**SUPREME COURT OF INDIA**

Appaji Gowda

Vs.

Vokkaligara Sangha

C.A.No. _____ of 2009

(S.B. Sinha and Deepak Verma JJ.)

07.08.2009

**JUDGMENT**

**S.B. Sinha, J.**

Leave granted.

1. The effect of creation of a Trust by the Executor of a Testamentary Disposition vis-`-vis the rights of the heirs and legal representatives of the author of the Will is the question involved in this appeal.

2. It arises out of a judgment and order passed by the high Court of Karnataka at Bangalore in Regular First Appeal No. 965 of 2004 dismissing the appeal preferred by the appellant from the judgment and order dated 26th March, 2004 passed by the Additional City Civil Judge, Bangalore.

3. One Rangammja, was the owner of a huge chunk of land bearing Survey Nos.8, 9, 10, 13, 14 and 15 of Village Sajjepalya and Survey Nos.43 and 44 of Village Malagala measuring 96 acres and 35 guntas. On or about 15th March, 1962, she executed a registered Will appointing her nephew Puttaswamy as the executor and administrator thereof. The said Puttaswamy was also given the right to utilize the property for perpetuating the memory of her husband Krishnappa. He was also given the authority to appoint his successor.

> "The relevant recitals in the said Will are as under:- I am the widow of Late Shri Krishnappa, son of kempanna, who died on 18.12.1907. Under a Registered Partition Deed dated 18.11.1905, several properties came to the share of my deceased husband Krishnappa and he was in possession and enjoyment of the properties that fell to his share in the said partition deed as the absolute owner thereof till his death. I have no children, male or female, and after the death of my husband on 18.12.1907, I became a limited owner of all the properties that fell to my husband's share and which he left behind at the time of his death. As a limited owner of these properties, I was in possession and enjoyment of them till the year 1956. By reason of the provisions of

the *Hindu Succession Act, 1956* (Central Act 30 of 1956), I became the full and absolute owner of the properties that fell to the share of my husband under the Partition Deed dated 18.11.1905 and which he left behind him on his death. Since 1956, I have been in possession and enjoyment of those properties as the full and absolute owner thereof. I am thus entitled to make a Will in respect of the properties I am owning and enjoying.

..... .....

(c) I hereby devise and bequeath that all the landed property owned by me except the house bequeathed in (a) supra, shall be sold by the Executor appointed under this WILL. He shall invest or deal with the sale amounts in a proper manner and, if invested from the realizations of either rent or interest of the said amounts, he shall perpetuate the name and memory of my deceased husband."

4. The Will specified the lands which were required to be sold to fulfill the object thereof.

5. Rangamma expired on 27th February, 1966.

6. Puttaswamy pursuant to or in furtherance of the said Will, on or about 19th October, 1978 executed a Trust Deed in favour of Vokkaligara Sangha, respondent No.1, wherein it was inter alia stipulated:-

"(2) The Donor has all along considered himself and acted as TRUSTEE of these lands and he is anxious to make use of these lands and the yield therefrom or the money that may be derived in the event of these lands being taken by competent authority for a public purpose for the sole purpose for furthering the objective of the former owner by utilizing the schedule property in the cause of education and spread of knowledge.

xxx xxx xxx

(4) The Donor has therefore offered to the Sangha the schedule property in Trust and for the fulfillment of the Donor's in Trust and for the fulfillment of the Donor's cherished objective of serving the cause of education and spread of knowledge.

xxx xxx xxx

(6) Under these circumstances and with the object of making adequate arrangements for the proper preservation and management of the schedule property and for its utilization for the realization and fulfillment of the objective (b) (7) of the Donor, the Donor has created this trust and has executed this Deed of Trust."

7. Puttaswamy in terms of the said Deed of Trust had put his son-in- law as Member of Executive Committee along with himself and one another. It was also provided that after his life time his son Respondent No. 2 or his nominee shall be the member.

8. Indisputably a proceeding under the Karnataka Land Reforms Act, 1961 was initiated by the tenants. For the said purpose they filed Form No.7 prescribed under Section 48A thereof.

9. Before the Land Tribunal a contention was raised by Puttaswamy that Sanga is also a necessary party. The said contention, however, was rejected.

> "Occupancy rights were granted to Chikkanarasimhaiah and Mariyapa for all Survey numbers except Survey No.15 (44 acres and 33 guntas)."

10. Puttaswamy challenged the said order before the High Court impleading the first respondent as a party by filing a writ petition. However, upon constitution of the Land Reforms Appellate Authority, the said writ petition was transferred to it. The provisions for an appeal, however, later on having removed, the matter was transferred back to the High Court. It was marked as W.P. No.19015 of 1992. Puttaswamy in the meantime had died in 1982.

11. The High Court set aside the order of the Land Tribunal and remanded the matter back to the Tribunal to consider the application of Puttaswamy.

12. Indisputably by an order dated 18th July, 1998, after the matter was remitted back to it by the High Court, the tenancy rights were conferred on tenants regarding 52 acres of land. Allegedly no tenancy right was conferred in respect of Survey No.15.

13. Our attention has been drawn to the fact that questioning the said order of the Tribunal a writ petition was filed on 8th October, 1998 by respondent No.1 which was marked as Writ Petition No.30742 of 1998. One of the grounds taken in the said writ petition reads under :-
30. The Land Tribunal has come to a wrong conclusion that the petitioner has no right to be the owner of the property in question. In view of Section 79(b) read with Section 63(7), the education institutions can own the land. Also by Amendment Act of 1997 the power is given to the Government to exempt education institutions and industrial concerns upto the extent of 200 acres. Further the Land Tribunal has no power to take any decision under Section 69(b) or 63(7) or any other provisions of the Act to declare the document as void document. This is how the Land Tribunal has exceeded their jurisdiction by saying that the Vokkaligara Sangha is not the owner of the property in question. There is a competent authority constituted under the Act to decide the question, not the Land Tribunal. This is how the illegality was committed by the Land Tribunal by granting occupancy rights.

> "The prayer made in the said writ petition reads thus :- To quash the impugned order of the Land Tribunal, Bangalore North Taluk, Bangalore dated 18-7-1998 passed in LRF No.680 : 1538/74-75 Annexure-D, by the issue of a writ of certiorari or any other appropriate writ, order or direction as the case may be."

14. The said writ petition, alongwith other writ petitions, however, was withdrawn unconditionally as would appear from the order sheet dated 23rd March, 2001 which reads :-

> "Learned Advocate for the petitioners in all these writ petitions has filed a memo for withdrawal to the effect that the petitioners may be permitted to withdraw the above said writ petitions in the interest of justice and equity. The memo filed by the learned Advocate for the petitioner dated 23.3.2001 is placed on record. All these writ petitions are accordingly dismissed as withdrawn."

15. Respondent Nos. 2 to 4, however, made a representation before the Bangalore Development Authority that they were the real owners of the property and applied for forming a layout in the scheduled property. Permission was granted to form the layout and a Resolution being No.105 of 1999 was passed in that behalf.

16. Yet again a writ petition was filed by respondent No.1, which was marked as W.P. No.28703 of 1999 challenging the Resolution of Bangalore Development Authority. The same was also withdrawn.

17. It is, however, contended before us by Mr. K.K. Venugopal, learned Senior Counsel appearing on behalf of the appellant, although no record has been produced in support thereof, that another writ petition has been filed which is pending before the High Court.

18. Respondent No.1 filed a suit in the Court of City Civil Judge, Bangalore City, which was marked as O.S. No. 5796 of 2001, for a declaration that they are the owners in possession of the suit property in terms of the Deed of Trust executed by Puttaswamy. The said plaint was rejected in terms of Order VII Rule 11 of the Code of Civil Procedure inter alia - on the ground of non-joinder of necessary parties; concealment of facts with regard to the dismissal of the proceedings before the Land Tribunal as also the High Court and orders passed therein; that no probate was obtained; and that no material has been placed on record that Survey No.15 was under self-occupation of Testator on 27th February, 1956 or on 19th October, 1978.

19. Respondent No.1 preferred an appeal thereagainst before the High Court wherein a settlement was arrived at. By the said settlement respondent No.1 restricted its claim to 6 acres and 20 guntas of land in Survey No.15 and declared that it had no claim over 38 acres and 18 guntas of land. The High Court by an order dated 14th December, 2001 allowed the said appeal and remitted the matter back to the trial court stating :-

> "Having given my anxious consideration to that submission made at the Bar, I am of the view that the better course would be to set aside the impugned Judgment and Order and remit the matter back to the Trial Court reserving liberty for the parties to seek disposal of the suit in terms of the compromise filed before this Court. Counsel for the parties had no objection even to that course being followed. In the circumstances and with the consent of learned for the parties, I allow this appeal and

set aside the judgment and Order impugned and remit the matter back to the Trial Court with the direction that it shall examine the question of passing a decree in terms fo the compromise arrived at between the parties in accordance with law.. In case, the compromise falls through or the Court does not for any reason find it permissible to pas a decree in terms thereof, the suit field by the appellants shall be proceeded with on merits in accordance with law."

20. Appellant herein and some other members of respondent No.1 filed an application for impleadment contending that the said compromise had been entered into without the consent of the General Body.

21. The said settlement was accepted by the trial court by its order dated 26th March, 2004 directing, however, that the requisite court fee should be paid.

22. Appellant preferred an appeal thereagainst. The said appeal has been dismissed by the High Court by reason of the impugned order dated 7th July, 2006 holding:-

> "10. It is not the plea of the appellant that the respondent No.1 had without the consent or approval of the Managing Committee entered into this compromise agreement. What terms of compromise shall be stipulated in a suit is left to the parties and I do not find that the respondent No.1 was in any way misled or what the Managing Committee had not consented to the terms. Merely because one of the members of the association does not agree with the administration or any decision taken by the Managing Committee, he does not get any right to challenge the compromise entered into by such association. In that view of the matter, I do not find that the appellant has any locus standi to challenge the compromise entered into by the respondent No.1 with the respondent Nos.2 to 4..... .....
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> 13. For the above said reasons, the appeal is dismissed with no order as to cots. The respondents are directed to appear before the trial Court on 26.7.2006, on which date, the trial Court shall proceed to determine the appropriate Court fee and fix up the time limit for payment of the same."

23. It is, however, not denied or disputed that ultimately for non- payment of court fee the plaint had been rejected in terms of an Order VII Rule 11 (b) of the Code of Civil Procedure.

24. Mr. K.K. Venugopal, learned senior counsel, appearing on behalf of the appellant contended:-

> i) That the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that any person interested in a public trust may prefer an appeal being a `person aggrieved'. ii) The High Court and consequently the trial court committed a serious error in so far as they failed to take into consideration that a Trust is not entitled to enter into a compromise, save and except, for the benefit of Trust itself wherefor even Resolution of the Trustees is imperative.

25. Mr. A.K. Ganguli, learned senior counsel appearing for respondent No.1 urged that this appeal has become infructuous. Learned counsel, however, would support Mr. Venugopal in regard to his contention that the first appeal preferred by the appellant was maintainable.

26. Mr. Harish Salve, learned senior counsel, on the other hand, submitted that the appellant as also the first respondent are guilty of suppression of facts as it has been categorically held by the Land Tribunal that the Deed of Trust dated 19th October, 1978 was illegal being contrary to the provisions of the Karnataka Land Reforms Act.

27. Appellant is a Member of the Executive Committee of respondent No.1-Trust. Any action which, according to its members are illegal, can be subject matter of challenge before an appropriate forum.

28. The question which had been raised by the appellant in his Memorandum of Appeal is as to whether respondent No.1 could have entered into a settlement with respondent Nos. 2 to 4 in respect of the property of the Trust.

29. In a given case, an appeal would also be maintainable at the instance of a Executive Member of the Trust. This Court in *A.A. Gopalakrishnan v. Cochin Devaswom Board*[1] has held:-

> 11. Learned counsel for Respondents 3 and 4 submitted that the settlement in the suit (OS No. 399 of 1998) was validly arrived at between them (the plaintiffs) and the Devaswom Board (the defendant), that the Devaswom Board had considered the proposal after taking legal advice and had duly passed a resolution to settle the suit. It is further submitted that a decree having been made in terms of the compromise and such decree having attained finality, it cannot be questioned, interfered or set aside at the instance of a third party in a writ proceeding. Order 23 Rule 3 CPC deals with compromise of suits. Rule 3-A provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. We are of the considered view that the bar contained in Rule 3-A will not come in the way of the High Court examining the validity of a compromise decree, when allegations of fraud/collusion are made against a statutory authority which entered into such compromise. While it is true that decrees of civil courts which have attained finality should not be interfered with lightly, challenge to such compromise decrees by an aggrieved devotee, who was not a party to the suit, cannot be rejected, where fraud/collusion on the part of officers of a statutory board is made out. Further, when the High Court by order dated 9-9-1998 had directed the Board to take possession of Sy. No. 1042/2 immediately from Respondents 3 and 4 in CDB No. 3 of 1996, in a complaint by another devotee, it was improper for the Board to enter into a settlement with Respondents 2 and 3, giving up the right, title and interest in Sy. No. 1042/2, without the permission of the court which passed such order. Viewed from any angle, the compromise decree cannot be sustained and is liable to be set aside.

[Emphasis supplied]

Yet again in *Swami Shankaranand (Dead) by LRs. v. Mahant Sri Sadguru Sarnanad and others*[2] this Court has held :- 11. In a case of this nature judiciary exercises the jurisdiction of parens patriae and, thus, when an objection is filed for grant of sanction in terms of Section 92(1)(f) of the Code, the same should receive serious consideration. The High Court thus may not be entirely correct in opining that the appellant had no locus standi to maintain an appeal. It is true that the appellant is said to be in- charge of a Math situated at Varanasi. However, it is contended that he really stays at Mirzapur. According to the respondents, he has nothing to do with the Math in question. But, that is to say, no person being a third party to the application, would not be a 'person aggrieved', in a case of this nature cannot be sustained, if the appellant establishes that he is otherwise interested in the welfare of the Trust.

30. However, in our opinion, it is not necessary to go into the aforementioned question as the suit filed by respondent No.1 has been dismissed for non-payment of court fee. No decree has thus been drawn up incorporating the terms of settlement entered into by and between respondent No.1 on one hand and respondent Nos. 2 to 4 on the other.

31. There cannot, however, be any doubt whatsoever that in the event a case is made out as regards mal-administration of the Trust or otherwise appropriate remedies can be availed. An originating summons can be taken out, if otherwise it is permissible in law before the Original Side of the High Court.

32. We, however, must also place on record that we have also not applied our mind as to whether the order of the Land Tribunal has attained finality and whether the Land Tribunal had any jurisdiction to deal with the question of interpretation of the Original Will and/or the execution of the subsequent Trust Deed creating respondent No.1

33. We would also place on record that it is also not necessary for us to consider the effect of withdrawal of Writ Petition Nos.30742 of 1998 and 28703 of 1999 at this stage.

34. With the aforementioned observations this appeal is disposed of. No costs.

[1]*(2007) 7 SCC 482*
[2]*(2008) 14 SCC 642*