

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.No.215 of 1997

And

Tr.A.S.No.1734 of 2002

COMMON JUDGMENT:

These two appeals are filed against the common judgment and decree dated 31.12.1996 passed in O.S.No.115 of 1987 and O.S.No.116 of 1987 by the Subordinate Judge, Rajam, whereunder the suit filed by the plaintiff-Sri Mallikharjuna Swamy Vari Temple, Ponduru for recovery of possession of the suit schedule property was decreed.

2. For the sake of convenience of reference the ranks given to the parties before the trial Court will be adopted through out the judgment.

3. Originally the suits were filed by the Chairman of the Trust Board and later the Executive Officer was impleaded as per the orders in I.,A.No.61 of 1991. Both the suits were filed for recovery of possession of the suit schedule property from the defendants.

4. Sri Mallikharjuna Swamy Vari Temple, Ponduru is a religious institution, governed by Andhra Pradesh Hindu Charitable and Religious Endowments Act, 17 of 1966. One Gunthothu Sankarayya was a Philanthropist and a man of charitable disposition. During his life time he endowed the suit schedule property to the plaintiff-temple and executed registered gift deed on 05.05.1891 constituting himself as a trustee of the temple and after his death his son Dongayya became hereditary trustee. The said Dongayya, who is the son of original trustee Sankarayya made unauthorised alienation of the temple property by executing sale deed dated 15.04.1944 in favour of the father of the 1st defendant viz., late Mantri Ramanna, who is the clerk under Dongayya. The 1st defendant was minor by that time and he was represented by his father Ramanna.

The 2nd defendant, who is the father of the 3rd defendant purchased the property for Rs.4,500/- from Dongayya, who fraudulently described the property as his personal property. Mantri Ramanna, father of the 1st defendant, worked as clerk under Dongayya, he is aware about the endowment created in favour of the temple. Thus, the purchasers under the sale deeds have got knowledge that the property belonged to Sri Mallikharjuna Swamy Vari Temple. Dongayya, the vendor has no right to alienate the said property.

5. In the earlier round of litigation in A.S.No.140 of 1951 on the file of the Subordinate Judge, Srikakulam as confirmed by this Court in S.A.No.279 of 1952, defendant Nos.1 to 7 and their predecessors were parties, and both the Courts held that the schedule property belongs to Temple and Dongayya is incompetent to sell the property. The Deputy Commissioner, Hindu Religious and Charitable Endowments, held in O.A.No.106 of 1958 that the sale in favour of defendants and their predecessors in title is not valid and the schedule property belongs to the plaintiff. Therefore, the findings of the Subordinate Judge, Srikakulam in A.S.No.140 of 1951, and this Court in S.A.No.279 of 1952 have attained finality and operate as *res judicata*. Since the defendants are in wrongful possession and enjoyment of the property, the plaintiff-temple is entitled to past profits of Rs.45,000/- and future profits as determined by the Court. Hence the plaintiff-temple prayed to pass a decree for the aforesaid relief.

6. The defendants filed written statement denying the material allegations and resisted the claim of the plaintiff on the following grounds.

- a) The suit schedule property was purchased by the 1st defendant from Dongayya and it was never in possession and enjoyment of the plaintiff-temple or endowments Department and that the plaintiff never demanded for payment of profits in the suit schedule property.
- b) The plaintiff is not competent to file the suit.

- c) No sanction was obtained from the department to file the suit.
- d) The Court fees paid is not correct.
- e) The defendants purchased the property under registered sale deed dated 15.04.1944 from Dongayya for a valuable consideration and since the date of purchase the defendants are in possession and enjoyment of the schedule property by paying land revenue to the Government.
- f) The land originally situated in Zamindari Village and after abolition of Zamindari in 1948, survey and settlement operations were taken place and the Survey and Settlement Department issued patta in favour of the 1st defendant's father. Thus, by virtue of patta, the 1st defendant became the absolute owner of the property.
- g) The lands are Inam lands in Jamindari Village and after abolition of Inams under Act 37 of 1956 by following the procedure under Sections 3, 4 and 7 and after conducting elaborate enquiry Ryotwari patta was issued in favour of the 1st defendant's father i.e., Mantri Ramanna under Section 7 of the Act as such the Civil Court has jurisdiction to decide the title.
- h) The defendant also perfected his title by adverse possession.
- i) The suit is bared by time.
- j) The judgments in O.S.No.440 of 1949, A.S.No.140 of 1951 on the file of the Subordinate Judge, Srikakulam, confirmed by this Court in S.A.No.279 of 1952 and the order in O.A.No.131 of 1951 dated 10.05.1951 passed by the Deputy Commissioner of Endowments Department, Madras, would not operate as *res judicata*, as such, the defendant became the owner of the property and the plaintiff is not entitled to claim any relief over the suit schedule property, and prayed to dismiss the suit.

7. On the strength of the above pleadings, the trial Court framed the following issues and additional issues for trial (extracted).

1. Whether the suit temple is a non-existing institution?
2. Whether the suit is barred by the provisions of H.R. & C.E. Act of 1966 and 1987?
3. Whether the plaintiff is entitled for possession as prayed for?
4. Whether the plaintiff is entitled for any past profits and future profits?
5. Whether the suit is barred by time?
6. Whether the previous judgments, shown in the pleadings operates as res-judicata?
7. To what relief?

Additional issue dated 29.01.1988.

Whether the defendants perfected their title by adverse possession?

Additional issues dated 23.02.1995.

1. Whether the suit stands abated?
2. Whether the Civil Court has no jurisdiction to entertain the suit?

8. During the course of trial, to prove its case the plaintiff examined PWs.1 to 4 and got marked Exs.A.1 to A.22 and the defendants examined DWs.1 to 5 and got marked Exs.B.1 to B.6.

9. Upon hearing the argument of both the counsel, considering oral and documentary evidence on record, the trial Court decreed the suits granting the relief of recovery of possession in favour of the plaintiff.

10. Aggrieved by the decrees and common judgment Sri Allada Satyanarayana, the 1st defendant in O.S.No.115 of 1987, filed A.S.No.22 of 1997 before the District Judge, Srikakulam, challenging the decree and judgment of the trial Court on various grounds. Thereafter, the same has been transferred to this Court and renumbered as Tr.A.S.No.1734 of 2002. Similarly, defendant Nos.1, 2, 5 to 7 and 10 to 14 filed A.S.No.215 of 1997 before this Court against the decree and judgment in O.S.No.116 of 1997.

11. The grounds urged in both the appeals are almost identical. Therefore, to avoid repetition, I would like to refer the

specific contentions raised by the appellants in both the appeals.

- a) The trial Court did not consider the plea about the maintainability of the suit as there was no Board of Trustees for more than 10 years. Apart from that in the absence of Trust Board, the Executive Officer of Temple is not competent to file the suit.
- b) The Executive Officer is only an employee and unless he was authorised to file the suit, the suit filed by him is not maintainable.
- c) The trial Court did not consider the present condition of the plaintiff-temple as per the Commissioner's report since the temple is in dilapidated condition and surrounding areas were covered by tombs of weavers, thereby the plaintiff/temple could not have claimed recovery of possession since there is no temple in existence except a part of structure in the midst of the premises.
- d) The trial Court failed to consider the deposition of PW.2 in O.S.No.99 of 1974 wherein PW.2 categorically testified that there is no idol of Lingam or Nandi at the temple and that the Endowments Department advised PW.2 not to proceed against the plaint schedule land at any time, as only income was allotted for worship, but the trial Court did not consider the same in proper perspective.
- e) It is further contended that the temple is neither public nor private religious charitable endowment and the gift is not valid, thereby the plaintiff-temple is not entitled to recover the possession of the property, which is under cultivation of various tenants. Therefore, the common decree and judgment of the trial Court is erroneous and hence prayed to set aside the said decree and judgment.

12. During the course of argument, learned counsel for the appellants/defendants would contend that this Court being the Court

of first appeals is under obligation to reappraise the entire evidence with respect to various contentions raised in the grounds of appeal and requested to decide the matter in accordance with law while drawing attention of this Court to various contentions raised in the grounds of appeal, and prayed to allow the appeal setting aside the decree and judgment passed by the trial Court.

13. Whereas learned counsel for the 1st respondent-plaintiff admitted that the suit schedule property is an Inam property situated in Jamindari village of Ponduru, Srikakulam District. Therefore, the patta, if any, issued in favour of the 1st defendant's father is not valid and deemed to have been set aside in view of the amendment to A.P. (Andhra Area) Inams Abolition Act, 1956 by Act 16 of 2013 w.e.f 26.11.1956. Apart from that the decree and judgment in O.S.No.440 of 1949 as confirmed by the Subordinate Judge, Srikakulam in A.S.No.140 of 1951 and this Court in S.A.No.279 of 1952 operate as *res judicata*. Therefore, there are no merits in this appeal and prayed to confirm the decrees and common judgment, while dismissing these two appeals.

14. Considering rival contentions and after perusing the material available on record including the common judgment and decrees in both O.S.Nos.115 and 116 of 1987, the points that arise for consideration are as follows:

- 1) Whether the decree and judgment in O.S.No.440 of 1949 as confirmed by the Subordinate Judge, Srikakulam in A.S.No.140 of 1951 and this Court in S.A.No.279 of 1952 operate as *res judicata*?
- 2) Whether in view of amendment to A.P. Inams Abolition Act (Andhra Area) by A.P Act 16 of 2013 w.e.f 26.11.1956 pattas granted in favour of the plaintiff for the Inam land belonging to the charitable institution is null and void?
- 3) Whether the Executive Officer of the plaintiff-temple is competent to file a suit for recovery of possession from the

defendants?

Point No.1

15. The first and foremost contention of the plaintiff from the beginning was that there were earlier proceedings in O.S.No.440 of 1949 and the decree and judgment passed therein was confirmed by the Subordinate Judge, Srikakulam in A.S.No.140 of 1951 and by this Court in S.A.No.279 of 1952 wherein a specific finding was recorded to the effect that the temple is the owner of the suit schedule property by virtue of the gift executed by the father of Dongayya and that the said Dongayya was not competent to execute registered sale deeds in favour of the defendants or their predecessors in title. The said finding attained finality and thereby the defendants are precluded from raising any contention with regard to the title to the property, in view of the bar under Section 11 of C.P.C. In support of his contention, the plaintiff produced Exs.A.5 & A.6-certified copy of printed copy of the judgment in A.S.No.140 of 1951 and certified copy of decree in S.A.No.279 of 1952 passed by this Court respectively, to prove that finding was recorded to the effect that the plaintiff-temple is the owner of the property and that Dongayya S/o. original donor Sankarayya was not competent to execute registered sale deeds in favour of the defendants.

16. In the said suit, defendant Nos.1 to 7 and their predecessors in title were the parties and they contested the suit, appeal and second appeal, but ultimately this Court held that the property belongs to the plaintiff-temple and the vendor of the defendants viz., Dongayya was incompetent. The schedule property in the said legal proceedings and in the present suit is one and the same, and persons claiming through the defendants in the said suit are the respondents in the appeal. Therefore, the decree and judgment of the trial Court in O.S.No.440 of 1949 confirmed in A.S.No.140 of 1951 and S.A.No.279 of 1952 were marked as Exs.A.5 and A.6 attained finality. When a finding was already recorded

regarding the title and competency of Dongayya to execute registered sale deeds between the same parties, the parties are precluded to reagitate the same question in the present suits, by applying the principle of doctrine of *res judicata*.

17. To constitute a matter, as *res judicata*, the following conditions must exist:

- (i) The matter directly and substantially in issue in the subsequent proceedings must be the same which was directly and substantially in issue either actually or constructively in the earlier proceedings.
- (ii) The former proceeding must have been one between the same parties or between parties under whom they or any of them claim.
- (iii) The parties must have litigated under the same title in the former proceedings.
- (iv) This Court which decided the former proceeding must have been a Court competent to try the subsequent proceedings or the proceedings in which such issue is subsequently raised.
- (v) The matter directly and substantially in issue in the subsequent proceeding must have been heard and finally decided by the Court in the earlier proceeding.

18. The principle of *res judicata* is based on the need of giving a finality to judicial decisions. The principle is based on public policy. The literal meaning of "*res*" is "everything that may form an object of rights and includes an object, subject-matter or status" and "*res judicata*" literally means "a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgments". "*Res judicata pro veritate accipitur*" is the full maxim which has, over the years, shrunk to mere "*res judicata*", which means that *res judicata* is accepted for truth. The doctrine contains the rule of conclusiveness

of the judgment which is based partly on the maxim of Roman jurisprudence "*interest reipublicae ut sit finis litium*" (it concerns the State that there be an end to law suits) and partly on the maxim "*nemo debet bis vexari pro uno et eadem causa*" (no man should be vexed twice over for the same cause). In ***Dr. Subramanian Swamy Vs. State of Tamil Nadu and others*** with ***Sabhayanagar Temple Vs. State of Tamil Nadu and others*** with ***T.Sivaraman and others Vs. State of Tamil Nadu and others***^[1], the Supreme Court discussed the philosophy of *res judicata* which is a matter of procedure and, while relying several judgments of Apex Court, held that when a matter was already decided with regard to management of temple in the earlier proceedings, the same would operate as *res judicata*. The Apex Court relied on the judgments in ***Shah Shivraj Gopalji Vs. ED-, Appakadh Ayiassa Bi and others***^[2] and ***Mohanlal Goenka Vs. Benoy Kishna Mukherjee and others***^[3] to hold that even an erroneous decision on a question of law attracts the doctrine of *res judicata* between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as *res judicata*.

19. In ***Smt. Raj Lakshmi Dasi and others Vs. Banamali Sen and others***^[4], the Apex Court while dealing with the doctrine of *res judicata* referred to and relied upon the judgment in ***Sheoparsan Singh Vs. Ramnandan Singh***^[5], wherein it had been observed as under:

"..... the rule of *res judicata*, while founded on ancient precedents, is dictated by a wisdom which is for all time Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: 'If a person though defeated at law, sue again, he should be

answered, "you were defeated formerly". This is called the plea of former judgment.'..... And so the application of the rule by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law".

20. In ***Satyadhyan Ghosal and others Vs. Smt. Deorajin***

Debi and another^[6], the Apex Court explained the scope of principle of *res judicata* observing as under:

"The principle of *res judicata* is based on the need of giving a finality to judicial decisions. What it says is that once a *res judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, when a matter whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvas the matter again. This principle of *res judicata* is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of *res judicata* has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

21. From the law declared by the Supreme Court in catena of decisions referred to *supra*, it is clear that when an issue was decided between the same parties in former suit, which attained finality, the same cannot be re-agitated in the subsequent proceedings. In the facts of the above judgment, the dispute is with regard to administration of temples and the same issue was decided by competent Court in earlier judgments and attained finality. Therefore, the same issue cannot be raised again in the subsequent proceedings. However, in para No. 35 of the judgment, the Supreme Court observed that

"Explanation to Order XLVII, Rule 1 of Code of Civil Procedure, 1908, provides that if the decision on a question of law on which the judgment of the Court is based, is reverse or modified by the subsequent decision of a superior court in any

other case, it shall not be ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed."

22. In view of the principles enunciated in the judgments referred to *supra*, the defendants, who are parties to the earlier proceedings, or the persons claiming through the parties to the earlier proceedings, cannot re-agitate the same since the findings of the earlier proceedings attained finality.

23. In view of the principles laid down in the above judgments, the Decree and Judgment passed in O.S.No.440 of 1949 as confirmed in by the Subordinate Judge, Srikakulam in A.S.No.140 of 1951 and this Court in S.A.No.279 of 1952, which were marked as Exs.A.5 and A.6, the defendants/appellants are not entitled to re-agitate the same issue in the present suits.

24. The learned counsel for the defendants/appellants contended that the judgment and decree in the earlier proceedings would not operate as *res judicata* but this contention is without any merit as the parties to earlier legal proceedings and the present suit are one and the same or the persons claiming through them and the judgment and decree referred in earlier proceedings, which were marked as Exs.A.5 and A.6 attained finality. Therefore, the decree and judgment under Exs.A.5 and A.6 operate as *res judicata* in view of the law laid down by the Apex Court in the judgments referred to *supra*. Accordingly this point is held against the defendants/appellants and in favour of the plaintiff-temple.

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Point No.2

25. The next contention of the learned counsel for the

respondent/plaintiff is that in view of the amendment to A.P. (Andhra Area Inams Abolition and Conversion into Ryotwari) Act 1956 (for brevity 'the Act') by AP Act 16 of 2013 w.e.f 26.11.1956, the patta granted in favour of the occupants under Section 7 of the Act in respect of the land belonging to the temple, is deemed to be invalid. Thereby the patta granted under Sections 3 and 4 in favour of the defendants, if any, by the Inam Tahsildar by following procedure and issuance of patta under Section 9 of the Act would not come to the aid of the defendants/appellants to claim title.

26. According to Section 4 of the Inams Abolition Act (Andhra Area) where an Inam is with burden to render service, or for performance of a religious or public charity, or as a remuneration for performance of certain customary service, to an institution or endowment, no person shall be entitled to patta. Institution or endowment alone entitled to patta for such inam land. As per the proviso, if any patta is granted, such patta shall always deemed to be null and void and no effect shall be given to such patta.

27. The amendment brought on statute by A.P Act 16 of 2013 is extracted hereunder for better appreciation:

“Not withstanding anything contained in this Act, or any other law for the time being in force, where an Inam land is with a burden to render service, or for performance of a religious or public charity, or as a remuneration for performance of certain customary service, to an institution or endowment, no person shall be entitled to Ryotwari patta, and the institution or Endowment alone shall be entitled to Ryotwari patta for such Inam land without any restriction of extent and without the condition of personal cultivation:

Provided that, where any person other than concerned charitable or religious institution or endowment obtained a patta for such Inam Land after the commencement of the Andhra Pradesh (Andhra Area) Inam (Abolition and Conversion into Ryotwari) Act, 1956, such patta shall and shall be deemed always to have been null and void and no effect shall be given to such patta granted:

Provided further that, no person, other than the person to whom the Inam Land was given to render service, or for performance of a religious or public charity or as a

remuneration for performance of certain customary service, and who is in enjoyment of such Inam land, shall be entitled to continue in enjoyment of such land as long as the render such service for which that Inam land was originally given.”

28. As seen from gift deed marked as Ex.A.3, the donor Sankarayya donated an extent of Ac.60.00 cents to perform certain customary services like “Dhoopa Deepa Nyvadyam etc., and to perform annual celebrations in the temple”, thus, the purpose of endowment under Ex.A.3 is to perform customary services. In such case in view of amendment by Act 16 of 2013, the patta granted in favour of defendants is deemed to be null and void and no effect shall be given to such patta. If, patta is excluded for consideration due to nullity or invalidity, there is absolutely no evidence to prove title of defendants, except sale deeds executed by incompetent person Dongayya. Hence, the defendants are not entitled to claim any title to property, on this ground also the defendants are not entitled to continue in possession and enjoyment of the property. Since the patta granted by Inam Tahsildar under the provisions of Inams Abolition Act (Andhra Area) is invalid, liable to deliver vacant possession of schedule property to plaintiff/temple.

29. Admittedly under original of Ex.A.3-Gift Deed late Sankarayya, father of Dongayya-the defendants’ vendor donated the suit schedule property for performing “Dhoopa Deepa Nyvadyam” in the plaintiff-temple. Therefore, the endowment created by father of Dongayya is an Inam in favour of a Hindu Religious Charitable Institution and the said gift was upheld in originals under Exs.A.5 and A.6 of Subordinate Judge, Srikakulam and this Court and the said judgments had attained finality. Consequently, the defendants are not competent to question the nature of endowment. On this ground also the defendants are not entitled to continue in possession of the suit schedule property since they are not lawful owners to continue in possession without any lawful entitlement. In such a case, the defendants being in unlawful possession are bound to deliver the

vacant possession of the property to the plaintiff-temple.

30. The learned counsel for the defendants though raised several contentions regarding possession they are not relevant for the purpose of deciding the real controversy in view of the latest amendment to Inams Abolition Act referred to supra.

31. Hence this finding of the trial Court is hereby confirmed holding that the plaintiff is the owner of the property and entitled to recover the possession from the defendants who are in possession without any lawful entitlement and they are bound to deliver vacant possession to the plaintiff-temple.

Point No.3

32. One of the contentions raised before the trial Court and this Court is that the Executive Officer is incompetent to file suit irrespective of the nature of the temple whether private or public.

33. As seen from the record, the temple is a public charitable institution notified by the Government under Section 6 of the A.P. Hindu Religious and Charitable Endowments Act and appointed Executive Officer for management of the temple. Therefore, the Executive Officer being the administrative head is competent to file the suit. The Executive Officer was appointed basing on the income of the institution. Even in Exs.A.12 and A.13 dated 8.09.1976 & 15.05.1986 a trust board was in existence and letters have been addressed by the Assistant Commissioner, Endowments Department to the Chairman of the plaintiff-temple. Ex.A.15 is the estimate approved by the Assistant Commissioner of Temples for filing the suit, more over, Ex.A.16 is the notification issued under Section 6 of the Endowments Act, as such the plaintiff is public temple. Therefore, this Court need not decide whether the temple is a public or private temple and when an Executive Officer is appointed to the temple to manage the temple, he being the administrative head of the temple is competent to file suit for recovery of possession of the property. Therefore, the objection raised by the defendants before the trial

Court and this Court is without legal basis.

34. The other contentions raised about the condition of the temple etc., are not germane to decide the competency of the Executive Officer of the plaintiff to file a suit. Therefore I find that the Executive Officer of the temple is competent to file the suit and accordingly this point is held in favour of the plaintiff/respondent herein and against the defendants/appellants.

35. In view of my findings on Point Nos.1 to 3, the plaintiff is the owner of the property whereas the defendants are in unlawful possession and enjoyment of the property, thereby, they are bound to deliver vacant possession of the property. Hence I find no illegality in the findings recorded by the trial Court warranting interference of this Court. Consequently, the appeals are devoid of merits and deserve to be dismissed.

36. In the result, the appeals are dismissed. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

M.SATYANARAYANA MURTHY, J.

29th September, 2015
Js.

[\[1\]](#) AIR 2015 SC 460

[\[2\]](#) AIR 1949 PC 302

[\[3\]](#) AIR 1953 SC 65

[\[4\]](#) AIR 1953 SC 33

[\[5\]](#) AIR 1916 PC 78

[\[6\]](#) AIR 1960 SC 941