

(1984) 11 KAR CK 0034
In the Karnataka High Court
Case No : MFA No. 570 of 80

Madhukar Virupax Mutalik Desai

APPELLANT

Vs

Virupaxmi Basayya and Others

RESPONDENT

Date of Decision : 27-11-1984

Acts Referred:

Bombay Public Trust Act, 1950 — Section 70 (A), 72 (1)
Evidence Act, 1872 — Section 11, 42

Citation : (1985) ILR (Kar) 636

Hon'ble Judges : Rajasekhara Murthy, J;Nesargi, J

Bench : Division Bench

Advocate : L.S. Chikkanna Goudar, for G.S. Visveswara, for the Appellant; S.R. Bannurmah, for Respondents 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Nesargi, J.

1.This appeal is directed against the order dated 4-3-1980 passed by the First Additional District Judge, Belgaum, in Miscellaneous Case No. 106 of 1978 instituted u/s 72(1) of the Bombay Public Trust Act, 1950 (hereinafter referred to as the A xct).

2. Sy. Nos. 19 and 23 of Yedur Village, Chikodi taluk are the only two lands concerned in this matter.

3. The undisputed facts are that in village Yedur, there is a temple Veerabhadra Dev. In Enquiry No. 8520 of 1952 held u/s 18 of the Act, the said temple was registered as a Public Trust. In regard to These 2 lands, an entry was made in the Public Trust Register showing the royal share namely the revenue of these lands belonged to the Trust as its property. That order was passed on 13-6-1955. The enquiry had been instituted by the Deputy Charity Commissioner on the application given by Virupax Naganath Mutalik Desai u/s 18 of the Act. That application is in the prescribed form. It may be stated here itself that in sub-

column No. (vii) these two lands and two other lands are mentioned as properties of the trust. In sub-column No. (xiii) it is made clear that the lands were In his possession as wahiwardar. He himself requested in the said enquiry by filing the said application that the temple be registered as public trust showing these lands as the properties of the trust. It is also undisputed that during the enquiry, some witnesses were examined whose evidence was not relied upon to such an extent. An uncertified copy of the judgment in Original Suit No. 290 of 1913 filed by the trust as against one Laxmanrao Bhujangrao Huilgolkar of Dharwar was produced. That judgment referred to an award said to have been passed by the Inam Commission in 1857. In that, it is said to have concluded that only the Royal share of the entire lands of village Yedur were the properties of Veerabhadra Dev Trust. After noticing these facts, the then Deputy Charity Commissioner concluded the enquiry and got the entries made in the Public Trust Register as already narrated above.

4. The further undisputed facts are that somewhere in the year 1969, this Virupax Naganath was about to cut the tamarind trees standing in these lands and therefore, VPC., of Yedur filed an application to the Assistant Charity Commissioner on 28-7-1969. The Charity Commissioner took action and prevented Virupax Naganath from enjoying the said property namely, the tamarind trees he had already cut. Virupax Naganath was directed to hand-over that property to the Trust. In the year 1977, Virupax Naganath was about to alienate these properties and therefore, the V.P.C. of Yedur filed Original Suit No. 236 of 1977 for an injunction restraining Virupax Naganath from alienating these lands. Injunction was granted and that suit is said to be still pending. In view of all these happenings, four persons namely, respondents 1 to 4 filed an application before the Charity Commissioner, Belgaum on 2-3-1978 u/s 70(A) of the Act, requesting the Charity Commissioner to revise the order dated 13-6-1955 passed in Enquiry No. 8520 of 1952 by the Deputy Charity Commissioner. The respondent before the Charity Commissioner was Madhukar Virupax Mutalik Desai, son of Virupax Naganath Mutalik Desai. He is the appellant in this appeal, The other sons of Virupax Mutalik Desai who are respondents 6 to 8 in this appeal were also made party-respondents. It was contended before the Charity Commissioner that the applicants before him had no locus-standing and that the order impugned before him had been passed on 25-6-1952 and therefore, beyond any imaginable reasonable time. The learned Charity Commissioner held that the applicants before him had no locus-standing to maintain the Revision Petition. He did not record any conclusive findings on the other questions.

5. Thereafter, respondents 1 to 4 filed Miscellaneous Case No. 106 of 1978 in the Court of the First Additional District Judge, Belgaum u/s 72 of the Act. The learned First Additional District Judge has held that the applicants had locus-standing and that the material on record before the Deputy Charity Commissioner in Enquiry No. 8520 of 1952 and the material on record before the Charity Commissioner in Revision Petition No. 4 of 1978 plus the certified copy of

the judgment in Original Suit No. 290 of 1913 produced before him on permission being granted, was sufficient to show that lands in question were the properties of the said Trust. He has, in the course of his order observed that the oral, evidence recorded during the enquiry in 1952 was neither here nor there, as those persons were stating in regard to some other lands and that the Deputy Charity Commissioner had relied upon inadmissible material in as much as the fisalnama or the order passed by the Inam Commissioner had not been produced and only a private copy of the judgment in Original Suit No. 290 of 1913 had been produced and further, that, even in the judgment in Original Suit No. 290 of 1913, as disclosed from the certified copy of the judgment produced before him with permission, there was nothing to show, which were the lands concerned in that suit. He has specifically observed that so far as the lands in question are concerned, they are nowhere found to be the subject matter of the suit. Thereafter, he proceeded to consider in the course of the order impugned, the effect of Section 42 of the Indian Evidence Act and other questions of law which according to him had some bearing under the facts and circumstances of the case.

6. Sri L. S. Chikkan Goudar, learned Counsel appearing on behalf of the appellant fairly stated that the appellant would not be relying on his contention that respondents 1 to 4 had no locus-standing to maintain the Revision Petition before the Charity Commissioner u/s 70(A) of the Act. He argued that the Revision Petition before the Charity Commissioner had been filed nearly after 23 years after the original order passed on 26-5-1952 and therefore, beyond imaginable reasonable time and as such, respondents 1 to 4 had no case at all.

7. We do not find any force in this contention. Right of revision has not been conferred on a party u/s 70(A) of the Act. It is the power of the Charity Commissioner who is competent to exercise by himself at any time. Even if there has been unreasonable delay in filing the Revision Petition, the District Court u/s 72 of the Act is not competent to reject the application on that score. Plain reading of Section 72 of the Act makes out that the Court is not competent to remit the matter to the Charity Commissioner after holding that the Charity Commissioner ought to have exercised his powers inspite of the delay and when that is so, that question does not call for any consideration at our hands.

8. Sri. L. S. Chikkan Goudar pointedly brought to our notice the certified copy of the judgment in Original Suit No. 290 of 1913 wherein a specific finding has been recorded by the Presiding Officer, based on the fisalnama said to have been passed by the Inam Commission in 1857 that the royal share of the entire lands in the village of Yedur was the property of the public trust, namely Veerabhadra Dev. In this connection, we have to observe that the trust had filed that suit for recovery of possession of lands specified in the plaint and for a decree in a sum of Rs. 275/- as damages from one Laxmanrao Bhujangar Huilgolkar of Dharwar. Neither the appellant's father who had filed application u/s 18 of the Act nor the appellant nor any member of the family of the appellant were parties to the suit.

Respondent Nos. 1 to 4 were also not parties to the suit. Therefore, that judgment is not inter parties. Sri L.S. Chikkan Goudar sought assistance from Section 42 of the Indian Evidence Act. He urged that the finding recorded relates to a matter of public nature which is relevant to the present enquiry, the public nature being whether the entire lands of village Yedur were the properties of the public trust. Firstly, it is to be seen that the lands which were the subject matter of the suit were not the entire land of Yedur village. Perusal of the Judgment shows that the reasoning of the Presiding Officer appears to be that in view of the award of the Inam Commission, the royal share of the entire village were the properties of the trust and, therefore, in regard to the lands specified in the plaint in that suit also the same should be the conclusion. Even if it is assumed that u/s 42 of the Evidence Act, the certified copy of the said judgment becomes relevant and becomes admissible in evidence, the extent to which it is useful as evidence and the weight of that evidence will have to be assessed with reference to Section 11 of the Indian Evidence Act. That is also the request of Sri Chikkan Goudar. In this connection, we would proceed on the assumption that there was an award as stated in the said judgment and the said judgment pronounces that royal share in the entire lands of Yedur village was the property of the public trust. The award was some-where in 1857 and the judgment was in the suit of 1913. The District Judge has noticed that the entries in the record of rights are consistently maintained in accordance with the provisions of the Bombay Land Revenue Code applicable at that time even after these proceedings particularly in regard to these lands. It is seen from the R. R. form that in column No. 9 relating to Kabjedar, the deity is shown as Kabjedar and thereafter the name of Virupax Naganath or his ancestor has been shown as wahiwardar (wahiwardar which necessarily means Manager). The Deputy Charity Commissioner appears to have on the basis of this kind of entry, reasoned that the deity was the "superior holder" and Virupax Naganath was the "inferior holder". In that connection, the Deputy Charity Commissioner has overlooked the contents of sub-column Nos. (vii) and (xiii) in the application presented by Sri Virupax Naganath himself u/s 18 of the Act. It was Sri Virupax Naganath himself who put forward to the Deputy Charity Commissioner" that these two lands and two other lands were properties of Veerabhadra Dev Trust, and he was only a wahiwardar and it was hereditary wahiwardar. Section 135(j) of the Bombay Land Revenue Code raises legal presumption in regard to these entries in the record of rights. Therefore, the presumption is that Veerabhadra Dev the deity is the owner of these lands and Sri Virupax Naganath was the wahiwardar of these lands. That presumption is in accordance with what Sri Virupax Naganath himself narrated in his application u/s 18 of the Act: Therefore, we are convinced that the finding of the Deputy Charity Commissioner is nothing but perverse, in regard to the award and the judgment in the suit of 1913, one cannot say, there being no other material made available, as to what had transpired in between the years 1913 and 1952, when the enquiry u/s 18 came to be made. In the absence of the material, the Court has to rely on the presumption available u/s 135(j) of the Bombay Land Revenue Code. In view of this reasoning and conclusion, we do not

see how any assistance can be derived in respect of the case of the appellant on the basis of what is contained in the certified copy of the judgment in Original Suit No. 290 of 1913. Hence, we do not propose to advert to the provisions of Section 42 and Section 11 of the Indian Evidence Act.

9. The facts and reasons narrated in the preceding paragraphs lead us to the only conclusion that is the one arrived at by the First Additional District Judge. In regard to the delay also, we are convinced that there has been no unreasonable delay in agitating the matter after the order dated 26-5-1952 in Enquiry No. 8520/1975 came to be passed. The agitation against this aspect appears to have gone on in view of the proceedings in 1969 and 1977. But that aspect of the matter is seen to be an innocuous one in a proceeding u/s 72 of the Act. Even if there is any delay, all that can be said on that score is that that will be a weakness in the case of the persons applying u/s 72 of the Act and that is likely to lead to an inference against their case so as to make those applicants produce stronger proof to overcome that weakness.

10. In view of the foregoing , we see no substance in this appeal and dismiss it.

11. No order as to costs under the facts and circumstances of the case.