

Shri Bhimsehwara Swami Varu Temple vs Pedapudi Krishna Murthi And Ors. on 27 March, 1973

Equivalent citations: AIR1973SC1299, (1973)2SCC261, AIR 1973 SUPREME COURT 1299, 1973 2 SCC 261

Author: Y.V. Chandrachud

Bench: J.M. Shelat, S.N. Dwivedi, Y.V. Chandrachud

JUDGMENT

Y.V. Chandrachud, J.

1. The appellant, Sri Bhimeshwara Swami Vara Temple, brought a suit in the Court of the Subordinate Judge, Eluru, for a declaration that the properties described in Schedules A and B of the plaint were Devadaya lands belonging to it and for possession of the same after ejecting the respondents. The learned trial Judge decreed the suit in respect of items 1 to 3 of Schedule B only. This decree was set aside by the High Court which remanded the matter for a fresh trial. After remand the trial Court decreed the suit except in regard to items 1 and 2 of Schedule A.

2. The decree for the trial Court was confirmed in appeal by a learned single Judge of the High Court of Andhra Pradesh. Letters Patent Appeal 71 of 1966 filed by the plaintiff against that Judgment was dismissed in limine by a Division Bench of the High Court on December 6, 1966. This appeal is filed by the plaintiff by special leave restricted to item No. 2 of Schedule A of the plaint

3. The case of the appellant is that the suit lands are Devadaya inam lands which were granted to the Deity and that the Archakas were mismanaging the lands and misappropriating the income received therefrom Defendants 1 to 7 are the archakas while defendants 8 to 39 are the tenants and alienees who claim under the archakas. The defence of the Archakas is that the lands did not belong to the temple but belonged to them and that they were in uninterrupted possession of the lands in their own right for about 100 years.

4. Item 2 of the Schedule A with which we are concerned in this appeal is a land R.S. No. 1057 admeasuring 3 acres and 4 cents situated at Vungutur. The sole contention of the appellant is that this land was shown in its name in certain entries of the Fasli year 1358 and that the High Court was in error in not acting upon those entries.

5. It is true that the name of the appellant is recorded as a "ryot" in 3 entries in the revenue accounts, Exhibits A-9, A-10 and A-11. Exhibit A-9 is an extract from the settlement Register of the

village of Vungutur and is referred to as No. 10 account of Vungutur village. Exhibits A-10 and A-11 are extracts from the Diglet Register. It has however to be remembered that as against these stray entries almost the entire revenue record is in favour of the Archakas. For example, Exhibit B-39 which is an extract from the Resettlement Register of the year 1866 shows that old survey No. 256 corresponding to R. S. No. 1057, with which we are concerned, stood in the name of "Kothalanka Ramanna Ganganna" as the pattadar. Ramanna and Ganganna were brothers, both being Archakas of the temple. Exhibit B-2 of the year 1896 which is called a "Keroyati Patta" also shows that old survey No. 256 was granted to Kotta Lanka Bupanna, who was the Archaka of the temple. The rough patta Exhibit B-15 dated June 4, 1900 and the fair patta Exhibit B-43 of the year 1902 are also in the name of Kothalanka Bapanna. The long course of entries which were consistently in favour of the Archakas cannot be ignored in preference to the entries in favour of the temple for a solitary year.

6. Learned Counsel for the appellant relied on a Mahazar, Exhibit A-24, dated July 30, 1892 submitted by the villagers of Vungutur to the Head Assistant Collector, Godavari District, in Order to show that the title of the temple was conceded by the entire village. It is true that the villagers had made a request, in the Mahazar that the name of the Deity should be entered against certain lands. But the official memorandum, Exhibit B-10, dated January 31, 1893 issued by J. H. Robertson, Acting Head Assistant Collector, shows that the submission made by the villagers was rejected and the Deity's claim was not recognised. Exhibit A-22 which is a report submitted by the Karnam of Vungutur on which the appellant relied does not also show acceptance of its claim.

7. Our attention was finally drawn to a judgment (Exhibit A-46) of the District Munsiffs Court in suit No. 684 of 1896. That was a suit filed by one Rajah Papamma Rao Bahadur Zamindari Garu against Kothalanka Bapanna for a declaration that lands measuring 22 acres and 19 cents at Vungutur belonged to the temple and that the Archakas had no right to the same. It was alleged by the plaintiff therein that his father-in-law was the Dharmakarta of the temple, that he had built the temple at his own cost and had endowed it to the Deity Kothalanka Bapanna, the defendant in that suit, set up his own title to the property. The trial Court held that the lands belonged to the temple and that the defendant was in possession of the lands as an Archaka of the temple, but it dismissed the suit on the ground that the plaintiff had failed to establish that he was the Dharmakarta of the temple and had, therefore, no right to ask for possession of the lands. No reliance can be placed on this judgment in support of the appellant's title because in an appeal against that judgment, the correctness of the finding that the lands belonged to the temple was not agitated. The appellate Court dealt only with the plaintiff's right to sue as the Dharmakarta of the temple and confirming the finding recorded by the trial Court on that issue, it dismissed the appeal.

8. No useful purpose will be served by discussing the oral evidence led by the parties. That evidence is of an uncertain character and is inadequate to displace the presumption arising out of the several entries spread over a large number of years showing that R.S. No. 1057 belonged to the Archakas and was in their possession in their own right.

9. For these reasons we confirm the judgment of the High Court and dismiss the appeal.