THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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A.S.No. 450 OF 1997

JUDGMENT:

The respondents in I.A.No. 599 of 1991 in O.S.No. 52 of 1975 on the file of the Court of Subordinate Judge, Narsapur (for short, 'the trial Court'), preferred this appeal challenging the final decree dated 04-12-1996, whereunder the respondents were made liable for payment of Rs.77,807.31 ps. together with subsequent interest on Rs.25,894.45 ps. at 6% *p.a.* from 17-10-1995 till date of payment .

2. The appellants were the respondents and the respondent was the petitioner before the trial Court. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout this judgment.

3. The petitioner filed petition under Order XX Rule 16 read with Section 151 of the Code of Civil Procedure (for short, 'C.P.C.') to appoint an advocate commissioner to take account of income and expenditure for the period from 1948 till 19-12-1970 to ascertain the amount due from the respondents to the petitioner satram and to pass final decree for the amount so ascertained by the Commissioner.

The petitioner, Sri Atyam Subbayya Anna Dana Satram, filed the suit for rendition of accounts directing the respondents, former trustees of the petitioner satram, to render true, complete and correct account of income of satram during their management from 1948 till 19-12-1970. Accordingly, preliminary decree dated 28-11-1980 was passed making the respondents liable to render true, complete and correct account giving liberty to the petitioner to file an application for appointment of an advocate commissioner for ascertainment of amount payable to satram. The trial Court, while passing decree, denied interest, the said finding was challenged before this Court in A.S.No. 2033 of 1981 and the same was allowed granting interest @ 6% *p.a.* on the amount payable by the respondents as a consequence of rendition of account. Thus, the petitioner is entitled to final decree in pursuance of preliminary decree dated 28-11-1980 and as modified by judgment of this Court dated 29-09-1988 in A.S.No. 2033 of 1981.

4. The respondents filed counter contending that late Atyam Subbayya executed will dated 04-09-1988. Under the said will, Atyam Subbayya constituted an endowment

establishing a choultry named as 'Atyam Subbayya Gari Anna Satram', which is purely a private charitable institution. The said Atyam Subbayya was not blessed with any children. Therefore, his adopted son and his lineal decedents constituted as hereditary trustees and no outsider should interfere with its management.

The object of the endowment is to perform Nitaya Anna Danam in the choultry. The said Atyam Subbayya donated a building and land measuring Ac. 19.58 cents for the said purpose. The adopted son of Atyam Subbayya *i.e.* China Seetaramayya, husband of the 1st respondent and father of the 2nd respondent, died in the year 1948. After the death of China Seetaramayya, the 1st defendant's father Gopu Ramachandra Rao managed the choultry and its properties in the name of the 2nd defendant who was minor by them. Gopu Ramachandra Rao was residing at Vijayawada. The said Gopu Ramachandra Rao appointed one Marti Kameswara Rao as clerk in the year 1955 and later he was in-charge of the management. Gopu Ramachandra Rao died in the year 1970. Even by that time, the 2nd defendant was a student of Engineering at Bangalore. In the beginning, Ramachandra Rao maintained the accounts of satram but he did not maintain it separately as it is a private institution. He clubbed the account of satram with the private account of the respondents giving a separate ledger folio. Thus, Ramachandra Rao maintained accounts from 1948 to 31-03-1962.

In 1962, Deputy Commissioner of Endowments conducted an enquiry and called for accounts. A copy of the accounts up to 31-03-1962 was submitted to Deputy Commissioner of Endowments. The said Ramachandra Rao could not submit the accounts relating to 1951-52, 1952-53, 1956-57, 1960-61 and 1962-63 as they were submitted in land ceiling case. As per the accounts submitted to Deputy Commissioner of Endowments, the outstanding amount by 31-03-1962 was Rs.25,532.28 ps. On the instructions of Endowment Department, a separate account has to be maintained for the property of satram. From 01-04-1962 onwards, a separate daybook was being maintained entering receipts and expenditure. While the matter stood thus, on 25-10-1970, Marti Kameswara Rao, who was looking after the management of satram property, handed over latest account book to Revenue Inspector showing balance amount as of Rs.247.07 ps. The accounts of satram being maintained by Ramachandra Rao from 01-04-1962 are filed in the present petition and the balance amount was already handed over to revenue department.

Therefore, the respondents are not liable to pay any amount much less interest over the same and that the respondents have no objection if the petitioner still wants appointment of an advocate commissioner to take account from 1948 till 19-12-1970 and to produce account book into the Court.

5. Upon hearing, an Advocate Commissioner was appointed for the aforesaid reliefs and submitted his report after conducting necessary enquiry finding that the respondents have to pay Rs.77,807.31 ps. which is inclusive of principal and interest. To the commissioner's report, the respondents filed objections raising several contentions about failure of the commissioner to take into consideration of the amount collected from Ramachandra Rao on various dates.

6. Basing on the commissioner's report and the objections filed thereto, the trial Court framed the following point for consideration (extracted):

Point:

> *"Whether the petitioner's Satram is entitled to a final decree in terms of preliminary decree and modified by High Court of A.P. as per decree and judgment dated 29-09-1988 passed in A.S.No. 2033 of 1981?"*

7. Upon hearing argument of both counsel, the trial Court, accepting the report of the commissioner, held that the respondents have to pay Rs.77,807.31 ps. with subsequent interest at 6% *p.a.* on the principal amount of Rs.25,894.45 ps. with costs.

8. Aggrieved by the final decree and judgment, the present appeal is preferred raising several contentions. The main contentions urged in the grounds of appeal by the respondents are thus:

(a) The trial Court failed to consider the objections filed against the commissioner's report and passed final decree accepting the report of the commissioner in toto. If the objections are considered in proper perspective, the trial Court would not have granted final decree for Rs.77,807.31 ps;

(b) The trial Court ignored the *factum* of management of choultry by Ramachandra Rao as the 2nd respondent was minor by then and, apart from that, R.W.2 specifically testified about maintenance of accounts so also handing over of Rs.247.07 ps. to Revenue Inspector;

(c) The trial Court also failed to take into consideration of salaries of clerk, servant and sweeper *etc.*, and the amount incurred for Nitya Anna Danam from 31-03-1962 till 25-10-1970. If the objections filed by the respondents are considered, the respondents are not liable to pay any amount and prayed to set aside the final decree and order passed by the trial Court allowing this appeal.

9. During the course of argument, learned counsel for the respondents would contend that the present appeal is the first appeal; therefore, this Court has to reappraise each and every contention with reference to evidence on record since it is a continuation of the suit and the commissioner and the trial Court did not look into the exact account which would show that the petitioner satram received certain amount from time to time from Ramachandra Rao which is more than Rs.25,532.28 ps. If that amount is deducted, nothing was due by the respondents, requested to reconsider entire accounts to come to an independent decision and prayed to allow the appeal setting aside the final decree and order passed by the trial Court.

10. Per contra, learned counsel for the petitioner argued totally in support of the finding recorded by the trial Court and prayed to dismiss the appeal confirming the final decree and order passed by the trial Court.

11. Considering rival contentions and perusing oral and documentary evidence available on record, the sole point that arises for consideration is thus:

> *"Whether the respondents are liable to pay Rs.77,807.31 ps. together with subsequent interest at 6% p.a. on the principal amount of Rs.25,894.45 ps., if not, whether final decree and order passed by the trial Court are liable to be set aside?"*

12. **In Re. Point:**

Undisputedly, Atyam Subbayya created an endowment donating Ac. 19.58 cents of agricultural land besides providing a building for choultry with an avowed object of Nitya Anna Danam to poor who are starving. Under the will, the trustees must be only lineal descendents of Atyam Subbayya. However, Atyam Subbayya was not blessed with any children and adopted China Seetaramayya, father of the 2nd respondent and husband of the 1st respondent, who died in 1948 leaving behind both the respondents to succeed his estate including the trusteeship of the plaintiff choultry. Accordingly, the 2nd respondent, being the male descendent of China

Seetaramayya, became hereditary trustee of the plaintiff.

13. One of the contentions of learned counsel for the respondents is that during the period of accounting from 1948 to 1970, the 2nd respondent was minor, prosecuting Engineering at Bangalore, was never in the management of choultry and, therefore, not liable to render true and correct account of income from the property of the plaintiff choultry. However, the said contention is not open to the respondents at this stage since the trial Court, while passing preliminary decree, made both the respondents liable to render true and correct account of income from the properties of the plaintiff and no appeal is filed challenging the finding recorded by the trial Court while passing preliminary decree. Therefore, at this stage, the respondents are incompetent to raise such contention.

14. One of the contentions of learned counsel for the respondents is that the property was managed by Ramachandra Rao, father of the 1st respondent and maternal grandfather of the 2nd respondent. However, it is admitted that by the date of producing account books before Deputy Commissioner of Endowments, an amount of Rs.25,532.28 was outstanding by the choultry but this amount was not carried forward in the accounts produced before Commissioner as admitted by both the parties. According to the respondents, some of the books for the years 1951-52, 1952-53, 1956-57, 1960-61 and 1962-63 were produced before Land Reforms Tribunal and they were not taken back. Therefore, account books for other years *i.e.* from 1948 to 1962 were produced before Deputy Commissioner of Endowments who conducted enquiry. Thus, the books either produced before Deputy Commissioner of Endowments or before Land Reforms Tribunal are not the complete account of income and expenditure incurred for maintenance of the petitioner satram but, on the pretext of producing certain account books referred *supra* before Land Reforms Tribunal, the respondents cannot avoid their liability to render true and correct account of income from the property of the petitioner satram. Even if certain books pertaining to 1951-52 and other years referred supra were produced before Land Reforms Tribunal, nothing prevented the respondents to take back those account books or much less to obtain certified copies of those documents to complete the account from 1948 to 1962 but strangely the respondents admitted in the counter itself that an amount of Rs.25,532.28 ps. was lying to the

credit of satram as on 31-03-1962. A bare look at the account for the year 1962-63, there was no carry forward entry in the book crediting Rs.25,532.28 ps. but the first entry dated 05-04-1962 disclosed a debit entry of Rs.225/- and the account further disclosed receipt of certain amount from Ramachandra Rao on various occasions. Taking advantage of certain entries evidencing receipt of amount from Ramachandra Rao, who was managing the choultry and its property on behalf of the respondents, contended that though no credit entry was made carrying forward Rs.25,532.28 ps. in the account books for the year 1962-63, the amount received from Gopu Ramachandra Rao for maintenance of choultry is more than Rs.25,532.28 ps. Therefore, mere failure to make an entry in the account book for the year 1962-63 carrying forward Rs.25,532.28 ps. is not sufficient to saddle with liability to pay Rs.25,532.28 ps. by the respondents since different amount was collected from Ramachandra Rao admitting that Ramachandra Rao was in the custody of the said amount.

15. In view of the specific contentions, it is relevant to advert to the contents of report of the commissioner. In para No. 7, the commissioner referred the evidence of R.W.2 about failure of the respondents to credit Rs.25,532.28 ps. in the account for the year 1962-63 and observed that the account books were only extracts but not the original books. However, learned counsel for the respondents stuck to his original contention that the books were accepted by commissioner though they were extracts and they were maintained in its regular course of business. Therefore, various entries in the books of account are sufficient to conclude that Rs.25,532.28 ps. was collected from Ramachandra Rao and drawn attention of this Court to the evidence of R.W.2. R.W.2, clerk, who maintained the accounts, testified at the end of page No. 2 and beginning of page No. 3 of his deposition as follows:

> *"In the year 1962, the Deputy Commissioner of Endowments conducted enquiry and called for the accounts. I submitted copy of account up to 31-03-1962. I alone used to attend enquiry. The accounts relating to 1951-52, 52-53, 56-57, 60-61, 62-63, could not file before commissioner. We have filed them into Land ceiling case. We could not take return. But the balance of the brought-over as on 31-03-1962 as amount of Rs.25,532.50 ps. was in credit as per the accounts. Subsequently Endowments Department informed that separate account should be maintained in respect of Choultry Properties. On that from 01-04-1962, separate account being maintained and show receipts and expenditure for Choultry Properties."*

From this categorical admission coupled with admission in the counter filed by the respondents, it is established that Rs.25,532.28 ps. was lying to the credit of choultry. At the end of examination in chief, R.W.2 further testified that the amount as on 31-03-11962 was brought into accounts and it was also expended. In cross-examination at page No. 5, R.W.2 admitted that Ramachandra Rao was managing the choultry during his lifetime and R.W.2 used to handover account books at the end of every year to the 1st respondent. The true copies of ledger folio pertaining to choultry maintained by him were handed over to Deputy Commissioner, Kakinada, and that the original account books were not produced by him before Deputy Commissioner for comparison with the true copies of accounts at the time when he handed over. Further cross-examination dated 23-08-1994 clinches the issue as R.W.2 admitted that the outstanding amount by 31-03-1962 was not brought forward into the account books. It is a fact that an amount of Rs.25,532.29 ps. was outstanding to the credit of choultry by 31-03-1962, the said amount was with Gopu Ramachandra Rao and the same was not handed over to R.W.2. In the ledger ending by 31-03-1962, the balance would appear as Rs.25,532.28 ps. and the same was found in the true copy of the ledger folio submitted to Deputy Commissioner. R.W.2 further admitted that he maintained ledgers for the choultry along with daybooks for all the years subsequent to 01-04-1963 and the corresponding ledgers for the years subsequent to 01-04-1963 were submitted to Ramachandra Rao. This important piece of evidence is suffice to conclude that the respondents maintained both daybooks and ledgers making necessary entries of income and expenditure. Strangely, the books produced before commissioner are only daybooks containing entries of both expenditure and income but none of the entries bears signature of the person who received the said amount and those entries are even not supported by receipts or vouchers issued by the person to whom the amount was paid.

16. Learned counsel for the respondents contended that the amount spent by the respondents is meager on various occasions and, in normal course of events, no voucher or receipt will be issued for such meager amount. The amount incurred by the respondents on various dates was ranging from Rs.50/- to Rs.100/- on various dates but the said amount of Rs.50/- to Rs.100/- was not meager during the year 1950. In such case, failure to obtain receipts or vouchers even for the salaries paid to sweeper, clerk *etc.*, creates any amount of suspicion about maintenance of accounts. Apart from that, non-production of ledgers, though admittedly maintained by the respondents, creates any amount of suspicion about genuineness of accounts. In addition to that, the accounts were produced before Land Reforms

Tribunal for some years referred in the earlier paras and some of the accounts were produced before Deputy Commissioner for the years 1948 to 1961 but the respondents did not take any steps even to produce certified copies of those account books or at least to summon those account books from the authorities concerned to prove the exact amount lying to the credit of satram prior to 01-04-1962. However, a categorical admission was made in the counter about surplus amount lying to the credit of choultry was Rs.25,532.28 ps. and the same was admitted by R.W.2, witness examined on behalf of the respondents. No carry forward entry was made in daybooks from 1962-63 onwards. Learned counsel for the respondents tried to explain how the amount was spent contending that the said amount of Rs.25,532.28 ps. was in the custody of Ramachandra Rao, he paid amount to R.W.2, clerk of the choultry, on various dates to meet day to day expenses and he drawn attention of this Court to certain entries in account books, more particularly to entry dated 01-05-1962 on which an amount of Rs.500/- was received and similarly different amount was received on different occasions from Ramachandra Rao by R.W.2. In fact, it was not the plea in the counter filed in the final decree petition and it was not supported by any evidence. Even in the evidence of R.Ws.1 and 2, they did not testify anything about keeping Rs.25,532.28 ps. with Ramachandra Rao, receiving different amount on various dates and, therefore, it is an afterthought invented for the first time during hearing. In the absence of proper explanation in the evidence of R.Ws.1 and 2 about entrustment of Rs.25,532.28 ps. to Ramachandra Rao and collecting the same on different dates cannot be accepted based on the argument advanced across the bench.

17. In cross-examination, curiously, at page No. 7, R.W.2 disclosed about practice of obtaining signatures of the persons concerned at the bottom of entries in the account books marked as Exs.C1 to C8. According to the respondents, the accounts were handed over to Revenue Inspector as directed by Deputy Commissioner along with balance of cash in the year 19710 and the said fact is admitted by R.W.2 in cross-examination dated 08-08-1994. When the respondents handed over accounts and balance amount to Revenue Inspector, how the respondents could produce account books marked as Exs.C1 to C8 is a mystery but learned counsel tried to convince the Court that these books are only extracts of accounts submitted to Revenue Inspector for the period from 1962 to 1970. Even assuming that these books are only extracts but they are not authenticated by competent person with whom the books are lying. Therefore, much evidentiary value cannot be attached to such books of

accounts to believe that those accounts were maintained in regular course of business.

18. Section 34 of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'), says that entries in books of accounts, including those maintained in an electronic form, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability. To accept the entries made in the books maintained by the respondents, they must prove that the books are kept in regular course of business and they are original books. However, in the present case, original books were admittedly handed over to Revenue Inspector and the books produced before the Court marked as Exs.C1 to C8 are only extracts not authenticated by any competent person. In such case, no legal sanctity can be attached to those books as has been held by Apex Court in ***Ishwar Dass Jain (dead) through L.Rs. Vs. Sohan Lal (dead) by L.Rs***. R.W.2, who maintained the accounts of the petitioner satram, admitted that they maintained ledgers but those ledgers were neither produced before any authorities nor before commissioner to prove the amount incurred under different heads and the balance available to the credit of the petitioner satram. In the absence of ledgers, no evidentiary value can be attached to the extracts of daybooks produced before commissioner but the commissioner and the trial Court accepted the entries in the extracts of the accounts maintained by the respondents. Even if those books are accepted as books maintained in regular course of business, still the respondents did not explain satisfactorily as to how Rs.25,532.28 ps. was spent and what had happened to that amount. In the absence of any pleading as to keeping Rs.25,532.28 ps. with Ramachandra Rao and collecting amount on various dates by adducing evidence in support of those collections, the plea of the respondents that the amount was kept with Ramachandra Rao and later collected on different dates to meet the expenses of Satram cannot be accepted.

19. The entries in account books by itself are not sufficient to accept the contention of the respondents unless those entries are corroborated by any independent evidence. Here, no signatures were obtained in daybook under the entries from the person concerned to whom amount was paid though there was a prevailing practice

of obtaining signatures. In fact, Exs.C1 to C8 are not originals. Apart from that, no vouchers or receipts in support of the entries were produced and the explanation offered by learned counsel for the respondents during argument that, for meager amount, no receipt was insisted is not acceptable for the reason that the amount spent during those days is huge amount but not meager. Even otherwise, the person who is maintaining a charitable trust with an avowed object of providing food to poor in the name of Nitya Anna Danam must be more diligent in maintaining accounts with transparency but obviously, for different reasons known to the respondents, they did not maintain proper account and even did not produce the ledgers admittedly maintained by the respondents for perusal of this Court to decide the actual liability. In the absence of any evidence and basing on the judicial admission made in the counter filed by the respondents about availability of balance by 31-03-1962 as Rs.25,532.28 ps., the commissioner rightly concluded that the respondents have to pay Rs.25,532.28 ps. + Rs.362.17 ps. which is available according to the entries in the books and directed the respondents to pay the same together with interest.

20. During argument, learned counsel for the respondents repeatedly requested this Court to reappraise entire evidence since appeal is the continuation of suit. There is some justification in the request made by learned counsel for the respondents but unfortunately no plea was raised about entrustment of Rs.25,532.28 ps. to Ramachandra Rao and collection of the same on various dates to meet day to day expenses of the choultry. No evidence was adduced in support of entrustment and collection of amount on various dates to meet expenses of the petitioner satram. In the absence of plea and evidence, question of probing into each and every entry in the accounts regarding collection of the said amount on various dates to meet day to day expenses of the choultry does not arise and it is for the respondents to explain in the evidence as to when the amount was entrusted to Ramachandra Rao and collected on different dates. Therefore, even after discerning entire material available on record, I find no substance or legal force in the argument advanced by learned counsel for the respondents. The commissioner though arrived the amount due at Rs.25,894.45 ps. and accepted by the trial Court, no cross-objections or separate appeal is filed questioning the same. Therefore, I am not inclined to disturb the said finding as it is not questioned.

21. In view of my foregoing discussion, the reasons for not accepting the contentions are summed-up as follows:

(a) The books produced before the commissioner marked as Exs.C1 to C8 are only extracts of accounts and the originals were handed over to Revenue Inspector in the year 1970;

(b) No summons were obtained summoning the account books submitted to Revenue Inspector, Deputy Commissioner of Endowments and the books lying with Land Reforms Tribunal;

(c) Ledgers admittedly maintained were not produced and

(d) No pleading and evidence on record about entrustment of Rs.25,532.28 ps. and collection of the same on different dates.

In view of the above reasons, I find no substance in the contentions, the appeal is devoid of merits and, therefore, it deserves to be dismissed.

22. In the result, the appeal is dismissed confirming the final decree dated 04-12-1996 passed in I.A.No. 599 of 1991 in O.S.No. 52 of 1975 on the file of the Court of Subordinate Judge, Narsapur. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 29-10-2015.

JSK