
(2008) 08 BOM CK 0086

In the Bombay High Court

Case No : Appeal From Order No. 76 of 2006

Amrut Shankar Verlekar and Others

APPELLANT

Vs

Sarvajanik SatyanarayanMaha Pooja Bazarkar Mandal
Madgaum and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2008) 08 BOM CK 0086

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : N.S. Verlekar and Prashila P. Naik, for the Appellant; S.D. Lotlikar, Senior Advocate, P. Lotlikar, for the Respondent No. 1 and N. Sardessai, for the respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—These two appeals are directed against two orders passed by the Civil Judge, Senior Division, Margao in Special Civil Suit No. 126/2005. The appellants in both these cases are plaintiffs in the said suit. The plaintiffs came to the Court with the case that they are owners of the property bearing Chalta No. 371 of P.T. Sheet No. 239 at Margao, in which a pedestal is situated. There was also a Peepal tree, which was cut down. A deity known as Lord Damodar is installed in that pedestal. According to plaintiff No. 5, who has argued in person for himself as well as other plaintiffs, since he happened to be an Advocate, this Deity is situated there for last 300 years. People in the area perform Satyanarayan Pooja and also celebrate Ganesh Festival on that pedestal. The plaintiffs filed proceedings u/s 145 of Criminal Procedure Code, wherein the Sub-Divisional Magistrate held in favour of plaintiffs holding them to be in possession of property bearing Chalta No. 371, Sheet No. 239 in Margao situated around Peepal tree.

2. According to plaintiffs, one Dinu Chari was looking after receiving offerings

from devotees on behalf of the plaintiffs. On 9.7.2005 some dispute arose and Dinu Chari was not permitted by the people to receive offerings. The plaintiffs filed suit thereafter for the following relief"s:

(a) The defendants no. 1 to 5, their servants, agents or representatives be restrained by order of permanent injunction from interfering in any manner or causing mischief and damage with the pedestal situation in Chalta No. 371 of P.T. Sheet no.239, City Survey, Margao.

(b) The defendants no. 1 to 5, their servants or agents or representatives be restrained from obstructing the plaintiffs or plaintiffs family or their servants or agents whilst accepting offerings being made of coconuts, oil, agarbattis, flowers, cash for God Shri Damodar by devotees.

(c) The defendants no. 1 to 5, their servants or agents, or their representatives be restrained from causing damage to the pedestal or removing anything attached to the pedestal and/or from removing cash boxes.

(d) The defendants no.1 to 3, their servants or agents or representatives be permanently restrained from causing mischief, nuisance, terror and violence in the property under Chalta no.371 of P.T. Sheet no.239 of City Survey, Margao.

(e) The defendants no. 4 to 5 be directed to give the account of the offering made by the devotees from 25.7.2005 till they stop from accepting ash, coconuts, agarbattis, oil, flowers from the devotees.

(f) The defendants no. 1 to 5 jointly or severally be directed to pay a sum of Rs. 25,000/- per month to the plaintiffs from 25.7.2005 till 25.8.2005 in respect of collection of coconuts and further sum of Rs. 25,000/- per month from 26th August, 2005 till they stop from collecting coconuts on pedestal and Rs. 15,000/- from cash collection from the box per month from middle of July 2005 up to 21.8.2005 and from 22.8.2005 at the rate of Rs. 15,000/- per month till realization.

(g) The defendants no. 1 to 3 jointly and severally be directed to pay the amount collected on 18.7.2005 which was offered by devotees by putting within the open area where pimple sapling was planted by plaintiff no.1 amounting to Rs. 2000/-.

By an application for temporary injunction the plaintiffs made following prayers :

(a) The defendants no. 1 to 5, their servants, agents or representatives be restrained by an order of injunction from interfering in any manner or causing mischief and damage with the pedestral situated in Chalta no.371 of P.T. Sheet no.239, City Survey, Margao."

(b) The defendants no.1 to 5, their servants or agents or representatives be restrained from obstructing the plaintiffs or plaintiffs family or their servants or agents whilst accepting offerings of coconuts, oil, agarbattis, flowers, cash for God Shri Damodar, Deity by devotees.

(c) The defendants no. 1 to 5, their servants or agents or their representatives be restrained from causing damage to the pedestral or removing anything attached to the pedestral and/or from removing cash boxes.

(d) The defendants no. 1 to 3, their servants or agents, or their representatives be restrained from causing mischief, nuisance, annoyance, terror and violence in the property of the plaintiffs under Chalta no.371 of P.T. Sheet no.239, City Survey, Margao.

3. Respondents opposed these prayers on several grounds. After considering the contentions raised as well as the evidence tendered by the parties in support of their respective contentions, the learned trial judge held that since defendant No. 4 was sitting at the pedestal as temporary arrangement, that arrangement should continue until further orders. He directed that the cash collected in the cash box, may be counted in presence of plaintiff No. 5, Presidents of defendants Nos.1 to 3 institutions, and deposited in the Court every month, after retaining 10 % of the sum as service charges for the priest. The other offerings like oil, coconuts, incense sticks were to be utilised at the pedestal itself for prayers to the Deity and distribution of Prasad every Monday. While concluding the learned Judge had also observed that the arrangement could be modified any stage after hearing the parties. This order dated 24.5.2006 has been challenged by the plaintiffs by filing appeal No. 78/2006.

4. It appears that Bazarkar Mandal, Margao respondent No. 1 had challenged the same order by filing an appeal bearing No. 47/2006 before this Court. While disposing of the said appeal on 13.7.2006, this Court directed the trial Court to hear matter afresh and consider whether the arrangements made by the trial Judge, by the impugned order, required to be modified. The Court also directed the trial Judge to consider prayer of defendant No. 1, for appointment of receiver, and to pass appropriate orders after hearing all concerned.

5. In pursuance of these directions, the learned trial Judge passed order dated 25.8.2008, which has also been impugned by Appeal No. 76/2006 by the plaintiffs. By this order, the trial Judge rejected the defendant's claim for appointment of receiver. He also held by his elaborate order that the arrangements made earlier in the order dated 24.5.2006, did not call for any modification.

6. I have heard Shri N. S. Verlekar, Advocate, who is appellant No. 5 in both these appeals for himself as also for other appellants. I did not find it necessary to call upon the learned Counsel for the respondents to address me. For the present, it may be taken that the appellants have an order of the Sub-Divisional Magistrate in their favour, holding them to be in possession of land bearing Chalta No. 371, Sheet No. 239, on which a pedestal situated around Peepal tree exists. It does not, however, ipso-facto entitle them to the prayers made by them particularly in the injunction application. As far as causing any mischief or damage to the pedestal is concerned, it has not been pointed out by any cogent

evidence that any such damage or mischief was anticipated. On the other hand, the grievance of the plaintiffs is that the respondents have been reaping benefit of offerings before the Deity, which is situated at the pedestal. Prayer (b) in the injunction application is in fact the real grievance of the appellants. By this prayer, they seek injunction to restrain the defendants from obstructing them or their family members or servants or agents from receiving coconuts, agarbattis, flowers and cash for the Deity i.e. Lord Damodar. By prayer (c), they repeat their apprehension about causing damage to the pedestal, and removal of cash boxes as well. Prayer (d) is omnibus prayer to restrain the respondents from mischief, nuisance, annoyance, terror, violence in the property i.e. restraining them from indulging in all criminal acts.

7. The plaintiff No. 5 has graciously conceded that Deity is situated at the place last 300 years and devotees have been offering prayers as well as offerings in cash and kind since time immemorial. He stated that he has been seeing this since his childhood. He also stated that around 1946, plaintiff No. 5's father gave land for extension of pedestal. This implies that this land was given to someone else, who constructed or extended pedestal, since plaintiff No. 5's father could not have given land to himself for such extension. Thus, it is safe to conclude that offerings were being made to Deity, which incidentally happened to be situated in land claimed to have been owned by the plaintiffs, and not to a deity installed by plaintiffs in their private place of worship, made accessible to public. Therefore, this does not entitle plaintiffs to appropriate offerings to themselves, since offerings are made to the Deity and not to the plaintiffs. These offerings are, therefore, rightly directed by the learned trial Judge, to be appropriated during the pendency of suit in the manner, indicated in the order. It is not clear as to what grievance the plaintiffs can have at this stage, since the entire cash which may be collected, has to be deposited in the Court, after retaining 10 % for the services of the priest. Even offerings in kind are duly dealt with by the learned trial Judge. Therefore, what the plaintiffs appellants claim by this appeal, is a final decree in their favour without trial, which is thoroughly impermissible.

8. The impugned orders do not call for any interference. They have been passed by the learned trial Judge wisely in exercise of his discretion. The appeals are, therefore, dismissed. At this stage, learned Counsel for the appellant No. 5 states that he is a senior citizen as also are two other appellants and, therefore, prays that the suit should be directed to be disposed of by the learned trial Judge within six months. The learned trial Judge would definitely take into consideration the age of the parties and take up suit for expeditious hearing in the category of senior citizens, and dispose it of as expeditiously as possible and may endeavor to dispose it of before the Courts closed for summer vacation 2009.