

(1991) 02 KAR CK 0072

In the Karnataka High Court

Case No : Regular First Appeal No. 227 of 1980

Emba Tippamma

APPELLANT

Vs

Nagappa and others

RESPONDENT

Date of Decision : 06-02-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 562, 92, 92 (1), 92 (2)
States Reorganisation Act, 1956 — Section 119, 120, 122, 7 (1) (c)

Citation : AIR 1991 Kar 413 : (1991) ILR (Kar) 1410 : (1991) 1 KarLJ 417

Hon'ble Judges : N. Venkatachala, J; Murlidher Rao, J

Bench : Division Bench

Advocate : M.M. Jagirdhar, Somnath Reddy and H. Puttaswamy, for the Appellant; M. Mahabaleshwargoud, for the Respondent

Judgement

Murlidhar Rao, J.—Third defendant in O.S. 1 /1978, on the file of the District Judge, Raichur, is the appellant. Respondents I to 4 plaintiffs -- after obtaining leave of the Court filed the suit, under S. 92, C.P.C. for the following reliefs: --

- 1) Removal of defendants 1 and 2, the trustees;
- 2) Direct these trustees to render accounts from the inception of the Trust and deposit the entire amount in the Court;
- 3) To appoint suitable person, as trustee;
- 4) To declare the decree dated 15-3-1976 in O.S. 40/ 76, on the file of the Munsiff. Manvi, as void.

2. Among the several contentions urged by defendants in the written statement, it was contended that suit is not maintainable and is barred under S. 92(2), C.P.C. The learned Judge framed 18 issues covering all the disputes. In view of the arguments advanced by Sri Manohar Rao Jagirdhar in this appeal, the one question that goes to the root of the matter is the maintainability of the suit in the light of S. 92(2), C.P.C. read with Hyderabad Endowment Regulations, 1349

Fasli (1940 AD). On this question, the relevant issue reads thus :

"12) Whether the suit is barred for non-compliance with the provisions contained in S. 92 of the Civil Procedure Code?".

3. Dealing with S. 92(2), C.P.C. and the provisions of Hyderabad Endowment Regulations, the observations of the learned Judge are:--

"40. The question of considering the saving in respect of suits coming under the Religious Endowments Act, 1863, does not really arise. It appears that the said Act was not made applicable to the part of the Karnataka State which was formerly in erstwhile Hyderabad State ("B" State). Even assuming that the provisions of the Religious Endowment Act are applicable to this part of the State, evidently plaintiff's suit comes under both S. 92 and under the religious endowment Act leaving the choice to the plaintiffs to proceed under either of the provisions though they may not proceed under both.

41. The Endowments regulations sanctioned by His Excellency Highness on 16th Shabhan 1358 Hijri, cannot be equated with the status of law. By no standard it can be considered to be law corresponding to the Religious Endowment Act, 1863. I have carefully gone through the Regulations. They do not bar a suit under S. 92. There is no provisions in the Regulations providing for institution of suit claiming reliefs specified in S. 92(1) of the Code."

The observations are not factually correct. The aforesaid Regulation was in force till 31 10-1956, in the former State of Hyderabad. On 1-11-1956, parts of that State namely, the Districts of Gulbarga, Raichur and Bidar (excluding a few taluks in Bidar) were included in the New State of Mysore. Under S. 119, States Reorganisation Act, 1956, all laws in force are to continue till they are repealed or altered in the new State. By S. 120 of the States Reorganisation Act, the appropriate Government is empowered, by order, to make adaptation and modification of law, as is necessary or expedient, for the purpose of facilitating the application of law in the newly formed States. In exercise of this power, the Government of Mysore promulgated the order called Mysore Adaptation Laws Order, 1956, which came into force on 1-11-1956. The expression "Hyderabad Area" reads thus:--

"(e) "Hyderabad Area" means the territory specified in Cl.(c) of sub-sec. (1) of S. 7 of the Act."

4. The Table appended to this order mentions the corresponding "expressions" in the various enactments in the erstwhile States for Hyderabad Area; it reads thus :

"HYDERABAD AREA

(i) Rajpramukh Rajpramukh of Hyderabad

Governor

(ii) Government of Hyderabad Sarkar-i-Ali Hyderabad Government;

State Government

(iii) H.E.H. the Nizam's Dominions;

H.H. the Nizam's Dominions; Mumalik-i-Mahroosa-i-Sarkar-i-Ali; Mumalik-i-Mahroosa; State of Hyderabad; Hyderabad State; Hyderabad where it refers to the territories of the State of Hyderabad.

Hyderabad Area

(iv) Jarida Jarida Alamia Jarida Alamia Sarkar-i-Ali

Mysore Gazette"

5. S. 122 of the States Reorganisation Act empowers the State Government to specify the authority, officer or person who shall be competent to discharge and exercise the functions specified in the various enactments, which are continued in the new State. The relevant entry, for the purposes of this case, reads thus:--

" Law

Functions

Authority, officer or

(1)

(2)

(3)

The Endowment Regulation, 1349 Fasli.

Functions of the Director of Ecclesiastic Affairs of the Government of Hyderabad.

Commissioner for Settlement and Charitable Endowments for the State of Mysore."

6. Further, by the Adaptation of Laws Order, some of the provisions of the Regulations, referring to City of Hyderabad have been omitted. Similarly in Ss. 14, 16 and 18, the corresponding authorities have been substituted. Therefore, it is apparent that the Hyderabad Endowment Regulation, 1349, which was a valid legislation, was made applicable to New State of Mysore. The necessity of passing this legislation is explained thus by a learned Judge of the Hyderabad High Court in *Narayan Pershad v. State of Hyderabad*, AIR 1955 Hyd 82 at p.87:--

"The endowment Regulation which received the sanction of H.E.H. the Nizam in Shaban 1358 H. was passed as it was felt necessary that there should be some principles adopted for the management and security of endowed property and inasmuch as the management and security of endowment property was one of the duties of the Government it was thought desirable to pass a Regulation governing the proper administration of the endowed property. Under the Regulation the Revenue Board has been given the power to frame rules which

regard to matters enumerated in S. 16 of the Regulation. In pursuance of the Rule-making power vested in the Revenue Board under S. 16, Rules have been framed which are called "Rules relating to religious endowments of Hyderabad Government". The rules are comprehensive enough to cover all matters relating to supervision, management and proper upkeep of the endowments. The rules enumerate the powers of the Director of the Ecclesiastical Department and narrate in detail as to what procedure should be followed by an endower of a property for charitable purposes, and the procedure that would be followed by the Department with reference to any endowed property.

Chapter 3 states that the endower shall inform and intimate the Director of the Department of Endowment and get the endowed property entered in the Register of endowments maintained by the Ecclesiastical Department. Chapter 5 relates to the procedure that would be followed in the event of non-receipt of intimation of the endowment. Chapters 6 and 7 provide that on receipt of intimation of an endowment a Notification would be published of the endowment calling for any objections with regard to this endowment and an enquiry made into the objections and after enquiry has been made, the entry in the book of endowments would be confirmed. Chapter 14 relates to the powers of the endower to be a trustee and it also deals with the duties and responsibilities of trustees. Chapter 15 relates to enquiry into disputes as regards trusteeship. Chapter 21 relates to succession proceedings relating to trustees.

It would, therefore, appear from what has been stated above, that the "Rules relating to endowments of the Hyderabad Government" is a complete Code in itself.

7. In the same ruling, Qamar Hasan, J : to whom the matter was referred on a difference of opinion between two Judges constituting the Division Bench stated thus :

"As the remedy provided by S. 562 substantially in pan materia with S. 92, Indian Civil P.C. was expensive and tardy and dependent upon the discretion of the Court, it was to my knowledge never resorted to by the Sarkar-i-Ali and rarely taken advantage of by two or more persons interested in the endowments to set right the maladministration of the subject-matter of the trust. The then Government of Hyderabad in order to avoid the necessity of having recourse to legal proceedings in matters of trust conceived the idea of drafting a Regulation and secured sanction of H.E.H. the Nizam to it under S. 57, Hyderabad Legislative Council Act (Act 3 of 1309F)."

8. The constitutional validity of this Regulation was challenged in Anant Prasad Lakshminivas Generiwal Vs. State of Andhra Pradesh and Others, the provisions were upheld.

Section 92(2), C.P.C. reads thus:

"(2) Save as provided by the Religious Endowments Act, 1863 or by any

corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-sec. (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that subsection."

9. It is manifest that if a corresponding legislative provision is made in respect of the reliefs prayed for in the suit filed under S. 92, C.P.C. the civil suit would be barred and the remedy provided in the special law has to be resorted. The reliefs prayed for in the suit have been stated above. Therefore, what is required to be examined is whether to secure such reliefs, any provision is made in the Hyderabad Endowment Regulation. It is needless to mention that if any decree is passed in contravention of S. 92(2), C.P.C. it would be void, therefore, the last relief in the suit to declare the compromise decree in O.S. 40/1976, as void very much depends on the examination of the main question regarding the maintainability of the civil suit.

10. In exercise of the powers conferred by S. 16 of the Regulation, the Government of Hyderabad has passed rules called "Rules relating to Endowments in the Hyderabad State". In all, there are 478 Rules in 87 Chapters. Chapters 14 to 42 pertain to trustees, the aspects dealt with in these Chapters pertain to :

- 1) Qualifications.
- 2) Temporary disability of trustee.
- 3) Permanent disability of trustee.
- 4) Succession of Trustees.
- 5) Remuneration, Resignation and Transfer of Trusteeship.
- 6) Right of adoption.
- 7) Inspection of Office of Trustees.
- 8) Complaints against Trustees etc.etc.

11. In particular Chapter 19 pertains to removal of trustee by the Minister of Endowment. Rule 166 in Chapter 39 deals with complaints against Trustees. Chapter 40 deals with the defaults on the part of Trustees in discharging their duties. Therefore, elaborate provisions are made in these rules in respect of the reliefs asked for in the plaint. In Anant Prasad Lakshminivas Generiwal Vs. State of Andhra Pradesh and Others, there is a detailed reference to these provisions in Para 21. Therefore, in view of the bar contained in S. 92(2). C.P.C. Civil suit was not maintainable. It follows that if such a suit is instituted and a collusive or compromise decree is passed, as is done in O.S. 40/1976, on the file of the Munsiff at Manvi. the same would be illegal and without jurisdiction.

12. In this view of the matter, it is unnecessary to go into the correctness of the findings on the other issues. We hold that the suit was not maintainable.

13. For the aforesaid reasons, this appeal succeeds, it is allowed. The judgment and decree of the Court below are set aside suit is dismissed. No costs.

14. Appeal allowed.