courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 16/09/2026

(2002) 07 KAR CK 0003

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 942 of 2000 (OS)

H.M. Basamma (Deceased) by L.Rs. — APPELLANT

Vs

The Commissioner of Hindu Religious and Charitable Endowments, Bangalore and Another — RESPONDENT

Date of Decision : 12-07-2002

Acts Referred:
Madras Hindu Religious and Charitable Endowments Act, 1951 — Section 57, 61

Citation : (2002) 4 KarLJ 535 : (2003) 1 KCCR 18 SN

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : M.R. Achar, for S. Shadaksharaiah, for the Appellant; B. Anand, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal by the plaintiffs in O.S. No. 28 of 1991 on the file of the Civil Judge, Senior Division, Bellary is directed against the judgment and decree dated 21-9-1999.

2. The facts of the case in brief leading up to this appeal are as follows: The parties would be referred to with reference to their rank before the Trial Court.

O.S. No. 1 of 1977 was filed by H.M. Basamma before the District Judge, Bellary seeking for a declaration that the "Samadhi" of Jade Thatha situate at Emmiganur Village in Bellary Taluk, colloquially called as "Shri Jade Thatha Temple", is not a "temple" within the meaning of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter called as ''Act'') and not subject to the purview of the Act and for cancelling the order, if necessary, passed by the second defendant, Deputy Commissioner, Hindu Religious an ''Charitable Endowments, Bellary, dated 24-8-1970 as being nullity and void and without jurisdiction and for an injunction restraining the defendants and their officers under the Act from interfering with the management of the same by the plaintiff

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hm-basamma-deceased-by-lrs-…

and her successors. It was averred in the plaint that Jade Thatha who was saintly person and was respected by many was the ancestor of the plaintiff. He died in the year 1902 and his dead body was buried in the land bearing Sy. No. 1329-A/1 (Item No. 1 of the plaint schedule) of Emmiganur Village in Bellary Taluk belonging to the family of one M/s. Shri Reddera Deva Reddy Gowda and Thimmang Gowda of that village. In view of the request made by the members of the family of the plaintiff and their ancestors, having regard to the reverence and sentiments they had for the deceased Jade Thatha, the owners of the land bearing Sy. No. 1329-A/1 (Item No. 1 of the plaint Schedule) executed a registered gift deed dated 6-9-1916 in the individual name of the plaintiffs husband who was then a minor represented by his guardian Sri Channaveeraiah, father-in-law of the plaintiff. In view of the sentimental affection of the parties, the donors put a condition in the said gift deed that the donee should enjoy the land from generation to generation, using the income from the land to perform poojas connected with the tomb of the deceased. There was change of patta in the name of the donee. The plaintiffs husband and after his death, the plaintiff being in possession and enjoyment of the said land which has a tomb therein of the deceased, even till today have been performing pooja and they have also put up buildings since few years being residential quarters of the plaintiff and her family and a tomb has also been constructed over the grave of the deceased. It is further averred that Item Nos. 2, 3 and 4 of the Schedule property were purchased by one Sanna Jadayya, the brother of the father-in-law of the plaintiff under a document dated 15-6-1944 for a consideration of Rs. 200/- and Item No. 3 of the Schedule has now become wet and after the death of Sanna Jedayya, his widow Sanna Basamma executed a gift deed dated 18-5-1950 bequeathing these properties in favour of the plaintiff personally. As such, the plaintiff has become the absolute owner of Item Nos. 2, 3 and 4. Item No. 5 of the Schedule property is the land gifted orally to the plaintiff and she has been personally in possession and enjoyment of the same in her own right. The patta has been transferred in her name. She has perfected her title by adverse possession and the donors do not make any claim in respect of the property. It is further averred that Samadhi or tomb of Jade Thatha in Item No. 1 of the Schedule property is not a temple nor has there been any endowment or dedication of any property to the tomb, much less, to the Samadhi. It is further averred that there is neither any temple nor any endowment to any charitable or religious purpose within the purview of the Act and wherefore the provisions of the Act are not applicable regarding the management of the said tomb and the properties mentioned in the Schedule to the plaint. It is further averred that some of the residents of Emmiganur Village in Bellary Taluk appear to have put in an application before the second defendant, Deputy Commissioner, Hindu Religious and Charitable Endowments, Bellary alleging the tomb as a temple coming within the purview of the Act and also alleging mismanagement of the funds of the tomb colloquially called as "Jade Swamy Temple" and on such complaint an order was passed by the second defendant on 24-8-1970 holding that it was a temple coming within the purview of the Hindu Religious and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hm-basamma-deceased-by-lrs-…

Charitable Endowments Act and directed the Assistant Commissioner, Hindu Religious and Charitable Endowments, Bellary to take suitable steps for the better management of the institution as per rules and further held that the plaintiff was the hereditary Archaka-cum-Trustee of the said temple. It was further averred that taking advantage of the said order some of the respondents of the village of Emmiganur inimically disposed towards the plaintiff have been egging the Assistant Commissioner, Hindu Religious and Charitable Endowments, Bellary to take over the management of the temple itself and they are bent upon depriving the plaintiff and wreak their personal vengeance and wherefore the suit for declaration as stated above. It is further averred that the order of the Deputy Commissioner, Hindu Religious and Charitable Endowments, Bellary is void and without jurisdiction as the Act is not applicable to the suit schedule property which is a tomb of a dead man and not a temple and the plaintiff is obliged to file this suit to have declaration that the order of the second defendant treating it is a "temple" is without jurisdiction, null and void and that the alleged "temple" (tomb) of Jade Thatha has no endowments at all. It was further averred that the cause of action for the suit arose on the date of the alleged order of the second defendant dated 24-8-1970 and it is a recurring cause of action as the second defendant is purporting to enforce the order by calling upon the plaintiff to submit accounts and is exercising his authority under the Act by various notices from time to time, one of such notice being the one dated 29-4-1977.

3. The second defendant filed written statement contending that the averment made in the plaint as to whether Jade Thatha was the ancestors of the plaintiff and that his body was buried in Sy. No. 1329-A/1 (Item No. 1 of the plaint Schedule) is not within the knowledge of the defendant and the averments made in the plaint are not correct. Averments made in paragraphs 5 and 6 of the plaint axe not correct and false. It was averred that Jade Thatha temple which exists in Item No. 1 of Schedule property belongs to Hindu Religious and Charitable Endowments Department. The said temple was included in the list of Hindu Religious and Charitable Endowments Department as per the order of the second defendant dated 24-8-1970 and in view of the said order the Assistant Commissioner, Bellary has to take stops for the improvement of the institution as per the rules. The averment made in paragraph 9 of the plaint were denied as not correct and it was averred that the Assistant Commissioner is bound to submit budget and also bound to take action in accordance with the provisions of the Act and the Rules in view of the order dated 24-8-1970 and as a matter of fact the plaintiff has paid contribution to the Department up to Fasli 1390. It was further averred that the order was passed on 24-8-1970 by the Deputy Commissioner and the suit is barred by time and there is no cause of action for the suit and wherefore the suit is liable to be dismissed.

4. The plaintiff sought for amendment of the plaint to include the additional prayer for a declaration that Jade Thatha Samadhi of Sri Jade Thatha temple is a private institution belonging to the plaintiff and her family and to hold that the action of the second defendant in demanding the plaintiff to render accounts for

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hm-basamma-deceased-by-lrs-…

the alleged collections made during the Shravana Masa and Karthika Masa as illegal.

5. The learned District Judge dismissed the suit holding that then was no cause of action for the plaintiff to file the suit as the plaintiff had not preferred any appeal against the order passed by the Deputy Commissioner on 24-8-1970 and since the cause of action for filing the suit arose only on passing of the order by the Deputy Commissioner, in the absence of any appeal against the order passed by the Deputy Commissioner u/s 57 of the Act there was no cause of action for the suit filed u/s 62 of the Act and wherefore the suit was liable to be dismissed and accordingly dismissed the suit by order dated 31-1-1978.

6. Being aggrieved by the said dismissal of the suit, the plaintiff preferred R. F. A. No. 116 of 1978 on the file of this Court and this Court by order dated 22-6-1990 held that the learned District Judge had no jurisdiction to entertain the suit and wherefore the impugned order of dismissal of the suit was set aside and the learned District Judge was directed to return the plaint to the plaintiff for presentation to the appropriate Court and thereafter the plaint was presented before the learned Civil Judge, Bellary and numbered as O.S. No. 28 of 1991.

7. The following issues were framed in O.S. No. 28 of 1991:

1. Does plaintiffs 1(a) to (c) prove that Jade Thatha temple of Emmiganur is not the temple within the meaning of Madras Hindu Religious and Charitable Endowments Act, 1951?

2. Does plaintiffs 1(a) to (c) prove that the suit property including Gaddige of Jade Thatha are their personal properties and they have got right, title, interest over it?

3. Does plaintiffs 1(a) to (c) prove that the order passed by the 2nd defendant dated 24-8-1970 is illegal and not binding upon them?

4. Does plaintiff prove that defendants caused interference to them in the enjoyment of the suit property to them as averred in the plaint?

5. Does plaintiffs 1(a) to (c) prove cause of action to file this suit as averred in the plaint?

6. Does plaintiffs 1(a) to (c) prove that they are entitled for the declaration as prayed?

7. Does plaintiffs 1(a) to (e) prove that they are entitled for the injunction prayed against the defendants?

8. Does defendants prove that the suit is barred by time as contended in the written statement?

9. What order or decree?

8. The plaintiff died during the pendency of the proceedings and her legal

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hm-basamma-deceased-by-lrs-…

representatives were brought on record. One of the legal representatives of the plaintiff was examined as P.W. 1 and P.Ws. 2 to 6 were examined and Exs. P. 1 to P. 13 were got marked. On behalf of the respondents, the Assistant Commissioner, Hindu Religious and Charitable Endowments was examined as D.W. 1 and Exs. D. 1 to D. 8 were got marked.

9. The learned Civil Judge after hearing the contentions of the learned Counsels appearing for the parties by his judgment dated 21-9-1999 answered Issues 1 to 7 in the negative and Issue 8 in the affirmative and accordingly dismissed the suit of the plaintiff. Being aggrieved by the said judgment and decree dismissing the suit of the plaintiff, the legal representatives of the plaintiff have preferred this appeal.

10. I have heard the learned Counsel appearing for the appellants and the learned High Court Government Pleader appearing for the respondents.

11. Having regard to the contentions urged, the points that arise for determination in this appeal are:

1. Whether the learned Civil Judge was justified in holding that the suit filed by the plaintiff was barred by time?

2. Whether the learned Civil Judge was justified in holding that there was no cause of action for filing the suit and wherefore the suit was liable to be dismissed?

3. Whether the learned Civil Judge was justified in answering the Issues 2, 4, 6 and 7 in the negative against the plaintiff and whether the finding on the said issues calls for interference in this appeal?

4. What order? and I answer the above points for determination as follows:

1. In the affirmative;

2. In the affirmative;

3. In the negative;

4. As per the final order for the following:

REASONS

12. Points 1 to 4.--These points are considered together since they are interconnected and to avoid repetition.

The suit of the plaintiff was filed u/s 62 of the Act read with Order 7, Rule 1 and Section 26 of the Civil Procedure Code. The scope of the suit filed u/s 62 of the Act has been considered by this Court in Commissioner Vs. Committee Management of the Jeeva Samadhi of Sri Yerriswami Tata, , wherein this Court has observed as follows:

"12. Section 62 provides for a suit being filed in the Court as defined in Sub-

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hm-basamma-deceased-by-lrs-…

section (6) of Section 6 extracted above. Such a suit has to be filed within 90 days from the date of the receipt of the order made. The suit to be filed as contemplated u/s 62 is of a special nature and the only relief that can be granted by the Court is to modify or cancel such an order.

17. As extracted above, the suit u/s 62 is a special suit under the statute. Unlike the suits under general law Court has no competence to grant relief other than the one contemplated by the section. The limited power of the Court is to modify or cancel the orders of the Commissioner u/s 61".

It is clear from the above decision that the only scope of the suit filed before the learned Civil Judge, was as to whether the order passed by the Deputy Commissioner dated 24-8-1970 required any modification or called for cancellation. The Trial Court has held that the order was passed on 24-8-1970 and the suit was filed on 15-11-1977. u/s 62 of the Act the suit has to be filed within a period of 90 days from the date of receipt of the order by the party and wherefore the same is barred by time. The learned Civil Judge has also held that there was no cause of action for the plaintiff to file the suit under the provisions of Section 62 of the Act.

13. The main contention of the learned Counsel appearing for the appellants is that the order dated 24-8-1970 is a nullity, it is a void order as the order has been passed in gross violation of the provisions of Sections 57 to 61 and 95 of the Act and the Rules framed thereunder and that the cause of action is continuous one and demand was made every year for the payment of contribution and wherefore according to the averments made in the plaint, the cause of action arose on 29-4-1977 when notice was issued calling upon the plaintiff to submit accounts. The learned Counsel appearing for the appellants further submitted that since the order dated 24-8-1970 is a nullity and void no declaration is required in that behalf and only as a matter of abundant caution suit has been filed for declaration that it is nullity. In support of his contention, he has relied upon the decisions in Union of India (UOI) Vs. T.R. Varma, , Nawabkhan Abbaskhan Vs. The State of Gujarat, , State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, and Jabbalpore Electric Supply Co. Ltd. Vs. The Madhya Pradesh Electricity Board and Others,

It is clear from the above decisions relied upon by the learned Counsel appearing for the appellants that it has been clearly laid down in the said decisions that if the order is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court to declare it to be so. In the case of Jabbalpore Electric Supply Company Limited, supra, Division Bench of Calcutta High Court has held as follows:

"The distinction between the two has been repeatedly drawn. If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hm-basamma-deceased-by-lrs-…

more ado, though it is sometimes convenient to have the Court to declare it to be so. Any/every proceeding which is founded on it is also bad and incurably bad. But if an act is only voidable, then it is not automatically void. It is only an irregularity which may be waived. It is not to be avoided unless something is done to avoid it. There must be an order of the Court setting it aside, and the Court has a discretion whether to set it aside or not. It will do so if justice demands it but not otherwise. Meanwhile it remains good and a support for all that has been done under it".

Same principles have been reiterated in the other decisions relied upon by the learned Counsel appearing for the appellants.

14. The learned Counsel appearing for the appellants submitted that the order passed without jurisdiction is a nullity and its validity could be set up wherever and whenever it is sought to be enforced. It is well-settled that order though not according to law is binding and conclusive between the parties until it is set aside in appeal or revision. All invalid, improper or even erroneous orders would not be a nullity. In the present case, in view of the powers vested with the Deputy Commissioner u/s 57 of the Act, order cannot be said to be without jurisdiction and nullity. Deputy Commissioner has power to decide as to whether a particular institution is religious institution and as to whether a person is a hereditary trustee. The contention of the learned Counsel appearing for the appellants in the present case is that the order dated 24-8-1970 is erroneous and illegal for non-compliance with the procedure prescribed u/s 95 and Rules framed thereunder and order is not passed in accordance with law. Wherefore, the order dated 24-8-1970 cannot at all be said to be a nullity and it would only be an order not passed in accordance with law which is liable to be set aside in appeal or suit as prescribed under the Act within the period prescribed in Sections 61 and 62 of the Act. Wherefore, the contention of the learned Counsel that the order dated 24-8-1970 is a nullity and validity can be set up at any time whenever sought to be enforced cannot be accepted. It is clear from the perusal of the order dated 24-8-1970 that the said order was passed after giving opportunity to the parties. The parties were represented by their Counsels before the Deputy Commissioner and the order has been passed after hearing the arguments of the Counsels appearing for the parties and wherefore the impugned order cannot be said to be passed in violation of principles of natural justice and mere fact that there is alleged violation of some of the provisions of the Act would not by itself render the order of the Deputy Commissioner a nullity and it would only be an irregularity or illegality which is liable to be set aside, more so, when a provision has been made in the Act for preferring appeal u/s 61 of the Act by any person who is aggrieved by any order passed by the Deputy Commissioner and thereafter there is remedy of filing the suit and appeal to the High Court u/s 62 of the Act and Section 96 of the Act clearly states that save as otherwise expressly provided in the Act no notification or certificate issued, order passed, decision made, proceedings or action taken, scheme settled, or other thing done under the provisions of this Act by the Government, Commissioner or

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hm-basamma-deceased-by-lrs-…

a Deputy Commissioner, an Area Committee, or an Assistant Commissioner, shall be liable to be questioned in any Court of law. Wherefore, it is clear that there is no merit in the contention of the learned Counsel appearing for the appellants that the order dated 24-8-1970 is a void order and is nullity in the eye of law. Moreover, it is also clear from the perusal of the oral and documentary evidence adduced by the parties that after passing of the order dated 24-8-1970, the plaintiffs have paid the contribution that was demanded and only after the demand was made for making contribution in the year 1977 the suit was filed and wherefore it cannot be said that the plaintiffs were not aware of the order that was passed by the Deputy Commissioner and suit is filed beyond the period of limitation prescribed u/s 62 of the Act.

15. It is also clear that there was no cause of action at all for the plaintiff to file a suit u/s 62 of the Act as the cause of action for filing the suit u/s 62 of the Act is the order passed by the Commissioner and the Act provides that an appeal can be filed against the said order u/s 61 of the Act. The plaintiff has not filed any appeal u/s 61 of the Act. However, the Seva Mandali had filed an appeal u/s 61 of the Act and the same was disposed off by the respondents in the order passed by the Deputy Commissioner as per Ex. P. 3 and Ex. P. 3 clearly shows that Basamma was arrayed as respondent and Basamma had not filed any appeal before the Commissioner and since she had not filed any appeal before the Commissioner, she had no cause of action to file the suit u/s 62 of the Act as the suit can be filed only against the order passed by the Commissioner u/s 61 of the Act. Wherefore, in the present case since no order was passed by the Commissioner at the instance of Basamma and she had not chosen to prefer any appeal before the Commissioner there is no cause of action for her to file the suit. Even assuming that the appeal which was filed by the Seva Mandali against the order passed by the Deputy Commissioner on 24-8-1970 gave a cause of action to the respondent in the said appeal to file the suit, the said appeal was disposed off on 28-2-1972 and wherefore the suit that was filed on 15-11-1997 was clearly barred by time and wherefore it is clear that the Trial Court was justified in holding that the suit filed by the plaintiff was barred by time and there was no cause of action for filing the suit and the said finding of the Trial Court is entitled to be confirmed having regard to the above said material on record.

16. It is clear from the provisions of Section 62 and the decision of this Court in Commissioner of Hindu Religious and Charitable Endowments case, referred to above that the scope of the suit u/s 62 is limited to find out as to whether the order passed by the Commissioner under the Act requires any modification or is liable to be cancelled and all other questions would be alien and beyond the scope of suit and in the present case the additional prayer that was sought for by the plaintiff for declaration that the suit properties are the personal properties and they have got right, title and interest over the same was not within the scope of suit filed u/s 62 of the Act. Even otherwise, it is clear that when the suit is dismissed on the ground that it is barred by time and there was no cause of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hm-basamma-deceased-by-lrs-…

action for filing the suit, the finding that is given by the Trial Court on Issues 2, 4, 6 and 7 on merits would not be binding between the parties as the result of the dismissal of the suit on the ground of limitation and want of cause of action would be confirmation of the order passed by the Deputy Commissioner, Hindu Religious and Charitable Endowments, Bellary, dated 24-8-1970 and wherefore any observation made and finding given on other issues would not be binding between the parties and would not operate as res judicata in any further proceedings between the parties. Accordingly, I answer the points for determination and pass the following order;

The appeal is dismissed. The parties to bear their own costs in this appeal.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/hm-basamma-deceased-by-lrs-…