(2012) 03 AP CK 0026

In the Andhra Pradesh High Court

Case No : Civil Revision Petition 5784 of 2010 and 394 of 2012

Sri Bhakatanaeya Swamy Vari Devalayam Trust — APPELLANT

Vs

To whom so ever it may concern, Vakadani Ramanarayana, P. Rajkumar, Trustee of Sri Bhaktanjaneya Swamy Vari Devalayam Tekulapalli, Khammam District and T. Ramaprasad
 Vakadani Ramanarayana Vs Sri Bhaktananjaneya Swamy Vari Devalayam Trust — RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 43, 45, 46(3), 47, 87
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, 92
Constitution of India, 1950 — Article 227, 227
Endowments Act — Section 43, 46(3), 87
Trusts Act, 1882 — Section 1, 34, 34, 83, 83

Citation : AIR 2012 AP 142 : (2012) 3 ALD 707 : (2012) 5 ALT 439

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for Sri. V.L.N. Gopalakrishna Murthy in Civil Revision Petition 5784 of 2010 and 394 of 2012, for the Appellant; M V S Suresh Kumar for the respondent No. 2, for the Respondent No. 3, Sri G M Mohiuddin for the respondent No. 4 and Sri A S C Bose for the respondent No. 5 in Civil Revision Petition 5784 of 2010 and 394 of 2012, for the Respondent

Judgement

C.V. Nagarjuna Reddy

1. As the subject matter of the dispute is common, both these Civil Revision Petitions are heard and being disposed of together.

For convenience, the parties are referred as they are arrayed in C.R.P. No. 5784/2010.

2. C.R.P. No. 5784/2010, arises out of order dated 31-8-2010 in T.O.P. No. 193/2007 whereby the learned District Judge, Khammam dismissed the said

T.O.P. filed by the petitioner u/s 34 of the Indian Trusts Act, 1882 (for short "the Trusts Act") seeking permission to proceed with the sale of the petition schedule property. C.R.P. No. 394/2012 is filed by respondent No. 2 assailing the findings rendered by the learned District Judge in the above mentioned O.P. with respect to the nature of the Trust in question and the petition schedule property.

3. The facts leading to the filing of this Civil Revision Petition are briefly stated hereunder:

4. A person by name Kannaiah Lal Singh and Smt. Bondali Krishna Bai, the widow late Mohan Singh, who was the brother of Kannaiah Lal Singh, for attaining salvation (''Satgathulu'') jointly executed Ex.A-1-gift deed on 16-6-1966, which was registered as document No. 3281/1966, in respect of an extent of Hc. 1-31, equivalent to Ac.3-10 guntas, comprised in Sy. No. 504 of Velugumatla village, Khammam District (petition schedule property), jointly owned by the said two persons. It is recited in the said gift deed that the petition schedule property cannot be encumbered in any manner in favour of third parties except by way of lease and that from out of the income derived from the petition schedule property, the deity-Bhakthanjaneya Swamy, shall be worshipped on every Saturday and after defraying towards the land cist, the balance income shall be paid to the archakas of the deity, under receipts. The gift deed also contains a covenant as to how succession with regard to the Trustees shall take place. It is further recited in the gift deed that if any differences arise during the lifetime of the two donors, on the application filed by either of the two persons, the Endowment Board shall take over the petition schedule property and manage the same.

5. On 22-5-2006, a new Trust was registered in the name of "Sri Bhakthanjaneya Swami Vari Devalayam Abhivruddi & Nirvahana Trust Board" (for short "the petitioner-Trust Board"), comprising the legal heirs of the donors and some others selected by them. The petitioner-Trust Board passed an unanimous resolution on 9-7-2006 for reconstruction of the dilapidated temple and providing better facilities to the devotees out of the income from the petition schedule property. On 10-7-2006, the petitioner-Trust Board entered into an agreement with one Telaprolu Ramaprasad, who has got himself impleaded as respondent No. 4 in the C.R.P. No. 5784/2010, whereunder it was agreed to sell the petition schedule property to him for a sum of Rs. 1,25,00,000/-. In pursuance of the said agreement of sale, respondent No. 4 has deposited a sum of Rs. 3,00,000/- as part sale consideration in Karur Vysya Bank, Khammam and the said amount is lying therein.

6. On 23-1-2007, the petitioner-Trust Board filed the above mentioned T.O.P. in the Court of the learned Principal District Judge, Khammam, u/s 34 of the Trusts Act seeking permission to sell the petition schedule property. The main grounds on which the permission to sell the petition schedule property was sought were that the petition schedule property is a dry and barren land and the same is not fetching any income; that as the petitioner-Trust Board is not collecting any

offerings, donations and gifts from the devotees, it is not possible to meet the expenses for maintaining the Temple and its development and for performing nitya poojas, naivaidyam and other rituals to the deity; that they intend to reconstruct the Temple which is in a dilapidated condition and improve the facilities; and that the amount will be spent towards meeting the expenditure towards salaries to the archakas and the sweeper and expenses towards nitya sevas, poojas etc.

7. The learned District Judge ordered publication of notice in the T.O.P. in two daily newspapers on 13-2-2007 calling for objections from the general public. After publication of the said notice, the Assistant Commissioner, Endowments, Khammam, registered the property u/s 47 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Endowments Act"). By order dated 1-3-2007, the Assistant Commissioner appointed a Single Trustee. The said order was challenged by the petitioner-Trust Board before the Regional Joint Commissioner, Multi Zone-III, Hyderabad and by order dated 21-8-2008 the latter has set-aside the appointment of the Single Trustee. Subsequent thereto, the Commissioner, Endowments Department, appointed an Executive Officer to the Temple on the recommendations of the Assistant Commissioner. This order was questioned by the petitioner-Trust Board in W.P. No. 23179/2008 and this Court by order dated 23-10-2008 suspended the appointment of the Executive Officer subject to the condition that the petition schedule property shall not be alienated to third parties. By order dated 18-3-2009, this Court permitted the petitioner-Trust Board to deposit the balance sale consideration paid by respondent No. 4 to the credit of the T.O.P. No. 193/2007 and the same was accordingly deposited.

8. After a detailed hearing of the case, the learned District Judge, Khammam, as noted supra, disposed of the above mentioned T.O.P. by order dated 31-8-2010 whereby he has declined permission to the petitioner-Trust Board to sell the petition schedule property. The learned District Judge however rendered findings that the petition schedule property belongs to a private Trust; that the gift under Ex.A-1 was a conditional one to the Temple for performing Saturday poojas and that the petition schedule property does not vest with the Endowments Department. As noted above, feeling aggrieved to the extent of rejection of permission to sell the petition schedule property, the petitioner-Trust Board filed C.R.P. No. 5784/2010 and assailing the findings rendered by the learned District Judge with respect to the nature of the Trust and the petition schedule property, respondent No. 2 filed C.R.P. No. 394/2012, both under Article 227 of the Constitution of India.

9. Extensive arguments have been advanced by Sri Vedula Venkataramana, learned Senior Counsel and Sri V.L.N. Gopalakrishna Murthy, learned counsel appearing for the petitioner in C.R.P. No. 5784/2010 who is respondent No. 1 in C.R.P. No. 394/2012 and Sri M.V.S. Suresh Kumar, learned counsel appearing for respondent No. 2 in C.R.P. No. 5784/2010 who is the petitioner in C.R.P. No.

394/2012. Sri G.M. Mohiuddin, learned counsel for respondent No. 4 and Sri A.S.C. Bose, learned counsel appearing for respondent No. 5-Board of Trustees constituted by the Commissioner of Endowments, also made their submissions.

10. Sri Vedula Venkataramana, the learned Senior Counsel, submitted that the Temple and the Trust in question are two different entities; that the Temple was in existence much prior to the coming into existence of the Trust under Ex.A-1-gift deed and that Ex.A-1-gift deed does not divest title of the donors over the petition schedule property. He further argued that even if there is a specific endowment, the right of the contesting respondent is only to approach the competent authorities under the Endowments Act and that the scope of Section 34 of the Trusts Act being narrow and the jurisdiction of the District Court being summary, neither the contesting respondent is entitled to raise the disputed questions nor the District Court can embark upon adjudication of such questions without confining itself to the question as to whether under the circumstances, the request of the petitioner-Trust Board for granting permission to sell the petition schedule property was reasonable and justifiable or not? The learned Senior Counsel argued that u/s 34 of the Trusts Act, the jurisdiction of the District Court is advisory and not adjudicatory and that the same cannot be equated with the jurisdiction of the Civil Court u/s 92 of the Code of Civil Procedure, 1908 whereunder the Civil Court has jurisdiction to frame a scheme. In support of his submissions, the learned Senior Counsel relied upon the Judgments of the Supreme Court in Trustees of HEH the Nizam''s Pilgrimage Money Trust, Hyderabad Vs. Commissioner of income tax AIR 2000 S.C. 1802, Sahebzadi Amina Marzia Vs. Syed Mohd. Hussain and Others, , Muffakham Jah Bahadur and Others Vs. H.E.H. Nawab Mir Barkat Ali Khan Bahadur, Mukarram Jah and Others, , Hasan Bin Mubarak Vs. Chief Judge, City Civil Court, Hyd. and Others, and M. Radhakrishna Gade Rao Sahib Vs. State of Madras,

11. Pursuing the same line of argument, Sri V.L.N. Gopalakrishna Murthy, learned counsel who also appeared for the petitioner-Trust Board, submitted that the learned District Judge has committed a serious error in far too exceeding his jurisdiction u/s 34 of the Trusts Act. The donors under the Trust, argued the learned counsel, are the beneficiaries themselves as the object of the Trust was to attain salvation (''Satgathulu'') in furtherance of which a provision was made for the purpose of Saturday poojas and payment to archakas for performing such poojas. The learned counsel further argued that as Ex.A-1-gift deed prohibited transfer of the petition schedule property in any manner other than by way of lease and as the said property cannot be put to agricultural use as the same has become barren and uncultivable, the object of the Trust itself got frustrated and thereby the provisions of Section 83 of the Trusts Act got attracted. The learned counsel has canvassed the theory of "resultant Trust" with the frustration of the object of the Trust created under Ex.A-1 and consequently the vesting of the property absolutely in the legal heirs of the donors under the said provision. The learned counsel placed reliance on the Judgment of the Supreme Court in State of U.P. Vs. Bansi Dhar and Others, in support of his submissions. The learned

counsel also submitted that the Civil Revision Petition filed by respondent No. 2 suffers from laches and that it is a pure afterthought as it was filed at the stage of arguments of C.R.P. No. 5784/2010.

12. Opposing the above submissions, Sri M.V.S. Suresh Kumar, learned counsel for respondent No. 2, submitted that with the registration of the petition schedule property u/s 43 of the Endowments Act, it has become a religious endowment, as a consequence of which the subject matter falls outside the scope of the provisions of the Trusts Act and that u/s 46(3) of the Endowments Act, until the contrary is established, it shall be presumed that all the particulars entered in the register maintained u/s 43 thereof are genuine. The learned counsel placed reliance on Section 1 of the Trusts Act in support of his submission. He has further submitted that there is a complete dedication in favour of the deity under Ex.A-1-gift deed and that therefore there can be no question of the petition schedule property being dealt with by the Trustees in contravention of the specific recitals of Ex.A-1-gift deed. The learned counsel further submitted that as the property has become an endowment property, it is governed by the provisions of the Endowments Act and thereby the learned District Judge is divested of the jurisdiction and that the property needs to be dealt with in accordance with the various provisions of the Endowments Act alone. The learned counsel further argued that the learned District Judge has completely misinterpreted the recitals of Ex.A-1-gift deed and also committed a serious error in holding that the petition schedule property belongs to a private Trust. He has also argued that the petition schedule property which is worth more than Rs. 20 crores is sought to be sold for a pittance i.e., for Rs. 1,25,00,000/- crores and thereby public interest is sought to be seriously jeopardized. The learned counsel placed reliance on the Judgment of the Supreme Court in Menakuru Dasaratharami Reddi Vs. Duddukudru Subba Rao AIR 1957 S.C. 797 in support of his submissions. He has also sought to justify the delayed filing of the revision petition by respondent No. 2.

13. Before dealing with the various submissions advanced by the learned counsel on merits, the objection to the delayed filing of C.R.P. No. 394/2012 needs to be considered. It is the submission of the learned counsel for the parties that filing of the said C.R.P. is a pure afterthought and that the same suffers from laches. The learned counsel for respondent No. 2 submitted that his client has given convincing reasons for not filing the C.R.P. earlier. He has drawn the Court''s attention to para-2 of the affidavit filed in C.R.P.M.P. No. 552/2012, wherein it is averred, as under :

At the outset, it is humbly submitted that questioning the impugned order dismissing the petition filed u/s 34 of the Indian Trusts Act, the 1st respondent herein filed C.R.P. No. 5784/2010 and the same is pending admission before this Hon''ble Court. As the matter is likely to be listed in due course, while going through the order of the trial court, my counsel stated that though the T.O.P. No. 193/2007 filed by the 1st respondent herein was dismissed by the District Judge, Khammam by order dated 31-8-2010, certain findings have been rendered by the trial court which are erroneous and that it is advisable to file an independent revision petition questioning the findings of the learned Judge to the extent of holding the subject property as constituting a private trust. It is submitted that the requirement to file a separate revision petition arose only when my counsel in the High Court was studying the matter so as to get ready with the hearing C.R.P. No. 5784/2010. It is submitted that the matter involves grant of permission to alienate property endowed to the deity of a temple in Khammam and the 1st respondent in O.P. No. 193/2007 was shown to be "to whomsoever it may concern". It is humbly submitted that I got impleaded in T.O.P. No. 193/2007 on devotee of the temple when a public notification was issued. It is humbly submitted that as it is a matter concerning the public, this Hon''ble Court may be pleased to consider the circumstances that led me in approaching this Hon''ble Court at this point of time by way of this independent revision petition. I submit that the delay in approaching this Hon''ble Court is neither willful nor wanton but bonafide.

There is no gainsaying that C.R.P. No. 394/2012 was filed when C.R.P. No. 5784/2010 was ripe for hearing. Even though no limitation is prescribed for filing a revision under Article 227 of the Condition, still a party cannot be permitted to invoke this remedy at his leisure. In this case, the T.O.P. filed by the petitioner was dismissed by the learned District Judge. However, respondent No. 2 felt aggrieved by certain findings rendered by the learned Judge while dismissing the T.O.P. The purpose of respondent No. 2 in filing the C.R.P. is to question those findings. Since the proceedings before this Court being in the nature of revision, he cannot obviously attack those findings on the analogy of a respondent in an appeal by invoking the provisions of Order XLI Rule 22 of the Code without independently filing a revision. Obviously respondent No. 2 did not feel the necessity of filing a separate C.R.P. as the T.O.P. was dismissed without any relief being granted to the petitioner, till he was advised by his Counsel while preparing for C.R.P. No. 5784/2010. From these facts, it is reasonable to presume that the belated filing of C.R.P. No. 394/2012 by respondent No. 2 is for bonafide reasons. At any rate, even in the absence of the revision petition filed by respondent No. 2, this Court while exercising its supervisory jurisdiction under Article 227 of the Constitution, is not precluded from examining the correctness or otherwise of the findings rendered by the learned District Judge and render its opinion to completely and effectively adjudicate the issues involved in this case. Hence, the objection raised by the petitioner is rejected.

14. In order to consider the various submissions advanced by the learned counsel for the parties, it is necessary to consider the width and ambit of Section 34 of the Trusts Act. The heading of the said provision reads : "Right to apply to Court for opinion in management of trust property." Under this provision, any trustee may, without instituting a suit, apply by petition to a Principal Civil Court of original jurisdiction for its opinion, advice or direction on any presented questions respecting the management or administration of the trust property

other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

15. This provision fell for consideration of the Supreme Court in many a case. One such case is the Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another, wherein the Apex Court, while dealing with the power of the Court to give opinion as to whether the buildings require repairs and whether the amounts would be properly used for the purpose of repairing the buildings, held that u/s 34 of the Trusts Act, the Court could have given opinion, advice or direction on any presented questions respecting the management or administration of the Trust property and not on any other matters; that the jurisdiction of the Court u/s 34 is limited jurisdiction under which it has not been conferred with the over all jurisdiction in matters arising under a trust deed; that the statute has prescribed what the Court can do and inferentially what it cannot do and that from the fact that the Court has been conferred power to grant only certain reliefs, it follows as a matter of law that the Court has been prohibited from granting any other relief.

The Apex Court further held that the jurisdiction of the Court is circumscribed by the provisions of Section 34 of the Trusts Act and that it has no jurisdiction to pronounce on the pleas put forward by the settler. On the strength of the said ratio, the Supreme Court held that on facts, the said case did not come within the scope of Section 34 of the Trusts Act and that the relief granted by the learned Judge was beyond his competence under the said provision.

16. A perusal of the order of the lower Court, in the present case, would show that it has framed a solitary point, viz., whether the petitioner-Trust Board is competent to seek permission of the court to sell the schedule lands and whether such permission can be accorded? However, the lower Court has expanded the scope of the inquiry into the petition as evident from para-13 of its order wherein it has embarked upon the question whether the petition schedule property is a private Trust or a public Trust and if it is a private Trust whether the petitioner-Trust Board being the trustee, can be permitted to sell the petition schedule property for securing the objects of the Trust created by its predecessors-in-title. The lower Court thereupon proceeded to consider various covenants of Ex.A-1-gift deed and adjudicated on the nature of endowment while holding that the property under Ex.A-1-gift deed is not endowed for the purpose of any service or charity of public nature and that the gift deed has been executed for the religious benefit of the executants and their family members by performing poojas on every Saturday. The lower Court further held that the petition schedule property does not vest with the Endowments Department and that it was a conditional gift made in favour of the presiding deity for the salvation of the executants of Ex.A-1-gift deed and their descendents. A further finding was rendered that since the property is a private Trust, the provisions of the Trusts Act are attracted. The lower Court however declined to grant permission to sell the plaint schedule property on the ground that the same is contrary to the object for which the

Trust in question has been created.

17. As rightly submitted by the learned Senior Counsel, the jurisdiction of the District Court u/s 34 of the Trusts Act is advisory and not adjudicatory. The Judgment of the Apex Court in Official Trustee (1-supra) leaves no room for doubt on this aspect. The limited jurisdiction of the lower Court is to hold a summary inquiry for the purpose of giving opinion, advice or direction on any presented questions respecting the management or administration of the Trust property. Such questions do not include the questions of details, difficulty or importance which cannot be disposed of summarily. In short, the questions that fall within the ambit of Section 34 of the Trusts Act in the present case are (i) whether as per the terms of Ex.A-1-gift deed, alienation of the petition schedule property was permissible? (ii) if not, in order to sustain the objects for which the Trust was created, the terms of Ex.A-1-gift deed have to be deviated from? and (iii) if so, to what extent such deviation is permissible? While giving its opinion, advice or direction on these aspects, if the Court felt that those questions cannot be decided in a summary manner, it should refrain from granting any relief u/s 34 of the Trusts Act.

18. The facts of the case created a situation where the case is taken out of the jurisdiction of the District Court for more reasons than one. It is an admitted fact that the petition schedule property was registered as a religious endowment u/s 43 of the Endowments Act, vide R.Dis.No.B/349/2007, dated 6-2-2007 of the Assistant Commissioner, Endowments Department. As noted above, u/s 46(3) of the Endowments Act, until the contrary is established, it shall be presumed that all the particulars entered in the register maintained u/s 43 thereof are genuine. The ''Savings'' clause in Section 1 of the Trusts Act saved public or private religious or charitable endowments from being affected by the provisions of the Trusts Act. Once the property is registered u/s 43 of the Endowments Act, it becomes the religious endowment and consequently it falls outside the scope of the Trusts Act. The remedy left to the aggrieved person is to apply to the Endowments Tribunal for modification or annulment of the entry and where such application relates to the right claimed by the applicant in support of such entry or omission, the same shall be decided as if it were a dispute within the meaning of Section 87 of the Endowments Act.

19. Unless the petition schedule property is declared as a private Trust and not a religious endowment, the District Court has no jurisdiction to render its advice or opinion or give any direction on the questions raised before it. Both the learned counsel appearing for the petitioner submitted that as the Trust is created under Ex.A-1-gift deed, the contesting respondent who is claiming to espouse the public cause, ought to have approached the Endowments Tribunal u/s 87 of the Endowments Act and that till a declaration is obtained that the property covered by Ex.A-1-gift deed is a religious endowment, he cannot raise any objection before the District Court under the provisions of the Trusts Act.

20. This submission, in my considered opinion, is without any merit. From the

provisions of the Endowments Act discussed above, with the registration of the petition schedule property as the endowment property, it is not possible to treat the same as the Trust property. Until the contrary is established, the entry relating to the property in question, in the register maintained u/s 43 of the Endowments Act, shall be treated as genuine. If the petitioner or any of its members is aggrieved by the registration of the petition schedule property u/s 43 of the Endowments Act, it is for them to approach the Endowments Tribunal u/s 45 of the Endowments Act for annulment of the entry. Till an order on such application is made by the Endowments Tribunal, the petition schedule property cannot be dealt with under the provisions of the Trusts Act. The learned District Judge has committed a serious error in not examining these aspects and instead delving into various aspects as noted above which completely fall outside the scope of Section 34 of the Trusts Act.

21. With regard to the submission of Sri V.L.N. Gopalakrishna Murthy, on Section 83 of the Trusts Act, having regard to the facts pleaded, the questions whether the Trust was created for the benefit of the donors and their descendents or of the deity and whether Ex.A-1 is rendered incapable of being executed and thereby a "resultant Trust" has got created for the benefit of the creator of the Trust or their legal representatives, are issues which fall completely outside the narrow confines of Section 34 of the Trusts Act. These questions, which will be germane for consideration after determination of the questions by the Endowments Tribunal on the legality or otherwise of the entry in the register maintained u/s 43 of the Endowments Act, can only be decided by the Civil Court in a regularly constituted suit.

22. In the light of the above findings, it has become unnecessary for this Court to deal with the various other contentions raised and the Judgments cited in support thereof, by the learned counsel for the parties. Since this court is of the opinion that the lower Court, instead of disposing of the T.O.P. through adjudicatory process and rendering various findings in the process for and against the petitioner-Trust, ought to have simply dismissed the same by relegating the parties to the remedy under the provisions of the Endowments Act.

23. On the analysis as above, while not interfering with the rejection of the T.O.P. by the lower Court, the findings rendered by it are declared to have no effect in law and that they do not bind the parties. The parties are left free to avail appropriate remedies in the light of the observations made and the findings rendered hereinabove. Respondent No. 4 shall be free to make an appropriate application in W.P. No. 23179/2008 for taking return of the deposit of the purported sale consideration made to the credit of T.O.P. No. 197/2007.

24. In the result, C.R.P. No. 5784/2010 is dismissed and C.R.P. No. 394/2012 is disposed of. As a sequel, C.R.P.M.P. No. 7708/2010 in C.R.P. No. 5784/2010 and C.R.P.M.P. No. 552/2012 in C.R.P. No. 394/2012 are disposed of as infructuous.