
(1978) 10 BOM CK 0009
In the Bombay High Court
Case No : First Appeal No. 11 of 1967

Mahant Madhavdas Guru Devadas

APPELLANT

Vs

Mathuradas Mohta and others

RESPONDENT

Date of Decision : 18-10-1978

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 80, 86, 86(3), 86(3)(a)

Citation : (1979) MhLj 216

Hon'ble Judges : R.D. Tulpule, J; M.D. Kambli, J

Bench : Division Bench

Advocate : H.G. Ghare, for the Appellant; N.L. Belekar, for the Respondent

Final Decision : Allowed

Judgement

M.D. Kambli, J.—The appellant by this appeal challenges the dismissal of his suit on certain preliminary points by Joint Civil Judge, Senior Division, Nagpur.

2. The preliminary issues which were tried by the learned Judge and on which the suit was decided are as follows:

"8. Do the defendants prove that after the enforcement of Bombay Public Trust Act, the present suit is not tenable.

9. Do the Defendants prove that Section 80, Bombay Public Trusts Act oust the jurisdiction of Civil Courts to decide the dispute in suit.

The only short question that arises for our decision in this appeal is whether the appellant-plaintiff's suit is not tenable. The few facts that may be stated for appreciating the point involved are these:

3. The suit was initially initiated in 1956 u/s 8 (1) of the Madhya Pradesh Public Trusts Act, 1951 (for brevity "the M. P. Act"). The plaintiff had applied for registration of the endowment concerned u/s 4 of the M. P. Act. It appears that other defendants also had made similar applications. Each party claimed to be recorded as trustees. The Additional Deputy Commissioner, Nagpur, by order

dated 20-3-1956 found that the endowment, namely, Balaji Mandir was a Matha and that one Bharatdas was the Mahant, that the mode of succession was by nomination of a Chela of the outgoing Mahant and that the Dharmashala was the property of Balaji Mandir. He directed to make the entries accordingly.

4. The grievance of the plaintiff was that the Additional Deputy Commissioner, Shri Thakkar who had recorded the finding, could not act as a Registrar of public trusts and that, therefore, the order dated 20-3-1956 passed by him was ultra vires and was without jurisdiction. That contention of the plaintiff, it appears, was upheld by the learned trial Judge. The matter was carried to this Court and in view of a subsequent amendment to the M. P. Act this Court held in First Appeal No. 94 of 1958 that Mr. Thakkar can be held to have been validly appointed as the Registrar of the Public Trusts and was the Registrar on the day on which the order impugned in the suit was passed by him. In that view, the dismissal of the plaintiff's suit was set aside and the suit was sent back for trial on merits.

5. In the meanwhile, i. e. before the said appeal was decided by this Court on 21-9-1965, the M. P. Act was repealed by the extension of the Bombay Public Trusts Act to Vidarbha (Bombay Public Trusts Amendment Act No. 6 of 1960). This Act came into force on 1-2-1961. In Bombay Public Trusts Act, there is no provision similar to section 8 of the M. P. Act. Relying upon this position, it was contended for the defendants after the suit went back for trial on merits that the plaintiff's suit was not tenable.

6. The learned trial Judge upheld that contention and dismissed the plaintiff's suit.

7. Mr. Ghare, the Learned Counsel for the appellant, submitted that even though the M. P. Act was repealed as above, in view of the saving provisions enacted in section 86 of the Bombay Public Trusts Act, 1950 (for brevity "Bombay Act") the suit which the plaintiff had filed before the repeal of M. P. Act was saved and that it could be continued. On the other hand, Mr. Belekar, the Learned Counsel for the respondents, contended that the saving provisions in section 86 of the Bombay Act have not the effect of saving the present suit.

8. Section 86 of the Bombay Act, so far as it is material for our purpose is as follows:

"86. (1) * * *

(2) * * *

(3) Save as otherwise provided in this section, such repeal or cessation shall not in any way affect:

(a) anything only done or suffered under the laws hereby repealed or ceasing to apply before the said date;

(b) any right, title, interest, obligation or liability already acquired, accrued or incurred before the said date under the laws hereby repealed or ceasing to apply.

(c) any legal proceedings or remedy in respect of such right, title, interest, obligation or liability:

Provided that if on the said date, any legal proceeding in respect of any public trust is pending before any Court under any enactment specified in Schedule AA to which the State Government, Commissioner, Registrar or any officer of the State Government is a party, the Charity Commissioner, shall be deemed to be substituted in those proceedings for the State Government, Commissioner, Registrar or as the case may be, the officer, and such proceedings shall be disposed of by such Court:"

Mr. Ghare, the Learned Counsel for the appellant, relies upon the decision of the Supreme Court in *Hasan Nurani Malak v. S. M. Ismail*, Assistant Charity Commissioner 1967 Mh. L. J. 135 in support of his contention that the present suit is saved under the above saving provisions enacted in section 86 of the Bombay Act, of course, the facts in Hasan Nurani's case (cited supra) were slightly different. However, the observations of the Supreme Court in the said case would be useful in adjudicating upon the point in controversy. In Hasan Nurani's case the facts were that, in October 1953, a person claiming to be a beneficiary applied to the Registrar, u/s 5 of the M. P. Public Trusts Act for declaration that a particular trust was a public trust. On 11-11-1955 the Registrar held that the trust was not a public trust, but he did not cause an entry thereof to be made in the register maintained under the Act. When the Bombay Public Trusts Act became applicable, a beneficiary moved the Assistant Charity Commissioner for enquiry as to the nature of the trust. The appellant who had been in possession contended that the trust was already declared not to be a public trust under the M. P. Act and the Assistant Charity Commissioner was precluded from again holding an enquiry under the Bombay Act. It was held that the enquiry held by the Registrar under the M. P. Act was "A thing duly done" under that Act and an enquiry and its result having been saved by section 86 (3) (a) of the Bombay Act, they continued to be governed by the M. P. Act in spite of its repeal". While analysing the provisions and the scheme of M. P. Act, Shelat J. who spoke for the Court observed, "under that section, (reference is to section 8 of the M. P. Act) though it is the entry made u/s 7 which has been given finality a" right of suit is conferred on both the working trustee and all persons having interest in the trust or any property belonging to it and who is aggrieved "by any finding". It was further observed:

"The object of such a saving clause is to save what has been previously done under the statute repealed. The result of such a saving clause is that the pre-existing law continues to govern the thing done before a particular date from which the repeal of such a pre-existing law takes effect."

Now, section 5 of the M. P. Act enjoined upon the Registrar to hold an enquiry on receipt of an application u/s 4 for registration of a Public Trust. Section 7 of the Act ordained that the Registrar shall make entries in the register in accordance with the findings recorded by him in that enquiry u/s 6 of the Act. Section 7 (2)

of the M. P. Act provides that the entries so made shall, subject to the provisions of the Act and subject to any change recorded under any provision of the Act or a rule made thereunder, be final and conclusive. Now, section 8, which is material for our purpose, provides :

"8 (1). Any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar u/s 6 may, within six months from the date of the publication of the notice under sub-section (1) of section 7, institute a suit in a civil Court to have such finding set aside or modified."

Obviously, this is a right conferred on a working trustee or a person having interest in the public trust. This, as we have pointed out earlier, has been referred to as "a right" by the Supreme Court in Hasan Malak's case (supra). If that be so, it is clear that the saving provisions in section 86 (3) of the Bombay Act and in particular the provisions in clause (3), sub-clause (c), would have the effect of validly continuing the suit which has been instituted before the repeal of the M. P. Act, in spite of the repeal of that Act. We have already set out the provisions in section 86 (3) of the Bombay Act, which clearly provides that save as otherwise provided in that section such repeal or cessation shall not in any way affect;

"(b) any right, title, interest, obligation or liability already acquired, accrued or incurred before the said date under the laws repealed and

(c) any legal proceedings or remedy in respect of such right, title, interest, obligation or liability."

Proviso to section 86 (3) of the Bombay Act also supports this position. The proviso indicates that if on the said date, i.e. the date of repeal of the repealed Act, any legal proceeding in respect of any public trust is pending before any Court under any enactment specified in Schedule AA (the M. P. Act is one such enactment) to which the State Government, Commissioner, Registrar or any officer of the State Government is a party, the Charity Commissioner shall be deemed to be substituted in those proceedings for the State Government, Commissioner, Registrar or as the case may be, the Officer, and such proceedings shall be disposed of by such Court. We are clearly of the view that the suit filed by the present appellant plaintiff has been clearly saved by section 86 (3) of the Bombay Act, and section 80 of the Bombay Act will not have the effect of ousting the jurisdiction of the present suit. The only thing that will have to be done in view of the proviso referred to above is to substitute the Charity Commissioner as a party in place of the authorities and the officers mentioned in that proviso. However, it appears that in the present suit, no such authority or officer has been impleaded as a defendant. In this view of the matter, we are inclined to allow this appeal and set aside the dismissal of the suit as ordered by the learned trial Judge.

9. In the result, the appeal is allowed. The Judgment and order dated 18-7-1966

dismissing the plaintiff's suit are set aside and the suit is remitted back to the trial Court for trial on merits.

10. In view of the peculiar circumstances of the case there will be no order as to costs.

11. In view of the fact that the present suit has come to be instituted in 1956, the learned trial Judge is directed to dispose of the suit expeditiously and as far as possible within six months from the receipt of the records and proceedings from this Court.