

Tutupalli Ramalinga Sastri vs Sri Yogananda Lakshminarasimhaswami ... on 29 November, 1982

Equivalent citations: AIR1983SC257, 1982(2)SCALE1116, (1983)1SCC425, 1983(15)UJ1(SC), AIR 1983 SUPREME COURT 257, 1983 (1) SCC 425, 1983 UJ (SC) 1, (1983) 1 APLJ 34.1

Bench: A. Varadarajan, V.D. Tulzapurkar

JUDGMENT

1. This appeal by special leave is directed against the judgment of the Division Bench of the Andhra Pradesh High Court dismissing L.P.A. No. 245 of 1972, which had been filed against the judgment of a learned Single Judge of that High Court in A. S. No. 89 of 1970. Notice under Section 3(2) of the Andhra Pradesh (Andhra Area) Inams Abolition and Conversion into Ryotwari Act, 1956, which came into force on 14.12.1956, was issued, calling upon the appellant, Archaka of the respondent temple to appear before the Deputy Tehsildar for Inams, Guntur in a suo motu enquiry for determining the nature of the Inam. But unfortunately, the appellant did not appear before the Deputy Tehsildar. The Deputy Tehsildar, therefore, decided on 22.12.1960, holding that the Inam was in favour of respondent temple and that the appellant was only Archaka. The Deputy Tehsildar granted Patta in favour of the respondent temple. But the contention of the appellant is that the Inam title deed dated 29.11.1860 in respect of the lands was issued in favour of his ancestors, burdened with service of Swastivachakam in the Pagoda of the respondent temple. The Inam title deed, Inam Fair Register extracts etc. are available.

2. The appellant filed an appeal against the aforesaid decision of the Deputy Tehsildar for Inams in I.A. No. 14 of 1961 before the Revenue Court. The Revenue Court dismissed the appeal holding that the appellant was not a person concerned, on the ground, that he had not appeared before the Deputy Tehsildar for Inams in pursuance of the aforesaid Notice issued to him under Section 3(2) of the Act. The appellant challenged that order of the Revenue Court in W.P. No. 915 of 1961 and it was dismissed. The appellant, thereafter, filed Original Suit No. 42 of 1975 in the Court of the Subordinate Judge, Tenali for a declaration that the order dated 22.12.1960 of the Deputy Tehsildar for Inams granting Patta in favour of the respondent temple is not valid and binding on him. That suit was dismissed by the learned Subordinate Judge on 30.1.1969. Against the judgment and decree in that Original Suit, the appellant filed the aforesaid Appeal Suit No. 89 of 1970.

3. The Inam Title Deed dated 29.11.1860 and the Inam Fair Register extract came up for consideration in Original Suit No. 314 of 1941 before District Munsiff's Court, Tenali, to which the respondent temple as well as the Hindu Religious Endowments Board were parties. That suit was filed by the appellant for a declaration that neither the appellant nor the property involved in that suit, which is the land in dispute in these proceedings nor the income from the lands is liable to be proceeded against for recovery of contribution by the Hindu Religious Endowments Board and for the refund of Rs. 32-14-6, being the amount collected by the Board by way of contribution. That suit

appears to have been decreed by the trial court. The Hindu Religious Endowments Board took up the matter in appeal in A.S. No. 63 of 1944, Sub-Court, Tenali, which was subsequently taken on file as A.S. No. 324 of 1944, Sub-Court, Bapatla, and was dismissed on 30.12.1944. On a consideration of the evidence adduced by the parties and judgment and decree of the trial court, the learned Additional Subordinate Judge, who disposed of the appeal, observed thus in his judgment:

The suit land is "Swastivachakam" service inam. From the documentary evidence adduced in the case, it is clear that the grantee of the land is not the deity, i. e., Yogananda Narasimhaswami of Yedlapalli, but the grantees were the ancestors of the plaintiff. Ex. P-3 is the title deed No. 823 granted to Thootupalli Narasayya Appayya and Padmanabhudu of Yedlapalli by the Inam Commissioner for the service in the Pagoda. Plaintiff is the grand son of T. Padamanabhudu. Ex. P-4 is certified copy of the Inam Statement, which shows in column 1 the names of the Inamdars as the three persons just now mentioned, to whom the title deed was granted by the Inam Commissioner. Ex. P-5 is Inam fair register extract, which also gives the names of three persons just now mentioned in column 14. In column 13 relating to the original grantee, the remark is 'not known'. Column 8 shows that the Inam was granted for service in the pagoda of Yogananda Narasimhaswami of Yedlapalli for saying 'Swasti'.... From the documents referred to above, it is clear that the suit land was granted in inam to the ancestors of the plaintiff and not to the deity though the same was burdened with 'swastivachakam' service. The Temple does not get any income on the suit property. So, by virtue of the provisions contained in Section 69 of the Hindu Religious Endowments Act, no contribution can be levied in respect of that property.

4. The Revenue Department which could not have been unaware of the litigations relating to the lands, could have looked into these proceedings in the suo moto enquiry which was taken up by the Deputy Tehsildar for Inams. The appellant could not bring these documents to the notice of the Deputy Tehsildar for Inams as he unfortunately did not appear in the suo moto enquiry. Unfortunately, again; the appellant had not questioned the appellate order of the Revenue Court which had confirmed the order of the Deputy Tehsildar for Inams in O.S. No. 42 of 1965, which he filed in the sub-court, Tenali for declaration that the said order of the Deputy Tehsildar for Inams dated 22.12.1960 was not valid and binding on him. The decisions in the appeal before the Revenue Court and W.P. No. 915 of 1961, appear to have been given on the technical ground that the appellant was not a person concerned, because he had not appeared before the Deputy Tehsildar for Inams in pursuance of the Notice issued under Section 3(2) of the Act. We are of the opinion that the ultimate decisions of the tribunals and courts below would not have been what have been given, if the appellant had appeared before the Deputy Tehsildar for Inams and placed the entire material and had questioned the correctness and binding nature of the order of the Revenue Court also in O.S. No. 42 of 1965 which he filed in the Sub-Court, Tenali. In these circumstances, we are of the opinion that interest of justice requires that the entire matter should go back before the Deputy Tehsildar for Inams for re-consideration, in the light of the evidence which may be produced before him by both parties. The appeal is accordingly allowed and the matter is remitted to the Deputy Tehsildar for Inams, Guntur for fresh disposal in accordance with law, with liberty for both parties to produce oral and documentary evidence. There will be no order as to costs.