SRI BHAVANARAYANASWAMIVARI TEMPLE

v.

VADAPALLI VENKATA BHAVANARAYANACHARYULU

March 25, 1970

[J. C. SHAH AND K. S. HEGDE, JJ.]

Madras Religious and Charitable Endowments Act, 1927 *s.* 57(1) *and* (3)—*Decision of Madras Religious Endowment Board in proceeding under s.* 57(1) *that certain properties did not belong to temple—No suit filed under s.* 57(3)—*Decision of Board whether operates as* res judicata—*Proceeding under s.* 57(1) *whether a summary proceeding.*

In 1931 the Madras Endowments Board framed a scheme for the better management of the appellant temple. At that time the question arose whether the suit properties were the properties of the temple. The respondent's family put forward the claim that those properties had been granted to them as archakatwam service inam and consequently those properties were not temple properties. That contention was accepted by the Board. The Board's decision was not challenged by the appellant by a suit under s. 57(3) of the Act. The suit under appeal was filed by the respondent praying for a declaration that the suit properties had been granted to his family as archakatwam service inam, and that the appellant had no right therein. An injunction restraining the appellant from interferring with the respondent's possession was also prayed for. The appellant resisted the claim. The lower courts as well as the High Court upheld the respondent's claim on the ground that the appellant's claim was barred by *res judicata.* In this Court it was urged on behalf of the appellant that the Board's decision could not be regarded as *res judicata* because (i) the proceeding before the Board was a summary proceeding, (ii) the question as to the title of the suit properties was not directly and substantially in issue in that proceeding since the essential purpose of the framing of a scheme for the management of a temple is to see that the administration is carried on properly and not to determine what properties the temple owns.

HELD : (i) It is not correct to say that the power conferred on the Board under s. 57 is a summary power. A decision rendered by the Board under that section is final subject to the result of the suit contemplated in the said section. Section 57 provides for an exhaustive enquiry in the matter of framing scheme, firstly by the Board and then by the Court. The trial before the Court has to be held in the same manner as any other suit that may be instituted under the provisions of the Civil Procedure Code. [131 E-F]

(ii)(a) The doctrine of *res judicata* is not confined to a decision in a suit but it applies to decisions in other proceedings as well. But how far a decision which is rendered in other proceedings will bind the parties depends upon other considerations one of which is whether the decision determines substantial rights of parties and the other is whether the parties are given adequate opportunities to establish the rights pleaded by them. The doctrine of *res judicata* is not confined to the limits prescribed in s. 11 Civil Procedure Code. The underlying principle of that doctrine is that there should be finality in litigation and that a person should not be vexed twice over in respect of the same matter. [132 B-C]

A (b) A scheme framed for the better management of a temple must necessarily show therein the properties of the temple. Before deciding to frame a scheme the authority framing the scheme must know the nature and extent of the trust funds. There can be no scheme of management of a temple in vacuum. [131 A-B]

In the previous proceedings one of the important questions the B Board had to decide was whether the properties in dispute were archakatwam service inam properties. The Board's decision which was adverse to the temple affected the rights of the temple in a substantial manner. It was open to the temple to get its right established by means of a suit under s. 57(3). It failed to take that step. Therefore, the decision of the Board in 1931 that the suit properties were not temple properties operated as *res judicata*, and the appeal must fail. [132 D-G]

C *Chotalal Lakhmiram & Ors.* v. *Manohar Ganesh Tambekar & Ors.* I.L.R. XXIV Bom. p. 50, (*Sri Mahant*) *Sitaram Dass Bavaji* v. *Madras Religious Endowment Board, Madras,* A.I.R. 1937 Mad. 106, *Arikapudi Balakotayya* v. *Yadlapalli Nagayya,* A.I.R. (33) 1946 Mad. 509 and *State of Madras* v. *Kunnakudi Melamatam* alias *Annathana Matam,* (1962) 2 M.L.J. 13, applied.

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 431 of 1967.

Appeal by special leave from the judgment and decree dated September 1, 1966 of the Andhra Pradesh High Court in Second Appeal No. 719 of 1962.

R. Venugopal Reddy and *K. Jayaram,* for the appellants.

E

B. Parthasarathy, for the respondent.

The Judgment of the Court was delivered by

Hegde, J.—The point in controversy in this appeal by special leave is whether the properties in dispute herein constitute a hereditary archakatwam service inam granted to the plaintiff's predecessors or whether they are the properties of the appellant temple. The High Court and the courts below have come to the conclusion that the appellant's contention that it is the owner of the suit properties is barred by *res judicata.* That conclusion is challenged in this appeal.

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In the suit under appeal the respondent who is an archaka in the appellant temple prayed for a declaration that the suit properties had been granted to his family as archakatwam service Inam land and that the appellant has no right therein. He has also asked for an injunction restraining the appellant from interfering with his possession and enjoyment. The appellant denied H the respondent's claim. The High Court as well as the appellate court have upheld the respondent's claim on the ground that the appellant's claim is barred by *res judicata.*

In 1931 the Madras Religious Endowments Board framed a scheme for the better management of the appellant temple. At that time the question arose whether the suit properties were the properties of the temple. The respondent's family put forward the claim that those properties had been granted to them as archakatwam service inam and consequently those properties were not temple properties. That contention was accepted by the Board. It is said that the said decision operates as *res judicata* against the claim made by the appellant.

On behalf of the appellant it was urged that the proceeding before the Board under s. 57(1) of the Madras Religious & Charitable Endowments Act, 1927 (in short the Act) was a summary proceeding, the question as to the title to the suit properties was not directly and substantially in issue in that proceeding and as such the decision in question does not operate as *res judicata* in the present suit.

Section 57(1) as it stood in 1931 reads thus :

> "When the Board is satisfied that in the interest of the proper administration of the endowments of a temple, a scheme of administration should be settled, the Board may after consulting in the prescribed manner, the trustee, the committee, if any and the persons having interest by order settle a scheme of administration for the endowments of such temple".

Sub-section (3) of that section says :

> "Every order of the Board under this scheme shall be published in the prescribed manner. The trustee or any person having interest may within six months of the date of such publication institute a suit in the court to modify or set aside such order. Subject to the result of such suit every order of the Board shall be final and binding on the committee, the trustee and all persons having interest."

It is not disputed that the decision of the Board holding that the properties in question were archakatwam service inam lands was not challenged by means of a suit under s. 57(3). Therefore the said decision has become final. We have now to see what is the effect of the finality in question. According to the appellant as the title to the suit properties was not directly and substantially in issue in the proceeding before the Board and the decision thereon being only incidental, the same cannot operate as *res judicata*.

In support of the contention that the decision rendered by the Board was only an incidental one, it was urged that the essential purpose of framing of a scheme for the management of temple is

A to see that the temple's administration is carried on properly; and in such a proceeding it is not necessary to determine what all properties the temple owns. We are unable to accede to this contention. A scheme framed for the better management of a temple must necessarily show therein the properties of the temple. Before deciding to frame a scheme the authority framing the scheme B must know the nature and extent of the trust funds. There can be no scheme of management of a temple in vacuum. As observed by the Judicial Committee in *Chotalal Lakhmiram and ors.* v. *Manohar Ganesh Tambekar and ors.* [1] :

> "Until the trust funds are ascertained, it seems impossible that any scheme can be settled."

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Varadachariar J. in (*Sri Mahant*) *Sitaram Dass Bavaji* v. *Madras Religious Endowment Board, Madras and ors;*[2] observed that the power given by s. 63 to the Board for framing a scheme for the management of a mutt,—a power similar to that conferred on the Board under s. 57 for framing scheme for the management D of a temple—carries with it the power to settle what the properties of the institution are. A scheme for proper administration of a temple must necessarily provide for the proper administration of its assets. The persons empowered to manage must know what properties are to be governed by the scheme and what the resources of the temple are.

E It is not correct to say that the power conferred on the Board under s. 57 is a summary power as urged by the learned Counsel for the appellant. A decision rendered by the Board under that section is final subject to the result of the suit contemplated in the said section. Section 57 provides for an exhaustive enquiry in the matter of framing scheme, firstly by the Board and then by the F Court. The trial before the court has to be held in the same manner as any other suit that may be instituted under the provisions of the Civil Procedure Code. In *Arikapudi Balakotayya* v. *Yadlapalli Nagayya*[3]; a Division Bench of the Madras High Court held that the order made by the District Court under s. 84(2) of the Act operates as *res judicata* in a subsequent proceeding. G Under s. 84(1) the Board is given power to decide if any dispute arises as to (a) whether an institution is a math or temple as defined in the Act; (b) whether the trustee is a hereditary trustee as defined in the Act or not and (c) whether any property or money endowed is a specific endowment as defined in the Act or not. Sub-s. (2) of that section provides that any person affected by a decision under sub-s. (1) may, within six months apply to the Court H to modify or set aside that decision. Sub-s (3) thereof provides for

(1) I.L.R. XXIV Bom. p. 50. (2) A.I.R. 1937 Mad. 106.
(3) A.I.R. (33) 1946 Mad. 509.

an appeal to the High Court against the order of the District Judge. Sub-s. (4) of that section provides that subject to the result of an application under sub-s. (2) or an appeal under sub-s. (3), the decision of the Board shall be final.

In *Balakotayya's case*(1) while examining the effect of a decision under s. 84(2), it was observed that the doctrine of *res judicata* is not confined to a decision in a suit it applies to decisions in other proceedings as well. But how far a decision which is rendered in other proceedings will bind the parties depends upon other considerations one of which is whether that decision determines substantial rights of parties and the other is whether the parties are given adequate opportunities to establish the rights pleaded by them. The doctrine of *res judicata* is not confined to the limits prescribed in s. 11, Civil Procedure Code. The underlying principle of that doctrine is that there should be finality in litigation and that a person should not be vexed twice over in respect of the same matter.

In the proceedings with which we are concerned in this appeal one of the important question the Board had to decide was whether the properties in dispute are archakatwam service inam properties. The Board's decision which was adverse to the temple, affected the rights of the temple in a substantial manner. It was open to the temple to get its right established by means of a suit under s. 57(3). It failed to take that step. Therefore the decision of the Board has become final and binding on the temple. In *State of Madras* v. *Kunnakudi Melamatam alias Annathana Matam*(2) this Court held that a decision of the Board under s. 84(1) which had become final in the absence of any application to the court to set aside that decision under s. 84(2), holding that the institution was outside the purview of the Act, bars the board from levying any contribution on the institution under the Act subsequently.

In our judgment the decision of the Board in 1931 that the suit properties are not temple properties operates as *res judicata* in the present proceeding.

In the result this appeal fails and the same is dismissed with costs.

G.C. *Appeal dismissed.*

(1) A.I.R. (33) 1946 Mad. 539.
(2) (1962) 2 M.L. J. p. 13.