
(1906) 08 BOM CK 0018
In the Bombay High Court
Case No : First Appeal No. 154 of 1905

Baldevpuri Kailaspuri

APPELLANT

Vs

Gopaldas Tribhuwandas

RESPONDENT

Date of Decision : 16-08-1906

Acts Referred:

Citation : (1906) 8 BOMLR 756

Hon'ble Judges : Lawrence Jenkins, J;Heaton, J

Bench : Division Bench

Judgement

Lawrence Jenkins, K.C.I.E., C.J.—This is a suit brought u/s 539 of the Code of Civil Procedure, and though the remarks of the learned Judge suggest that he viewed the suit as one which did not properly fall within that section, he passed a decree for a scheme as provided by it; and from this decree no appeal has been preferred by the respondent before us.

2. The appellant objects that in settling the scheme regard has not been had to his position in connection with the temple.

3. It appears from the judgment of the learned District Judge that before him the plaintiffs asked for a declaration of their hereditary right to officiate as pujaris and managers of the temple as against the defendants' assertions that they are merely employees of the Punch. They go on to cite the opinion of the Advocate General in these terms :-

If the Court decides to frame a scheme under Clause (e) of Section 539, it should decide this question (Schedule of plaintiff's right). Not only is there nothing in the terms of Section 539 to preclude such an enquiry, but such an enquiry is often necessary in suits under that section in order to provide for the proper administration of the trust.

4. On that the learned Judge makes the comment that "the meaning is that if the Court proceeds with the appointment of trustees to a charitable institution, it is

necessary that it should adjudicate upon the claims of those who assert a hereditary right to such appointment. From this view I venture to express my dissent."

5. In our opinion the learned Judge has fallen into an error. It is clear that in settling a scheme due consideration should be given to the established practice of the institution and to the position of the persons connected with it.

6. This is established by the judgment of Justice West in *Manohar Ganesh Tambekar v. Lakhmiram Govindram* ILR (1887) 12 Bom. 247 which was subsequently affirmed by the Privy Council.

7. We feel no doubt that the contention of the appellants and the opinion expressed by the Advocate General are correct.

8. Then it has been urged by way of cross-objection that nothing is said in the scheme as to the Padali although the plaintiffs treat it as a part of the temple endowment.

9. Having regard to the pleadings, we think, it was incumbent on the Judge to consider and decide whether the Padali is a part of the endowment, and if so, then how it should be dealt with in the scheme.

10. We must, therefore, reverse the decree and send back the case in order that the scheme may be drawn up after giving due consideration to the established practice of the institution and to the position of the plaintiffs and all other persons connected with it, and after determining whether the Padali is part of the endowment, and if so, how it should be dealt with.

11. The District Judge's order as to costs cannot stand, and therefore we set it aside. The fact that the Judge deemed it right to draw up a scheme, shows that in his opinion the suit was justifiable though points may have been raised in it, which did not meet his approval. The only order that we can make at present as to costs is, that the costs in the Court below and of this appeal should be dealt with by the District Court after the scheme has been settled in the light of this judgment.