

(1906) 03 BOM CK 0005
In the Bombay High Court
Case No : Second Appeal No. 542 of 1905

Bhavanishankar Ramrao

APPELLANT

Vs

Timmanna Ram Bhatta

RESPONDENT

Date of Decision : 23-03-1906

Acts Referred:

Religious Endowments Act, 1863 — Section 18

Citation : (1906) 8 BOMLR 407

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Batty, J.—The plaintiff sued to obtain a declaration that the appointment of defendants 10 to 15 as Moktesars of a certain Devasthan was illegal, and that the plaintiff is entitled to the office of Moktesar of that Devasthan.

2. The Court of first instance held that the suit was not maintainable without leave obtained u/s 18 of Act XX of 1863, and that the plaintiff had been properly dismissed by the defendants 1 to 9, who constitute the Committee of the Temple.

3.The lower appellate Court held that the suit did not fall within Section 14 of the Act; that leave u/s 18 was unnecessary; that the defendants 1 to 9 could not dismiss the plaintiff from office without good and sufficient cause, and that no good and sufficient cause for dismissal had existed. The lower appellate Court reversed the decree of the Court of first instance and declared the dismissal of the plaintiff to be void, but held that no case had been made out for declaring the appointments of defendants 10 to 15 invalid.

4. The defendants 2 to 5 and 7 to 9, the Committee of the Temple, appealed against that decree.

5. The objection as to the jurisdiction of the Court of first instance has not been pressed. But it is urged for appellants that, inasmuch as it has not been held that

the plaintiff was a hereditary Moktesar, the plaintiff cannot dispute the right of the defendant-Committee to dismiss him at their absolute discretion, or on mere matter of suspicion, without assigning or establishing their reasons for so doing. The cases of Seshadri Ayyangar v. Nataraja Ayyar ILR (1898) Mad. 179, and Chinna v. Subbraya (1867) 3 Mad. H. C. 334, were relied on by the lower appellate Court. Appellants contend, those cases relate to the dismissal of persons appointed as permanent officers, and, therefore, do not apply, whereas plaintiff was appointed by the Committee, and the relation in which the parties stand to each other is that of master and servant.

6. We think this contention untenable. For the powers of appointment and dismissal with which the defendants as a Committee were vested, were exerciseable not in their own interests, but in the interests and on behalf of the Devasthan, whereof they were trustees. They were, therefore, not at liberty to appoint or dismiss arbitrarily, capriciously or for private reasons of their own, but only on grounds justified by the interests of the institution. The appointment of the plaintiff by the Committee, therefore, implied that his tenure of office was to continue so long as its continuance was not inconsistent with the interests of the Devasthan. No doubt it was for the Committee to exercise their own judgment as to whether those interests were impaired by the plaintiff's continuance in office. And having regard to the case of Hayman v. The Governors of Rugby School (1874) L. R. 18 Eq. 28, we think the onus was, as the Court of first instance placed it, on the plaintiff to show that the defendant-Committee had not, in dismissing him, acted on a bona fide belief that the dismissal was necessary in the interests of the Devasthan, but had been actuated by some other and improper motive. But the finding of the lower appellate Court is, we think, in effect, that the Committee did act without any real regard to the interests of the Devasthan and were actuated by the bad feeling and caste enmity which, the lower appellate Court holds, the majority of the committee entertain as Saraswats towards the Having community, of which the plaintiff is a member.

7. This, we think, is a finding of fact which is binding in second appeal.

8. The decree of the lower Court must, therefore, be confirmed. The appellants must bear all costs of this appeal.