
(2019) 06 UK CK 0043

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 1746 Of 2017

Sheela Devi

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 17-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 145, 146, 146(1), 482

Citation : (2019) 06 UK CK 0043

Hon'ble Judges : R.C. Khulbe, J

Bench : Single Bench

Advocate : T.A. Khan, A.K. Arya, S.S. Adhikari, P.S. Uniyal, Maneesh Bisht, Vipul Sharma

Final Decision : Allowed

Judgement

R.C. Khulbe, J

1. By way of present application, moved under Section 482 of Cr.P.C., applicant seeks to quash the orders dated 31.10.2017 and 10.12.2015 passed by the learned SDM, Kashipur, District Udham Singh Nagar in Criminal Case no.08/2006 of 2014.

2. Brief facts of the case are that the husband of the applicant, Late Atma Ram, was the owner of the some properties. He was having three sons, namely, Lekhraj, Tilakraj and Gulshan Kumar. The respondent no.3 Saurav Kumar was the son of Tilak Raj. The husband of the applicant died on 25.10.2012. When he was alive, during his life time, he had executed a registered Will on 01.08.2006 in favour of the applicant Sheela Devi, after whose death, the property was directed to be inherited by her sons equally. After the death of Atma Ram, the applicant and her sons became the owner of the respective shares as per the registered Will. The respondent no.3, who is the son of Tilakraj, in connivance with some antisocial elements, tried to grab the land of the applicant. Thereupon the applicant filed a civil suit bearing no.171 of 2014, which was withdrawn, and

another suit, bearing no. 48 of 2016, was filed against the respondent no.3 which was pending.

3. The respondent no. 3 also moved an application under Section 145 of Cr. P.C. on 5.07.2014 without impleading the applicant, as a party, in order to grab the land of the applicant by showing a false apprehension of breach of peace.

4. It is argued by learned Senior Counsel for the applicant that since the civil suit, regarding the same property, is already pending before the Civil Judge, Kashipur, the proceedings initiated by the S.D.M. must be withdrawn. It is further argued by learned Senior Counsel that in the proceedings initiated under Section 145 of Cr.P.C. by the Executive Magistrate, the present applicant was not the party. The Magistrate, without perusing the police report and without impleading the applicant as a necessary party, passed an order on 10.12.2015 illegally. When the impugned order came into notice of the applicant, she moved an application. Thereafter, the learned Magistrate passed another order dated 31.10.2017 which is against the facts and law.

5. Learned counsel for the State as well as learned counsel for the respondent would submit that the proceedings initiated under Sections 145 & 146 of Cr.P.C. are the separate proceedings, which have no concern with the civil suit pending before the Civil Court.

6. Although the Civil Suit No. 48 of 2016 was filed by the applicant for permanent injunction, wherein, the counterclaim was filed by the respondent, in which the Will dated 1.08.2006 was challenged. Both the parties have filed their respective Civil Suit and counterclaim before the Civil Court for the disputed property and the matter is still pending.

7. It is the contention of the petitioner that the civil suit in respect of the same property is filed by the respondent which is pending before the Civil Judge (J.D.) Kashipur in which the temporary injunction application is also pending. In these circumstances, the proceedings initiated u/s 145 and 146 Cr.P.C. are not maintainable in view of the law laid down by Hon'ble Apex Court in the matter of Amresh Tiwari Vs. Lalta Prasad Dubey and another, reported in (2000) 4 SCC 440.

8. Learned Counsel for the applicant has further placed reliance upon judgment rendered by Hon'ble Supreme Court in "Ashok Kumar Vs. State of Uttarakhand & others" reported in (2013) 1 U.D. 4. Paragraph no. 15 of the judgment rendered in the case of Ashok Kumar (Supra) is extracted below:

"15. We also notice that the respondent herein has filed a civil suit for injunction before Civil Judge (J.D.) Haridwar on 02.09.2009 and an application for interim injunction is also pending, on which the civil court has issued only a notice. An Amin report was called for and Amin submitted its report on 21.11.2009. Civil suit was filed prior in point of time, it is for the civil court to decide as to who was in possession on the date of the filing of the suit. In any view, there is

nothing to show that there was an emergency so as to invoke the powers under Section 146(1) to attach the property, specially, when the civil court is seized of the matter. Under such circumstances, we are inclined to set aside the order passed by the SDM dated 25.11.2009 and the order of the High court dated 27.03.2012."

9. In the present case also, admittedly, the civil suit, in respect of the same property, was filed in which the temporary injunction application is also pending. In such view of the matter, there was no such emergent situation to initiate the proceedings against the applicant under Section 145/146(1) Cr.P.C.

10. Thus, the present petition filed u/s 482 Cr.P.C. is allowed. The entire proceedings of Criminal Case no. 08/06 of 2014 pending before the Court of S.D.M., Kashipur, District Udham Singh Nagar, are hereby quashed. The S.D.M. concerned is forthwith directed to release the property in question in favour of the applicant.

11. Pending applications, if any, also stand disposed of accordingly.