SUBBA v. VENKATRAMI

SANKARAN NAIR, J.

case. If the learned Judges intended to go further and lay down that if a junior member of a Hindu family agrees to sell any specific property belonging to his family, a decree may be passed against him to sell his share of that specific property, I am unable to agree with that view. Because the junior member is unable to perform the whole of his part of the contract of conveying the entire property agreed to be sold and for the same reason that he is not entitled to claim any specific property till partition, conveyance of a portion, is not a part of the contract "as he can perform" in the terms of section 15 of the Specific Relief Act. On the view that a co-parcener cannot alienate any specific property, no specific performance can be decreed. The opposite view rests on the principle laid down in some of the cases that a co-parcener is entitled to alienate any particular property. BAKEWELL, J., and myself have dissented from those cases in *Nanjaya Mudali* v. *Shanmuga Mudali*(1) and our judgment has been followed by the OFFICIATING CHIEF JUSTICE and KUMARASWAMI SASTRI, J., in *Maharaja of Bobbili* v. *Venkataramanjulu Naidu*(2). This question, however, does not arise in the appeal. I would dismiss the appeal with costs.

SPENCER, J.

SPENCER, J.—I concur.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Spencer

1914. July 27 and 28.

VENKATESHA MALIA (PLAINTIFF), APPELLANT,

v.

B. RAMAYA HEGADE AND TWELVE OTHERS (DEFENDANTS NOS. 1, 3 TO 5, 7, 8, 11 TO 17), RESPONDENTS.*

Religious Endowments Act (*XX of* 1863), *ss.* 14 *and* 18—*Sanction to two persons jointly—Whether suit by one competent.*

Where sanction to sue is given to two persons under section 18 of Religious Endowments Act, one of them cannot sue alone.

Mahomed Athar v. *Ramjan Khan* (1907) I.L.R., 34 Calc., 587, explained. Sanction granted under section 18 of the Act is a condition precedent to the exercise of the right of suit.

(1) (1914) 15 M.L.T., 186. (2) (1914) 16 M.L.T., 181.

* Appeal No. 132 of 1910.

Venkateswara, In re (1887) I.L.R., 10 Mad., 98, referred to.

It has to be construed strictly without enlarging its scope.

Sayad Hussein Miyan v. *Collector of Kaira* (1897) I.L.R., 21 Bom., 257, referred to.

Section 14 of the Act commented on.

APPEAL against the decree of H. O. D. HARDING, the District Judge of South Canara, in Original Suit No. 62 of 1906.

The facts of this case appear sufficiently from the judgment.

K. Ramanath Shenai for the appellant.

B. Sitarama Rao for the first respondent.

K. Naraina Rao for the respondents Nos. 2 and 3.

K. Yagna Narayana Adiga for the fourth respondent.

JUDGMENT.—Under section 18 of Act XX of 1863 the District Judge gave sanction to two individuals to sue for the removal of the respondents who are the moktessors of the Shri Ananth Padmanabha Temple of Perdur for misfeasance, breach of trust or neglect of duty.

SANKARAN NAIR AND SPENCER, JJ.

Although the sanction was given jointly to both, only one of the individuals took action thereon and sued the trustees.

When the suit came on for trial before the same Judge who gave the original sanction, a preliminary objection was taken that the suit was bad because the joint sanction-holder had not joined in the suit. The Judge upheld this objection and dismissed the suit holding that the plaintiff could not prosecute it alone. He further expressed a doubt as to the pla[illegible]s *bona fides*. The question before us therefore is lan[illegible] one man should be allowed to sue under section 14 any [illegible]ct upon the strength of a sanction given to two men. defe[illegible]ctions are a condition precedent to the exercise of the the suit [*Venkateswara, In re*(1)], and it is open to the sho[illegible] amend the order of sanction at any time [*Srinivasa* v. He [illegible] 2)], but the plaintiff seems to have made no attempt to [illegible] Court to alter the sanction by getting it granted in *Nagp*[illegible] only.

arg[illegible]*thomed Athar* v. *Ramjan Khan*(3), this point was consid[illegible]d the learned Judges held that when sanction had been to three persons and two of them withdrew and one of ree joining with him two new persons brought a suit under on 14 of the Act the suit was not defective by reason of two

(1) (1887) I.L.R., 10 Mad., 98. (2) (1888) I.L.R., 11 Mad., 148.
(3) (1907) I.L.R., 34 Calc., 587.

VENKATESHA MALIA. v. RAMAYA HEGADE.

SANKARAN NAIR AND SPENCER, JJ.

of the three plaintiffs being persons to whom leave to sue not been accorded. There no objection was taken at the trial and no issue framed as to the maintainability of the suit.

It was observed by the High Court that as the same Judge who gave the leave under section 18 also entertained the suit, he must have tacitly given permission to the two new men become plaintiffs along with Ramjan Khan.

So here as Mr. Harding granted sanction to two petitioners in his order of January 8th, 1906, and subsequently on May 1st, 1910, he himself dismissed the plaintiff's suit because Shivalli Brahman had not been joined as a party, and at same time doubted the *bona fides* of the plaintiff, it may taken that he refused to allow the plaintiff to sue singly.

Such sanctions for instituting suits against trustees have to be construed strictly without enlarging their scope (*Sayad Hussein Miyan* v. *Collector of Kaira*(1) the object of requiring sanction being to protect managers from vexatious suits. The words in section 14 of the Act "any person or persons interested in any mosque, etc., may without *joining as plaintiff with any of the other persons interested therein,* sue before the Civil Court the trustee, manager, etc.," seem to be enabling words intended to give individuals a right to sue individually without the necessity of all the worshippers of the particular temple or religious institution joining as plaintiffs. With all respect to the learned Judges who decided *Mahomed Athar* v. *Ramjan Khan*(2), we do not consider that those words are intended to refer to the persons who hold the sanctions granted under section 18.

Cases may occur in which it might be inadvisable to grant sanction to a particular individual either on account of his character, personal motives, or his solvency, and yet if he joined with some one whose very name would be a guarantee against the suit being improperly conducted, a Court would be justified in granting a joint sanction where it would have refused leave to the single applicant.

We are therefore of opinion that this suit was rightly dismissed.

The appeal is dismissed with costs.

S.V.

(1) (1897) I.L.R., 21 Bom., 257. (2) (1907) I.L.R., 34 Calc., 587.