(1971) 03 KAR CK 0003

In the Karnataka High Court

Case No : First Appeal No. 57 of 1967

Gollaleshwar Dev and Others — APPELLANT

Vs

Gangawa Kom Shantayya Math and Others — RESPONDENT

Date of Decision : 18-03-1971

Acts Referred:

Bombay Public Trust Act, 1950 — Section 2 (10), 50
States Reorganisation Act, 1956 — Section 119

Citation : AIR 1972 Kar 1 : (1971) 2 MysLJ 147

Hon'ble Judges : V.S. Malimath, J;K. Jagannatha Shetty, J;G.K. Govinda Bhat, J

Bench : Full Bench

Advocate : C.M. Desai and B.B. Mandappa, for the Appellant; Murlidhar Rao, for the Respondent

Judgement

Malimath, J.

1.The questions referred for the decision of the Full Bench by Honniah and Venkataramiah, JJ. are as follows:

"a) Whether the expression ''person having interest in the trust'' occurring in Section 2 (10) and Section 50 of the Act includes trustees also;

b) Whether two or more trustees of a public Trust can file a suit for a declaration that a property belongs to the Public Trust and for possession of the same from a person holding it adversely to the trust u/s 50 of the Act and for recovery of possession of such property."

The material facts of the case are as follows: The plaintiffs instituted the suit in the court of the District Judge at Bijapur for the following among other consequential reliefs:

"(1) That it be declared that the suit premises belong to and appertain to the Public Trust ''Shree Gollaleshwar Dev'' of Golger a Public Trust.

(2) That possession of the suit premises be awarded to the Trustees of the

temple on behalf of the Trust." The 1st plaintiff is the deity represented by its trustee, the 2nd plaintiff. It is stated in para 6 of the Plaint that plain-tiff-2 is referred to as the ''plaintiff in the suit. The plaint averred that Shree Gollaleshwar Dev is registered as a Public Trust under the provisions of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the ''Act'') that the suit is instituted in the name of the temple by the Trustee as the property in, suit belongs to Shree Gollaleshwar temple, that the 2nd plaintiff is the present trustee of the suit temple- whereas the 3rd plaintiff, is the grandson of Mariyappa, the elder brother of the 2nd plaintiff and that plaintiffs 2 and 3 have joined in the suit as ''persons interested in the Trust''. It ''is further stated that the suit has been instituted under Sections 50 and 51 of the Act after obtaining the necessary consent of the Charity Commissioner u/s 51.

The case of the plaintiffs is that the defendants are in occupation of the suit premises with leave and license of the trustee of the temple, and as the defendants refused to deliver possession of the property, the suit has been instituted for a declaration that the property belongs to the first plaintiff and for possession. The reliefs, it is clear, have been asked by the trustee of the temple on behalf of the Trust.

2. The defendants contested the suit on various grounds, one of their contentions being that plaintiffs 2 and 3 being trustees of the 1st plaintiff, they arc not entitled to institute the suit u/s 50 of the Act. The court below following the decision in Ganapathi Ram Naik v. Kumta Shri Venkataraman Dev 1964 1 Mys LJ 172 upheld that contention and dismissed the suit. Aggrieved by the said decree, the plaintiffs have preferred the above appeal to this Court.

3. Honniah and Venkataramiah JJ. before whom the appeal came up for hearing were of the opinion that the view taken by a Division Bench of this Court in Ganapathi Ram Naik''s case, requires reconsideration for the reasons stated in paragraph 5 of the Order of reference, which reads as follows:

"As already stated, this court in the decision referred to above held that the trustee or a manager of a trust is an

interested person but in saying so this court held that such a person will have larger interest than others. The word ''interest'' in the definition denotes an interest which is substantial and not sentimental or remote. Therefore, if that is the intendment of the Act, in our opinion, a trustee is a person vitally interested in the trust and for recovering the trust properties held by trespassers, he would be the proper person to bring a suit for declaration and for recovery of trust property u/s 50 of the Act."

4. Before addressing ourselves to the questions referred, it is necessary to examine briefly the scheme and the object of the Act.

5. The Bombay Public Trusts Act, 1950, was enacted with a view to regulate and to make better provision for the administration of Public, Religious and Charitable

Trusts in the then State of Bombay. The Act is in force in the four districts of the Bombay Karnatak area of the new State, of Mysore by virtue of Section 119 of the States Reorganisation Act. 1956. By virtue of a notification issued under Subsection (2) of Section 1 of the Act, the provisions of the Act were applied, among others, to all Public Trusts which are temples.

Section 2 (4) defines the ''Court'' to mean the City Civil Court in the City of Greater Bombay and elsewhere the District Court; section 2 (10) defines the expression ''person having interest'' as including--

"(a) in the case of a temple, a person who is entitled to attend at or ia in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof;

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs:

(c) in the case of a wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institutions connected with the wakf or to participate in any religious or charitable institution under the wakf;

(d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society; and

(e) in the case of any other public trust, any beneficiary."

Section 2 (18) defines ''the trustee'' as meaning a person in whom either alone or in association with other persons, the trust property is vested and includes a manager. Section 3 provides for the appointment of a Charity Commissioner for the entire State. Section 18 provides that it shall be the duty of the trustee to make an application for registration of public trusts. Section 19 provides for an inquiry of the application made u/s 18 for registration of public trusts by the Deputy or Assistant Charity Commissioner. Among other matters, the concerned officer is required to hold an inquiry and ascertain whether a trust exists and whether such a trust is a public trust and whether any property is a property of such a trust. The result of the inquiry is required to be recorded in the form of findings with the reasons therefore u/s 20. Those findings are required to be entered in the relevant register as provided in Section 21. Section 31 bars suits to enforce any right on behalf of the public trust which has not been registered under the Act. Section 50 provides for suits relating to public trusts.

6. Section 50 is in pari materia with Section 92 of the CPC (hereinafter referred to as the ''Code''). This is evident on a comparison of the two Sections which we set out below:

Section 50 of the Bombay Public Trusts Act, 1950:

"50. In any case -

(i) where it is alleged that there is a breach of a public trust,

(ii) where a declaration is necessary

that a particular property is a property belonging to a public trust or where a direction is required to recover the possession of such property or the proceeds thereof or for an account of such pro-

perty or '' proceeds from any person including a person holding adversely to the public trust, or

(iii) Where the direction of the court is deemed necessary for the administration of any public trust. The Charity Commissioner or two or more persons having an interest in the trust and having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentious or not in the court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate, to obtain a decree for any of the following reliefs:

(a) an order for the recovery of the possession of such property or proceeds thereof,

(b) the removal of any trustee or manager,

(c) the appointment of a new trustee or manager,

(cc) vesting any property in a trustee.

(d) a direction for taking accounts and making certain inquiries,

(e) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust,

(f) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged.

(g) the settlement of a scheme or variations or alterations in a scheme already settled, or

(h) granting such further or other relief as the nature of the case may require:

Provided that no suit claiming any of the reliefs specified in this Section shall be instituted in respect of any public trust except in conformity with the provisions thereof."

Section 92 of the Code of Civil Procedure, 1908:

"92. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General may institute a suit, whether contentious or not, in the Principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who _ has been removed or a person who has ceased to be a trustee,_to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust:

(f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other reliefs as the nature of the case may

require.

(2) Save as provided by the Religious Endowments Act, 1863, or by any corresponding law in force in the territories which, immediately before the 1st November 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that Sub-section".

Except for portions underlined by us, the provisions of the two Sections are identical.

7. Dr. B. K. Mukherjea in his Tagore Law Lectures "On the Hindu Law of Religious and Charitable Trusts" (3rd Edition) at page 347 while dealing with the object and scope of Section 92 of the Code has stated as follows:

"In a public trust the persons interested are the members of the general public or at least an indeterminate part of it and ordinarily it is not possible for all persons interested in a public trust to be made parties to a suit. The only relief possible was u/s 30 of the Old CPC which corresponds to Order 1 Rule 8 of the present one; but that too was neither convenient nor effective in all cases. The jurisdiction of both the High Courts and the mofussil tribunals is now affirmed and controlled by Section 92 of the CPC and a special procedure has been laid down which while obviating the inconveniences inherent in suits in which a large and indefinite number of persons are interested, has at the same time provided an effective check upon reckless and harassing litigation. As a suit u/s 92 of the CPC is a representative suit, the court is enabled to decide effectively and finally what is best in the interests of the public, whenever a case relating to administration of public, religious and charitable trust comes up before it u/s 92 of the Civil Procedure Code."

The Act having made Sections 92 and 93 of the Code inapplicable to public trusts governed by the Act, it has made provision by Section 50 for institution of suits in respect of public trusts. While u/s 92 of the Code, a suit can be instituted In respect of a public trust only by the Advocate General or two or more persons having interest in the trust and having obtained the consent in writing of the Advocate-General, u/s 50 of the Act such a suit can be instituted only by the Charity Commissioner or two or more persons having an interest in the Trust and having obtained the consent in writing of the Charity Commissioner as provided in Section 51. For the Advocate General, the Charity Commissioner is substituted u/s 50; but the character of suits under both the provisions remain the same.

Having regard to the scheme of the Act, the language of Section 50 and the set up in which Section 50 occurs, it is clear that the purpose and object of Section 50 is similar to that of Section 92 of the Code. Therefore, well settled principles governing Section 92 of the Code are equally applicable to Section 50 of the Act.

8. Justice Woodroffe in Budree Das Mukim v. Chooni Lal Johurry ILR (1906) Cal 789, dealing with Section 539 of the Civil Procedure Code, 1882, which is similar to Section 92 of the Civil Procedure Code, 1908, has observed as follows:

"The suit contemplated by the Section is one of a representative character.

It is obvious that the Advocate-General, Collector or other Public Officer can and do sue only as representing the public and if, instead of these public officers, two or more persons having an interest in the trust sue with their consent, they so sue under a warrant to represent the public as the objects of the trust; see Lakshmandas Raghunath Das v. Jugal Kishore ILR (1896) Bom 216.

It follows from this that when a person or persons sue not to establish the general rights of the public, of '' which they are a member or members, but to remedy a particular infringement of their own individual right, the suit is not within or need not be brought under the Section."

To the same effect is the view taken by the Full Bench of the Madras High Court in The Tirumalai Tirupati Devasthanams Committee Vs. Udiavar Krishnayya Shanbhaga and Others, , by the Bombay High Court in Madhavrao Anandrao v. Shri Omkareshvar Ghat. AIR 1929 Bom 153 and by the Allahabad High Court in Darshan Lal and Others Vs. Shibji Maharaj Birajman, The decisions in Madharao''s case AIR 1929 Bom 153 and Darshan Lal and Others Vs. Shibji Maharaj Birajman, have been referred to with approval by the Supreme Court in

Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others,

In the said decision, the Supreme Court has stated that suit by an idol for declaration of its title to property and possession of the same from the defendant who is in possession thereof under a void alienation falls outside the scope of Section 92 of the Code. In para 7 of the judgment, it is stated:

"Other decisions have reached the same result on a different ground, namely, that such a suit is one for the enforcement of a private right. It was held that a suit by an idol, as a juristic person against persons who interfered unlawfully with the property of the idol was a suit for enforcement of its private right and was, therefore, not a suit to which Section 92 of the CPC applied: See Darshan Lal and Others Vs. Shibji Maharaj Birajman, The present suit is filed by the idol for possession of its property from the person who is in illegal possession thereof and, therefore, it is a suit by the idol to enforce its private right. The suit also is for a declaration of the plaintiff''s title and for possession thereof and is, therefore, not a suit for one of the reliefs mentioned in Section 92 of the Code of Civil Procedure. In either view, this is a suit outside the purview of Section 92 of the said Code and, therefore, the said Section is not a bar to its maintainability." It is clear from the judgment of the Supreme Court that if the suit is filed by the idol to enforce its private rights, the provisions of Section 92 of the Code are not attracted. A suit by an idol or by its trustees for a declaration that the suit properties belong to the trust and for possession of the same from persons holding the properties adversely to the trust is not a suit of a representative character instituted in the interest of the public, but is really a suit for the vindication of the individual or personal rights of the deity or the trustees. The same principles equally govern suits u/s 50 of the Act.

9. If that be so, a suit instituted by the idol represented by its trustee or by the trustees qua trustees for recovery of trust property is not a suit falling within the scope of Section 50 of the Act but is a suit for enforcement of the private rights of the idol or of the trustees. It is therefore, clear that the expression ''two or more persons having an interest in the trust'' in Section 50 of the Act cannot include the trustees but persons other than the trustees who have an interest in the trust. The reason for holding that the expression ''two or more persons having an interest in the trust'' cannot be construed to include trustees, is not because the trustees are not persons interested in the trust but because of the character of the suit contemplated u/s 50 of the Act.

The remedy of the idol represented by its trustee or of the trustees to enforce their individual rights is not to institute a suit u/s 50 but to sue in the ordinary courts in the usual way as any other citizen, and for such a suit, the trustees are not required to satisfy the conditions of Section 50 of the Act. A suit for recovery of trust property instituted by a trustee not being one for enforcement of the right of the public, but being merely for enforcement of the private rights of the trust or trustees, does not, in our opinion, fall within the scope of Section 50 of the Act.

10. It appears to us from the reasons given in paragraph 5 of the Order of reference that it was urged before the Division Bench that the effect of the decision in Ganapathi Ram Naik''s case is to deny the right of the trustees to institute suits for recovering the trust properties held by trespassers. A careful reading of the judgment of Somnath Iyer, J. (as he then was) does not leave scope for any such inference. That was a case in which a suit was brought on behalf of a temple to recover rent from its tenant. The suit was resisted by the tenant on the ground that the consent of the Charity Commissioner u/s 50 of the Act not having been taken, the suit was incompetent. The said objection was overruled and the suit was decreed by the trial court. The appeal against the said decree was also dismissed by the District Court. The said decree was challenged by the tenant in a revision petition to this Court. Govinda Bhat, J. (one of us) before whom the matter came, did not agree with the view taken by Hegde, J. (as he then was) in Shri Marikamba Temple v. Subraya Venkataramanappa (1958) 36 Mys LJ 923, wherein it was held that even a suit by a deity for possession is governed by Section 50 of the Act.

On a reference made by Govinda Bhat, J. the revision petition was heard by a Bench consisting of Somnath Iyer and Gopivallabha Iyengar. JJ. Their Lordships dissented from the view taken by Hegde, J. in Shri Marikamba Temple''s case (1958) 36 Mys LJ 923 and held that the suit filed by the deity was not governed by Section 50 of the Act. It is clear from the facts of that case that the suit was filed by the deity for vindicating its own personal rights. Such a suit by a deity or by the trustees is not governed by Section 50 of the Act. On the facts of that case, we are of opinion that the conclusion arrived at by the Division Bench was right. But. with respect, we are unable to agree with the reasons given by Somnath Iyer, J. in Ganapathi Ram Naik''s case 1964 1 Mys LJ 172 for holding that Section 50 of the Act does not govern such suits. Dealing with this aspect, this is what Somnath Iyer, J. has observed in that decision:

"The ''person having an interest'' in a public trust is therefore one whose interest is inferior to that of a trustee or manager and it is by reason of existence of that inferior and smaller interest that Section 50 of the Act like Section 92 C. P. C. authorises the institution of a suit and regulates it in the manner specified in it. But that Section does not govern the institution of a suit by a person possessing larger and a higher interest which is not regulated by it."

The applicability of Section 50 does not depend on the question whether the interest of the persons instituting the suit is higher or smaller, but on the question whether the plaintiffs are instituting the suit in a representative character representing the public or, whether they are vindicating their personal or individual rights. Persons who institute suits in their capacity as trustees do so not in their representative capacity representing the interests of the public, but in their own individual or personal capacity to vindicate their own rights. Merely because the trustees are persons having an interest in the trust, the provisions of Section 50 of the Act will not be applicable, when they are vindicating their private rights and not suing in a representative capacity in the interest of the public.

11. For the reasons stated above, we answer the two questions referred. as follows:

(i) That the expression "person having interest in the Trust" occurring in Section 2 (10) and Section 50 of the Act does not include trustees when they institute suits in their capacity as trustees for vindicating their private rights; and

(ii) that a suit u/s 50 of the Act cannot be filed by two or more trustees of a public trust for a declaration that the property belongs to the public trust and for possession of the same from a person holding it adversely to the trust."

12. Answered accordingly.

