

(2005) 12 AP CK 0073
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4372 of 2005

Sri Sitharamaswamy Vari Devasthanam	APPELLANT
Vs	
Grandhi Sambasiva Rao and Others	RESPONDENT

Date of Decision : 19-12-2005

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 151, 83
Civil Procedure Code, 1908 (CPC) — Section 10
Constitution of India, 1950 — Article 227

Citation : (2006) 2 ALT 4 : (2006) 1 APLJ 174

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : N. Guru Gopal, for the Appellant; Chakravarthy P.V.S.K., for the Respondent

Final Decision : Allowed

Judgement

C.V. Ramulu, J.—This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against an order dated 25-6-2004 made in I.A. No. 626 of 2004 in O.S. No. 20 of 2004 on the file of the learned Additional Senior Civil Judge, Narsaraopet, Guntur District, allowing the said petition.

2. The revision petitioner is the second defendant, first respondent is the plaintiff, and the respondents 2 and 3 are the defendants 1 and 3 in the suit. For the sake of convenience, the parties will be referred to as they are arrayed before the trial Court.

3. Plaintiff laid the suit for specific performance of the lease agreement. It appears that after the suit was laid, the revision petitioner herein filed an application u/s 83 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act") and the same is pending consideration. While so, the plaintiff filed the present I.A. No. 626 of 2004 in O.S. No. 20 of 2004 purported to u/s 10 of CPC seeking to stay of the subsequent

proceedings filed u/s 83 of the Act by the revision petitioner herein. The Court below allowed the said application and directed to stay the proceedings of the Deputy Commissioner, Endowments in O.A. No. 38 of 2004 until further orders. Aggrieved by the same, the present Civil Revision Petition has been filed by the revision petitioner.

4. It is the case of the revision petitioner that the land in question belongs to the temple endowment and no suit is maintainable in view of Section 151 of the Act as well as law laid down by the Supreme Court. Further, the petition u/s 10 of CPC is also not maintainable because the proceedings initiated by the second defendant is u/s 83 of the Act, so the Civil Court could not have assumed jurisdiction to stay the subsequent proceedings before any authorities under the Endowments Act.

5. Per contra, the learned Counsel for the respondents while supporting the order passed by the trial Court contended that the petition u/s 10 CPC is maintainable and the Court below has not committed any error calling for interference of this Court under Article 227 of the Constitution of India.

6.1 have given my earnest consideration to the submissions made by the learned Counsel on either side, and also perused the order under revision and the other material made available on record.

7. At the out set, I am of the opinion that the Court below has grossly erred in applying the provisions of Section 10 CPC in a matter of this nature. Admittedly, the proceedings initiated by the second defendant-revision petitioner herein u/s 83 of the Act are pending before the Deputy Commissioner of Endowments in O.A. No. 38 of 2004. Thus, the proceedings sought to be stayed are the purported subsequent proceedings before the Deputy Commissioner of Endowment to avoid conflicting judgments on the ground that the subject matter and the issues involved in both the cases are one and the same. I am afraid I cannot agree with such proposition. Before going further, it may be necessary to notice Section 10 of CPC, which reads as under:

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

8. A bare reading of the above provision would show that only when the suits are pending before the same Court or before some other Civil Court and if the subject matter is the same and the issues are substantially same, probably the subsequent suit can be stayed to avoid conflict of verdicts. The underlying object of the rule contained in Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel

litigations in respect of the same cause of action, the same subject matter and the same relief. The policy of the law is to confine the plaintiff to one litigation, thus, obviating the possibility of two contradictory verdicts by two or more courts in respect of the same relief.

9. The basic purpose of this section is to protect a person from multiplicity of proceedings as also to avoid conflict of decisions. In other words, the section aims to avert inconvenience to the parties and it also gives effect to the rule of *res judicata*. The true intent of the provisions in Section 10 is that common matters in issue in two suits ordinarily be decided in a previously instituted suit.

10. In *Sohal Engineering Works Vs. Rustam Jehangir Vakil Mills Co. Ltd.*, the High Court of Gujarat held thus:

On a plain reading of the contents of Section 10 of the Code, it is crystal clear that the object of the provision is to prevent courts of concurrent jurisdiction from adjudicating upon parallel litigations between the same parties having the same matter in issue with a view to avoiding conflict of decisions. The policy of the law is that if the matter in issue in the two parallel suits is identical, in the interest of judicial comity the court in which the subsequently instituted suit is pending shall stay the proceedings and allow the previously instituted suit to proceed.

11. In *Indian Bank Vs. Maharashtra State Co-operative Marketing Federation Ltd.*, the Supreme Court held thus:

The object of the prohibition contained in Section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matter in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the Court to entertain and deal with the later suit nor does it create any substantive right in the matter. It is not a bar to the institution of the suit. It has been construed by the Court as not a bar of the passing of interlocutory order such as an order for consolidation of the later suit with the earlier suit, or appointment of a receiver or an injunction or attachment before judgment.

12. The provisions of Section 10 apply only to suits and not to other proceedings. This section, therefore, cannot apply where one of the two proceedings is not a suit.

13. The very proceedings u/s 83 are before the Deputy Commissioner under the Endowments Act. The Endowments Act is a special Act providing certain machinery to protect the landed property of the temple. Whereas the present suit was filed under CPC before the competent Civil Court, and when another suit is also pending before the competent Civil Court, the plaintiffs are entitled to maintain a petition u/s 10 CPC, not otherwise. The Deputy Commissioner, who is authorized u/s 83 of the Act to proceed with the certain aspects under the Act, is not a Civil Court as contemplated u/s 10 of CPC.

14. In view of the above, I am of the opinion that the very petition u/s 10 CPC is not maintainable. Therefore, the order under revision is illegal and is liable to be set aside, as such, the order dated 25-6-2004 made in I.A. No. 626 of 2004 in O.S. No. 20 of 2004 is set aside and the I.A. No. 626 of 2004 stands dismissed.

15. Accordingly, the Civil Revision Petition is allowed. No order as to costs.