

B. K. C. Muruga Konar (Dead) By Lrs. and Others

Vs

V. Setha Kone and Others

Civil Appeal No. 1045 of 1972

(M. H. Kania, Dr. T. K. Thommen JJ)

01.09.1989

JUDGMENT

KANIA, J. –

1. This is an appeal by special leave against a judgment of a Division Bench of the Madras High Court delivered on February 7, 1972.
2. Respondent 1 to 5 along with one other person filed a representative suit on behalf of themselves and other members of the Thousand-Yadhava community residing in Ramayanchavadi Street and the other adjoining lances in North Masi Street, Madurai Town and adjoining villages against original appellant 1 herein, for an order directing him to render true and proper accounts of the management of the properties of the Thousand-Yadhava community including the Sri Ramaswami Sri Navaneethakrishnasami Devasthanam Temples and their properties and to pay to the plaintiffs the amount ascertained as payable on such rendition of accounts with interest and other relief. Original appellant 1 herein was the trustee of the said temples. He died during the pendency of the appeal before us and his two sons have been joined as appellants 1(i) to 1(u) in this appeal.
3. We propose to refer to the parties by their description in the suit for the sake convenience.
4. Very briefly stated, according to the plaintiffs, the said temples were private religious trusts and the defendant had committed several acts of mismanagement in respect of the properties of the said trusts. The defendant denied these allegations. He, inter alia, contended that the suit as framed was not maintainable in law, in view of the provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the said Act"). The trial court dismissed the suit on the ground that it was barred by the provisions of the said Act. The trial court held that the said temples were not private temples belonging to the aforesaid community, namely, Thousand-Yadhava community. The trial court took the view that the Thousand-Yadhava community and in that case both the temples would be covered by the provisions of Section 6(20) of the said Act. Sub-section (20) of Section 6 defines the meaning of the word 'temple' for the purpose of the said Act and, very briefly stated, lays down that it is a place used as a place of public religious worship and dedicated to or for the benefit of the Hindu community or any section thereof, as a place of public religious worship. The trial court took the view that although this question could be decided primarily only by the Endowment Board and civil court has no jurisdiction to go into it, it could go into that question incidentally as was done by the trial court. As a consequence of this conclusion the trial court held that the suit was barred by the provisions of the said Act and was not maintainable at law. The plaintiffs preferred an appeal against this decision to the Madras High Court. A Division Bench of the Madras High Court after examining the provisions of the said Act held that the trial court was

not right in dismissing the suit in toto even with regard to the relief of accounting. The High Court held that defendant 1 (original appellant before us) admitted that he was elected in 1949 as the trustee of the said temples at a meeting of the members of the community. The said Act does not contain any provision for rendition of accounts. A party seeking relief of accounting cannot approach the Deputy Commissioner or any other authority under the said Act and hence, the civil court is not barred either expressly or by necessary implication from entertaining a suit insofar as it was for the relief of accounting. Following upon this reasoning, the court allowed the appeal and passed a preliminary decree against defendant 1 for rendition of accounts while dismissing the suit in all other respects.

5. The High Court did not decide as to whether the said temples were private temples or could be regarded as public religious endowments falling within the definition of the term 'temple' as defined in sub-section (20) of Section 6 of the said Act. Defendant 1 along with some other filed a petition for special leave before this Court and by an order dated April 24, 1972 special leave was granted by this Court but was confined to the question whether it was within the power of the civil court to direct accounts to be taken without deciding the question whether the temple is public temple or a private temple.

6. At the hearing of the appeal before us, Mr. Ram Kumar, learned counsel for the appellants conceded that if the said temples were private temples as contended by the plaintiffs in the said suit, the defendant as the trustee was liable to render accounts of this management of the said trust to them as beneficiaries. It was, however, submitted by him that in case the said temples were not private temples but were temples as defined in sub-section (20) of Section 6 of the said Act to which we have already referred earlier, the suit for rendition of accounts was not maintainable in view of the provisions of the said Act and hence, it was not open to the High Court to have passed a decree for rendition of accounts without deciding whether the said temples were public temples or private temples. He drew our attention to sub-section (20) of Section 6 of the said Act which defines the term 'temple' for the purpose of the said Act. We have already referred to that definition of the said term 'temple' earlier. Suffice it to state here that under the definition only public temples of the nature stated earlier could be regarded as temples. Sub-section (17) of Section 6 defines the term 'religious endowment' or 'endowment' and it is sufficient for the purpose of this appeal to note that it means property belonging to or given or endowed for the support of maths or temples for the purposes set out therein. Section 108 of the said Act runs as follows :

"108. Bar of suits in respect of administration or management of religious institution etc. - 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."

7. Section 63 of the said Act deals with the power of the Deputy Commissioner to hold inquires into and decide the disputes and matters set out therein. It inter alia confers on him the power to hold inquires in connection with the property and funds of the temples within the meaning of the said Act. Against the order of the Deputy Commissioner, an appeal is provided under Section 69 to the Commissioner and Section 70 lays down that a person aggrieved by an order passed by the Commissioner under the provisions set out in clauses (i) and (ii) of sub-section (1) thereof can file a suit in a civil court. Sub-section (2) of Section 70 provides that an appeal shall lie to the High Court against the decree of the civil court under sub-section (1) of Section 70. Chapter VIII of the said Act deals with the topic of Budgets, Accounts and Audit. Section 87 of the said Act provides that the

trustee of every religious institution shall keep regular accounts of all receipts and disbursements and provides that these accounts have to be audited by the auditors appointed in a prescribed manner. After the audit is completed, the auditor is required under Section 88 to send a report to the Commissioner or the Deputy Commissioner or the Assistant Commissioner as provided therein. Section 90 deals with the rectification of defects disclosed the audit and order of surcharge against trustee etc. It is interesting to note that sub-section (6) of Section 90 provides that an order of surcharge under this section against a trustee shall not bar a suit for accounts against him except in respect of the matters finally dealt with by such order.

8. In the appeal before us a perusal of the plaint shows that the suit was filed not on behalf of any particular beneficiary or group of beneficiaries but by certain persons claiming to belong to the beneficiary community, namely, the Thousand-Yadhava community, and the suit was a representative suit instituted on behalf of themselves and other members of the community. There is no doubt that in respect of a public trust, beneficiaries as a class can file a suit against the trustee for rendition of accounts, subject to the bar imposed by Section 92 of the Code of Civil Procedure, 1908. It was with a view to prevent reckless and harassing suits being brought against the trustees of public trusts that Section 92 was enacted requiring that two or more persons having interest in the suit could institute such a suit only with the consent in writing of the Advocate General. However, we find that in view of the provisions of Section 5 of the said Act, Sections 92 and 93 of the Code of Civil Procedure have ceased to apply to the Hindu Religious and Charitable Endowments in the concerned State. Hence the bar, if any, to the institution of a suit like this has to be found only in the provisions of the Act. We have already set out earlier the provisions of Section 108 of the said Act which is analogous to Section 93 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as "the said Act of 1951") which was repealed by the said Act. Many of the powers of the Deputy Commissioner under the Act to which we have already referred earlier are similar to the powers conferred by Section 57 of the said Act of 1951. Sections 63 and 64 of the said Act which deal with the powers of the Deputy Commissioner are in pari material with the provisions of Sections 57 and 58 of the said Act of 1951. Section 90(6) of the said Act provides that an order of surcharge under this section made against the trustee shall not bar a suit accounts against him and we find a similar provision in sub-section (7) of Section 74 of the said Act of 1951. The schemes of the two Acts are largely similar. In *Sri Vedagiri Lakshmi Narasinha Swami Temple v. Induru Pattabhrami Reddy* ((1967) 1 SCR 280 : AIR 1967 SC 781), a question arose before this Court as to whether a suit by the present trustee against the provision trustee of a temple was barred by reason of the provisions of the said Act of 1951. It was argued in that case that the Act in question provides a complete machinery for deciding disputes in regard to accounts and, therefore, no suit for accounting against an ex-trustee can be filed at all in a civil court. After analysing the scheme of the said Act of 1951, and the provisions of the relevant sections of that Act, which we have referred to earlier that argument was rejected by a Division Bench of this Court. It was pointed out by Subba Rao, C.J., who delivered the judgment of this Court that the scope of the auditor's investigation is limited. It is only an effective substitute for the trustee himself furnishing an audited account. It was held that Chapter VII of the said Act of 1951 only provides for a strict supervision of the financial side of the administration. Chapter VII does not provide for determining a dispute in respect of rendition of accounts and does not bar a suit for that relief. Section 74(7) of the said Act of 1951 was not a bar to the maintainability of such a suit. The same reasoning applies to the case before us. In our opinion, Chapter VIII of the said Act has no bearing on the question of the liability of a trustee to render accounts to the beneficiaries as a group or class and it does not provide for determining or deciding a dispute in respect of such rendition of accounts and hence, Section 108 of the said Act does not bar a suit like the one filed by respondent 1 before us. We are of the view that

the High Court did not commit any error in passing a decree for rendition of accounts without deciding the question whether a temple was a public or private trust.

9. In the result, the appeal fails and is dismissed with costs fixed at Rs. 2000 to be divided between the respondents equally.

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