Privy Council Appeal No. 94 of 1947

N. S. Venkatagiri Ayyangar and another - - - *Appellants*

v.

The Hindu Religious Endowments Board, Madras - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JANUARY, 1949

Present at the Hearing :

LORD PORTER
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal by special leave from a judgment and order of the High Court of Judicature at Madras dated the 6th November, 1944, which revised a judgment and decree of the Court of the District Judge of Ramnad at Madras dated the 7th August, 1943.

The only matter which arises for determination in this appeal, and upon which special leave to appeal was granted, is whether the learned Judges of the High Court had any power to interfere in revision with the said order of the District Judge.

On the 1st July, 1907, one Narayana, the grandfather of the appellants, made a will by which he founded a temple and directed his male heirs to act as trustees of the temple. Narayana died in 1910, and in 1915 the family became divided. Thereafter each branch of the family managed the temple for one year in rotation.

In 1927, the Madras Hindu Endowments Act 1926 (Act II of 1927) (hereinafter with its amendments referred to as the "Act") was passed. The Act authorised the creation of a Hindu Religious Endowment Board and empowered it to take over control of temples dedicated to the use of the public. Section 63 of the Act empowered the Board to settle a scheme of administration for the endowments connected with a math or temple. Section 84 of the Act was in the following terms:—

> "(1) If any dispute arises as to whether an institution is a math or temple as defined in this Act or whether a temple is an excepted temple, such dispute shall be decided by the Board.
>
> (2) Any person affected by a decision under subsection (1) may, within one year, apply to the Court to modify or set aside such decision; but, subject to the result of such application, the order of the Board shall be final."

The respondent Board was duly constituted under the Act, and, in or about the year 1930, demanded a contribution under the Act for the upkeep of the said temple constituted by the will of Narayana from N. S. Narayana, another grandson of the testator, though representing a different branch from the appellants. The said N. S. Narayana objected to pay on the ground that the temple was a private one.

On the 15th January, 1931, the respondent, having decided to hold an inquiry under section 84 of the Act, served a notice on N. S. Narayana informing him that his contention that the temple was a private one, would be heard by the Board on the 26th February, 1931, and that he should appear either in person or by counsel.

On the 4th August, 1931, the respondent, having held an inquiry at which N. S. Narayana had been represented, declared the temple to be a public one which was to be classed as an excepted one under the Act. The contention of the appellants is that the said N. S. Narayana was not at the date of these proceedings a trustee of the temple, that the order was never served upon the trustees, and that the appellants are not bound thereby.

In 1933 the respondent asked Sadagopa, another grandson of the testator, to make a contribution out of the temple funds. The said Sadagopa objected to the levy on the ground that it was illegal. On the 8th September, 1933, the respondent ordered the cancellation of the contribution demanded from the temple funds.

From 1933 to 1937 the respondent does not appear to have made any further demand for contribution ; but in 1938 the respondent asked for a contribution from the appellants, who refused to pay on the ground that the temple was a private one. In answer to such refusal the respondent, on the 19th January, 1938, wrote a letter to the appellants in the following terms:—

> " Sir,
>
> Reference—Your letter dated 3.1.1938, regarding recovery of contribution, I have to state that your contention that the temple is ' Private ' is untenable as the temple was already declared by the Board in its Order No. 820, dated 4.8.1931, to be an ' Excepted Temple ' as defined in the Madras Hindu Religious Endowment Act, 1926, and as that Order has not been set aside by the Court."

On the 15th April, 1939, it appears that the respondent made an order under section 63 of the Act that a scheme relating to the endowments of the said temple should be framed, and this was subsequently done.

On the 19th January, 1939, the appellants filed a petition O.P. No. 15 of 1939 purporting to be under section 84 (2) of the Act, asking for a declaration that the order of the respondent dated 19th January, 1938, was without jurisdiction and void, to have that order set aside, and for a declaration that the said temple was a private temple.

On the 16th October, 1939, the appellants appear to have filed a suit against the respondent and three others asking to have the said scheme set aside.

The learned District Judge tried the petition and suit together and gave judgment on the 7th August, 1943, in both matters. He held that the temple was a private one and that the appellants were not bound by the order of the respondent made on the 4th August, 1931. On the petition he passed an order setting aside the alleged order of the respondent dated 19th January, 1938, and declared the said temple to be a private one. The learned Judge was clearly in error in purporting to set aside the so-called order of the 19th January, 1938, because no such order existed. In the letter of that date the respondent merely informed the appellants that they were bound by the order of 4th August, 1931. The effective part of the order of the learned District Judge was his declaration that the temple was a private one. In the suit the learned Judge passed a decree that the said scheme be set aside.

From the order passed by the learned District Judge on the said petition an application for revision was presented to the High Court at Madras under section 115 of the Code of Civil Procedure, and there was also an appeal to the said Court from the decree passed in the suit.

On the 6th November, 1944, the learned Judges delivered one judgment in both matters. In the suit they allowed the appeal setting aside the order of the lower Court so far as it held the said temple to be a private one and remanded the suit to the lower Court for a decision on certain issues raised in the suit. No appeal has been presented to His Majesty in Council from this order made in the suit, and such order is unaffected by this judgment. On the revision application Mr. Justice Mockett expressed the view that the decision of the case depended entirely on the

construction of the will of Narayana. He considered that the conclusion of the learned Judge upon the construction of the will was so entirely out of accord with the meaning of the document that it required interference by the High Court, and that the wrong construction put upon the will by the learned District Judge involved such material misuse of jurisdiction as to involve interference by the High Court. Mr. Justice Kuppuswami Ayyar in a concurring judgment expressed the view that the High Court was justified in interfering in revision under sub-section (*c*) of section 115 of the Code of Civil Procedure.

Section 115 of the Code of Civil Procedure is in the following terms:—

> "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears
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> (*a*) to have exercised a jurisdiction not vested in it by law, or
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> (*b*) to have failed to exercise a jurisdiction so vested, or
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> (*c*) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

As long ago as 1884 in the case of *Amir Hassan Khan* v. *Sheo Baksh Singh* 11 I.A. page 237, the Privy Council made the following observation upon section 622 of the former Code of Civil Procedure which was replaced by section 115 of the Code of 1908.

> "The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case, and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.

In the case of *Balakrishna Udayar* v. *Vasudeva Aiyar* 44 I.A. 261, the Board observed:—

> "It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."

In the present case the learned judges of the High Court did not act upon this principle. They set aside the judgment of the District Judge because they considered that he had made a serious mistake in the construction which he had placed upon the will of the testator and they seem to have thought that a serious error of law could be corrected in revision. There have been, no doubt, decisions in some High Courts in India which lend support to the view upon which the judges acted. The cases are collected in the 4th Edition of Chitaley and Rao on the Code of Civil Procedure, Vol. I page 1105. In *Mohunt* v. *Khetter Moni Dassi*, 1 C.W.N. 617, the High Court of Calcutta expressed the opinion that Subsection (*c*) of Section 115 of the Code of Civil Procedure was "intended to authorise the High Courts to interfere and correct gross and palpable errors of subordinate courts, so as to prevent gross injustice in non-appealable cases". This passage was dissented from by the Calcutta High Court in *Enat Mondul* v. *Baloram Dey* 3 C.W.N. 581, but was cited with approval by Lort-Williams J. in *Gulabchand* v. *Kabiruddin* I.L.R. 58 Cal. 111. Their Lordships can see no justification for any such view; it would indeed be difficult to formulate any standard by which the degree of error of subordinate courts could be measured. Section 115 applies only to cases in which no appeal lies, and, where the Legislature has provided no right of appeal, the manifest intention is that the order of the trial court, right or wrong, shall be final. The section empowers the High Court to satisfy itself upon three matters (*a*) That the order of the subordinate court is within its jurisdiction (*b*) That the case is one in which the court ought to exercise jurisdiction and (*c*) That in exercising jurisdiction the court has not acted illegally, that is, in breach of some

provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate court upon questions of fact or law. No such matters arose in this case, and the order of the High Court upon the petition was without justification.

For these reasons their Lordships will humbly advise His Majesty that this appeal be allowed, that the order made by the High Court at Madras on the 6th November, 1944, upon the original petition No. 15 of 1939 be set aside and that the order on such Petition made by the learned District Judge at Ramnad dated 7th August, 1943, so far as it declared the said temple to be a private one, be restored. Their Lordships however, must not be understood as expressing any opinion upon the question whether the said temple is a private one or a public one, which question is not before them. The respondent must pay the costs of the revision application to the High Court made in O.P. No. 15 of 1939 and of this appeal.

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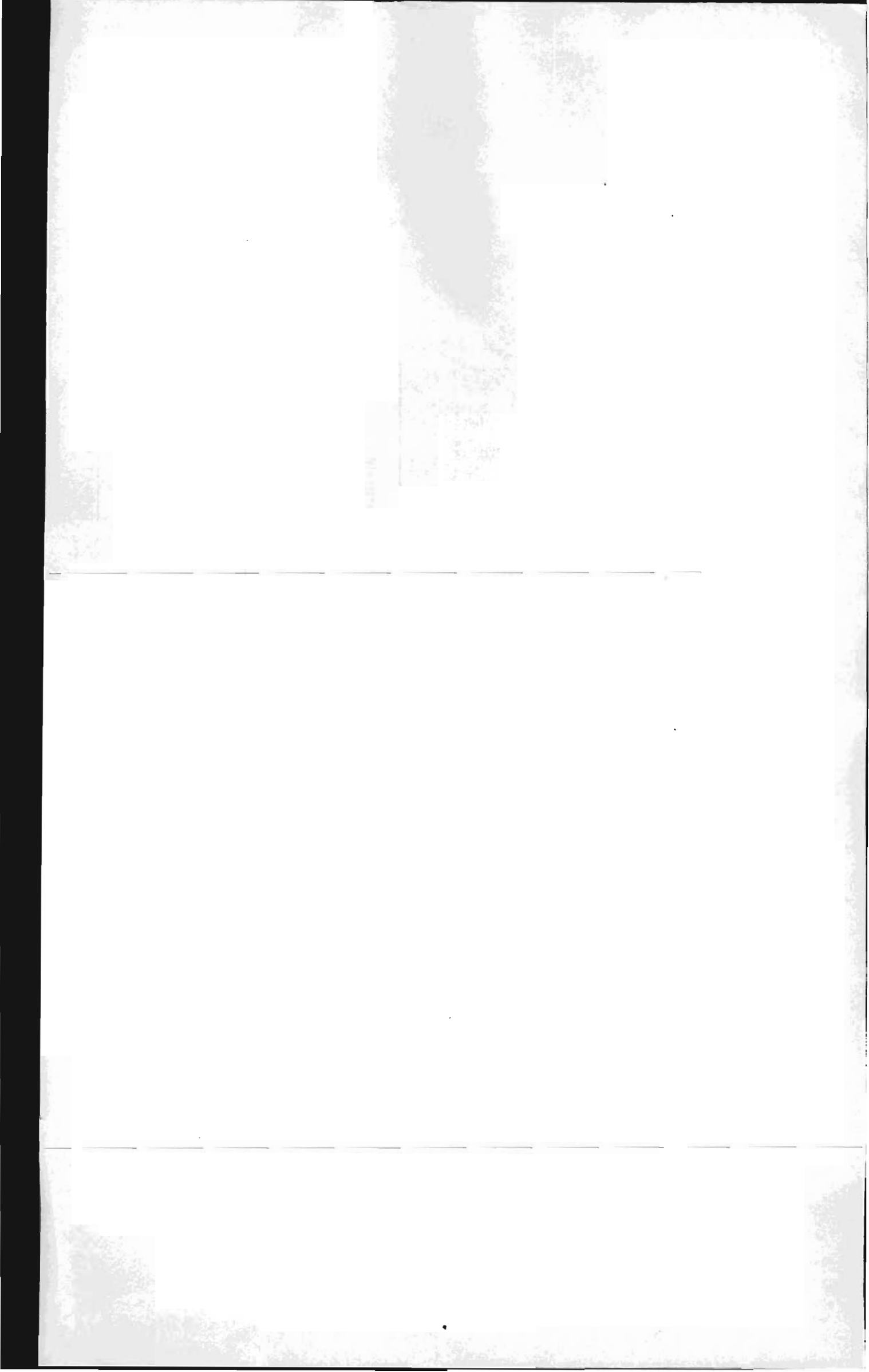

In the Privy Council

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v.

THE HINDU RELIGIOUS ENDOWMENTS BOARD, MADRAS

DELIVERED BY SIR JOHN BEAUMONT

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