

(1996) 03 MAD CK 0144

In the Madras High Court

Case No : S.A. No's. 305 and 306 of 1996

K.M. Rathinam Nadar and other

APPELLANT

Vs

Arulmigu Hanumantharayar Bhajanai Madam alias Hanumar
Kovil

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 11
Evidence Act, 1872 — Section 11, 13, 35, 41, 42
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3)(b)

Citation : (1996) 03 MAD CK 0144

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : T.R. Muni, for Mr. T.M. Hariharan in both, for the Appellant; T.R. Rajagopalan, for Mr. T. R. Rajaraman in both, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—With the consent of both sides, the appeals are taken up for final disposal. These two appeals are preferred by the defendants in the two suits. They are tenants under the common plaintiff. The suits are for eviction. The plaintiff is a Bajanai Madam or Hanumar temple and is represented by its hereditary trustee. The main defence raised by the defendants in both the cases is that the suit is not maintainable in the Civil Court inasmuch as they are entitled to the benefits of Tamil Nadu Buildings (Lease and Rent Control) Act and according to them, the remedy of the plaintiff, if any, should be only by taking appropriate proceedings under that Act. That contention was sought to be met by the plaintiff by invoking the provisions of G.O. Ms. No. 2000, Home dated 16th August, 1976 exempting all buildings owned by a Hindu, Christian or Muslim religious public trusts and public charitable trusts from all the provisions of the said Act. The contention of the defendants is that the exemption will not apply as the trust is not a public trust and the temple is a private temple. The contention was negated by both the Courts and the defendants have preferred these

Second Appeals.

2. It is not in dispute that there was a proceeding between the trustee of the plaintiff trust on the one hand and the H.R. & C.E. Department on the other, in which the trustee claimed that the temple was a private one and would not come under the control of the department. That contention was negated by the trial court as well as this Court. The judgement of this Court is reported in K. Lakshmi Venkatrama Rao Vs. The Commissioner, Hindu Religious and Charitable Endowments, The court held that the temple is a "public temple" as defined in Section 6 (20) of the Hindu Religious and Charitable Endowments Act. The judgement of this Court has been marked as Ex.A-35 in the lower appellate Court. While the trial Court held that the judgment would be a judgment in rem and binding on the appellants herein, the appellate Court differed from the trial Court and held that it was not a judgment in rem. But the appellate Court held that it would have evidentiary value and could be considered along with the other evidence. The appellate Court proceeded to refer to Exs.A-18 to A-22 receipts issued by the department in acknowledgment of payment of contribution by the plaintiff and Exs.A-23 to A-26, the audit reports. It has also referred to Ex.A-27, the order passed by the Assistant Commissioner of Endowments with regard to the expenditure to be incurred, for a special worship. Relying on such documents, the appellate Court has found that there is ample evidence to prove that the temple is a public temple.

3. The contention on behalf of the appellants is that the judgment of this Court in K. Lakshmi Venkatrama Rao's case ((1972 2 M.L.J. 193) is not a judgment in rem and it is not binding on the appellants. According to learned counsel, it can only be a piece of evidence to be considered along with the other evidence on record. It is submitted that the burden is on the plaintiff to plead that the temple is a "public temple" and the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act will not apply in view of the exemption granted by G.O. Ms. No. 2000, Home dated 16th August, 1976. According to learned counsel, there is no such plea in the plaints in the present case; nor is any attempt made to establish by evidence the said fact. Learned counsel contends that the documents relied on by the lower appellate Court do only prove that the trustees were abiding by the judgment rendered by this Court in K. Lakshmi Venkatrama Rao Vs. The Commissioner, Hindu Religious and Charitable Endowments, and that was only an act in, pursuance of the judgment. It cannot be considered to be an independent act by which the temple can be treated as a "public temple".

4. I am unable to accept this contention. No doubt, there is no specific plea that the plaintiff is exempted from the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and, therefore, the suits are filed. But, the basis of the suits is itself that the Act is not applicable and the remedy of the plaintiff is only before the Civil Court. The plaintiff has, however, made it sufficiently clear in the plaint that the temple is a "public temple". In paragraph IV of the plaint, the fact that the trustee is recognised as hereditary trustee by the order of the Deputy

Commissioner, Hindu Religious and Charitable Endowments Department, Madurai in O.A. No. 8 of 1960 is mentioned. In paragraph VI it is stated that the temple is familiar and large number of public is worshipping the deity. Again it is stated that for making convenience to the worshipping public, the plaintiff has made arrangements for improvement in the premises of the temple. Thus, the averments in the plaint are more than enough to show that the suit is based on the premise that the temple is a "public temple".

5. The defendants have raised the plea that they are entitled to the benefits of the Tamil Nadu Buildings (Lease and Rent Control) Act and the suits are not maintainable. Hence the issue has arisen before the Court whether the suit is maintainable and whether the Rent Control Act is applicable to the suit property. Thus, the question whether the temple is a "public temple" or private temple has arisen for consideration. Both the parties were fully aware of the respective contentions and they had adduced evidence before the trial Court in support of their respective contentions.

6. Learned counsel for the appellants referred to the provisions of Section 10 (3) (b) of the Tamil Nadu Buildings (Lease and Rent Control) Act under which if the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is required for the purposes of the institution, apply to the Controller for an order directing the tenant to put the institution in possession of the building. That provision will not apply if G.O. Ms. No. 2000 dated 16-8-1976 is applicable to the suit temple. Hence, I have to decide whether the suit temple is a "public temple".

7. I have already pointed out that besides the judgment of the High Court in the earlier proceedings between the trustee and the Hindu Religious and Charitable Endowments Department, the documents filed by the plaintiff and relied on by the lower appellate Court show that it is a public temple. There is no necessity in law that a temple should be a "public temple" from the inception. Even if a temple is a private temple in the beginning, it can subsequently become a public temple by an act of the persons who claim ownership in that temple. In other words, it can be dedicated to the public at any stage. Even assuming for the sake of argument that in this case it was previously a private temple and it is open to the appellants to go behind the judgment of the High Court in the earlier proceedings and contend that it was a private temple, if at the time of this suit the evidence on record makes out that from the date of earlier judgment or subsequent to the date of judgment, the temple is treated as a public temple and the members of the public have been worshipping in the temple as a matter of right, then it will satisfy the definition of "public temple" contained in the Hindu Religious and Charitable Endowments Act. When such evidence has been considered by the lower appellate Court in Exs.A-18 to A-22, A-23 to A-26 and A-27, and a conclusion on the question of fact has been arrived at by the lower appellate Court, I do not think that there is any scope for interference by this Court in a Second Appeal. I can straightway say that the finding of fact arrived at

by lower appellate Court is supported by ample evidence on record and it is not a finding without any evidence. Hence, these two appeals can be dismissed on a very short ground that the findings of fact which have been supported by acceptable evidence, cannot be interfered with u/s 100 of the Code of Civil Procedure.

8. Learned counsel for the appellants having raised an interesting question of law, I think it necessary for me to consider the same in this judgment. That relates to the effect of the judgment rendered by this Court in the earlier proceedings as between the trustee and the department. There is no dispute that the judgement is not a judgement in rem. It cannot fall u/s 41 of the Evidence Act. But the question is whether it can be brought in u/s 42 of the Evidence Act or treated as a piece of evidence under any other provision of the Evidence Act. The question has been considered by a Full Bench of this Court in *The Secretary of State for India in Council Vs. Syed Ahmad Badsha Sahib Bahadur*, The question referred to the Full Bench was whether a judgment in an earlier proceeding was conclusive or binding on a person who was not a party thereto. The Full Bench answered the question in the negative, but expressed the opinion that such a judgment can only be used in evidence, even though it will not fall u/s 41 of the Evidence Act. The Full Bench has also observed that the judgment cannot be used for the purpose of preventing the other side from proving facts which he sets up.

9. In *Tripurana Seethapati Rao Dora Vs. Rokkam Vencanna Dora and Others*, , another Full Bench of this Court held that a judgement not inter-partes will not come within the language of Section 35 of the Evidence Act and it cannot be admitted in evidence under that Section.

10. In *Hem Chandra Bhaduri and Others Vs. Purna Chandra Sarkar and Others*, a single Judge of the Calcutta High Court held that a previous judgment which is not inter-partes is admissible in evidence u/s 43 of the Evidence Act read with Sections 11 and 13. He said that though such a judgment does not operate as res judicata, it is to be treated as evidence to be used for certain limited purposes and to be considered along with other evidence, if indeed any other evidence exists.

11. A Division Bench of this Court had occasion to consider the question whether a judgment declaring the character of a Trust but not inter-parties could be binding in a subsequent proceeding in *M.G. Narayanaswami Naidu and Another Vs. M. Balasundaram Naidu and Others*, It was held therein that the said judgment would have abundant evidentiary value and the Court in the subsequent litigation contesting the character of the trust must pay attention to it. The Bench referred to and relied on the judgment of the Full Bench in *The Secretary of State for India in Council Vs. Syed Ahmad Badsha Sahib Bahadur*, referred to above. As rightly pointed out by learned counsel for the appellant, the Full Bench in that case has not used the term "abundant evidentiary value". The Full Bench has only referred to the fact that such a judgment in an earlier

proceeding was not conclusive or binding on a person who was not a party thereto but it can be used in evidence and nothing more than that. But the Division Bench has interpreted that judgment as laying down the law that the judgment in the prior proceeding will have abundant evidentiary value.

12. My attention is drawn to the judgment of a Division Bench of the Bombay High Court in Ramaji Batanji Vs. Manohar Chintaman and Others, The Bench held that a judgment in another suit which is not inter-partes is not evidence to establish the truth of the matters decided in that judgment and that the evidence of fact arrived at on the evidence in one case is not evidence of that fact in another case. To the extent to which the said judgment of the Division Bench runs counter to the judgment of the Division Bench of this Court in M.G. Narayanaswami Naidu and Another Vs. M. Balasundaram Naidu and Others,), I am not in a position to accept the correctness of the dictum.

13. Another Division Bench of this Court considered the question whether an order passed in a proceeding u/s 57 (c) of the Tamil Nadu Hindu Religious and Charitable Endowments Act is a decision in rem, in Tirumalaisami Naicker Vs. Villagers of Kadambur and Another, . The Bench held that it is not a decision in rem so as to bind persons who are not parties to the proceedings.

14. Reference is made by learned counsel for the appellants to a judgment of a single Judge in Somasundaram Chetty v. Ganga Bai Ammal (87 L.W. 712). Though the learned Judge held that the writ petition before him was not maintainable, he went on to make some observations on the merits of the case, which related to the binding nature of a decision rendered in an earlier proceeding under the Hindu Religious and Charitable Endowments Act. I do not think it necessary to consider the said ruling in view of the finding of the learned Judge that the writ petition before him was not maintainable.

15. My attention is drawn to the judgement of the Supreme Court in State of Bihar Vs. Radha Krishna Singh and Others, The Court said that a judgment which is not inter partes is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the decree passed and the properties which were the subject matter of the suit. It was pointed out that the recitals in a judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.

16. Learned counsel for the respondent has drawn my attention to the judgment of the Supreme Court in Sahu Madho Das and Others Vs. Mukand Ram and Another, . That case related to construction of a Will. The Supreme Court held that where the Privy Council had construed certain document viz., a will, though the decision is not binding on a person not a party to that litigation, yet the decision operates as a judicial precedent. It is argued by learned counsel that in the present case, the judgment of the High Court in K. Lakshmi Venkatrama Rao Vs. The Commissioner, Hindu Religious and Charitable Endowments,) should be

construed as a judicial precedent, even if it is not a judgment in rem. In support of this proposition, learned counsel refers also to Virupakshayya Shandarayya Vs. Neelakanta Shivacharya Pattadadevaru, . The relevant portion of the judgment reads as follows:-

8. The above apart, what is more material is that the Privy Council of Jamkhandi State having held in an earlier proceeding that Shivalingayya was duly nominated and installed as Padadayya inasmuch as he had been so nominated by Shankarayya before his marriage, which is the only ground on which Shivalingayya's nomination has been held to be vitiated in the present proceedings by the High Court, we are of the firm view that the contrary conclusion arrived at in the present proceedings in favour of plaintiff does not deserve to be confirmed. It may be that principle of res judicata has no application, despite what has been stated in Explanation VI of Section 11 C.P.C., inasmuch as in the earlier proceeding the present plaintiff was not a party and Andanayya (the plaintiff therein) had not claimed possession of the property as Padadayya but as Charanti contending that as the office of Padadayya was lying vacant because of invalidity in the nomination and the installation of Shivalingayya, he had stepped into the shoes of Padadayya. There is, however, no denial that the foundation of the case of Andanayya was the infirmity in the nomination and the installation of Shivalingayya as Padadayya; and it is precisely this which the Privy Council had not accepted.

9. In the aforesaid premises, the judgment of the Privy Council, even though the same did not bind the plaintiff on the principle of res judicata, was definitely a relevant circumstance to be taken note of, because of what has been stated in Section 42 of the Evidence Act. What we, however, find is that the High Court had only referred to the earlier decision without examining the question as to whether law permitted a contrary view to be taken on the self same issue. According to us, the issue having been finally determined at the highest level, the same could not have been reexamined, which exercise, to start with, was undertaken even by a Civil Judge.

10. Shri Wad contends that even the defendants did not take such a stand throughout the litigation, which is apparent from the fact that they tried to establish their case de novo by leading fresh evidence. Though this is so, we are of the view that the defendants were wrongly advised and we have to set right the don't caused to the decision of the Privy Council. The only way available to us in this proceeding to do so is to restore the view that was taken by that high powered committee.

17. The above judgment of the Supreme Court places the matter beyond doubt. Even if the judgment of the High Court in the prior proceedings cannot be treated as a judgment in rem, it can certainly be treated as a precedent inasmuch as it decides the character of a temple. It should be noticed that the question whether a temple is a private or a public one is essentially between the persons who claim it to be private temple and the Hindu Religious and Charitable

Endowments Department. Once as between them the said question has been decided one way or other, that should be treated as a precedent in a subsequent case if the question arises between some third parties and one of the parties to the earlier proceedings.

18. In this case, I have already pointed out that there is ample evidence to support the finding of fact that it is a public temple and it can be also held that the judgment rendered by this Court in K. Lakshmi Venkatrama Rao Vs. The Commissioner, Hindu Religious and Charitable Endowments,) is a binding precedent.

19. In such circumstances, there is no merit in these appeals. They are dismissed. There will be no order as to costs. Learned counsel for the appellants prays for grant of certain time to vacate the property. Learned counsel for the respondent agrees that if affidavits of undertaking are filed some reasonable time, say three months, may be granted. The decrees passed in these proceedings shall not be executed for a period of three months from today, i.e., till the end of May 1996, if the appellant in each of these appeals files an affidavit in this Court on or before 11-3-1996 undertaking to vacate the respective portions on or before 31-5-1996 without driving the respondent to execution proceedings. If the affidavits are not filed within the time given above the appellants will not have the benefit of grant of time and it is open to the respondent to proceed with the execution proceedings.