
(1936) 12 BOM CK 0004
In the Bombay High Court
Case No : First Appeal No. 259 of 1931

Govind Shripad Lokhande	Vs	APPELLANT
Shrinivas Krishna Hebbali		RESPONDENT

Date of Decision : 23-12-1936

Acts Referred:

Bombay District Municipal Act, 1901 — Section 23
Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1937) 39 BOMLR 548

Hon'ble Judges : N.J. Wadia, J; Macklin, J; Barlee, J

Bench : Full Bench

Judgement

Barlee, J.—This case has been referred to a full bench, and the question referred is in these terms?

Whether by virtue of a notification in this form: "In exercise of the powers conferred by Sub-section (i) of Section 92 of the Code of Civil Procedure, 1908 (V of 1908), the Governor in Council is pleased to empower Mr. V.B. Halbhavi, First Class. Subordinate Judge, Dharwar, to hear suits which may be instituted for 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 Court of the First Class Subordinate. Judge, Dharwar, presided over by Mr. V.B. Halbhavi, was a Court duly empowered in that behalf within the meaning of Section 92(1)?

Similar notifications have been a subject of enquiry in this Court already. Mr. Justice Divatia in *Bhimaji Bhagwanji v. Gamaji Motiji* (1934) civil revision application No. 244 of 1934 decided by Divatia J., on August 13, 1934 (Unrep). held that a notification in the same terms was legal and intra vires, and empowered the Court of the Subordinate Judge therein named to exercise jurisdiction u/s 92 of the Civil Procedure Code. The question was again considered in an appeal heard by His Lordship the Chief Justice and Mr. Justice Divatia in *Dhoribhai v. Pragdasji* ILR (1934) Bom. 412 : 37 Bom. L.R. 120. The

question was not there decided, but the learned BarleeJ. Chief Justice expressed an opinion obiter that the notification then in suit, which was in the same terms as that we have to consider, was ultra vires and had no effect u/s 92. Accordingly, when the question came up for decision for a third time in the present appeal, Broomfield and Wassoodew JJ. referred the matter to a full bench.

2. Section 92 of the CPC provides?

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, may institute a suit,... in the principal Civil Court of original truss diction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate,....

The Government of Bombay, purporting to act under this section, issued the notification in suit, which empowered Mr. V.B. Halbhavi, First Class Subordinate Judge, Dharwar, to hear suits which may be instituted u/s 92, and it is contended that this notification is not in conformity with the terms of the section and does not empower the Court of the First Class Subordinate Judge, Dharwar, to hear suits within the section.

3. Mr. Murdeshwar contends that under the notification Mr. Halbhavi was a persona designata, and that the notification, therefore, did not comply with the section.

4. It appears to us that the notification can be interpreted in two ways. The words " First Class Subordinate Judge of Dharwar" following Mr. Halbhavi's name may be looked upon as words of description, in which case, as Mr. Murdeshwar contends, the notification would not comply with Section 92. But this is not the only way in which it can be interpreted. The words, we think, can mean "Mr. V.B. Halbhavi, in his judicial capacity as Judge of the First Class Court of Dharwar", and that, in our opinion, is as much to say that the First Class Court presided over by Mr. Halbhavi was empowered under the section. If we are right, then we are entitled, if not bound, to adopt the latter interpretation. It is the duty of a Court in interpreting statutes and other documents of like nature to attempt to find the intention of the author, and if possible, to give effect to that intention, as stated in *Caledonian Railway Co. v. North British Railway Co.* (1881) 6 App. Cas. 114 :?

The more literal construction ought not to prevail, if (as the Court below has thought) it is opposed to the intentions of the legislature, as apparent byi the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated.

5. The intention of Government was, we think, clear. In the words of Broomfield

J :?

It is reasonable to assume that Government intended to comply with the statute and to confer the necessary powers on the Court over which Mr. Halbhavi presided

6. Against this view Mr. Murdeshwar urges that it must have been the intention of Government to confer a personal jurisdiction on Mr. Halbhavi since it must end with his transfer or be taken by him to another Court. But, again, another and more liberal view is possible?that the jurisdiction was given to the Court so long as it was presided over by Mr. Halbhavi, in other words that the jurisdiction was restricted in time. We see no objection to such a restriction or to accepting that view.

7. We have been referred by the learned advocate to two cases in support of his argument. *Balaji Sakharam v. Merwanji Nowroji* ILR (1895) Bom. 279 decides that a District Judge when trying election petitions u/s 23 of the Bombay District Municipal Act is a *persona designata* and not a Court; and on this analogy Mr. Murdeshwar argues that Mr. Halbhavi was a *persona designata*. This, case does not take us very far, for we cannot interpret the notification by itself, but must read it with Section 92. In *Abdul Karim Abu Ahmed Khan v. Abdus Sobhan Chowdhry* ILR (1911) Cal. 146 it was held that a notification u/s 92 directed to a particular Judge, and purporting to deal with a particular litigation which was already pending in the Court of a District Judge, was *ultra vires*. Our case, however, is distinguishable, if we assume, as we have done, that it was the intention of Government to empower Mr. Halbhavi to try cases instituted u/s 92 in his own Court.

8. The next objection is that the section deals with the institution of suits and to conform with it the notification should have empowered the Court to entertain plaints. This is a formal objection, and in our opinion it disappears when the section is analysed and interpreted in accordance with the general plan of the Code. The first part confers on the Advocate General the right to institute suits directly or through persons nominated by him. The second part indicates the Courts which have jurisdiction. It restricts the jurisdiction of Courts inferior to a District Court which would otherwise have had jurisdiction under the various acts which confer jurisdiction; and it authorizes a Local Government to empower a Court to exercise jurisdiction in such suits, that is to say a Local Government may restore jurisdiction. In our opinion it was not necessary for the notification to mention the power to entertain plaints for that power is included in the general grant of jurisdiction, and is nowhere expressly mentioned in the Code. Section 26 provides that a suit shall be instituted by the presentation of a plaint : Order VI, Rule 1, that a plaint shall be presented to the Court or such officer as it appoints; and Order VII, which deals with plaints, contains rules for their return or rejection but not for acceptance. In fact the CPC unlike the Criminal Procedure Code lays no stress on acceptance, which is looked on as a semi-ministerial act.

9. The next objection put forward by the learned advocate is that the notification is bad inasmuch as the limits of the jurisdiction of the First Class Subordinate Judge are not indicated. This objection, however, does not survive now that we have come to the conclusion that the Government intended to give and that the words used are capable of giving jurisdiction to the Court of the First Class Subordinate Judge at Dharwar, since it follows that the limits of the Court's jurisdiction for the purposes of suits under this section must be the same as those for ordinary suits.

10. Our answer, then, to the question before us is that the Court of the First Class Subordinate Judge presided over by Mr. Halbhavi was a Court duly empowered in that behalf within the meaning of Section 92(1).

N.J. Wadia, J.

11. I agree, and have no remarks to offer.

Macklin, J.

12. I agree, and have nothing to add.