

R. Venugopala Naidu And Ors vs Venkatarayulu Naidu Charities And Ors on 26 October, 1989

Equivalent citations: 1990 AIR 444, 1989 SCR SUPL. (1) 760, AIR 1990 SUPREME COURT 444, (1989) 2 ALL WC 1479, (1990) 1 SIM LC 246, (1990) 1 LJR 376, 1989 (3) CURCC 328, (1990) 1 APLJ 59, (1990) 1 APLJ 46, (1989) 4 JT 262 (SC), 1989 SCC (SUPP) 2 356, (1989) 39 DLT 470

Author: Kuldip Singh

Bench: Kuldip Singh

PETITIONER:

R. VENUGOPALA NAIDU AND ORS.

Vs.

RESPONDENT:

VENKATARAYULU NAIDU CHARITIES AND ORS.

DATE OF JUDGMENT 26/10/1989

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

NATRAJAN, S. (J)

CITATION:

1990 AIR 444 1989 SCR Supl. (1) 760
1989 SCC Supl. (2) 356 JT 1989 (4) 262
1989 SCALE (2) 902

ACT:

Civil Procedure Code, 1908: Section 92--Representative suit-Nature of--Whether all persons interested in a trust are parties to the suit.

HEADNOTE:

Respondent No. 1 is a public trust. The trust owns several properties. On the ground that the trust properties were improperly and fraudulently alienated, a suit was filed under Section 92 CPC for removing the trustee and appointing a new trustee and to recover trust properties alienated by the said trustee. The sub-judge permitted the trustees to continue and framed a scheme-decree for the future manage-

ment and administration of trust. The scheme also granted liberty to the parties to apply to the sub-court for further directions as regards the administration of the trust.

The trustees filed an interim application before the sub-court and obtained permission to sell two properties. The appellants filed an interim application for setting aside the order granting permission to the trust for selling the two properties, alleging that the negotiated price was only about 20% of the market price. The sub-judge dismissed the application on the ground that the applicants had no locus-standi to file the application under clauses 13 and 14 of the Scheme-decree as they were not parties to the Original suit.

On revision the High Court also came to the conclusion that the application was not maintainable.

This appeal, by special leave, is against the said judgment of the High Court.

On behalf of the appellants, it was contended that since the suit under section 92 CPC being a representative suit, the scheme-decree binds not only the parties thereto, but all those who are interested in the trust.

The contention of the Respondents was that only the two persons

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who filed the original suit can be considered as "parties" in terms of clause 14 of the scheme-decree and since the appellants were not plaintiffs in the suit, they have no locus-standi to file an application under clauses 13 and 14 of the scheme decree.

Allowing the appeals, this Court,

HELD: 1.1 A suit under Section 92 of the Code is a suit of a special nature for the protection of Public rights in the Public Trusts and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 of the Code and the suit-title in that event would show only their names as plaintiffs. The named plaintiffs being the representatives of the public at large which is interested in the trust all such interested persons would be considered in the eyes of law to be parties to the suit. A suit under Section 92 of the Code is thus a representative suit and as such binds not only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that explanation VI to Section 11 of Code constructively bars by res-judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier suit under Section 92 of the Code. [766B-C]

1.2 A suit whether under Section 92 of the Civil Procedure Code or under Order 1 Rule 8 of Civil Procedure Code is by the representatives of large number of persons who have a

common interest. The very nature of a representative suit makes all those who have common interest in the suit as parties. In the instant case all persons who are interested in the respondent trust are parties to the original suit and as such can exercise their rights under clauses 13 and 14 of scheme-decree. [766H; 767A]

Raje Anandrao v. Shamrao and Ors., [1961] 3 SCR 930; Ahmed Adam Sait and Ors. v. Inayatullah Mekhri and Ors., [1964] 2 SCR 647 relied on.

2.1 The property of religious and charitable endowments or institutions must be jealously protected because large segment of the community has beneficial interest therein. Sale by private negotiations which is not visible to the public eye and may even give rise to public suspicion should not, therefore, be permitted unless there are special
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reasons to justify the same. Care must be taken to fix the reserve price after ascertaining the market value for safeguarding the interest of the endowment. [767F-G]

2.2 The orders of subordinate court dated October 27, 1984 and January 23, 1985 permitting the sale of the two properties and consequent sale in favour of the respondents, are set aside. The properties in question may be sold by public auction by giving wide publicity regarding the date, time and place of public auction. The offer of Rs. 10 lacs made in this Court will be treated as minimum bid of the person who has given the offer and deposited ten percent of the amount in this Court. It will also be open to the respondents/purchasers to participate in the auction and compete with others for purchasing the properties. The respondents-vendees from the trust shall be entitled to refund of the price paid by them with 10% interest from the date of payment of the amount till the date of auction of the property. They will also be entitled to compensation for any superstructure put up by them in the properties including compensation for any additions or improvements made by them to the building and the property. [767H; 768A-C]

Chenchu Ram Reddy and Anr. v. Govt. of Andhra Pradesh and Ors., [1986] 3 SCC 391, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3577 of 1988.

From the Judgment and Order dated 19.9.1986 of the Madras High Court in C.R.P. No. 3210 of 1985. S. Padmanabhan, Mr. T.A. Subramaniam, R.N. Keshwani and S. Balakrishnan for the Appellants.

G. Ramaswamy, Additional Solicitor General, K. Swami, S. Srinivasan, Rajyappa, S. Murlidhar,

Diwan Balak Ram and M.K.D. Namboodari for the Respondents.

The Judgment of the Court was delivered by KULDIP SINGH, J. Venkatarayulu Naidu Charities is a public trust V.P. Venkatakrishna Naidu and V.P. Rajagopala Naidu, filed an original suit No. 28 of 1909 (hereinafter called original suit) in the court of Subordinate Judge, Mayavaram under Section 92 of the Code of Civil Procedure praying inter alia that the defendant trustee be removed from the said office and a new trustee be appointed with directions to recover trust properties improperly and fraudulently alienated by the defendant. The subordinate court permitted the trustee to continue and framed a scheme-decree dated September 9, 1910 for the future management and administration of the trust. Clauses 13 and 14 of the scheme are as under:

"13--The trustee shall not effect any alterations or additions to the existing buildings except with the permission of the Tanjore Sub Court."

"14--Liberty is given to the parties to apply to the Tanjore Sub Court for further directions if any from time to time as regards the administration of the trusts."

The question for consideration in this Appeal is whether "parties" mentioned in Clause 14 of the scheme-decree reproduced above mean only the named plaintiffs and defendant in the suit-title and their successors-in-interest or the suit being representative it includes all those who are interested in the trust.

Further necessary facts are as under:

The trust owns several items of properties. We are concerned with the following two properties alone of the trust.

1. Property situate at Muthukumara Moopannaar Road in T.S. No. 2936 to an extent of 11484 sq. ft.
2. Property situate at ward No. 6 Gandhiji Road, in T.S. No. 2937 to an extent of 4429 sq. ft.

The trustees filed interim application No. 453 of 1984 in the Original Suit before the subordinate court for permission to sell the first property which was granted by the order dated October 27, 1984 and the property was sold for Rs.11,000. Similarly the second property was sold for Rs.69,328 with the permission of the court dated January 23, 1985.

R. Venugopala Naidu and three others who are the present appellants filed interim application No. 175 of 1985 in the original suit before the subordinate judge, Thanjavur for setting aside the orders dated October 27, 1984 and January 23, 1985 granting permission to the trust to sell the above mentioned two properties. It was alleged that the negotiated sale was at a price which was almost 20% of the market price. There was no publication in any newspapers or even in the court notice board inviting the general public.

The learned subordinate judge dismissed the application on the ground that the applicants have no locus-sandi to file the application under clauses 13 and 14 of the scheme-decree as they were not parties to the original suit. A further revision before the Madras High Court was dismissed. The High Court also came to the conclusion that the application was not maintainable. It was also held by the High Court that two of the four applicants who are muslims cannot have any interest in the administration of the trust. Against the High Court judgment the present appeal by way of special leave has been filed.

Mr. S. Padmanabhan, learned counsel for the appellants has vehemently argued that though the appellants were not shown as parties in suit-title but the suit under Section 92 of Civil Procedure Code being a representative suit the scheme-decree binds not only the parties thereto but all those who are interested in the trust. According to him "parties" in clause 14 of the scheme decree would include appellants and all those who are interested in the trust. He has relied on *Raje Anandrao v. Shamrao and Others*, [1961] 3 SCR 930 wherein this Court held as under:

" It is true that the pujaris were not parties to the suit under s. 92 but the decision in that suit binds the pujaris as wor- shippers so far as the administration of the temple is concerned, even though they were not parties to it, for a suit under s. 92 is a representative suit and binds not only the parties thereto but all those who are interested in the trust."

The learned counsel further relied on *Ahmed Adam Sait and Others v. Inayathullah Mekhri and Others*, [1964] 2 SCR 647 wherein this Court observed as under:

"A suit under s. 92, it is urged, is a repre- sentative suit, and so, whether or not the present respondents actually appeared in that suit, they would be bound by the decree, which had framed a scheme for the proper administra- tion of the Trust. In support of this argu- ment, reliance is placed on the decision of this Court in *Raja Anandrao v. Shamrao*, where it is observed that though the Pujaris were not parties to the suit under s. 92, the decision in that suit binds the pujaris as worshipers so far as the administration of the temple is concerned, because a suit under s. 92 is a representative suit and binds not only the parties thereto, but all those who are interested in the Trust "

" In assessing the validity of this argument, it is necessary to consider the basis of the decisions that a decree passed in a suit under s. 92 binds all parties. The basis of this view is that a suit under s. 92 is a representative suit and is brought with the necessary sanction required by it on behalf of all the beneficiaries interested in the Trust. The said section authorises two or more persons having an interest in the Trust to file a suit for claiming one or more of the reliefs specified in clauses (a) to (h) of sub-section (1) after consent in writing there prescribed has been obtained. Thus, when a suit is brought under s. 92, it is brought by two or more persons interested in the Trust who have taken upon themselves the responsi- bility of representing all the beneficiaries of the Trust. In such a suit, though all the beneficiaries may not be

expressly impleaded, the action is instituted on their behalf and relief is claimed in a representative character. This position immediately attracts the provisions of explanation VI to s. 11 of the Code. Explanation VI provides that where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. It is clear that s. 11 read with its explanation VI leads to the result that a decree passed in a suit instituted by persons to which explanation VI applies will bar further claims by persons interested in the same right in respect of which the prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata. Where a representative suit is brought under s. 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matters directly and substantially in issue in the said earlier suit.

A similar result follows if a suit is either brought or defended under O.1., r. 8. In that case persons either suing or defending an action are doing so in a representative character, and so the decree passed in such a suit binds all those whose interests were represented either by the plaintiffs or by the defendants

The legal position which emerges is that a suit under Section 92 of the Code is a suit of a special nature for the protection of Public rights in the Public Trusts and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 of the Code and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are on the suit-title are the only parties to the suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust all such interested persons would be considered in the eyes of law to be parties to the suit. A suit under Section 92 of the Code is thus a representative suit and as such binds only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that explanation VI to Section II of the Code constructively bars by res judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier suit under Section 92 of the Code. Mr. G. Ramaswamy, learned counsel appearing for the respondent trust has argued that only the two persons who filed the original suit can be considered as "parties" in terms of clause 14 of the scheme decree and according to him since the appellants were not the plaintiffs they have no locus-standi to file any application under clause 13 and 14 of the scheme-decree. According to the learned counsel Section 92 of the Code brings out a dichotomy in the sense that there are "parties to the suit" and "persons interested in the trust." According to him persons interested in the trust cannot be considered parties to the suit although the judgment/decreed in the suit is binding on them. He has also argued that a suit under Section 92 of Civil Procedure Code is different from a suit filed under Order 1 Rule 8 of Civil Procedure Code. We do not agree with the learned counsel. A suit whether under Section 92 of Civil Procedure Code or

under Order 1 Rule 8 of Civil Procedure Code is by the representatives of large number of persons who have a common interest. The very nature of a representative suit makes all those who have common interest in the suit as parties. We, therefore, conclude that all persons who are interested in Venkatarayulu Naidu Charities which is admittedly a public trust are parties to the original suit and as such can exercise their rights under clauses 13 and 14 of scheme- decree dated September 9, 1910.

It is not necessary to go into the finding of the High Court that two of the appellants being muslims can have no interest in the trust as the other two appellants claim to be the beneficiaries of the trust and their claim has not been negated. Moreover, the trust has been constituted to perform not only charities of a religious nature but also charities of a secular nature such as providing for drinking water and food for the general public without reference to caste or religion.

In view of our findings above the subordinate court and the High Court were in error in holding that the appellants had no locus-standi to file the application for setting aside the order permitting the sale of the properties. We, therefore, allow the appeal and set aside the order of the subordinate court and that of the High Court. The subordinate court and the High Court did not go into the merits of the case as the appellants were non-suited on the ground of locus-standi. We would have normally remanded the case for decision on merits but in the facts and circumstances of this case we are satisfied that the value of the property which the trust got was not the market value. Two persons namely S.M. Mohamed Yaaseen ad S.N.M. Ubayadully have filed affidavit offering Rs.9.00 lacs and Rs. 10.00 lacs respectively for these properties. In support of their bona fide they have deposited 10% of the offer in this Court. This Court in Chenchu Ram Reddy and another v. Government of Andhra Pradesh and Others, [1986] 3 SCC 391 has held that the property of religious and charitable endowments or institutions must be jealously protected because large segment of the community has beneficial interest therein. Sale by private negotiations which is not visible to the public eye and may, even give rise to public suspicion should not, therefore, be permitted unless there are special reasons to justify the same. It has further been held that care must be taken to fix the reserve price after ascertaining the market value for safeguarding the interest of the endowment.

We, therefore, set aside the orders of subordinate court dated October 27, 1984 and January 23, 1985 permitting the sale of the two properties and also set aside the consequent sale in favour of the respondents. We direct that the properties in question may be sold by public auction by giving wide publicity regarding the date, time and place of public auction. The offer of Rs. 10 lacs made in this Court will be treated as minimum bid of the person who has given the offer and deposited ten percent of the amount in this Court. It will also be open to the respondents/purchasers to participate in the auction and compete with others for purchasing the properties. The respondents--vendees from the trust shall be entitled to refund of the price paid by them with 10% interest from the date of payment of the amount till the date of auction of the property. They will also be entitled to compensation for any super structure put up by them in the properties including compensation for any additions or improvements made by them to the building and the property. The value of such super structure and the improvements and additions shall be ascertained by the subordinate court through a qualified engineer and by Such other method as the court may deem fit. The court shall fix the value and compensation amount after affording opportunity to the respond-

ents and the trust to make their representation in that respect. There shall be no order as to costs.

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Appeal al -