

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
and
HON'BLE MS. JUSTICE J. UMADEVI

+ Writ Appeal No.1146, 1148, 1149, 1150,
1151, 1152, 1153 and 1154 of 2016

% 20-4-2018

Between:

1. E.Sidda Reddy (Died)
2. E.Dhananjay Redy S/o Late Sidda Reddy,
Aged about 60 years, R/o. D.No.2-20/1,
M.R. Palli, Tirupati, Chittoor District
... Appellant/Petitioner

Vs.

\$ 1. Sri Swamy Hathirajmi Mutt, Tirupathi,
Chittoor District, Rep. by its Mahant Varu
2. Assistant Commissioner, Endowments Department,
Chittoor, Chittoor District
.. Respondents/Respondents

! Counsel for Appellant : Mr. Srinivasa Rao Bodduluri

Counsel for Respondent No.1 : Mr. S.Ramachandra Rao,
Senior Counsel, representing
Mr. Srinivas Bobbili

Counsel for Respondent No.2: Government Pleader for
Endowments (Andhra Pradesh)

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> Head Note:

? Cases referred:

1. 2011(6) ALD 427
2. (2016) 9 SCC 44
3. (2017) 2 SCC 797

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE J. UMADEVI**

**Writ Appeal No.1146, 1148, 1149, 1150,
1151, 1152, 1153 and 1154 of 2016**

COMMON JUDGMENT: *(per V. Ramasubramanian, J)*

Aggrieved by the dismissal of their writ petitions challenging notices issued under Section 82 (1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, persons claiming to be in possession of the lands, have come up with the above writ appeals.

2. Heard Mr. Srinivasa Rao Bodduluri, learned counsel appearing for the appellants, Mr. S. Ramachandra Rao, learned senior counsel appearing for the 1st respondent-Mutt and the learned Government Pleader for Endowments (A.P.).

3. Challenging individual notices issued by the Mahant of the 1st respondent Mutt under Section 82 (1) of the A.P. Act 30 of 1987, terminating the leases and calling upon the appellants to hand over possession of the lands allegedly leased out to them, the appellants filed individual writ petitions. In brief, the claim of the appellants in their writ petitions was that the lands in question were banjar and waste land; that in the 18th and early 19th century, the then Mahant of the 1st respondent Mutt granted a Saswatha Patta in favour of the ancestors of the appellants; that from the time when Saswatha pattas were granted, the predecessors of the appellants started cultivating the lands by digging wells; that in the year 1971, the Mutt made an attempt to take back possession by filing a suit before the

Civil Court; that though the trial Court dismissed the suits, the first Appellate Court allowed the appeals, but the same was reversed by this Court in S.A.No.547 of 1979 and in a batch of appeals; that it was categorically held in the second appeal that the suit was barred under Article 134 B of the Old Limitation Act and that the Mutt cannot even invoke the provisions of the Madras and Andhra Endowments Act, as the leases were created much before the advent of these enactments; that the Mutt initiated a second round of litigation in the year 1985 seeking a permanent injunction restraining all the persons in possession of the lands from converting the lands into house sites; that the said suit was decreed by the trial Court, but the decree was set aside by the First Appellate Court; that since the appellants are in possession and enjoyment of the lands, claiming independent title, they have perfected title to the lands; that despite the above, a fresh attempt was made by the 1st respondent-Mutt by invoking Section 82(1) of the A.P. Act 30 of 1987 as though there was a lease, which was subsisting and that the same was getting terminated.

4. The 1st respondent filed a counter affidavit contending, *inter alia*, that the total extent of land measuring about Ac.174.75 cents in S. Nos.13, 15, 17/2, 17/3 and 17/5 belonged to the Mutt; that the entire land was contiguous and located in one block; that the lands were granted in Inam under a title deed bearing No.2937, equally in favour of Bugga Mutt, Tirupathi and one Gundluri Venkamma, for the upkeep of Kasam Kaluva of Avilala village; that by a registered document dated 23-12-1856, the Gundluri family permanently

leased out their half share in favour of Bugga Mutt; that Bugga Mutt, in turn alienated its share in favour of the 1st respondent-Mutt under two documents bearing Nos.985 and 986 of 1884; that the 1st respondent thus came into lawful possession of the entire extent of land; that it is true that the lands were given on lease to third parties; that when those third parties failed to pay the agreed rents, the 1st respondent instituted a series of civil suits; that O.S.No.123 of 1971 was one of the suits filed by the Mutt; that the suits were partly decreed directing the persons in possession to pay arrears of cist; that however the relief of recovery of possession was dismissed by the trial Court on the ground of limitation; that the suit lands are located in Avilala village, which was never notified under the provisions of Estates (Abolition and Conversion into Ryotwari) Act, 1954; that therefore, the intermediary tenures cannot be taken to have been abolished; that while disposing of the second appeal, this Court did not go into the question about the application of Section 82 of the A.P. Act 30 of 1987, as the same required investigation of further facts; that therefore, the Mutt was entitled to take recourse to Section 82; that the judgment in the second round of litigation arising out of the suits for injunction have not attained finality; that in view of Section 160 of A.P. Act 30 of 1987, the provisions of the Act will prevail, notwithstanding any compromise, scheme, agreement, judgment, decree or order of a Court; that therefore, the results of the previous litigation will have no effect; that if the claim of the appellants that they were landless poor is correct, then they should have approached the Assistant Commissioner in terms of Rule 3 (1)

of the Rules framed under G.O.Ms.No.379, dated 11-03-2003; that since the appellants did not file any application under Rule 3 (1), the 1st respondent was entitled to issue notices under Section 82; that as a matter of fact one Mr. B. Ramaiah working as Superintendent in the office of the Mutt, created facsimiles of the then Mahant of the Mutt and created certain alienations, forcing the Mutt to file a criminal complaint in Crime No.139 of 2004; that under Section 75 of Act 30 of 1987, any lease for a term exceeding six years, is null and void; that the appellants could not even produce copies of the Saswatha pattas on the basis of which they claim title and that therefore, the writ petitions were liable to be dismissed.

5. All the appellants (writ petitioners) filed reply affidavits to the counter, inviting a rejoinder by the Mutt. Additional counters were also filed.

6. After considering the elaborate pleadings, the effect of the judgment by the Civil Courts in two earlier rounds of litigation, the purport of Section 82 (1) and all attending circumstances, the learned single Judge held that the landlord and tenancy relationship continued up to the date of issue of notices under Section 82 (1) of the Act and that therefore, the notices issued under Section 82 were not without jurisdiction. Accordingly, the learned Judge dismissed all the writ petitions, forcing the writ petitioners to come up with the above writ appeals.

7. Drawing our attention to a judgment rendered by this Court on 19-11-1982 in S.A.No.547 of 1979, it is first contended by Mr. Srinivasa Rao Bodduluri, learned counsel for the appellants that

even the suit instituted by the Mutt way back in the year 1971 for recovery of possession was held to be barred by limitation and that therefore, any attempt to take over possession by invoking the provisions of the A.P. Act 30 of 1987, is an attempt at annulling the judgment of the Court.

8. But the above contention loses sight of one important fact. In the penultimate paragraph of the judgment in S.A.No.547 of 1979, the learned Judge of this Court made it clear that he was not going into the question whether the lease was void under the Madras or Andhra Acts or not. Once this question is not gone into, then the next issue that would fall for consideration is as to whether the dismissal of a suit for recovery of possession would shut all the doors for the 1st respondent-Mutt. We think it would not. The reason is that limitation extinguishes merely the remedy and not the right. Therefore, the right of the Mutt to recover possession otherwise than through a Court of law, was not extinguished by the said judgment in the second appeal. The provisions of the Limitation Act merely bar the Civil Court from granting relief, if the plaintiff comes to Court beyond the period of limitation. Today, the 1st respondent is not seeking to recover possession by filing a suit. If they do so, the judgment in S.A.No.547 of 1979 can be put against them.

9. As a matter of fact, after 5 years of the disposal of S.A.No. 547 of 1979, another batch of second appeals in S.A.Nos.512, 584, 591, 712, 719, 784, 785, 827 and 901 of 1984 came up before the very same learned Judge. While dismissing those appeals by a judgment dated 04-12-1987, the very same learned Judge

considered the effect of Section 82 of A.P. Act 30 of 1987. On the scope of the same, the learned Judge held as follows:

“The learned counsel for the appellant-Mutt has, however, referred to Sec.82 (2) of the new Act passed by the A.P. Legislature (Act 30/87) which states that notwithstanding any law for the time being in force the Endowment can recover possession of lease-hold property from any person except a person who is a s'Landless Poor' as defined in the new Endowment Act. The definition of 'Landless Poor' person as given in Sec. 82(2) of the Act is that a person will be a 'Landless Poor' if he has title to land which does not exceed 2 ½ acres wet land or 0 acres dry land and whose monthly income other than from such lands does not exceed Rs.250/- or Rs.3,000/- per annum. In as much as the application of this new Sec.82 depends upon investigation of further facts, I am not permitting the appellant to raise this question in this batch of Second Appeals.”

10. A careful look at the last few lines extracted above would show that the learned Judge did not permit the Mutt to raise the question relating to Section 82, “*in this batch of Second Appeals*”. The learned Judge stated that he was not permitting the Mutt to raise the question, as the same depended upon investigation of further facts. Therefore, the doors were not shut for the Mutt to invoke Section 82 of the Act 30 of 1987.

11. The second contention of Mr. Srinivasa Rao Bodduluri, learned counsel for the appellants is that the learned single Judge erroneously invoked the principle of law laid down by the Supreme Court in **A.V. Papayya Sastry and others v. Government of A.P.** ((2007) 4 SCC 221), by holding that there was a pleading of fraud. But the pleading of fraud was made by the Mutt with reference to activities of a person by name B. Ramaiah employed as the Superintendent in the office of the Mutt, against whom criminal complaints came to be lodged, in the year 2004. This person was

not even born when Saswatha pattas were granted way back in 1900. Therefore, it is the contention of the learned counsel for the appellants that a fraud committed by some person in respect of some other lands, after more than 100 years of the grant of Saswatha pattas in favour of the predecessors of the appellants, cannot entitle the 1st respondent to seek to nullify all earlier proceedings.

12. We have no quarrel with the above proposition of the learned counsel for the appellants. It is true that the learned single Judge invoked the decision of the Supreme court in **A.V. Papayya Sastry**. But it is seen from the paragraph 11 of the judgment of the learned Judge that the fraud alleged by the Mutt was not merely in relation to the pattas created by him, but was also in relation to the evidence allegedly tendered by him in the suits filed in the year 1971. Therefore, it is not without substance or out of context that the learned Judge relied upon the decision in **A.V. Papayya Sastry**.

13. As rightly contended by the 1st respondent, the appellants, who claimed that their predecessors had obtained Saswatha pattas, could not even produce the same before the learned Judge. On the contrary it became an admitted fact that the appellants were directed to pay cist.

14. A careful look at the judgment of the Trial Court in O.S.No.120 of 1971 would show that the Court recorded the following findings on the issues framed for consideration:

(i) that the Mutt was the owner and pattadar of the suit schedule property;

(ii) that the Mutt is a religious institution and consequently the suit property belonged to the Mutt as a religious endowment;

(iii) that though there was no evidence to show that the suit lands were granted on permanent lease, Exs.B-1 and B-2 themselves revealed that the defendants had to pay cist, but not rent;

(iv) that the defendants had perfected title by adverse possession;

(v) that the suit was not barred insofar as recovery of the amounts for fasli years 1377 to 1379 (i.e. 1967 to 1969) were concerned;

(vi) that though Exs.B-1 and B-2 do not show the amount of cist payable, D.W.1 admitted in cross-examination that he was willing to pay Rs.2.50 per acre per fasli and

(vii) that therefore the plaintiff was entitled to recover the arrears of cist payable.

15. The judgment of the Trial Court dated 30-11-1976 in O.S.No.120 of 1971 was confirmed by the First Appellate Court in A.S.No.57 of 1977 by a judgment dated 27-6-1983. Without upsetting the findings of the Trial Court that the cist was payable, the First Appellate Court confirmed the judgment of the Trial Court. The judgment of the First Appellate Court was confirmed by a learned Judge of this Court in a batch of second appeals S.A.Nos.512 of 1984 batch by a judgment dated 04-12-1987, following the judgment in another appeal S.A.No.547 of 1979. Even in this judgment, the focus was only on limitation and the question

relating to Section 82 was left open. Therefore, if the appellants had actually perfected title by adverse possession, the question of the appellants paying cist would not have arisen. Therefore, the learned Judge was right in holding that the very obligation to pay cist indicated the existence of a relationship that could be severed by initiating proceedings under Section 82 of A.P. Act 30/1987.

16. It is next contended by Mr. Srinivasa Rao Bodduluri, learned counsel for the appellants, that the appellants were in occupation of small extents of land granted by way of Saswatha Pattas 100 years ago and that the Mutt lost its right to throw them out. But we do not think that the sympathy that the Court will show in favour of small ryots who happen to be cultivating tenants, could be extended to the appellants. As rightly pointed out by Mr. S.Ramachandra Rao, learned Senior Counsel for the 1st respondent/Mutt, the lands in respect of which the appellants are claiming rights, are situate in Survey Nos.13, 15 and 17 in Avilala Village. It is no more a village, but had become a town, which is why the persons in occupation were converting the lands into house-sites, forcing the Mutt to initiate a second round of litigation in the year 1985, seeking prohibitory orders from such conversion. In fact, a few people who had already converted the agricultural lands into house-sites and who had also put up construction appear to have formed themselves into an association known as "Weaker Sections Mutt Land Residents Association". This Association came up with two writ petitions in W.P.Nos.4839 and 3128 of 2011 questioning the action of the Mutt as well as the official respondents in disconnecting

power supply and demolishing the compound walls without due process of law. The lands involved in the said writ petitions were also located in the very same Survey Nos.13, 15 and 17. By a judgment rendered on 28-4-2011 in ***Weaker Sections Mutt Land Residents Association, Tirupati v. Sri Swamy Hathiramji Mutt***¹, a learned Judge of this Court dismissed the writ petitions. The said decision was carried on appeal in Writ Appeal No.842 of 2012. But the same was dismissed by a Bench of this Court dated 10-7-2012.

17. Therefore, at least one thing will be clear from the aforesaid decisions that the lands in question are no more agricultural lands, cultivated by small farmers, to whose rescue this Court could go.

18. Relying upon a decision of the Supreme Court in ***Anita International v. Tungabadra Sugar Works Mazdoor Sangh***², it is contended by Mr. Srinivasa Rao Bodduluri, learned counsel for the appellants, that a party to a lis, cannot ignore an order or judgment that he suffered and that if he considered such judgment to be void or non est, he should approach a Court of competent jurisdiction to have the order set aside. Unless and until it was set aside, the judgment will have a binding effect upon the parties.

19. We have no quarrel with the above proposition. But in this case, the judgment of the Trial Court in O.S.No.120 of 1971 recorded the obligation of the appellants' forefathers to pay cist. While confirming the said judgment, in the second appeal, this Court

¹ 2011(6) ALD 427

² (2016) 9 SCC 44

left the question relating to Section 82 of A.P. Act 30/1987, open. Therefore, the fact that the 1st respondent/Mutt cannot recover possession by filing a civil suit, is beyond any pale of doubt. But what is barred is only a remedy through a Court of law. Hence, the said decision has no application.

20. Mr. Srinivasa Rao Bodduluri, learned counsel for the appellants, also relied upon the decision of the Supreme Court in **Harjas Rai Makhija v. Pushparani Jain**³, to drive home the point that without having the judgment in the civil proceedings set at naught, the Mutt is not entitled to attack the same collaterally.

21. But this is not a case where the Mutt is seeking to attack the validity of the judgment in O.S.No.120 of 1971 in these proceedings. The Mutt merely initiated proceedings under Section 82 of A.P. Act 30/1987. It is the appellants who came up with a challenge to the notice. In response, the Mutt contended that their right to proceed under Section 82 was not curtailed by the judgment in the civil proceedings. Therefore, the second decision is also of no assistance to the appellants.

22. In fine, we find no grounds to interfere with the judgment of the learned Judge. It must be pointed out that in an intra court appeal under Clause 15 of the Letters Patent, especially arising out of the proceedings under Article 226 of the Constitution of India, the jurisdiction of this Court is not similar to Section 96 CPC. Keeping this in mind, if we analyse the judgment of the learned Judge, we find no grounds to interfere with the same. Hence, all the writ

³ (2017) 2 SCC 797

appeals are dismissed. The applications, if any, pending in these writ appeals shall stand closed. No costs.

V. RAMASUBRAMANIAN, J

J. UMADEVI, J

Date: 20-04-2018.
Ksn/Ak



**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE J. UMADEVI**

**Writ Appeal No.1146, 1148, 1149, 1150,
1151, 1152, 1153 and 1154 of 2016
(COMMON JUDGMENT – per VRS, J.)**



**20th April, 2018.
(Ak)**