

(2015) 11 KAR CK 0113

In the Karnataka High Court

Case No : Writ Petition No. 13053 of 2015 (GM-RES)

M. Mohandas Hegde

APPELLANT

Vs

The Assistant Commissioner, Kundapura Sub-Division and
Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 146

Citation : (2015) 11 KAR CK 0113

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Pavan Chandra Shetty H., Advocate, for the Appellant; M.I. Arun,
Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The petition coming on for preliminary hearing in "B" group is considered for final disposal, in the following circumstances.

3. The petitioner is said to be the Managing Trustee of Shri Manibettu Mahathobara Mahalingeshwara Temple, which is said to be managed by a family Trust of the petitioner for several decades and the family of the petitioner is popularly known as "Manibettu Aranthade Kutuba". It is alleged that some of the devotees had forcibly taken possession of the management of the temple and in this regard, there was a police complaint lodged by the petitioner as well as a suit for permanent injunction had been filed in O.S. 605/2014 against the defendants in the said suit, who are said to be obstructing the day-to-day affairs of the temple and the suit is pending adjudication. In the meanwhile, respondent No. 1 had passed an order on 24.1.2015 directing the petitioner, and other defendants to the suit, to appear before him on 31.1.2015 and thereafter

respondent No. 1 had passed an order, directing respondent No. 2 to attach and take possession and custody of the immoveable property belonging to the temple. Pursuant to the said order, respondent No. 2 is said to have conducted a mahazar and has taken possession of the property of the temple, without any order as to the management of the affairs of the temple. It is in this background, that the present writ petition is filed.

4. The learned counsel for the petitioner would point out that it is the settled legal position that when there is a civil suit pending in respect of any property, invocation of powers under Section 145 or Section 146 of Code of Criminal Procedure, 1973, (hereinafter referred to as "the Cr.P.C.", for short) would be out of place, as held by this Court in the case of Malkappa Vs. Padmanna, . He further submits that it is also the law as laid down by the Apex Court, in the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, to the effect that when there is a suit pending before a Civil Court in respect of the very property and any relief in respect of the property would at best be granted by the Civil Court and to parallelly invoke the provisions of Section 146 of the Cr.P.C. would be illegal. Hence the learned Counsel seeks that the impugned orders be set at naught. He also submits that the property in question is a private property and it is not the concern of the State as to any dispute between the petitioner and other respondents, which is the subject matter of a civil suit and the invocation of powers, mechanically, under Section 146 of the Cr.P.C. would run counter to the law as laid down by this Court as well as the Apex Court.

5. While the learned counsel appearing for the respondents would point out that the suit filed by the petitioner is a bare suit for permanent injunction and not for any other comprehensive relief and therefore, the question of deciding the ownership or otherwise and the right of management of the temple would be without the scope of the suit and the petitioner's claim that he is in possession of the temple is also incorrect. He further submits that the respondents are villagers and devotees of the temple who have formed a Committee of management and the Committee is managing the affairs of the temple over the years. It is only a recent development in the petitioner seeking to claim management and ownership of the temple on the footing that the temple is owned by his family members. This is, however, out of the scope of the civil suit which is pending. And the question of seeking the appointment of a Court Commissioner or Receiver to take over the property would also be outside the scope of the suit. Since there is a law and order situation, it was well within the powers of the Executive Magistrate to invoke his powers and to direct handing over of the assets to the Receiver, namely the Tahsildar, who had in turn, pursuant to the direction of the first respondent, drawn up a mahazar and taken the movables of the temple into his custody to prevent any untoward incident and handed over the same to the Archak of the temple. Hence, it is contended that the law as laid down by the Apex Court and this Court would be applicable if the said pending suit was a comprehensive suit, which would also address the management and ownership of the temple and since the suit is one for bare

injunction, it would hardly give scope for determination of any issues other than the claim that the petitioner is in possession of the suit property and that the respondents must be restrained from interfering with such lawful possession. Therefore, the orders impugned herein are in consonance with the circumstances and there is no legal impediment for such invocation of powers, to prevent breach of peace and to maintain law and order and hence, seeks that the petition be rejected.

6. In considering the case of the petitioner, the law as laid down by this Court as well as the Apex Court may be briefly noticed.

7. In Malkappa's case, it was found by this Court that there was no dispute regarding the fact that respondents therein had already filed a suit against the petitioner in which he had obtained temporary injunction, which order was made absolute in an appeal against the order of temporary injunction. The Police in turn had made a report before the Munsiff Magistrate of Gulbarga stating that the parties are contesting among themselves on the question of possession of the very property which is the subject-matter of the civil litigation and on the strength of the report, the Magistrate had made preliminary and final orders, declaring the first party, the respondent in that case, to be the party in actual possession as on the date of the preliminary order. However, the said order was challenged in a Revision Petition before the District Magistrate, who had confirmed the order of the Munsiff Magistrate. The petitioner was therefore before this Court. This Court formed an opinion that the provisions of Section 145 of the Cr.P.C. should not be invoked when civil litigation about the subject matter is pending and it should be remembered that the very purpose of that section is to prevent breach of public peace at the instance of parties, who should, like law abiding citizens, place their dispute before a civil court and not take the law into their own hands. The final order that is contemplated under that Section is intended only as a stopgap arrangement. The ultimate objective undoubtedly is to compel the parties to place their disputes before a Civil Court and to get a proper adjudication on their rights to immoveable property. When the parties have already gone to the civil court and the civil court is already seized of the matter, this Court was of the opinion, that there is no longer any scope for invoking Section 145 of the Cr.P.C. The overriding considerations of the maintenance of public peace was very often pressed before Courts whenever a situation like this has arisen and some Courts have taken a view that although it may not be proper for a Magistrate to act under Section 145 of the Cr.P.C., the mere pendency of civil litigation does not oust the jurisdiction of a Executive Magistrate to proceed under Section 145 of the Cr.P.C. This Court was of the opinion that it is a misapprehension to consider this question from the point of view of the existence or otherwise of a jurisdiction in a Magistrate and that Section 145 should not be understood as merely conferring a particular jurisdiction on a criminal Court to deal with a civil matter. It embodies or enjoins upon the Magistrate a certain duty and that duty is to see that parties who have a civil dispute do not take the law into their own hands and commit breach of

peace. If the parties have already gone to civil court, the Magistrate has no longer any duty to perform. It was held that it was also necessary to state that one of the pillars of public peace is the respect for orders of the Civil Courts and the proceedings before a Civil Court. If the criminal courts should start parallel proceedings in respect of a matter which is pending before a Civil Court, this Court opined, that it will have the effect of undermining respect for the authority of civil courts with the result that the very objective of Section 145 of the Cr.P.C. will be defeated and that the Magistrate can proceed under Section 107 to bind over the parties who, it is apprehended, might commit some offence or commit breach of the peace. It was also opined, that indeed Section 107 could be more properly invoked because it is exclusively a matter for a Magistrate to deal with, whereas Section 145 impinges upon the authority of a civil Court. When therefore, there is a choice between Section 145 and Section 107 of the Cr.P.C., by reason of the pendency of civil litigation, the Magistrate should choose Section 107 and not Section 145 .

8. Similar is the view taken by the Apex in the case of Ram Sumer Puri Mahant, wherein there was an order of the Allahabad High Court, exercising its revisional jurisdiction against the order directing initiation of proceedings under Section 145 of the Cr.P.C. and attachment of the property at the instance of respondents 2 to 5, therein. It was noticed that in respect of the very property, there was a suit for possession and injunction before the Court of Civil Judge at Ballia wherein the question of title was gone into and the suit had been dismissed. The appellant before the High Court was the defendant in that suit. According to the appellant therein, the plaintiffs were close relatives of respondents 2 to 5 and it was gathered from the counter affidavit, that an appeal was preferred and the same was pending before the appellate Court. It was also noticed that when a civil litigation is pending wherein the question of possession is involved and has been adjudicated, there is no justification for invoking criminal proceedings under Section 145 of the Cr.P.C. and there is no scope to doubt or dispute the position. To challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction, particularly when possession is being examined by the civil court and parties were in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute and that multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation and the order of the Magistrate was quashed.

9. In the light of the above views expressed, in the present case, though the suit is said to be one for permanent injunction, it does not preclude the petitioner from enlarging the scope of the suit by seeking appropriate amendment to the pleadings. It would be appropriate for the petitioner to do so, as there is serious dispute with regard to his right to claim ownership over the said property and management of the temple. An Interim order of injunction has been refused to

the petitioner.

10. The legal issue involved "whether the proceedings under Section 145 of the Cr.P.C. could be invoked, notwithstanding the suit which is pending consideration?" would have to be necessarily answered in the negative and it is to be held that the proceedings were not competent when it is not in dispute that there was a civil suit pending in respect of the very property. If the respondents intend to ensure that during the pendency of the suit, the petitioner should not interfere in the functioning of the temple, it is for them to file an independent suit or seek appointment of a receiver in the pending suit. The invocation of the power of the Executive Magistrate and his interference notwithstanding the pendency of the civil suit would run counter to the law as laid down by this Court as well as the Apex Court. Consequently, it is appropriate that the parties take necessary steps in having their rights adjudicated before the civil Court in respect of which, the petitioner has already taken an initiative, though not an effective initiative. It is therefore open for the petitioner to enlarge the scope of the suit or for the respondents to initiate a counter suit and seek appointment of a receiver, if they are so inclined. Therefore, keeping in line with the law as laid down, the proceedings initiated under Section 146 of the Cr.P.C. are not well-advised and consequently, the petition is allowed to that extent, without thereby conferring any right on the petitioner. It is for the petitioner to approach the civil Court for further adjudication of his right and to seek appointment of a receiver, or otherwise. This would not enable the petitioner to claim a march over the respondents insofar as taking over the management or seeking custody of the temple and its properties. With that observation, the petition stands allowed. The impugned order dated 31.1.2015 passed in MAG: CR: 174/2014-15 by the Assistant Commissioner, Kundapura Sub-Division, Kundapura, under Section 146 of the Cr.P.C. is set at naught. Parties are left to their remedies before the Civil Court.