

(1982) 03 KAR CK 0031
In the Karnataka High Court
Case No : W.P. 26439/81

Parameshwara Ganapathy

APPELLANT

Vs

Venkataramana Gopalakrishna and Others

RESPONDENT

Date of Decision : 10-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1982) 2 KarLJ 155

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. At Kekkar village, Honnavar Taluk, UK Dist., there is a Hindu temple called Sri Subramanyadev and Batte Vinayakdev. While the petitioner claims that the said temple is a private temple, respondents 1 to 4 claim that the same is a Hindu public temple and has been registered as a public trust under the provisions of the Bombay Public Trust Act of 1950 (Bombay Act No. 29 of 1950) (hereinafter referred to as the "Act") which is still in force in the Bombay Karnataka area.

2. On 9-10-1980 respondents 1 to 3 made an application before the District Court, UK, under S. 17 of the Act to appoint them as the trustees of the said temple. On the said application made by respondents 1 to 3, the Court issued a public notice, considered the affidavit filed by one of the applicants and made an order on 15-1-1981 (Annexure-A) appointing them as the trustees of the temple.

3. On 13-2-1981 the petitioner made application before the District Court under Or. 9, R. 13 of CPC to set aside its earlier order, afford him an opportunity to file his objections to the application made by respondents 1 to 3 and then dispose of the same on merits which was naturally opposed by respondents 1 to 3. On a consideration of the objections filed by respondents 1 to 3, the learned District Judge, taking the view that the said application made by the petitioner was not maintainable, has rejected the same by his order dated 3-8-1981 (Annexure-B). In this petition under Arts. 226 and 227 of the Constitution, the petitioner has challenged the order dated 15 1-1981 (Annexure A) made by the District Court on diverse grounds.

4. Sri B.V. Acharya, learned counsel for the petitioner at the forefront contends that the District Judge had no jurisdiction to entertain the application made by respondents 1 to 3, and make the order dated 15-1-1981 as such an application can only be made before the Charity Commissioner and not the District Court.

5. Sri T.S. Ramachandra, learned counsel for respondents 1 to 3 and Sri V.G. Dharmakumar, learned High Court Government Pleader appearing for respondents 4 and 5 sought to justify the impugned order.

6. As early as on 12 2 1954 the Asst, Charity Commissioner, Belgaum Division has registered the temple as a public trust under the Act. So long as the said certificate of registration is not annulled, the temple will continue to be a public trust within the meaning of this term occurring in the Act. In this petition, the petitioner has not challenged the registration made by the Asst. Charity Commissioner. When that is so, this Court has to proceed on the assumption that the temple is a public trust within the meaning of that term occurring in the Act.

7. S. 47 of the Act which is in force in Bombay Karnataka area, by virtue of the provisions of the State Reorganisation Act of 1956 (Cent. Act No. XXXVII of 1950) empowers the District Court of the area to entertain the application for appointment of trustees. Any amendment by the Maharashtra legislature to the said Act subsequent to 1-11-1956 taking away the jurisdiction of the District Court and conferring that jurisdiction on the Charity Commissioner, that is made the basis for urging that the District Court had no jurisdiction, cannot be depended upon by the petitioner, the District Court or this Court. S. 47 of the Act as in force in the Bombay Karnataka area of the State exclusively empowers the District Court to entertain an application for the appointment of trustees. In this view the application made by respondents 1 to 3 before the District Court was undoubtedly maintainable and the order made by the learned District Judge on that application was within his jurisdiction.

8. An order made by the District Court under S. 47 of the Act is declared to be a decree of that Court and that decree is made appealable to this Court (vide S. 47(6) of the Act). As the first order made by the learned District Judge is a decree which is appealable to this Court, this Court will not be justified in interfering with the same in a proceeding under Arts. 226 and 227 of the Constitution. In this view, I decline to interfere with the impugned order.

9. As the second order of the District Court is not challenged by the petitioner, it is not necessary for me to express my opinion on the correctness of the same and the same is left open.

10. In the light of my above discussion, I hold that this is not a fit case for my interference. I, therefore, decline to interfere with any of the orders and discharge the rule issued in the case. But, in the circumstances of the case, I direct the parties to bear their own costs.

11. Sri V.G. Dharmakumar, is permitted to file his memo of appearance for

respondents 4 and 5 within 15 days from this day.