

(1963) 03 MAD CK 0037
In the Madras High Court
Case No : Writ Appeal No. 45 of 1966

Shanmugha Porayar

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 14-03-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 3

Citation : (1974) ILR (Mad) 46

Hon'ble Judges : Venkataraman, J;Maharajan, J

Bench : Division Bench

Advocate : T.R. Srinivasan and K. Ramamurti, for the Appellant; S. Mohan,
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Venkataraman, J.—This writ appeal has been filed in order to challenge the notification of the Government of Madras u/s 3 of the Madras Hindu Religious and Charitable Endowments Act, 1951 in respect of a certain charity conducted by the Appellant. The notification extended the provisions of the Act to the particular charity. The Appellant filed a suit challenging the notification on the ground into ... dedication to the public and that it was only a private trust. He failed in the trial Court, in the first appellate Court and in the second appeal. Thereafter he filed the writ petition, No. 817 of 1962 challenging the notification on the ground that the Government had no authority to invoke the provisions of the Act in respect of this charity because the beneficiaries under the charity were not exclusively Hindus, e.g., feeding and distribution of water could apply even in respect of non-Hindus. His contention was that the provisions of the Act could be invoked only if the beneficiaries were exclusively Hindus. In support of this contention, he relied on a decision of a Bench of this Court in *The State of Madras v. Seshachalam Chettiar Charities* 1960 (2) M.L.J. 691. This ground of attack of the notification had not, however been taken in the suit which the

Appellant had filed earlier. Veeraswami J., as he then was, before whom the writ petition came up, recognised the force of the submission that the Government had no jurisdiction to extend the provisions of the Act to this charity because the beneficiaries may not be exclusively Hindus. All the same, the learned Judge declined to interfere in writ proceedings because in his opinion, this ground of attack should have been put forth in the earlier suit and that not having been done, it was not open to the Appellant to raise the point in the writ petition after having failed in the suit and the appeals therefrom. The learned Judge also pointed out that there was a delay of four years in filing the writ petition, though he also observed that in mitigation thereof there were the circumstances that the Appellant had been fighting this matter in the civil Court. It is against this order of Veeraswami J., as he then was, that the present writ appeal has been filed. We are in entire agreement with the learned Judge in his view that the ground of attack of the notification now put forth is not open to the Appellant on the principle of constructive res judicata enacted in Explanation IV to Section 11, Code of Civil Procedure. This is a ground of attack which might and ought to have been put forth in the suit. In *Devilal Modi v. Sales Tax Officer* AIR 1966 S.C. 1150 the Assessee was assessed to sales tax for 1957-58. He filed a writ petition challenging the order of assessment. It was dismissed by the High Court. The Assessee filed an appeal to the Supreme Court by special leave. At the hearing, he wanted to raise two new pleas. Permission was refused and the appeal was dismissed. Thereafter the Assessee filed another writ petition in the High Court putting forth the said two pleas. The High Court examined the pleas on merits and rejected them. The Assessee filed an appeal to the Supreme Court. Their Lordships pointed out that the High Court should have dismissed the writ petition on the ground of constructive res judicata and need not have decided them on the merits. They observed at page 1152

This rule (constructive res judicata) postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action but basically even this view is founded on the same considerations of public policy because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time and that plainly is inconsistent with considerations of public policy to which we have just referred.

Again at page 1153, their Lordships observed:

In case the Madhya Pradesh High Court had upheld these contentions and had given effect to its decision, its order would have been plainly inconsistent with the earlier decision of this Court and that would be inconsistent with the finality which must attach to the decisions of this Court as between the parties before it in respect of the subject-matter directly covered by said decision. Considerations of public policy and the principle of the finality of judgments are important

constituents of the rule of law and they cannot be allowed to be violated just because a citizen contends that his fundamental rights have been contravened by an impugned order and wants liberty to agitate the question about its validity by filing one writ petition after another.

2. The principle of this decision directly applies to the instant case. The above decision was quoted with approval in *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, . The Appellant in that case had stood as surety for certain contractors who had taken in auction the forest produce on condition of paying certain sums of money to Government. The Appellant contended that he had been discharged from his liability by reason of the act of the Government allowing the contractors to remove some of the produce without the knowledge of the Appellant. He filed a writ petition in the High Court and that was dismissed on merits. Subsequently he filed a suit on the same basis. It was held by the majority of Their Lordships that the decision in the writ petition operated as *res judicata* in the suit. The decision emphasise that the principle of *res judicata* is based on sound policy and that it does not depend on the nature of the earlier or the later proceedings. The Appellant again relied on a decision of the Punjab High Court. Their Lordships in holding that it had been wrongly decided observed at page 1167:

Courts do not usually enter into disputed questions of fact (in writ petitions) but there is no bar to their doing so if they feel disposed to enter into such facts and arrive at a conclusion with respect to them. We do not see why all the grounds which can be urged in support of or against a matter raised for decision in a writ petition cannot be urged 10 the proceedings on it.

It is clear from the above decision that it is immaterial that the previous decision in the case before us was rendered in a suit and the second proceeding is a writ petition. Indeed the position is worse for the Appellant before us because, the suit was the most comprehensive form or remedy, wherein he could have put forth all possible objections to the notification including the ground now urged. The important point is that both in the suit and in the writ petition, the Appellant asks the same relief namely a declaration that the notification does not apply to this trust. The point is really plain and need not be discussed in further detail.

3. Sri T. R. Srinivasan, the learned Counsel for the Appellant has relied on two decisions, namely *M.P. Sarjoo Jaiswal v. D.N.B. Jeejeebhoy* (1970) 2 S.C.J. 685 and *Palaniappa Chettiar (died) and Others Vs. Babu Sahib and Others*, but they are not relevant.

4. In the result, the writ appeal has no merit. It is accordingly dismissed, but under the circumstances without costs.