

(2015) 06 KAR CK 0262

In the Karnataka High Court

Case No : Writ Petition No. 58068/2013 (GM-RES)

P.T. Sannarange Gowda

APPELLANT

Vs

Thopina Gollahallamma Devasthana Sevasamithi

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10(b), 115, 151
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 145, 482

Citation : (2015) 5 KarLJ 453

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : H.M. Gopala, for the Appellant; Satish M. Doddamani, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 11.10.2013 impugned at Annexure-F to the petition. The petitioner is also seeking that the sixth respondent be directed to release the amount in deposit to the petitioner forthwith which is needed for meeting the expenses of the developmental activities relating to the temple. The petitioner has further sought that the fifth respondent be directed not to interfere with the affairs of the petitioner in respect of the administration of the temple.

2. The petitioner claims to be taking care of the affairs of Sri Thopina Gollahallamma temple which belongs to the family of the petitioner since from the time of their ancestors. They are presently aggrieved by the order impugned at Annexure-F to the petition and the subsequent order produced along with the application wherein similar action has been taken for subsequent years. It is contended that when the private respondents herein had filed a suit before the Civil Court, the Civil Court while considering the application filed therein has recognized the right of the petitioner to administer the temple and in that view,

the prayer to take charge of the Hundi of the temple had been rejected. It is in that view contended that the impugned order at Annexure-F whereby a similar action has been taken by the fifth respondent is only an attempt to overreach the order passed by the Civil Court and to aid the private respondents herein which is not justifiable.

3. Learned counsel for the respondents oppose the petition. The learned counsel for the private respondents at the outset would contend that the instant petition is not maintainable since the order assailed is one passed under Section 145 of Cr.P.C. and as such a criminal petition should be filed. In order to support his contention, he has relied upon the decisions in the case of Narendra Singh and Others Vs. Addl. S.D.M. and Others, (2004) CriLJ 751 : (2003) 1 UD 286 and in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, (2003) 1 ACC 33 : (2003) ACJ 505 : AIR 2003 SC 1561 : (2003) 6 JT 126 : (2003) 1 SCALE 739 : (2003) 3 SCC 524 : (2003) 1 SCR 567 .

4. Having perused the judgments cited by the learned counsel for the private respondents, I am of the opinion that the same would not apply to the facts of the instant case. In the decision of the Hon"ble Supreme Court, the issue was with regard to the maintainability of a petition under Article 227 of the Constitution in the circumstance, where remedy under Section 115 of the CPC was provided. In the decision of the Uttaranchal High Court, it is no doubt indicated that in respect of the property dispute when the orders are passed under section 145 of Cr.P.C., a writ petition under Article 227 of the Constitution is not maintainable. As against what has been decided therein, what is necessary to be noticed is in the instant case, the petitioner has filed petition under Section 226 and 227 of the Constitution of India. If a revision petition is to be filed under the provisions of the Cr.P.C., the power no doubt is to be exercised under Section 482 of Cr.P.C. which is similar to the power which is being exercised under Article 227 of the Constitution. That apart in the instant case, the issue relating to the civil proceedings between the parties is also an issue which is to be considered and in that light, as to whether the exercise of power under Section 145 of Cr.P.C. is justified is the main issue and this petition has been pending since the year 2013 Therefore, in the present facts, I am of the opinion that even though the petitioner could have assailed the same by filing a revision petition, it would not prevent this Court from exercising its discretion to entertain the petition under Article 226 and 227 of the Constitution of India. In fact I have taken a similar view in W.P. No. 39134/2004 dated 22.02.2008 after referring to a decision of the Hon"ble Supreme Court. Hence the contention put forth by the learned counsel for the private respondents in that regard is not acceptable.

5. A perusal of the writ papers would disclose that the private respondents at the first instance have filed a suit in O.S. No. 22/2013 seeking for injunction with the averments that the villagers are not satisfied with the management of the affairs of the temple by the petitioner. In the said suit, the plaintiffs had also filed an application in IA-IV under Order 26 Rule 10(b) read with Section 151 of CPC

seeking the Court below to issue a commission to bring the Hundi kept in the suit schedule temple in order to keep it in safe custody before the Hon"ble Court. The Court below while taking note of the rival contentions has referred to the documents in detail to arrive at a conclusion that the plaintiffs therein have not made out any right to seek for such interim orders from the Court below. In that light the Court below has taken note of the right as claimed by the petitioner herein who was the defendant in the said suit. Hence, by the order dated 05.10.2013 the application in IA-IV was dismissed. Notwithstanding the dismissal of the application, the fifth respondent herein was moved at the behest of the private respondents herein. The fifth respondent in the proceedings which was initiated in the nature of exercising the powers under-Section 145 Cr.P.C. has by the impugned order dated 11.10.2013 ordered for the Hundi to be opened, a portion of amount utilized and the balance amount is kept in the Bank. Subsequently similar order has been passed which is produced along with the application for temporary injunction. The question therefore is as to whether the fifth respondent was justified in passing such order.

6. As noticed, the parties are before a Civil Court wherein the rights of the parties would be decided in the said suit and application for the very same relief which has now been granted by the order passed by the fifth respondent was sought in the suit. The Court below after detailed consideration had rejected the application. Immediately within about a week thereafter, the fifth respondent has passed an order with regard to the Hundi of the temple which in fact was rejected by the Civil Court and as such the order as passed by the fifth respondent in exercise of the power under Section 145 of Cr.P.C. cannot be considered as bona fide one. Further the decision relied on by the learned counsel for the petitioners in the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, AIR 1985 SC 472 : (1984) 2 SCALE 1014 : (1985) 1 SCC 427 , the Hon"ble Supreme Court has held that the proceedings under Section 145 of Cr.P.C. would not be sustainable when the dispute is pending in a civil litigation.

7. If that be the position, the order impugned dated 11.10.2013 and the consequent orders thereto in the subsequent year would not be sustainable. Accordingly, the order dated 11.10.2013 stands quashed. The fifth respondent is directed to intimate the sixth respondent Bank to permit the petitioner to withdraw the amount which had been kept in deposit with them. Further a direction is issued to the fifth respondent not to interfere with the affairs of Sri Thopina Gollahallamma Temple in respect of management being carried on by the petitioner until a decision is taken by the Civil Court.

In terms of the above, the petition stands disposed of.