

(1944) 09 PAT CK 0002

In the Patna High Court

Gouhari Samantaray

APPELLANT

Vs

Sarada Charan Das and Others

RESPONDENT

Date of Decision : 06-09-1944

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 92, 93

Citation : AIR 1945 Patna 125

Hon'ble Judges : Varma, J;Imam, J

Bench : Full Bench

Judgement

Imam, J.—This is an appeal by the defendant against the judgment of the District Judge of Cuttack, dated 18th June 1940, decreeing the plaintiffs' suit and ordering a scheme for the management of the religious endowment. The plaintiffs, having obtained the sanction of the Advocate-General u/s 92, Civil P. C. instituted the suit on 3rd October 1939, on various allegations against the defendant praying that accounts may be taken from him, a scheme for the management of the trust property may be settled placing the defendant under the control of a committee appointed by the Court, or, in the alternative, for the removal of the defendant owing to his being unfit for the purposes of managing the trust property. The plaintiffs asserted that the endowment in question was a public trust. The defendant, i.e., the appellant, denied the allegations of mismanagement and misconduct and pleaded that the suit should be dismissed as it was not maintainable, having regard to the fact that the Orissa Hindu Religious Endowments Act (IV of 1939) applied, and the District Judge had no jurisdiction to entertain the suit. He further denied that the endowment was a public trust, asserting that it was purely a private trust.

2. The Orissa Hindu Religious Endowments Act, 1939 (hereinafter referred to as the Act), was enforced on 4th November 1939, i. e., a little more than a month after the suit had been filed. It was urged on behalf of the appellant that the Act has a retrospective effect, and, having regard to its provisions, the District Judge had no jurisdiction to proceed further with the suit. The Act does not in express

terms state that it is retrospective. Prima facie that should be enough; but it has to be examined as to whether its provisions indicate clearly, the intention of the Legislature to give it a retrospective effect. By Section 4, the Act expressly repealed certain enactments, as mentioned therein but not Sections 92 and 93, Civil P. C. It further provided by Clause (iii) to Section 5:

Any remedy by way of application, suit or appeal which is provided by this Act shall be available in respect of proceedings under the said Acts pending at the time of the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act.

3. It is to be noticed that throughout the Act there is no mention that a suit pending u/s 92, Civil P. C., should be treated as a proceeding instituted under the Act. If the Legislature had intended that the Act should apply to pending actions u/s 92, Civil P. C., it would have so provided, as it did in the case of pending proceedings under the various Acts repealed by Section 4. Our attention, however, was drawn to Sub-section (2) of Section 54 of the Act, which states as follows:

Sections 92 and 93 and Rule 8 of Order 1 of Schedule 1, Civil P. C, 1908, shall have no application to any suit claiming any relief in respect of the administration or management of a religious endowment and no suit in respect of such administration or management shall be instituted, except as provided by this Act.

4. It is clear to my mind that what is provided by this Sub-section is no more than this, that, after the commencement of this Act, the provisions of Sections 92 and 93 and Rule 8 of Order 1, Civil P. C, shall have no application to any suit claiming relief in respect of the administration or management of a religious endowment, the reason being obvious, namely, that, after the commencement of the Act, proceedings relating to religious endowments in the province of Orissa would have to be instituted under the provisions of the Act itself. I am satisfied that what the Legislature intended was that there should be no room for the contention, having regard to the provisions of Sections 92 and 93 of the Code, that proceedings under the Act had still to receive the previous sanction of the Advocate-General before being instituted. In consonance with the entire scheme of the Act, it was further necessary for the Legislature to make it clear, that the powers given to the Court u/s 92 should no longer be applied in a manner other than that provided for by the Act. This is quite different to saying that by the provisions of Sub-section (2) to Section 54, the Legislature repealed the provisions of Section 92, Civil P. C, or that the Act was intended to be retrospective in its application. By Section 57 of the Act the Legislature provided that, where a religious endowment is governed by any scheme settled u/s 92, Civil P. C, such scheme shall be deemed to be a scheme settled under the Act and might be modified or cancelled in the manner provided by the Act. I am of the opinion that this section applies even to schemes settled u/s 92 in a suit instituted before the commencement of the Act, but decided after its coming into force. It was urged on behalf of the appellant that this section merely referred to

such endowments as were governed by schemes settled u/s 92 before the commencement of the Act. I cannot read that restriction into the words of Section 57 of the Act. Several other sections of the Act were referred to likewise. It is, however, not necessary to deal with them here, as I am satisfied that the Act was not an enactment relating merely to procedures. In many respects the Act enacts substantive law. It is well settled that where an enactment deals with mere procedure, it is generally retrospective unlike an enactment of substantive law, which is not generally retrospective. It is to be noticed that the present suit was instituted on 3rd October 1939, long before the Act came into force. The question is whether any rights had vested in the parties at that moment, which rights were affected by the Act, even if the Act enacted merely a law of procedure ? It is clear that the plaintiffs or the defendant had, at the time the suit was filed, a right of appeal to the High Court. Under the provisions of the Act that right of appeal was affected. Was that right a vested right? I think, there can be no doubt that it was. As long ago as 1905, in *Colonial Sugar Refining Co., Ltd. v. Irving Colonial Sugar Refining Co. Ltd. V. Irving* (1905) 1905 A. C. 369 Lord Macnaghten stated:

As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well known general principle that statutes are not to be held to act retroactively unless a clear intention to that effect is manifested.

5. It seems to me that there can be no room for doubt that the Act involved something more than a mere matter of procedure. If the Act was to be regarded as retrospective, it deprived a suitor in a pending action, the right of appeal to a specified superior tribunal. It was urged on behalf of the appellant that the Act itself provided for an appeal and a second appeal. It is necessary to state that, according to the provisions of the Act, such suits as have to be instituted under the Act, lie in the lowest Court of civil jurisdiction, i. e., before the Munsif, and by Section 65, right of appeal, presumably, to the District Judge, and also a right of second appeal has been allowed. There can be no doubt that the right of a first appeal to the High Court is a more valuable right than that of a second appeal. In

this case the parties had vested in them the right of a first appeal to this Court, and, if, by the Act, that right was abolished, and the right of first appeal was transferred to a new tribunal, it would offend against the principle laid down by their Lordships of the Judicial Committee in the case just referred to. Reference may also be made to the decision of the Special Bench of the Calcutta High Court in *Sadar Ali and Others Vs. Doliluddin Ostagar*, followed by a Full Bench of this Court in *Banwari Gope v. Emperor A. I. R. 1943 Pat. 18* where it has been held that the date of the institution of the suit in each case is the determining factor with reference to the right of appeal. There had been an amendment of the Letters Patent of the Calcutta High Court, by which it was necessary to obtain the leave of the single Judge, sitting in second appeal, before an appeal by way of Letters Patent could be permitted. The amendment had taken place in 1927 and came into effect on 14th January 1928. The second appeal was actually heard after 14th January 1928. The question arose as to whether the losing party in the second appeal had to obtain the leave of the Judge, who decided against him, before he could file a Letters Patent appeal. Their Lordships had no hesitation in deciding that, although the second appeal was heard after the amendment of the Letters Patent, the right of appeal had vested in the party long before, namely, at the date of the institution of the suit, and that such right was not conditional upon obtaining leave of the Judge who heard the second appeal. It was accordingly held that the amendment to the Letters Patent was not retrospective. In AIR 1941 16 (Federal Court) Sulaiman J. observed:

Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending suits. Courts have undoubtedly leaned very strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so, It is a well recognised rule that statutes should, as far as possible be so interpreted, as not to affect vested rights adversely particularly when they are being litigated. When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed. Ambiguities in it should not be removed by Courts, nor gaps filled up in order to widen its applicability. It is a well established principle that such statutes must be construed strictly, and not given a liberal interpretation.

6. In view of the decisions of the Privy, Council and the Calcutta High Court and the observations of Sulaiman J. in the Federal Court, I am of opinion that before it could be held that the Act is retrospective, it must be shown that the necessary intendment appears in its provisions to make it so, when the Act does not in express terms provide that it is retrospective. As I do not find the necessary intendment in it, I must construe its provisions strictly and hold that it has no application to suits u/s 92, Civil P. C, which were pending at its commencement. It was urged that the learned District Judge was wrong in coming to the conclusion that the endowment in question was a public trust. It was pointed out that their Lordships of the Judicial Committee have stated that the mere fact that

Hindu worshippers have been freely admitted to a temple does not prove that the temple is public. I do not think that the District Judge proceeded to decide this issue on such considerations. He examined the evidence and came to the conclusion that the plaintiffs' evidence, that it was a public trust, was acceptable, and that that conclusion was fully supported by the admission of the defendant himself in a previous suit. Some question has been raised before us that the previous statements of the defendant were wrongly admitted into evidence. It is not necessary to decide that point, because the defendant himself admits that he stated on the previous occasion that the temple was a public one; but he asserted that what he had stated was false. According to his own statement, however, he did join the plaintiff of that suit in seeking a declaration from the Court that the trust was a public trust. In that suit, as far back as 1919, the District Judge of Cuttack upheld the Subordinate Judge's decision that the temple in question was a public temple. There are, however, independent of these considerations, statements of defendant's witnesses themselves, which go a long way to prove that the trust is a public trust. (After considering the statements, of the defendant's witnesses his Lordship proceeded.) The finding of the learned District Judge on this issue is correct.

7. There can be no doubt that the learned District Judge was right on an examination of the various circumstances and the allegations made against the defendant in coming to the conclusion that he was not a fit person to manage the trust property by himself. He was, accordingly, justified in drawing up the scheme for the management of the property. Indeed, no serious argument was advanced before us with reference to the findings of the learned District Judge in this regard. If the appellant feels that the scheme should be modified, altered or cancelled, Section 57 of the Act provides the remedy. I would, accordingly, affirm the decision of the Court below and dismiss the appeal with costs.

Varma, J.

8. I agree.