

(1983) 08 AP CK 0002
In the Andhra Pradesh High Court
Case No : Appeal No. 438 of 1980

Bonam Krishnamurthy and Another	APPELLANT
Vs	
Mirza Nallaparaju Venkata Prabhakara Rama Bhadra Raju and Others	RESPONDENT

Date of Decision : 31-08-1983

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 110
Civil Procedure Code Amendment Act, 1976 — Section 97
Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 254

Citation : AIR 1984 AP 374

Hon'ble Judges : Rama Rao, J;Raghuvir, J

Bench : Division Bench

Advocate : N.V. Ranaganadham, for the Appellant;

Judgement

Rama Rao, J.—The plaintiffs are appellants. This appeal arises out of the order declining to grant leave to the plaintiffs to file the suit for the relief stated in the plaint u/s 92 C. P. C. and the consequential dismissal of the suit. The suit is filed for a declaration that the choultry standing in R. S. No. 244/5 in about 0.20 cents at Siddhantham is a public trust and to settle a scheme for its administration after evicting the defendants 1 to 3 from the suit property. The case of the plaintiffs is that Venkata Suryanarayana Srihariraju, the father of defendants 1 and 2 and the husband of the 3rd defendant settled the land in favour of his mother Subhadramma on 10-5-1929 with a view to have a choultry constructed at Sidhantham. The husband of the 4th defendant is said to have collected funds and constructed the choultry in 1947 and was managing the same. About six years ago the defendants appear to have trespassed on the premises under the pretext of getting it repaired. But the son of the 4th defendant filed an application before Asst. Commissioner. HR. & C. E. department to take over records from the 4th defendant to manage the choultry. The suit is filed for the relief with a prayer to grant leave u/s 92 C. P. C. for petitioners to

file the suit. The defendants 1 to 3 denied that it is a public charitable trust created for public purpose. Under the terms of the settlement deed dated 10-5-1929 defendants 1 to 3 are entitled for possession and management of the suit property. It is also stated that the court has no jurisdiction to entertain the suit and also application as Sections 92 and 93 C. P. C. are repealed by Section 110 of the A. P. Charitable and Endowments Act, 1966. The application for granting leave u/s 92 C. P. C. was heard and the court below held that the petitioners plaintiffs cannot invoke Section 92 C. P. C. when this application is barred u/s 110 of A. P. Charitable and Hindu Religious Institutions and Endowments Act and hence dismissed the application as well as the suit.

2. the learned counsel for the appellant contended that the bar to applicability of Section 92 C. P. C. u/s 110 of H. R. & C. E. Act is with respect to unamended provision only and in the absence of provision in the Endowments Act precluding the applicability of the amended Section 92 C. P. C. Section 110 of the Endowments Act, being inconsistent with the amended Section 92 C. P. C. stands repealed as provided u/s 97 of C. P. C. Amendment Act 1976 and in view of such repugnancy, the central Act namely the amended Section 92 C. P. C. prevails in consonance with Art. 254 of the Constitution. To get at the involved issues projected, it is necessary to have a glimpse of the relevant provisions touching the same. Section 110 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act (17 of 1967) is as follows;

"110. The enactments mentioned below shall cease to apply to charitable institutions and Hindu Religious institutions and the endowments thereof to which this Act applies; and Section 8 of the Andhra Pradesh General Clauses Act, 1981, shall apply upon such cesser as if those enactments had been repealed by an Andhra Pradesh Act:

- a) The Andhra Pradesh (Andhra Area) Endowments and Escheats Regulation, 1817;
- b) the Religious Endowments Act, 1863;
- c) the Charitable Endowments Act, 1890;
- d) the Charitable and Religious Trusts Act, 1920 and
- e) Sections 92 and 93 of the Code of Civil Procedure, 1908".

Section 92(i) C. P. C. before amendment to the extent relevant is as follows:

"92(1) In the case of any alleged breach of any express or constructive trust created for public purpose of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General may institute a suit;

Section 92(1) C. P. C. after amendment substituted "leave of court" in the place

of consent in writing of the "Advocate General". Section 97 of the C. P. C. Amendment Act of 1976 is as follows :

"97. Repeal and Savings.- (1) Any amendment made or any provision inserted in the principal Act by a State Legislature before the commencement of this Act shall except in so far as such amendment or provision is inconsistent with the provisions of the principal Act as amended by this Act stand repealed."

Section 92 C. P. C. anterior to amendment provides that the clearance of the Advocate General is imperative to file a suit concerning the reliefs enumerated therein. Section 92 C. P. C. is amended by Act of 1976 wherein the sanction of Advocate General for filing the suit is substituted by leave of the court. . Section 92 of the C. P. C. amendment Act, 1970 envisages that any amendment or provision at the instance of the State Legislature or the High Court to the extent it is inconsistent with the amended provisions of C. P. C. withers away. The learned counsel stressed that, in the absence of Section 110 interdicting the applicability of amended . Section 92 C. P. C., Section 110 providing for prohibition of the applicability of the bygone . Section 92 C. P. C. only is inconsistent with new provisions under C. P. C. and as such stands repealed. The fallacy in this contention is transparent for more than one reason, . Section 97 C. P. C. should be read down as pertaining to the amendments to C. P. C. made by the State Legislature or the High Court so as to be conducive to local situations and exigencies. The amendments visualised are in the nature of modulating certain angularities or pruning edges or insertion of a suitable provision without doing violence to the substratum and without bordering on the fringe of the ouster of applicability. The amendments contemplated thereunder are not susceptible to be stretched to preclusion or untouchability of any of the provisions of C. P. C. The Endowments Act being a special enactment clearly fretted out the coverage of . Section 92 C. P. C. This aspect can be considered from another perspective. Section 110 is concerned with the non-applicability of . Section 92 C. P. C. as such, and, S. 92 takes in its fold the contents at the time when section 110 of the H. R. & C. E. Act was enacted and also the variations of amendments subsequent thereto provided the mould continues to be the same. The non-applicability is brought by merely reference to . Section 92 C. P. C. The distinction between reference and incorporation of provision of another statute is highlighted by a Division Bench of this court consisting of Ramanujulu Naidu, J. and Rama Rao, J. in an unreported decision in CMA. 613 of 1980 dt. 8-4-1983 (since reported in Government of Andhra Pradesh Vs. Durgaram Prasad, in the context of considering applicability of the provisions of the new Limitation Act notwithstanding the mention of applicability of the provisions of Limitation Act, 1908 in Section 37 of the Arbitration Act. One of us (Rama Rao, J.) speaking for the court observed as follows (at p. 21) :

"The incorporation effectively operates as bodily lifting of provision of one enactment and making it as integral part of another statute and the consequence of such incorporation is that the provision in another statute becomes a part of

the present statute and in view of the same this statute along with its added provision will become a self-contained statute without being affected or percolated by any amendments in the other statute from which this provision is borrowed. But in a case of a reference to provision or enactment the subsequent amendment or substitution by way of repeal or otherwise must be implied to have been the part of the present statute as the reference refers to only the provision as such and implies the applicability of the provision as amended from time to time. But in the case of incorporation the provision itself is taken out and merged in the provisions of the statute and unless there is an amendment in this statute there will not be any impact of an amendment or otherwise made in the other statute as there is no continuing link between the two statutes. Section 8 of the General Clauses Act provides that in the event of reference to any other enactment or provisions it must be construed that the re-enactment provisions pursuant to repeal or otherwise will apply unless different intention can be spelt out from the provisions of the statute. Bearing in mind these cardinal principle it has to be considered whether Section 37 of the Arbitration Act makes a reference to the provisions of Limitation Act or the entirety of the provisions of the Limitation Act are incorporated in the Statute. It is apparent from the perusal of Sec. 37 of the Arbitration Act that a reference to the provisions of the Limitation Act, 1908 has been made and it cannot be interpreted that the provisions of Limitation Act have been incorporated or merged into the provisions of the statute. Therefore, when Section 37 of the Arbitration Act has made a reference to the provisions of the Limitation Act, 1908 and when 1908 Act has been substituted by 1963 Act by repeal the new provisions of 1963 Act are applicable."

3. The contention founded upon the repugnancy and consequent invocation of Art. 254 of the Constitution is devoid of substance. The foregoing discussion cleared the clouds sought to be cast on the subsistence and validity of Section 110 of the H. R. & C. E. Act leading to the conclusion that there is no repugnancy. The decision of the Supreme Court in State of Orissa Vs. M.A. Tulloch and Co., is concerned with the collision of the provisions of Orissa Mining Areas Development Fund Act with Orissa Mines and Minerals Act, 1957. The Supreme Court held that a State Act is superseded in view of Art. 254 of the Constitution. In Uligappa v. Mohan Rao, (1971) 2 AnWR 298 this court was seized of the issue whether A. P. Buildings (Lease, Rent and Eviction) Control Act prevails over chapter V of the Transfer of Property Act. It was held that in view of the assent of the President with regard to the subject in the concurrent list the State law prevails over the central law on the same subject. Both these decisions are far removed from the facts and issues in this case.

4. In the result, the judgment and decree of the court below is confirmed. Appeal dismissed. No costs.

5. Appeal dismissed.