

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

AS No.72 of 1998

JUDGMENT:

This appeal is filed by the first defendant against the judgment and decree dated 23.12.1997 in OS No.6 of 1985 passed by the III Additional District Judge, Vijayawada.

The suit OS No.6 of 1985 was filed by the plaintiff-Assistant Commissioner of Endowments, Vijayawada against the two defendants viz., i) Sri Vigneswara Swamy Devasthanam Sangham and ii) the Deputy Commissioner of Endowments, Kakinada to set aside the order dated 29.06.1989 of the second defendant in OA No.89 of 1979, which was filed for a declaration that the first defendant Sangham and its properties are not a Public Charitable and Religious Institutions governed by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 17 of 1966.

The averments of the plaint in brief are that on 06.08.1999 the first defendant Sangham was published/declared under Section 6 (c)(i) of the Act 17 of 1966 by the Commissioner of Endowments as a 'Charitable Institution'. The Committee of the first defendant Sangham used to submit their budget every year and

obtain sanction of the Endowments Department and also pay necessary contribution to the Department. The Asst. Commissioner issued a notice for constitution of the Trust Board under Section 15 of the Act to have control and management over the Sangham. The President and Secretary applied for being appointed as 'non-hereditary trustees', but their request was not granted and the Trust Board was constituted with different persons by the Asst. Commissioner, through order dated 24.03.1979. Aggrieved by the said order, the Secretary of the first defendant Sangham filed a suit OS No.110 of 1979 before the Sub-ordinate Judge, Vijayawada questioning the constitution of the Trust Board and for other reliefs. He also filed a petition u/s.77 (1)(a)(b)(d) of the Act 17 of 1966 before the second defendant-Deputy Commissioner of Endowments, Kakinada in OA No.89 of 1979 for a declaration that the first defendant Sangam and its properties are not governed by the Endowments Act 17 of 1966 and to restrain the plaintiff from appointing the non-hereditary trustees. After considering the matter, the second defendant passed an order dated 22.06.1984 declaring that the first defendant Sangham is a private institution intended for the benefit of the members of the Sangham only and outsiders are not entitled as of right

to visit the temple and the first defendant Sangham is neither a religious nor a charitable institution and the Society was registered on 11.03.1964 under the Societies Registration Act 14 of 1964 with a memorandum of association mentioning its objects. The objects of the Sangham clearly manifest the public nature of the society and it is predominantly a religious charitable institution. The temple was open for public worship and there are no restrictions. The Archanas are being performed by general public for which fee would be collected and a Hundi was installed for receiving offerings in money or kind. Therefore, the said Sangham was notified under Section 6 (c) (i) of the Act 17 of 1966 by the Commissioner as a 'Charitable Institution'. The orders passed by the second defendant are erroneous. From the beginning, the first defendant is a public temple. In the memorandum of association, the objects of the Sangham are mentioned as the renovation of Vigneswaraswamy temple. By the formation of a society with bye-laws, a public temple cannot be converted into a private temple of the Sangham. Thus, the second defendant failed to see that the objects of the Sangham fall within the ambit of sub-clauses 2 to 5 of Section 2 of A.P. Act 17 of 1966 and erred in holding that the Sangham is not a charitable

or religious institution. Therefore, the Sangham is not a private institution, which is governed by A.P. Act 17 of 1966, hence the suit.

The second defendant remained *ex parte*. Contesting the suit, the first defendant Sangham filed its written statement denying the material allegations made in the plaint. The Sangham was registered on 07.03.1964 under the Societies Registration Act 14 of 1964. It is an admitted fact that a notification under Section 6 (c)(i) of the Act 17 of 1966 was made by the Endowments Department, but it is based on mis-appreciation of facts and mis-conception of law. When the Trust Board was constituted by the orders of the plaintiff-Asst. Commissioner of Endowments, dated 24.03.1979, the Sangham filed a suit OS No.110 of 1979 before the Sub-Ordinate Judge, Vijayawada and also filed OA No.89 of 1979 before the second defendant-Deputy Commissioner of Endowments under Section 77 (1) of the Act 17 of 1966 for a declaration that the Sangham and its properties are not attracted by the said Act. After considering the matter, the second defendant passed orders dated 22.06.1984 holding that the first defendant Sangham is a private institution and the same is neither a religious nor a charitable institution as defined under

the Act and therefore, the provisions thereof are not attracted. Hence, the order of the second defendant is thus a well reasoned order and is in accordance with law.

It is also stated that the temple of Lord Vigneswara is a separate entity and it was never dedicated to the public. The beneficiaries are limited to 364 members of the Sangham, which is also entitled to divert the assets to some other sangham of similar objects. The Sangham never collected anything from members other than the members of the Sangham. There is no cause of action for the suit and it is liable to be dismissed.

Basing on the above pleadings, the following issues were framed for trial:

- i) Whether the plaintiff is entitled for setting aside of the orders passed in OA No.89/79 by the Deputy Commissioner of Endowments on 26.06.2984?
- ii) Whether the plaintiff is entitled for declaration as prayed for in the suit?
- iii) To what relief?

The parties went to trial on the basis of above pleadings and issues. For the plaintiff, PWs.1 to 3 were examined and Exs.A.1 to A.8 were marked. For the defendants, DWs.1 to 3 were marked and Exs.B.1 to 4 were marked. Ex.C.1 was also marked. After considering the oral and documentary evidence, the lower Court

decreed the suit. Aggrieved by the same, the present appeal is filed by the plaintiff-Asst. Commissioner of Endowments.

This Court has heard Sri K.V. Satyanarayana, learned counsel for the appellant and the learned Government for Appeals for the respondents.

The point that arises for consideration is whether the judgment and decree dated 23.12.1997 of the III Additional District Judge, Vijayawada in OS No.6 of 1985 are correct and in accordance with the provisions of Act 17 of 1996 and Act 30 of 1987?

The learned counsel for the appellant/1st defendant contends that a petition filed under Section 77 of the Old Act before the second defendant-Deputy Commissioner of Endowments cannot be continued as a suit, but the same has to be treated as an appeal under Sections 88 and 155 (2)(d) of the New Act .He contends that, the suit does not lie against the decision of the Deputy Commissioner under Section 87, but only an appeal lies under Section 88. In support of his contention, the learned counsel relied upon a decision of this Court in ***K.N. Venkatarama Chetty v. V. Lakshmiram Chetty***¹. He relied on Section 155 (2) (d) of the new Act and argued

¹ 1993 (2) An.W.R. 584

relying on the above decision that the remedy which was available for an aggrieved party against a decision of the Deputy Commissioner under the old Act was to institute a suit. The remedy now available to an aggrieved party under the new Act is by filing an appeal against the order of the Deputy Commissioner. A suit which was instituted under the old Act is a proceeding which was pending on the date of commencement of the new Act, and the remedy now provided under the new Act against such a proceeding, namely, an appeal is now available to the aggrieved party. Hence the submission is that the suit will have to be continued as an appeal instituted under the new Act.

The learned counsel for the appellant also contends that Section 155 (d) is *couched* in a language which creates a legal fiction. To that effect, he relied on ***State of Bombay v. Pandurang Vinayak***² and ***Industrial Supplies Pvt. Ltd. V. Union of India***³ wherein the Hon'ble Supreme Court held as under:

“it is now axiomatic that when a legal fiction is incorporated in a statute, the Court has to ascertain for what purpose the fiction is created. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The Court has to assume all the

² AIR 1953 SC 244

³ AIR 1980 SC 1858

facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction.”

The learned counsel for the appellant also pointed out that during pendency of the suit before the District Court, the Endowments Act was amended and the remedy of a suit against the decision of the Deputy Commissioner is no more available to an unsuccessful party under the new Act, which specifically provided a right of appeal to the District Court. Under the provisions of the Old Act, the case is to be tried by the District Court. Moreover, ‘District Court’ has been interpreted by a Division Bench of this Court as Principal District Judge. For this contention, the learned counsel relied on a decision in **Tadikona Surya Venkata Satyanarayana Murthy v. Tammana Seethamahalakshmi**⁴, wherein a Division Bench of this Court held in paras 19 & 20, which are under:

“19. A careful look at clause (a) of sub-section (3) of Section 24 would show that the phrase "Courts of Additional and Assistant Judges" appearing therein, is ejusdem generis with what follows, namely the phrase "District Court". When clause (a) speaks of the Courts of Additional and Assistant Judges with specific reference to the District Court, it can be construed only as a reference to the Additional and Assistant District Judges, irrespective of whether the word

⁴ (2016) 5 ALD 482

"District" is used or not in between the words "Additional Judges" and "Assistant Judges".

20. A few decisions are cited by the learned Counsel for the petitioner in support of his contention that the Courts are not empowered to supply words into a statutory provision. We do not think that we need to refer to any of them, as the principle of *causus omissus* is too well recognised. We are not, in this case, supplying the word "District" in clause (a) of sub-section (3), when it is conspicuous by its absence. We are just pointing out that the word already exists in the statutory provision, but it is more visible when we apply the rule of *ejusdem generis*.

Principle of subordination".

The learned counsel for the appellant also pointed out that participation in proceedings does not debar any party from raising the question of lack of jurisdiction. To this point, he relied on ***Nammi Ganga Raju v. A. Ramakrishna***⁵ and ii) ***Chiranjilal Shrilal Goenka (died) through LRs v. Jasjit Singh***⁶. As per him, it is only the statute that can confer the jurisdiction. A decree passed by a Court without jurisdiction is *non est* in the eye of law.

Lastly, the learned counsel for the appellant relying upon a decision of the Hon'ble Supreme Court in ***Arka Bikas Chakravorty v. State Bank of India***⁷ contended

⁵ (2003) 1 Decisions Today (AP) 484 =
Laws (APH) 2002 12 107

⁶ (1993) 2 SCC 507

⁷ (1997) 10 SCC 417

that where, however, the remedy is repealed, the Court loses its jurisdiction to enforce that remedy and the pending cases must terminate at the stage they have reached when the repeal occurs, since statutes affecting remedies are retrospective.

To summarize, the learned counsel for the appellant contended that based on the above contentions with the support of the decisions that the decree has to be set aside and the matter has to be remanded to the Principal District Court with a direction to treat it as an appeal under Section 88 of the new Act and dispose of the same in accordance with law.

The learned counsel for the first respondent tried his best to support the order passed and argued that the appeal has no merits and should be dismissed. He argued that the proceedings cannot be heard as an appeal.

After hearing the parties, this Court is of the opinion that the appeal is to be remanded for fresh disposal. The case law cited and the new section of law in the amended Act make it clear that the remedy available is an appeal and not a suit. The current appeal is a continuation of the suit and therefore this court is of the

opinion that the case has to be remanded to the designated court and be heard like it was an appeal.

In the result, the impugned judgment and decree is set aside. The present appeal is remanded to the Court of the Principal District Judge, Machilipatnam, who shall treat the remanded matter as an appeal and proceed to determine the same. The remanded appeal should be disposed within three months of receipt of a copy of this order. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous Petitions, if any pending in this appeal shall stand closed.

Date: 31.12.2018
Isn

D.V.S.S. SOMAYAJULU, J

