
(1996) 03 AP CK 0065
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 234 of 1996

D. Pulla Rao

APPELLANT

Vs

Valluru Basavaiah Chowdary and Others

RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:

Citation : (1996) 2 ALD 435 : (1996) 2 ALT 289

Hon'ble Judges : P.S. Mishra, C.J;M.H.S. Ansari, J

Bench : Division Bench

Advocate : V.S.R. Anjaneyulu, for the Appellant; M.V. Suresh Kumar, for the 1st Respondent and G.P. for Endowments for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Mishra, C.J.—This appeal has come up only because having held categorically that the matter in dispute requires the evidence to be led by the parties and the issue regarding the jurisdiction can also be raised by the parties concerned before the civil Court and accordingly,

"under these circumstances this Court is not in favour of deciding any issue involved in the civil litigation as a civil Court is seized of the matter in dispute"

has ordered as follows:

"Under these circumstances this Court allows the writ petition and directs that as long as the civil litigation is pending before the civil Court, the temple be known as Sri Trishakthi Peetham" which is subject to the result of the civil suit which is pending in the civil Court."

2. It is not in dispute that the writ petitioner-respondent is a defendant in the civil suit. The case pleaded before this Court is that a temple previously known as "Kali Matha was re-named as "Sri Trishakthi Peetham" after two idols, namely, that of Maha Lakshmi and Maha Saraswathi, were installed in the premises by

the committee of which he was/is a member. Plaintiffs in the suit O.S. 702/92 which is in the Court of the II Additional Subordinate Judge, Vijayawada, however, have alleged that change in the name of the temple is illegal. The Assistant Commissioner of Endowments, Vijayawada, the Deputy Commissioner of Endowments, Kakinada and Commissioner of Endowments, Hyderabad are also impleaded as party respondents. While the suit is pending it is alleged the Deputy Commissioner of Endowments passed an order on 5-12-92 for retention of the old name. It is alleged thereafter the matter was carried to the Commissioner of Endowments, Hyderabad who on 1-2-93 passed an order to keep the order of the Deputy Commissioner of Endowments, Kakinada in abeyance.

3. We are avoiding reference to several facts which apparently are stated with a view to suggest that something very illegal was done by the Commissioner, Endowments during the pendency of the suit and the writ petition was filed in this Court only because the Commissioner's actions could not be taken to the civil Court by way of a suit. On the question, however, whether a suit is maintainable at all to question the action of the Commissioner or when the writ petitioner himself is a defendant in the suit and to his knowledge some orders by the Commissioner are not legal he could /can seek avoidance of the order of the Commissioner pending adjudication in the suit, learned Single Judge has rightly held that ouster of the jurisdiction of the ordinary civil Court is not presumed unless it is found to be either specifically or impliedly barred and at the first instance any objection to the jurisdiction should be raised before the Court concerned and the Court must get the opportunity to decide whether it has jurisdiction to proceed or not. He has thus held that if at all the suit is found to be not maintainable any other remedy can be elected by the affected party but that cannot be a ground to by-pass the jurisdiction of the civil Court. On the main issue whether the change in the name of the temple is valid or not and whether the Deputy Commissioner or the Commissioner have acted illegally or with out jurisdiction, learned Single Judge has held any decision shall require going into the evidence. It is indeed curious how then any order can be issued which will have the effect of denying the civil Court jurisdiction to pass such interim or interlocutory orders or directions or finally adjudicate on the issues in accordance with law.

4. We have reasons to think that when as a plaintiff or a defendant a certain party is before the civil Court it has to appear before the Court. That itself gives and raises all legal objections including objections to the jurisdiction before the civil Court and any attempt of a party to assume ouster of jurisdiction and move for any direction which will have some effect upon the adjudication in the civil proceeding can be easily called an attempt to over-reach the civil Court. It is not unknown to law that if there are some subsequent events which are not included in the pleadings in the suit they can be brought by way of amendment to the pleadings in the civil Court and even a defendant can ask for avoidance of any action in the suit by way of an interim order including an order of injunction. On

the facts and on the findings the learned Single Judge has recorded, he ought to have held that the writ petition is not maintainable and the parties if so advised could raise the disputes in the pending suit. An order of the type issued in the writ petition can work as an encouragement to the litigants to stall proceedings in the regular Courts of law and one can legitimately suspect that petitioner has resorted to the writ proceeding by claiming that the civil Court had no jurisdiction with a view to avoiding adjudication of the controversy in the civil Court. Since we are of the opinion that the direction issued by the learned Single Judge is not warranted on the facts of this case we are inclined to interfere with the impugned judgment.

5. In the result the appeal is allowed. The impugned judgment is set aside. The writ petition is dismissed as not maintainable. No costs.