Veruareddi Ramaraghava Reddy and Ors.

Vs

Konduru Seshu Reddy and 2 Ors.

Civil Appeal No. 265 of 1964

(K. Subha Rao, V. Ramaswami-I JJ)

26.04.1966

JUDGMENT

RAMASWAMI, J.-

This appeal is brought by certificate on behalf of the defendants against the judgment of the High Court of Andhra Pradesh dated August 7, 1962 in Appeal Suit No. 312 of 1957.

In the village of Varagali, in the district of Nellore, there is a temple in which is enshrined the idol of Sri Kodandaramaswami. The temple was built in the middle of the last century by one Burla Rangareddi who manager the affairs of the temple and its properties during his life-time. After his death, his son, Venkata Subbareddy was in management. By a deed dated August 19, 1898 Venkata Subbareddi relinquished his interest in the properties in favour of one Vemareddi Rangareddi whose family members are defendants 1 to 5. The plaintiff filed a petition before the Assistant Commissioner for Hindu Religious Endowments, Nellore, alleging mismanagement of the temple and its properties by the first defendant. Notice was issued to the 1st defendant to show cause why the temple properties should not be leased out in public auction and the first defendant contested the application alleging that the properties were not the properties of the temple but they belonged to his family. After enquiry, the Assistant Commissioner submitted a report to the Hindu Religious Endowments Board, Madras, recommending that a scheme of management may be framed for the administration of the temple and its properties. The Board thereafter commenced proceedings for settling a scheme and issued notice to the 1st defendant to state his objections. The 1st defendant reiterated his plea that the temple was not a public temple. The Board held an enquiry and by its order dated October 5, 1949 held that the temple was a public one. On January 18, 1950 the 1st defendant filed O.P. no. 3 of 1950 on the file of the District Judge; Nellore (1) for setting aside the order of the Board dated October 5, 1949 declaring the temple of Sri Kodandaramaswamivari as a temple defined in s. 6, cl. 17 of the Act, (2) for a declaration that the temple was private temple and (3) for a declaration that the properties set out in the schedule annexed to the petition were the personal properties of his family and they did not constitute the temple properties. Originally, the Commissioner. Hindu Religious Endowment Board, Madras was impleaded as the sole respondent in the petition. The present plaintiff later on got himself impleaded as the 2nd respondent therein. Both the respondents contested the petition on the ground that the temple was a public temple and that the properties mentioned in the schedule were the properties of the temple and not the personal properties of the 1st defendant. For reasons which are not apparent on the record the petition was not disposed of for a number of years. In the meantime Madras Act II 1927 was repealed and the Hindu Religious and Charitable Endowments Act of 1951 was enacted. Then came the formation of the State of Andhra Pradesh. By reason of these changes the Commissioner of Hindu Religious Endowments in the State of Andhra Pradesh was impleaded as the 1st respondent to the petition.

Thereafter, there was a compromise between the petitioners 1 to 5 on the one hand and the Commissioner, the 1st respondent on the other. The District Judge, Nellore recorded the compromise and passed a decree in terms thereof by his order dated October 28, 1954.

The material clauses of the compromise decree, Ex. B-11 are as follows :

> "1. That Sri Kodandaramaswami temple, Varagali, be and hereby is declared as a temple as defined in section 6, clause 17 of the Hindu Religious and Charitable Endowments Act;
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> 2. That petitioners 1 to 4 be and hereby are, declared as the present hereditary trustees of the said temple.
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> 3. That the properties set out in schedule A filed herewith be and hereby are, declared as the personal properties of the family of the petitioners subject to a charge as noted below;
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> 4. That petitioners 1 to 4 their heirs, successors administrators and assignees do pay to the said temple for its maintenance 12 1/2 putties of good Mologolukulu paddy and Rs. 600/- every year by the 31st of March;
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> 5. That the said 12 1/2 putties of good Mologolukulu paddy and Rs. 600/- due every year be a charge on the lands mentioned in Schedule A given hereunder;
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> 6. That the petitioners 1 to 4 and their successors, heirs and assignees be liable to pay 12 1/2 putties of Mologolukulu paddy and Rs. 600 every year whether the lands yield any income or not.
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> 10. That the H.R. & C.E. Commissioner be entitled to associate non hereditary trustees not exceeding two, whenever they consider that such appointment is necessary and in the interests of the management.
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> 11. That the Managing trustee shall be one of the four hereditary trustees or their successors in title only and not the non hereditary trustees;
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> 15. That the right of the 2nd respondent to agitate the matter by separate proceedings will be unaffected by the terms of this compromise to which he is not a party."

It is apparent from the terms of the compromise decree that the temple was declared to be a public temple as defined in s. 6, cl. 17 of the Hindu Religious and Charitable Endowments Act and that the properties set out in Sch. A annexed to the compromise petition were declared to be the personal properties of defendants 1 to 5. The decree created a liability on their part to deliver to the temple for its maintenance 12 1/2 putties of paddy and pay Rs. 600/- cash every year. The present suit was instituted on October 31, 1955 for a declaration that the provision in the compromise decree that the lands mentioned in the schedule were the personal properties of defendants 1 to 5 and not the absolute properties of the temple, was not valid and binding on the temple. Defendants 1 to 5

objected to the suit on the ground that it was not open to the plaintiff to seek a declaration that a part of the decree was not binding but the plaintiff should have directed his attack against the entirety of the decree. The trial court dismissed the suit on the ground that the suit was defective and that s. 93 of the Hindu Religious and Charitable Endowments Act of 1951 was a bar to the institution of the suit. Against the decree of the trial court the plaintiff preferred an appeal - A.S. 312 of 1957 to the High Court of Andhra Pradesh. The plaintiff also filed C.M.P. no. 6422 of 1962 praying for amendment of the plaint the effect that the compromise decree in O.P. no. 3 of 1950 was not valid and binding on the temple. After hearing defendants 1 to 5 the High Court allowed the amendment sought for by the plaintiff and held that the amendment cured the defect with regard to the prayer for a declaration to have the compromise decree set aside partially. The High Court further held that s. 93 of the Hindu Religious and Charitable Endowments Act was not a bar to the suit and s. 42 of the Specific Relief Act was not exhaustive and the suit was therefore maintainable. In the result, the High Court allowed the appeal and remanded the suit to the trial court for disposing the same on the remaining issues.

It was contended, in the first place, on behalf of the appellants that declaratory suits are governed exclusively by s. 42 of the Specific Reliefs Act and if the requirements of that section are not fulfilled no relief can be granted in a suit for a mere declaration. It was submitted that the plaintiff must satisfy the court, in such a suit, that he is entitled either to any legal character or to any right in any property. It was argued for the appellants that the plaintiff has brought the suit as a mere worshipper of the temple and that he has no legal or equitable right to the properties of the temple which constitute the subject-matter of the suit. It was pointed out that the plaintiff has not asked for a declaration of his legal character as a worshipper of the temple but he has asked for the setting aside of the compromise decree in O.P. no. 3 of 1950 with regard to the nature of the temple properties. It was contended that in a suit of this description the conditions of s. 42 of the Specific Relief Act are not satisfied and the suit is, therefore, not maintainable.

The first question to be considered in this appeal is whether the suit is barred by the provisions of s. 42 of the Specific Relief Act which states :

> "42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :
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> Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.
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> Explanation - A trustee of property is a 'person interested to deny' a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee."

The legal development of the declaratory action is important. Formerly it was the practice in the Court of Chancery not to make declaratory orders unaccompanied by any other relief. But in exceptional cases the Court of Chancery allowed the subject to sue the Crown through the Attorney-General and gave declaratory judgments in favour of the subject even in cases where it could not give full effect to its declaration. In 1852 the Court of Chancery Procedure Act was enacted and it was provided by s. 50 of that Act that no suit should be open to objection on the ground that a merely declaratory decree or order was sought thereby, and it would be lawful for the court to make

binding declarations of right without granting consequential relief. By s. 19 of Act VI of 1854, s. 50 of the Chancery Procedure Act was transplanted to India and made applicable to the Supreme Courts. With regard to courts other than the courts established by Charters the procedure was codified in India for the first time by the Civil Procedure Code, 1859, where the form of remedy under s. 19 of Act VI of 1854 was incorporated as s. 15 of that Act which stood as follows :

> "No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the civil Courts to make binding declarations of right without granting consequential relief."

In 1862 the provisions of the Civil Procedure Code of 1859 were extended to the courts established by Charters when the Supreme Courts were abolished and the present High Courts were established. In 1877 the Civil Procedure Code, 1859 was repealed and Civil Procedure Code of 1877 was enacted. The provision regarding declaratory relief was transferred to s. 42 of the Specific Relief Act which was passed in the same year. This section which is said to be a reproduction of the Scottish action of declarator, has altered and to some extent widened the provisions of s. 15 of the old Code of 1859.

It was argued on behalf of the appellants that, in the present case, the plaintiff was suing as a worshipper of the temple and that he was not suing as a person entitled to any legal character, or the any right as to any property and so the suit barred by the provisions of s. 42 of the Specific Relief Act.

Upon this argument we think that there is both principle and authority for holding that the present suit is not governed by s. 42 of the Specific Relief Act. In Fischer v. Secretary of State for India in Council, [26 I.A. 16] Lord Macnaghten said of this section :

> "Now, in the first place it is at least open to doubt whether the present suit is within the purview of s. 42 of the Specific Relief Act. There can be no doubt as to the origin and purpose of that section. It was intended to introduce the provisions of s. 50 of the Chancery Procedure Act of 1852 (15 & 16 Vict. c. 86) as interpreted by judicial decision. Before the Act of 1852 it was not the practice of the Court in ordinary suits to make a declaration of right except as introductory to relief which it proceeded to administer. But the present suit is one to which no objection could have been taken before the Act of 1852. It is in substance a suit to have the true construction of a statute declared and to have an act done in contravention of the statute rightly understood pronounced void and of no effect. That is not the sort of declaratory decree which the framers of the Act had in their mind."

In Pratab Singh v. Bhabuti Singh, [40 I.A. 182] the appellants sued for a declaration that a compromise of certain pre-emption suits and decrees passed thereunder made on their behalf when they were minors were not binding on them, having been obtained by fraud and in proceedings in which they were practically unrepresented. The Subordinate Judge having decree the suit on appeal the members of the Court of the Judicial Commissioner differed upon the question whether the declaration sought should be refused as a matter of discretion under s. 42 of the Specific Relief Act. Before the Judicial Committee it was contended for the respondent that the suit having been filed for the purpose of obtaining a declaratory decree only was bad in form inasmuch as it did not pray that the decree should be set aside; but that, assuming that it was rightly framed in asking only for a declaratory decree, the Court had a discretion as to the granting or refusing such a declaration. The

Judicial Committee observed that s. 42 of the Specific Relief Act did not apply to the case and that it was not a question of exercising a discretion under that section; and they gave to the appellant a decree setting aside the decree complained of and declaring that the agreement of compromise and the decree complained of were not binding upon the appellants or either of them and that they were entitled to such rights as they had before the suit was dismissed on December 15, 1899.

It appears to us that a decree of the character which has been sought by the plaintiff in this case is not one as to which the additional powers conferred by the Act of 1852 were required by the Court of Chancery. The injury complained of was that the Court has, by recording the compromise in O.P. no. 3 of 1950, deprived the deity of its present title to certain trust properties. The relief which the plaintiff seeks is for a declaration that the compromise decree was null and void and if such a declaration is granted the deity will be restored to its present rights in the trust properties. A declaration of this character, namely, that the compromise decree is not binding upon the deity is in itself a substantial relief and has immediate coercive effect. A declaration of this kind was the subject matter of appeal in Fischer v. Secretary of State for India in council [26 I.A. 16] and falls outside the purview of s. 42 of the Specific Relief Act and will be governed by the general provisions of the Civil Procedure Code like s. 9 or O. 7, r. 7.

On behalf of the respondents reliance was placed on the decision of the Judicial Committee in Sheoparsan Singh v. Ramnandan Prasad Singh [I.L.R. 43 Cal. 694 (P.C.)]. In that case, the plaintiffs had prayed for a declaration that a will, probate of which had been granted, was not genuine and the Judicial Committee pointed out that under s. 42 a plaintiff has to be entitled to a legal character or to a right as to property and that the plaintiffs could not predicate this of themselves as they described themselves in the plaint as entitled to the estate in case of an intestacy, whereas, as things stood, there was no intestacy, since the will had been affirmed by a Court exercising appropriate jurisdiction. The suit was, indeed, nothing more than an attempt to evade or annul the adjudication in the testamentary suit. The suit was held to fail at the very outset because the plaintiffs were not clothed with a legal character or title which would authorise them to ask for the declaratory decree sought by their plaint. There is no reference in this case to the previous decision of the Judicial Committee in Fischer v. Secretary of State for India in Council [26 I.A. 16]. In our opinion, the decision of the Judicial Committee in Sheoparsan Singh v. Ramnandan Prasad Singh [I.L.R. 43 Cal. 694 (P.C.)] should be explained on the ground that the will which was sought to be avoided had been affirmed by a Court exercising appropriate jurisdiction and as the propriety of that decision could not be impeached in subsequent proceedings, the plaintiffs could not sue, not being reversioners.

The legal position is also well-established that the worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the de jure Shebait is invalid and not binding upon the temple. If a Shebait has improperly alienated trust property a suit can be brought by any person interested for a declaration that such alienation is not binding upon the deity but no decree for recovery of possession can be made in such a suit unless the plaintiff in the suit has the present right to the possession. Worshippers of temples are in the position of cestuui que trustent or beneficiaries in a spiritual sense (See Vidhyapurna Thirthaswami v. Vidhyanidhi Thirthaswami) [I.L.R. 27 Mad. 435, 451]. Since the worshippers do not exercise the deity's power of suing to protect its own interests, they are not entitled to recover possession of the property improperly alienated by the Shebait, but they can be granted a declaratory decree that the alienation is not binding on the deity (See for example, Kalyana Venkataramana Ayyangar v. Kasturiranga Ayyangar [I.L.R. 40 Mad. 212] and Chidambaranatha Thambiran v. Nallasiva Mudaliar) [I.L.R. 41 Mad. 124]. It has also been decided by the Judicial

Committee in Abdur Rahim v. Mahomed Barkat Ali [55 I.A. 96] that a suit for a declaration that property belongs to a wakf can be maintained by Mahomedans interested in the wakf without the sanction of the Advocate-General, and a declaration can be given in such a suit that the plaintiff is not bound by the compromise decree relating to wakf properties.

In our opinion, s. 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of s. 42 of the Specific Relief Act.

The next question presented for determination in this case is whether the compromise decree is invalid for the reason that the Commissioner did not represent the deity. The High Court has taken the view that the Commissioner could not represent the deity because s. 20 of the Hindu Religious & Charitable Endowments Act provided only that the administration of all the endowments shall be under the superintendence and control of the Commissioner. Mr. Babula Reddy took us through all the provisions of the Act but he was not able to satisfy us that the Commissioner had authority to represent the deity in the judicial proceedings. It is true that under s. 20 of the Act the Commissioner is vested with the power of superintendence and control over the temple but that does not mean that he has authority to represent the deity in proceedings before the District Judge under s. 84(2) of the Act. As a matter of law the only person who can represent the deity or who can bring a suit on behalf of the deity is the Shebait, and although a deity is a juridical person capable of holding property, it is only in an ideal sense that property is so held. The possession and management of the property with the right to sue in respect thereof are, in the normal course, vested in the Shebait, but where, however, the Shebait is negligent or where the Shebait himself is the guilty party against whom the deity needs relief it is open to the worshippers or other persons interested in the religious endowment to file suits for the protection of the trust properties. It is open, in such a case to the deity to file a suit through some person as next friend for recovery of possession of the property improperly alienated or for other relief. Such a next friend may be a person who is a worshipper of the deity or as a prospective Shebait is legally interested in the endowment. In a case where the Shebait has denied the right of the deity to the dedicated properties, it is obviously desirable that the deity should file the suit through a disinterested next friend, nominated by the court. The principle is clearly stated in Pramath Nath v. Pradymma Kumar. [I.L.R. 52 Cal. 809, (P.C.)]. That was a suit between contending shebaits about the location of the deity, and the Judicial Committee held that the will of the idol on that question must be respect, and inasmuch as the idol was not represented otherwise than by shebaits, it ought to appear through a disinterested next friend appointed by the Court. In the present case no such action was taken by the District Court in O.P. no. 3 of 1950 and as there was no representation of the deity in that judicial proceeding it is manifest that the compromise decree cannot be binding upon the deity. It was also contended by Mr. P. Rama Reddy on behalf of respondent no. 1 that the compromise decree was beyond was beyond the scope of the proceedings in O.P. no. 3 of 1950 and was, therefore, invalid. In our opinion, this argument is well-founded and must prevail. The proceeding was brought under s. 84(2) of the old Act (Act II of 1927) for setting aside the order of the Board dated October 5, 1949 declaring the temple of Sri Kodandaramaswami as a temple defined in s. 6, cl. 17 of the Act and for a declaration that the temple was a private temple. After the passing of the new Act, namely Madras Act 19 of 1951, there was an amendment of the original petition and the amended petition included a prayer for a further declaration that the properties in dispute are the personal properties of the petitioner's family and not the properties of the temple. Such a declaration was outside the purview of s. 84(2) of Madras Act II of 1927 and could not have been granted. We are, therefore, of

the opinion that the contention of respondent no. 1 is correct and that he is entitled to a declaratory decree that the compromise decree in O.P. no. 3 of 1950 was not valid and was not binding upon Sri Kodandaramaswami temple.

We have gone into the question of the validity of the compromise decree because both the parties to the appeal invited us to decided the question and said that there was no use in our remanding the matter to the trial court on this question and the matter will be unduly protracted.

For the reasons expressed, we hold that the decree passed by the trial court should be set aside and the plaintiff-respondent no. 1 should be granted a declaratory decree that the compromise decree in O.P. no. 3 of 1950 on the file of the District Court Nellore is not valid and binding on Sri Kodandaramaswami temple. Subject to this modifications, we dismiss this appeal. The parties will bear their own costs throughout.

Appeal dismissed.

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