

(2007) 12 KAR CK 0044

In the Karnataka High Court

Case No : Review Petition No. 225 of 2006 and Regular First Appeal No"s. 539 and 540/96

G. Venkatesh, G. Sathyanarayan and The Deity Sri Shani
Mahatma rep. by hereditary Dharmadhikari and Archaka Sri
G. Sathyanarayana

APPELLANT

Vs

Sri C. Gangaiah and Others

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2008) ILR (Kar) 979 : (2008) 3 KarLJ 567 : (2008) 1 KCCR 477

Hon'ble Judges : V. Gopala Gowda, J;Jawad Rahim, J

Bench : Division Bench

Advocate : M. Shivaprakash, for the Appellant; G.B. Chandregowda, for R1, for the Respondent

Final Decision : Dismissed

Judgement

1. This review petition under the provisions of Order 47 Rule 1 of CPC is preferred by the appellant - petitioners for review of the judgment passed by us in RPA Nos.539/96 and 540/96 on 17.03.2006 whereby the common judgment and decrees passed in the Original Suits No. 45/1988 and 409/1988 passed by the I Additional Civil Judge, Bangalore Rural District, Bangalore were set aside and modified by us for the reasons assigned in the judgment and a direction was issued by framing of a scheme and settling the dispute between the parties.

2. The circumstances in which this review petition is filed are:

The review petitioners - appellants had questioned the judgment and decree of the Trial Court in O.S. No. 45/1988 dated 26.07.1996. By the said judgment, the Trial Court had declined to declare the temple namely "Shanimahatma Temple" as private temple and declared it as a public temple. The appellants claimed that their late father Gangahanumaiah while working on his lands was enlightened on the divine appearance of Lord Shanimahatma. Lord Shanimahatma blessed him

in person and ordained him to lift the huge rock and shift it on the portion of another agricultural land and conduct poojas. Gangahanumaiah followed the revelations and lifted the rock easily which was otherwise humanly impossible and as ordained, installed it on a portion of land and conducted poojas and other rituals. He revealed of divine appearance of Lord Shanimahatma in the first instance to his family members and then to the local residents. Persons who had faith, followed him and commenced performing of poojas with reverence. As time passed, it became a popular place of worship and people from far and near with implicit faith regularised the worship. It led to establishment of a regular temple in the name of Lord Shanimahatma and a diety was also carved out and installed. As the time passed, the offerings of the devotees resulted in collection of large sums of money and necessitated effective management.

3. Gangahanumaiah the first devotee though a non-brahmin, continued to conduct the worship to fulfil the aspirations of all concerned. In about an year - the Government accepted the request of Gangahanumaiah and granted land in the name of temple. In this way, the temple came to acquire land measuring an extent of 1 acres 8 3/4 guntas.

4. A Committee was also constituted by Gangahanumaiah which includes local residents and the offerings were utilised for build up of the temple. However, a dispute arose between the local residents and the family members of Gangahanumaiah. In this regard, Gangahanumaiah executed a gift deed vide Ex.P.14 gifting the property granted by the Government to the Committee in the name of diety but reserved for himself the right of worship as "Sabhahit".

5. That was not to the satisfaction of the local residents and therefore came to be filed. In the first instance O.S. No. 45/1988 was filed by the review petitioner - appellants seeking a declaration that the "Shanimahatma Swamy Temple" is a private property belonging to the family of late Gangahanumaiah and his descendants etc. A suit in O.S. No. 409/1988 was also filed by the local residents who sought rendition of accounts of Gangahanumaiah for the income/ expenditure of the offerings made by the devotees. After due and detailed enquiry, the learned Trial Judge decreed the suits by his common judgment and decrees dated 26.07.1996. Aggrieved by the judgment and decrees so passed, an appeal was preferred by the appellants before this Court in RFA No. 539/1996 and connected appeal No. 540/1996. Both the appeals were heard by us on merits. Learned Counsel Sri. S.K.V. Chalapathy appeared for the plaintiff - appellants (in RFA No. 539/96) who are also the descendants of late Gangahanumaiah and Sri. R.B. Sadashivappa, learned Counsel appeared for the respondent No. 5 (in RFA No. 539/96). By judgment dated 17.03.2006, we had disposed of both the appeals by framing of a scheme for better management of the temple in question in the larger interest of public devotees.

6. The parties had submitted draft schemes but during the course of hearing, they exchanged list(s) of members to be nominated to the Committee. The proposal of the Court to frame a scheme was accepted by both sides and thus, a

scheme was framed.

7. The appellants have preferred this review petition under Order 47 Rule 1 of CPC contending that the scheme framed by this Court requires review as the legitimate right has been infringed. In support thereof, learned Senior Advocate Sri. U.L. Bhat appeared for them while for the respondents Sri. R.B. Sadashivappa continued to represent.

8. Review of our judgment is sought on the ground that the Annexure (scheme framed) to the judgment does not contain the terms that were agreed to between the parties. The grievance of review petitioners is that the scheme framed by this Court in Annexure is not in conformity with Ex.P-14 and certain terms are contrary to it.

9. Learned Senior Counsel Mr. U.L. Bhat appearing for the petitioners relied upon the following decisions in support of the case of the petitioners contending that Archakship right is hereditary and therefore they are entitled to continue as such to the temple:

i) Bhogaraju Venkata Janakirama Rao Vs. The Board of Commissioners for Hindu Religious Endowment Andhra Pradesh, wherein it is held that Archakship is hereditary right.

ii) A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others,

iii) A. Ramaswamy Dikshitulu and Others Vs. Government of Andhra Pradesh and Others,

iv) Vinayaka Dev Idagunji and Others Vs. Shivaram and Others,

v) ILR 2004 KAR 4611 (SC)

9.1 The learned Counsel relied upon Section 2(11) of Karnataka Religious and Charitable Institutions Act, 1927. He placed reliance upon Section 25 of the Act regarding right of Archakship at the time of constitution of committee of the management. Relying upon Ex.P-14 he has contended that the finding recorded on this document is erroneous. The trial Court ought to have noticed the hereditary right of the petitioners to perform pooja of the diety after considering Rule 8 of the Rules framed under the Act. He submitted that these aspects are not considered by this court at the time of framing scheme and constituting committee. Therefore, the judgment passed on the basis of joint memos filed by the parties requires to be reviewed by allowing this Review Petition. Reliance is placed on the Interpretation of Statutes written by O.P. Singh in support of the submission that eventhough the judgment of the trial Court is set aside, finding is not given by this Court and therefore the order of the Endowment Commissioner remains in tact. Consequently, the rights of the petitioners to perform Archakship continues.

10. Mr. R.B. Sadashivappa, learned Counsel for the contesting respondents relied upon the following decisions:

a) Dokka Samuel Vs. Dr Jacob Lazarus Chelly, wherein with regard to power of review of this court, it is held by the Apex Court that review of its order can be made only when there is error apparent on the face of the record. It is further held that omission on the part of the learned Counsel for the petitioners to cite an authority of law does not amount to error apparent on the face of the record.

b) Haridas Das Vs. Smt. Usha Rani Banik and Others, in which regarding the scope of review it is held that if a party has not high-lighted all aspects of the case, that is not a ground for review.

c) AIR 2006 SC 1650 in which it is held that the scope of review is only for correction of the mistake and not to substitute views.

d) Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, in which it is held that the review Court shall not act as Appellate Court What is error apparent on the face of the record is explained.

11. On the basis of rival legal contentions urged, the following points that would arise for our consideration and determination are:

i) Whether the review petition is maintainable?

ii) If the petition is maintainable, whether the judgment warrants review?

12. Both the points have to be answered against the petitioners for the following reasons:

What is sought to be modified by the petitioners is the terms of Annexure to the judgment dated 17/3/2006. The Annexure is part and parcel of the judgment The judgment was passed on the basis of the memos filed by both the parties and with their consent Therefore, the contention that certain legal grounds were not considered and therefore the judgment has to be reviewed, is wholly untenable in law. Since it is almost a consent judgment and the terms incorporated in Annexure were with the consent and satisfaction of all the parties and after hearing the learned Counsel for the parties, the review petition is not maintainable. There is no error apparent on the face of the record warranting review of our judgment.

14. In the Affidavit dated 31/1/2007 filed by Sri M. Shivaprakash, who is the Advocate on record on behalf of the petitioners has sworn to false statements of facts in paragraphs 4 and 5, which are extracted hereunder:

4. I state at the time of the discussion before this Hon''ble Court learned senior advocate and I made it clear the scheme should be on the same lines as laid down by late Gangahanumaiah under Ex.P14. At one stage the Hon''ble Court also observed that the scheme would be framed on the same lines as indicated in Ex.P14 with the rider that provision will be made for a representative committee to be chosen by the Hon''ble Court, 5th respondent also agreed to this suggestion.

5. I state that at the time of discussion before this Hon"ble Court there was no mention and discussion on the issue of Archakas or emoluments of Archakas or Thatte Kasu and the like... I state that if at the time of discussion before this Hon"ble Court, if the Hon"ble Court had suggested against the Hereditary rights of the family of the appellants, appellants would have not agreed for settlement.

The above statements made on oath by the Advocate are utter false. The statements are contrary to the memos filed in the case. The conduct of the Advocate in filing the affidavit is highly objectionable and deprecated for the reason that he has been present throughout the proceedings.

14. In the interest of the Temple and the devotees, this Court put an end to the long pending litigation after lot of deliberations and both sides were satisfied with the same. By an after-thought, the present review is filed finding fault with the Court. Everything was dictated in open Court in the presence of both parties and their learned Counsel. The petitioners have now turned-round and alleges that everything is not in accordance with Ex.P-14. Virtually, the petitioners intention is to revive the litigation that came to an end with consent.

15. The decisions pressed into service by the learned Senior counsel for the petitioners are of no assistance in view of the disposal of the case at the behest and satisfaction of both sides. The contentions urged are untenable. On the other hand, the decisions cited by Mr. R.B. Sadashivappa aptly apply to the case on hand. The submissions made by him are also well-founded and deserves to be accepted.

16. Apart: from the maintainability of the review petition, there Is no ground to review the judgment and the review petition is misconceived and liable to be dismissed. In view of the conduct of the Advocate and the petitioners, it is a fit case to impose costs.

Accordingly, the review petition is dismissed with costs of Rs. 5,000/- payable to the temple.