

(1936) 12 BOM CK 0010
In the Bombay High Court

Govind Sripad Lokhande and Others

APPELLANT

Vs

Shrinivas Krishna Hebbali and Others

RESPONDENT

Date of Decision : 23-12-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1937 Bom 275

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

Bench : Full Bench

Judgement

Broomfield, J.—This is an appeal from a decree of Mr. V.B. Halbhavi, First Class Subordinate Judge, Dharwar, in a suit u/s 92, Civil P.C.A preliminary objection has been taken on behalf of the appellants that the Judge had no jurisdiction to try the suit. The point arises in this way. Section 92 provides that suits of the nature dealt with in the section may be instituted in the principal civil Court of original jurisdiction 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. By a notification dated 10th March 1930, Government empowered

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.

2. The plaint in this suit was filed in the Court of the First Class Subordinate Judge, Dharwar, on 21st August 1930. It is argued that the notification does not satisfy the requirements of the statute and that the empowering of an individual Judge to hear suits of a certain class which may be instituted has not the effect of making the Court over which that Judge presides a Court duly empowered in that behalf within the meaning of Section 92 so that a suit may be lawfully instituted there. The principal support for this argument and in all probability the

genesis of it are to be found in certain observations of the learned Chief Justice in *Dhoribhai v. Pragdasji* AIR 1935 Bom. 172. The point to be decided there was whether a District Judge had power to transfer a suit u/s 92 which had been instituted in his Court to be heard by a Subordinate Judge who subsequently to the institution of the suit had been empowered by a notification similar to that in the present case. It was held that the transfer was illegal. One of the grounds of the decision was that the words "suits which may be instituted" in the notification could not possibly apply retrospectively to a suit instituted before the notification and that therefore the Subordinate Judge was not empowered to try the suit. That was the only ground on which Divatia, J. based his decision. But the learned Chief Justice expressed the view that the notification was ultra vires. He said (p. 415):

Section 92 authorizes the Local Government to empower the institution of a suit falling within Section 92 in the Court of the First Class Subordinate Judge of Nadiad, if the whole or any part of the subject-matter is situate within the local limits of that Court's jurisdiction. But when one looks at the language of the notification which exercises the authority, it bears in its operative part no relationship to the language of Section 92 which creates the authority. The notification does not deal with the institution of suits; it deals with the hearing of suits which may be instituted; nor is there any limit in the notification upon the local jurisdiction of Mr. Desai, who is empowered to hear the suits. If the notification is construed literally, it authorizes or purports to authorize Mr. Desai to hear any suit falling within Section 92 which may be instituted, which must mean properly instituted, in any place. My own view is that the notification does not deal, as it should, with the institution of suits, but merely with the hearing of suits properly instituted, and is ultra vires and has no effect u/s 92.

3. It was not essential to go as far as that for the purpose of that ease, as indeed the learned Chief Justice said, and, as Divatia, J. did not express agreement with the view that the notification was ultra vires and ineffectual, learned counsel for the appellants cannot and does not contend that there is a decision on the point which binds this Court. But he says, quite properly, that if the reasoning of the learned Chief Justice is sound, we must accept it and follow it in the present case. We think, however, that there may be other points deserving of consideration in this connexion which it was not necessary to go into in *Dhoribhai v. Pragdasji* AIR 1935 Bom. 172. The gist of the argument of the learned counsel for the respondents is that power to hear suits of a specified class includes the power to receive or entertain such suits. Now obviously that cannot be laid down as a proposition universally correct. Some suits and applications which are by law required to be instituted in a particular Court may be transferred for hearing to another Court and in that case the latter Court, though empowered to hear, is not empowered to receive and entertain. But generally speaking it is true that if a presiding Judge of a Court is empowered to hear suits of a particular description such suits may be instituted in his Court. The institution of a suit is in a sense a purely formal matter. It means the handing of the plaint to a clerk of

the Court. A layman therefore might perhaps suppose that, as the matter of most importance is the jurisdiction to hear and decide the case, the conferment of jurisdiction to hear such cases carries with it jurisdiction over the formal preliminaries. The notification purports to be issued in exercise of the powers u/s 92(1). It is reasonable, I think to assume that Government intended to comply with the statute and to confer the necessary powers on the Court over which Mr. Halbhavi presided and presides. It was never suggested at the hearing of the suit that the intention of Government could have been otherwise. As the learned Chief Justice pointed out in the case cited, the language used in the notification is most inappropriate for the purpose suggested. But it is one thing to say that the language is inappropriate and another to say that it is incapable of bearing the meaning which Government, as I see no reason to doubt, intended it to have. Although it is

a golden rule of drafting that where an Act of Parliament or other instrument confers power to authorize some act, the instrument which exercises the power should be expressed in language following as far as possible the language of the Act or instrument which creates the power,

there is no legally prescribed form of words for the conferment of the power in question. It would be unfortunate and unsatisfactory in the extreme if we were forced to hold that the First Class Subordinate Judge had no jurisdiction. The result would be that the plaint in this suit which was instituted more than six years ago would have to be returned. The whole of the proceedings, labour, time and expense would go for nothing, and after amending the form of the notification the whole process would have to be commenced afresh. We are informed that there are other cases of the same kind pending which would be affected in the same way. It is possible that a large number of cases might be affected both pending and decided. It is therefore a matter of considerable public importance. We think the law point involved is by no means free from difficulty even after the decision in *Dhoribhai v. Pragdasji* AIR 1935 Bom. 172. We think it desirable therefore to refer to a Full Bench the following question; Whether by virtue of a Notification in this form, "In exercise of the powers conferred by Sub-section (1), Section 92, Civil P.C., (1908), (5 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)."

Wassoodew, J.

4. Section 92(1), Civil P.C., proposes to give new jurisdiction to the existing Courts in a particular mode to deal with a new matter. That mode has been clearly indicated according to which the Local Government is invested with

authority to empower the Courts with the new jurisdiction. Therefore it must be expected that the authority of the Local Government would be exercised in conformity with the direction of the statute. That the notification in question does not strictly follow the language of Section 92(1), cannot be doubted. If the phrase "to hear suits" in the notification is used in a technical sense, it will not necessarily confer the power to receive suits which may be instituted in the empowered Court. The language of the notification in my view is susceptible of the construction that the Subordinate Judge is empowered to hear suits which may be instituted in another Court. The difficulty is whether the notification can be understood to intend to confer jurisdiction on the Court u/s 92(1) to receive suits which may be instituted in that Court when it has expressly empowered that Court to hear suits of the description mentioned in that section. Undoubtedly the Government have purported to act under the powers conferred by Section 92(1). But they have left it for implication as to what jurisdiction they intended to confer. The question is how far the doctrine of implication can be extended to this case. The matter is of general importance and likely to affect the validity of decrees passed in similar suits in other Courts which have been similarly empowered. I therefore agree that it is desirable that the question should be referred to the decision of a Full Bench in the form in which it is formulated.

Opinion.

Barlee, J.

5. 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 (1) of Section 92, Civil P.C., 1908 (5 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).

6. Similar notifications have been a subject of enquiry in this Court already. Divatia, J., in Civil Revn. Appln. No. Bhimaji Bhagwanji v. Gomaji Motiji, Civil Revn. Appln. No. 244 of 1934 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, Civil P.C. The question was again considered in an appeal heard by his Lordship the Chief Justice and Divatia, J., in Dhoribhai v. Pragdasji AIR 1935 Bom. 172. The question was not there decided, but the learned 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. Section 92, Civil P.C. 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 jurisdiction or in 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....

7. 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. Mr. Murdeshwar contends that under the notification Mr. Halbhavi was a persona designata, and that the notification therefore did not comply with the section. 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 Rail way Co. v. North British Railway Co.* (1881) 6 A.C. 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 by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated.

8. 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 and presides.

9. 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. We have been referred by the learned advocate to two cases in support of his argument. *Balaji Sakharam v. Merwanji Nowroji* (1895) 21 Bom. 279 decides that a District Judge when trying election petitions u/s 23, 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 Bobhan Chowdhry* (1911) 39 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. 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 analyzed 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 6, Rule 1, that a plaint shall be presented to the Court or such officer as it appoints; and Order 7, 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.

10. 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. 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.