

In Re: Mukku Venkatrao

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Court : Chennai

Decided On : Apr-10-1953

Reported in : AIR1954Mad346; (1953)2MLJ410

Judge : Ramaswami, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : Civil Revn. Petn. No. 488 of 1953

Appellant : In Re: Mukku Venkatrao

Advocate for Pet/Ap. : B.V. Ramanarasu, Adv.

Judgement :

ORDER

Ramaswami, J.

1. This is a civil revision petition filed against the decree of the learned District Mun-sif of Chodavaram in S. C. S. No. 56 of 1952.

2. The facts are: The plaintiff filed the suit claiming a share of the emoluments received by the defendants for officiating as 'Puro-hits' at the marriage and other auspicious ceremonies conducted by them in the houses of Vysyas at Kothavalasa Dabalu. The plaintiff as P. W. 1 stated that the right to officiate as 'Purohit' in the houses of Vysyas at Kothavalasu Dabalu exclusively belonged to

him and that nobody else can officiate as such and that he had a right to collect a half share of the emoluments collected by the defendants-usurpers and that in fact the defendants have been giving him his share of the emoluments. The defendants contended that the suit was not maintainable as it was only for a share in respect of emoluments paid to 'Purohits' on a voluntary basis and that the agreement set up by the plaintiff was wholly false. The learned District Munsif found as a point of fact that the agreement set up by the plaintiff was not true and as a point of law that the suit in respect of voluntary offerings will not lie. He therefore dismissed the suit and hence this civil revision petition.

3. I am in entire agreement with the learned District Munsif on both these points. As regards the finding of fact that the agreement set up has not been proved, it is binding on me and cannot be interfered with in revision, apart from the fact that as pointed out by the learned District Munsif the plaintiff adduced no reliable evidence and that the defendants have adduced reliable evidence that the agreement set up is untrue. Therefore point (1) fails.

4. 'Point 2:' It is well settled that no suit will lie for the recovery of a gratuity or voluntary offering or for damages against any person for failing to make an offering where there is no duty to make it: -- 'Barsati v. Chamru', 29 All 683 (A); -- 'Madhusudan Parvat v. Shri Shankaracharya', 33 Bom 278 (B); -- 'Maya-shanker.v. Harishanker', 10 Bom 661 (C); --'Shankara Bin Marabassapa v. Hanma Bin Bhima', 2 Bom 470 (D); -- 'Konayamma v. Ra-maswami Garu' : AIR1928 Mad851 'Krishnasami v. Krishnama', 5 Mad 313 (F); --'Subraya v. Srinivasa', AIR 1919 Mad 396 (G) and -- 'Dhadphale v. Gurav',6 Bom 122 (H). Nor can a person lay claim to the voluntary offerings made to a usurper of his office under circumstances showing, as in the instant case, that the offerings were made to him in his personal capacity as 'Purohit' for 'Mantrams' uttered, rituals arranged and blessings given: -- 'Sona Dei v. Fakir Chand', 35 All 412 (I); -- 'Kashi Chandra v. Kailash Chandra', 26 Cal 356 (J). But where there is a long and uninterrupted usage or an agreement between the sharers to share the voluntary offerings in a particular manner, such usage or agreement can be enforced between them: -- 'Ramasawmi Aiyar' v. Venkata Achari', 9 Moo Ind App 344 (PC) (K); -- 'Bhima Char-yulu v. Hamanuja Charyulu', 17 Mad L J 493 (L) and -- 'Hira Pandey v.

Bachu Pandey', AIR 1916 Pat 215 (M). It is only to come within the benefit of this that the agreement mentioned in point (1) was put forward and which on scrutiny failed.

5. The conclusion of the learned DistrictMunsif is correct and this civil revision petition, devoid of merits, is dismissed.

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