

(1964) 10 AP CK 0005
In the Andhra Pradesh High Court
Case No : Appeal No. 264 of 1961

Chunduru Chenchuramaiah Sett

APPELLANT

Vs

Deputy Commissioner, Hindu Religious and Charitable
Endowments, Andhra Pradesh Kurnool

RESPONDENT

Date of Decision : 28-10-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Transfer of Property Act, 1882 — Section 100

Citation : AIR 1966 AP 123

Hon'ble Judges : Manohar Pershad, J

Bench : Single Bench

Advocate : A. kuppuswamy, for the Appellant; 2nd Govt. Pleader and P. Babulu reddy, for the Respondent

Final Decision : Dismissed

Judgement

Manohar Pershad, J.—This appeal is on behalf of the unsuccessful plaintiff, whose suit u/s 62 of the Hindu Religions and Charitable Endowments Act for declaration that item 1 of the schedule was the absolute property of the members of the Chunduru family and the performance pf the charities mentioned in the document dated 18-12-1887 was only a charge on the income thereof and that item 2 of the schedule was the absolute property of his family and not part of the specific endowment, has been dismissed by the Subordinate Judge, Nellore on 27th February 1961.

2. The allegation of the plaintiff-appellant was that item 1 of the plaint schedule bearing old S. No. 405 was a tope jointly belonging to the members of Chunduru family, of Nawabpet that the family then consisted of five branches, that on 18-12-1887 the members of Chunduru family executed among themselves a registered agreement to the effect that from the income of the tone, ubhayams or the performance of Mukkoti Ekadasi and Dwadasi in Sri Ranganadhaswami temple Nellore should perpetually be performed and that the existing trees in the

tope might be cut and sold away if they become old and useless and new trees be planted, and the tope improved and that vacant sites might be let pit for ground-rent or be sold for house-building purposes, that necessary repairs to the tope might be carried out from the income, that after meeting the expenses of the ubhayams in Sri Ranganadhaswamy temple, and the maintenance and repairs of the tope, the balance, if any, should be utilised for the performance of some charities in the temple of Sri Kesavaswami in Nawabpet, Nellore. The then sharers of the tope constituted themselves as the managers.

Later on different members of Chunduru family were in management of the same. On 27-2-46, the plaintiff was entrusted with the management and before him one Chunduru Rajamannar was the manager. Since the fruit-bearing trees in the tope died, about three acres thereof had been converted into wet and the remaining area cultivated as garden land. The plaintiff had been leasing it out and collecting rents from the tenants and attending to the performance of the Ubhayam in the temple of Sri Ranganadhaswami and had been also paying the land taxes. It is the further case of the plaintiffs that item 2 of the plaint schedule was a distinct and separate plot of land measuring Ac. 2-52 and was independent of the tope described as item 1 of the schedule and was part of old S. Nos. 403 and 404 having been acquired by Chunduru Govindu Chetti his paternal uncle that ever since the purchase item 2 had been in separate and exclusive enjoyment of Govindu Chetti and subsequently in the possession of the plaintiff's family as successor-in-interest, that recently it came to his knowledge that in the survey, items 1 and 2 were clubbed together and surveyed as C. A. S. No. 164 showing the extent as Acres 6-79 cents.

He denies that it is part of the tope, it was further averred that though the ubhayams were performed by him to the satisfaction of the temple authorities and the public from out of the income of item 1, the third defendant began creating obstacles. According to him, in 1955, the third defendant managed to obtain Srimukham from the temple authorities jointly in his name and the plaintiff and when he protested, the third defendant started taking hostile attitude and instigated the tenants to evade payment of the makthas. Consequent to that, the plaintiff filed suits against the tenants making the third defendant as a party. Thereafter, the third defendant filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowments u/s 57 of the Hindu Religious and Charitable Endowments Act alleging both the items of the plaint schedule formed the specific endowment. In spite of the contest of the plaintiff the Deputy Commissioner declared that both the items constituted the specific endowment for the performance of the ubhayams and an appeal preferred by the plaintiff was dismissed.

3. The plaintiff denies that items 1 and 2 both constituted specific endowment and states that item 2 is not part of the endowment. He also denies that item 1 was also dedicated and states that there was no dedication of the land, as such there was only a charge for the performance of charities from the income of item

1. The plaintiff therefore seeks a declaration that item 2 is the absolute property of the plaintiff and not part of the dedication and also that there was no dedication of the land of item 1 but only a charge for the performance of charities on the income from item 1.

4. The first defendant put the plaintiff to proof of the title in respect of item 1 and also that it did not constitute specific endowment for the performance of charities and that endowment consisted only a charge over the income. He was also put to strict proof of the fact that item 2 was purchased by his paternal uncle and that the plaintiff was in exclusive possession. It was also stated that on enquiry it was found that both the plaint schedule items constituted specific endowment and under the scheme framed possession of those items had been obtained and an officer appointed to carry out the functions of the endowment. A legal objection was also taken that as notice u/s 80 C. P. C. was not given, the suit was not maintainable.

5. The third defendant denied that there was only a charge for the performance of charities on the income from item 1 of the plaint schedule and stated that the endowment was of the land itself. He also denied that item 2 was not part of the endowment and stated that both the items formed part of one tope after it was endowed for the specific purpose mentioned in the agreement. He also denied that item 2 was part of old demarcation Nos. 403 and 404 and stated that items 1 and 2 constituted one block covered by the old demarcation No. 405. While admitting that he had moved the Deputy Commissioner, Hindu Religious and Charitable Endowments for the necessary relief, he stated that he did so because he found that the plaintiff was trying to keep item 2.

6. On the averments in the pleadings, the following issues were framed.

1. Whether the property described as item 2 in the plaint schedule has been acquired independently by the predecessors of the plaintiff and was being enjoyed as an absolute property of the family having nothing to do with the land dedicated under the document dated 18-12-1887?

2. Whether item 2 of the plaint schedule is a distinct plot falling under old demarcation Nos. 403 and 404 and it had nothing to do with item 1 ?

3. Whether plaintiff and his predecessors have acquired any title by adverse possession to item 2 of plaint scheduler

4. Whether Items 1 and 2 were clubbed in survey proceedings under C. A. S. No. 164 and if so, whether the said proceedings are not binding on the plaintiff?

5. Whether a charge for performance of ubhayam is created only over the income of item I alone under the agreement dated 16-12-1877?

6. Whether the order of the Duputy Commissioner Hindu Religious and Charitable Endowments in C. A. 244 of 56 as confirmed in A. S. 32/57 is erroneous and has to be set aside?

7. Whether this suit as framed is not maintainable?
8. Whether the plaintiff is entitled to the declaration prayed for against any of the sale items?
9. Whether the valuation and court-fee paid are correct?
10. Whether this suit is not maintainable for non-compliance of provision of Section 80 C. P. C.?
11. Whether the suit is bad for non-joinder of necessary parties?
12. To what relief is plaintiff entitled?

7. Evidence was led by the parties both documentary and oral. On a consideration of the evidence, the learned Judge found on issues 1 to 4 that both the items constituted one block. He, also found that item 2 of the plaint schedule has nothing to do with the demarcation Nos. 403 and 404 and it does not form part of the property acquired independently by the plaintiffs paternal uncle Govindu Chetti and that there was no separate enjoyment of such item by the plaintiff or by persons in management of the charities or by the family of the plaintiff's paternal uncle. On issue 5, he found that the performance of the ubhayam of Kainkaryams was not a charge on the suit schedule properties but the suit tope itself had been dedicated for the specific purpose of performing the said functions. On issue 6, he found that the order of the Deputy Commissioner was not erroneous having regard to the findings on issues 1 to 5. Issue 7 was not pressed. On the question of the court-fee he Found that the court-fee paid was proper. On issue 10 he found that notice u/s 80 C. P. C. was necessary and that as no notice was given the suit was not maintainable. He also found that the plaintiff was not entitled to any declaration. In the result, the learned Judge dismissed the suit. Hence this appeal on behalf of the plaintiff.

8. In this appeal Sri Kuppuswamy, the learned counsel for the appellant has advanced the following arguments:

1. that the court below has erred in coming to the conclusion that notice u/s 80 C. P. C. was necessary when the suit was not directed against a public officer, but against an order by the Tribunal;
2. that the suit items do not form one block and are not governed by Ex. A. 1;
3. that there was not an out and out dedication, but only a charge on the income of item 1;
4. that item 2 was the absolute property of the plaintiff and was not dedicated;
5. that the plaintiff is the absolute owner of both the items. The points that arise for consideration in this appeal are:

1. Whether notice u/s 80 C. P. C. is necessary?

2. Whether the suit items formed one block and are governed by Ex. A. 1?
3. Whether there is an out and out dedication or only a charge on the property?
4. Whether item 2 is the absolute property of the plaintiff?
5. Whether the plaintiff has made out his title to the suit property? I would now proceed to consider each of the points in seriatim.
9. So far as the first point is concerned, which relates to Section 80 C. P. C., the lower Court in paras 19 and 20 of the Judgment relying on the cases of *State of Madras v. Venkata Durga Prasad Rao*, 1956 Andh LT 106: AIR 19,57 A P 675); AIR 1927 176 (Privy Council) In *Venkata Rangiah v. Secretary of State*, 32 Mad LW 810: (AIR 1931 Mad 173) and *The Province of Madras Vs. Sri Sri Sri Vikrama Deo Varma Maharajulungaru, Maharaja of Jeypore and Zamindar of Madgole*, held that though the suit was filed u/s 62 of the Hindu Religious and Charitable Endowments Act, defendants 1 and 2 had been made as parties, though pro forma, u/s 82 C. P. C. notice was necessary and for its non-compliance the suit itself was not maintainable.
10. The contention of Sri Kuppaswami is that since the suit is not directed against a public officer but against an order of the Tribunal, notice u/s 80 C. P. C. is not necessary. In this connection, the learned Counsel drew my attention to a decision of this Court reported in *Narayana v. H. R. and C. E. A. P.*, ILR (1962) A P 865.
11. I find sufficient force in the contention of the learned counsel for the appellant. Section 80 C. P. C. in my opinion also, does not apply to a suit u/s 62 of the Hindu Religions and Charitable Endowments Act. Orders passed by the Deputy Commissioner, u/s 68 of the Act and by the Commissioner u/s 61 of the Act are judicial orders and the right of suit is provided u/s 62 to set aside the judicial orders passed by the Commissioner. The Commissioner is not sued in his capacity as a public officer but only as a statutory body. I cannot therefore understand how in such a case a notice u/s 80 C. P. C. is necessary. The cases relied upon by the lower court are cases which do not apply to the facts of the case,
12. 1956 Andh LT 106; 1950 Andh WR 54: AIR 1957 A P 675) was a suit for declaration and permanent injunction. Question arose whether Section 80 C. P. C. was applicable to suits of this nature. It was held that the policy underlying Section 80 C. P. C. is the protection intended to be afforded to all officers of Government and there is nothing in the language of the section which supported the view that suits for injunction were outside the purview of the section. It may be noted that this was not a case arising u/s 62 of the Hindu Religious and Charitable Endowments Act. This case therefore cannot be an authority for the proposition that notice u/s 80 C. P. C. is necessary in case arising u/s 62 of the Hindu Religions and Charitable Endowments Act.
13. AIR 1927 176 (Privy Council) was also a case of declaration and injunction

wherein the plaintiff challenged a notification of the Government, but in this case it was taken for granted that Section 80 C. P. C. was applicable. This is also a case, it may be noted, not arising u/s 62 of the Hindu Religious and Charitable Endowments Act.

14. Sree Raja Venkata Rangiah Appa Rao Bahadur and Another Vs. The Secretary of State for India in Council and Others, is also not a case arising under S, 62 of the Hindu Religious and Charitable Endowments Act.

15. The Province of Madras Vs. Sri Sri Sri Vikrama Deo Varma Maharajulungaru, Maharaja of Jeypore and Zamindar of Madgole, was a case arising under the Madras Survey and Boundaries Act and not the Hindu Religious and Charitable Endowments Act.

16. I am therefore clear that notice under S 80 C. P. C. is not necessary.

17. The next question to be considered is whether the said items formed one block and are governed by Ex. A. 1. The lower Court in paras 10 to 15 of the judgment has considered this point and has come to the conclusion that both the items constituted one block and are governed by Ex. A. 1. I agree with the view of the lower court. Item 1 is of the extent of Ac. 4-27 and item 2 is of the extent of Ac. 2-52 cents. The case of the appellant is that item 2 of 2 acres 52 cents is separate and has nothing to do with the first item, whereas the case of the defendants is that the entire extent of acres 6-79 cents has been dedicated for charitable purposes. In order to prove that both these items do not constitute one block the plaintiff-appellant relies on Ex. A. 1, the agreement, the sale deed Ex. A. 2, E\\s. A. 7, A. 7(a), A. 9 to A. 10, Ex. A. 12, Ex. B. 7, Ex. B. 4 and Ex. B. 5 and the oral testimony of the plaintiff as P. W. 1.

18. Ex. A. 1 is the agreement admitted by both the parties. It mentions the extent as Ac. 4-27 of the demarcation No. 405. It does not give any boundaries of the plot of land dedicated. By the extent of acres 4-27 shown in this document, the plaintiff-appellant wants to show that it relates to only item 1 and does not cover the second item in dispute of the extent of acres 2 52 cents. He also relies on the fact that Acres. 4-27 shown therein form part of demarcation No. 405 & the extent of Acres 2-52 cents is part of survey Nos. 403 and 404, whereas the case of the other side is the total extent under Ex. A. 1 is of 6 acres 79 cents and the extent of acres 4-27 shown is a mistake. It is also their case that it is part of demarcation 405 and not 403 and 404. As no boundaries are given and in view of the contentions of the parties from the recitals of the document alone, it is not possible to come to any definite conclusion.

19. Ex. A. 2 is a registration copy of the sale deed executed by Azim Hussain, and others in favour of Govindu Setti. It shows that acres 2-76 part of survey Nos. 403 and 404 belonging to Azim Hussain and Khader Hussain were purchased by Govinda Setty. In survey No. 403 became 162, survey No. 404 became 163. From Ex. B. 1, the registered copy of sale deed executed by Chenchayya in favour of Vengannachetti, I find that acres 5-05 in survey Nos.

403 and 404 were sold away by Govindu Setty's son and about 30 cents out of the extent were already given away towards the house site even during the lifetime of Govindu Setty.

20. Ex. B. 7 certified copy of the resettlement register 17 shows the demarcation No. 408 was acres 4-75, demarcation No. 404/A was Ac. 0-50 cents total of both coming to acres 5-29 and demarcation No. 405 was shown as Ac. 4-27.

21. Ex. B. 8 certified copy of the supplement to the Re-settlement Register No. 134 made in 1916 shows that the demarcation 403 which corresponds to 182 was given C. A. S. 162 and shown as Ac. 4-10. Old demarcation 404/A and B which corresponds to S. Nos. 183 to 183 in the subsequent survey were clubbed together under C. A. S. 163 showing the extent as Ac. 0-85. So the total of C. A. S. 162 and 163 would come to Ac. 4-25 plus Ac. 0-85 i.e., Ac. 5-10. Old demarcation No. 405 which corresponds to resurvey No. 186 was given C. A. S. No. 164 and the extent was shown as Ac. 6-76. Thus it is apparent from Ex. B. 1 that the total extent Chenchayya had in old demarcation 403 and 404 had been sold away and there is nothing in Ex. B. 1 to show that any portion was reserved by Chenchu Ramayya Setty son of Govindu Setty. When the total extent owned by Chenchu Ramayya was sold, it becomes very difficult to accept the contention that item 2 is part of survey Nos. 403 and 404. Much reliance is placed on Ex. A 12 certified copy of the resettlement register.

In that old demarcation No. 405 corresponding to resurvey 186 was shown to be of an extent of 4-27 cents. But as discussed above the case of the plaintiff-appellant is that Ac. 2-52 is part of survey Nos. 403 and 404 and when the total extent was sold and nothing was left this recital in Ex. A. 12 showing the extent of old demarcation 405 as 4-27 seems to be a mistake. Further reliance is placed on the lease deeds Exs. A. 1 to A. 6 wherein also the extent of the land is shown as 4 acres 27 cents. But it may be noted at this stage that in Ex. A. 1, the extent of demarcation 405 was shown as 4 acres 27 cents even after the supplementary survey in 1916 wherein the corresponding extent was shown as acres 6-79. The subsequent lease deeds also mention the extent of the land as 4-27 cents. This confusion seems to have arisen because in all the lease deeds and the transfer deeds, reference was made to survey No. as 1576/186 which was of the resurvey prior to 1916 when of course as could be seen from Ex. A. 12 the extent was mentioned only as Ac. 4-27. The mention of Ac. 4-27 in all the above documents seems to be a mistake which continued even after the survey,

This mistake was only detected when the plaintiff started to separately lease out Acres 2-53 and Acres 4-27 to Sada Venkatachalam, in 1953 under Exs. A. 10 and A. 11. Under Ex. A. 11, for the first time mention of C. A. S. 164 and the extent of 6 acres, 79 cents was made. Why such an occasion had arisen for the first time in 1953 is clear from the evidence of defendant 3 as D. W. 1. He says that in his absence the plaintiff tried to lease it out himself to Sada Venkatachalam. The plaintiff admits in his evidence that the management was with him and the third defendant. When the management was with the third defendant and

himself, I fail to understand how the plaintiff could lease out the land in 1953 showing the extent as 6 acres 79 cents without the concurrence of the third defendant. Thus, it is clear that the plaintiff taking advantage of the recitals in Exs. B. 7 and A. 12 started laying claim to the second item as his absolute property. That this claim of the plaintiff is not correct in evidence from Exs. A. 11 and B. 4. Ex. A. 11 is a lease given by the appellant of item 2 asserting as owner.

In it the boundaries given are -- East: irrigation channel, South: land belonging to the landlord, West: land belonging to the landlord; North; land belonging to Chenchayya and house of Mohammadan. Ex. B. 4 is a lease deed given Jointly by the appellant and the third defendant and the extent shown in this is acres 4-27. The boundaries given are: East; Kondeti China Channel; South; land belonging to the landlord; West: donka. North: land belonging to Chenchayya. If as is contended by the plaintiff that this second item as not part of one block, then in the joint lease Ex. B. 4 wherein the extent is shown as Ac. 4-27, one of the boundaries would have been item 2 non-charity land. The plaintiff in his evidence has admitted that Ex. B. 2 does not show that non-charity land is the boundary on his side. The plaintiff has further remitted that there is no mutation in his name in the Municipal records. If it was a fact as is contended that the second item was not part of block, there is no reason why mutation has not been made in his name. I am therefore clear that item 1 and item 2 both constituted a block.

22. The next question to be considered is whether there was an out and out dedication or only a charge on the property. The Court below in paras 16 to 18 has considered this point and has come to the conclusion that it was Hot a charge on the suit schedule property but that the said tope itself has been dedicated for the specific performance of the said function. I agree with the view of the lower Court. In order to know whether there was a mere charge on the suit properties or there was a total dedication. I have to refer to Ex. A. 1. The relevant portion is as follows:

"With the amount remaining after paying the taxes from out of the maktha amount realised from the dry Vanam tope in Nawabpet hamlet of Nellore, Sub-District, Nellore, Registration District, that is, dry land of Ac. 4-29 cents bearing Demarcation No. 405 together with the fruit bearing trees therein such as mango trees, Goa trees, neredu etc., which is worth about Rupees 500 and wherein all the members have right and enjoyment, we have all been performing the Mukkotu Ekadasi Ustavam and Dwadasiparayanam from a long time in Sri Ranganadhaswami vari temple in Nellore, Ranganayakulupet. It is agreed that this Kainkaryam and others Kainkaryams which should be done by us, should be carried on permanently and hereditarily, that the useless trees in the tope should be cut and sold away, that new trees should be planted and the tope improved, that sites should be let out for monthly rent to persons who desire to build houses in the said garden site, that sites should be sold to persons if they want to build houses after purchasing the site, that repairs etc., required for the said garden should be done, and that the aforesaid sharers or any other person

should not use the said tope site for latrine purposes. It is agreed that the amount remaining after deducting the expenses of Kainkaryam that should be performed From out of the entire income realised from the garden etc., in the temple of Sri Ranganadhaswamy, in Nellore and the expenses of garden repairs etc. should be utilised for performing the Kainkaryams in the temple of Sri Kesavaswamy enshrined in Nawabpet, hamlet of Nellore as per the desire of the hereunder mentioned persons. It is settled that therefore Voleti Venkatachalam Chetty and Chunduru Bhashakaryulu Chetty from out of the aforesaid sharers, shall keep the money with them and maintain proper accounts etc. therefore and render (furnish) accounts properly when demanded by the other sharers, that with regard to the mailer of cutting of trees or leasing out the garden, the aforesaid elder persons namely Shundurm Rangaiah etc., Duggiseti Narasimhulu Chetti's son, Pedda Subbaiah shall maintain the accounts of credit and debit, that the aforesaid Voleti Venkatachalam Setty and Chunduru Bhashakaryulu Chetty along with the aforesaid four persons shall be the six Vicharanakarthas therefore and carry out all the affairs and that the accounts shall be maintained in their name only in respect of garden leases and that in case suits etc., have to be filed against the lessees, the aforesaid two persons shall attend thereto and that the garden shall be utilised permanently for the aforesaid charities without selling the same to any one hereafter. All of us, the sharers have agreed thereto and settled the mailer accordingly. Therefore we shall carry out accordingly the aforesaid terms without fail. This draft has been caused to be written by Addanki Subharamaiah." On a fair reading of the above document, it becomes clear that it is not a charge on the income but on complete dedication. The fact that the donors have not reserved any right to themselves supports this view. If the intention of the donors was only to create a charge on the income and the total income of the property is to be used for the purpose of charity, they would have reserved certain rights for themselves and also reserved a portion of the income in the hands of the manager or worshipper for their own private purposes. The learned counsel appearing for the respondent very rightly conceded that in the document there is nothing to indicate that the donors have reserved any rights. The very fact that the donors have not reserved any rights for themselves, in my opinion, is a clear indication of an out and out dedication and not merely a charge on the income. I am supported in this view by the decision of the Supreme Court in *M. Dasaratharami Reddi v. Subba Rao*, (S) AIR 1957 SC 797.

23. The learned counsel, Sri A. Kuppuswamy, relying on the fact that there it a provision giving power to sell and the surplus income, after meeting the expenses of the temple of Ranganadhaswamy is to be utilised for performing the Kainkaryam in the temple of Kesavaswami, being inconsistent with the idea of trust, contended that that would go to show that there was no out and out dedication but only a charge on the income. I am not prepared to agree with the contention of Sri A. Kuppuswami. The surplus income, after meeting the expenses of the temple of Sri Ranganadhaswami or utilising it for performing the Kainkaryam in the temple of Kesavaswami is also another purpose of charity. By

this fact and the fact that the right or power to sell is given, it cannot be construed that it is not a total dedication.

24. While considering the question whether items 1 and 2 are part of one block, I have already held that item 2 forms part of the tope dedicated and is not the property of the plain-till. In view of that, I cannot accept the contention that item 2 is the absolute property of the plaintiff. From the above discussion, it is clear that the plaintiff has failed to make out a case that he has title to the suit property. The lower Court has also taken that view and I do not see any reason to disagree.

25. The learned counsel for the appellant drew my attention to another fact that the lower Court, while dismissing the suit, has awarded separate set of costs to defendants 1 and 2 and also the 3rd defendant separately. His contention is that defendants 1 and 2 were members of the Tribunal and there is no question of awarding any separate costs to them. I find sufficient force in this argument. Defendants 1 and 2, who are members of the Tribunal, are not entitled to any costs. The lower Court was not justified in awarding separate set of costs to defendants 1 and 2 and the 3rd defendant.

26. In the result, this appeal is dismissed with costs of 3rd defendant throughout. Only one set.