

## SUPREME COURT OF INDIA

State of Andhara Pradesh

Versus

Manjeti Laxmi Kantha Rao (Dead) by L.Rs.

(S. Rajendra Babu and R.C. Lahoti, JJ.)

Civil Appeal Nos. 3637-38 of 1988.

04.04.2000

### JUDGMENT

**Rajendra Babu, J.** - These appeals arise out of a suit brought by Manjeti Venkata Nagabhushana Rao and Manjeti Lakshmi Kanta Rao against the State of Adndhra Pradesh and others for a declaration that the property comprised in R.S. No. 400 with a building thereon bearing Municipal No. 15\184 at Chilakalapudi, Masulipatnam measuring Ac. 17-61 cents in which the plaintiffs have a half share is not subject to any public or charitable trust or endowment or provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951 that the order G.O. Ms. No. 1501 dated July 12, 1979 is void; and for certain other consequential reliefs. For purposes of convenience we will refer to the parties as arrayed in the suit.

2. The Trial Court framed several issues as to whether (1) the notification dated July 28, 1960 is valid and binding on the plaintiffs, (2) the suit property is subject to any charitable trust of endowment; (3) the aggrieved parties are estopped from questioning the ownership; (4) any of the parties have perfected their title by adverse possession; (5) the Court has jurisdiction to try the suit after Act 17 of 1966 came into force; (6) the order of the third defendant dated May 26, 1969 in O.a. No. 50\69 is conclusive and binding on the parties; and (7) any of the parties are estopped from contending that the plaint schedule property constitutes charitable endowment in view of the order of the third defendant in O.A. No. 50\69. On all the issues the trial Court held against the plaintiffs. Two appeals were filed in the High Court against the judgment of the trial Court which were dismissed. Thereupon two Letters Patent Appeals were filed.

3. When the suit was pending in the trial Court the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (hereinafter referred to as 'the Act') came into force from January 26, 1967 and defendants Nos. 4 to 12 filed a petition (O.A. No. 50 of 1969) under Section 77 of the Act before the third defendant in the suit and that petition ended in their favour by holding that the property had been purchased by the applicant and other members of his family in a Court auction and they had been enjoying the same for nearly 40 years and no one had questioned their enjoyment on the ground that the property was subject to any public charity of endowment. The third defendant made a declaration that the said property is not public charity or subject to any endowment. That order became final inasmuch as no appeal or suit as contemplated under the Act had been filed. In the circumstances when the order

made by the Deputy Commissioner had attained finality and conclusiveness and the matter could not be challenged except in the manner provided under the Act and that course having not been adopted the High Court allowed the Letters Patent Appeals and set aside the judgment and decree passed by the trial Court as affirmed by the learned single Judge of the High Court. Hence this appeal.

4. Three contentions are put forth before us as was done before the High Court in the Letters Patent Appeals. Firstly, that the order under Section 77 of the Act does not affect a decision rendered in civil suit No. 11\67 inasmuch as question of title had been raised in the suit. Secondly, that both the order under Section 77 of the Act and the suit had been decided by a competent authority or Court and, therefore, the proceeding under Section 77 of the Act could not operate as *res judicata*. Lastly, it was contended that to challenge an order made under Section 77 of the Act a suit was required to be filed under Section 78 of the Act, then the Court could construe the suit out of which the appeal itself arises as a suit under Section 77 of the Act.

5. 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 under Section 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 of the civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the state in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. In ***Dhulabhai & Ors. v. The State of Madhya Pradesh & Anr., 1968(3) SCR 662***, it was noticed that where a statute gives finality to the orders of the special tribunals jurisdiction of the civil Courts must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit and 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.

6. The suit is prior to initiation of proceedings under Section 77 of the Act and, therefore, the said suit cannot be a suit as contemplated under Section 78 of the Act. The order under Section 77 of the Act is conclusive which determined the issue that the suit property is not subject to public charity or endowment upholding the case of the defendants Nos. 4 to 12 that the property is private property and is not an endowment. Such a question could have been decided in a proceeding under Section 77(1)(d) of the Act as to whether any property is an endowment and, if so, whether it is charitable endowment or a religious endowment. A person aggrieved could file a suit under Section 78 of the Act. Since no such suit was filed the declaration made by the Deputy Commissioner under Section 77 of the Act the order made by him concluded the issue whether or not the suit property is a charitable or religious endowment. After the Act came into force the Deputy commissioner was competent to deal with such a question. The subject matter in G.O. 1501 which was passed on July 12, 1966; the prayer in the suit in O.S. No. 11\67 and the decision under Section 77 pertains to the same question whether or not the property was an endowed property. The Deputy Commissioner considered the very question raised in the suit as to nature of the suit property and held that it is private property and having concluded as public charity or endowment that

conclusion became final.

7. In the present case, there is no allegation that the Deputy Commissioner had acted contrary to the provisions of the Act or not having followed the fundamental principles of judicial procedure. On the other hand, the Deputy Commissioner having followed the due procedure made the order and that order could have been challenged as provided under Section 78 of the Act by way of a suit or by an appeal. When neither of these courses was adopted, the order made by the authority in its special jurisdiction must be held to be conclusive and final.

8. In the circumstances, the view taken by the High Court appears to us to be correct and does not call for interference. In the result, the appeals are dismissed but in the circumstances of the case there shall be no order as to costs.