
(1990) 03 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 1237 of 1990

Chandra Prabha and Another

APPELLANT

Vs

Vijaya and Others

RESPONDENT

Date of Decision : 20-03-1990

Acts Referred:

Karnataka Religious and Charitable Institutions Act, 1927 — Section 13

Citation : (1992) 4 KarLJ 136

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. The petitioners have challenged the legality and correctness of the orders passed by respondent Nos. 13 to 16. They are the Assistant Commissioner, Revenue Sub-Division, Chikmagalur, the Special Deputy Commissioner, Hassan, the Commissioner for Religious and Charitable Endowments in Karnataka, Bangalore and Karnataka Appellate Tribunal, Bangalore, respectively.

2. By order dated 4th October, 1989, the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as "the Tribunal") dismissed the Revision Petition No. 127 of 1986 as well as 61 of 1986, thereby affirming the orders passed by the Assistant Commissioner, Revenue Sub-Division, Chikmagalur, the Special Deputy Commissioner, Hassan and the Commissioner for Religious and Charitable Endowments in Karnataka, Bangalore.

3. The brief facts which lead to the litigation may be stated and they are as follows:

Petitioners are the sons of one Sri G.S. Nemichandraiah. One Sri Vijaya, filed a suit in O.S. No. 1102/54 claiming to be the owner of the temple and seeking permanent injunction against one Sukandramma, Secretary of Jain community and Swamiji of Shravanabelagola. The temple in question was none other than Sahasra Koota Jainalaya situated at Arasikere town and said to have been built as far back as in the year 1220 A.D. The said suit came to be dismissed. The appeal was filed before the Civil Judge, Hassan. The learned Civil Judge dismissed the appeal confirming the finding of the Munsiff, Hassan. The regular

second appeal filed in the High Court of Karnataka, Bangalore, also came to be dismissed. The High Court while disposing of the regular second appeal had come to the conclusion that it was not the private property of the plaintiff but a religious public institution. The Judgment of this court was not challenged by any further appeal by Vijaya or persons claiming under him who are none other than the present petitioners in this writ petition. It appears that the said temple was in the management of a committee as noticed by the Assistant Commissioner, Revenue Sub-Division, Chikmagalur, in his order dated 12th May, 1975. That committee consisted of the residents belonging to the jain community at Arasikere. One Bharamanna was performing the pooja and after his death, pooja was being done by several others in accordance with the arrangement made by the temple committee. One Puttaiah, who was the sanitary inspector and the Tahsildar Jinadatharaya took the initiative for improvement of the temple and raised funds for construction of a compound or wall around the temple and also constructed some shops on the temple land to earn income for the temple. The said Bharamanna was performing pooja in the temple and after his death many others were entrusted by the committee to perform pooja. In the meanwhile one Sukandaramma, daughter-in-law of Bharamanna was appointed as a care-taker of the temple by the managing committee of the temple and was allowed to reside in a shed by the side of the temple. In the records, it is revealed that she herself acquired the right of performance of pooja, management of the temple, structures and lands belonging to the temple. During May, 1950 Sukandaramma executed a registered settlement deed in favour of Sri Vijaya, the brother of the petitioners; by that she conveyed the right of management of temple and all the properties belonging to the temple. Apparently that was the source of title, on the basis of which the original suit came to be filed by the brother Vijaya, since deceased.

4. When the matter was pending in the civil court an enquiry had actually commenced under the provisions of the Mysore Religious and Charitable Institutions Act, 1927. That enquiry was pending before the Assistant Commissioner, Hassan. Thereafter the records were transferred to the Assistant Commissioner, Chikmagalur. By order dated 18th October, 1972, a receiver was appointed by the Assistant Commissioner, Chikmagalur. Against which a revision was preferred to the Karnataka Appellate Tribunal, Bangalore and the case was returned to the Assistant Commissioner, Chikmagalur, for enquiry under Chapter III of the Mysore Religious and Charitable Institutions Act on 6-7-1974. Even before the Muzarai Officer, Hassan, the said Vijaya (since deceased) had claimed the temple to be his personal property. His brothers Soma Prabha and Chandra Prabha, the present petitioners put in an application to be heard as co-respondents. That application was rejected; so also an appeal filed before the Deputy Commissioner. Finally, an appeal was filed before the Muzarai Commissioner, who remanded the case to the Deputy Commissioner. The Deputy Commissioner then impleaded them as respondents. The enquiry was recommenced by the Assistant Commissioner, Chikmagalur on 31-8-1974. After

numerous adjournments, the arguments of the counsel for respondents was heard. One Mr. M.H. Shah was present, though not his counsel and the case was reserved for orders on 30-11-1974. On 15-1-1975 the counsel for the petitioners presented an application asking for another opportunity to submit his arguments. Therefore, the Assistant Commissioner heard the matter once again and reserved the same for orders on 29-3-1975.

5. In the light of the enquiry commenced and held, he formulated two points for determination; they were;

(a) The character and nature of the property in question whether it is private or a public property?

(b) Whether any mismanagement exists, so as to attract the provisions of Chapter III of the Mysore Religious and Charitable Institutions Act, 1905, if the property in question is declared to be a Public Religious and Charitable Institutions?

6. After discussing the various arguments advanced on behalf of the contending parties as well as appreciating the history of the temple which was on record, he came to the conclusion that the property in question was public property in view of the decision of the High Court in R.S.A. No. 275/62 disposed of on 15-4-1966 to which I have already made a reference. He also came to the conclusion that the High Court ruling was binding on Chandra Prabha and Soma Prabha, the petitioners herein, who had pleaded title to the property through Vijaya, their brother. Having come to the conclusion that the property in the light of the decision of the High Court was a public temple, he recorded a finding against the petitioners and their predecessor in title that they had mismanaged. The very fact of assertion of title to the public temple was considered as an act of mismanagement. On the evidence recorded he came to the conclusion that refusal to permit access to the public for religious purpose also constituted an act of mismanagement having regard to the evidence of H.D. Adhirajaiah, Thankappa Setty, Parswanathaiah, H.T. Bharamadaiah and S.D. Nagendra Shastry. The cumulative effect of their oral evidence was that the respondents and the public professing jain faith were prevented from using the temple for religious purpose and the persons who were supposed to be in-charge of the temple had begun to reside in the temple and therefore that also constituted an act of mismanagement. The oral evidence given by the brother of the petitioner Vijaya (since deceased) was disbelieved. He also found that the persons who are presently occupying the premises of the temple and conducting its affairs had not maintained the accounts in regard to the income and expenditure of the temple properties. He came to the conclusion that there was gross mismanagement in view of the fact that the temple was a public religious institution. In the result, he recommended under Section 18(1) of the Mysore Religious and Charitable Institutions Act, that the institution should be taken over by the Government.

7. Aggrieved by that order, the petitioners preferred a first appeal to the Deputy

Commissioner, Hassan. The Deputy Commissioner after discussing the various points of the case concurred with the findings of the Assistant Commissioner, Chikmagalur and held that the temple was a religious public institution and that there was mismanagement and misuse of the affairs of the temple and that the property of the temple had been misappropriated by the appellants. Therefore, in the interest of the institution and the people of the Jain community, he felt it desirable to take over the management of the temple by Government, so that there will be scope for better maintenance and administration as well as improvements. He in that circumstance recommended the case to the Government through the Endowment Commissioner for take over of the management. The appeal therefore was dismissed. On a second appeal to the Commissioner for Religious and Charitable Endowments in Karnataka, Bangalore, under Section 38 of the Mysore Religious and Charitable Institutions Act, 1927 (Respondent 15 herein), the Commissioner after elaborately discussing the evidence came to the conclusion that the Judgment of the High Court was binding on the appellants before him, but on the question of mismanagement, he gave some kind of a benefit of doubt to the appellants before him and felt that it was not proved beyond reasonable doubt that there was mismanagement. However, he concurred with the recommendation made by the Assistant Commissioner, Chikmagalur and the Deputy Commissioner, Hassan. It will be useful to extract from the concluding paragraphs of his order. The relevant portions are as under:

"Finally the High Court has already decided that the temple is a public temple; that it is not private temple as claimed by the appellants. That the temple was renovated or repaired from out of the funds or donations raised from the public; that a committee was managing the temple for several years. This being the position the question arises whether a public temple should be in the hands or control of private person. It should not be. The temple has a large following in the Jain community. Though the temple belongs to one sect in the Jain community, it is being worshiped by all including Hindus. The appellant has not made any improvement in the temple. He has not made attempts to increase the income of the temple. He has not attempted to earn the goodwill of the Jains. His obstinate attitude and illegitimate claim over the temple has alienated large followings of the sect of Jain community resulting in the loss of income. Some Jain people have constructed another temple.

In the interest of public and in the larger interests of the temple and for better upkeep and maintenance and for future improvements, it is necessary that Government should take over the institution". (emphasis supplied)

8. Against that order, the petitioners preferred revision before the Karnataka Appellate Tribunal, Bangalore, in Revision Petition No. 61 of 1986. Certain other respondents who were parties to the proceedings before the Assistant Commissioner, Chikmagalur and the Deputy Commissioner, Hassan, also preferred a revision which came to be numbered as Revision Petition No. 127 of

1986. The two revisions were clubbed together and a common order was made on 4-10-1989. That is the impugned order of the Tribunal.

9. The Tribunal has found fault with the reasoning adopted by the Commissioner for Religious and Charitable Endowments in Karnataka, Bangalore, that the acts of mismanagement and misappropriation of the temple funds had not been proved beyond reasonable doubt. In that behalf, it is useful to extract certain portions of the Tribunal's order.

"The Endowments Commissioner inspected the temple during the pendency of the appeal before him. He noticed that the appellant had stocked some fuel wood in one side and used some portion for residence. Touching this aspect, he has stated that the occupation of the appellants on use of some portion of the temple had not caused any inconvenience to the public to have access. Therefore, it was not misuse of the property."

10. They emphasised the fact that there was inconvenience and that there was misuse of the property. This court cannot find fault with that reasoning. Unless the petitioners show independent right to stay in the temple premises by virtue of any right derived by them, their residence in the temple would amount to misuse. Therefore it is difficult to find fault with the reasoning. That the Tribunal having come to a different conclusion on the same set of facts that the Commissioner for Religious and Charitable Endowments does not call for interference. In any event this court cannot act as a further court of appeal and interfere with the findings of facts recorded by the inferior Tribunal, even if that be construed as not being in accordance with the jurisdiction exercised by the Tribunal. One cannot in the circumstances forget as earlier pointed out that the petitioners had claimed title to the temple property and had failed. Therefore, they cannot claim any better title than what their predecessors had. If that title was totally negated by this court in the proceedings arising out of the original suit filed by Vijaya (since deceased) the brother of the petitioners, it is not now open to contend that their right traceable to the deed of settlement which was executed in favour of Vijaya and not by virtue of any arrangement made by the committee of the management. If the settlement deed itself was unlawful act committed by the petitioners' brother Vijaya, acts of his successors in interest must also be considered as unlawful.

11. In order to get over this situation Sri Jayavittal Rao Kolar contended that the Judgment of this court in R.A. No. 275/1962 decided on 15-4-1966 was a nullity and therefore not binding on the petitioners. He placed reliance on the decision of the Supreme Court in the case of Kiran Singh and Others v Chaman Paswan and Others, AIR 1954 SC 340. A Division Bench had occasion to consider the effect of Section 11 of the Suits Valuation Act read with Sections 9 and 21 of the Code of Civil Procedure. In the course of their Judgment at paragraph 6 Their Lordships have observed as follows:

"It is a fundamental principle well-established that a decree passed by a court

without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings".

Therefore, learned counsel for the petitioners contended that even in these proceedings under Article 226 of the Constitution, the petitioners may take advantage of the law declared by the Supreme Court and not be bound by the decision of this court rendered in the second appeal.

12. It is difficult to accept that proposition though one cannot disagree with the principle reiterated by the Supreme Court. One should also take into account the circumstances under which that well-established principle was pressed into service by their Lordships in deciding the matter before them. The matter before them arose out of certain proceedings originally initiated in the Court of the Subordinate Judge by the plaintiff. The plaint was valued at Rs. 2950/- and the suit was one for ejection of certain people in certain lands. The defendants resisted the suit *inter alia* on the ground that they were occupants cultivating the lands on crop share basis and therefore they were not liable to be evicted. The suit came to be dismissed. The plaintiffs preferred an appeal to the District Judge, Monghyr. The learned District Judge, confirmed the trial court's Judgment and decree. A second appeal was filed in the High Court of Patna. In the second appeal, the revenue raised an objection that the suit was under valued. That objection came to be upheld by the High Court. It was then contended by the plaintiffs-appellants that the appeal should be heard as a first appeal treating the Judgment of the District Judge as nullity in as much as there was no appeal permissible to the District Judge in view of the low valuation of the suit. The High Court however came to reject that contention *inter alia* on the ground having regard to the decision of the Full Bench of that High Court that unless prejudice was demonstrated even if the District Judge heard the appeal, it would not be proper for the court to convert the second appeal into first appeal and dispose of the same. On further appeal to the Supreme court, the Supreme Court came to the conclusion that in view of the valuation of the suit having been fixed by the High Court at Rs. 9,000/- and odd, clearly the appeal to the District Judge was impermissible from the very inception of the suit and at that stage the High Court erred in not converting the second appeal to first appeal and dispose of it as such. The reason was, it was alternatively contended before the Supreme Court that the very fact the Judgment was a nullity was the act of prejudice in terms of Section 11 of the Suits Valuation Act and such prejudice was demonstrable and therefore the Judgment could not be acted upon. None may disagree with the ruling of the Supreme Court, much less this court which is bound to follow the same in view of Article 141. But the question is whether on the facts of this case it could be said that the High Court did not have the jurisdiction to declare that the temple in question was a public temple.

13. Learned counsel for the petitioners submitted that the language of Section 13 of the Mysore Religious and Charitable Institutions Act, 1927, which *inter alia*

provides for reference of a dispute whenever a dispute arises as to whether any charitable or religious trust has been actually created in respect of any institution, the Muzrai Officer may, with the sanction of the Government make a reference to the court of the District Judge in whose jurisdiction the institution or the greater part of the property thereof is situated for adjudication. It is therefore contended that since the dispute was there the Court of the District Judge alone was competent to decide and not the High Court. This court must reject that argument on the sole ground that the suit instituted by Vijaya, the predecessor in title was not on the basis of Section 13 of the Act, but on the basis of the deed of settlement said to have been executed by one Sukandamma who had been permitted by the committee of management to be in possession of the temple and its properties. Therefore, it was not a matter arising under the provisions of the Mysore Religious and Charitable Institutions Act, 1927 simpliciter but a matter arising in regard to the civil rights of the petitioners or their predecessors in title on the basis of the instrument said to have been executed by Sukandamma who was not competent to do so. If ultimately in deciding the essential issue raised in the suit, that is whether the plaintiff was the owner of the temple, the answer was that it was a public temple, it cannot be said to be a decision without jurisdiction. Muchless is it possible for any other Judge of this court to sit in Judgment over the earlier decision of this court and say that the decision is not binding on the petitioners, who are successors in interest when no appeal was preferred by the petitioners against that finding. But it is also a matter of justice that what is a public temple cannot again be converted by this court into private property.

For all the reasons stated above, no legal infirmity as such that constitute errors of law apparent on the face of the record in the Judgment of the Karnataka Appellate Tribunal is pointed out. Therefore, it does not call for interference.

The writ petition is rejected.