
(2005) 08 KAR CK 0023

In the Karnataka High Court

Case No : Miscellaneous First Appeal No's. 747 and 748 of 1999

Ganesh Rama Hegde and Others

APPELLANT

Vs

Timmanna Mahabal Hegde and Others

RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:

Bombay Public Trust Act, 1950 — Section 18 (1), 72, 72 (4)

Citation : (2005) 6 KarLJ 643 : (2005) 4 KCCR 2775

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : R.V. Jayaprakash, for the Appellant; Ravi G. Sabhahit, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—These appeals are directed against the common order passed by the District Judge in petitions filed by the appellants u/s 72 of the Bombay Public Trust Act, 1950 (hereinafter referred to as "the Act").

2. The brief facts leading to these appeals are as follows.--

The father of the appellants Sri Rama Ganesh Hegde has filed an application on 2-7-1954 u/s 18(1) of the Act, which was registered as Enquiry No. 97 of 1954 before the Assistant Charity Commissioner. This application, seeking to register "Shri Shambu Linga Deva Temple" as a public temple, was allowed by an order dated 10-1-1955. However, the father of the appellants, the applicants therein had challenged the same before the Charity Commissioner, by way of a revision petition and the said revision petition was allowed and by an order dated 25-1-1994, the Charity Commissioner had remanded the matter to the Assistant Charity Commissioner for a fresh enquiry. It is at this juncture, that the respondents herein had filed an application u/s 18 of the Act to declare the very temple as public temple and that application was numbered as Enquiry No. 420 of 1985. The Assistant Charity Commissioner, after an enquiry on the two

applications passed a common order dated 31-10-1996, declaring the temple as a public temple. The same was challenged by the appellants in revision before the Charity Commissioner, who had upheld the order of the Assistant Charity Commissioner, by an order dated 8-1-1998. This in turn, was carried in revision before the Court of the District Judge in Miscellaneous Case Nos. 11 and 12 of 1998 and the said Court having dismissed the petitions by an order dated 12-11-1998, the present appeals are filed.

3. Sri R.V. Jayaprakash, Counsel appearing for the appellants seeks to contend as follows.--

That on facts, it cannot be disputed that from time immemorial the ancestors of the appellants have been in the management of the temple and though there is a stray entry indicating a stranger as being in management for a short period of one year, through out it is the ancestors of these appellants who have been in the management of the temple. The further circumstance that Survey No. 80 measuring four acres twenty-eight guntas and Survey No. 81/2 measuring two acres five guntas were endowed by the father of the appellants in favour of the temple and the circumstance that a portion of Survey No. 80, which was acquired belonged to the father of the appellants and the compensation amount out of such acquisition was utilised in the purchase of Survey No. 81/2 in the name of the temple and the anterior fact that the temple in fact, was constructed by the appellants' ancestors, apart from planting of trees in the above said lands, which were endowed in favour of the temple, apart from appellants and their ancestors, none could claim as of right to worship at the temple. The further fact that the features of the temple would clearly indicate that it is not a public temple, but a private one meant for the exclusive use of the appellants, has been clearly overlooked by the authorities below and at no point of time dedication of the temple was in favour of the public, which is a primary requirement as laid down by series of decisions of the Apex Court, would render the temple a private temple and therefore, the authorities have clearly erred in appreciating the facts and in applying the law.

4. In support of the factual contentions, he would rest his case on the principles laid down in the following judgment.

4-A. He firstly relied upon the judgment of the Supreme Court in the case of Radhakanta Deb v. Commissioner, (1981) 2 SCR 826 and he drew my attention to paragraph 14 of the judgment, which reads as follows.--

"14. Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:

- (1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;
- (2) The fact that the control and management vests either in a large body of

persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by the members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment".

And would submit that applying the tests which have been laid down as above, the appellants would necessarily succeed on all counts.

4-B. Nextly, he placed reliance on the case of Coimbatore District Podu Thozillar Samgam Vs. Balasubramania Foundry and Others, and he drew my attention to paragraph 11 of the judgment which reads as follows.--

"11. The essence of a public endowment consists in its being dedicated to the public; and in the absence of any document creating the endowment, long user is the material factor from which an inference of dedication may arise. The distinction between a private and public endowment is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. The distinction is succinctly brought out in Mulla's Hindu Law in para 424 at pp. 544 and 545 in these words:

"Religious endowments are either public or private. In a public endowment the dedication is for the use or benefit of the public. The essential distinction between a public and a private endowment is that in the former the beneficial interest is vested in an uncertain and a fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private endowment the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the fluctuating and uncertain body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make it a private endowment. The essence of a public endowment consists in its being dedicated to the public; and in the absence of any document creating the endowment, long user is the material factor from which an inference of dedication may arise. Besides user by the public, conduct of the founder and his descendants is also relevant, and if they in fact held out the temple to be a public one a very strong presumption of dedication would arise. When property is set apart for the worship of a family

god in which the public are not interested, the endowment is a private one".

It therefore follows that the principles are well-settled. When property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the members who are entitled to worship at the shrine of the deity can only be the members of the family i.e., an ascertained group of individuals. But where the beneficiaries are not the members of a family or specified individuals but the public at large of a specified portion thereof, then the endowment can only be regarded as public intended to benefit the general body of worshippers".

And he would submit that unless there was an endowment in favour of public which is not forthcoming in the present case, it cannot be concluded that the temple was a private temple.

4-C. Nextly, he placed reliance on the decision of the Supreme Court, in the case of *Kuldip Chand and Another Vs. Advocate General to Government of Himachal Pradesh and Others*, and drew my attention to paragraph 40 to contend that there should be complete cessation of ownership of the founder and vesting of the property for public or religious objects is essential. If the premises is used by the public for a long period but if the complete control is retained by the owners, mere long use by the public would not make the dedication complete and he would draw a parallel to the case on hand and contend that mere worship of the public in the temple, which is a private temple, would not render it as a public temple.

4-D. He further relies upon an unreported judgment in the case of *M.F.A. No. 2677 of 1977*, decided on 25-7-1997, to support his contention as to the essential ingredients which constitute a public temple as extracted at portion of paragraphs 15 and 16 of the judgment which reads as follows.--

"15. The essential ingredients which constitute a public temple are:

- (i) The place must be used as a place of public religious worship;
- (ii) It must be dedicated to the Hindu community or any action thereof;
- (iii) The dedication or use of the place must be a place of religious worship.

16. Some of the tests adopted by the Supreme Court in addition to what we have state are:

- (1) Whether the temple built in such imposing manner that it may prima facie appear to be a public temple?
- (2) Whether the members of the public are entitled to worship in that temple as of right?
- (3) Are the temple expense met by the contributions made by the devotees?"

And would contend that the settled principles as enunciated in these judgments

would clearly indicate that the authorities below and the Court below have erred in appreciating the facts and in applying the law and therefore would pray that the appeals be allowed.

5. Per contra, Sri Ravi G. Sabhahit, Counsel appearing for the respondents would submit that the appellants are prosecuting the appeals as legal heirs of the original applicants before the Assistant Charity Commissioner and initially, an application in 1954 was filed by the father of the appellants to declare the temple as a public trust and that the application having been allowed, the appellants cannot be said to be aggrieved in laying the challenge to the same. He would also submit that during the pendency of these proceedings, the Bombay Public Trust Act, 1950 has been repealed and the Hindu Religious Institutions and Charitable Endowments Act, 1997 has come into force and a notification has been issued in the said Act dated 30-4-2003, declaring the temple which is the subject-matter of these proceedings as a public temple. The appellants have not challenged the said notification and it has attained finality and appeals themselves are in fructuous and would not be maintainable. He would further submit on merits that the findings of the authorities below are concurrent findings, both on facts and law and hence u/s 72(4) of the Act, there is no substantial question of law that falls for consideration and the appeals would have to be rejected on that count alone. He would also submit that the stand of the appellants has been wholly inconsistent and contradictory. The appellants have claimed as managers of the temple at certain points of time and have sought to claim as trustees of the temple at some other points of time and there was a claim under Form 7, prescribed under the Karnataka Land Reforms Act, 1961, seeking to claim as tenants under the said Act, in respect of the lands vested in the temple at a point of time. The appellants, have also claimed as Archaks of the temple at yet another point of time. These inconsistencies themselves would disclose that as a matter of fact, the appellants have not established their case of the temple being a private temple belonging to them exclusively. The findings of the authorities below are that there is no document to show that the properties on which the temple exists belonged to the appellants. On the other hand, it is appellants' own case that the temple is situated on Government land and hence, it could never be termed as a private temple. The fact of endowment of land in Survey No. 81/1 by the appellants or their father would not render the temple a public temple if appellants' father alone has endowed the same in favour of the temple. The properties namely, the land on which the temple exists and the lands which are endowed are all in the name of the temple itself and the essential requirement even to claim that the temple was a private temple, the fact that there was no continuous appointment of appellants or their ancestors as managers of the temple is admitted even by the appellants and that it is not continuous, cannot be disputed by the appellants and the claim by the appellants before the Court of the District Judge to be appointed as trustees by inheritance has been expressly denied. In that, the Court had held that the trustees are not hereditary and trustees are to be

appointed by the temple committee. It is not disputed that the temple has received "Thasdik" from the Government and the well and the bathroom, which services are constructed by the panchayath and the temple is constructed by the contributions by public and rents paid by the tenant-farmers endowed with the lands of the temple are always contributed to the temple and the facilities such as Tulsikatta, bathroom and Chandrashala are all meant for the public at large and these are indications that it cannot be treated as private temple for the exclusive use of the appellants.

6. On these rival contentions, in my opinion on facts, the findings being concurrent, there is a little scope for disturbing the same. The contentions of Sri R.V. Jayaprakash, Counsel appearing on behalf of the appellants cannot be accepted. In that, his claim that there is no evidence that the temple was ever been endowed in favour of the public is not correct, since the records from the year 1890 do indicate that the temple has been dedicated in the name of the Deity and even according to the appellant, the temple is constructed over the Government land. The claim of the appellants that it was constructed on the Government land and at the instance of the appellants it was granted in their favour, is not evidenced by any documents. On the other hand, the revenue records have been in the name of the temple and at no point of time has it been shown that the appellants or their ancestors had endowed the lands on which the temple stands in favour of the temple. On the other hand, it is contradiction on the terms of claims to claim this, since it is admitted that the temple is on a Government land. If that fact is accepted, then it cannot be said that the temple is a private temple and even if it is accepted that the appellants and their ancestors were instrumental in constructing the temple the presumption if the temple is constructed for the general benefit of the public, in the absence of an express intention and coupled with the fact that the land in Survey No. 81/1, which is admittedly purchased out of the compensation paid in respect of the acquisition of the Survey No. 80 and has been endowed in the name of the temple would only support the contention that it was endowed in favour of a public temple. Be that as it may. On facts, it cannot be said that the order warrants interference.

7. On the question of law, the judgments which have been cited by the Counsel for the appellants insofar as Radhakanta Deb's case is concerned, Sri Jayaprakash, has not placed any material before me or pointed out from the record that the members of the public cannot claim a right to worship at the temple and the fact that the managers of the temple have been appointed from time to time, is not denied. There is no document produced by the appellants to demonstrate that the temple belongs to the appellants or their ancestors exclusively. There is also no evidence to show that the appellants or their ancestors did not make any stipulation on the offerings or contributions made by the members of public in the light of which, the appellants would not be in a position to demonstrate that applying the tests laid down by the Supreme Court in this judgment, the temple should be held to be a private temple.

7-A. In the next judgment in Pratapsinhji N. Desai's case, there is no evidence on record to show that the user of the temple is for the sole benefit of the appellants and their family members and hence, the same would not support the case of the appellant.

7-B. Insofar as Kuldip Chand's case is concerned, in view of the appellants having failed to demonstrate that it is a private temple, the fact that public at large are worshipping at the temple would therefore render this judgment invalid insofar as appellants' case is concerned.

7-C. In the unreported judgment of this Court referred to herein above, the principles laid down by the Supreme Court are reiterated and therefore would not help the appellant. However, there is a finding by the Division Bench as to the contention that the features of a temple not being a decisive factor in deciding whether a temple is a public or private in nature would militate against the appellants' own- case. In that, the appellants have sought to contend that having regard to the physical features of the temple, it should be held to be a private temple. In the light of these facts and circumstances and the position of law, the appeals are to be rejected.

8. According the appeals are dismissed.