

(1925) 09 BOM CK 0012
In the Bombay High Court

Lambodar Dhonddeo Deo

APPELLANT

Vs

Dharanidhar Ganesh Deo

RESPONDENT

Date of Decision : 21-09-1925

Acts Referred:

Citation : AIR 1926 Bom 167

Hon'ble Judges : Macleod, C.J

Bench : Division Bench

Judgement

Macleod, C.J.—In Appeal No. 71 of 1886 from original decree, the High Court framed a scheme for the management of the Chinchwad Saushtan including the Devasthans of Morgaum, Sidhatek and Theur. Under Clause 2 of that scheme, one of the trustees referred to in Clause 1 was to be selected from among the descendants of Shri Narayan Maharaj, the eldest son of Shri Chintaman Dev, to represent the eldest branch of the family; one was to be selected from among the descendants of Shri Chintaman Dev generally, and the third was to be selected entirely according to the discretion of the District Judge of Poona. The District Judge was to nominate the trustees after ascertaining from the members of the family, or in such other manner as he might deem desirable, who were eligible to act as such trustees, and what were their respective qualifications.

2. We are concerned in this case with the selection or nomination by the District Judge of Poona of a trustee from amongst the descendants of Shri Narayan Maharaj in consequence of a Vacancy having arisen. There were twelve candidates for the post, and the Judge said, after carefully considering their qualifications, that he had decided to appoint Applicant No. 7 to fill the vacancy.

3. Three of the disappointed applicants, Nos. 1, 2 and 6, have filed appeals in this Court, and the first question that arises is whether an appeal lies to this Court. At appeal can only lie if the order of the District Judge can be said to be an order in execution, and therefore appealable as a decree u/s 47. Section 47 says : "All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or

satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit." It was contended that an application would be made to the District Judge of Poona to select a trustee by way of execution, but we are of opinion that clearly the District Judge is a persona designate under the scheme which expressly mentioned the District Judge as the person to select the trustees under Clause 2 of the scheme. u/s 100 of the Code "an appeal lies to the High Court from every decree passed in appeal by any Court subordinate to the High Court," so that the order passed by the District Judge is not an order of the District Court of Poona, but an order of the District Judge. Consequently, no appeal would lie u/s 47 read with Section 2 and Section 100.

4. The difference between the District Court and the District Judge is emphasized by a reference to Clause 21 which directs that "the trustees shall furnish to the District Court on or before the 31st day of October as amended by the High Court about three years ago in each year an account of the property in their charge." It must follow then that no appeal lies from the, order of the District Judge appointing a trustee.

5. The appellants, however, contended that if no appeals lies they are entitled to apply to the Court to exercise its revisional jurisdiction u/s 115. There they are met with the same objection, because u/s 115 "the High Court may call for the record of any case which has been decided by any court subordinate to such High court And in which no appeal lies thereto." Consequently, there is the same objection to entertain an application in revision as there is to entertain an appeal.

6. We think from the scheme it was intended that the question of selection should be left to the District Judge, and if the High court had intended that on every occasion when the District Judge selected a trustee, an appeal to the High Court should be open to every disappointed candidate, then the Court would certainly have directed in the scheme that such an appeal would lie. Reference may be made to Clause 26 of the scheme which directs " the District Judge to frame rules for the guidance of the trustees in the conduct of the Saasthan business and submit them for the sanction of the High Court." So that in framing the scheme a distinction has been made between the acts to be performed by the District Judge, without any further reference to a higher authority, and the questions which were to be dealt with by him subject to the sanction of the High Court.

7. We are not concerned with hypothetical cases which have been suggested to us, such as, the District Judge declining to exercise the functions imposed upon him by the scheme, or in the exercise of those functions entirely failing to exercise any discretion in the matter. When such cases arise, we have no doubt that the High Court will be competent to deal with them. In the meantime the appeals and the applications will be dismissed with costs.