

(1973) 06 KAR CK 0003
In the Karnataka High Court
Case No : Second Appeal No. 235 of 1970

Shamaraya

APPELLANT

Vs

Beloor Sri Mariamma Temple and others

RESPONDENT

Date of Decision : 26-06-1973

Acts Referred:

Citation : AIR 1974 Kar 10

Hon'ble Judges : Chandrashekhar, J

Bench : Single Bench

Advocate : K. Balakrishna Rao, for the Appellant; S.G. Hande for K.R.D. Karanth, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekhar, J.—This second appeal Is by a plaintiff who failed in both the Courts below. The suit is for a declaration that he is entitled to the Archakaship of defendant-1 temple and for recovery of certain amounts, which according to him, he should have got as emoluments or perquisites attached to the office of the Archak of that temple.

2. Defendants 2 to 6 are the trustees of the temple, while defendants 7 to 17 are stated to be other persons interested in the office of the Archak of that temple.

3. The suit was resisted by the defendants on several grounds. For the purpose of this appeal it is sufficient to consider only one ground, namely, whether the suit is barred under Sections 57 and 93 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as the Act).

4. The learned Munsiff held that the suit was barred u/s 48 of the Act, but not u/s 93 of the Act In the first appeal preferred by the plaintiff, the learned Civil Judge held that the suit was barred not only u/s 48 but also under Sections 57 and 93 of the Act

5. The relevant part of Section 57 of the Act reads:

57. Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following disputes and matters:--

(a) to (d).....

(e) whether any person is entitled, by custom or otherwise, to any honour, emoluments or perquisites in any religious, institution.....

6. Section 93 of the Act provides, inter alia that no suit or other legal proceedings in respect of any matter or dispute for determining or deciding which provision is made in this Act, shall be instituted in any Court of law, except under, and in conformity with, the provisions of this Act.

7. If the Deputy Commissioner has, u/s 57 (e) of the Act, Jurisdiction to determine whether a person is entitled by custom or otherwise to the office of Archak of a temple, and to file emoluments and perquisites attached to that office, then u/s 93 of the Act the suit in respect of such claim or dispute is barred.

8. Following the decision of the Madras High Court in *Salamalayan Poojari v. Commr., HRCE, Madras*, (1968 1 Mad LJ 105, the learned Civil Judge held that the Deputy Commissioner has jurisdiction to decide whether the plaintiff is entitled to the office of the Archak of defendant 1 temple and that hence that question cannot be agitated in a suit

9. Mr. K. Balakrishna Rao, learned counsel for the appellant, contended, that the power of the Deputy Commissioner u/s 57 of the Act to decide whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any religious institution, does not include the power to decide whether a person is entitled to hold any office in such institution But the very contention was considered and negatived by the Madras High Court in the aforesaid decision, *Ramakrishnan, J.*, while considering the scope of Section 63 (e) of the Madras Hindu Religious and Charitable Endowments Act, 1959, which is practically identical with Section 57 "(e) of the Act, observed thus at p. 106:

When the right to the Office and the right to the emoluments are both interlinked, the Deputy Commissioner; while exercising jurisdiction regarding the right, to the emoluments cannot refuse to exercise jurisdiction for deciding the right to the office which is a condition precedent to the applicant being entitled to the emoluments.

I am in respectful agreement with the above observation of his Lordship. I am unable to accept the contention of Mr. Balakrishna Rao that the Deputy Commissioner has jurisdiction to determine only the right to perquisites or emoluments, but has no jurisdiction to determine the right to hold the office in a religious institution to which such emoluments or perquisites are attached.

10. However, Mr. Balakrishna Rao contended that in view of the decision of this Court in *K. Mukandaraya Shenoy v. State of Mysore*, 1959 Mys LJ 708 = (AIR

1960 Mys 18) and *Eranna v. Commr., HRCE, Bangalore*, (1970) 1 Mys U 170 = (AIR 1970 Mys 191) the provisions of Section 57 (e) of the Act should be held to be ultra vires the fundamental right guaranteed under Art 26 of the Constitution and hence that section should be held to be invalid.

11. In the above two decisions this Court the sections which came up for consideration were Sections 39 and 41 of the Act. Section 39 empowers the Commissioner to constitute a Trustees for a religious institution and Section 41 confers like power on, Area Committee. What this Co. that the power conferred on the Commissioner and/or the Area Committee to appoint trustees for a religious institution owned and administered by a religious denomination, would take away the right of administration of the affairs of that institution from the hands of that religious denomination which right has been guaranteed under Art. 26 of the Constitution. Section 57 of the Act did not come up for consideration in those two cases. The powers of the Commissioner and the Area Committee under Ss. 39 and 41 respectively of the Act, are entirely different from the powers of the Deputy Commissioner u/s 57 of the Act. While the powers conferred by Sections 39 and 41 are executive or administrative powers to appoint trustees for a religious institution, the power conferred on the Deputy Commissioner u/s 57 is the power to adjudicate certain disputes relating to religious institutions. If a power is conferred on the Deputy Commissioner or any functionary or authority under the Act to adjudicate certain disputes relating to a religious institution owned and administered by a denomination, such power of adjudication cannot be regarded as interfering with the right of that denomination to manage the affairs of that institution. Section 57 has merely substituted the Deputy Commissioner for the ordinary Civil Courts to adjudicate certain disputes of civil nature relating to religious institutions. Hence, the ruling of this Court in the aforesaid two cases does not lead to an inference that Section 57 of the Act is violative of fundamental right guaranteed under Art. 26 of the Constitution,

12. The conclusion reached by the learned Civil Judge is correct and does not call for interference. In the result this appeal fails and is dismissed. The dismissal of this suit should not be understood as precluding the appellant from approaching the Deputy Commissioner for adjudicating his claims.

13. As the plaintiffs suit has to fail on a purely technical ground, there will be no order as to costs in this appeal.