

(2015) 07 KAR CK 0233

In the Karnataka High Court

Case No : Writ Petition Nos. 56746-747/2014 (GM-CPC) and 58257-259/2014 (GM-CPC)

Sanjeeva Murthy S.R. and Others

APPELLANT

Vs

The Assistant Commissioner, Madhugiri Sub-Division and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, 92

Citation : (2015) 5 KarLJ 313

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : S.R. Anuradha, for the Appellant; Anitha, HCGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.V. Chandrashekara, J—Heard the learned counsel for the parties. With their consent, the matter is taken up for final hearing.

2. The facts leading to filing of the impugned order dated 15.11.2014 in an scheme suit bearing O.S. No. 21/1949-50 pending on the file of Court of the District Judge, Bangalore as follows:

"Two persons by name Seebaiah and Narasimaiah had filed a scheme suit under Section 92 of CPC relating to the management of two temples namely Bhuvaneshwari Temple and Anjaneyaswamy Temple which are situated in the Sira Taluk and properties belonging to these two temples as described in the schedule (a) and (b) appended to the plaint."

3. The suit came to be filed in terms of Section 92 of CPC read with Order 7 Rule 1 of CPC on behalf of the members of the Lauder community for declaration to the effect that right of management of two temples situated in Sira Taluk and immovable properties attached to those temples vests in the community

constituted by the devotees at the meeting held on 22.10.1946. The said suit came to be filed against 6 persons namely Lakshmana Rao, Yellappa, Yelu Nagappa, Siddappa, Venkatappa Subbaih. Further, reliefs had been sought for appointment of proper trustees for the management of the trust and the property and directing enquiries and accounts if necessary and to grant such other relief. Ultimately, the said suit ended in a compromise. On the basis of the compromise petition filed, decree came to be passed on 7.9.1951 by the then learned Principal District Judge with the following terms:

"It is ordered and decreed that the suit be and is hereby decreed in the terms of the said compromise petition a copy whereof is annexed hereto:--

1) That the first defendant Lakshman Rao, second plaintiff Narasimhaiah and the sub-Division officer, Madhugiri sub-division, shall constitute the committee of management of suit " A " and " B" schedule properties and that the properties do and is here by ordered to be vested in the committee of Trustees.

2) That the committee shall have power to appoint the archak or arhaks of the "A" schedule temple, who will manage the "B" schedule properties and that the said archak or archaks shall be under the control and supervision of the above said committee of Management:

3) That the aforesaid committee of management shall have power to remove any or both the archaks if they do not perform their duties properly and satisfactorily.

4) That the parties may apply to the court by means of an application for suitable directions in regard to management, if need be.

5) That all proceedings held and all acts done hither to by the committee of Management formed on 22-10-45 alleged and referred to in Para 4 of the plaint shall have no effect whatever and

6) That in case of death or disabilities of any of the trustees, the court shall have power to fill in the vacancy so caused.

It is further ordered and decreed that the parties to the suit do bear their own costs of the suit.

Given under my hand and the seal of the court 7th day of September 1951."

4. Consequent upon the compromise entered into between the parties therein, and same being accepted by the then learned Principal District Judge, a committee was appointed which was inclusive of defendant No. 1 Lakshmana Rao and plaintiff No. 2 Narasimaiah to manage the suit schedule (a) and (b) properties and Revenue Sub Divisional Officer of Madhugiri, Sub division would be the Ex-officio trustee of the Committee constituted for the management of the temples and schedule property.

5. After sometime, Lakshmana Rao died and Ramanna nephew of Lakshman Rao made an application to the learned Principal District Judge to come on record as

member of the managing committee and that application was considered in detail on 21.4.1973. The then learned Principal District Judge satisfying himself with the credentials of Ramanna, appointed Sri Ramanna as trustee of the managing committee. This was opposed and inclusion of Ramanna was challenged by plaintiff No. 1 in CRP 1902/1973 and the said revision petition was dismissed on 29.11.1973 and the order passed on 21.4.1973 by the then learned Principal District Judge was affirmed by this Court and it had become final.

6. Then Narasimhaiah and Ramanna continued to be the members of the managing committee. Ramanna died on 27.1.1990 and Narasimhaiah died on 14.7.1991. After the death of Ramanna and Narasimhaiah, no new members were appointed to the managing committee. Then one Ashok Kumar s/o Yellappa resident of Sira Town and member belonging to Lauder community made an application recommending the names of two persons namely Sri. B.S. Vijaya Kumar and Sri. S.N. Krishanaiah residents of Sira Town to be appointed as trustees of the Managing Committee. This application was filed on 8.1.2013 and this was opposed by the petitioners Sri. S.R. Sanjeeva Murthy and he had made application to come on record for opposing the said application only.

7. Alternatively, Sri. Sanjeeva Murthy had also filed an application to the learned Principal District Judge to permit him to come on record to assist the court and filed an application to make interim arrangement till the vacancy of the trustees was filled up. All applications filed before the learned Principal District Judge came to be dismissed after contest vide detailed order on 15.11.2014 and operative portion of the order is as follows:

ORDER

I.A. No XV filled under clause 4 and 6 of the scheme R/w 151 of C.P.C., are hereby rejected.

However, Executive Officers of Sira and Pavagada Taluka Panchayaths are hereby appointed as Members of the Managing Committee along with the Assistant Commissioner, Madhugirifor managing the schedule A" and "B" properties, till a regular body of two members are elected, with following

- a. The said two members namely Executive Officers of Sira and pavagada Taluka Panchayaths shall work in the Managing Committee along with the Assistant Commissioner, Madhugiri till two regular members are appointed.
- b. The committee shall be constituted before the 1st December, 2014.
- c. Supervision and management of all the schedule "A" and "B" properties shall be vested with the Managing committee as per the terms of the decree, including power of appointment and removal of archak or archks.
- d. The Managing committee shall prepare estimated statement of expenditure for every month on or before 25th of the preceding month payable from the Temple Board.

- e. If any revenue dispute regarding schedule "B" properties pending before the Assistant Commissioner, Madhugiri, the same shall be transferred to the Deputy commissioner, Tumkur for adjudication.
- f. The Assistant commissioner, Madhugiri shall act as and independent Member of the Managing committee along with executive officers of Sira and Pavagada Taluka Panchayaths.
- g. The present term of the Managing committee members shall be for a period of 6 months. In the meanwhile, the Managing committee shall call for list of Laudar community members by giving necessary and appropriate publication and also by giving notice to Ludar Sangha.
- h. Applications of Ludar members shall be made along with enabling documents showing that, the particular person belonging to Laudar community. After receipt of applications of Laudar members, it shall be exhibited and objections shall be invited for, thereafter list shall be finalized and out of the finalized list, two members of the Laudar community be selected through elections by way of secret ballot for Managing Committee.
- i. The account for the said election shall be maintained by the Managing committee headed by the Assistant Commissioner.
- j. There shall be separate Bank account for the Managing committee, which shall be jointly operated by the Assistant Commissioner and Executive Officer of Sira at present and after appointment of two regular members, bank account shall be operated by the Assistant Commissioner, Madhugiri and first Member, on the basis of number of voted scored by him.
- k. Within 15 days from the date of election of two members of the Managing committee, the same shall be intimated to the court on or before 30th of April of every year.
- m. List of movable and immovable properties shall be separately submitted including the value and this responsibility shall be on the Assistant commissioner and it shall be carried out within 30 days from today.
- n. The estimated income and expenditure shall be maintained by the committee through proper books, ledgers, vouchers, acknowledgments and other relevant documents.
- o. Valuable movable of the temples shall be deposited in the Taluka treasury except ornaments and articles of deities required for regular wearing day today. Valuables shall be invariably deposited in taluka treasury.
- p. The term of the office of Executive Officers, Taluka panchayath, Sira and Pavagada shall be come to and end the moment new members as stated above, are elected. The period of elected body in the office shall be for two years from the date of election.

Send a copy of this order to the Chief Executive Officer, Zilla Panchayath, Tumkur, for sending intimation to the Executive Officers of Sira and Pavagada Taluka Panchayaths."

8. Pursuant to the order dated 15.11.2014, election was expected to be held by the Deputy Commissioner to select two persons for filling up the vacancy of two trustees. Further time was extended to conduct election within 45 days from the order dated 17.6.2015. This order was passed on an application filed by the Assistant Commissioner, Sub-division, Madhugiri.

9. Now the question that crops up is to whether holding of an election to select the two trustees manage the temples and properties attached to the temples would be proper and advisable?. pursuant to the order passed by the then learned Principal District Judge, Tumkur on 21.4.2013, while appointing Ramanna as the trustee, he had made personal enquiries and had satisfied himself about the credentials of Ramanna, and then only he was permitted to come on record as trustee.

10. The then learned Principal District Judge did not thought of holding an election to fill up the posts. On the other hand, the learned Principal District Judge thought it fit to choose one of the members suggested in the panel of members sent by the jurisdictional Assistant Commissioner, Madhugiri. On going through the detailed order dated 21.4.1973 and affirmation of the same by this Court on 29.11.1973 in CRP 1902/1973, this Court is of the opinion that the same method as adopted by the then learned Principal District Judge would be proper method and it would serve the purpose of the members of the community and temple and the properties attached there in. Holding of election to select the trustees would create many problems and even persons who are not residing in Sira Town may also elected and consequently such trustee may not be able to monitor day to day management of the temples.

11. Therefore, at this stage when it was suggested to both the learned counsel appearing for the parties to have a via media course in regard to the names of two members of the trustees. After due negotiation they have come up with two names. One names of the two persons are (1) Sri. Ramaprakash s/o Late R.G. Srinivasaiah resident of Sira Town and he is a business man by profession and is involved in religious activities and he has sufficient experience in having looked after the temples and (2) Sri. R. Uday Kumar s/o of Late R. Ramanna aged 43 years resident of Sira Town. He runs a store under the name and style of "Sri. Tulasi Stores", Sira Town and he has sufficient experience in managing the temples and discharging the duties connected thereto.

12. In the light of the names suggested by the learned counsel for the parties, this Court is of the opinion that the learned Principal District Judge can consider these two persons namely Sri. Ramaprakash and Sri. Uday Kumar to be inducted as trustees of the managing committee.

13. Insofar as permanent mechanism to be adopted in filling up the vacancy for

the posts of trustees whenever they become vacant, procedure adopted by the learned Principal District Judge would be more proper. The learned Principal District Judge can direct the jurisdictional Assistant Commissioner, Sub-Division Officer, Madhugiri to send a panel of 5 names and out of 5 names, the learned Principal District Judge can choose the names to fill up the vacancy that would arise, after satisfying himself above the credentials of such members.

ORDER

Accordingly, petitions are disposed of. The impugned order is set aside.

All other contentions regarding permanent mechanism or scheme to be formulated for the trustee are left open.

The parties to give suggestions to the Court in this regard and the Court is at liberty to formulate suitable scheme as it deems fit in accordance with law.

It need not be reiterated that when the Assistant Commissioner submits a panel of 5 persons for consideration, he must ascertain the background of these five persons and he must be satisfied that those persons are interested in doing service to these temples and looking after the management of the temples effectively. It need not be reiterated that 5 names suggested would be from the members of the lauder community. It is also made clear that such members who would be suggested by the Assistant Commissioner must not have personal interest on the properties attached to the temples, and preferably residents of Sira town of having honest intensive of serving the temple and the properties attached to the temples.