Sri Vedagiri Lakshmi Narasimha Swami Temple

Vs

Induru Pattabhirami Reddy

Civil Appeal No. 605 of 1964

(CJI K. Subha Rao, J. M. Shelat JJ)

06.09.1966

JUDGMENT

SUBBA RAO, C.J.

This appeal by special leave raises the question whether a suit would lie at the instance of the present trustees of a temple for rendition of accounts of the management of the temple by the ex-trustees.

The appellant is Sri Vedagiri Lakshmi Narasimha Swami temple situated at Narasimhulykonda, Nellore taluk, in the State of Andhra Pradesh, represented by its trustees. The respondent and two others were non-hereditary trustees of the said temple and functioned as such for a term of five years ending with January 1951. The respondent was the managing trustee during that period. The new trustees were appointed by order of the Hindu Religious Endowments Board dated January 21, 1951; but they were able to obtain possession of the temple only on July 21, 1952. They, representing the temple, filed O.S. No. 246 of 1953 in the Court of the Subordinate Judge, Nellore against the respondent and others for the following three reliefs : (1) to direct all or such of the defendants as may be found liable to render a true and proper account of their management of the temple and its properties since the date of their functioning as trustees and to pay over to the new trustees such amounts as may be found due; (2) to assess the amount due to the temple as a result of the various acts of malfeasance, misfeasance and non-feasance of the defendants 1 to 3 in respect of their management, and to direct them to pay the same to the new trustees; and (3) to direct the defendants 1 to 3 to deliver to the new trustees all documents, accounts, registers, s. 38 register, jewels and movable properties, after rendering a true account thereof and failing such delivery, to pass a decree against the defendants for their value, or pass such decree against them for such damages as the temple had sustained. In the plaint, the new trustees alleged that the defendants were guilty of acts of misfeasance, malfeasance and non-feasance and also of gross negligence. The defendants, inter alia, apart from denying the said allegations made against them, pleaded that the suit was not maintainable in a civil court in view of the provisions of s. 87 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Act 19 of 1951), hereinafter called the Act.

The learned Subordinate Judge, by his judgment dated August 12, 1953, held that the suit was maintainable. He also found that defendants 1 to 3 were liable to render an account of their management during the period of their trusteeship and to pay damages for the loss suffered by the temple on account of their acts of misfeasance, malfeasance and non-feasance. In the result, he passed a preliminary decree in favour of the new trustees directing the respondent and defendants 2, 5 and 6 the legal representatives of defendant 3, to render a true and proper account of their management of the temple and its properties for the period commencing from the beginning of 1946

to the date when the plaintiffs took possession of the temple in July 1952 and to pay such amounts as may be found due from them on taking accounts. The 1st defendant, the ex-managing trustee of the temple, preferred an appeal against the said decree to the court of the District Judge, Nellore. To that appeal, the plaintiffs were made respondents. Pending the appeal, the plaint was amended and the words "or pass such decree against them for such damages as the temple has sustained thereby" were deleted from prayer 3 of the plaint. The learned advocate for the plaintiffs made an endorsement on the plaint and the appeal memo stated as follows :

> "Plaintiffs have given up prayer in respect of the damages as endorsed by the learned advocate on behalf of the plaintiffs on the plaint on 20-8-1958."

The learned District Judge also recorded in his judgment that the appellant (respondent herein) did not press his appeal in respect of the claim for damages given up by the plaintiffs. Prima facie this amendment related only to the prayer to deliver to the new trustees the documents and other movable properties and did not affect the other prayers for rendition of accounts on the ground of malfeasance, misfeasance and non-feasance of the defendants. The learned District Judge understood the finding given by the learned Subordinate Judge as follows

> "Setting out all these things in detail in paras 13 and 14 of his judgment, the learned Subordinate Judge came to the conclusion that it was sufficient to say that there is liability to account in respect of the management on the part of the ex-trustees, i.e., defendants 1 and 3, and that they are liable to pay to temple whatever damages it has suffered on account of their acts of misfeasance, malfeasance and non-feasance."

After considering the relevant evidence and the case law on the subject, he came to the following conclusion :

> "I have no hesitation to hold that the plaintiffs have established liability of ex-trustees to render account of their management of deliver possession of the other property yet to be delivered and also the records mentioned in the plaint."

The learned District Judge, therefore, agreed with the learned Subordinate Judge that the defendants had to render accounts of their management of the temple and to pay to the temple damages suffered by it on account of their acts of misfeasance, malfeasance and non-feasance. In the result the decree of the learned Subordinate Judge was confirmed.

But, on Second Appeal, Jaganmohan Reddy, J., of the Andhra Pradesh High Court, held that the suit for accounts was not maintainable. The reasoning of the learned Judge is found in the following observations :

> "It is true that a suit for back accounting on the authority of the decisions cited above does not lie and unfortunately in this case though the frame of the suit was for recovery of damages for negligence of the trustees in not taking leases, in not filing rent suits, in not collecting rents and generally for other acts of negligence, that plea was given up by the respondents, probably because they were not in a position to establish these facts. The learned advocate for the respondents admits that this plea was given up by the clients and in the circumstances the only relief that the respondents claim against the appellant now is one for general accounting relating to the management or administration of the trust property and applying the principle

> laid down by the two judgments of this Court in Venkataratnam v. Narasimha Rao ([1960] 2 Andh. W.R. 319.) and Sri Saraveswaraswami Vari temple v. Veerabhadrayya ([1961] 1 Andh. W.R. 250.), I cannot but hold that suit will not lie and in this view, the appeal is allowed and the judgments and the decrees of the courts below are set aside."

Though, prima facie, as we have said earlier, we are inclined to hold that what was given up by the appellant was only a part of the third relief, in view of the unambiguous admission made by the learned advocate for the appellant and recorded in the judgment of the High Court, we have no option but to hold that the appellant had given up the plea of wilful default against the defendants and confined the relief only to a rendition of accounts by them in respect of their management of the temple during their tenure and to pay the amount that might be found due to the appellant.

Mr. P. Ram Reddy, learned counsel for the appellant-temple raised before us three points : (1) The suit was for damages for gross negligence and the learned Judge did not appreciate the correct scope of the concession made by the learned advocate appearing for the temple before him. (2) Section 93 of the Act is not a bar to a suit by the present trustees against the ex-trustees for rendition of accounts of their management of the temple properties and recovery of the amounts due from them. (3) The learned Judge went wrong in holding that a suit for back-accounting would not lie.

On the first point we have already expressed our opinion earlier that, in view of the unambiguous concession made by the learned advocate for the appellant before the High Court, we must hold that the suit, after the amendment of the plaint, was confined only to rendition of accounts, not on account of wilful default or negligence, but only for rendition of accounts by the ex-trustees of their management and to pay the amounts due to the present trustees.

The question, therefore, is whether the present trustees can demand a rendition of accounts from the ex-trustees in respect of their management without alleging against them any acts of negligence of wilful default and, if so, whether s. 93 of the Act was a bar to the maintainability of a suit for the relief of rendition of accounts in a civil court.

It is common place that no trustee can get a discharge unless he renders accounts of his management. This liability is irrespective of any question of negligence or wilful default. In the present case, the ex-trustees admittedly did not give an account of their management though they put the plaintiffs in possession of the properties in the year 1952 and that too after adopting a course of obstructive attitude. They are, therefore, liable to render accounts of their management to the present trustees.

The decisions relied upon by the learned Judge to not support the view that an ex-trustee need not render accounts in the absence of allegations of negligence or wilful default. In V.K. Kelu Achan v. C.S. Sivarama Pattar (A.I.R. 1928 Madras 879, 887.) one of the questions raised was whether the 1st defendant therein, who was a karnavan of a tarwad and also the manager of temple properties, should be made to give a general rendition of accounts of his management from 1900. It was found in that case that the 1st defendant was not personally responsible for any loss to the temple, that no relief for rendition of accounts was asked for against him and that he was not the person who was maintaining the accounts. On those facts, the High Court refused to give a decree against the 1st respondent for back-accounting. In the course of the judgment the following observations were made :

> "It is a general principle also that back accounting will not be decreed except on proof of dishonesty and malversation, and we have not found any such proof here against the present trustee."

These observations do not circumscribe the scope of the court's discretion, but only lay down a guide for its exercise. They must be read in the context of the facts found in that case. Nor the decision in The Madura etc. Devasthanams v. Doraiswami Nayudu ([1943] 1 M.L.J. 144.) lays down any such wide proposition. There, the executive officer of a temple sought to recover from its ex-trustee a certain amount by way of damages on foot of gross negligence. It was found that the trustee was not guilty of any wilful default and that he was justified in acting upon the vouchers and accounts furnished by the law department of the Devasthanam and also that it was not established that any items were really due to the temple. On those facts the suit was dismissed. Briefly stated, that was a suit for rendition of account on the ground of wilful default in the course of management of the temple affairs and, as no wilful default had been established, the suit for accounts was dismissed. It is not an authority for the position that unless wilful default is established an ex-trustee need not account to the present trustee and to pay to him the amount due under the said accounts. In the case of rendition of accounts by an ex-trustee to a present trustee, it will necessarily relate to back accounting, for no question of accounting in future arises in his case. The question that invariably arises in such a context is as to what period he shall be made liable to render accounts. That depends upon the facts of each case. Sir Thomas Flumer, M.R., said in Attorney General v. Exetor Mayor ([1822] 37 E.R. 918.) :

> "It has, I think, been properly stated on both sides that there is no fixed limit of time in directing an account against a trustee of a charity..... It does not, however, follow that the relief will be given after a great length of time, it being the constant course of Courts of Equity to discourage stale demands; even in cases of fraud, in which, if recent, there would have been no doubt, lapse of time has induced the Courts to refuse their interference. In cases of charities, this principle has often been acted on. When there has been a long period, during which a party has, under an innocent mistake, misapplied a fund, from the laches and neglect of others, that is, from no one of the public setting him right, and when the accounts have in consequence become entangled, the Court, under its general discretion, considering the enormous expense of the enquiries, the great hardships of calling upon representatives to refund what families have spent, acting on the notion of its being their property, has been in the habit, while giving the relief, of fixing a period to the account."

These observations were followed by a Division Bench of the Madras High Court in Sanyasayya v. Murthamma (A.I.R. 1919 Madras 943.). Where a suit was filed for an account for the year 1884 and the 1st defendant was asked to account for the management of his father and grand-father, the learned Judges of the Madras High Court fixed the period of accounting at 12 years. The said observations were also followed by the Andhra High Court in Hariharabrahmam v. Janakiramiah (A.I.R. 1955 Andhra 18.) and, having regard to the circumstances in that case, the said High Court directed accounts to be taken for a period of six years prior to 1938.

In the present case the learned subordinate Judge and the learned District Judge, in exercise of their discretion, having regard to the circumstances of the case, directed the respondent to render accounts of his management from the beginning of the year 1946 to the date when the plaintiffs took possession of the temple in July 1952. We do not see any justifiction to interfere with the discretion of the courts in that regard.

The next question is whether s. 93 of the Act is a bar to the maintainability of the suit. The said section reads :

> "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."

The learned counsel for the appellant contended that in order to invoke this section the following conditions shall be complied with : (1) The suit shall be in respect of the administration or management of a religious institution; (2) it shall be in respect of any other matter in dispute; and (3) for determining or deciding such a suit or other legal proceeding there shall be a provision in the Act; if there is such a provision, such a suit or proceeding could not be instituted in any court of law except under, and in conformity with, the provisions of the Act. The further argument was that the administration or management referred to in s. 93 related to s. 58 of the Act, and the other matters of dispute related to s. 57 thereof, and that, as the suit for rendition of accounts did not fall either under s. 57 or under s. 58 of the Act, the present suit for such a relief was outside the scope of s. 93 of the Act.

Mr. Gokhale, learned counsel for the respondent, contended that Ch. VII of the Act provided for rendition of accounts and a machinery for determining or deciding disputes in respect thereof, and that, therefore, no suit or other legal proceeding could be taken in any court except under and in conformity with the provisions of that Chapter.

Under s. 9 of the Code of Civil Procedure, the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is a well settled principle that a party seeking to oust the jurisdiction of an ordinary civil court shall establish the right to do so. Section 93 of the Act does not impose a total bar on the maintainability of a suit in a civil court. It states that a suit of the nature mentioned therein can be instituted only in conformity with the provisions of the Act; that is to say, a suit or other legal proceeding in respect of matters not covered by the section can be instituted in the ordinary way. It therefore imposes certain statutory restrictions on suits or other legal proceedings relating to matters mentioned therein. Now, what are those matters ? They are : (1) administration or management of religious institutions; and (2) any other matter or dispute for determining or deciding which provision, is made in the Act. The clause "determining or deciding which a provision is made in this Act", on a reasonable construction, cannot be made to qualify "the administration or management" but must be confined only to any other matter or dispute. Even so, the expression "administration or management" cannot be construed widely so as to take in any matter however remotely connected with the administration or management. The limitation on the said words is found in the phrase "except under and in conformity with the provisions of this Act." To state it differently, the said phrase does not impose a total bar on a suit in a civil court but only imposes a restriction on suits or other legal proceedings in respect of matters for which a provision is made in the Act. Any other construction would lead to an incongruity, namely, there will be a vacuum in many areas not covered by the Act and the general remedies would be displaced without replacing them by new remedies.

The history of this provision also supports the said interpretation. Sub-section (2) of s. 92 of the Code of Civil Procedure says :

> "Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section."

Suits for reliefs mentioned in sub-s. (1) of s. 92 of the Code of Civil Procedure can only be instituted in special courts and in the manner mentioned therein. Constructing the said sub-section, a Full Bench of the Madras High Court in Appanna v. Narasinga ((1922) I.L.R. 45 Madras 113.) held that a suit by a trustee of a public religious trust against a co-trustee for accounts did not fall within the section, though the relief claimed was the one specified in sub-s. (1), cl. (d). The reason given was that the relief was sought not in the larger interest of the public but merely for the purpose of vindicating the private rights of one of the trustees and of enabling him to discharge the duties and liabilities which were imposed upon him by the trust. Another Full Bench of the Madras High Court in Tirumalai Tirupati Devasthanam Committee v. Udiavar Krishnayya Sahnbhaga (A.I.R. 1943 Madras 466.) held that the said section did not apply where the general trustees of a public temple sued the trustees of certain offerings given to the deity, for accounts, on the ground that in that suit the right of the public was not sought to be enforced but only the personal rights of the trustees qua the trustees.

These decisions indicate that s. 92 of the Code of Civil Procedure does not impose a general embargo on filing of a suit in a civil court, but only directs that suits of the nature mentioned in sub-s. (1) thereof shall not be instituted in a civil court except in conformity with the provisions of the said sub-section. If a suit does not fall within the ambit of s. 92(1) of the Code of Civil Procedure, it is not hit also by sub-s. (2) thereof. When the Madras Hindu Religious Endowments Act (2 of 1927) was passed, in respect of the endowments covered by that Act, s. 73 of that Act replaced s. 92 of the Code of Civil Procedure. Sub-section (4) thereof, which was added by Madras Act X of 1946 read :

> "No suit or other legal proceeding claiming any relief provided in this Act in respect of such administration or management shall be instituted except under and in conformity with the provisions of this Act."

The expression "except under and in conformity with the provisions of this Act" in the said sub-section is also found in s. 93 of the Act. The scope of the said sub-section came under judicial scrutiny in Manjeshwar Srimad Anantheswar Temple v. Vaikunta Bhakta (A.I.R. 1943 Madras 466.) Therein Horwill, J., summarised the legal position reached in respect of the construction of that section thus :

> "It will be seen therefore that from 54 Mad. 1011 (Vythilinga Pandarasannadhi v. Temple Committee, Tinnevelly) onwards there was a considerable body of opinion that the general scope of s. 73, Hindu Religious Endowments Act, is the same as s. 92, Civil P.C., that the last paragraph of s. 73 of the Act is meant to refer only to the classes of cases referred to in s. 73(1) and other sections of the Act, and that suits which do not fall within the scope of these sections can be tried under the general law. I have not come across any case in which these opinions were dissented from or contrary opinions expressed."
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> Sub-section (4), which corresponds to s. 93 of the Act, was held not to impose a total bar on a civil suit but only confined to suits relating to the classes of cases referred to in s. 73(1) and other sections of the Act. Section 93 of the Act enlarges the scope of s. 73(4) thereof. It bars not only suits or legal proceedings in respect of

> administration or management of religious institutions but also in respect of any other matter or dispute for determining or deciding which provision is made in the Act. By repeating the phrase "except under and in conformity with the provisions of the Act" which had received authoritative judicial interpretation when it remained in s. 73(4) of the earlier Act, the Legislature must be held to have accepted the interpretation put upon the phrase by the courts. It follows that s. 93 will apply only to matters for which provision has been made in the Act. It does not bar suits under the general law which do not fall within the scope of any section of the Act.

Even so, the learned counsel for the respondent contended that Ch. VII of the Act provided a complete machinery for deciding disputes in regard to accounts and, therefore, no suit for accounting against an ex-trustee could be filed in a civil court. This interpretation was accepted by two decisions of the Andhra Pradesh High Court. The decision in Venkataratnam v. Narasimha Rao ([1960] 2 Andh. W.R. 319, 323.) dealt with a case of a suit filed with the permission of the Advocate General for removing the trustee, for framing a scheme for the management of the trust property, for appointing a new trustee and for accounts and other incidental reliefs. The contesting defendant pleaded inter alia that because of the provisions of the Madras Act 19 of 1951, the suit could not be entertained by the civil court, and that s. 93 was a bar to such a suit. The Andhra Pradesh High Court held that s. 93 of the Act clearly interdicted the determination of the subject matter of the suit by a civil court. The reasoning of the decision is summarized thus :

> "Now the suit is entirely based on allegations of breach of trust and every one of the reliefs prayed for in the plaint can flow from appropriate action that officers named in the Act may take. The first relief sought in the present plaint can result from action taken under section 45 of the Act; the second and third reliefs from action under section 58; the fourth from action under section 60; the 6th relief from action under section 57 and the relief numbered and lettered as 6(a) from action under section 87."

The High Court also observed :

> "In our opinion, all these are 'matters or disputes for determining or deciding which provision is made' in the Act."

On that basis it held that s. 93 of the Act was a bar to the maintainability of the suit. It may be mentioned that the observation that the fourth relief could result from action under s. 60 appears to be a mistake, for s. 60 applies only to a default religious institution.

In Sri Sarveswaraswami Vari Temple v. Rudrapaka Veerabhadrayya Seshachelapati, J., speaking for the court, said thus :

> "It will be seen, as correctly observed by the learned Subordinate Judge, that the section has two limbs. The first limb interdicts suits or other legal proceedings with respect to the administration or management of the religious institution. The second limb enacts an embargo on suits and legal proceedings on any other matter in dispute for the determination of which a provision had been made in this Act."

There, the suit was by the present trustees for the recovery of the temple properties from the hereditary archakas. The High Court held that such a suit was not one in respect of the administration or management of the temple and, therefore, it did not attract the embargo entered in

the first limb of the section. This decision, therefore, held that unless the suit fell within the classes of suits mentioned in s. 93 of the Act, the provisions of the section were not attracted.

It leads us to the consideration of the scope of Chapter VII of the Act. If Chapter VII of the Act provides for determining or deciding a dispute in respect of rendition of accounts, s. 93 of the Act would be attracted. The heading of the said Chapter is "Budgets, Accounts and Audit". Section 70 provides for the presentation of budgets and the particulars to be mentioned therein. Section 71 enjoins upon a trustee of every institution to keep regular accounts of receipts and disbursements. Section 71(4) prescribes for an audit of the accounts every year. Section 72 directs the auditor to send a report of the results of the audit to the prescribed authorities. Section 73 enumerates the matters in respect of which the auditor has to send his report. Section 74 directs the prescribed authorities to send the said report to the trustees for remedying the defects pointed out therein. The Area Committee, one of the prescribed authorities under s. 74(2) of the Act, has to forward to the Commissioner the report of the auditor along with the report of the trustees, if any, and with his remarks. If the Commissioner thinks that the trustee or any other person is guilty of misappropriation or wilful waste of funds of the institution or of gross neglect resulting in a loss to the institution, after making the requisite inquiry, certify the amount so lost and direct the trustee or such person to pay within a specified time such amount personally and not from the funds of the religious institution. On the receipt of such an order, the trustee can apply to a court to modify or set aside the same. Instead of filing an application to the Court, he has an alternative remedy to file an appeal to the Government which shall pass such order as it thinks fit. Under sub-s. (7) of s. 74, an order of surcharge under the section against a trustee shall not bar a suit for accounts against him except in respect of the matter finally dealt with by such order. Sub-section (8) thereof provides a machinery for collecting the said amounts from the trustee or other person by way of surcharge.

Relying upon the scheme of this Chapter, it is contended that it provides an exhaustive and self-contained machinery for scrutinizing the accounts, for orders of surcharge and to recover the amount surcharged from the trustee or other persons and for a suit to set aside such orders or alternatively for an appeal to the Government and that, therefore, no suit for rendition of accounts would lie dehors the provisions of the Act.

We find it difficult to accept this argument. Chapter VII only provides for a strict supervision of the financial side of the administration of an institution. The scope of the auditors' investigation is limited. It is only an effective substitute for the trustee himself furnishing an audited account. It is concerned only with the current management of a trustee. It does not even exonerate a trustee of his liability to render accounts except to a limited extent mentioned in sub-s. (7) of s. 74; it only facilitates the rendition of accounts. Under sub-s. (7) of s. 74, an order of surcharge under that section against a trustee shall not bar a suit against him except in matters finally dealt with in such order. This shows by necessary implication that a suit can be filed for accounts against a trustee in other respects. In any view, it has nothing to do with the management of a temple by a previous trustee. It is contended that under sub-s. (5) of s. 74 the trustee or any other person aggrieved by such order may file a suit in the civil court or prefer an appeal to the Government questioning the order of the Commissioner and, therefore, it is open to any member of the public to file a suit under the Act. "Any person" there only refers to a person mentioned in sub-s. (3) of s. 74, i.e., a person who is guilty of misappropriation or wilful waste of the funds of the institution etc. It obviously refers to a trustee or some other person in management of the institution who is guilty of misappropriation. We, therefore, hold that Chapter VII of the Act has no bearing on the question of liability of an ex-trustee to render account to the present trustee of his management. Chapter VII does not provide for determining or deciding a dispute in respect of such rendition of accounts. If

so, it follows that s. 93 of the Act is not a bar to the maintainability of such a suit.

In the result, we set aside the decree of the High Court and restore that of the learned Subordinate Judge. The respondent will pay the costs of the appellant throughout.

V.P.S.

Appeal allowed.

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