

(1937) 09 BOM CK 0016

In the Bombay High Court

Case No : Cross First Appeal No's. 24 and 25 of 1932

Nagappa Ramaya Bab Balgi

APPELLANT

Vs

Santappa Pandurang Pai
 Annappa Ramchandra Pai Vs
Nagappa Ramaya Bab Balgi

RESPONDENT

Date of Decision : 16-09-1937

Acts Referred:

Religious Endowments Act, 1863 — Section 14

Citation : AIR 1938 Bom 311 : (1938) 40 BOMLR 365

Hon'ble Judges : Sen, J;Divatia, J

Bench : Division Bench

Judgement

Divatia, J.—These two appeals have been preferred against a decree passed by the acting District Judge at Karwar in a suit by the plaintiffs for a declaration that defendant No. 4 had no right to manage the property of the suit temple, which is known as the Shri Vyankatraman temple at Kumta, in his hereditary right, secondly, for the removal of defendants Nos. 1 to 4 from the management of the suit temple, for an order on the defendants to produce the accounts of the moveable property, cash ornaments, etc., for damages from the defendants for their acts of misfeasance and malfeasance, and lastly for an order directing the defendants to hand over the possession of the suit properties to the trustees who may hereafter be appointed for the temple.

2. Appeal No. 24 has been preferred by the plaintiffs while Appeal No. 25 has been preferred by defendant No. 4. The final order of the lower Court was partly against the plaintiffs and partly against defendant No. 4. It was against defendant No. 4 inasmuch as it was declared that he had no hereditary right to take part in the management of the suit temple and that therefore he should be removed from the management and that he should hand over possession of the property to the temple committee and defendants Nos. 1 and 2. As against the other defendants the plaintiffs' suit was dismissed and they did not succeed in their prayer for the defendants' removal and for accounts.

3. The plaintiffs' allegations in the plaint were shortly these : that defendants Nos. 1 to 3 were appointed muktesars by the Temple Committee which had been appointed under the Religious Endowments Act (XX of 1863) ; that defendant No. 4 was the undivided brother of defendant No. 1 and he was practically in the exclusive management of this temple; that the muktesars did not exercise any power of management but they allowed the management to remain with defendant No. 4 who set up a false hereditary right to the management of this temple and its properties ; that therefore, inasmuch as the first three defendants were responsible for the proper management of the properties, they ought not to have allowed defendant No. 4 to wrongfully manage the properties of the suit temple and on that ground they should be removed from their management; that defendant No. 4 had no hereditary right of management in the temple and that he should therefore be removed from management. On these pleadings the plaintiffs asked for the removal of the defendants and for consequential reliefs of accounts, damages, possession, etc,

4. The suit was defended mainly by defendant No. 4, Written statements were filed by defendants Nos. 1 and 4. Defendant No. 1 asserted in his statement that although it was true that the first three defendants had been appointed as managers by the Temple Committee, there was a separate manager to manage the affairs of the temple, and the long established practice of the temple was that the latter was to manage the temple as per the wishes and directions of the devotees and they had no active hand in the management. He further stated that the temple belonged to certain Gowd Saraswat families of Kumta which originally numbered fifty-eight and their descendants only, who were called the Tens or the panchas of the community, were the persons who were interested in the temple, and it was with their advice that defendant No. 4, who was the president of the Tens, was managing the temple affairs, and there was no mismanagement to their knowledge, and that it was not proved that they had left the management in the hands of defendant No. 4 but the latter was in management in his own right according to the long established practice of the temple.

5. Defendant No. 4 in his written statement contended, first, that the suit was not maintainable as against him inasmuch as it was alleged by the plaintiffs that he was only a trespasser and not a person who was entitled to manage the property of the temple, and such a suit against a person who is alleged to be a trespasser was not maintainable u/s 14 of the Religious Endowments Act. He admitted that he was in the management of the temple, but he asserted that the temple was founded by certain persons of the Gowd Saraswat community at Kumta, that the practice was that it was to be managed by the Tens or the panchas of Kumta of which he was the chairman, that the usage of the temple both before as well as after the Religious Endowments Act and for the past one hundred years or more was that the manager of defendant No. 4's family was to be the manager of this temple not by appointment but by way of a hereditary right, that the usage also was that the Tens of the community were to meet in the temple and discuss all matters and decide as to the mode and amount of

contributions to be levied from the members of the community and also as to the mode in which the investment should be made of the cash balances, etc., and that the management of the properties of the deity or contributions and fines from, the community was to be carried on by means of resolutions passed by the panchas. He admitted that the first three defendants were the trustees appointed by the Temple Committee but he contended that they had no hand in the actual management of the temple except receiving the cash allowance from Government and paying it over to the manager of the temple. He further asserted that there had been no acts of mismanagement by the defendants as alleged by the plaintiffs in their plaint, and he, therefore, contended that the suit as against him should be dismissed.

6. On these pleadings the learned Judge framed several issues. The legal issues were as to whether the suit against defendant No. 4 was maintainable under the Religious Endowments Act, and secondly, whether defendant No. 4 had proved that the temple was not subject to the jurisdiction of the Temple Committee and that therefore the suit under the Religious Endowments Act was not maintainable at all. The learned Judge found on the first issue that the suit against defendant No. 4 was maintainable, and on the second issue he found that it was not proved that the temple was not subject to the jurisdiction of the Temple Committee. With regard to the issues on the merits the learned Judge found that it had been proved by the plaintiffs that defendants Nos. 1 to 3 had unauthorizedly allowed defendant No. 4 to interfere with the management, but it cannot be said that it was improperly done. He further found that defendant No. 4 had not proved that he was the hereditary manager of the suit temple, but the plaintiffs had not succeeded in proving that the various items, alleged by them, of mismanagement or misappropriation by the defendants had been proved. In view of these findings the learned Judge passed the final order which I have referred to above.

7. Now, in the plaintiffs' appeal, their grievance is that the lower Court was wrong in not holding that defendants Nos. 1 to 3 had unauthorizedly as well as improperly allowed defendant No. 4 to interfere in the management and that the lower Court ought to have held that the items of misapplication or mismanagement of funds, alleged by them, ought to have been held as proved, and that therefore defendants Nos. 1 to 3 should be removed from the managership. Defendant No. 4's case in his appeal is that the suit is not maintainable against him at all, and that in any case, although he may not be a hereditary manager of this temple, he is entitled to manage this temple in virtue of the long established custom by which a member of defendant No. 4's family, who generally is the president of the Tens, is in management of: this temple as well.

8. I will deal with the appeal of defendant No. 4 first. His main contention is that the suit is not maintainable as against him u/s 14 of the Religious Endowments Act which says that " any person or persons interested in any temple, or in the

performance of the worship or of the service thereof, or the trusts relating thereto, may sue before the civil Court the trustee, manager or superintendent of such temple or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to them respectively." Reliance is placed upon the words "trusts vested in, or confided to them respectively," and it is urged that according to the plaintiffs' own allegations in the plaint no property was either vested in defendant No. 4 or confided to him, and the plaintiffs' allegation was that he was a trespasser or intruder into the management of this temple without any right and without having been appointed as manager of this temple, and it is on these grounds that a declaration has been prayed as against him by the plaintiff. Under the section the suit can lie only against those persons in whom the property has been vested or confided. In other words, the suit could be filed against the members of the Temple Committee or against the trustees or managers where appointed by the members of the Temple Committee to manage the temple, and defendant No. 4, according to the plaintiffs, does not come under any of these categories, and therefore, no suit could be filed against him u/s 14. For this contention the learned advocate for defendant No. 4 has relied on the case of Sabapathi v. Subraya and Ramanadha, which has been subsequently approved in ILR (1878) Mad. 58 the case of Sivayya v. Rami Reddi ILR (1899) Mad 223. We think this contention has force inasmuch as the wording of the section is quite clear and the remedy which is given under the section and which is a sort of a summary remedy under the Act is to be obtained only against those persons in whom the properties of the institution have been duly vested for the purpose of management. In other words, the section contemplates that in a suit under this section the Court has not to pass any order against a person who is alleged to have intruded into management without authority, but that the only question to be considered is whether a person in whom property has been vested should be removed for misfeasance or malfeasance. Now, it may be that in a suit where the plaintiff alleges that a certain person is a trustee in whom property has vested and the defendant denies that position, the point may arise whether the defendant was a trustee in whom the property had been vested, and for that purpose the Court may go into the question whether he is a trustee. But that is not the position here. The plaintiffs' own case is that defendant No. 4 is not a person in whom the property or management has been vested. So according to the plaintiffs' own allegation, defendant No. 4 does not come under this section. It is true that defendant No. 4 has set up a hereditary right of management of this temple, and by virtue of the long established custom he says that the right of management is his. But that does not bring him within the wording of this section. The section contemplates only those persons in whom property has been vested or to whom certain funds are confided. Whatever may be the practice according to the defendants, it is not the plaintiffs' case that defendant No. 4 had any, right whatever either by direct appointment or by long established practice. That being so, the present suit against him u/s 14 could not be

maintained.

9. It is contended on behalf of the plaintiffs that the suit is so maintainable against defendant No. 4 and reliance is placed on their behalf on the ruling in the case of Muhammad Siraj-Ul-Haq v. Imam-Ud-Din ILR (1896) All. 104, and also on the ruling in Nur Hussain Shah v. Mt. Hussain Bibi AIR[1926] Lah. 16. With regard to the Allahabad ruling, it has been rightly distinguished in a Madras case, viz. Venkatappayya v. Venkatapathi (1899) 9 M. L.J. 105, inasmuch as the defendant in the Allahabad case had been treated as a trustee and not merely as an agent. No doubt, there are some observations in the case in Muhammad Siraj-Ul-Haq's case which the plaintiffs might invoke in their favour. But if the learned Judges thought that the plaintiffs could file a suit u/s 14 against a person whom they alleged to be a trespasser or intruder in the right of management, with great respect to them, I think that is not so, and the view taken by the Madras High Court in Sabapathi v. Subraya is correct and in consonance with the wording of the section. In the Lahore case which has been relied upon, the contention was that the defendant trustee's father was a trespasser and that the defendant also should be regarded as a trespasser. It was held that that question was irrelevant and that defendant must be taken to be a validly appointed trustee as the section contemplated that the person in whom the trust vests was a validly appointed trustee. This case instead of supporting the plaintiffs' contention is really against it. The plaintiffs' case in the plaint is that defendant No. 4 was a trespasser and could not be regarded as a person in whom the property would vest.

10. The result, therefore, is that the present suit is not maintainable as against defendant No. 4, and it should have been dismissed as against him. There is no question, therefore, with regard to the prayer about his removal from management.

11. [The rest of the judgment is not material to this report. It wound up thus. The result would be that the plaintiffs are not entitled to the relief which they seek with regard to the removal of defendants Nos. 1 to 3 from their office as managers, and that the suit against them should be dismissed.

12. It is not without some regret that we cannot do anything more in this suit because we think that in view of the factions which prevail in this community, the affairs of the temple would not be set in order unless there is a regular scheme for its management which scheme could not unfortunately be framed in this suit u/s 14. If the plaintiffs had filed a suit u/s 92 of the Civil Procedure Code, a scheme could have been framed in consonance with the ancient practice of this temple. But as it is, we cannot do anything by way of framing a scheme except saying that in our opinion the evidence in this case establishes the long established practice of management of this temple affairs by the Tens along with the muktesars of the temple. The best course, therefore, would be for the persons interested in the welfare of this temple to file a suit u/s 92 for directions of the Court with regard to the management of the temple and the framing of a

scheme. In the meanwhile, we think that the affairs of this temple, at least its pecuniary affairs, should be sufficiently safeguarded. Unfortunately, the members of the Temple Committee have not been made parties to the suit, and we cannot therefore pass any order as against them in this suit. At the same time, u/s 13 of the Act the Temple Committee has got certain powers over the muktesars appointed by them with regard to the annual production of the sc-counts of this temple. The member of the Committee, who has been examined, has stated that no accounts have been submitted and asked for after 1888 till 1927 when the accounts were refused to be shown by the muktesars. It is stated that at that time it was told that the matter was under litigation. Now, however, that this litigation has ended, the Temple Committee should exercise its right of asking the muktesars appointed by it to submit the annual accounts to them as provided under the law. Even though the management is done by the community, we believe, the Temple Committee can scrutinize the accounts as muktesars have been appointed by it.

13. As we cannot pass any decretal order against the members of the Temple Committee in this suit, we direct that a copy of our judgment should be sent to the District Magistrate with a request that he or whoever is the proper authority should see that the Temple Committee henceforth exercises its powers over the muktesars under the law. We hope that this step would be sufficient to protect to a certain extent the interests of the temple and that in future good sense might prevail among the members of the community so that a scheme might be settled under which the interests of the temple may be safeguarded and the rights of the community may also be respected.

14. As the result of our findings First Appeal No. 25 of 1932 will be allowed with costs throughout in favour of defendant No. 4, First Appeal No. 24 of 1932 is dismissed with costs. As there has been no appeal against the order of costs on behalf of defendants Nos. 1 and 2, the order passed by the lower Court will stand.

Sen J.

15. I agree.