel for the petitioner-plaintiff and also learned counsel for the respondents.

3. Petitioner-plaintiff filed a suit claiming that he is the Archak and also Trustee of Mahalingeshwara Temple and Surya Narayana Temple of Kumbashi village. Respondent No. 10 by filing an application before the competent authorities got himself appointed as the trustee of the said two temples and taking undue advantage of his possession, is mismanaging the properties of the said two temples. It is also the claim of the plaintiff in the suit that his predecessors were also Archaks and trustees in the said temples. In the said suit, he has also filed I.A. No. IV under Order 40 Rule 1 of CPC requesting the Court that in view of the acts of respondent No. 10 regarding mismanagement misappropriation of the income and properties of the said two temples, in the interest of all the trustees and disciples it is necessary to appoint receiver to manage the said property till

the disposal of the said suit. The said application was opposed by the defendants by filing detailed objection statement. After considering the merits, ultimately, the trial Court allowed the application and appointed the receiver. Learned counsel has submitted that while passing such order, the trial Court has taken into consideration all the materials produced in the case and also the submissions made during the course of hearing of the said application namely, the trial Court found that plaintiff has made out a case for appointment of receiver to manage both the temples till the disposal of the suit. Accordingly, defendant No. 8, the Deputy Commissioner was appointed as the receiver to manage the properties. He has submitted that respondent No. 10 challenged the order of the trial Court by preferring Miscellaneous Appeal No. 9/2012 before the first appellate Court wherein, the first appellate Court has wrongly appreciated the materials, so also, the order of the trial Court and allowed the appeal and set aside the order of the trial Court holding that plaintiff has not established his case that there is mismanagement and misappropriation of funds of two temples. The appellate Court has held that unless and until the requirements of Order 40 of CPC are complied with, the receiver cannot be appointed. Accordingly, Miscellaneous Appeal was allowed and the order of the trial Court was set aside. Learned counsel submitted that this observation of the first appellate Court is patently illegal and not in accordance with the documents produced before the trial Court, which were properly appreciated by the trial Court. He has submitted that since from the date of the order of the trial Court i.e., from 11.9.2012, the Commissioner has taken possession and managing two temples smoothly without there being any sort of disturbance or hindrance from anybody. Hence, the judgment and order of the first appellate Court is to be set aside and the official receiver who has been appointed shall have to be continued to manage the properties till the disposal of the suit.

4. Per-contra, learned counsel for respondent No. 10 during the course of his arguments submitted that firstly, plaintiff has to establish his status that he is the trustee in respect of the two temples. Unless and until he establishes his declaratory relief that he is the trustee of the said two temples, he has no locus standi to maintain the suit. He has submitted that when the application was made by respondent No. 10 before the competent authorities requesting to appoint him as a trustee of two temples, the same was considered and it was allowed and he has been appointed as one of the trustees in respect of two temples and he was managing the affairs of the temples along with the committee members smoothly. At no point of time respondent No. 10 has mismanaged the property nor misappropriated the funds of said two temples. Hence, learned counsel submitted that the first appellate Court has properly appreciated all these aspects of the matter and rightly allowed the appeal and set aside the order of the trial Court. It is his submission that the requirements of Order 40 of CPC for the appointment of the receiver are not at all complied with by the plaintiff in the suit. No such material is produced before the Court except the bald allegation that there was mismanagement and misappropriation

of funds and the property of the two temples. Hence, there is no merit in the petitions and the same are to be rejected.

5. Learned counsel appearing for respondent No. 3 during the course of his arguments has submitted that the first and foremost thing the plaintiff has to establish in the suit, after the full fledged trial, is that he is also the trustee in respect of the two temples. Till then, he cannot question the acts of the defendants. Regarding the appointment of receiver, learned counsel has submitted that the receiver himself who has been appointed and has taken possession, in his report has made it clear that there is no mismanagement or misappropriation of either funds or property of the said two temples, which itself is sufficient to reject the application filed by the plaintiff, which was correctly done by the first appellate Court. Hence, he has submitted that the writ petitions are to be rejected.

6. I have perused the grounds urged in the writ petitions, impugned orders of the Courts below, the plaint copy and other documents produced by the petitioner along with the petitions.

7. I.A. No. IV was filed under Order 40 Rule 1 r/w Section 151 of CPC which was supported by the affidavit of the plaintiff. Perusing the said affidavit, there is no specific mention or allegation in the said affidavit as to what are the acts of misappropriation and mismanagement by the respondents in respect of the management of two properties. He has vaguely mentioned in the affidavit that there is mismanagement and misappropriation in respect of the said property and therefore, receiver is to be appointed. But, however, the trial Court after considering the materials placed before it allowed the application and passed the order for appointment of receiver in the case. But the first appellate Court in the miscellaneous appeal has considered the entire materials in detail and came to the conclusion that requirements of Order 40 Rule 1 of CPC are not at all complied with and established by the plaintiff to seek appointment of receiver to manage two temple properties. It has been observed by the first appellate Court that except the bald and vague allegation in the plaint as well as in the affidavit supporting the application, there is no specific allegation as to what is the misappropriation and mismanagement and in respect of which item of the property.

8. I have also perused the report of the receiver which is produced by the learned counsel for respondent No. 3 herein. About this document, the first appellate Court has already taken note of and discussed in its judgment holding that the receiver himself in his report has stated that there is no mismanagement or misappropriation of either the funds or property of the said two temples. Therefore, taking into consideration even the report of the receiver who is the proper and competent person to say since he has taken possession and examined accounts in respect of the said property during the period when respondent No. 10 came as a trustee in respect of two temples, it has been reported by him that there is no mismanagement and misappropriation of the

funds or property of the said two temples. As rightly submitted by the respondents counsel the suit itself is for declaring the status of the plaintiff as trustee of the two temples which is yet to be established after conclusion of the main suit. Till then, plaintiff has no locus standi to question the acts of the respondents so far as the management of the property is concerned.

9. Apart from that the provision Order 40 Rule 1 of CPC provides for appointment of receiver by the Court if it is just and convenient to the parties. Since the appointment of receiver is having a severe consequence of taking out the property from the possession of the committee which is managing and giving it to the possession of some another person, the Court has to satisfy itself as to whether such a course is necessary under the facts and circumstances of the case. So observing the first appellate Court has come to the conclusion that the trial Court has patently committed serious illegality in passing such order in appointing the receiver in the case and allowed the appeal setting aside the order of the trial Court.

10. So far as the allegations of the plaintiff are concerned, it is also observed by the first appellate Court that he could have made complaint before the Commissioner who is also a person to manage the property. Before the Commissioner there are no such complaints filed by the plaintiff regarding the mismanagement and misappropriation against the members of the trust committee, more particularly, against respondent No. 10. Considering all these aspects of the matter, I am of the clear opinion that the first appellate Court is justified in passing such order in the Miscellaneous Appeal. I do not find any illegality in the judgment of the first appellate Court and it does not call for interference by this Court in these writ proceedings.

11. Accordingly, writ petitions are hereby rejected. The receiver shall hand over the possession and management of the said temples to the committee. Further, in view of the submission of the learned counsel for the petitioner herein that the suit is pending since long, the trial Court is directed to take up the main suit itself on priority basis and dispose of the same as early as possible and not later than six months from the date of receipt of the copy of this order.