(1952) 09 MAD CK 0014

In the Madras High Court

Case No : Civil Revision Petition No. 1339 of 1948

Chilakuri Venkateswara Rao and Others APPELLANT

Vs

Chamarthi Ramanadham and Another RESPONDENT

Date of Decision : 12-09-1952

Acts Referred:

Madras Hindu Religious Endowments Act, 1926 — Section 76, 78

Citation : AIR 1954 Mad 102 : (1953) 66 LW 46 : (1952) 2 MLJ 931

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : B.V. Subramaniam, for the Appellant; M.S. Ramachandra Rao, S. Venugopala Rao, B. Laxminarayana and S. Subhiah Chowdry, for the Respondent

Final Decision : Allowed

Judgement

Govinda Menon, J.—The learned District Judge is in error in thinking that Section 78, Hindu Religious Endowments Act is not applicable to

the present case. The respondents, who claim to be in possession of the disputed properties either under Ex. A. 3 dated 4-5-1940 or under Ex. A.

4 dated 17-1-1944, contend that they are lawfully in possession and cannot be dispossessed by an application u/s 78. The learned Judge says that

on the documents produced before him it is not easy to find that the lessor under Ex. A. 3 had not acquired any rights to the properties or that the

respondents are estopped from urging occupancy rights therein.

2. NOW, the petitioners both before the lower Court and here are the three trustees appointed by the Hindu Religious Endowments Board for the

purpose of managing the endowment connected with the Sri Markendeswara Swami Vari temple at Markandapadu. Any application by such

trustees for recovery of possession of the trust property, the temple or the endowments against ex-trustees or other persons who are not lawfully in

possession can be decided u/s 78 of the Act. There is an explanation to Section 78 which is to the effect that a person claiming under an alienation

contrary to the provisions of Section 76 shall not be regarded as a person claiming in good faith within the meaning of the section. This

contemplates that if a trustee or ex-trustee; alienates property that is mortgages without the sanction of the Board or leases it for a period of more

than five years without the sanction of the Board, such transactions are invalid and even the trustee who has alienated or a succeeding trustee can

file an application u/s 78 for recovery of possession of the invalidly alienated property.

3. It is the case of at least Some of the respondents here that one Chamarthi Veera Raghavayya, respondent 1''s father, was the lessee under Sri

Rajah Vijaya Apparao under Ex. A. 4 and they are only sub-lessees under this Veera Raghavayya. Mr. Ramachandra Rao contends that the

section cannot be invoked as against those sub-leases. I do not agree. If the lease in favour of Chamarthi Veera Raghavayya is hit by the operation

of Section 76, then even if the sub-lessee under Veera Raghavayya is a bona fide lessee still he cannot say that he is a person claiming bona fide

within the meaning of the section. These are matters to be gone into in the application. The learned District Judge seems to have summarily

dismissed the appln. holding that the section would not apply. In doing so, he has failed to exercise a jurisdiction vested in him by law. Mr.

Ramachandra Rao also further urges that with regard to the production of certificate from the Endowments Board, he is entitled to contend that the

petitioners have not satisfied the requirements of the Section. These are all matters which can be gone into at the fresh hearing of the petn. The

respondents are entitled to take any objection or any defence that they can legitimately take before the lower Court at the fresh hearing of the

petition. It is essential for a proper adjudication of the dispute that Chamarthi Veera Raghavayya should be added as a party to the application.

The petitioners-trustees would take steps to add him as a party in the lower Court.

4. The order of the learned District Judge is set aside and O. P. No. 34 of 1947 is remanded to the District Court of Eluru for disposing of on the

merits.

5. Costs of this revision will abide and follow the result of the fresh disposal.

