

(1957) 11 AP CK 0031

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1663 of 1953

Rameswara Das Bavaji and others

APPELLANT

Vs

Vuppuluri Purnachandra Rao and another

RESPONDENT

Date of Decision : 27-11-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 105

Citation : AIR 1958 AP 494

Hon'ble Judges : K. Subba Rao, C.J.;Ranganadham Chetty, J

Bench : Division Bench

Advocate : B.V. Ramanarasu and D. Venkatappayya sicutri, for the Appellant; G. Balaparameswari (sic)o, for the Respondent

Judgement

Ranganadham Chetty, J.—In this Second Appeal, plaintiff and the second defendant are the Appellants. The it (O. S. No. 237 of 1948) was filed before (sic) District Munsif, Vijayawada, by one Rame(sic) (sic)radas Bavaji describing himself as the Mat(sic)ipathi of the Brahmachari Bavaji Mutt at (sic)wada, for a permanent injunction restrain(sic) the defendant Purnachandra Rao from interring with his possession and enjoyment of suit land as the head of the Mutt. Later, plaint was amended by asking for posseseses.

2. Plaintiff's predecessor-in-office was one (sic)uladas. He was the Mahant of the afore(sic) Mutt for several years. During his tenure (sic) granted a permanent lease to one Veera(sic)dra Rao, a benamidar for the defendant's (sic)er. The father died and the defendant was (sic)ming under the lease. While Gokuladas was (sic)ctioning as the Mahant, the Endowments (sic)rd framed a scheme for the administration the Mutt, appointed certain trustees and (sic)cted them to file a suit for cancellation of lease. O. S. No. 179 of 1931 was the result.

It was decided therein that the lease could valid only for the lifetime of Gokuladas. (sic)uladas died. 8 months later the plaintiff (sic)ming to be his successor, nominated under (sic)ed of settlement dated 9-1-1946, filed O. S. 237 of 1948 out of which this Second Appeals.

3. The defendant resisted the suit plead that the deed of settlement aforesaid was valid, that one Arjunadas was the rightful (sic)essor to Gokuladas and the suit was not (sic)tainable by reason of an Executive Officer (sic)ng been appointed under the Scheme fram(sic)y the Endowments Board and a Receiver having been appointed to the Mutt in ano(sic) suit... The defendant's claim was limited to a half of the property as the other half was in the possession of his brother's son, Naga Visweswara Rao. That nephew was subsequently impleaded as the 3rd defendant and has been sailing with the defendant - henceforth the 1st defendant - all through.

4. In the meanwhile, the Executive Officer, Nanduru Rama Rao, who has so far not taken any. steps for the recovery of the property for the Mutt, bestirred himself and moved an application I. A. No. 1685 of 1948 seeking to bring on record the Mutt itself as 2nd plaintiff represented, of course, by its Executive Officer.

Plaintiff objected, questioning the jurisdiction of the Board to interfere with the administration of the Mutt. Defendants, too protested and the petition was dismissed. Later, Rama Rao's successor, Kasi Viswanatham as Executive Officer moved I. A. No. 909 of 1949 for leave to come on record.

But this time he rested content with asking for the role of a defendant for the Mutt. The plaintiff had no objection and the Mutt was impleaded as the 2nd defendant. Subsequently, one Subrahmanyam, who became Executive Officer by that time, presented I. A. No. 321 of 1951 for transposition of the Mutt as the 2nd plaintiff. Plaintiff again endorsed his consent. The 1st defendant, the lessee's successor, however, resisted and the Court dismissed the application. The suit was then tried on the preliminary question of its maintainability and was dismissed on the ground that the plaintiff was neither a de facto nor a de jure trustee off the Mutt. Plaintiff appealed to the Court of the Subordinate Judge, Vijayawada, but was again unsuccessful. Hence this Second Appeal by the plaintiff and the 2nd defendant jointly.

5. On the contentions of the respondents, the following points arise for consideration:

1. (a). Is this second appeal maintainable in view of the 2nd appellant not having preferred or joined the plaintiff in preferring the first appeal?

(b) Is the contention about transposition of the Mutt open to the appellants at this stage when they had not questioned the correctness of the lower court's order of refusal so far?

2. Was the refusal justified? If not can the transposition be effected now?

3. Is the suit maintainable by the plaintiff as a de facto trustee.

6. Point 1 (a): In support of the first contention, the learned counsel for the respondents cited Gangayya v. Venkayya, 1929 Mad WN 112 (A) where it was

held that:

If a case arrives at the higher appellate Tribunal in such a state that the result is that if to deal with the matter would involve hearing directly an appeal from the first court without the intervention of the lower appellate court, that course cannot be permitted.

But we have the plaintiff too figuring as a so appellant now and that would suffice for the maintainability of the second appeal and its disposal on all the questions raised.

7. Point 1 (b) : Again, it is argued that he there the plaintiff nor the 2nd defendant having preferred an appeal or revision directly against the order of refusal to transpose, the question cannot be raised in the second appeal. But S. 105, C. P. C. enables an appellant to raise the question or the correctness of an interlocutory order in the main appeal itself, despite his omission to question it earlier in the lower court. In fact, the plaintiff raised a specific ground in regard to it even in his first appeal and is urging it again consistently in the second appeal. The question of transposition has necessarily to be deckled in this appeal.

8. Point 2. The order of refusal of transposition was passed by the learned District Munsif of Vijayawada on I. A. No. 326 of 1951 on the sole ground that there is a conflict of interest between the plaintiff on record and the Executive Officer. But the fact was over looked that both the plaintiff Rameswaradas as well as the Bavaji Mutt have an identical interest in recovering possession of the land from defendants 1 and 3. Plaintiff never claimed the suit land as his private and personal property. From the start, he has been claiming it as only for and on behalf of the Mutt.

He has been consistently describing himself only as the Matadhipathi. The learned District Munsif, however, felt that though the plaintiff is the Brahmachari Bavaji Mutt, the right to represent the Mutt is actually claimed adversely by both Rameswaradas Bavaji and the Executive Officer." The person competent to speak about the conflict and urge it as a ground for refusing addition of a new party is the plaintiff himself. But he had absolutely no objection to the Mutt coming on record. In fact, he endorsed his consent on the application for transposition.

When both the parties have agreed that there is no conflict, it is futile for the court to imagine a discord. No doubt, the refusal might toe justified if the Executive Officer of nominee wished to figure as the 2nd plaintiff. But all the 3 applications filed by the successive Executive Officers proceeded on the correct footing that the Mutt was the party that should be added or transposed. Its representation might be by an Executive Officer but the party of nominee coming on record is the Mutt itself.

Any dispute touching the management would only be an internecine affair between Rameswaradas and the officer. But, so long as that dispute is not made

an issue in the suit, there is clearly no justification for the refusal to allow them to join hands to fight and evict a stranger in unlawful possession of the Mutt's properties.

9. For the respondent reliance is placed on *Musammat Jarao Kunwar Vs. Rani Bhagwan Kunwar and Others*, . The facts of the case have nothing similar to those on hand. That was a suit for contribution. One Thakur Das died leaving some properties. His widow claimed them on the ground that they formed the separate estate of her husband. Thakur Das had a brother who too presumably died. Two persons Chiranji Lal and Ram Pratap claiming to be the adopted sons of the two brothers claimed title pleading that Thakurdas died undivided and that the estate had belonged to the joint family.

The litigation ended in a compromise under which Ram Pratap was vouchsafed a half(sic) share. The other half was to be held and enjoyed by the widow Kunwar for her lifetime with a remainder over in favour of Chiranji Lal. Later on, a mortgagee recovered his mortgage amount from one of the items of the estate. (sic) contribution suit followed. Ram Pratap and Chiranji Lal were the plaintiffs. They made the widow Kunwar a defendant. She pleaded that she and the 1st plaintiff Ram Pratap (sic) had a title to the estate and that the 2nd plaintiff Chiranji Lal had absolutely no rights. Share asked for being transposed from her role of defendant to that of a plaintiff.

The application was rejected because of the obvious conflict of interest between the two Chiranji Lal as a plaintiff in that case, of courts objected to the transposition. In the present(sic) case, the plaintiff welcomes the Mutt as the 2(sic) plaintiff and there is in fact no conflict of interest between the plaintiff and the Mutt treated(sic) as a juristic person.

10. In *John Boisogomoff v. Manmath Nath Mallick*, ILR 58 Cal 561: (AIR 1931 (sic) 76) (C) the Calcutta High Court refused to take(sic) position where the suit as originally framed was(sic) by a person who had prima facie no title whatsoever. He had purported to derive title, appears, from a person who had nothing more(sic) than a mere spes successions. The suit (sic) bound to fail and in that perilous state attempt was made to transpose a defendant who had perhaps seemingly some title to the property. The Court declined to countenance (sic) move.

The case is distinguishable on facts as plaintiff on record, Rameswaradas, has undoubtedly the status of a de facto trustee who has been in actual management of the property for 8 months before suit. It was not "such hopelessly bad suit" as formed the subject-matter(sic) of the Calcutta decision.

11. *Venkata Nagayya v. Sitaramayya*, J. An WR 322 (D) is a case where a bogus creditor(sic) of an insolvent, i.e., a person conscious of (sic)sence of any rights, filed a suit and at the time(sic) when a dismissal was imminent another creditor(sic) was sought to be substituted in his place(sic). This Court held that O. 1, R. 10, C. P. C. does not allow a plaintiff to have an application only when the institution of the earlier suit was under a bona fide mistake(sic) and that the lack of good faith at the inception being so patent in

that case, substitution refused.

12. The possibility of transposition, w(sic) often amounts to a virtual substitution (sic) new plaintiff for the plaintiff on record, (sic) on the question whether the very institu(sic) of the suit by the plaintiff is under a (sic) fide mistake as to his rights, capacity or (sic)tus. In regard to Rameswaradas, there hardly be a doubt that he acted and is now acting with the best of intentions, bona fides are borne out by several circumstance.

He unequivocally admits that the property belongs to the Mutt and claims a right to sue only as the Matadhipathi.

The very cause title shows it and in the body of the plaint, too, the averments are consistent. He felt honestly that he had a right to represent the Mutt in ejecting the unlawful occupant and if it turns out to be a mistaken impression, it was nevertheless a bona fide mistake.

13. Again, the fact cannot be gainsaid that the was in actual management. Exs. A-4 to A-6 (sic)re receipt books containing counterfoils for (sic)oneys received on behalf of the Mutt. Exs. (sic)-9 to A-23 are similar documents for a period subsequent to the suit, no doubt, but forming (sic)art of a series evidencing the continuity of management. There is further no denial that or about 8 months prior to the suit, i.e., subsequent to Gokuldas" death, plaintiff Rameshwara Das was in actual and exclusive management of the Mutt properties. Further, the validity of the scheme by the Endowments Board as being questioned and was the subject-matter of much litigation.

14. Respondent"s learned counsel urged at, when the 1st Executive Officer, Nanduru (sic)marao moved an application for coming on (sic)cord, plaintiff objected and that would suffice rebut an inference of good faith. But we (sic)ve the explanation - quite a satisfactory one from the plaintiff that he had no confidence that particular Executive Officer and that fie withdrew his objection and gave his consent hesitatingly when the succeeding officers (sic)hed to co-operate with him. We are con(sic)ced that the institution of the suit was under bona fide mistake.

15. After all, the principle underlying the provisions for addition or deletion or substitution or transposition of parties under O. 1 R. 10 to save honest plaintiffs, believing bona fide the tenability of their claims, being non-suit on a mere technical A.M. Koman Nair Vs. Kunhambu Moolacheri Nair and Another, goes to the ex(sic)t of allowing transposition when the question remains identical even if, by the time the (sic)e of a party is changed, his claim might be red by limitation. The premium on honesty good faith can go no further.

The policy is to discourage puerile contest technicalities. In AIR 1939 170 (Privy Council) the Privy Council recognised that the (sic)rt has ample power to "amend the parties" (sic)ny time where the defect in institution was to a genuine mistake. In Radhaballabh Prasad Narain Singh Vs. Raghunath Lal and Others, a

Bench he Patna High Court regarded the object transposition of parties as the determination of the real questions in controversy by (sic)ing the mere technical objection for de(sic)ng a just and honest claim.

Bongi Narayana alias Demullu and Another Vs. Bangari Gurramma and Others, not only recognises the powers conferred courts under O. 1, R. 10, C. P. C. to be wide (sic)adds that the section has to be liberally (sic)rueed. A suit was filed on a promissory note insufficiently stamped and when the claim was on the brink of failure, it was propped up through a transposition of parties.

16. There are, however, two limitations on the free and unfettered application of the power under O. 1 R. 10. One is, as already observed, that the institution by the wrong plaintiff should have been under a genuine mistake. The other is illustrated by Santuram Hari Vs. Trust of India Assurance Co., . It engrafts on the general power of courts an exception that a valuable right acquired by the other defendants should not be defeated. The expression "valuable right" of course, means a right other than a claim for rejection of the suit itself on the ground of institution by a wrong plaintiff.

In the case in hand no "valuable" right would be lost, and the refusal of the trial court to order transposition can hardly be sustained. The interests of the Mutt are paramount and we direct that the 2nd defendant Mutt be transposed as 2nd plaintiff in the suit.

17. Point 3: It is needless to decide whether the first plaintiff is a de(sic)jure or a de facto trustee and whether the suit is maintainable by him, inasmuch as the first plaintiff Rameswara Das has no objection to a decree being passed in favour of the Mutt as the 2nd plaintiff represented by its Executive Officer.

18. The order of dismissal of the suit by the trial Court, confirmed by the first appellate Court, is set aside and the suit remanded for a decision on issue 3, additional issues 2 to 4 and disposal of the suit according to law. Costs of appeal would abide the result of the fresh trial. Court-fee paid on the appeal memo will be refunded.