

(2016) 04 KL CK 0057

In the High Court Of Kerala

Case No : Ex.S.A. No. 10 of 2015. (Against The Judgment In A.S. No. 81 of 2006 of Sub Court, Kochi-5 Dated 31.01.2015. Against The Judgment In E.A. No. 388 of 2006 In E.P. No. 96 of 2006 In O.S. No. 287 of 1994 of Principal Munsiff Court, Kochi-5 Dated 04.11.2006)

Phalgunan N.K.

APPELLANT

Vs

Wilson Joseph

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2016) 4 CivCC 236 : (2016) 4 CivilLJ 918 : (2016) 3 HLR 130 : (2016) 3 ILRKerala 222 : (2016) 3 KerLJ 702 : (2016) 3 KHC 603 : (2016) 3 KLT 757

Hon'ble Judges : P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : Sri. S. Sreekumar, Senior Advocate, Sri. C.P. Peethambaran and Smt. Mini. V.A., Advocates, for the Appellant; Sri. S. Vinod Bhat and Sri. Legith T. Kottakkal, Advocates, Sri. Denizen Komath, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Suresh Kumar, J.—This second appeal arises from the proceedings in execution of the decree in O.S.No.287 of 1994 on the file of the Munsiff Court, Kochi. The predecessor of the first respondent was the plaintiff in the suit. The suit was one for recovery possession and injunction. The plaintiff A schedule property measuring 29 cents belonged to the plaintiff. The mother-in-law of the first defendant namely, Iyya was a kudikidappukari in the said property. The plaintiff B schedule property which is a portion of the plaintiff A schedule property measuring 10 cents was accordingly given by the plaintiff to Iyya towards kudikidappu. The plaintiff C schedule property, hereinafter referred to as "the suit property", measuring 19 cents was the property remaining with the plaintiff after settling the kudikidappu claim of Iyya. According to the plaintiff, while Iyya was residing in the plaintiff A schedule property, her husband used to worship a few

stones placed by him in the suit property. It was the case of the plaintiff that after the death of the husband of Iyya, the members of Pulaya community to which Iyya belonged, continued the worship after consecrating a deity for the said purpose. It was also the case of the plaintiff that of late, the members of the Pulaya community formed an association called, "Sree Bhayyakkara Bhagavathy Dharmodharani Pulaya Samajam" and took control of the suit property. Defendants 2 and 3 in the suit were the office bearers of the said association. The suit was filed, in the circumstances, for recovery of possession of the suit property from the defendants after removing the structures erected by them for worship in the property. Since the suit property was under the control of the association referred to above, defendants 2 and 3 were sued in their representative capacity for and on behalf of all the persons interested in the said association, as provided for under Order I Rule 8 of the Code of Civil Procedure.

2. The first defendant remained ex-parte. Defendants 2 and 3 contested the suit contending, among others, that a temple has been built in the suit property about 50 years ago and since the establishment of the temple was with the knowledge and consent of the plaintiff, the plaintiff is not entitled to the reliefs claimed in the suit.

3. The trial court rejected the contentions raised by the defendants and decreed the suit. The operative portion of the judgment of the trial court reads thus:

"In the result, the suit decreed in part directing the defendants and their men to remove the "D" schedule structures from the "C" schedule and they are restrained from using "C" schedule as a place of public worship and conducting festivals thereon and committing waste in the property and they are also restrained by a permanent prohibitory injunction from causing any obstruction to the plaintiffs peaceful possession and enjoyment of the plaint "C" schedule property. Plaintiff is entitled to recover possession of the "C" schedule after removing "D" schedule structure in the property on the strength of the plaintiff's title."

4. Thereupon, the plaintiff initiated proceedings for execution of the decree obtained by him. In the execution petition, the appellants filed E.A.No. 388 of 2006 seeking an order declaring that the suit property belongs to Sree Bhayyakkara Bhagavathy and the decree obtained by the plaintiff is, therefore, not executable. The case set up by the appellants in the said application was that the deity consecrated in the temple in the suit property has perfected title to the suit property by adverse possession and limitation and that since the deity was not made a party to the suit, the decree is not binding on the deity and hence not executable. It is also the case of the appellants that they are worshippers of the deity in the suit property and they have filed the said application on behalf of the deity. The plaintiff died pending the execution petition and consequently, the first respondent, his son got himself impleaded in the execution petition and pursued the same. The application, in the circumstances, was opposed by the first respondent contending that in so far as the suit was instituted in a

representative capacity against the defendants, the decree is binding on the appellants also. The execution court dismissed E.A.No.388 of 2006 accepting the contention of the first respondent that the decree binds all including the appellants. Though the appellants challenged the decision of the execution court in appeal, on a reappraisal of the materials on record, the appellate court confirmed the decision of the execution court holding that the decree binds the appellants also and therefore E.A.No. 388 of 2006 is not maintainable. Hence this Execution Second Appeal.

5. Heard the learned Senior Counsel for the appellants and the learned counsel for the first respondent.

6. The learned Senior Counsel for the appellants contended that there has been a dedication of the suit property in favour of the deity consecrated in the temple built therein and that since the decree in respect of the suit property has been obtained without impleading the deity, the decree is not binding on the deity and hence not executable. Relying on the decision of the Apex Court in *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi* (AIR 1960 SC 100), the learned Senior Counsel also contended that merely for the reason that the suit was a representative action against the defendants, it cannot be said that the decree binds the deity.

7. Per contra, relying on the decision of the Apex Court in *Shiromani Gurudwara Prabandhak Committee Amritsar v. Shri Som Nath Dass and others* (AIR 2000 SC 1421), the learned counsel for the first respondent contended that the deity in the temple in the suit property cannot be attributed the status of a juristic person. According to the learned counsel, E.A.No. 388 of 2006, in the circumstances, can be considered only as an application filed by the appellants as the worshippers of the temple and since the appellants are bound by the decree passed in the representative action, the application is not maintainable. The learned counsel for the first respondent also pointed out that even if it is assumed that the deity consecrated in the temple in the suit property is a juristic person, the decree being one passed in a representative action, the same binds the deity also.

8. In reply to the contention that the deity consecrated in the temple in the suit property cannot be attributed the status of a juristic person, the learned Senior Counsel for the appellants, relying on the decision of the Apex Court in *Ram Jankijee Deities v. State of Bihar* [(1999) 5 SCC 50] contended that when a deity having a visible image is consecrated by performing all the requisite ceremonies, it acquires the status of a juristic person.

9. Having heard the learned counsel for the parties on either side, the following questions are formulated for decision in the second appeal:

(i) Whether a deity consecrated in a property which does not belong to it be attributed the status of a juristic person?

(ii) Whether a decree for recovery of possession and injunction obtained in a representative action in respect of a property binds the deity consecrated therein?

(iii) Have the appellants made out a case of dedication of the suit property in favour of the deity consecrated therein so as to enable the deity to claim independent title to the suit property?

10. Question (i): One of the cardinal principles of idol worship is that whichever God the devotee might choose for the purpose of worship and whatever image he might set up and consecrate with the said object, the image represents the God and none else. The idol is the image of the deity. (See B.K.Mukherjee - Hindu Law of Religious and Charitable Trusts - Vth Edition). To constitute a temple, it is enough if it is a place of public religious worship and if the public believe in its religious efficacy irrespective of the fact as to whether there is an idol or a structure or other paraphernalia. In other words, if the devotees or the pilgrims feel that there is some superhuman power at a particular place which they should worship and invoke its blessings, the place constitutes a temple. [See Poohari Fakir Sadavarthy of Bondilipuram and another v. Commr., Hindu Religious and Charitable Endowments (AIR 1963 SC 510)]. Under the Hindu Law, it is beyond dispute that a deity is a juristic person capable of receiving gifts and holding properties. Since the dispute in this case is as to whether the deity consecrated at a particular place is a juristic person, the concept of juristic person is to be understood. With the development of society where the interaction of individuals fell short to upsurge the social development, the concept of juristic person was devised and created by human laws for the purposes of the society. Corpus Juris Secundum, Vol.6, Page 778 explains the concept of juristic persons/artificial persons thus:

"Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic."

A juristic person can be any subject matter other than a human being to which the law attributes personality for good and sufficient reasons. Juristic persons being the arbitrary creations of law, as many kinds of juristic persons have been created by law as the society require for its development. (See Salmond on Jurisprudence 12th Edition Pages 305 & 306). A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. A Hindu deity is also one of the juristic persons thus created by law to subserve the religious faith of the society. The aforesaid principles have been explained by the Apex Court in *Shiromani Gurudwara Prabandhak Committee Amritsar v. Shri Som Nath Dass and others* (supra). Paragraph 14 of the said judgment reads thus:

"14. Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became

inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for sub-serving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church hospital, gurudwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such."

Once recognised as a juristic person, the deity can receive gifts, hold properties and make use of its properties for its maintenance and also for the benefit of its followers. That does not however mean that the deity will have all the rights of a natural person. The rights and duties of the deity as a juristic person are only the rights and duties which the law conceived for the deity. In other words, the policy of the law behind the recognition of a Hindu deity as a juristic person is to enable the deity to receive gifts, hold properties and make use of its properties in the manner referred to above. If the concept of recognition of a Hindu deity as a juristic person is understood in the aforesaid manner, it cannot be said that merely for the reason that the deity is consecrated by a section of the public in a property which does not belong to it, the deity is not a juristic person. It is all the more so since, as noted above, the question as to whether a particular place is a place of religious worship or not is decided by ascertaining whether the public believe in its religious efficacy, notwithstanding whether there is an idol or structure or other paraphernalia. True, in a case of that nature, the deity may not acquire any right in the property in which it is consecrated, but that does not mean that the deity is not a juristic person. In the said view of the matter, even deities consecrated in properties which do not belong to it would become juristic persons for the purpose of receiving gifts, holding properties and managing its affairs. A different interpretation would result in chaos as regards the ownership of the properties gifted to such deities.

11. As noted above, it is placing reliance on paragraph 33 of the decision of the Apex Court in *Shiromani Gurudwara Prabandhak Committee Amritsar v. Shri Som Nath Dass and others* (supra), the learned counsel for the first respondent contended that an idol becomes a juristic person only when it is consecrated and installed at a public place for public at large. Paragraph 33 of the said judgment reads thus:

"33. Next it was the reason of the learned Judges that, if Guru Granth Sahib is a "Juristic Person" then every copy of Guru Granth Sahib would be a "Juristic Person". This again in our considered opinion is based on erroneous approach. On this reasoning it could be argued that every idol at private places, or carrying it with one self each would become a "Juristic Person". This is a misconception. An "idol" becomes a juristic person only when it is consecrated and installed at a public place for public at large. Every "idol" is not a juristic person. So every Guru Granth Sahib cannot be a juristic person unless it takes juristic role through its installation in a gurudwara or at such other recognised public place."

The issue arose for consideration before the Apex Court in *Shiromani Gurudwara Prabandhak Committee Amritsar v. Shri Som Nath Dass and others* (supra) was whether "the Guru Grandh Sahib", the compositions of the Gurus of persons belonging to Sikh religion, which is the central object of worship in all Gurudwaras could be treated as a juristic person. In the said context, the Apex Court held that installation of "Guru Grandh Sahib" is the nucleus of any Gurudwara, without which the Gurudwara is only a building, and that therefore, "Guru Grandh Sahib" can be regarded as a juristic person. One of the reasons based on which Guru Grandh Sahib was not treated as a juristic person by the High Court in the judgment impugned in the matter before the Apex Court was that if Guru Grandh Sahib is regarded as a juristic person, every copy of the same should also be regarded as a juristic person. In the context of examining the correctness of the said view, the Apex Court observed that an idol becomes a juristic person only when it is consecrated and installed in a public place for the public at large. In other words, the emphasis is on the installation of Guru Grandh Sahib for the benefit of the public at large.

12. I have, therefore, no hesitation to hold that even deities consecrated in properties which do not belong to it would become juristic persons for the purpose of receiving gifts, holding properties and managing its affairs. Question No.(i) is thus answered accordingly.

13. Question (ii): The next question to be considered is as to whether the decree obtained by the predecessor of the first defendant binds the deity consecrated in the suit property. The fact that the suit was a representative action against the defendants as provided for under Order 1, Rule 8 of the Code of Civil Procedure is not in dispute. Explanation (VI) to Section 11 of the Code of Civil Procedure provides that where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to

claim under the persons so litigating. Order 1, Rule 8 (6) of the Code of Civil Procedure provides that a decree passed in a suit under the said rule shall be binding on all persons on whose behalf or for whose benefit the suit was instituted or defended as the case may be. In *James v. Mathew and others* (ILR 2012 (4) Kerala 753) this Court, relying on the provisions contained in Explanation (VI) to Section 11 and Order 8, Rule 1 of the Code of Civil Procedure, held that all persons, for whose benefit the suit was defended by the parties on record, are bound by the decree, though they are not *eo nomine* parties to the suit and that the same is enforceable against them. Paragraph 20 of the said judgment reads thus:

"In the light of the above, I hold that a decree for injunction obtained in a representative suit is binding on all persons for whose benefit the suit was defended though they are not *eo nomine* parties to the suit. I also hold that in case of wilful dis-obeyance of such a decree by those persons for whose benefit the suit was defended by the defendants, it is enforceable against them under R.32 of O.21 of the Code."

I do not think that an exception can be drawn to the said proposition on any ground whatsoever in favour of a juristic person. As noted above, the suit was in respect of a property in which the deity is consecrated and defendants 2 and 3 have defended the action not in their individual capacity but on behalf of the deity. As such, the decree binds the deity also. Further, as far as a juristic person is concerned, it can only act through its human agent. Since the case of the appellants is that the deity is a juristic person, it could not have contested the suit without the help of a human agency. There is no explanation also in the application as to why the appellants or anybody else could not have contested the suit on behalf of the deity.

14. The contention raised by the learned Senior Counsel, relying on the decision of the Apex Court in *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi* (supra) is that the decree in a representative action which does not bind the deity cannot be accepted. Paragraph 41 of the said judgment reads thus:

"41. The appellant raised a special argument in respect of certain properties, which, he stated, were private. He relied upon the observations of the learned Judges of the High Court that they were inclined to hold that these properties were private but refrained from giving a declaration in view of the fact that the deity had not been joined. These properties are "jat" inams, recently built properties, namely, the Balaji temple and the "Shree Theatre", and an allowance which goes in the name of Kulkarni commutation amounting to Rs. 24 per year. The difficulty in the way of the appellant is real. He refrained from joining the deity, if not as a necessary, at least as a proper party to the suit. If he had joined the deity and the deity was represented by a disinterested guardian, necessary pleas against his contention could have been raised by the guardian, and it is likely that some evidence would also have been given. The appellant seeks to cover up his default by saying that the suit was one under O.I, R. 8 of the Code

of Civil Procedure, and that the Hindu public was joined and the deity was adequately represented. In a suit of this character, it is incumbent to have all necessary parties, so that the declaration may be effective and binding. It is obvious enough that a declaration given against the interests of the deity will not bind the deity, even though the Hindu Community as such may be bound. The appellant would have avoided circuity of action, if he had acceded to the very proper request of the respondents to bring on record the deity as a party. He stoutly opposed such a move, but at a very late stage in this Court he has made an application that the deity be joined. It is too late now to follow the course adopted by the Privy Council in 52 Ind App 245: (AIR 1925 PC 139) and *Kanhaiya Lal v. Hamid Ali*, (AIR 1933 PC 198 (1)), in view of the attitude adopted by the appellant himself and the warning which the trial Judge had issued to him in his order. There is yet another reason why the case cannot be re-opened, because the appellant himself did not choose to make any distinction between one property and another as regards the claim of his ownership. He stated that each item of property was acquired and owned in the same manner as another."

The said case was a case seeking declaration in respect of a few items of properties including properties of a deity. The suit was dismissed by the trial court and the decision therein was confirmed in appeal. Before the Apex Court, the plaintiff has contended alternatively that the court below should have at any rate granted relief in respect of the private properties of the plaintiff. It was also pointed out to the Apex Court by the plaintiff that the High Court found that the said properties were private properties but declined the relief in respect of the said properties on the ground that the deity was not a party to the suit. In the context of the said dispute, the Apex Court took the view that if the plaintiff had joined the deity as a party to the suit and the deity was represented by a disinterested guardian, necessary pleas against his contention could have been raised by the guardian and it was likely that some evidence would also have been given. The view taken by the Apex Court in the said case, it seems, that in so far as the suit was in respect of a few properties of the deity, the deity should have been made a party and the said defect cannot be cured by contending that the suit is a representative action against the Hindu public. The Apex Court has not considered the issue as to whether a decree obtained in a representative action in respect of a property would bind a deity asserting independent right in the said property. Further, as far as the present case is concerned, the suit was not in respect of any property owned by the deity nor the plaintiff was obliged to array the deity as a party to the suit. The said case, in the circumstances, has no application to the facts of the present case.

15. I have, therefore, no hesitation to hold that E.A. No. 388 of 2006 being an application filed on behalf of the deity, the same is not maintainable as the deity is bound by the decree. Question No.(ii) is thus answered accordingly.

16. Question No.(iii): Since it is found that E.A. No. 388 of 2006 is not maintainable, the question whether the appellants have made out a case in the

said application does not arise for consideration.

17. In the light of the finding on question No.(ii), the appeal is liable to be dismissed and I do so.