

## **S. Bhaskaran vs Sebastian (Dead) By Lrs. And Ors. on 13 September, 2019**

**Equivalent citations: AIR 2019 SUPREME COURT 4306, AIRONLINE 2019 SC 1038, 2019 (9) SCC 161, (2019) 3 CURCC 567, (2019) 2 ORISSA LR 681, (2019) 4 PAT LJR 1, (2019) 12 SCALE 334, (2020) 1 ICC 545, (2020) 1 CIVLJ 459, (2019) 4 RECCIVR 406**

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**Bench: Ajay Rastogi, Mohan M. Shantanagoudar, N.V. Ramana**

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7800 OF 2014

S. Bhaskaran

...Appellant(s)

Versus

Sebastian (Dead) By Lrs. & Ors.

...Respondent(s)

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

1. The instant appeal arises out of the order of the High Court of Judicature at Madras dated 10.12.2007 in Civil Revision Petition No. 1007 of 2007, setting aside the order of the City Civil Court, Chennai dated 31.01.2007 in E.A. No. 5750/2003 in Execution Petition No. 1910/1992 in O.S. No. 8664/1988.

2. The brief facts from which this appeal arises are as follows:

The suit temple properties were originally administered by three brothers—Sadhasivamurthy, Balasundaram, and Sundararajan ('original owners'). Vide settlement deed dated 19.09.1947, these original owners endowed the property to the temple. The deed also included a provision that the eldest son of the deceased trustee would become his successor. The genealogy of the family of the original owners is as follows:

Sadhasivamurthy Balasundaram Sundararajan (issueless) K.S.Jaganathan Sabapathy  
Umapathy Ram Gnanambal S. Bhaskaran (Appellant)

3. From 1987-88, three suits relating to the temple properties were filed. Among these, O.S. No. 8664/1988 is relevant to the instant appeal. This suit was filed on behalf of the temple by one K.S. Jaganathan and S. Bhaskaran (Appellant herein) in their capacity as trustees, seeking permanent injunction against Gnanambal and her husband, who were tenants in the suit properties (Respondents 1-7 herein) at that time. One Umapathymurthy (represented by Respondents 8-14 herein) was impleaded in this suit as a defendant. In his written statement, he claimed that he was the eldest son of Sadhasivamurthy and that he had been dispossessed from the trusteeship of the temple by his younger brother, K.S. Sabapathy.

4. By a common judgment dated 09.09.1991, the Trial Court disposed of all the three suits. With respect to the relevant suit (O.S. No. 8664/1988), it gave a finding that the Appellant herein and his uncle, K.S. Jaganathan were the trustees of the temple. To arrive at this finding, the Court relied on documents indicating that the Appellant's father, K.S. Sabapathy was the eldest son of Sadhasivamurthy and the heir to the suit land in terms of the settlement deed dated 19.09.1947. These included the license issued by the Police Commissioner in 1983 showing K.S. Sabapathy as the heir (Ex. B21), electricity card of K.S. Sabapathy (Ex. B22), wedding invitation of Sadhasivamurthy (Ex. B24), license issued by police department for temple celebration (Ex. B25), and the legal heir certificate dated 31.08.1987 issued to Sadhasivamurthy by the Tahsildar (Ex. B26). In holding that the Appellant was a trustee and passing a decree in his favour, the Court rejected the claim of Umapathymurthy that he was the eldest son of Sadhasivamurthy, and consequently the trustee of the temple.

5. In first appeal, the Appellate Court confirmed the judgment and decree of the Trial Court passed in O.S.No.8664/1988. No further appeal was preferred. It is crucial to note that Umapathymurthy was an appellant in the first appeal and had contested it.

6. The decree holders filed Execution Petition No. 1910/1992, for executing the decree obtained by them in O.S. No.8664/1988. In this petition, the judgment debtors (Respondents herein) filed an execution application (E.A. No. 5750/2003) under Section 47 of the Code of Civil Procedure, 1908 ('CPC') against the Appellant and his uncle, seeking dismissal of the execution petition on the basis that the original decree was vitiated by fraud. They alleged that the heir certificate of Sadhasivamurthy furnished by the Appellant (Ex. B26 in the Trial Court record) was falsely prepared and suppressed the name of Umapathymurthy as the eldest son of Sadhasivamurthy.

7. While examining this application, the executing court observed that the judgment debtors had not objected to the heir certificate when it was adduced before the Trial Court. In any case, the Trial Court had not adjudicated the issue of trusteeship solely on the basis of the heir certificate, and other documents had been considered as well. Thus, by order dated 31.01.2007, the executing court dismissed E.A. No. 5750/2003 filed under Section 47 of the CPC as non-maintainable on the ground that the judgment of the Trial Court had been confirmed by the First Appellate Court after considering all relevant evidence, and had therefore become final.

8. When a revision petition was filed against the above order, the High Court allowed E.A. No. 5750/2003 vide the impugned judgment. Relying on sale deeds dated 11.08.1948 and 22.06.1950 showing Umapathymurthy as the eldest son and K.S. Sabapathy as the second minor son of Sadhasivamurthy, the High Court concluded that Umapathymurthy qualified as the trustee of the temple in view of the settlement deed dated 19.09.1947. Thus, K.S. Sabapathy could not have become the trustee of the temple. In view of this finding, the High Court went on to observe that the decree passed in the original suit was a nullity and could not be enforced.

9. Having perused the records and the findings of the Trial Court, we find ourselves unable to agree with the decision of the High Court in the impugned judgment. It is well-settled that an executing court cannot travel beyond the order or decree under execution (see Rameshwar Dass Gupta v. State of U.P. and Another, (1996) 5 SCC 728).

In the present case, the Trial Court had already considered the evidence on record and given a finding that the Appellant and his uncle were the trustees of the temple. Notably, Umapathymurthy was a party to this suit and had contested it by filing a written statement, claiming to be the eldest son of Sadhasivamurthy. However, at that time, he did not put forth any objections to the heir certificate of Sadhasivamurthy, which was considered by the Trial Court while arriving at its finding. This judgment was confirmed by the First Appellate Court and no further appeal was preferred by the Respondents against it. In light of this, the findings of the Trial Court have become final, and Umapathymurthy as well as the other Respondents are bound by them.

By allowing them to re-open the question of trusteeship by way of an application in an execution petition, the High Court has gone beyond the decree to be executed and exceeded its revisional jurisdiction under Section 115 of the CPC. Since the findings of the Trial Court had attained finality, the decision of the executing court dated 31.01.2007 by which E.A. No. 5750/2003 was dismissed, should have been affirmed. Thus, the impugned judgment is not only illegal, but also without jurisdiction.

10. For the aforementioned reasons, we set aside the impugned order dated 10.12.2007 in Civil Revision Petition No. 1007 of 2007 passed by the High Court. The order of the City Civil Court, Chennai dated 31.01.2007 in E.A. No. 5750/2003 is restored. The appeal is allowed accordingly.

.....J. (N.V. RAMANA) .....J. (MOHAN M. SHANTANAGOUDAR) .....J. (AJAY RASTOGI) NEW DELHI;

SEPTEMBER 13, 2019