

(1957) 03 AP CK 0013

In the Andhra Pradesh High Court

Case No : Civil Revision Petn No. 610 of 1954

Rachakonda Satyanarayana

APPELLANT

Vs

Lankapotu Venkarappa Reddy and Another

RESPONDENT

Date of Decision : 25-03-1957

Acts Referred:

Charitable and Religious Trusts Act, 1920 — Section 5, 5(5), 5(6), 5(8)
Civil Procedure Code, 1908 (CPC) — Section 115, 92

Citation : (1957) 03 AP CK 0013

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : Ch. Sankara Sastry and T. Veerabhadriah, for the Appellant; Y. Rama Reddy, for the Respondent

Judgement

Krishna Rao, J.—This is a petition for revision u/s 115, Code of Civil Procedure, of an order made by the Addl. District Judge, Guntur, u/s 5 (5) of the Charitable and Religious Trusts Act 14 of 1920, directing the Petitioner to render an account of tire income from the trust properties for a period of three years immediately preceding 27-9-52. The order of the District Judge was based on his findings that the Petitioner's great grand-father Lingamurthy endowed certain properties under his will Ex. A-I dated 20-1-1892 for tire upkeep of a fresh water tank in the village of Garpadu and that the Petitioner is in possession of these trust properties.

One of the grounds set forth in tho revision petition is that the lower Court had no jurisdiction to take the proceedings, because Act 14 of 1920 ceased to apply, by reason of the repealing provisions, of Section 5 (3) of the Madras Hindu Religious and Charitable Endowments Act 19 of 1951. At the hearing Sri Ch. Sankara Sastry, the learned Counsel for the Petitioner, Conceded that he is unable to "argue this position, as the repeal was only in respect of religious institutions and endowments and not in respect of charitable endowments like that in question here. "

The only ground on which he assails the lower Court's jurisdiction, is based on the fact that the Petitioner claims the properties in dispute adversely to the alleged trust, as being his family properties which Lingamurthy was incompetent to dispose of by a will and as having been enjoyed by him and by his forefathers with absolute rights for over the statutory period. It is urged that this question of title raised by him could not be tried or determined by the lower Court in view of Sub-section (6) of Section 5 of Act 14 of 1920 and therefore the lower Court was competent to pass the order on the Respondent's application u/s 3 of the Act.

2. There is clearly no substance in this contention. Sub-section (6) of Section 5 reads:

Save as provided in this section, the Court shall not try or determine any question of title between the Petitioner and any person claiming the adversely to the trust.

It is manifest from the opening clause that the inhibition against trying determining questions of title is not absolute but is subject to the other provisions of Section 5. These provisions are contained in Sub-sections (8) and (4). Sub-section

3. says that if any person appears at the hearing of the petition u/s 3 and either denies the existence of the trust or denies that the trust is one to which the Act applies and undertakes to institute within three months a suit for declaration to that effect and for any other appropriate relief, the Court shall order a stay of the proceedings and, if such suit is instituted shall, continue the stay until the suit finally decided,. Sub-section

4. provides that if such undertaking is not given, or if after the expiry of three months such a suit is not instituted, the Court shall itself decide the question. A claim of title adversely to the trust is in effect a denial of the existence of the trust. The Court dealing with petition properly filed, u/s is charged with the duty of itself deciding" that dispute, if the person setting up adverse title does not avail of Sub-section (3) and have recourse to a separate suit.

The, Petitioner did not institute such a suit and therefore the lower Court was competent to decide in a summary way whether the adverse title set up by the Petitioner negated the existence of the trust. This view of the effect of Sub-section (6) is supported by the decision in Haidarali Gulamali Vs. Saiyed Gulam Mohiuddin, .

5. Sri Ch. Sankara Sastry next contends that the findings of the learned District Judge are vitiated by his failure to take into consideration material evidence on the side of the Petitioner. In his will Ex. A-I, Lingamurthy stated that the endowed properties were his self-acquisition. He directed his-son Yagnanarayana to be the "dharmakarta" and to get repairs effected to the fresh-water-tank with the income derived from the trust properties. Yagnanarayana, the Petitioner's grand-father attested the will.

Sri Ch. Sankara Sastry contends that the endowed properties consisting of about Ac. 2-45 cents of land in two villages were Lingamurthy's family properties and that Yagnanarayana did not accept the-trust though he attested the will. Ex. B-1 is a Kist receipt book of 1850; Ex. B-2 is patta of Fasli 1274 and Ex. B-4 is an inam tide deed of 1860. Sri Ch. Sankara Sastry relies on these documents as showing that Lingamurthy" had considerable ancestral properties and argues that although the endowed properties were purchased by Lingamurthy in 1885,, they were merely accretions to the ancestral estate.

He urges that the learned District Judge did: not consider the effect of Exs. B-1, B-2 and B-4 at all, but merely accepted the recitals in the will that the endowed properties were Lingamurthy self acquisition and came to the conclusion that a trust was created in respect of the properties. But the learned District Judge was making only a summary-enquiry as to the existence of the trust.

As pointed out by Sri Y. Ramareddy, the learned Counsel for the Respondent, if the Petitioner fails-to comply with the order u/s 5 (5), the only-consequence would, be, that as provided by, Section 6 the "Respondent can file a suit without the previous sanction of the Advocate General u/s 92, Civil Procedure Code. It appears that the Petitioner's rand father Yagnanarayana not only attested the will Ex. A-1 but also accepted the trust and con firmed the trust by his own will.

An extract of Yagnanarayana will of 1930 was "furnished by the Petitioner himself as an enclosure to a communication Ex, A-2 sent by him to the District Board in 1943. The extract shows that Yagnanarayana directed his son to manage the endowed properties and spend the income for .the fresh water-"tank. In the circumstances, the learned District Judge was justified in accepting Ex. A-1 as prima facie sufficient proof of the existence of a trust in Flyspeck of the properties. The Petitioner has no teal grievance, because there is no final adjudication of the title put forward by him adversely to the trust. It is open to him to agitate his title in a regular suit.

6. I see no ground to interfere with the lower Court's order and this revision petition is dismissed with costs.