

(1976) 08 BOM CK 0013
In the Bombay High Court
Case No : A.F.A.D. No. 225 of 1969

Sardruddin Allisaheb Mutavali and Others	APPELLANT
Vs	
Hajarat Peer Shamma Meer Saheb Darga and Others	RESPONDENT

Date of Decision : 03-08-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1977 Bom 38

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : S.C. Pratap, for the Appellant; K.J. Abhyankar, for the Respondent

Judgement

1. The respondents are the Trustees of the famous Dargah of Hajarat Peer Shamma Meer Saheb at Miraj. The Dargah is registered as a Public Trust under the Bombay Public Trusts Act, 1950.
2. On November 30, 1964, the respondents filed a suit in the Court of the Civil Judge, Junior Division, Miraj, against the appellants to get a permanent injunction restraining the appellants from touching or removing the Maitana and Amish, i.e., articles and cash amounts of Navas offered by the devotees of the Dargah at the time of Moharrum and Urus festivals, and further restraining them from interfering with the plaintiffs' right of distributing the said Maitana and Amish and cash amount. They also sued to obtain accounts from the defendants about the Maitana and Amish removed by the defendants during the Moharrum and Urus of 1963 and during the Moharrum of 1964; and for the recovery of the amount that would be found due from the defendants at the foot of the accounts and costs.
3. According to the plaintiffs, Moharrum and Urus festivals are celebrated in the Dargah every year. Devotees offer cash amounts and other articles of Navas called maitana and Amish to the Kabrasthan (Tomb) in the Dargah at the time of Moharrum and Urus. The plaintiffs keep a box for that Maitana and Amish and

cash amounts. The three families of Mutavallis, Sharik Maslats and Mushrifs of Miraj had shares in that Maitana, Amish and cash amounts. The Mutavallis had 1 1/2 share, Sharik Maslats had one share and Mushrifs had one share in the said Maitana, Amish and cash amounts. The plaintiffs were distributing the same among the members of the three families of Mutavallis, Sharik Maslats and Mushrifs in proportion of their respective shares according to the usage from ancient times.

4. However, the defendants, who belong to the said three families, removed the Maitana and Amish etc., received at the time of Moharrum and Urus of 1963 and at the time of Moharrum of 1964 illegally and unauthorisedly and were threatening to do the same even in the year 1964 by unauthorisedly taking away the box and other articles. Hence the plaintiffs filed the suit claiming the aforesaid reliefs.

5. The suit was resisted by the defendants. They denied the allegations made by the plaintiffs and contended that the plaintiffs alone were not the Trustees of the Dargah and the plaintiffs had no right to keep the box for collecting the cash amount and other articles of Navas offered at the Dargah. According to the defendants, the box was kept there by the three families of Mushrifs, Sharik Maslats and Mutavallis for collecting the Maitana, Amish, cash and other articles offered by the devotees at the time of Moharrum and Urus. The defendants' families distribute them according to their respective shares and the custom and usage of the Dargah.

6. They denied the right of the plaintiffs to distribute the same among the families. They contended that all the amounts and articles received at the time of Moharrum and Urus were given to the Mulla of the Dargah for safe custody after making a list of the same. They further contended that sugar and coconuts offered to the Dargah were kept on the Gala above the door in front of the Dargah and the same were distributed according to the shares of the families. They also contended that the cash amounts were distributed by themselves once a year after Moharrum and Urus.

7. They described the following method of customary distribution, viz., --Rupees 12 were given to Mulla before distribution; rupee one was reserved for Ramzan Id; Rs. 3.50 were given to Fakirs; Rs. 25/- were paid by way of Khidamati charges and after deducting the amount of Rs. 41.50 the balance was distributed among the three families. They admitted that Mutavallis have got 1 1/2 share; Sharik Maslats have got one share and Mushrifs have got one share.

8. They denied that they had removed the boxes containing cash amounts and articles of Navas at the time of Moharrum and Urus of 1963 or at the time of Moharrum of 1964 unauthorisedly. They also denied that they were threatening to remove the box at the time of Urus of 1964. They contended that the cause of action for the suit was a false one; and the plaintiffs were not entitled to claim accounts of amounts and articles in the boxes during the Urus and Moharrum of

1963 and Moharrum of 1964. They submitted that the plaintiffs' suit was liable to be dismissed with costs.

9. The learned Civil Judge framed as many as eight issues as per Exhibit 26. The defendants led oral and documentary evidence consisting of two decisions of the Charity Commissioner regarding the Dargah, viz., Exhibit 82, under which the Assistant Charity Commissioner had ordered that the Dargah and its endowment property be registered as a religious Public Trust; and Exhibit 83, ordering certain properties to be registered as properties of the Public Trust. The plaintiffs also produced registers and other documents from the record of the suit Dargah at Exhibits 62, 63 and 66 to 76.

10. The learned Civil Judge very carefully considered the oral and documentary evidence and particularly the previous litigations relating to the Dargah and the previous records of the Dargah and came to the conclusion that the plaintiffs had a right of distributing Maitana, Amish, cash amounts and other articles offered to the Dargah at the time of Moharrum and Urus festivals; and the plaintiffs were, therefore, entitled to an in-junction. He, however, dismissed the suit for accounts as the plaintiffs had no share in the said offerings.

11. Accordingly, the learned Civil Judge passed a decree on December 10, 1966, in the following terms:--

"(1) It is hereby declared that plaintiffs, as Trustees of the Hajarat Peer Shamma Meerasaheb Darga of Miraj have got a right to distribute the Maitana, Amish, cash amounts and other articles of Navas received from the devotees in that Darga at the time of Moharrum and Urus festivals every year amongst the members of the three Mujavar families of Mutavallies, Sharik Maslats and Mushrifs according to their 1 1/2, 1 and 1 share respectively.

(2) Defendants are hereby permanently restrained by a perpetual injunction, from touching or removing the Mai-tana, the Arnish, the cash amounts and other articles of Navas offered by the devotees to the Peer's Tomb (Kabaras-than) in the Hajarat Peer Shamma Meerasaheb Darga of Miraj at the time of Moharram and Urus festivals every year and from interfering with the right of plaintiffs, as trustees of that Darga, of distributing the said Maitana, Amish cash amounts and other property amongst the three families of Mutavallis, Sharik Maslats and Mushrifs according to their respective shares, either by themselves -or through their agents, servants and such other persons.

(3) Plaintiffs' suit so far as it relates to the claim for accounts and for possession of Maitana, Amish, cash amounts and other articles of Navas received in the Darga at the time of Moharrum and Urus of 1963 and Moharrum of 1964 at the foot of those accounts, stands dismissed.

(4) Parties to bear their own costs as incurred.

(5) Decree to be drawn up in terms of this order."

12. The said judgment and decree passed by the learned Civil Judge were challenged by the defendants in Civil Appeal No. 47 of 1967. The learned Assistant Judge, who heard the said appeal, dismissed it with costs on August 22, 1968, having regard to the registered agreement executed in favour of the Secretary of State for India in Council on January 7, 1916, referred to in the orders of the Assistant Charity Commissioner at Exhibits 82 and 83, overruling the contentions raised by the defendants. The concurrent judgments and the decrees are challenged in the above Second Appeal by the defendants.

13. Mr. Pratap, the learned Counsel appearing for the defendants-appellants, submitted that having regard to the fact that the plaintiffs themselves have no share in the suit offerings before the Dargah and also having regard to the fact that it was undisputed that the defendants' families were entitled to their respective shares in the offerings according to the custom and usage of the Dargah, the suit was liable to be dismissed on the ground that it was not a suit of a civil nature.

14. He relied upon the decision of this Court in *Ramchandra Keshav Gore v. Gavalakha Gangadhar Swami* (1973) 75 Bom LR 668, and the provisions of Section 9 of the Code of Civil Procedure. He also contended that the questions as to how the offerings were to be distributed and who actually had to distribute them, were matters of indoor management of the three families who were entitled to their respective shares in the offerings and hence the Civil Court could not interfere in such matter of indoor managements of the three families. In support of his arguments he relied on a judgment of this Court in *Janardhan C. Upadhye Vs. Rajni Patel*,

15. There is no merit in these arguments as the present suit 19 clearly covered by the Explanation to Section 9 of the Code of Civil Procedure, which runs as follows:--

"A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies."

The right to distribute the offerings is, undoubtedly, a right to property, though the Trustees may not have any personal interest" in the offerings.

16. Mr. Pratap's argument that because the defendants alone were interested in the distribution of the offerings, the plaintiffs could not claim any right as Trustees, cannot be accepted because the Trustees are responsible for the proper management of the Public Trust. In the course of the management, they are in duty bound to distribute the offerings made to the Dargah of Hajarat Peer Shamma Meer Saheb in accordance with the ancient custom and usage of the Dargah.

17. They cannot allow the defendants to raise disputes among themselves or quarrel among themselves and mar the sanctity of the offerings made to the

Dargah by the devotees. The cases cited by Mr. Pratap cannot, therefore, be of any assistance to him in the present case, It must be held that the Civil Court had jurisdiction to entertain the suit for injunction filed by the Trustees in the facts and circumstances of the present case.

18. Secondly, it was argued by Mr. Pratap that in any event, the Trustees had no right to the offerings qua Trustees as it was admitted that the offerings were to be distributed, as stated above, among the three families of the defendants. The words "right to property" in the Explanation to Section 9 of the CPC cannot be narrowly construed to be meaning as only "the right of ownership of the property". In the case of the offerings, the proper distribution thereof among the three families is a duty of the Trustees who are entrusted with the management of the Dargah. The right to distribute it must necessarily vest in the Trustees. It is the duty of the Trustees, as already stated above, to see that the offerings are properly distributed in accordance with the custom. The right so to distribute or deal with offerings is also a right to property within the meaning of the Explanation to Section 9 of the Code of Civil Procedure.

19. Thirdly, it was submitted by Mr. Pratap that in any event as since 1950 the defendants were distributing the offerings by themselves, the plaintiffs' suit instituted in 1964 was barred by time. The two Courts below have very carefully appreciated the oral and documentary evidence; and have held that the contention raised by the defendants is false; and the record clearly shows that the distribution of the offerings was made by the Trustees before 1963.

20. The learned Civil Judge has very carefully summarised the position in paragraph 10 of his judgment as follows:--

"A series of documents produced at Exhibit 76 by the Plaintiffs go to show that there were constant disputes amongst the members of the three Mujavar families regarding distribution of the Amish property and that the Police and the Government of the Ex-Miraj State and the Collector of Satara had to intervene from time to time to see that the distribution of the Amish was made properly and without breach of peace. The register of the Darga produced at Ex. 62 shows that on 22nd October, 1936, distribution of Amish was made. The words "Watun Dile" in Marathi therein show that the Panchas of the Darga had made distribution of that property. The register at Exh. 63 shows that similar distribution was made by the panchas of the Darga on 28th May, 1950, in the presence of the Mamlatdar of Miraj. The file of the Darga for the years 1900 and 1901 produced at Exh. 66 shows that in December 1900, distribution of Amish was similarly made and that on 30th January, 1901 some amount was paid to Fakirs in the presence of the Karbhari of Ex-Miraj State. The file of the Darga produced at Exh. 67 shows that in October 1906, distribution of Amish was made under the supervision of the Panchas of the Darga. The receipt book of the Darga for the years 1922 and 1923 produced at Exh. 68 shows that the panchas of the Darga had made the distribution of Amish during the year 1922-23. The receipt book of the Darga for the year 1927 produced at Exh. 69 shows that the panchas

of the Darga had distributed the Amish for the year 1927 amongst the members of the three families on 13th February, 1927. The proceeding book of the suit Durga for the year 1940-41 produced at Exh. 70, shows that on 10th September, 1940, the Durga Panchas had distributed the Amish received during the year 1940-41. The proceeding book of the suit Durga for the year 1941-42 produced by plaintiffs at Exh. 71 shows that the Durga Panchas had made the distribution of Amish received during the year 1941-42 on 28th August, 1941. The proceeding book of the suit Durga for the year 1945-46 produced at Exh. 72 shows that the Amish received during the year 1945-46 was distributed by the Panchas of the Darga. The proceeding book of the suit Durga for the year 1947-48 produced at Exh. 73 shows that the Durga Panchas had distributed the Amish for the year 1947-48. The proceeding Book of the Darga for the year 1950-51 produced at Exh. 74 shows that the Durga Panchas had distributed the Amish for the year 1950-51 on 11th July, 1951, in the presence of the Mamlatdar of Miraj. The outward register of the Darga for the year 1950-51 produced at Exh. 75 shows at its pages Nos. 6 and 7 that the distribution of Amish for the year 1950-51 was made in the presence of Mamlatdar of Miraj and that the Mamlatdar was informed on 9th July, 1951, that no receipts regarding that distribution were obtained as the Amish was distributed in the presence of the Mamlatdar of Miraj. All these documents prima facie go to show that distribution of Amish is made by the Panchas or Trustees of the suit Durga every year. Thus Plaintiffs have proved their right and longstanding Vahiwat of distributing the Amish."

21. The said findings are fully supported by the evidence on the record and are impeccable. I find no error in the judgments of the two Courts below. The judgments and decrees passed by the two Courts below are, therefore, confirmed and the Second Appeal is dismissed. Having regard to the fact that the Trustees also belong to the families of the defendants and in the hope that the offerings made to a saint like Hajarat Peer Shamma Meer Saheb will not be squandered by the parties in litigation like the present appeal, the parties are directed to bear their own respective costs of this Second Appeal.

22. Appeal dismissed.