

(2009) 07 MAD CK 0102

In the Madras High Court

Case No : Appeal Suit No. 13 of 2002 and CMP No. 968 of 2009

The Commissioner, H.R. and C.E. Department

APPELLANT

Vs

Manali Lakshmana Mudaliar Specific Endowment

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, 92
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 108, 34, 63, 64, 65

Citation : (2009) 07 MAD CK 0102

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Ravirja Pandian, J

Bench : Division Bench

Advocate : T. Chandrasekaran, Special Government Pleader, for the Appellant;
G. Anbumani, for the Respondent

Final Decision : Dismissed

Judgement

K. Ravirja Pandian, J.—The Commissioner of Hindu Religious and Charitable Endowments Department, has filed this appeal against the

judgment and decree dated 30.04.2001 made in O.S. No. 184 of 2000 granting the decree in favour of the plaintiff/respondent to sell an extent of

Ac.14.14 out of lands belonging to the plaintiff to the Pudupalayam Co-operative House-site society at the rate of Rs. 1,25,000/- per acre. The

correctness of the said decree is canvassed by the appellant on the ground that the suit by the plaintiff is not maintainable in view of Section 108 of

the Hindu Religious and Charitable Endowments Act. A prior permission has to be obtained u/s 34 of the Hindu Religious and Charitable

Endowments Act before any alienation is made in respect of the properties of the Endowment.

2. The facts of the case are : Manali Ramakrishnan Mudaliar, the hereditary

trustee of Manali Lakshmana Mudaliar Specific Endowment, filed a suit on the premise that the suit properties situated in Pudupalayam, Cuddalore are the trust properties, and that there were more than 200 persons, who had occupied the properties last several decades ago and constructed more than 40 brick built terraced houses, besides tiled buildings and huts and the trust was not deriving any income from the suit property for several decades. The occupants of the property have formed a society among themselves under the name of Pudupalayam Co-operative House Sites Society (E. No. 2513) (hereinafter called "the society"); that all the attempts made by the plaintiff to evict them were resisted by the occupants and as well as by the society and the trust was not able to recover possession of the property. In the said circumstances, permission was sought for from the Commissioner, H.R. & C.E.

Department, Nungambakkam to dispose of the suit properties. The defendant/appellant in their letter in C. No. 29538/60 dated 22.04.1960

permitted the plaintiff to sell the properties by public auction. The society formed by the occupiers of the property resisted the public auction to be conducted by the plaintiff. There was no takers of the property in the public auction so conducted as the properties were under the occupation and possession of the members of the society. No third party was inclined to purchase the same. Hence, the properties could not be sold in the public auction.

3. Taking into consideration the fact that the property did not yield any income, but under the occupation of several persons for several decades, a settlement was reached, rather a compromise was arrived at the instance of eminent persons and dignitaries, whereby the society itself offered to purchase the suit properties and distribute the land amongst its members. The Society offered to purchase the property at the rate of Rs.

1,25,000/- per acre. According to the plaintiff, it was a reasonable proposal and hence, the plaintiff once again applied to the defendant to modify

the permission already given and permit him to sell the property to the society at the rate of Rs. 1,25,000/- per acre by letter dated 17.06.1999.

Despite the fact that more than a year had lapsed, the defendant did not give any reply and when the plaintiff personally approached the defendant,

the defendant refused to give any answer for the sale of the property. The

plaintiff, finding no other option, filed a suit u/s 92 of the CPC by arraying the Commissioner as a party respondent to the suit and sought for the relief of permission permitting the plaintiff to sell the suit property for

Rs. 17,67,500/- to Pudupalayam Co-operative House site society.

4. The suit was defended by admitting almost all the material facts stated in the plaint, such as, the properties belong to the Trust; the properties

encroached upon by several persons and are in possession for several decades; and that all attempts made to evict them ended in futile. But the

only defence taken was that the amount offered by the Society was not on par with the market price.

5. The learned trial Judge, after hearing the counsel on either side and on analysis of the oral evidence let in and the documents produced before it,

granted the relief as sought for in the plaint. The correctness of the same is now canvassed before us in this appeal by the Hindu Religious and

Charitable Endowments Department on the grounds stated in the summation of facts. An application to implead 201 persons, who are stated to be

in actual possession of the properties, is filed by the members in CMP No. 968 of 2009.

6. We heard the learned Counsel on either side and perused the materials available on record. We also heard Mr. Jothi, learned senior counsel,

appearing for the proposed parties in CMP No. 968 of 2009.

7. The facts are not in dispute. The properties of the Trust have been occupied by several persons, and they are in such occupation for the last

several decades and constructed more than 40 brick built terraced houses, besides tiled buildings and huts. The trust was not deriving any income

from the suit property for the several decades. All the efforts made to recover the property from them went in vain and ultimately, the Trust took a

decision to sell away the property to the occupants to atleast have some money from the occupants, who otherwise would occupy the same

without any hindrance and without making any payment to the Trust. They even formed a society to protect their possession. That factum has been

explained to the Commissioner and the Commissioner permitted the Trust by letter dated 22.04.1960, which is marked as Ex.A2, to sell the

property by public auction. That shows that the defendant is well aware of the situation and then only granted the permission to sell the property in

public auction. But when the efforts of the trust in selling the property through the Public auction did not yield any result, by a letter dated

17.06.1999, the plaintiff informed this factum to the defendant and sought for permission to sell the property to the society for Rs. 1,25,000/- per

acre, but there was total silence on the part of the defendant. The defendant neither gave any permission nor rejected the same. It is curious to note

that in the written statement even the permission granted under Ex.A2 has not been vouched by the defendant by innocuously saying that the

defendant was not able to verify the proceedings dated 22.04.1960, since the same was 40 years old document. Whatever may be the reason, the

fact remains that the defendant has not replied to the letter seeking permission to sell the properties to the occupants themselves. Taking into the

totality of the circumstances of the case, and the fact that the occupants are in possession of the properties dating back to several decades prior to

the filing of the suit and also the further fact that the properties could not be sold to any other third party, the trial Judge has granted the decree.

8. Before us, the learned Government Pleader appearing for the appellant/defendant contended that the suit itself is not maintainable, since there is

a specific bar for filing of the suit u/s 108 of the Hindu Religious and Charitable Endowments Act. He further submitted that prior permission has to

be obtained for any alienation as per Section 34 of the Act, which has not been obtained in this case, whereas the learned Counsel for the

plaintiff/respondent argued for sustaining the judgment and decree of the trial Court. Mr.Jothi, learned senior counsel, appearing for the proposed

parties, also argued for sustaining the order of the trial Court.

9. Admittedly, these two points were not raised before the trial Court. As a point as to the bar of jurisdiction of the Civil Court has been argued,

we consider the point. The first point that arises for consideration in this appeal is whether the suit filed u/s 92 of the CPC seeking permission from

the defendant/appellant is barred because of the provision Section 108 of the Act. Section 108 of the Act reads as under:

No suit or other legal proceeding in respect of the administration or management of a religious institution or any other 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.

10. It is evident from the above provision that filing of a suit in civil Court in respect of the administration or management of a religious institution or

any other matter or dispute for determining which provision is made in the Act, is barred. What are the provisions made in the Act for determining

or deciding the matter or dispute in respect of the administration or management of the religious institution is provided in Chapter V of the Act,

which speaks about "Inquiries". The said Chapter contains Sections 63 to 70. Sections 63 and 69 are relevant for deciding the issue on hand.

Section 63 vests the power on the Joint Commissioner or Deputy Commissioner to inquire into and decide the disputes enumerated therein, such

as,

(a) whether an institution is a religious institution;

(b) whether a trustee holds or held office as a hereditary trustee;

(c) whether any property or money is a religious endowment;

(d) Whether any property or money is a specific endowment;

(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the

established usage of a religious institution is in regard to any other matter;

(f) whether any institution or endowment is wholly or partly of a religious or secular character; and whether any property or money has been given

wholly or partly for religious or secular uses; and

(g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or

the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly

of a secular character or where by property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such

property or money shall be allocated to religious uses.

11. Section 69 provides for appeals to the Commissioner against any order passed under the provisions of Chapter V and Section 70 provides for

suits and appeal to the Civil Court against the order of the Commissioner made under the provisions in the same Chapter.

12. Thus, the filing of the suit in a Civil Court in respect of the administration or

management of a religious institution or any other matter or dispute

for determining or deciding which provision is made in the Act is barred, except under and in conformity with the provisions of the Act. Though the

jurisdiction of the Civil Court to decide the matter that arose u/s 63 of the Act is not totally prohibited, the section requires that the proceedings

prescribed under the Act to be followed. So far as matters do not relate to the subjects enumerated in Section 63, a civil suit will certainly lie. The

lis in the present case does not relate to the subject enumerated in Section 63. (See Sri Venkataramanaswamy Deity at Kothur Village Vs.

Vadugammal,).

13. The normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either

expressly or impliedly excluded as provided u/s 9 of the Code of Civil Procedure. But such exclusion is not readily inferred and the presumption to

be drawn must be in favour of the existence rather than exclusion of jurisdiction. Therefore, jurisdiction of the Civil Court is to be assumed.

Exclusion thereof is an exception. Unless the jurisdiction is specifically or by necessary implication is excluded the Civil Court will continue to have

the jurisdiction vide Abdul Waheed Khan Vs. Bhawani and Others, ; Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, ;

State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, ; I.T.I. Ltd. Vs. Siemens Public Communications Network

Ltd.,

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14. Even in the wake of specific provision in the statute giving finality to the orders passed by the authorities under the statute it is not decisive to

conclude that the jurisdiction of the Civil Court is taken away. In Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , a

Constitution Bench of the Apex Court laid down seven principles of parameters regarding the exclusion of jurisdiction of Civil Court and they are

thus:

(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is

adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the

provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegality collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if

the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

15. In the light of the decisions referred to supra and in terms of the statutory

provisions above referred to, we are of the view that the suit is well maintainable.

16. In respect of the second point that no permission has been obtained for alienating the property u/s 34 of the Act, we are not able to accept the stand of the appellant. As detailed in the summation of facts, necessary permission was sought for under Ex. B.1 dated 17.06.1999 for which no reply was forthcoming from the appellant. The continuous silence on the part of the appellant made the Trust to move the civil Court for which the respondent should not be faulted, rather should not be denied the relief particularly in the given set of facts.

17. We find, on the peculiar facts and circumstances of the case, that the amount fixed is also correct and the decree granted by the trial Court cannot be regarded as faulty, for us to interfere with. The decree is confirmed. The appeal is dismissed. No costs.

18. Mr. Jothi, learned senior counsel appearing on behalf of certain persons who are claiming that they are in possession of the suit properties, and filed CMP No. 968 of 2009 seeking to implead themselves, has expressed apprehension that the society may distribute the properties to their whims and fancies without identifying the proper persons entitled for distribution of land and argued that certain directions may be issued in this regard.

19. Having regard to the fact that the issue is of the year 2000, and the fact that the persons who are in occupation and possession of the suit properties are in the suit properties for 20 to 30 years back, a cautionary note is hereby issued to the Special Officer or the elected persons or whoever is administering the society to be careful in identifying the persons, who are entitled to the benefit of the decree granted by the trial Court.

Any dereliction on the part of the officers would be viewed seriously. By observing so the CMP No. 968 of 2009 is dismissed as the petitioners are neither necessary nor proper party to the lis.