(1958) 02 KL CK 0014

In the High Court Of Kerala

Case No : A.S. No. 34 of 1954 (M) .

Kelu Alias Mooppil Nair — APPELLANT

Vs

Commissioner, Madras Hindu Religious and Charitable Endowments and Another — RESPONDENT

Date of Decision : 14-02-1958

Acts Referred:

Citation : (1958) KLJ 419

Hon'ble Judges : M.S. Menon, J;G. Kumara Pillai, J

Bench : Division Bench

Advocate : K.N. Karunakaran, K.K. Sreedharan and T.P. Kelu Nambiar, for the Appellant;

Final Decision : Allowed

Judgement

M.S. Menon, J.—The plaintiff in O.S. No. 129 of 1951 of the Court of the Subordinate Judge of Tellicherry is the appellant before us. The suit sought the cancellation of a scheme settled by the Madras Hindu Religious Endowments Board in respect of the Sree Echom temple and its endowments or, in the alternative, a modification of the scheme in the manner and to the extent indicated in the plaint. The order settling the scheme was passed on 14-6-1951. The Act in force at the time the scheme was settled and till 30-9-1951 was the Madras Hindu Religious Endowments Act, 1926 (Act II of 1927). Sub-section(6) of section 57 of the Act provided that:

Every order of the Board settling, modifying or cancelling a scheme under this section shall be published in the prescribed manner"; and sub-section (7):

"The (trustee or any person having interest may within six months of the date of such publication institute a suit in the court to modify or set aside such order

. The suit was instituted within six months of the date of the order, on 15--10--951.

2. Sub-section (I) of section 5 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Act XIX of 1951), repealed the Madras Hindu Religious Endowments Act, 1926 (Act II of 1927). The new Act made no provision for a statutory body like the Madras Hindu Religious Endowments Board. It vested the administration of the religious and charitable institutions and endowments in a department of the Government, the Commissioner being the head thereof.

3. The classes of authorities created by section 7 of Act XIX of 1951 are-:

(a) the Commissioner;

(b) Deputy Commissioners;

(c) Assistant Commissioners; and

(d) Area Committees.

Section 58 of the Act invests the Deputy Commissioners with the power to frame schemes of administration, section 61 provides for an appeal to the Commissioner within one month from the date of the publication of the orders of the Deputy Commissioners and section 62 gives the aggrieved party a right to institute a suit against the order of the Commissioner "within ninety days from the date of the receipt of such order by him

. 4. As already stated the suit was instituted on 15-10-1951, that is, over a fortnight after Act XIX of 1951 came into force and the contentions of the 1st respondent, the Commissioner for the Madras Hindu Religious and Charitable Endowments, which have been accepted by the lower court are :

(1) that the suit is incompetent because no appeal had been filed before the Commissioner u/s 61 of Act XIX of 1951; and

(2) that the suit is barred by limitation as it had not been filed within the period of ninety days specified in section 62 of Act XIX of 1951.

Both these contentions are based on the assumption that the provisions governing the plaintiff''s right of suit are those embodied in Act XIX of 1951 and not those of Act II of 1927, an assumption which is clearly incorrect.

5. Sub-section (d) of section 8 of the Madras General Clauses Act, 1891 (Act I of 1891), provides that the repeal of an Act shall not:

affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed

and in view of the said provision we must hold that the plaintiff''s right to file a suit against the order of the Board dated 14-6-1951 was not lost when Act XIX of 1951 came into force and that his suit having been filed within the six months specified in sub-section (7) of section 57 of Act II of 1927 it was well within time and cannot be considered as barred by limitation.

6. On the date Act XIX of 1951 came into force, that is, on 30-9-1951, the plaintiff had a subsisting right to file a suit under sub-section (7) of section 57 of Act II of 1927 and there is nothing in Act XIX of 1951 which by express-words or necessary intendment abrogates or destroys that right. In 1957 K.L.T., 980 this Court had occasion to deal with the impact of subsequent legislation on a right of appeal. Koshi, C.J., said:

It is settled law that a right of appeal is a vested right and sic practice or procedure. It is equally well settled that a party in whose sic favour a vested right has accrued cannot be deprived of that right by supervening legislation unless the sic express words or by necessary intendment took away that right.

In the light of what is stated above this appeal has to be allowed and the case sent back to the lower court for a proper disposal according to law. Judgment accordingly. The respondent will pay the costs of the appellant in this Court. The costs in the trial court will be costs in the cause

