

Parmananda Mahapatra

Vs

Commissioner of Hindu Religious Endowments, Orissa and Others

Civil Appeal No. 310/1963 and 121 of 1964

(V. Ramaswami – I, K. Subba Rao, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

10.09.1965

JUDGMENT

RAMASWAMI, J. –

This appeal is brought by a certificate on behalf of the plaintiff against the judgment and decree of the Orissa High Court, dated November 22, 1961.

In the suit which is the subject matter of this appeal the plaintiff alleged that his ancestor - Dayanidhi Mahapatra - constructed a temple out of his own funds and established a family deity and made endowments for the maintenance of Seba-Puja of the deity. After the death of Dayanidhi the plaintiff became the Manager and Shebait of the family deity. The case of the plaintiff was that the temple and the endowments were never dedicated to the public nor had the public any kind of right in the temple or the endowed properties, but that respondent No. 1, acting under the provisions of S. 49 of the Orissa Hindu Religious Endowment Act [Hereinafter referred to as the Act] realised a sum of Rs. 386 as the annual contribution from the plaintiff. Consequently Sri Baman Mahapatra filed an application under s. 64 [1] of the Act for a declaration that the temple in question was a private one and did not fall within the purview of the Act. On November 1, 1953 respondent No. 1 rejected the contention of the plaintiff a

The question of law involved in this appeal is whether the High Court is right in its view that in a suit brought under s. 64 [2] of the Act the public should be impleaded as necessary parties under O. 1 r. 8 of the Civil Procedure Code.

Section 6 [13] of the Act defines a temple as a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community, or any section thereof, as a place of religious worship. Section 6 [5] defines an excepted temple to mean and include a temple the right of succession to the office of trustee or the offices of all the trustees [where there are more trustees than one] whereof has been hereditary, or the succession to the trusteeship whereof has been specially provided for by the founder."

Section 64 of the Act States:

"64. [1] If any dispute arises as to whether an institution is a math or temple as defined in this act or whether a temple is an excepted temple, such dispute shall be decided by the Commissioner.

[2] Any person affected by a decision under subsection [1] may, within one year, institute a suit in the Court to modify or set aside such decision; but subject to the result of such suit, the order of the Commissioner shall be final."

The right of instituting a suit conferred by s. 64[2] on any person affected by the decision of the Commissioner is a statutory right and there is nothing in that section which makes it incumbent upon the plaintiff to make it incumbent upon the plaintiff to make the public as party defendants to the suit or to take recourse to the procedure prescribed under O. 1 r. 8 Civil Procedure Code. It Was conceded by the Solicitor General on behalf of respondent No. 1 that there is also nothing in the rules framed under s. 52 of the Act requiring the Commissioner to give public notice and invite objections from the members of the public interested in the temple in a proceeding under s, 64 [1] of the Act. If the Commissioner is not required to give public notice or to grant a hearing to members of the public notice or to grant a hearing to members of the public before making an order under s. 64 [1] of the Act, there is no reason why the person affected by the decision of the Commissioner should be compelled to implead

" 54 [1] The Commissioner or any person having interest and having obtained the consent of the Commissioner may institute a suit in the Court to obtain a decree-

[a] to recover possession of property comprised in a religious endowment.

[b] opening or removing the trustee of a math or excepted temple or of a specific endowment attached to a math or excepted temple:

[c] directing account and inquiries;

[d] declaring what proportion of the endowed property or of the interest therein shall be allocated to any particular object of the endowment.

[e] directing account and inquiries; or

[f] granting such further or other relief as the nature of the case may require.

[2] Section 92 and 93 and rule 8 of Order I of the First Schedule of the Code of Civil Procedure, 1908, shall have no application to any suit claiming any relief in respect of the Administration or management of a religious endowment and no suit in respect of such administration or management shall be instituted, except as provided by this Act.

[3] All suits or other legal proceeding by or against the Commissioner under this act Shall be instituted by or against him in his name.

The principle underlying the section is based, to some extent, upon the principle of English law for enforcement of charitable trusts in the interest of general public. In English law the Crown as parties is the constitutional protector of all property; subject to charitable trusts, such trusts being essentially matters of public concern - A. G. v. Brown and the Attorney General, who represents the Crown for all legal purposes, is accordingly the proper person to take proceeding on this behalf and to protect charities - Eyre v. Countess of Shaftsbury. Whenever an action is necessary to enforce the execution of a charitable purpose, to remedy any abuse or misapplication of charitable funds, or to administer a charity, the Attorney General is the proper plaintiff, whether he is acting alone ex

officer as the officer of the Crown and as such the protector of charities, or ex relatione, that is to say at the request of a private individual who thinks that the charity is being or has been abused. The same princip

For the reasons expressed we hold that this appeal should be allowed and the judgment and decree of the High Court of Orissa in First Appeal No. 53 of 1956, dated November 22, 1961 should be set aside and the appeal should be remanded to the High Court for being dealt with and decided in accordance with law. Both the parties will bear their own costs up to this stage.

Civil Appeal No. 121 of 1964.

This appeal is brought by a certificate against the judgment and decree of the High Court of Orissa, dated November 16, 1961 and the question of law involved in this appeal is identical with the one involved in Civil Appeal No. 310 of 1963. For the reasons given in that case we allow this appeal, set aside the judgment and decree of the Orissa High Court in First Appeal No. 78 of 1958, dated November 16, 1961 and order that the appeal should go back in remand to the High Court for being dealt with and determined in accordance with law. Both the parties will bear own costs up to this stage.

Appeals allowed.

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