

(1959) 06 KL CK 0004
In the High Court Of Kerala
Case No : A.S. No. 13 of 1954 (M)

Srimad Anantheshwar Temple and Others	APPELLANT
Vs	
Ananda Baliga and Others	RESPONDENT

Date of Decision : 08-06-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 23 Rule 1, Order 23 Rule 1(3), 92, 93
Constitution of India, 1950 — Article 1, 10, 11, 12, 13, 13
States Reorganisation Act, 1956 — Section 60

Citation : (1959) KLJ 671

Hon'ble Judges : K. Sankaran, C.J; P.T. Raman Nayar, J

Bench : Division Bench

Advocate : V.P. Gopalan Nambiar Govt, Pleader, for the Appellant; V. Rama Shenoï and A. Madhava Prabhu, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar, J.—The main question for decision in this appeal is whether the 1st defendant temple known as the Srimad Anantheshwar Temple of Manjeshwar (originally in the District of South Kanara of the Madras State and now, after the re-organisation of the States, in the District of Cannanore of this State) is a sectional temple belonging to the Gowda Saraswath Brahmin Community of South Kanara. The plaintiff, suing on behalf of the community by leave obtained under Order I rule 8C.P.C., claimed that it was and that that community "alone had the exclusive right of management and performing the pooja therein"; and he sought a declaration to that effect. In the plaint as originally framed, he asked for the consequential relief of, "a permanent injunction restraining the 2nd defendant (then the Madras Hindu Religious Endowments Board, and since, after the passing of the Madras Hindu Religious and Charitable Endowments Act, 1951, substituted by the Commissioner, Hindu Religious and Charitable Endowments, Madras) from introducing any form of agama, ritual or mode of worship in the said temple other than the existing form, contrary to the well-established custom

and usage". The suit was instituted on the 16th April 1947 in the Subordinate Judge's Court of South Kanara and it was dismissed by that court on 2-12-1947 on the preliminary ground that its jurisdiction was barred by certain provisions of the Madras Hindu Religious Endowments Act, 1926 (II of 1927). The plaintiff appealed. The appeal was heard by the Madras High Court and by its judgment dated 22-1-1952, that court held that the suit was not totally barred, that the first relief claimed in the plaint was within the jurisdiction of a civil court, and that the provisions in question ousted its jurisdiction only in respect of the second relief. The High Court accordingly remanded the suit for trial in respect of the first relief, at the same time directing that the second relief be deleted from the plaint. The prayer for the second relief was therefore deleted when the suit went back for retrial, but a new prayer was introduced in its place, and that asked for a cancellation of a notification (marked as Ext. B 1 in the case) issued in 1939 by the Government of Madras u/s 65 A (5) (b) of the Madras Hindu Religious Endowments Act (II of 1927) declaring that the temple, which was theretofore governed by a scheme of administration settled by court, shall be subject to the provisions of Chapter VI-A of the Act. In support of this prayer it was said that the said notification was bad in that it violated Articles 25 and 26 of the Constitution. As we have seen, the 1st defendant is the temple itself and it is represented by its executive officer appointed under Chapter VI-A of Act II of 1927 pursuant to the notification already referred to. The 2nd defendant is the Commissioner, Hindu Religious and Charitable Endowments, Madras, and the 3rd defendant is the State of Madras. The 4th defendant is an association known as the Gowda Saraswath Brahmins Temples Trustees' Association, and defendants 5 to 8 are members of the Gowda Saraswath Community, defendants 6 to 8 being trustees of the temple. There was a change in the executive officer of the temple during the pendency of the suit, and the new executive officer was impleaded as the 9th defendant.

2. The suit was contested by defendants 1 to 3 with whom the 9th defendant joined after he was impleaded. Defendants 4 to 8 supported the plaintiff.

3. The learned Subordinate Judge who tried the suit after remand decreed the suit in favour of the plaintiff. Defendants 1 to 3 appealed, and the appeal which was originally before the Madras High Court has come to this Court u/s 60 of the States Reorganisation Act.

4. It is undisputed that the suit temple is a public temple, but it is well-recognised that a public temple can belong to a section of the Hindu community. In fact the very definition of "temple" in the Madras Hindu Religious Endowments Act (II of 1927), in the Madras Hindu Religious and Charitable Endowments Act (XIX of 1951) and in the Madras Temple Entry Authorisation Act (V of 1947) as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, recognises this, and after the two Moolky cases, *Devaraja Shenoy v. State of Madras* (A.I.R. 1953 Mad. 149) and *Sri Venkataramana Devaru and Others Vs. The State of Mysore*

and Others, , it can no longer be doubted that the Gowda Saraswath Brahmin community of a particular place is a section of the Hindu community having the fundamental right to establish and maintain a temple of its own under Article 26 of the Constitution.

5. The evidence in the case seems to us overwhelmingly in favour of the finding of the learned Subordinate Judge that the suit temple belongs to the members of the Gowda Saraswath Brahmin community of the South Kanara District. Three witnesses were examined in the case, two for the plaintiff and one for the contesting defendants, (hereinafter referred to as merely the defendants) and all three affirmed that the suit temple was an exclusive Gowda temple. It is true that all the three witnesses belong to the Gowda Saraswath Community but that by itself can be no ground for discrediting their evidence, in particular, the vital admission made by the defendants' own witness in cross-examination. The defendants themselves did not seek to discredit their witness, and it is surprising that if, in truth, the suit temple was a general Hindu temple and not a temple belonging to the Gowda Saraswath community, the defendants should not have been able to find one witness to speak to this. In their written statements the defendants affirmed that in the course of an enquiry held by the Hindu Religious Endowments Board in 1945, a number of witnesses spoke to the general character of the temple and that several respectable gentlemen of the Gowda Saraswath community itself disclaimed its alleged sectional character. If that were so, it is all the more surprising that, leave alone the Gowda Saraswaths, not even one member of the general Hindu public should have come forward to assert that the temple is a general Hindu temple and not an exclusive temple of the Gowda Saraswath community.

6. As stated in Ext. A 25 dated 9-2-1943 (wrongly dated 9-2-1944) by P.W. 2, the Manager, and D.W. 1, the Executive Officer of the temple, in answer to the questionnaire Ext. A 24 sent by the Board, there is no record to show when or by whom or for whose benefit the temple was founded. But the tradition as spoken to by P.W. 1 and recounted in the Sthala Purana, Ext. B3, is that the Linga, one of the three deities in the temple was an Udbhava or Swayambhu discovered in the 10th Century or earlier by one Ranga Sharma, a Gowda Saraswath, who built a temple round it and installed the Sesha he had brought with him from Goa, his original home, and that the third deity, Bhadra Narasimha was installed in the 12th Century when the members of the Gowda Saraswath community, who were till then shaivites embraced the Madhva faith. This tradition by itself might not be of any great value (P.W. 1's evidence that until 1814 the temple was a private family temple and that it was transferred to the community in the course of the next 14 or 15 years is at variance with the plaintiff's case that it was dedicated for the benefit of the community) but in the light of the other evidence which we shall presently discuss, it would appear that there is something in the tradition.

7. From as long as is known, according to the written statement of the 2nd defendant at least from the commencement of the nineteenth century, the

management of the temple has vested exclusively in the Gowda Saraswath Brahmin community. This, of course, does not mean that the temple, is a Gowda Saraswath Brahmin temple, any more than the fact that the management of a temple, has vested exclusively in one family, means that the temple is a private family temple. It is quite possible that the Gowda Saraswath Brahmin community owing to their wealth and importance (the evidence shows that they are the richest and most influential community of the locality) were able to monopolise the management. But, if, as is alleged by the defendants, the temple has all along been a temple of the general Hindu public, one would have expected at least attempts by the general Hindu public to share in the management. Admittedly there were none and, what is more, it would appear that all along the general Hindu public and the authorities had recognised the communal character of the temple and that it was in G.O. No. 1295, P.H., passed by the Government of Madras on 17-5-1945 that, for the first time the assertion was made that the temple was a general Hindu temple and not one exclusively belonging to the Gowda Saraswath Brahmin community.

8. Ext. A5 is a certified copy of the judgment in O.S. No. 37 of 1891 on the file of the Sub-Court of South Kanara. That was a suit between certain members of the Gowda Saraswath Brahmin community with regard to certain hereditary rights in the suit temple. The suit has no direct bearing on the present matter, and its only relevancy is that the judgment in more than one place takes it for granted that the temple is a temple belonging to the Konkani (Gowda Saraswath Brahmin) community of South Kanara. Ext. P. 6 dated 25-5-1920 is a petition filed by two members of the Gowda Saraswath Brahmin community before the Collector of South Kanara, under sections 92 and 93 of the C.P.C. for leave to institute a suit for settling a scheme for the suit temple. There, there is the assertion that the suit temple belongs to the Gowda Saraswath Brahmin community of the District of South Kanara. Leave was granted under Ext. A7 dated 28-5-1920 and accordingly the scheme suit, O.S. No. 37 of 1920, was instituted. In Ext. A8 dated 20-12-1921, the decree in the suit, there is the statement that the suit temple belongs to the entire Gowda Saraswath community of the District of South Kanara and this statement is repeated in Ext. A9 dated 21-1-1924, the judgment in appeal therefrom. The same statement is to be found in Ext. A10 dated 31-3-1930, the judgment of the District Judge of South Kanara in O.S. No. 4 of 1928, a suit for modifying the scheme settled in O.S. No. 37 of 1920. It is true that the general Hindu public were not parties to these suits, that the sectional character of the temple were not in issue therein, and that the statements can by no means operate as *res judica*. It is also likely that the statements were based largely on the assertions of the parties to those suits who were all Gowda Saraswath Brahmins, but the suits at least show that from 1891 onwards the Gowda Saraswath Brahmins of South Kanara were asserting in the courts that the suit temple belonged exclusively to them. The scheme suit must have received a certain degree of publicity - in fact we find from Ext. All the decree in O.S. No. 4 of 1928, that a copy of the scheme framed therein was

forwarded to the Hindu Religious Endowments Board and was also published in two vernacular papers of the district. It is reasonable to assume that it was to the knowledge of the general Hindu public that the repeated assertions of exclusive rights in the temple were being made by the Gowda Saraswath Brahmin community, and the silence of the general Hindu Public in the face of these assertions - it is admitted that at no time did the general Hindu public assert any claim to the temple - is significant.

9. There are one or two features of the schemes framed in O.S. 37 of 1920 and O.S. No. 4 of 1928 to which we might draw pointed attention. The former scheme after saying that this temple is a very ancient institution belonging to the entire Gowda Saraswath Brahmin community of the district provides that the jurisdiction and control over the temple shall vest in all the members of the said community residing in the district. Then we find provision made for the maintenance of a free Sanskrit Vidya Shala for the exclusive benefit of the students of the Gowda Saraswath Brahmin community, and students coming [from outside the village are to be given boarding and lodging at the expense of the temple. The temple is also to maintain a separate Higher Elementary School for free education of the poor, not exclusively confined to the students of the community. But here again we find that the school is to be open only to students of such communities as will be determined by the council of management (which is exclusively Gowda Saraswath in composition) in view of the fact that the students of the priestly class of the community are also to receive their education there. The scheme also permits the temple to make contributions to high schools or colleges established in the district by the Gowda Saraswath Brahmin community and to award scholarships to poor deserving students of the community. It further requires the temple to construct a Chatram for accommodating Gowda Saraswath pilgrims assembling during the annual festivals, and the temple is to bear the funeral expenses of poor members of the community dying in the village. None of these provisions was altered by the scheme framed in O.S. No. 4 of 1928. We thus find that the schemes framed for the temple by the courts in 1921 and 1930 authorised the diversion of the funds of the temple for the exclusive benefit of members of the Gowda Saraswath Brahmin community of South Kanara, which would hardly be proper if the temple were not a sectional temple belonging to that community. Yet no member of the general Hindu public raised a protest. That the scheme also authorised expenditure for the benefit of the general public (as for example the establishment of a free Higher Elementary School and a Dharmasala for the use of Bairagis) is no indication of the general character of the temple for such expenditure would be proper even in the case of a sectional temple.

10. The South Kanara District Gazetteer, published by the Government of Madras contains the following statement at page 196 of its 1938 edition.

The Gowda Saraswaths of Goa who migrated to South Kanara and further south were mainly the Sastikars, i.e., the Vaishnavas, and hardly any of their numerous

temples in this district are dedicated to Shiva. Nevertheless they have a high regard for Shiva and some of them also observe the Saiva festivals. All of them worship his consort Gauri and his son Ganesa during the latter's festival in September. Their most important temple in this district is the Srimad Ananteshwara temple at Mangeshwar, a rich and ancient institution, which was famous even during the time of Madhawacharya, who is known to have visited it in about 1293 A.D., and the fact that even then it belonged to this community suffices to argue the existence of their colonies in this district long before they migrated hither in large numbers after the Portuguese persecution in the 16th century.

In Ext. A 17 dated 28-1--1939, the annexure to the order of the Hindu Religious Endowments Board deciding to notify the temple, there is the statement that the temple is one of the most famous temples of a highly advanced community in South Kanara, the Gowda Saraswaths, and in Ext. A 16 dated 18-9-1941, the notes prepared by one of the Commissioners of the Board, after an inquiry into the affairs of the temple, there is the observation that the temple is the richest temple of the Gowda Saraswath Community in the South Kanara District.

11. The temple is by no means an insignificant temple. It is a very famous temple attracting a large number of worshippers and owning very extensive properties, both movable and immovable. From as long as is known, and admittedly from the beginning of the 19th century, the temple has been under the exclusive management of the Gowda Saraswath Brahmin community, and the evidence shows that, whenever occasion arose, the Gowda Saraswath Brahmin community has asserted an exclusive claim to the temple, the earliest of such assertions of which there is the evidence being in O.S. No. 37 of 1891. The authorities, namely, the 2nd defendant Board, (now the Commissioner) and the 3rd defendant Government have from time to time recognised the sectional character of the temple (the statement in the gazetteer is of special value) and have described the temple as one belonging to the Gowda Saraswath Brahmin community, and throughout there has not been even a whisper of a claim by the general Hindu public. The very first claim by or on behalf of the general Hindu community was made in the G.O. of 1945 which provoked the present suit. All this seems to us inconsistent with any right in the general Hindu community and consistent only with the temple being a sectional temple of the Gowda Saraswath Brahmins of South Kanara as claimed in the plaint.

12. The court below has considered various other pieces of evidence such as Ext. A-3, an appeal issued by the temple in 1857 for subscription for renewing the copper sheeting of its roof. There the deity is described as appertaining to the Brahmins of the Bharadwaja Gotra of Kundodari village, namely, the Gowda Saraswath Brahmins who originally came to South Kanara from that village. The appeal is addressed to the Gowda Saraswath Brahmins of several places in South Kanara (and also of Malabar) and attached to it, is a long list of subscribers; all of whom from their names, appear to be Gowda Saraswath Brahmins. Another

document considered by the court below is Ext. B-3, a Sthala Purana of Manjeswar written in 1924 by a school master by the name of Ganapathi Rao Igal. This Sthala Purana seems to us of doubtful value, and the statement therein that the linga in this temple was installed in the Kritha Yuga seems to us of as much authenticity as the further statement that the Gowda Saraswath Brahmins were brought to the place by Parasurama. The statement in Ext. B-3 that Manjeswar is a holy place, referred to in the Puranas certainly cannot lend support to the argument which seems to have been advanced on behalf of the defendants that the temple must have been in existence long before the Gowda Saraswath Brahmins came to South Kanara. In view of the conclusive nature of the evidence already referred to it is unnecessary to consider the rest of the evidence relied upon by the court below.

13. It is in evidence that Hindus other than Gowda Saraswath Brahmins worship in the temple without asking leave of anybody and, especially during festivals, make offerings. It is also in evidence that out of the 3000 and odd permanent endowments to the temple roughly 300 are by non-Gowda Saraswaths. The ancient inscriptions show that persons other than Gowda Saraswaths have figured among the benefactors of the temple. But all this is not inconsistent with the sectional character of the temple. As pointed out by the Privy Council in AIR 1940 7 (Privy Council) , which decision was followed by the Supreme Court in Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, such incidents are not inconsistent even with the private character of a temple. It was there observed that it would be hazardous to draw any inference of dedication to the public merely from the fact of user by the public since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away; and as worship generally implies offerings of some kind it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity. To adopt the language of Their Lordships, it is not enough to deprive the temple of its sectional character to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus or among persons resorting to the annual festival. Worshippers are naturally welcome to a temple because of the offerings they bring and the repute they give to the idol; and they do not have to be turned away on pain of the temple losing its sectional character and becoming what we might call a general Hindu temple. We might also mention that, as the ancient inscriptions show, even Muslims have made benefactions to this temple without imperilling its character as a Hindu temple.

14. We might also point out that access by the general Hindu public is by no means unrestricted. According to the defendants' own witness there are Bhojonas and Santharpanas to which only Gowda Saraswath Brahmins are admitted, and every day until the Naivedyam is over i.e., from about 10 A.M. to 12 noon, no one except the Gowda Saraswaths is allowed within the inner courtyard of the temple. During the Santharpanas even the outer courtyard is closed to all non-Gowda Saraswaths.

15. It is in evidence that the temple stands on poramboke land. But that can at best only show that the temple is a public temple and is no indication of its non-sectional character. It is also to be noted that until the settlement of 1900 the land stood in the warg of a Gowda Saraswath Brahmin and that it was only in the settlement that it was registered as temple poramboke.

16. That the provisions of Chapter VI-A of the Madras Hindu Religious Endowments Act, 1926 under which the impugned order, Ext. B1, was passed and of the corresponding Chapter VI of the Madras Hindu Religious and Charitable Endowments Act, 1951, are void under Article 13 of the Constitution in that they offend Article 26 is not questioned in view of the decision in the Shirur Mutt case (A.I.R. 1954 S.C. 282 at 289). Nor that the plaintiff in this case, namely, the Gowda Saraswath Brahmin Community of South Kanara is a section of a religious denomination entitled to the protection of Article 26, in view of what has been said in that case and more specifically with reference to this particular community in the two Moolky Temple cases, Devaraja v. State of Madras (A.I.R. 1953 Madras 149) and Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, . What is argued is that Article 13 of the Constitution is not retrospective in operation and that the abrogation of a law by reason of that Article can be with effect only from the date of the Constitution and cannot in any way affect an order like" the impugned order passed before the Constitution when the law was a perfectly good law. The order itself is not a law within the meaning of Article 13 and remains unaffected by that Article. Likewise, any action taken, rights accrued, or liability incurred, under the order. The rights of the community in the temple are restricted and regulated by the order. This was done before the Constitution came into force and there can be no question of setting aside the order or reviving the rights by a retrospective application of Article 13. The decision in Veera swaraswamyvaru Temples v. Board of Commrs. for H.R.E. (A.I.R. 1957 Andhra 373) is cited in support of this argument.

17. It seems to us that, as pointed out by a Division Bench of this Court in O.P. No. 324 of 1957, (a decision that has not yet been reported) that this argument fails to take note of section 103 of the new Act, Madras Act XIX of 1951 by reason of which all orders passed, and proceedings or action taken, under the repealed Act, Madras Act II of 1927, must be deemed to have been passed and taken under the corresponding provisions of the new Act. It follows that, for all purposes, the impugned order, Ext. B1, must be regarded as an order passed not under the old provision, section 65A of Act II of 1927, but under the new provision, section 64 of the Act XIX of 1951. The order must therefore be regarded as one passed at the moment when Act XIX of 1951 came into force. In other words it is a post-Constitution order made under a law which is void and is therefore itself void and of no effect. Perhaps the proper decree to pass would have been a declaration to this effect rather than to cancel the order as the court below has done, but this is a matter of no practical consequence.

18. Only two other defences have been taken before us; (i) that the suit is barred under Order XXIII, rule 1 (3) of the CPC and (ii) that it is barred by time. Neither defence impresses us.

19. The bar under Order XXIII rule 1 is pleaded with reference to the withdrawal without leave of O.S. No. 72 of 1938 on the file of the Sub Court, South Kanara, a suit brought by two of the three trustees of the temple against the Board, the third trustee being formally impleaded as a defendant. The Board had on 29-7-1938 called upon the trustees of the temple u/s 65A(1)(a) of Act II of 1927 to show cause why the temple should not be notified under Chapter VI-A. On 25-11-1938, the suit was brought for a declaration that the Board had no jurisdiction to hold the contemplated inquiry or to notify the temple under the provisions of Chapter VI-A and for an injunction restraining the Board from doing so. Ext. A15, the Judge's notes in the suit, show that on 10-1-1939 the plaintiffs withdrew the suit stating that they had resigned from the trusteeship, and that the suit was accordingly dismissed as withdrawn. Ext. A14 is the order of dismissal. As we have already observed no leave of court seems to have been taken for the withdrawal.

20. We do not think that this withdrawal can operate as a bar under Order XXIII rule 1(3). In the first place, as rightly observed by the court below in paragraph 58 of its judgment, the suit was not a representative suit brought on behalf of the community which is the real plaintiff in the present suit. Ext. A 13 is a copy of the plaint in the previous suit. It is true that in paragraph 30 thereof the plaintiffs have said that they are bringing the suit in their own right as trustees as also under Order I rule 8 on behalf of all the Gowda Saraswath Brahmins residing in the South Kanara District, and they have also in the same paragraph sought the necessary permission. But it would appear from the endorsements on the plaint and from the entries in the Judge's notes that this prayer was completely lost sight of and that no notice was ordered under Order I rule 8C.P.C., far less leave granted. The plaint was admitted on 25-11-1938 and summons was straightaway directed to the defendants for 19-12-1938 on which date the 1st defendant, namely, the Board entered appearance and the 2nd defendant, the third trustee was absent. The suit was posted to 10-1-1939 for written statement and, on that date, as we have seen, the plaintiffs withdrew from the suit. The suit was in no sense a suit by the Gowda Saraswath Brahmin community and its withdrawal can be no bar to the present suit.

21. We might also observe that the subject-matter of that suit was altogether different. No question of the community's title to the temple was there involved-Chapter VI A of the Act of 1927 applied equally to sectional as to general temples, and a notification proceedings did not imply that the temple was not a sectional temple - and the mere assertion in the plaint that the temple was a communal temple belonging to the Gowda Saraswath community cannot have the effect of making the title of the community the subject-matter of the suit. In fact the title of the community was not then in dispute at all and it was, we have

already seen, expressly admitted by the Board in their order Ext. A 17 dated 28-1-1939. The suit was for a declaration that the conditions requisite for action under Chapter VI A did not obtain the non-sectional character of the temple is not one of the conditions - and for an injunction restraining the Board from proceeding further in the matter. The present suit is for a declaration of the sectional character of the temple and for setting aside the notification actually made by the Government on the report of the Board, the cause of action in respect of the latter relief having arisen only when Act XIX of 1951 came into force and the order of notification became an order passed under this new Act.

22. With regard to limitation it is common ground that Article 1-20 is the proper Article to apply. The question is when did the right to sue accrue so as to furnish the starting point for limitation under that Article ? The plea of limitation was expressly taken only with regard to the first relief claimed, namely, the declaration that the temple belonged to the community, and, according to the appellants, the right to sue arose when the notification proceedings were initiated by the Board by its notice dated 29-7-1938 u/s 65 A (1) (a) of Act II of 1927 or, at any rate, when the Government passed the impugned order, Ext. B I, dated 10-6-1939. According to the plaintiff the right to sue accrued only when, by their order dated 17-5-1945, (which has been referred to in the pleadings by both sides but has not been marked), Government declined to recognise that the temple was a sectional temple owned by the community. We have no doubt that the plaintiff is right, for, as we have already shown, the notification proceedings and the notification itself implied no threat whatsoever to the title of the community, but, on the contrary, at least in the Board's proceedings Ext. A 17 dated 28-1-1939, expressly affirmed the title of the community. The first time that the title of the community was questioned by anybody was by the Government's order of the 17th May 1945. That was the first invasion of the plaintiff's rights and it was then that for the first time the plaintiffs got a cause of action to sue the Government or any one else for a declaration of its title. The suit having been instituted in 1947 is obviously in time.

23. With regard to the second relief, namely the cancellation of the order Ext. B 1, brought in by way of amendment to the plaint/the cause of action for that arose only when on the passing of Act XIX of 1951 that order became passed u/s 64 of that Act. The appeal fails and is dismissed with costs.