

R. MURALI AND ORS.

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v.

KANYAKA P. DEVASTHANAM AND CHARITIES AND ORS.

JULY 25, 2005

[D.M. DHARMADHIKARI AND ARUN KUMAR, JJ.]

B

*Code of Civil Procedure, 1908—Section 92:*

*Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959—Section 5(e), 64, 107—Board of trustees of respondent—institution obtained a decree of declaration and permanent injunction restraining authorities from interfering with the management of their properties or modifying the scheme framed for governing the institution—Aggrieved with the various acts of mismanagement, appellants sought leave under Section 92 CPC for instituting suit—Application opposed by Board of trustees on the ground that institution is governed by the Tamil Nadu Act which prohibits applicability of Section 92—Single Judge of High Court granted the leave—However, Division Bench revoked the same—Correctness of—Held: Division Bench has grossly erred in revoking the leave to file the suit granted in favour of the appellants under section 92 CPC—Operative part of the judgment containing the decree, having not been appealed against, has attained finality and cannot be described as an ‘incidental observation’, ‘not a part of ratio decidendi’, ‘obiter dicta’ and ‘not authoritative’ as has been done by the Division Bench—By their own conduct, Board of trustees are estopped from raising a contrary plea in the subsequent suit instituted against them and oppose grant of leave of the Court under Section 92 CPC—Constitution of India, 1950—Article 26.*

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*Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959—Sections 5(e), 64—Applicability of Section 5(e)—Held: Not applicable since the respondent-institution is carrying on multifarious activities of religious and charitable nature and is not purely a ‘Hindu Religious Institution or Endowment’—It is also a ‘charitable endowment’ as defined in clause (5) and ‘religious charity’ under definition clause (16) of section 6.*

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*Approbation and reprobation—Respondents cannot be allowed to approbate and reprobate in the two suits in which the subject matter and*

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A *issue of jurisdiction of civil court involved are the same.*

The Members of Board of trustees of respondent - Hindu religious and charitable Institution had obtained a decree of declaration that their institution was a denominational temple with guaranteed fundamental freedom under Article 26 of the Constitution of India. A decree of permanent injunction was also granted restraining Commissioner and Deputy Commissioner under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 from interfering in any manner with the management and administration of the properties of the institution or modifying the scheme framed for governing the institution.

C The appellants, aggrieved with the various acts of mismanagement by present members of Board of Trustees sought leave under Section 92 CPC from Single Judge of High Court for instituting suit for seeking relief of modifying/reframing a scheme for administration of institution. Respondent nos. 2 to 7, the members of Board of trustees opposed the application on the ground that institution is governed by the Tamil Nadu Act and under Section 5(c), the provisions of Sections 92 & 93 CPC are inapplicable to the institution. Single Judge granted the leave. On appeal, Division Bench held that part of the decree, restraining the authorities under the Tamil Nadu Act from modifying the scheme of administration or management of the Trust, was 'incidental', 'not part of the *ratio decidendi*, 'obiter dicta' and 'not authoritative and thereby revoked the leave granted under Section 92. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The Division Bench has grossly erred in revoking the leave to file a suit granted in favour of the appellants under section 92 CPC.

[806-F]

2. The respondents had themselves obtained a decree of declaration that the institution belongs to a religious denomination and the authorities under Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 have no powers of framing or modifying any scheme of administration of the institution thereunder. An executable part of decree granted by the city civil court clearly restrains the authorities under the Tamil Nadu Act from modifying or framing the scheme of administration of the institution and declares the institution to be of a religious denomination. The operative part of the judgment containing the decree, rightly or erroneously granted, having not been appealed against, has attained finality and cannot be described as an 'incidental observation',

'not a part of *ratio decidendi*', '*obiter dicta*' and 'not authoritative' as has been done by the Division Bench in its impugned judgment. By their own conduct of obtaining a decree of declaration and injunction against the authorities under the Tamil Nadu Act, they are estopped from raising a contrary plea in the subsequent suit instituted against them and oppose grant of leave of the Court under Section 92 CPC. The respondents cannot be allowed to approbate and reprobate in the two suits in which the subject matter and issue of jurisdiction of civil court involved are the same.

[806-G, H; 807-A, D, E]

3. The Division Bench of the High Court also went wrong in holding that the decree granted by the city civil court in the year 1976 in favour of respondents is contrary to section 64 of the Tamil Nadu Act. The institution under consideration is carrying on multifarious activities of religious and charitable nature. It is not purely a 'Hindu Religious Institution or Endowment'. It is also a 'charitable endowment' as defined in clause (5) and 'religious charity' under definition clause (16) of section 6 of the Tamil Nadu Act. As a result of decree of declaration that the institution is of religious denomination of Arya Vysya community, it had protection under Article 26 of the Constitution of India from interference in its administration by the authorities under the Tamil Nadu Act. This right guaranteed under Article 26 of the Constitution has been expressly protected under section 107 of the Tamil Nadu Act by making inapplicable the other provisions of the Act including section 64 to institutions of religious and charitable nature of religious denominations. Therefore, it is not open to the present appellants to approach the authorities under section 64 of the Tamil Nadu Act for modification or reframing the scheme of administration of the trust. As decree of declaration and injunction is operative against the authorities under Tamil Nadu Act, civil court alone could have been approached by obtaining leave under section 92 of the CPC for seeking modification or reframing of scheme of administration of the trust. [807-F, G, H; 808-A, B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4467 of 2005.

From the Judgment and Order dated 23.12.2003 of the Madras High Court in O.S.A.No. 327 of 2003.

K. Parasaran and V. Balachandran with him for the Appellants.

A.K. Ganguly and T. Harish Kumar with him for the Respondents.

The Judgment of the Court was delivered by

**A** **DHARMADHIKARI, J.** Leave to file appeal is granted.

Counsel for the parties are heard on the merits of the appeal.

**B** The appellants are aggrieved by the impugned order of the Division Bench of the High Court of Madras whereby leave granted under Section 92 of the Code of Civil Procedure to file suit for reframing scheme of administration of Sri Kanyaka Parameshwari Devasthanam and Charities by the learned single judge has been revoked.

**C** The aforesaid religious endowment and charitable trust admittedly is carrying on various activities which include running of high schools for girls and boys, maintaining three choultries, hostel for college students, Annachatram for feeding poor students and pilgrims, cremation ground, gardens and maintaining market in the vicinity of the temple.

**D** Respondent Nos. 2 to 7 as members of the Board of Trustees of the religious and charitable institution named above, had instituted a suit No. OS 7453 of 1972 in the City Civil Court at Madras seeking a decree of declaration and injunction against the Commissioner and Deputy Commissioner restraining them from exercising powers under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'Tamil Nadu Act']. In the suit, it was pleaded that Kanyaka Parameswari temple is a denominational temple with guaranteed fundamental freedom under Article 26 of the Constitution of India from interference of the Commissioner and Deputy Commissioner under the Tamil Nadu Act in the administration of the institution. The city civil court by judgment dated 13.12.1976 granted a decree of declaration in favour of the trust and its trustees that the temple is a religious denomination of Arya Vysya community. A decree of permanent injunction was also granted restraining Commissioner and Deputy Commissioner under the Tamil Nadu Act from interfering, in any manner, with the management and administration of the properties of the institution or taking any proceedings or modifying the schemes framed for governing the institution.

**G** It is in the above background of the grant of decree of declaration and injunction in the civil suit OS No.7453 of 1972 of the city civil court restraining interference of Commissioner and the Deputy Commissioner under the Tamil Nadu Act in the affairs of the religious and charitable institution that the present appellants had sought leave under section 92 of the Code of Civil Procedure [for short 'CPC'] from the learned single judge of the High Court  
**H** for instituting a suit for seeking relief of modifying/re-framing a scheme for

administration of the institution. In the petition seeking leave to file suit, various acts of mismanagement by the present members of the Board of Trustees were alleged. A

The application for leave sought under section 92 of the Code to institute suit was opposed by respondent Nos. 2 to 7 as members of the Board of Trustees, on the ground that institution is governed by the Tamil Nadu Act and under section 5(e) thereof, the provisions of sections 92 & 93 of the CPC are inapplicable to the institution. It was submitted that the jurisdiction to settle or modify a scheme of administration of the religious and charitable institution vests in the Joint Commissioner or Deputy Commissioner, as the case may be, under section 64 of the Tamil Nadu Act. B C

The learned single judge by order passed on 2.9.2003 granted leave under section 92 of the CPC to the present appellants and rejected the objection raised by the respondent trustees. It is held that the respondents in earlier suit (supra) having sought and obtained a decree of declaration and injunction on their claim of protection under Article 26 of the Constitution of India, the appellants cannot be compelled to approach the authorities under the Act for obtaining relief which is sought in the suit. The learned single judge has also held that the institution having been declared to be of a religious denomination in accordance with section 107 of the Tamil Nadu Act, the autonomy guaranteed to it under Article 26 of the Constitution of India is recognized and protected. D E

In the appeal preferred by the respondents 2 to 7 as members of the Board of Trustees, the Division Bench by the impugned order reversed the judgment of the learned single judge and revoked the leave to file suit granted under section 92 of the CPC. In construing the judgment and decree of declaration and injunction granted by the city civil court in OS No. 7453 of 1972 decided on 13.12.1976, the Division Bench has held that the decree, to the extent it restrains the authorities under the Tamil Nadu Act from modifying the scheme of administration or management of the Trust, is contrary to section 64 of the Act. The Division Bench described a part of the decree as 'incidental', 'not part of the *ratio decidendi*, 'obiter dicta' and 'not authoritative.' F G

It is necessary at this stage to examine the relevant provisions of the Tamil Nadu Act and the relevant portion of the judgment and decree of the city civil court of the year 1976, the judgment of the learned single judge and H

A of the Division Bench of the High Court. Section 5(e) makes inapplicable provisions of section 92 & 93 of CPC to '*Hindu religious institutions and endowments*'. Section 5 with its opening part and clause (e) reads thus:-

B "5. *Certain Acts not to apply to Hindu Religious Institutions and Endowments.*—The following enactments shall cease to apply to Hindu religious institutions and endowments, namely :-

(a) to (d) .....

(e) Section 92 & 93 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

C [Emphasis added by Court]

Section 107 of the Tamil Nadu Act recognizes and protects religious freedom in matters of managing religious affairs by religious denominations guaranteed as fundamental right under Article 26 of the Constitution of India.

D Section 107 reads thus :-

E "107. *Act not to affect rights under Article 26 of the Constitution.*- Nothing contained in this Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution."

The operative part of decree of declaration and injunction obtained against the authorities under the Tamil Nadu Act by the respondents as members of the Board of Trustees in the year 1976 reads thus:-

F "In the result, it is declared that the plaintiff temple called as Sri Kanyaka Parameswari temple is a religious denomination of the Arya Vysya Community and that a permanent injunction is also issued against the defendants restraining them from interfering with the management or administration of the properties of the plaintiff, institution or taking any proceedings or *modifying the scheme governing the institution*. But the injunction issued in favour of the plaintiff shall not prevent the department from exercising such of the powers which are conferred on them by law in regard to the administration of institution."

H Learned single judge in construing the above decree obtained by

respondents themselves in the year 1976 from the city civil court, came to the conclusion that as a result of the decree of injunction, authorities under the Tamil Nadu Act could not be approached for seeking change or modification in the scheme of administration and management of the institution. It is only the civil court, on grant of leave under section 92 of the Code, which could grant relief to the plaintiffs, if they are found entitled to the same. The conclusion of learned single judge reads thus :—

“The respondents herein had sought for and obtained the protection of Article 26 of the Constitution of India in the civil suit already referred to and therefore, the applicants cannot go before the authorities for obtaining the relief that is sought for in this suit. The correctness of the allegations made against the respondents of mismanagement, dissipation of property and unbridled exercise of power will also be dealt with at the time of trial.

The requirements of section 92 of the Code of Civil Procedure have been satisfied so the maintainability of the application must be answered in favour of the applicant.”

The Division Bench by the impugned order reversed the judgment of the learned single judge. It came to the conclusion that certain observation in that decree granted by city civil court in the year 1976 is ‘incidental’. It is ‘not part of the *ratio-decidendi*’. It is ‘*obiter dicta*’ and ‘*not authoritative*.’ The said part of the decree is held to be contrary to section 64 of the Tamil Nadu Act which confers power on the prescribed authorities under the said Act of framing or modifying a scheme of administration or management of the religious institutions. The concluding portion of the judgment of the Division Bench, which is assailed before us by the learned counsel, reads as under :-

“In this case, one another strange circumstance pointed out by the learned senior counsel for the respondents is that the decree passed by the Civil Court in O.S. No. 7453 of 1972 has restrained the authorities from interfering with the management or administration of the properties of the institution or from taking any proceedings or modifying the scheme governing the institution. It is further argued by the learned senior counsel that clause (3) of the decree, though saves the rights of the authorities from exercising such powers vested on them by law in regard to the administration of the institution, the second clause of the decree restrained them from doing so.

A The suit O.S. No. 7453 of 1972 was filed for a declaration to declare that the first appellant is a denominational temple belonging to religious denomination of the Arya Vysya Community of Madras and for permanent injunction. *While passing the decree, the city civil court, though saved the powers of the authorities of HR & CE conferred under the Act has stated that the scheme could not be modified by*

B *the authorities. Indeed, the said observation is made contrary to section 64 of the Act and it is an 'incidental' which are not part of ratio decidendi, which is classified as obiter dicta and not authoritative.* The learned single judge granted leave on the face of the expression of the decree indicated above in O.S. No. 7453 of 1972

C that the authorities are restrained from modifying the scheme settled.

*The decree passed in O.S. No. 7453 of 1972 to that extent indicated above is an obiter dicta and not part of ratio decidendi hence not binding since section 64 confers powers on the authorities. Section 92 & 93 of CPC cease to apply to the first appellant endowment by virtue of section 5 of the Act.* The appellants have filed a suit C.S. No. 383 of 1998 against the defendants therein only for bare injunction and not for any other relief under section 92 or 93 of CPC.

D In view of the same, the order passed by the learned single judge is set aside. The appeal is allowed. No costs. Consequently, connected CMP is closed. It is made clear that the respondents are at liberty to move the authorities under the Act for the grievances, if any, if they

E are so advised."

[Emphasis added by this Court]

F After hearing learned senior counsel Shri K. Parasaran on behalf of the Appellants and Shri A. K. Ganguly for the respondents, we have formed an opinion that the Division Bench has grossly erred in reversing the judgment of the learned single judge of the High Court and revoking the leave to file the suit granted in favour of the appellants under section 92 of CPC.

G We have extracted above the relevant portions of the decree granted by the city civil court in the year 1976. The respondents themselves obtained a decree of declaration that the institution belongs to a religious denomination and the authorities under Tamil Nadu Act, have no powers of framing or modifying any scheme of administration of the institution under the Tamil

H Nadu Act. We fail to understand how an executable part of decree granted

by the city civil court which clearly restrains the authorities under the Tamil Nadu Act from modifying or framing the scheme of administration of the institution and declares the institution to be of a religious denomination, can be described as merely '*incidental observation*', '*obiter dicta*', '*not part of ratio decidendi*' and 'not authoritative.'

The operative part of the judgment containing the decree, rightly or erroneously granted, having not been appealed against, has attained finality and cannot be described as an '*incidental observation*', '*not a part of ratio decidendi*', '*obiter dicta*' and 'not authoritative' as has been done by the Division Bench in its impugned judgment. The conclusion of the city civil court on which decree is based is the main and operative part of the decision. The Division Bench has committed a gross error of law in ignoring a vital part of the judgment and decree dated 13.12.1976 of the City Civil Court, Madras which was obtained by the respondents themselves as the members of the Board of Trustee in their own suit instituted and numbered as O.S. No. 7453 of 1972. Such a judgment and decree is valid and binding on the respondents. By their own conduct of obtaining a decree of declaration and injunction against the authorities, under the Tamil Nadu Act, they are estopped from raising a contrary plea in the subsequent suit instituted against them and oppose grant of leave of the Court sought by the present appellants under Section 92 of the Code of Civil Procedure. The respondents cannot be allowed to approbate and reprobate in the two suits in which the subject matter and issue of jurisdiction of civil court involved are the same.

The Division Bench of the High Court also went wrong in holding that the decree granted by the city civil court in the year 1976 in favour of respondents is contrary to section 64 of the Tamil Nadu Act. We have examined the relevant provisions of the Tamil Nadu Act. The institution under consideration is carrying on multifarious activities of religious and charitable nature. It is not purely a 'Hindu Religious Institution or Endowment'. It is also a 'charitable endowment' as defined in clause (5) and 'religious charity' under definition clause (16) of section 6 of the Tamil Nadu Act.

As a result of decree of declaration that the institution is of religious denomination of Arya Vysya community, it had protection under Article 26 of the Constitution of India from interference in its administration by the authorities under the Tamil Nadu Act. This right guaranteed under Article 26 of the Constitution has been expressly protected under section 107 of the Tamil Nadu Act by making inapplicable the other provisions of the Act

**A** including section 64 to institutions of religious and charitable nature of religious denominations.

**B** Our conclusion is that on grounds both of existence of a decree of declaration and injunction granted by the city civil court in the year 1976 in the suit instituted by the respondents themselves and the mixed character of the institution of the 'religious denomination' as religious and charitable with protection of Article 26 and section 107 of the Tamil Nadu Act, it is not open to the present appellants to approach the authorities under section 64 of the Tamil Nadu Act for modification or reframing the scheme of the administration of the trust. As decree of declaration and injunction is operative against the authorities under Tamil Nadu Act, civil court alone could have been approached by obtaining leave under section 92 of CPC for seeking modification or reframing of scheme of administration of the trust.

**C** For the aforesaid reasons, the impugned order of the Division Bench of the High Court deserves to be set aside and that of the learned single judge restored. In the result, this appeal succeeds and is allowed. The impugned order of the Division Bench dated 23.12.2003 is set aside. The order of the learned single judge dated 02.9.2003 is restored. The respondents 2 to 7 shall individually and collectively, without using funds of the institution, pay full costs incurred in this appeal to the appellants.

D.G.

Appeal dismissed.