

(2002) 05 KAR CK 0011

In the Karnataka High Court

Case No : Civil Revision Petition No. 1557 of 2002

Timmane Gouda Narasimhappa Gouda Patil and Others

APPELLANT

Vs

Narasimhappa Hanamappa Doddamani and Others

RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2002) 3 KCCR 1774

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : N.R. Kanchi, for the Appellant; S.P. Hebballi, for C/Respondents 1 to 3, for the Respondent

Judgement

R. Gururajan, J.—The Petitioners are the Defendants in a pending suit in O.S. No. 37 of 2002 on the file of the Civil Judge, Jr. Dn., Bagalkot. They are before this Court challenging an order dated 21.3.2002 passed on IA-II by the learned Judge. The facts in brief are as under:

2.The pooja to lord Maruthi in Tulsigeri Village is performed by way of rotation system amongst five branches. The Plaintiff claiming to be the branch of one Sri Narasimhappa filed a suit in O.S. No. 37 of 2002 seeking for a declaration and an injunction with regard to his pooja rights. An IA was filed seeking for injunction under Order 39, Rules 1 and 2. Objections were filed to the said IA. On the same day, one more application was filed in IA-II u/s 151 CPC seeking the auction of pooja rights between the parties. Matter was contested. After contest, learned Judge has now passed the impugned order. This order is challenged by the Defendants-Petitioners.

3. The Respondent-Plaintiffs are represented. The Counsels are heard in the matter.

4. Sri N.R. Kanchi, learned Counsel contends that the impugned order require my interference. The Counsel elaborates by saying that there are no pleadings

available on record with regard to an existence of a right in favour of the Plaintiffs. He further argues that the pooja rights cannot be auctioned, as has been done in the case on hand. He relies on Prem Bakshi and Others Vs. Dharam Dev and Others, .

5. Per contra, Sri S.B. Hebballi, learned Counsel contends that the said order is nothing but an equitable order requiring no interference by this Court. He supports the order. He relies on various judgments to contend that the jurisdiction of the Court is very limited in these matters. He relies on Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, and Amolak Ram Khosla Vs. Commissioner of Income Tax, Delhi II, .

6. After hearing the Counsel, I have carefully perused the material on record. The Plaintiff-Respondents have filed their suit seeking for a declaration with regard to a right to perform pooja at Tulsigeri Village in addition to a prayer of permanent injunction restraining the Defendants from interfering with the Plaintiffs' right to perform pooja. An IA was filed seeking for temporary injunction. Objections were filed. IA-I was not heard. Instead, IA-II was heard by the learned Judge. In IA-II, the Respondents-Plaintiffs have sought for an order to auction the right to perform the pooja to Tulsigeri Maruthi Temple for a period between 14.1.2002 ending 13.1.2003. In support of the said IA, it is stated that the auction is necessary, in view of the time factor. The same was contested. The learned Judge has accepted the case of the Petitioners and has passed the following order:

Accordingly, it is ordered to auction the right to perform the Puja to Tulasigeri Maruti Temple and deity with all puja articles including ornaments on the deity and puja utensil etc., during the period from Shake 1923 Vishwanama Samvaschar Pushya Sudha Pratipada ending on Shake 1924 Chitrabhan Samvaschar Margshira Vadhi Amavasya i.e., for 14.1.2002 ending on 13.1.2003 between the parties. No order as to costs.

Let me as to whether this order requires my interference.

7. The Apex Court in Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, has ruled that the High Court cannot, while, exercising jurisdiction correct errors of fact or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself.

In Maitreyee Banerjee Vs. Prabir Kumar Mukherjee, , the Supreme Court again ruled while considering amendment that no irreparable injury or injustice caused to opposite party.

In the latest judgment, the Supreme Court has ruled in Prem Bakshi and Others Vs. Dharam Dev and Others, that if the order under challenge, occasions, failure of justice or cause irreparable injury to a party, Section 115 is available to a party concerned.

8. In the case on hand, from the material facts, it is seen that pooja rights which

is claimed the rival parties is auctioned in terms of the impugned order. The auction of the pooja right in my view is certainly, a case of irreparable injury to a party who has a right of pooja. Therefore, in the light of the latest judgment, it cannot be said that this Court cannot interfere on the facts of this case. A case is certainly made out for my interference.

9. The learned Judge, while granting prayers of auction with regard to pooja rights has chosen to notice various facts. The main reason given by the learned Judge is that the trial would take some time and therefore, an interim measure has to be made on the facts of this case. In the pleadings made available to the Court, it cannot be said that the Petitioner has made out any claim of pooja rights in his favour. In fact, he is claiming his right through Dodda Narasimhappa Pujari @ Patil, one of the groups which has right to perform the pooja. The said right in favour of the Petitioner is yet to be proved in the case on hand and therefore, prima facie, the Plaintiffs cannot said to have a legal right as on today. Even otherwise, it is seen from the material on record that the Defendant-Respondents have taken charge of performing pooja on 14.1.2002 itself. Thereafter, in view of the differences, the matter was though not strictly speaking by way of arbitration was referred to one Sri B.K. Desai, the head of the temple by the Plaintiffs themselves. The said gentleman Sri B.K. Desai has given a fact finding in favour of the Defendant-Petitioners. These material facts would prove that the present auctioning of pooja rights by the learned Judge would be contrary to these materials on record. Prima facie, a right is available to the Defendants. The learned Judge in the order though refers to the facts has failed to appreciate properly in ordering auctioning of pooja rights. Pooja rights are sacred in character. It cannot be auctioned at the instance of a person whose right is yet to be established. At the same time, where right is established and where that right is implemented that cannot be a matter of auction causing irreparable injury to the pooja rights to a party concerned. The learned Judge, in my view has failed to consider these material aspects, while ordering auction rights. The learned Judge though has considered various facts, has failed to consider the impact of taking charge, possession etc., which are in favour of the Defendant-Petitioners. When the very right of the Plaintiff is in doubt, in terms of the pleadings and in terms of the order itself, the learned Judge in my view could not have ordered auctioning by way of interim measure. Such auctioning would certainly be an injury to the existing practice of performing pooja by the Defendants in terms of their own rights. The learned Judge failed to notice these material facts, while arriving at this conclusion. In these circumstances, I am of the view that the impugned order is a clear case of non-consideration of material facts while arriving at unsustainable findings resulting in injury to the Defendants. In these circumstances, the Defendant-Petitioners are right in questioning this impugned order on the facts of this case. A case is certainly made out for my interference. The present order would result in irreparable injury to the pooja rights of the Defendant-Petitioners. The impugned order virtually results in granting the pooja rights in favour of the Plaintiffs. Moreover,

unless a strong case is made out, the Court cannot auction pooja rights which are sacred by character.

10. Moreover, it is interesting to know that the Plaintiff has chosen to file an IA seeking for an injunction but the said injunction is not pressed and instead on the day of objection, IA-II is filed seeking for auction of the rights. This peculiar procedure also is a point that goes against the Plaintiff-Respondents.

11. Looking from any angle, the Petitioners have made out a case requiring my interference.

12. In these circumstances, this petition is allowed. The impugned order is set aside. Parties are directed to maintain status-quo as on today.

13. I also make it clear that any of my observations is not to be construed as a finding on merits of the matter. Parties are directed to seek early disposal of the trial itself before the learned Judge. Learned Judge also may think of disposing of the entire suit as early as possible.

14. Ordered accordingly. No costs.