

CASE NO.:
Appeal (civil) 3135 of 2007

PETITIONER:
A.A. GOPALAKRISHNAN

RESPONDENT:
COCHIN DEVASWOM BOARD & ORS

DATE OF JUDGMENT: 19/07/2007

BENCH:
K. G. Balakrishnan & R V Raveendran & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO 3135 OF 2007
[@ SPECIAL LEAVE PETITION (CIVIL) NO. 26712 OF 2005)]

K.G. BALAKRISHNAN, CJI

Leave granted. Application for exemption from filing O.T. is granted.

2. An extent of 21 cents of land in Survey No.1042/2 of Mulanthuruthy village, Kanayannur Taluk, Ernakulam District, belonged to Karikkode Sastha and Maha Vishnu temple under the management of Cochin Devaswom Board ('Board' for short).

3. One T.K.Asokan filed a complaint before the High Court of Kerala alleging that respondents 3 and 4 had encroached upon the said land, and were in illegal possession. The complaint was registered as CDB No.3/1996. The High Court by order dated 12.6.1997 held that the said Sy No.1042/2 (21 cents) was part of the property of Karikkode Sastha and Vishnu Temple and gave a direction to the Board to take possession of the said land without delay. Respondents 3 and 4 challenged the said order before this Court in SLP (C) No.12985/1997 contending that they had acquired title over the said land by their long possession. This Court disposed of the said petition by the following order dated 30.3.1998:

"In the facts and circumstances of this case, having heard learned counsel for the parties, we do not think it is a fit case for our interference against the impugned direction of the High Court. The property in question should be delivered to the Devasthanam, if has not been delivered in the meantime. But since the High Court has given a declaration in respect of the property in a summary proceedings, it would be open for the petitioners to establish its title in a regularly instituted civil suit, if so advised and in the event of such a suit is filed, the finding the High Court will not be a bar for the civil court."

In view of the said order of this Court, the High Court closed the complaint (CDB No.3/1996) by order dated 9.9.1998, with a direction to the Devaswom Board to take possession of the said land, by taking police help, if necessary.

4. Respondents 3 to 5 thereafter filed O.S.No.399/1998 on the file of the Sub-Court, Ernakulam, against the Devaswom Board seeking declaration of title in respect of Sy.No.1042/2 and consequential injunction. During the pendency of the suit, they submitted a

representation dated 6.7.2000 to the Board requesting for a settlement. They proposed an exchange of Sy. No.1042/2 (21 cents of land which belonged to Karikkode Devaswom) with Sy. No.1043 (30 cents of land which was in the possession of Karikkode Devaswom, but title to which was claimed by respondent No. 3).

5. Without even waiting for a reply for the letter proposing settlement, respondents 3 to 5 filed a writ petition (OP No.20251/2000) before the High Court and secured an ex parte order dated 27.7.2000 directing the Board to consider their representation and pass an order thereon. In view of the said direction, the Board considered the representation and passed a resolution dated 29.8.2000 agreeing to the proposal and entered into a compromise with respondents 3 to 5 on 30.8.2000. The said compromise petition recorded a settlement that the parties will enter into a Deed of Exchange, by which plaintiffs (respondents 3 to 5 herein) would surrender their title and interest in respect of 30 cents in Survey No.1043 (Resurvey No.175/5) of Mulanthuruthy village, Kanayannur Taluk, Ernakulam District (which was the subject matter of the Purchase Certificate No.581/76 and 586/76 dated 21.2.1976 issued by the Deputy Collector (LT) No.IV, Ernakulam) where the three idols/vigrahas of Upadevanmar (Sri Malikappuram, Sri Malanada and another) were situated in favour of the defendant (Board) and in exchange the Defendant (Board) would surrender the right, title and interest in respect of Sy. No.1042/2 (measuring 21 cents) in favour of the plaintiffs. The Sub-court, Ernakulam decreed O.S. No.399/1998 on 18.9.2000 in terms of the said compromise.

6. The appellant herein challenged the said compromise in writ petition (O.P.No.19728/2001) before the High Court alleging that the settlement of the suit was collusive and the land which was agreed to be transferred by respondent Nos.3 to 5 by way of exchange in favour of the Devaswom Board was the property of the Karikkode temple itself; and that to defeat the directions by this Court and the High Court, requiring surrender of possession of Sy. No.1042/2, the officers of Devaswom Board had colluded with respondent Nos.3 to 5 and permitted them to retain Sy. No.1042/2 illegally. The writ petition was dismissed by holding that the Devaswom Board got possession of 30 cents of land in exchange for 21 cents in pursuance of a settlement between the parties, and therefore there was no case for interference. The said judgment of the High Court is under challenge in this appeal.

7. We have heard learned counsel for the appellant and learned counsel for the respondents. We find considerable force in the contention of the appellant that the Devaswom Board really got nothing out of the settlement and it gave to respondents 3 to 5 a property (Sy. No.1042/2) which belonged to the Karikkode Temple in regard to which this Court and High Court had specifically directed the Board to take immediate possession. Survey No.1042/2 adjoins the temple. Survey No.1043, it is seen, is the land in front of the temple and is a part of the temple where there are three structures housing idols/vigrahas of Upadevadas. The fact that the said Sy.No.1043 had always been in the possession and enjoyment of the temple, is not in dispute. The fact that Sy. No. 1043 was never under cultivation of respondents 3 to 5 at any time, is also not seriously contested.

8. During the hearing the learned counsel for respondents 3 to 5 made available a copy of an order dated 21.2.1976 passed by the Special Tehsildar, LR No.II, Ernakulam in SMP 3458/75 to establish the alleged title to Sy. No.1043. After perusing the said order, learned counsel for the appellant pointed out that the said order did not refer to Sy.No.1043. He submitted that even if it related to Sy. No.1043, it was evident that the third respondent, an employee of the Board had apparently in collusion with some revenue officials, got a suo motu proceedings initiated under section 72 of the Kerala Land Reforms Act, 1963 showing third respondent as a 'cultivating tenant' under Karikkode Devaswom, and

secured an ex parte order dated 21.2.1976, sanctioning the assignment of the land under sub-section (5) of section 72F of the said Act. The learned counsel for appellant further submitted that the very fact that the third respondent, an employee of the temple, has been shown to be the 'cultivating tenant' of the land in front of the temple, containing the structures where Upadevadas are installed, in a suo moto proceedings, clearly demonstrated collusion/fraud in securing the order dated 21.2.1976. Be that as it may.

9. What is surprising is that when respondents 3 to 5 claimed ownership of Survey No.1043, which was the front portion of the temple premises in the possession of the temple (in the proposal for settlement dated 6.7.2000), the Devaswom Board, instead of investigating and verifying as to how they could claim ownership over temple property, strangely agreed for a settlement under which the temple was to get Sy.No.1043 (which was a temple land already in its possession), in exchange for giving away another temple land (Sy.No.1042/2) to respondents 3 to 5. It is significant that the Board resolution dated 29.8.2000 agreeing for the settlement proposal clearly records that Sy.No.1043 is already in the possession of the temple.

10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/Sebais/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

11. Learned counsel for respondents 3 and 4 submitted that the settlement in the suit (OS No.399/1998) was validly arrived at between them (Plaintiffs) and the Devaswom Board (defendant), that the Devaswom Board had considered the proposal after taking legal advice and had duly passed a resolution to settle the suit. It is further submitted that a decree having been made in terms of the compromise and such decree having attained finality, it cannot be questioned, interfered or set aside at the instance of a third party in a writ proceeding. Order 23 Rule 3 of CPC deals with compromise of suits. Rule 3A provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. We are of the considered view that the bar contained in Rule 3A will not come in the way of the High Court examining the validity of a compromise decree, when allegations of fraud/collusion are made against a statutory authority which entered into such compromise. While, it is true that decrees of civil courts which have attained finality should not be interfered lightly, challenge to such compromise decrees by an aggrieved devotee, who was not a party to the suit, cannot be rejected, where fraud/collusion on the part of officers of a statutory board is made out. Further, when the High Court by order dated 9.9.1998 had directed the Board to take possession of Sy. No.1042/2 immediately from respondents 3 and 4 in CDB No.3/1996, in a complaint by another devotee, it was improper for the Board to enter into a settlement with respondents No.2 and 3, giving up the right, title and interest in Sy. No.1042/2, without the permission of the court which passed such order. Viewed from any angle, the compromise decree cannot be sustained and is liable to be set aside.

12. In view of the above, we allow this appeal as follows :

(i) The compromise dated 30.8.2000 and compromise decree dated

18.9.2000 in O.S. No.399/1998 on the file of the Sub-court, Ernakulam, are set aside.

(ii) The first respondent Board is directed to take possession of Sy. No.1042/2 as already directed by this Court and High Court.

(iii) It is open to respondents 3 to 5 to pursue OS No.399 of 1998, if they so desire, in which event, the Sub-Court, Ernakulam, shall dispose it in accordance with law.

(iv) The Collector, Ernakulam is directed to hold an enquiry as to the circumstances in which the order dated 21.2.1976 in SMP No.3458 of 1975 was passed on the file of the Special Tahsildar, LR No.II, Ernakulam, and take consequential remedial action.

(v) The first respondent-Board is at liberty to take action in accordance with law in regard to Survey No.1043.

(vi) Parties to bear their respective costs.