
(2009) 08 AP CK 0022
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 240 of 2007

S. Mohan Singh

APPELLANT

Vs

Bhairavi Matha Temple and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 143, 6, 83, 83(4), 84(1)
Specific Relief Act, 1963 — Section 34

Citation : (2009) 6 ALD 235 : (2010) 1 ALT 200

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C. Hanumantha Rao, for the Appellant; G.P. for Endowments for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—A Trustee of Bhairavi Matha Temple, the 1st respondent herein filed O.A. No. 101 of 2001 before the Deputy Commissioner of Endowment, Hyderabad, against the appellant, u/s 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short the Act) for eviction from the schedule property. It was alleged that the temple is situated in an extent of 632 sq. mts in T.S. No. 60, Ward No. 45, Block L, Goshamahal, Hyderabad and that the appellant had encroached premises bearing No. 14-3-68 and 69 in an extent of 133.3 sq. yards, with structures thereon. The appellant contested that O.A and he pleaded that the premises under his occupation are those with house No. 14-3-67 and that they have been purchased by his wife through a sale deed dated 31-9-1992 from one Sri Subhas Tiwari. The said Tiwari in turn is alleged to have purchased it from Ram Singh in the year 1988 and latter, from Rani Bai in the year 1955/The Deputy Commissioner of Endowment, Hyderabad, allowed the O.A and the order of eviction became final.

2. The appellant filed O.S. No. 87 of 2003 in the Court of XII Additional Chief Judge, City Civil Court, Hyderabad (Fast Track Court) under Sub-section (2) of Section 84 of the Act for a declaration to the effect that the 1st respondent has no right, tide or possession over the plaint schedule premises bearing No. 14-3-67. He pleaded that the property was purchased by his wife and traced the origin of the title. It was mentioned that the order passed by the Deputy Commissioner in O.A. No. 101 of 2001 is erroneous and contrary to the facts. The first respondent filed a written statement opposing the suit. It was pleaded that it is a temple registered u/s 6(c)(ii) of the Act and that the suit schedule property is the one which is the subject matter of the O.A. No. 101 of 2001. The trial Court dismissed the suit through its judgment dated 22-3-2007. Hence this appeal.

3. Sri C. Hanumantha Rao, learned Counsel for the appellant submits that the trial Court deviated from the core issues and did not insist on the respondent, to prove its tide. He submits that there is a serious dispute as to the identity of the property and when the respondent did not lay claim for the property in the premises bearing No. 14-3-67 there was no basis for dismissal of the suit.

4. The learned Government Pleader for endowment on the other hand submits that the petitioner suffered an order of eviction and that the suit was filed only to resist the eviction. He contends that a suit u/s 84(2) can be filed only by those who possess title and not being a registered owner of either the premises in bearing No. 14-3-67 or those in house No. 14-3-68 and 69, the appellant lacked competence to file the suit. It is also submitted that the appellant failed to discharge his burden and the trial court has approached the matter, from the correct point of view.

5. The appellant has chosen the remedy u/s 84(2) of the Act, obviously to overcome the order of eviction, suffered by him in O.A. No. 101 of 2001 on the file of the Deputy Commissioner of Endowment, Hyderabad. The learned Counsel for the petitioner (sic. appellant) submits that the 1st respondent is not the owner of the suit schedule property. The averments in the plaint were denied by the 1st respondent in their written statement. The trial Court framed the following issues for its consideration:

1. Whether the plaintiff is the owner of the plaint schedule property?
 2. Whether the suit schedule property does not form part of D-I's temple property?
 3. Whether the suit is not maintainable under law?
 4. To what relief?
6. On behalf of the appellant, P.W. 1 to P.W.3 were examined and Exs.A-1 to A-16 were filed. In addition to that Exs.X-1 and X-2 were also taken on record. The respondent did not adduce any oral or documentary evidence. On appreciation of the evidence on record, the trial court dismissed the suit.

7. The points that arise for consideration in this appeal are:

(a) Whether the suit filed by the appellant is maintainable?

(b) Whether the appellant had made out a case for declaration as provided for u/s 84(2) of the act.

8. Section 84(2) of the Act, provides for a typical remedy. The provision reads as under:

(2) Nothing in Sub-section (1) shall prevent any person aggrieved by the order of the Deputy Commissioner under Sub-section (4) of Section 83 from instituting a suit in a Court to establish that the charitable or religious institution or endowment has no title to the land, building or space:

Provided that no civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under Sub-section (4) of Section 83;

9. Normally law provides for the relief of declaration as to the rights that exist in the plaintiff. Reference, in this context may be made to Section 34 of the Specific Relief Act. The declaratory relief is claimed, as a prelude to assert the rights of other category, such as recovery of possession or injunction. The suit contemplated u/s 84(2) of the Act is not the one for declaration of the rights (and) in respect of the property in the plaintiff. It is for a declaration to the effect that the defendant in the suit does not hold the title to the property. This mechanism is provided to make good or to compensate the absence of the facility to decide the title by a Forum u/s 83 of the Act. Even where an individual suffers an order of eviction u/s 83 of the Act, he is extended the facility of seeking a declaration to the effect that the Religious Institution does not hold the title to the property. In a way, it can be said that a suit of this nature is an extension of the quasi judicial proceedings instituted before the Deputy Commissioner of Endowment, u/s 83 of the Act.

10. In the ordinary course, the plaintiff in a suit has to prove his right or title pleaded by him. For that, he may simply rely upon the provisions of law if any, that confer such rights or may have to adduce evidence in support of his rights. However, in a suit filed u/s 84(2) of the Act, the nature of burden to be discharged by a plaintiff is totally different. For all practical purposes, he has to prove a negative fact, viz., absence of title in the defendant therein. It is not even necessary that the plaintiff must prove his title, as a necessary concomitant.

11. One way of proving the absence of title in the defendant, is to prove the title in the plaintiff himself and thereby leave no option to the Court except to draw an inference that title does not vest in two persons, at one and the same time. Viewed in this context, it is only a person who possesses title or right over the property, that can successfully institute the proceedings under that provision. If the plaintiff does not hold the title to the property in himself, he virtually becomes an encroacher and the very cause of action to file the suit u/s 84(2) of the Act, ceases.

12. The learned Counsel for the petitioner (sic. appellant) has placed reliance upon the Section 143 of the Act to submit that the respondents do not have any right over the property since it did not vest in it before 1951. The provision reads as under.

Property of Charitable or religious institution or endowment not to vest under the law of limitation after commencement of this Act:- Nothing in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any charitable or religious institution or endowment which have not vested in such person or his predecessor in title before the 30th January, 1967 in the remaining area of the State.

13. From a reading of this, it is clear that the provision is intended to relieve the Religious Institutions from rigor of Law of Limitation. Even where the claim for recovery of the possession of an item of immovable property is barred by limitation or escapable of being defeated on the ground of adverse possession, the provision avoids such possibility, with reference to the property held by the Religious Institutions. Therefore, apart from not supporting the contention of the appellant, the said provision operates against him.

14. Once it emerges that the appellant did not claim title in himself, nor he alleges that he is in possession and enjoyment of the premises bearing No. 14-3-68 and 69, the suit filed by him was totally untenable.

15. On merits also, the appellant failed to establish his case. He wanted a relief to the effect that the 15th respondent does not have the right or title in respect of the premises bearing No. 14-3-67. As a matter of fact, the 18th respondent never claimed any rights over that property. The fact that the appellant was seeking relief only in respect of the premises bearing No. 14-3-68 and 69, is evident from the fact he made copious reference to the order in O.A. No. 101 of 2001. As a matter of fact a suit u/s 84(2) of the Act can be filed only in relation to the property which is the subject matter of the proceedings u/s 83 of the Act.

16. The appellant cannot be permitted to raise the dispute as to identity of the property in the suit, having failed in his effort to prove his case in O.A. No. 101 of 2001. At any rate, the alleged rightful owner is the wife of the petitioner (sic. appellant). He did not implead her as a party. Things would have been different, had it been a case where she figured as a party and on her behalf the appellant deposed as a witness. In the instant case, it is the other way round. In clear and categorical terms, the 1st respondent asserted its title over the property bearing No. 14-3-68 and 69. The declaration if at all ought to have been in respect of that property. In a disgusted manner, the appellant cannot overcome the order of the eviction suffered by him under O.A. No. 101 of 2001. Therefore, the 2nd point is also answered against the appellant.

17. In view of the above discussion, the appeal is liable to be dismissed and it is accordingly dismissed. There shall be no order as to costs.