

(2022) 02 GUJ CK 0060

In the Gujarat High Court

Case No : R/Special Civil Application No. 2752 Of 2022

Acharya Vishnuprasad Kandas

APPELLANT

Vs

Patel Tribhovanbhai Madhavlal

RESPONDENT

Date of Decision : 16-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Civil Procedure, 1908 — Order 43 Rule 1(r)

Citation : (2022) 02 GUJ CK 0060

Hon'ble Judges : A.G.Uraizee, J

Bench : Single Bench

Advocate : Manan K Paneri, Hemantkumar S Sheth, Kashyap R Ratnu, Jitendra H Singh

Final Decision : ?Dismissed

Judgement

A.G.Uraizee, J

1. Heard Mr.MK Paneri, learned advocate for the petitioner and Mr.JH Singh, learned advocate on caveat for the respondents.

2 The petitioner has preferred this petition under Articles 226 and 227 of the Constitution of India to assail the judgment and order dated 16.12.2021

passed by the 4th Additional District Judge, Mehsana at Visnagar in Civil Misc. Application No.4 of 2021 whereunder the order dated 23.7.2021

passed by the Additional Civil Judge, Visnagar below Exhibit 5 in Regular Civil Suit No.17 of 2020 came to be set aside.

3. Facts giving rise to the present petition are that the petitioner was working as a Pujari since last 18 years at the Mahakali alias Netreshwari

Majati Temple at Village Bokarwada, Taluka Visnagar, district Mehsana. He was also allotted a residential quarter located in the premises of the

temple in his capacity as a Pujari. It appears that owing to some dispute between the respondents and villagers, the petitioner came to be discontinued

as Pujari with effect from 8.6.2020 and also directed to vacate the quarter given to him in his capacity as Pujari. The petitioner instituted Regular Civil

Suit No.17 of 2020 in the Court of the Additional Civil Judge, Visnagar for declaration and permanent injunction. He also preferred an application

Exhibit 5 to restrain the respondents from removing him as a Pujari and from the quarter allotted to him during pendency of the suit. Learned trial

Judge by his order dated 23.7.2021 partly allowed application Exhibit 5 and directed the respondents not to remove the petitioner as Pujari without

following due process of law.

4. Being aggrieved by the order of the learned trial Judge, the respondents preferred Civil Misc. Application No.4 of 2021 under Order 43 Rule 1(r) of

the Code of Civil Procedure in the District Court. The Learned Lower Appellate Court by impugned judgment and order dated 16. 12.2021 allowed

the appeal and set aside the order dated 23.7.2021 passed below Exhibit 5 by the learned Additional Civil Judge in Regular Civil Suit No.17 of 2020.

5. The petitioner being aggrieved by the impugned order of the learned Lower Appellate Court has preferred the present petition under Article 227 of

the Constitution of India.

6. Mr.Paneri, learned advocate for the petitioner vehemently submits that the Lower Appellate Court has passed the order on the basis of documents

which are not there on the record of the suit. He further submits that if the petitioner is not protected, he would lose the Pujariship. It is his further

submission that the Court below has not properly considered the factor of irreparable loss and balance of convenience in the impugned order. He

further submits that the trial of the suit is likely to take more time during which period, if the petitioner is not protected, he would be without the source

of livelihood. He, therefore, urges that the petition requires consideration.

7. Mr.Singh, learned advocate on caveat for the respondents has supported the impugned judgment and order of the Lower Appellate Court. It is his

submission that the petitioner has already been removed as a Pujari and in fact, there is ample documentary evidences to indicate that he had handed

over charge as a Pujari has vacanted possession of the quarter to the respondents. He submits that the learned Lower Appellate Court has considered

all the relevant facts to set aside the order of the trial Court which does not warrant interference in exercise jurisdiction under Article 227 of the

Constitution of India, more particularly, the petitioner has failed to point out any perversity or jurisdictional error in the order.

8. I have considered the rival submissions. It is not in dispute that the petitioner was appointed as a Pujari in the respondents Trust and was also given

quarter in the premises of the temple in his capacity as Pujari. However, it appears from the impugned order of the Lower Appellate Court that the

petitioner had handed over the charge as a Pujari and vacated the possession of the quarter given to him under written documents. In fact, it emerges

from the written statement filed by the respondents herein that they have taken specific contention that the petitioner is removed as a Pujari of the

temple in view of the decision taken in the meeting of Executive Committee of the respondents.

9. The learned Appellate Court has relying upon the documentary mark 4/4 produced by the respondents has made the following pertinent

observations:

“The said letter signed by the plaintiff and the defendant-Trust in presence of the witness. The document produced vide Mark 4/5, which is a Yadi

of Charge given by the plaintiff to the newly appointed Pujari, who taken over the charge of the things of Temple, which is also signed by the plaintiff

in presence of the witness. The said documents clearly suggest that, now the plaintiff is not performing Puja in the temple. The defendants have also

produced copy of Property Assessment statement vide Mark 4/6, which also shows that, the plaintiff is having his own residential property bearing

Property No.503 in village Bokarvada, which is purchased by the plaintiff by executing registered sale deed. Before removing the plaintiff as a Pujari,

the defendants have issued Notice to the plaintiff which is produced vide Mark 13/3 intimating the plaintiff to hand over the things of temple to plain

the defendant Trust. The said fact clearly shows that, the defendant Trust has issued prior Notice to the plaintiff. Looking to the documentary evidence

produced in the case, it clearly shows that, the plaintiff has vacated the residential quarter allotted to him by the defendant No.1-Trust and also handed

over the things of Temple and handed over the charge to newly appointed Pujari. It is pertinent to note here that, the plaintiff is having his own

residential property in the same village of Bokarwada and if, the plaintiff removed from the quarter, no harm will be caused to the plaintiff, because he has his own residential house in the same village. The plaintiff failed to prove three ingredients of Hence in my opinion to that extent the order of the Civil Court is illegal and requires to be interfered to that extent.â??

10. Moreover, it is eminently clear that the main prayer of the petitioner in the suit is for restraining the respondents from not removing him as a Pujari and from the quarter without following the due process of law. If the interim order below Exhibit 5 granted by the trial Court is permitted to hold the field, it would virtually amount to allowing the suit. Learned advocate for the petitioner has failed to point out any jurisdictional error or perversity in the impugned order to warrant interference in the impugned order. I am, therefore, of the view that the petition lacks of merit and does not warrant consideration.

11 In view of the above, the petition fails and is hereby dismissed.

12. It is open to the petitioner to move an application before the trial Court for expeditious disposal of the suit, which shall be considered keeping in view the urgency pleaded by the petitioner and pendency of other suits.