

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CIVIL REVISION PETITION No.4860 OF 2010**

**ORDER:**

The present revision petition, under Article 227 of the Constitution of India, is directed against order No.5, dated 31.03.2009, passed in O.A.No.16 of 2008 by the Deputy Commissioner, Endowments Department, Hyderabad.

2. The aforesaid O.A. was filed by respondent No.3 herein. At the threshold of the O.A., revision petitioners - respondent Nos.1 to 5 appears to have urged the Deputy Commissioner to take up the preliminary issue for adjudication. According to them, the O.A. is not maintainable, as the principle of *res judicata* applies to this case, in view of the judgment of the Civil Court in O.S.No.712 of 1989, dated 15.12.2000. The Deputy Commissioner, having considered the arguments advanced by the learned counsel for both sides, passed the order under challenge holding that the principle of *res judicata* emphasized by the revision petitioners was not tenable and thereby, admitted the O.A. and posted it to 02.05.2009. When the said order was challenged in the present revision petition, this Court, on 24.12.2010, while admitting the revision petition, granted interim stay in C.R.P.MP.No.6459 of 2010. That was the reason, the proceedings in O.A. were still pending before the Deputy Commissioner, awaiting the order in the present revision petition.

3. Not much discussion is required to probe into the disputed question in the present revision petition.

4. The reasons assigned by the Deputy Commissioner in tendering the finding as aforesaid, since relevant, are extracted and read thus:

“Perused the material papers filed by both the parties. The point for consideration is whether the present O.A. filed before this forum amounts to resjudicata in the light of judgment of the Civil Court in O.S.No.712/1989, dt. 15-12-2000 and whether the O.A is maintainable. The suit No.712/89 was filed U/S 84(2) of the Act 30/87 to set aside the order of Deputy Commissioner, Hyderabad passed in O.A.No.38/86, dt.31-1-1989 in which the Deputy Commissioner has declared the plaintiff as encroacher over the O.A schedule property. The order of the Deputy Commissioner was challenged u/s 84 of the act before the Civil Court. The property in question was registered in the Book of Endowments as long back as in the year 1340 Fasli in file No.50/2. Section 46(3) of the Act 30/87 provides that until the contrary is established it shall be presumed that all the particulars entered in the registration record are genuine. Any person aggrieved by an entry or omission to make an entry in the register shall file an application u/s 45 read with Section 87 of the Act. The entry in the Book of Endowments regarding the property as endowed was not challenged and the entries not annulled by the competent authority and the said entries hold good till this day. The Section 87 of the A.P. Endowments Act 30/87 empowers the Deputy Commissioner having jurisdiction to enquiry and decide any dispute as to the question whether any property is an endowment if so whether it is charitable endowment or religious endowment. The power of the Deputy Commissioner u/s 87 of the Act

was up held by the Hon'ble High Court in number of cases. The respondent relied mainly on the judgment of the Civil Court in O.S.No.712/89 which was filed against the eviction orders passed by the Deputy Commissioner. The subject matter of the said suit was only eviction and not title dispute over the property. Further the Section 151 of the Act 30/87 provides that no suit or other legal proceeding in respect of administration or management of an institution or endowment or any other matters of dispute for determining or deciding for which provision is made in this Act shall be instituted in any court of law except under and in conformity with the provisions of this Act. In O.S.No.712/89, there was no adjudication on the title of the property. Hence, the principle of *rejudicata* emphasized by the petitioner herein is not tenable. Hence, the present O.A is admitted and posted to 2-5-2009."

5. Sri M. Venkateswar Rao, learned counsel for the revision petitioners, would submit that when a civil Court declared title of the revision petitioners in earlier litigation i.e., in O.S.No.712 of 1989 and when that finding remained unchallenged, the present O.A. cannot be adjudicated upon once again with regard to the title over the schedule property and, thus, the present O.A. is barred by the principle of *res judicata*.

6. Sri P.R. Prasad, learned counsel for respondent No.3, would submit that the earlier litigation relates to eviction proceedings and, in fact, the suit, filed under Section 84(2) of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) (for short, 'the Act'), arises out of the order, dated 31.01.1989, passed

in O.A.No.38 of 1986. When the issue directly and substantially bars for admission, the title of the plaintiff in O.S.No.712 of 1989 cannot be decided/declared by the civil Court, which amounts to exercising the power restrained on the civil Court and thereby, amounts to illegal exercise of jurisdiction and, therefore, the principle of *res judicata* is wholly inapplicable.

7. The revision petitioner has also filed CRP MP No.6827 of 2012 to permit him to raise the additional ground shown as ground No.10 thus:

“10. The Deputy Commissioner who passed the impugned order is the Second Defendant in O.S. No.712 of 1989 in the Court of II Additional Senior Civil Judge, City Civil Courts, Hyderabad and suffered a decree in that suit. The judgment and decree have become final. It is not open for the Deputy Commissioner to decide his own cause in another proceeding on the ground of his bias and as such the impugned order is liable to be set aside.”

8. It is, of course, unnecessary to refer to the grounds and the contentions in detail, but, suffice it to refer to the decisions relied on by the learned counsel for respondent No.3.

9. Learned Government Pleader for Arbitration is, of course, in agreement with the arguments advanced by the learned counsel for respondent No.3.

10. In **Teki Venkata Ratnam & Ors. v. Dy. Commissioner, Endowment and Ors.**<sup>1</sup>, relied on by the learned counsel for respondent No.3, the Honourable Apex Court held that mere self-serving design of a party to claim Temple as private one cannot defeat a specific statutory provision conferring power on authority to decide a question and the dispute whether the Temple is private or public falls within the purview of Section 87 of the Act for the purpose of enquiry and decision.

11. In **Union of India and another v. Association of Unified Telecom Service Providers of India and others**<sup>2</sup>, the Honourable Apex Court, while observing that an order passed without jurisdiction is nullity and cannot operate as *res judicata*, even if such order attains finality in favour of some parties by virtue of not being appealed against, in paragraph Nos.59 to 61 held thus:

“59. Thus, the Tribunal in its order dated 7-7-2006 has not just decided a dispute on the interpretation of adjusted gross revenue in the licence agreement, but has decided on the validity of the definition of adjusted gross revenue in the licence agreement. As we have already held, the Tribunal had no jurisdiction to decide on the validity of the terms and conditions of the licence including the definition of adjusted gross revenue incorporated in the licence agreement. Hence, the order dated 7-7-2006 of the Tribunal insofar as it decides that revenue realised by the licensee from activities beyond the licence will be excluded from adjusted gross revenue de hors the definition of adjusted gross revenue in the licence

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<sup>1</sup> 1996 (4) ALD 643

agreement is without jurisdiction and is a nullity and the principle of res judicata will not apply.

60. In *Chandrabhai K. Bhoir v. Krishna Arjun Bhoir* ((2009) 2 SCC 315) this Court relying on *Chief Justice of A.P. v. L.V.A. Dixitulu* ((1979) 2 SCC 34), *Union of India v. Pramod Gupta* ((2005) 12 SCC 1) and *National Institute of Technology v. Niraj Kumar Singh* ((2007) 2 SCC 481) has held: (Krishna Arjun case, SCC p.322, para 26)

"26. ... an order passed without jurisdiction would be a nullity. It will be a coram non iudice and non est in the eye of the law. Principles of res judicata would not apply to such cases".

61. We accordingly hold that the order dated 7-7-2006 of the Tribunal was not binding on the Union of India even in those cases in which the Union of India did not file any appeal against the order dated 7-7-2006 before this Court."

12. In **R. Venkataswami Naidu v. M/s. South India Viscose Ltd., Coimbatore**<sup>3</sup>, which is also to the same effect, the Honourable Apex Court, while dealing with the binding effect of the interlocutory orders passed in a suit, where lack of jurisdiction to entertain the suit occurs, held in paragraph No.10 thus:

"10. It is now necessary to consider the objections based on the distinction between total lack of competence and lack of local jurisdiction. If there is total lack of competence in a Court to entertain the suit, then there is no difficulty at all, because any order or adjudication made by such a Court, would be a nullity. Even if the objection is based upon want of jurisdiction on the ground of either pecuniary or territorial jurisdiction, in view of the decision of the Supreme Court in

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<sup>2</sup> (2011) 10 SCC 543

Kiran Singh v. Chaman Paswan, AIR 1954 SC 340, it seems to me that such a defect would also strike at the very authority of the court to pass a decree and it cannot be cured by consent of parties. Even on the assumption that there could be waiver of the objection in a manner recognised by law, in this case, there is no question of waiver at all, for, the respondent had clearly raised an objection regarding the jurisdiction of the City Civil Court at Bombay to entertain the suit and had persisted in that objection, which resulted in the Court coming to the conclusion that the City Civil Court at Bombay did not have jurisdiction to entertain the suit at all and that, therefore, the interim orders passed by it were of no consequence and were not binding on the respondent company. In view of this circumstance, the reliance placed by the learned Counsel for the petitioner upon the decision of the Supreme Court in Hira Lal v. Kali Nath, AIR 1962 SC 199, cannot avail the petitioner, for, in that case factually, there was a waiver of the objection relating to the territorial jurisdiction of the Court raised in the written statement, when the matter was agreed to be referred to arbitration through court. It is, therefore, rather difficult to accept the contention of the learned Counsel for the petitioner that there has been waiver in this case, as the record clearly establishes contra. Kammaran Nambiar v. Valia Ramunni, (1938) 1 Mad LJ 193 : (AIR 1938 Mad 257) also reiterates the fundamental rule that a judgment of a court without jurisdiction is a nullity and that want of jurisdiction cannot be waived and the law recognises two exceptions to this, namely S. 11 of the Suits Valuation Act, 1887 relating to defects of jurisdiction due to wrong pecuniary valuation and under S. 21, Civil P.C., with reference to the wrong place of suing. There is no question of the applicability of S. 11 of the Suits Valuation Act in this case because there is no dispute on valuation at all and with

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<sup>3</sup> AIR 1985 Madras 257

reference to the territorial incompetency of the City Civil Court at Bombay, factually, there is no waiver of the objection relating to jurisdiction by the respondent-company, which raised the objection in the court of first instance at the earliest possible opportunity, even in the course of the interlocutory proceedings, and had persisted in that objection which was upheld as well and that is the clearest indication that there is no abandonment of the objection regarding the territorial jurisdiction at all. Therefore, even assuming that similar considerations of waiver would arise with reference to an objection based on S. 11 of the Suits Valuation Act, 1887, and S. 21 Civil P.C., there has been no waiver in this case and the petitioner cannot claim that he is entitled to an order for injunction on the footing that the earlier order of ad interim injunction passed by the City Civil Court at Bombay would still hold good. The argument that the subsequent order passed by the City Civil Court at Bombay would not make the original order non est or void cannot be countenanced. If the Court had no jurisdiction at all to entertain the suit, anything done by it, by assuming such jurisdiction, would be totally without competence on its part to do so and merely because such incompetence is discovered subsequently, that would not render the intermediate act valid and binding till the date of discovery of such incompetence. To accept this argument would lead to a very strange situation in that orders passed by a Court, incompetent to entertain the proceedings would be valid between the date when the proceedings are entertained and the discovery of its incompetence and would not be either binding or operative, after the date of discovery of the incompetence of the Court. Either the Court is competent or it is incompetent to entertain suits and pass orders. The acceptance of the argument of the learned Counsel would render the same Court competent up to a particular stage of the proceedings and make it incompetent at the subsequent stages. Under those

circumstances, this argument of the learned Counsel for the petitioner that the subsequent order would not make the original order non est or void is unacceptable. No other point was urged. Consequently the Civil Revision Petition fails and it is dismissed with costs.”

13. Reverting to the fact situation occurring in the instant case, O.A.No.16 of 2008 was filed by the devotees association of Sri Surya Bhagavan Hanuman Temple situated in premises bearing No.3-4-149, Lingampally, admeasuring 675 Square Yards. In fact, the said extent belonged to one Kola Narsaiah, who constructed the Temple and Dharmashala way-back in the year 1920, and it was registered in the book of Endowments in 1340 Fasli and the said Kola Narsaiah was declared as hereditary trustee to the Temple by the Deputy Commissioner, Endowments Department, Hyderabad, by order No.32, dated 07.02.1975 in O.A.No.65 of 1972. After the death of Sri Kola Narsaiah, his wife became the trustee and then his son Kola Pentaiah. Thereafter, Kola Narsinga Rao, S/o. Kola Pentaiah, was recognized as hereditary trustee by proceedings, dated 21.08.1995.

14. While the things stood thus, a claim was laid over the schedule property and in O.A.No.148 of 1976, the respondents therein viz., Sri G. Narsimha Reddy and others were found as encroachers and were directed to vacate the premises and handover vacant possession to the Muthawalli. Aggrieved by the same, when W.P.No.6427 of 1979 was filed, this Court remanded the matter directing the Deputy Commissioner to conduct fresh enquiry. The said

matter was renumbered as O.A.No.38 of 1986 and the Deputy Commissioner on a thorough enquiry, held that the respondents therein were the encroachers over the schedule property. Thereafter, respondent No.1 herein filed the suit in O.S.No.712 of 1989, under Section 84(2) of the Act, on the file of learned II Additional Judge, City Civil Court, Hyderabad, seeking to set aside the orders of the Deputy Commissioner passed in O.A.No.38 of 1986, without seeking to declare the title of the suit property against the Temple, but the civil Court, in fact, declared the title and passed decree. The trustee of the Temple, though, preferred an appeal in A.S.No.168 of 2002 on the file of learned Chief Judge, City Civil Court, Hyderabad, challenging the judgment and decree passed in the aforesaid O.S., sought to withdraw the said appeal and accordingly permitted to withdraw and the same was dismissed as withdrawn by order, dated 02.12.2002. The said act of withdrawal by the hereditary trustee was claimed as an outcome of collusion between the parties therein and that has been the reason, O.A.No.16 of 2008 was filed, where respondent Nos.1 to 5 have taken the plea that the O.A. was barred by the judgment of the Civil Court in O.S.No.712 of 1989, which has attained finality and, therefore, the principle of *res judicata* operates.

15. It is clear from the proceedings that what was sought for in O.A.No.38 of 1986 is only eviction and surprisingly, the civil Court in O.S.No.712 of 1989 declared the title as mentioned in the above. A copy of the judgment in O.S.No.712 of 1989 was also filed for

reference, where twelve issues were framed, but they were re-cast on 01.12.2000 and surprisingly, issue No.6, after re-casting, reflects that the civil Court framed the issue 'whether the Endowments Department has got title to the suit schedule property'. The line of judgments relied on by the learned counsel for respondent No.3 clearly lay down that the judgment and decree of the Civil Court, when travelled beyond the scope of the *lis*, though, attained finality, on account of failure to prefer appeal, becomes nullity, and it aptly applies to the fact situation occurring in the present case.

16. Therefore, there is no merit in the present revision petition. The present revision is dismissed directing the Deputy Commissioner, Endowments Department, Hyderabad, to dispose of O.A.No.16 of 2008 within a period of six months from the date of receipt of a copy of the order. The learned Deputy Commissioner is directed to afford opportunity to both sides, and dispose of the O.P. uninfluenced by the observations, if any, made in the present order. The parties are also directed to co-operate for disposal of the O.A.

Miscellaneous Petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

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**A. SHANKAR NARAYANA, J**

June 19, 2018.  
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