

(2008) 11 AP CK 0064

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1207 of 2008

Sri Sanjeeva Anjaneya Swamy Vari Devasthanan,
Rajahmundry

APPELLANT

Vs

Thokkula Dasaradharamayya and Another

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 151, 83, 83(1), 83(4), 84
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2009) 2 ALD 356 : (2009) 2 ALT 431

Hon'ble Judges : G. Chandraiah, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : V.T.M. Prasad, for the Appellant; Chandra Sekhar Kapakurti and G.P. for Endowments, for the Respondent

Judgement

D.S.R. Varma, J.—Heard both the counsel at the stage of admission.

2. Aggrieved by the order dated 02.05.2008 passed by the learned single Judge in W.P. No. 10512/2008 the present writ appeal is filed.

3. Sri Sanjeeva Anjaneya Swamy Vari Devasthanam, Rajahmundry represented by its Archaka-cum-Trustee is the appellant herein (for short herein after referred to as "the appellant - Temple"). From the material available on record it could be seen that the Assistant Commissioner, Endowments Department, Rajahmundry by his proceedings in Rc. No. A4/5755/2007 dated 28.6.2007 submitted proposals u/s 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act") stating that the 1st respondent herein is an encroacher over the temple land bearing door No. 8-9-1 in 150 sq. yards of site, Tank Bund, Rajahmundry. Based on the proposal, a case in O.A. No. 114/2007 was instituted by the appellant - Temple. The case of the temple is that the 1st respondent took the schedule land on lease during the year 1982 from the then trustee without approval from the competent authority

and however, as there was default in payment of damages for use and occupation of the land in the year 1998, the Temple got issued notice on 9.4.1998 and the 1st respondent issued reply dated 19.4.1998 with false allegations contending that there is an oral lease agreement dated 15.7.1997. The further case of the temple is that the 1st respondent filed suit in O.S. No. 487/1998 on the file of the I Additional Junior Civil Judge, Rajahmundry for specific performance of the oral agreement dated 15.7.1997 and for permanent injunction and the said suit was dismissed on 7.4.2004 and the appeal filed in A.S. No. 51/2004 on the file of the Principal District Judge, East Godvari at Rajahmundry also ended in dismissal by judgment and decree dated 5.12.2006. The Deputy Commissioner, Endowments Department by order dated 3.4.2008 considering the evidence and the material on record and in exercise of the power vested in him u/s 83 of the Act held that the 1st respondent is an encroacher and directed that the vacant land shall be handed over within a period of 30 days from the date of the order and in case of default, action as provided u/s 84 of the Act was directed to be initiated.

4. Aggrieved by the above order dated 3.4.2008 the 1st respondent herein filed writ petition alleging that after the disposal of the first appeal in A.S. No. 51/2005 on 5.12.2006, there was a mutual understanding between him and the Temple on 30.12.2006 and by virtue of the same, he was allowed to continue his cement casting business and he incurred an amount of Rs. 22,000/- towards repairs and the Deputy Commissioner of Endowments by not considering these aspects allowed O.A. No. 114/2007 and declared him as encroacher u/s 83 of the Act and, therefore, he sought to set aside the order passed by the Deputy commissioner of Endowments dated 3.4.2008.

5. The learned single Judge of this Court holding that there is an alternative remedy by way of filing the suit under Sub-section (2) of Section 84 of the Act, dismissed the writ petition with liberty to file a suit within a period of one week from the date of receipt of a copy of the said order and till such time, directed that the 1st respondent shall not be evicted from the land in question. Aggrieved by the liberty given by the learned single Judge to the 1st respondent herein to institute a civil suit under Sub-section (2) of Section 84 of the Act, the Temple filed the present appeal.

6. The learned Counsel appearing for the appellant - Temple submitted that the 1st respondent was declared as an encroacher u/s 83 of the Act by the Deputy Commissioner of the Endowments Department and further the 1st respondent herein filed a suit in O.S. No. 487/1998 on the file of I Additional Junior Civil Judge, Rajahmundry for specific performance of the oral agreement and for permanent injunction and the said suit was dismissed by judgment and decree dated 7.4.2004 and even the appeal filed by him in A.S. No. 51/2004 on the file of Principal District Judge, Rajahmundry also ended in dismissal by judgment and decree dated 5.12.2006 and the order of the learned single Judge again giving liberty to the 1st respondent to institute a suit u/s 84(2) may not be sustained,

since the petitioner is not claiming any title and furthermore the competent courts have already declared the temple as the absolute owner. Relying on the judgment of a Division Bench in W.A. No. 873/2007 dated 30.10.2007 the learned Counsel for the appellant submitted that in similar circumstances where the alleged tenants claimed that they are cultivating the land for many years and acquired a right for grant of lease under the Act as they are depositing the makta, directed the appellants to vacate and further directed the civil courts in the State of A.P. not to entertain any suit for permanent or temporary injunction which may be filed by the appellants therein for the purpose of being allowed to retain possession of the land. Therefore, he submitted that the liberty given by the learned single Judge to institute the suit may be set aside in view of the above facts and circumstances of the case.

7. On the other hand, the learned Counsel appearing for the 1st respondent supporting the impugned order of the learned single Judge sought for dismissal of the writ appeal.

8. From the above, it could be seen that the 2nd respondent herein - Deputy Commissioner has declared the 1st respondent, as an encroacher u/s 83 of the Act and u/s 83(4), directed to remove the encroachments by order in O.A. No. 114/2007 dated 3.4.2008. Mode of eviction on failure of removal of encroachments as directed by the Deputy Commissioner is provided u/s 84 of the Act.

9. At this juncture it is necessary to note the relevant portions under Sections 84 and 151 of the Act as under:

84. Mode of eviction on failure to removal of the encroachments as directed by the Deputy Commissioner:

(1)....

(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;

Provided further that no such suit shall be instituted by a person who is let into the possession of the land, building or space, or who is a lessee, licensee or mortgagee, of the institution or endowment.

(3)....

151. Bar of Jurisdiction: No Suit or other legal proceeding in respect of administration or management of an institution or endowment or any other matters of dispute for determining or deciding for which provision is made in this Act shall be institution in any Court of Law except under and in conformity with

the provisions of this Act.

10. From the above provision, under Sub-section (2) of Section 84 it is clear that if any person is aggrieved by the order passed by the Deputy Commissioner u/s 83(4), he can file a suit to establish that the charitable or religious institution has no title to the land in dispute. In other words, if any person is aggrieved by the order passed u/s 83(4) alone, and that he is disputing the title of the charitable or religious institution, he can file a suit. Further, as per the second proviso to Sub-section (2) of Section 84, it is further clear that no suit as envisaged under Sub-section (2) of Section 84 shall be instituted by a person, who is let into the possession of the land, building or space or who is a lessee, licensee or mortgagee of the institution or endowment.

11. Therefore, as per the second proviso to Sub-section (2) of Section 84 of the Act, it is unambiguous that a person who is permitted to be in possession of the land of the religious institution or endowment by way of lease, licence or mortgage, is barred from instituting a civil suit.

12. Further, Section 151 of the Act contemplates that no suit or other legal proceedings in respect of administration or management of an institution or endowment or any other matters of dispute for determination or deciding for which provision is made in the Act shall be filed in any court of law, except under and in conformity with the provisions of the Act.

13. In the present case, the 1st respondent is admittedly not disputing the title of the appellant - Temple and he was declared by the Deputy Commissioner as an encroacher u/s 83 of the Act and his claim is that by way of mutual understanding/oral lease, he was permitted to continue in possession over the land in question. When this is the case of the 1st respondent, in view of the second proviso to Sub-section (2) of Section 84 and as he is not disputing the title of the appellant - temple, he is barred from instituting a suit in a civil court.

14. A perusal of the facts in W.A. No. 873/2007 dated 30.11.2007 would reveal that the appellants therein sought for a direction to the Executive Officer of Shri Venkateswara Swamy Devasthanam, Dwaraka Tirumala, West Godavari District to extend the lease and to quash the notice dated 5.7.2007 issued for auction of the land in question for grant of lease. Their case is that they have been cultivating the land for the last many years and thus have acquired a right for granting the lease under the Act read with the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 to the exclusion of others. The contention of the Temple therein is that they are not the lessees and that mere depositing of Maktas will not entitle them to claim leasehold rights. Considering these facts and circumstances and also considering the submission of the counsel for the appellants that the appellants may be granted some time till harvesting the existing crop, the Division Bench, while granting time to the appellants, passed certain directions and the direction No. 4, which is relevant, is extracted as under:

1....

2....

3....

4. No Civil Court in the State of Andhra I

Pradesh shall entertain any suit for

permanent or temporary injunction, which may be filed by the appellants for the purpose of being allowed to retain possession of the land.

15. In view of the above legal position, we are of the view that the observation of the learned single Judge that the 1st respondent has an alternative remedy u/s 84(2) of the Act and further giving him liberty to file a suit and till such time granting stay of eviction, cannot be sustained.

16. However, as per the submission of the learned Counsel for the 1st respondent, pursuant to the direction of the learned single Judge, the 1st respondent filed a suit in O.S. No. 407/2008 on the file of IV Junior Civil Judge, Rajahmandry and the same is pending. In other words, the liberty given by the learned single Judge while dismissing the writ petition has already been availed of. In view of this development, the appellant -temple may file a petition in the said suit under Order 7 Rule 11 (d) of C.P.C. raising a preliminary objection regarding the maintainability of a suit. In case any such petition is filed, the court below shall dispose of the same with utmost expedition, on priority basis, in accordance with law.

17. It is needless to observe that the 1st respondent is always at liberty to avail the statutory remedy available under the Act.

With the above observations, the writ appeal is disposed of, at the stage of admission. No costs.