

THE HONOURABLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.28491 OF 2019

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India for issuing a writ of mandamus declaring the proceedings No.B/1266/2019 dated 09.12.2019 issued by the 4th respondent under Section 145 Cr.P.C, as being illegal and arbitrary.

Heard Sri Raj Kumar Grandhi, learned Counsel for the petitioner, learned Assistant Government Pleader for Home for respondent Nos.1, 5 and 6, learned Government Pleader for Revenue for respondent Nos.2 to 4 and Sri S. Ganesh for Respondent No.7.

It is the case of the petitioner that in respect of the joint property, the respondent No.7 filed a suit before the Senior Civil Judge at Mancheri, in O.S. No.119 of 2013 wherein the petitioner herein is shown as defendant No.4. In the said suit filed by the respondent No.7 herein, it is admitted that the said property is in joint possession of the plaintiff therein and the defendants in the suit.

Learned Counsel for the petitioner submits that while the proceedings in the Original Suit are pending before the Civil Court, the exercise of jurisdiction by the 4th respondent is clearly barred and thus the impugned order dated

09.12.2019 passed by the 4th respondent whereby the respondent authority by invoking the provisions of Section 145 Cr.P.C. directed the parties not to enter into the suit schedule area until finalisation of the main suit pending before the Senior Civil Judge's court at Macherial in O.S. No.119 of 2013 is clearly without jurisdiction and also that parallel proceedings cannot be maintained. In support of the said plea, learned Counsel for the petitioner has placed reliance on the decision in the case in ***K. Janardhan Reddy v. The Vth City Magistrate Criminal¹*** and ***Mohd. Shafiuddin v. State of A.P.²***.

Learned Counsel for the petitioner further submits that since the petitioner being in joint possession of the property as per the admission of the respondent No.7 in the suit filed, has taken up cultivation in the suit schedule land pending the adjudication of suit, inasmuch as the injunction granted by the trial Court was only restraining the respondents from alienating the suit schedule land. The petitioner claims to have cultivated and grown paddy crop which is ready for harvesting and further delay would cause severe loss to the petitioner and seeks permission of the Court to allow the petitioner to harvest the standing paddy crop.

On the other hand, learned Counsel appearing for the respondent No.7 submits that the petitioner has approached

¹ AIR 1969 AP 150

² MANU/AP/1349/2006 (Criminal Petition No.2748 of 2004 dated 07.06.2006)

this Court by suppressing the facts and also not making the other respondents in the suit a party to these proceedings. Further, the learned counsel for the petitioner submits that by allowing the petitioner to reap the benefits of the joint property till the same is divided by the Court would adversely affect the interests of the plaintiffs in the suit and thus seeks to justify the order of the 4th respondent whereby the 4th respondent has directed the both parties not to enter into the said land. Learned Counsel also disputes the fact of petitioner cultivating the land and also as to the standing paddy crop ready for harvest.

Having given due consideration to the submissions made on either side, this Court is of the view that the impugned proceedings passed by the 4th respondent under Section 145 Cr.P.C. during the pendency of the suit being O.S. No.119 of 2013 on the file of Senior Civil Judge, Mancherla, would amount to initiation of parallel proceedings with regard to the same property. Further, this Court in **W.P. No.24027 of 2019** following the ratio laid down by a Division bench of this Court in **B. Madhan Mohan Reddy v. S.D.M. (Khammam)**³ had held that initiation of proceedings under Section 145 Cr.P.C. much after the suit is filed before the Civil Court is clearly unsustainable.

³ 1998 (2) ALT (CrI.) 283 (D.B.) (A.P.)

Following the above, the impugned order of the 4th respondent issued under Section 145 Cr.P.C. cannot be sustained and is liable to be set aside.

Accordingly, the proceedings No.B/1266/2019 dated 09.12.2019 issued by the 4th respondent under Section 145 Cr.P.C, is set aside.

However, it is to be noted that the entire case of the respondent No.7 in the suit before the trial Court is for partition of joint property, (on the basis of the land being a joint property), which needs to be adjudicated upon by the trial Court. Thus, this Court is of the view that the petitioner in the present Writ Petition cannot be allowed to derive the benefit by exploiting the joint property of the plaintiff and the other defendants in the said suit, detrimental to the interests of the other parties.

Having regard to the same, this Court is of the view that the petitioner shall undertake harvesting of the standing crop and also take steps to sell the produce, upon harvesting. The amount realised by the petitioner on selling of the paddy harvested along with proper evidence indicating the total produce derived and the proceeds received on account of sale shall deposited to the credit of O.S. No.119 of 2013 pending before the Senior Civil Judge, Mancheri. The entire exercise of the petitioner harvesting the crop, selling the resultant produce and depositing the proceeds realised to the credit of

O.S. No.119 of 2013 shall be undertaken within a period of one month from the date hereof.

Subject to the above observation and direction, the Writ Petition is allowed. No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

T. VINOD KUMAR, J

Date: 21.01.2020

Note: Issue C.C. in two days.
B/o
MRKR

