
(1951) 12 BOM CK 0001
In the Bombay High Court
Case No : First Appeal No. 434 of 1948

Mahadoba Devasthan	Vs	APPELLANT
Mahadba Romaji Bidkar and Others		RESPONDENT

Date of Decision : 19-12-1951

Acts Referred:

Limitation Act, 1877 — Section 6, 7

Citation : AIR 1953 Bom 38 : (1952) 54 BOMLR 645 : (1953) ILR (Bom) 1071

Hon'ble Judges : Chainani, J; Bhagwati, J

Bench : Division Bench

Advocate : S.H. Lulla and R.N. Bhalerao, for the Appellant; Y.V. Chandrachud, for the Respondent

Judgement

Bhagwati, J.

[1] This is a first appeal from the decision of the learned Joint Civil Judge (S.D.) at Poona who dismissed the plaintiff's suit. The plaintiff is the Shree Mahadoba Devasthan, Mouje Theur, Kasbe Poona, by its vahivatdar Keshav Waman Waghule, and the suit was filed by the plaintiff thus described against the original defendant 3 who was the then vahivatdar and the father of Keshav Waman Waghule and defendants 1 and 2 who were alienees of certain properties alleged to belong to the plaintiff for two declarations, one that the sale-deeds of the suit lands were void and the lands were of the ownership of Shree Mahadoba Devasthan, and two, that the plaintiff was entitled to recover possession of S. Nos. 240A, 242, 243 and 344 from the Government and recover possession of s. nO. 245 from the defendants and costs of the suit. The defences which were taken up were that Keshav Waman Waghule was not the vahivatdar, defendant 3 being the vahivatdar of Shree Mahadoba Devasthan, that the suit properties were not the Devasthan properties, that the alienations were valid and binding on the plaintiff and that the suit was barred by limitation, the defendants having been in adverse possession of the properties for more than the prescriptive period. The learned trial Judge held the existence of the Shree Mahadoba Devasthan and the

grant of the suit properties to the said Devasthan proved. He also held proved that Ganoji bin Rakhamoji, the ancestor of original defendant 3, was a trustee and his trusteeship was hereditary. He, however, came to the conclusion that Keshav Waman Waghule was not entitled to bring the suit on behalf of Shree Maha-doba Devasthau. He, therefore, dismissed the plaintiff's suit without recording his findings in regard to issues Nos. 5, 6, 8, 9 and 10. This appeal has been filed by the plaintiff against that decision of the learned trial Judge.

[2] The main question which has been agitated by Mr. Lulla for the plaintiff is that even if the lower Court came to the conclusion that Keshav Waman Waghule was not the vahivatdar of the Shree Mahadoba Davasthan, the order of dismissal was not justified because the plaintiff was Shree Mahadoba Devasthan to whom the suit properties belonged, and "the mere fact of the suit having been filed in the name of Shree Madadoba Devasthan by Keshav Waman Waghule describing himself as its vahivatdar did not vitiate the suit. Shree Mahadoba Devasthan is a description of the institution where the image of Shree Mahadoba has been installed and is worshipped. The image of Shree Mahadoba is, as has been held by the Privy Council, a juridical person and capable of holding property and also capable of suing or being sued. The contention, however, which was urged by the defendants and which found favour with the learned trial Judge was that even though the image of Shree Mahadoba was a juridical person the whole management of the properties belonging to the image could be and was carried on by its shebait or its vahivatdar and the right to sue for the protection of the properties belonging to the image of Shree Mahadoba was vested in the shebait and not in the image or the idol. Reliance was placed in support of this contention on the observations of their Lordships of the Privy Council in *Jagadindra Nath v. Hemanta Kumari Debi*, 32 Cal. 129 p. c. where Sir Arthur Wilson observed (p. 141) :

"But assuming the religious dedications to have been of the strictest character, it still remains that the possession and management of the dedicated property belongs to the shebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the shebait, not in the idol, And in the present case the right to sue accrued to the plaintiff when he was under age. The case therefore falls within the clear language of Section 7, Limitation Act..."

These observations were particularly relied on for the purpose of shewing that the suit for setting aside the alienations complained of could not be filed in the name of Shree Mahadoba Devasthan at all but could only be filed in the name of the shebait for the time being who was Waman Chimnaji Waghule, original defendant 3. These observations of their Lordships of the Privy Council were, however, made in a suit which was a suit for recovering possession of the property belonging to the idol against the persons who had dispossessed the idol of the same. The shebait of the idol was then a minor. The idol was no doubt a

juridical person and capable of suing or being sued, but even there the suit could be brought in the name of the idol by the shebait and the shebait was a minor with the result that their Lordships of the Privy Council held that the right of possession and management of the dedicated property having belonged to the shebait whatever suits were necessary for the protection of the property could also be brought by the shebait. There is no doubt that the words "not in the idol" are a part of the sentence which was used by their Lordships : "Every such right is vested in the shebait, not in the idol." Their Lordships of the Privy Council were, however, concerned with a case where even if the idol being a juridical person capable of holding the property could have filed the suit for recovering possession of the property of which it was dispossessed, that suit could only have been filed though in the name of the idol by its shebait and the shebait being a minor, they had got to consider what the position would be if the shebait was the person who could and should have filed the suit in the name of the idol for recovering possession of the property. We are of the opinion that their Lordships had not their attention focussed on this aspect of the question, namely, whether a suit could have been filed in the name of the idol by the shebait apart from the shebait vindicating his right of possession and management of the dedicated property and filing a suit for the protection of the same. This dictum of their Lordships of the Privy Council was considered by a Division Bench of the Calcutta High Court in the case of Sri Sri Iswar Sridhar Jieu Thakur represented by his shebait Jyoti Prosad Bandopadhyaya Vs. Jahor Lal Mukhopadhyaya and Others, . In the course of the judgment Biswas J. observed as follows (p. 277) :

"On the first point, the appellants' sheet anchor is the dictum of Sir Arthur Wilson in the Privy Council case in Jagadindra Nath Soy v. Hemanta Kumari Debi, 81 Ind. App. 203, that the right of suit is vested in the shebait, and not in the idol, but as has been explained in various decisions this does not and cannot mean that a Hindu idol is incapable of suing. The power of suing (as also being sued) undoubtedly resides in the idol, though ex necessitate the power must be exercised by and through a sentient being representing the idol. As was pointed out by Pal J. In. Tarit Bhusan v. Sri Iswar Sridhar Salagram Shila Thakur, I. L. K. (1941) 2 Cal. 477 where this question is discussed, the suit in Jagadindra Nath Soy v. Hemanta Kumari Debi, 31 Ind. App. 203, was not by the idol represented by its shebait but by the shebait himself as such to enforce the proprietary right of the idol in certain properties. The High Court had dismissed the suit as barred by limitation on the ground that as the interest was admitted to be in the idol, there was nothing to prevent its suit being brought on behalf of the idol by the plaintiff's mother during his minority, but the Judicial Committee reversed the decision, holding that as the possession and management of the dedicated property belonged to the shebait. and this carried with it the right to bring whatever suits were necessary for the protection of the property, the right to sue accrued to the plaintiff, and as he was a minor at the time, he could bring the suit within three years after he attained majority u/s 7 of Act 15 of 1877 (corresponding to Section 6 of the present Limitation Act). It is in this connec-

tion that Sir Arthur Wilson made the observation on which the appellants rely."

The learned Judge then proceeded to quote the observations of Lord Shaw in *Pramatha Nath Mullick v. Pradkyumna Kumar Mullick*, 52 Ind. App, 245 where their Lordships of the Privy Council dwelling on the nature of a Hindu idol expressly recognised it as a juristic entity and observed that it has a juridical status with the power of suing and being sued; and also the observations of the Judicial Committee in *Radha Benode Mandal v. Gopal Jiu Thakur*, 54 Ind. App. 238, where a clear distinction was drawn between a suit in which the idol itself was the plaintiff and the suit in which the plaintiffs were shebait of the idol. The learned Judge then observed (p. 277) :

"It is quite true that a Hindu idol is a juridical person capable of holding legal rights only in an ideal sense, and it may also be, as was indicated by Sir George Kekland in the Privy Council decision in *Masjid Shahid Ganj v. Shiromani Gurudwara Parbandhak Committee*, Amritsar, 67 Ind. App. 251, that the procedure of our Courts only allows for a suit in the name of an idol, but nevertheless the position remains incontestable that a Hindu idol may be a competent plaintiff in a suit in respect of property held or claimed by it, and that this is a right quite distinct from that which belongs to its shebait or shebait to sue on its behalf."

[3] Normally speaking, a manager or an agent would not be competent to file a suit in his own name in regard to the affairs of his principal and such a suit even if brought by the manager would have to be in the name of the principal. The principal in the case of an image or idol is not an entity capable of acting on its own, with the result that it has of necessity got to act through its manager or an accredited agent, who under the circumstances is the only person capable of performing these functions in the name of the idol. The shebait is in possession and management of the property belonging to the image or idol, and having such possession and management vested in him, it is only an extension of the principle of responsibility from the image or idol to the manager, or to use the other words, from the principal to the agent to vest the right of protection of the property which is incidental to the right of possession and management thereof by way of filing a suit in connection with the same, in the shebait. The extension of the right in the shebait however does not mean that the right which the image or the idol as a juridical person has by virtue of its holding the property to file a suit in regard thereto is by any process eliminated. Both these rights can exist simultaneously, so that if the suit is filed in the name of the image or idol, the image or the idol would be a proper plaintiff, though, as observed before, of necessity it would have to be represented in the suit by its manager or shebait. If the manager or the shebait on the other hand chooses in vindication of his right to sue for the protection of the properties to file a suit in his own name, he may just as well do so. But that would be no bar to the right of the image or the idol to file such a suit if it had chosen to do so. Of course these rights either by the image or the idol or by the manager or by the shebait could be exercised only by

the one or the other and not by both; so that if the cause of action was prosecuted to judgment, it would be merged in a decree properly passed in favour of the plaintiff and the defendant could not be proceeded against any more in respect of that very cause of action. We are, therefore, of the opinion that the suit was properly filed in the name of Shri Mahadoba Devasthan the image or idol by its vahivatdar Ke-shav Waman Waghule. It was, however, urged by Mr. Chandracud that Keshav Waman Waghule was not in fact the vahivatdar. The vahivatdar-for the time being was his father Waman Chim-naji Waghule, original defendant 3. Normally speaking again this would be the correct position and we have the analogy of suits filed on behalf of the minors and lunatics by their next friends. Where there is a testamentary guardian or a certificated guardian, nobody except such guardian could be the next friend of a minor plaintiff. But if the interests of that guardian were adverse to those of the minor, he certainly could not be appointed the next friend for the purpose of the suit. Applying that analogy so far it is possible to do so in the circumstances of the present case, no Court would appoint the manager or the shebait who was himself a party to an unauthorised alienation as the next friend of the image or the idol where the alienation was being challenged. The next friend would, of necessity, be some person other than the manager or the shebait of the image or the idol, and what better person could ever be found than the person next in order of succession of the shebaitship? in the case before us, Waman Chinnaji Waghule was the person who was alleged to have unauthorisedly alienated some of the suit properties. He could certainly not be appointed the next friend of the plaintiff for the purpose of instituting and prosecuting this suit. Keshav Waman Waghule, the son of original defendant 3, was the next vahivatdar after Waman Chinnaji Waghule. It was therefore in the fitness of things that he acted as the next friend of the plaintiff in the matter of the institution and prosecution of this suit.

[41 This is a commonsense point of law. If any authority was, however, needed in support of it, it is to be found in a decision of our appeal Court in *Kazi Sassan v. Sagun Balkrishna*, 212 Bom. 170. In that case, the plaintiffs sued to recover possession of certain lands alleging that they had been granted in wakf to their ancestor and his lineal descendants to defray the expenses for, or connected with the service of certain mosque. Their father and cousins who were impleaded as defendant 3 and defendants 4 and 6 respectively were mutwalis in charge of the said properties and were alleged to have illegally alienated some of these lands and also ceased to render any service to the mosque, whereupon the plaintiffs alleged that they had been acting as mutwalis in their stead. The plaintiffs, therefore, claimed to be entitled as such to the management and enjoyment of the lands in dispute. It was contended inter alia on behalf of the defendants that the plaintiffs could not sue in the life-time of their father, defendant 3 he not having transferred his rights to them. And the Court held

"that the plaintiffs were entitled to sue to have the alienation made by their father and cousins set aside and the wakf property restored to the service of the

mosque. They were not merely beneficiaries, hut members of the family of the mutwallis, and were the persons on whom, on the death of the existing mutwallis, the office of the mutwalli would fall by descent, if, indeed, it had not already fallen upon them, as alleged in the plaint, by abandonment and resignation . . ."

This case is authority for the proposition that in the absence of the manager or the shebait himself Doing in a position to file a suit as the next friend of the image or the idol, it would be competent to another person even the beneficiary apart from his being the next in succession to the office of the manager or the shebait to file a suit in the name of the image or the idol acting as its next friend. We are, therefore, of the opinion that the suit was properly filed and the learned Judge below was wrong in dismissing the suit on this ground as he did.

[5] Mr. Chandrachud, however, urged before us that the order of dismissal could be maintained by him on the ground that the properties which were the subject-matter of the suit were not in fact Devasthan properties but were properties which had been given to the Waghules impressed with a charge for the worship of the imago or the idol of Shree Mahadoba. He made a distinction between a complete dedication and a partial dedication. Even though in the case of complete dedication the properties would really vest in the Devasthan or the idol and the Devasthan or the idol would be entitled to maintain the suit, he urged that in the case of a partial dedication the properties belonged to the grantees and the grantees were entitled to alienate the same, though in the hands of the grantees or their alienees the properties would retain the character of partially dedicated properties and would be subject to a charge for the worship of the idol or the image. He relied upon the relevant passages in Mayne's Hindu Law, p. 922, s. 792, and Mulla's Hindu Law, p. 493, and s. 408 and p. 494, s. 408A. He also relied upon the observations of the Privy Council in Jagadindra Nath v. Hemanta Kumari Debi, 31 Ind. App. 203:

"There is no doubt that an idol may be regarded a a juridical person capable as such of holding property, though it is only in an ideal sense that property is so held. And probably this is the true legal view wfcen the dedication is of the completest hind known to the law. But there may be religious dedications of a less complete character. The cases of Sonatun Bysack v. Sm. Jaggutsoondree Dossee, 8 Ind. App. 66. and Ashutosh Dutt v. Doorga Churn Chatterjee, 6 Ind. App. 188, are instances of less complete dedications, in which, notwithstanding a religione dedication, property descends (and descends beneficially) to heirs, subject to a trust or charge for the purposes of religion. Their Lordships desire to speak with caution, but it seems possible that there may be other cases of partial or qualified dedication not quite so simple as those to which reference has been made."

Belying upon these observations he drew our attention to the terms of the grant EX. 81 in the suit. This was a grant of certain lands comprising in the aggregate 2 chawars and measuring in all 240 bighas, for the worship, Nuivedya and expenses of the festival of God Shree Mahadoba-Devasthan at Monjo Theur,

Kasba Poona. The lands were granted with two-fold Sardcsh mukhi rights both in Swaraj and Mogalai and 1/3rd Inarn together Kulbab and Kulkani (customary rights and rales), with the existing taxes and those that would be levied in future together with water, trees, timber, stone and treasure-trove excluding the rights of hakdars to the grantee Ganoji bin Bakhmaji Sali Waghule for the expenses of the Puja of Shree and Naivedya and festival by creating a new grant or agreement from the government and the grantee was enjoined that he should get the 2 chuvars of land transferred to his Dumala and he, his sons and grandsons should go on spending the akur of the aforesaid lands for the expenses in connection with the worship, Naivedya and festival of the Shri. The grantee was thus to get transferred all those lands and the altar of the lands was to be devoted by him for the expenses of the puja, Naivedya and festivals, it was urged by Mr. Chandrachud that this was an absolute grant of the said lands to Ganoji bin Bakhaniaji Waghule, that the lands were impressed with a charge to the extent of the akar or the assessment thereof for performing the worship, Naivedya and the festival of the Shri and there was, therefore, a partial dedication of the said lands in favour of Shree Mahadoba Devasthan. The word "Akar" is defined in Molesworth's dictionary inter alia as "a roughly framed statement or estimate (of expenses, profits, produce, revenue)". It also means assessment but does not necessarily mean that. What connotation to give to this word "Akar" would depend upon the context in which, this word is used. We are of the opinion that having regard to the context in which it has been used in this grant, EX. 81, it only means the produce or the income and not merely the assessment of these lands. The express purpose of the grant of these lands was to provide for the performance of the worship, Naivedya and the expenses of the festivals of the God Shree Mahadoba at Mouje Theur, Kasba Poona. These lands were set apart after the orders were sent to the subordinate officers by Ba. Ba. Madhavrao Pandit Prime Minister and they were granted to Ganoji bin Rakhamaji Waghule who was described as the devotee of Shree Mahadoba God for the purpose of performing worship, Naivedya and the festivals of Shri. Ganoji bin Rakhamaji Waghule had been carrying on the worship, Naivedya and the festival of the Shri and he, his sons and grandsons were granted these lands so that they may from generation to generation continue to perform the Puja, Naivedya and the festival of Shri. If anything can be culled out of the terms of the grant, it is this that there was not the remotest idea of these lands being capable of alienation by the grantee or his successors in the interest. The intention of the grantor was that these lands should continue in the family of Waghule from generation to generation so that the worship, Naivedya and the festival of the Shri be performed properly. "No doubt the intention was that the Waghules should perform this puja, Naivedya and the festival and that the shebaitship of Shree Mahadoba should continue in the family of the Waghules. That was in effect the creation of a hereditary shebaitship in the Waghule family, but it is a far cry from that to say that the Waghules were constituted the absolute owners of these lands which were the subject-matter of the grant. Nothing was farther from the imagination of the grantor than this alienability which has been urged

upon us by Mr. Channrachud.

[6] The question in such cases which falls to be decided by the Court is in the words of Telang J., at p. 634 in the case of *Shri Ganesh Dharnidkar Maharajdev v. Keshavaraw Govind Kulgavkar*, 15 Bom. 625 :

" . . . on the true construction of that document, the grant may fairly be taken to have been made primarily as A grant to the religious foundation, and not to the particular individuals named for their own benefit."

Looking to the terms of the grant, EX. 81, from this point of view it is abundantly clear that the grant was primarily a grant on the religious foundation, that is, Shree Mahadoba and not to Ganoji bin Rakhamji Waghule for his own benefit or for the benefit of his sons, grandsons and so on. This contention of Mr. Chandrachud, therefore, cannot be sustained.

[7] in view of the above, we are of the opinion that the learned Judge below was wrong in dismissing the plaintiff's suit as he did. The appeal must, therefore, be allowed and the suit remanded to the Court below for disposal according to law.

[8] While remanding the suit, however, we are asked by Mr. Chandrachud to reserve to his client the right to contend that s. nos. 244 and 245 have not been identified with any of the lands which formed the subject-matter of the grant, EX. 81. No issue was specifically raised in this behalf in the Court below, though on the evidence recorded before him, the learned trial Judge appears to have come to the conclusion that these two s. nos. 244 and 245 were sufficiently identified. While remanding the case, therefore, we do reserve liberty to both the parties to adduce such further evidence as they may be advised on the issues which the learned Judge has not decided, namely, issues Nos. 5, 6, 8, 9 and 10. It would be open also to the defendants to raise a specific issue in regard to the identity of the properties s. nos. 244 and 245, both the parties being at liberty to adduce such evidence in that behalf as they may be advised. The respondents will pay the appellant's costs of this appeal. The costs of the lower Court will be costs in the suit. Suit remanded.