

CASE NO.:
Appeal (civil) 5641 of 2004

PETITIONER:
Vinayaka Dev Idagunji & Ors.

RESPONDENT:
Shivaram & Ors.

DATE OF JUDGMENT: 28/07/2005

BENCH:
B.P. Singh & Arun Kumar

JUDGMENT:
J U D G M E N T

ARUN KUMAR, J.

The question for consideration in this appeal is :Whether a suit to establish a right to be hereditary 'archaks' (Pujaris) in a temple and a share in the offerings made to the deity, is a suit in relation to personal/private right of the archaks or it is a suit in the nature of exercising a public right in a public trust? The question has arisen in the context of bar created by Section 50 of the Bombay Public Trusts Act, 1950. Regarding suits falling within the categories enumerated in Section 50 of the Act, either the Charity Commissioner has to file them or they have to be filed after obtaining consent in writing of the Charity Commissioner.

Briefly, the facts are : the plaintiffs (respondents herein) claiming to be hereditary archaks of the temple in suit from times immemorial and having a right to perform their duties (poojapal) as archaks in the temple, filed a civil suit for declaration to establish these rights. According to the plaintiffs, their family has been performing poojapali and exercising the rights incidental thereto since ancient times. The plaintiffs also claimed that they are entitled to emoluments in the form of share in the offerings made by the devotees. The ancestors of the plaintiffs have been exercising such rights since time immemorial when there was no trust for the temple and there were no trustees. The trust was created much later and the trustees are only managers of the properties of the trust. The trustees sought to remove the plaintiffs from archakship. According to plaintiffs the trustees had no right to remove hereditary archaks like the plaintiffs. The plaintiffs further pleaded that often the offerings to the deity are symbol of sacrificial dedication of the produce of the land grown by the efforts of the devotees. "Padiakki" is the rice and coconut given by the devotees as dan (donation) to the officiating priest to take home. On this count, the priest has to accept the many negative karmas of the donor and to mitigate this, the priest has to perform penance. The plaintiffs had been exercising their rights to the knowledge of the defendants who are the trustees of the temple trust. According to the plaintiffs the archakship is not a job or vocation but a hereditary religious office, functions whereof they have to discharge ungrudgingly. A state of harmony and cooperation between the trustees and archaks continued till 1974-75. Thereafter, the trustees allegedly prepared a "Niyamavali" (Rule Book) meant for regulating the activities like Pooja and Viniyogas etc. The Niyamavali had no legal or statutory backing. Under the Niyamavali the trustees also tried to interfere with the right of the plaintiffs regarding remuneration and donations received by them from the devotees. According to the plaintiffs the emoluments received by the archaks are not the income of the temple.

In order to get rid of the plaintiffs, the defendants issued a notice

dated 21st September, 1994 terminating their services as archaks. The plaintiffs filed the instant suit for declaration that the plaintiffs are hereditary archaks of Shri Mahaganapathy (Vinayaka Dev) Temple of Idagunji in Honnavar Taluk and for consequential reliefs like declaring that the order of termination issued by defendants dated 21st September, 1994 is illegal, void and contrary to the principles of natural justice etc.

The defendants \026 appellants filed a written statement denying the rights of the plaintiffs to be hereditary archaks. It was further pleaded that the temple was under a public trust registered under the Bombay Public Trusts Act, 1950. Further a plea was taken in the written statement that the suit filed against the trustees of the public trust and the reliefs prayed in the plaint directly relate to administration and management of the public trust and as such without making the temple trust a party, the suit was not maintainable in view of Sections 50, 51, 79 and 80 of the Bombay Public Trusts Act read with Section 9 of the Code of Civil Procedure. According to the defendants, the plaintiffs had not obtained the permission of the Charity Commissioner as required under Sections 50 and 51 of the Bombay Public Trusts Act to file the present suit.

On the basis of the pleadings of the parties, the trial court framed as many as 32 issues. At the stage of evidence the defendants filed an application under Order 14 Rule 2 read with Section 151 of the Code of Civil Procedure that certain issues relating to maintainability of the suit be tried as preliminary issues. The application was rejected by the learned Civil Judge. The defendants filed a Revision Petition under Section 115 of the Code of Civil Procedure before the High Court. The High Court declined to interfere with the order of the trial court and accordingly dismissed the Civil Revision Petition. Further, in view of the fact that the suit had been pending for more than 10 years, a direction was issued to the trial court to dispose of the suit on merits within six months. The defendants, according to the said order, have come up before this court by way of a petition for special leave to appeal. Leave was granted and the order under appeal was stayed by this court on 30th August, 2004. Interim stay of the impugned order was passed on the first day of hearing, i.e. on 7th May, 2004. We have heard learned counsel for the parties at length. The main question for consideration is whether the suit filed by the respondents-plaintiffs is one which pertains to administration of a public trust or is it a suit to establish a private right to archakship or worship in the temple filed by persons claiming to be having such a right? Relevant portion of Section 50 of the Bombay Public Trusts Act as applicable to the facts of the present case is reproduced as under :

" Section 50 :

In any case-

(i) where it is alleged that there is a breach of a public trust,

(ii) where a declaration is necessary that a particular property is a property belonging to a public trust or where a direction is required to recover the possession of such property or the proceeds thereof or for an account of such property or proceeds from any person including a person holding adversely to the public trust, or

(iii) where the direction of the Court is deemed necessary for the administration of any public trust,

the Charity Commissioner or two or more persons having an interest in the trust and having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether

contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate, to obtain a decree for any of the following reliefs :

- (a) an order for the recovery of the possession of such property or proceeds thereof,
- (b) the removal of any trustee or manager,
- (c) the appointment of a new trustee or manager,
- (cc) vesting any property in a trustee,
- (d) a direction for taking accounts and making certain inquiries,
- (e) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust,
- (f) a direction authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged,
- (g) the settlement of a scheme or variations or alterations in a scheme already settled, or
- (h) granting such further or other relief as the nature of the case may require :

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust except in conformity with the provisions thereof."

To find out the nature of the suit, we have to go to the plaint in the suit as instituted by the plaintiffs- respondents in the Civil Court. It is the case of the plaintiffs that they have a hereditary right of archakship with emoluments attached. This right of archakship started with the consecration of the deity. The families of the plaintiffs have been performing archakship right from the time of consecration of the deity. In fact the ancestors of the plaintiffs who were performing the functions as archaks also acted as managers and custodians of the temple and its properties. After the introduction of the Madras Endowment Act, the trustees were appointed. One of the members of the families of the plaintiffs used to be appointed as a trustee of the Board which consisted of five trustees at the initial stages. This continued till the year 1930 whereafter they stopped having a member of the plaintiffs' families on the Board of trustees. The plaint contains various details to show and establish the right of the plaintiffs to archakship of the temple and the right to a share in the offerings of the deity with which we are not concerned at this stage. The fact relevant for our purpose is that vide a notice dated 21st September, 1994, the plaintiffs' services as archaks were terminated with which their right to perform puja in the temple and to have a share in the offerings also came to be terminated. The plaintiffs challenged the said notice as illegal and untenable. The plaintiffs prayed for a declaration that they are hereditary archaks of the temple in question. The said right to act as archaks was in the nature of the property. A declaration was also sought to have share in the offerings to the deity at the temple. Further a declaration was sought that the order of termination dated 21st September, 1994 was illegal, void and contrary to the principles of natural justice. Injunction was sought to restrain the plaintiffs from interfering with the rights of the plaintiffs in performing their duties as

archaks.

We are in the present appeal concerned with the pleas raised by the defendants- appellants in their written submissions to the effect that the suit was barred under Section 50 of the Bombay Public Trusts Act, 1950. The trial court as well as the High Court have rejected this plea raised by the defendants-appellants.

A perusal of Section 50 of the Act shows that in matters referred to or enumerated in the said Section, a suit is to be instituted after obtaining the consent in writing of the Charity Commissioner as per provisions of Section 51 of the Act. The learned counsel for the appellants submitted that the claim of the plaintiffs in the plaint falls within the ambit of administration of a public trust as admittedly there is a public trust with respect to the temple in question. If the matter pertains to administration of public trust then the Charity Commissioner comes into the picture and a Civil suit is not maintainable without compliance of Sections 50 and 51 of the Act. The real question is whether the present suit is a suit pertaining to administration of a public trust. In response to this question, the learned counsel for the respondents drew our attention to the preamble to the Act which provides "an Act to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay".

From this Preamble it is apparent that the main object of the Act is to regulate the administration of public trusts. The question is: Will this extend to regulating the right to perform worship in the temple? The right asserted by the plaintiffs in the plaint is claimed as their families' personal/private right. Whether they are entitled to continue as archaks on hereditary basis is a private claim of the plaintiffs. This right has nothing to do with any public functions of the trust or administration of the trust. Thus according to the learned counsel for the plaintiffs, Section 50 of the Act is not attracted at all. In support of the submission that the right claimed by the plaintiffs is their personal right which is an enforceable civil right, the learned counsel relied on *Rajkali Kuer vs. Ram Rattan Pandey* [1975 (2) SCR 186] wherein it was observed "that religious offices can be hereditary and that the right to such an office is in the nature of property under the Hindu Law is now well established." In the said judgment, this Court has relied on a Full Bench judgment of the Calcutta High Court while observing as under :

"That religious offices can be hereditary and that the right to such an office is in the nature of property under the Hindu Law is now well established. A Full Bench of the Calcutta High Court in *Manohar vs. Bhupendra* [AIR 1932 Calcutta 791] has laid down in respect of Shebaitship of a temple and this view has been accepted by the Privy Council in two subsequent cases in *Ganesh vs. Lal Behary* [(1936) LR 63 IA 448] and *Bhabatarini vs. Ashalata* [(1943)LR 70 IA 57]. In a recent judgment of this Court reported as *The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar* [(1954) SCR 1005] this view has been reiterated and extended to the office of a Mahant. On the view that Shebaiti is property, this Court has also recognized the right of a female to succeed to the religious office of Shebaitship in the case reported as *Angurbala vs. Debabrata* [(1951) SCR 1125], where the question as to the applicability of Hindu Women's Right to Property Act to the office of Shebaitship came up for consideration. On the same analogy as that of a Shebaiti right, the right of a hereditary priest or Pujari in a temple must also amount to property where emoluments are attached to such an office."

Reliance was also placed on Ram Rattan, through Lrs. Vs. Bajrang Lal and ors. [1978 (3) SCC 236] wherein while dealing with the question whether hereditary office of Shebait is immovable property, it was noted that :

"The question then is whether the hereditary office of Shebait is immovable property. Much before the enactment of the Transfer of Property Act a question arose in the context of the Limitation Act then in force whether a suit for a share in the worship and the emoluments incidental to the same would be a suit for recovery of immovable property or an interest in immovable property. In Krishnabhat bia Hiragange vs. Kanabhat bia Mahalbhat etc. [6 Bom HCR 137] after referring to various texts of Hindu Law and the commentaries of English commentators thereon, a Division Bench of the Bombay High Court held as under :

Although, therefore, the office of a priest in a temple, when it is not annexed to the ownership of any land, or held by virtue of such ownership, may not, in the ordinary sense of the term, be immovable property, but is an incorporeal hereditament of a personal nature, yet being by the custom of Hindus classed with immovable property, and so regarded in their law\005\005"

It was argued on behalf of the respondents that the reliefs claimed in the present suit do not fall in any of the clauses of Section 50 of the Act. There is no allegation of breach of trust; no declaration is sought that any property is a property belonging to a public trust. The right to archakship is an individual and personal right enforceable under ordinary law; nor any direction of the court is sought for administration of the public trust. The plaintiffs have never sought any orders of the court regarding administration of the trust. To illustrate the point our attention was drawn to Sri Kallagar Devasthanan vs. Thiruvengadathan [AIR (30) 1943 Madras 222]. In this case the question was about the competence of Civil Court to entertain a suit. Father of the plaintiffs in this case was a hereditary archak of a temple. The plaintiff was adopted by the mother after the death of his father. The trust did not recognize the plaintiff as an archak. The plaintiff filed a civil suit challenging the action and he being not allowed to be archak of the temple. Objection was taken about the maintainability of the suit. Reliance was placed on Section 73 of the Hindu Religious and Endowments Act by the defendants in support of objection regarding maintainability of the suit. The said Section had provision similar to the one under consideration in the present case. The following observations are relevant for the present purpose :

"If the words "administration or management" used in sub-clause (3) of s.73 have been employed with reference to the "religious endowment" as defined in the Act and this is what is stated in that sub-clause, it appears to be clear that they could not possibly be taken to cover or include the case of a dismissal of an archaka of a temple. The administration or management must be with reference to the "religious endowment," i.e. with reference to the property mentioned in the definition and not with respect to the dismissal of an archaka. The suit to set aside his dismissal relates to a personal right and as long as there is no question relating to the administration or management of the endowed property, the suit cannot be held to have been barred under that section."

This was also a case in which right to archakship was claimed and it was held to be a private personal right which had nothing to do with administration or management of the trust and the suit was held to be maintainable in a civil court. In the case in hand respondents/plaintiffs are trying to establish their hereditary right to act as archaks in the temple in suit. This has nothing to do with administration of the trust.

What is to be seen is the relief the plaintiffs are seeking from the court. First of all, they are seeking a declaration about their hereditary right as archaks of the temple. This right is claimed in their personal capacity as a family of archaks who have been performing the functions of archaks since the day the temple was established and the deity was consecrated. It is different matter whether ultimately the plaintiffs' contention is accepted by the court or not. Surely, the plaintiffs are entitled to have their claim examined by the court. If they fail to establish their claim, they will be out of the court. However, if they succeed in establishing the claim they will be entitled to the declaration sought. They cannot be non suited at the threshold unless the suit is expressly barred by any statute. We have seen the provision of Section 50 of the Bombay Public Trusts Act relied upon by the appellants-defendants. The said section does not cover a suit of the present type. Analogy has been drawn of Section 92 of the Code of Civil Procedure while considering Section 50 of Bombay Public Trusts Act. Both provisions are in the nature of representative suits which pertain to public trusts and protection of public interest in the trusts. In the present case, there is no public interest involved. The only interest is that of the plaintiffs and their families. The right of archakship is claimed on the basis of inheritance. It is a hereditary personal right which they want to establish. The right is purely of a private nature. We are of the view that Section 50 of the Bombay Public Trusts Act is not attracted at all in the facts of the present case.

We have seen the object of the Bombay Public Trusts Act. Appropriately the Act seeks to regulate and make better provision for administration of public religious and charitable trusts. Such trusts cater to things of public interest, i.e. things which concern large sections of public. Unless such trusts are properly administered public interest will suffer. Therefore, matters affecting administration of such trusts are covered under Section 50 of the Bombay Public Trusts Act. This situation is somewhat similar to suits under Section 92 of the Code of Civil Procedure. These suits are suits in representative capacity and pertain to matters of public interest. In contrast the suit which has given rise to the present appeal is a suit to establish an individual right. The plaintiffs claim that they are hereditary archaks of the temple since time immemorial and are entitled to exercise this right which cannot be taken away from them. No public interest is involved. Public is not concerned whether A acts as an archak or B acts. Such a suit, therefore, cannot be covered by Section 50 of the Act. Law is settled on this aspect as per various judgments of this Court.

In *Raje Anand Rao vs. Sham Rao and ors.* [(1961) 3 SCR 930], the dispute had arisen in view of dissatisfaction with the management of a temple which was an endowment for the public. A suit under Section 92 of the Code of Civil Procedure was filed. A scheme was framed for the management of the temple. The right of pujaris as a hereditary right was not affected under the scheme. Therefore, some of the pujaris who were not parties to the suit and were not, therefore, heard, made a grievance of this fact. The matter came upto this court. An amendment of the scheme by the District Judge without hearing the pujaris was also put in issue. However, it was held that the fact that the pujaris were not parties to the suit will not take away the jurisdiction of the District Judge to modify the scheme, if the modification is with respect to administration of the trust and if it has not affected the private rights of the pujaris. A suit under Section 92 of the Code of Civil Procedure being a representative suit binds not only the parties thereto but all those who are interested in the trust. The

scheme was framed for the management and administration of the trust and it did not affect the hereditary right of the pujaris to conduct the puja. Thus this judgment makes it clear that the right of the pujaris to conduct puja is their private right and does not fall in the category of suits under Section 92 of the Code of Civil Procedure.

Our attention was drawn by the learned counsel for the respondents to some other judgments holding the right to perform puja in the temple as a private right of the pujaris or archaks and the same cannot be defeated by invoking section 50 the Bombay Public Trusts Act or Section 92 of the Code of Civil Procedure. We need not refer to all the judgments in view of the fact that the law on this point is well settled. We only refer to the latest judgment of this court in Sahebgouda (Deceased) vs. Ogeppa and ors [2003 (6) SCC 151]. This case pertains to a suit for declaration of Pujaris' Pujariki right of performing puja. The plaintiff sought an injunction to restrain the defendants from interfering with the aforesaid right. Objection was taken about the maintainability of the civil suit in view of the provision of Bombay Public Trusts Act, 1950. However, the objection was turned down holding that the reliefs claimed in the suit do not come within the ambit of Sections 19 or 79 of the Act which gave jurisdiction to the Assistant Charity Commissioner to decide certain issues like existence of public trust or whether a property is a trust property. In this suit brought by the plaintiffs to establish his right of archakship the only relief claimed was a declaration regarding the right of the plaintiffs-appellants to function as hereditary pujaris or for pujariki rights in performing puja in the temple and consequential decree for injunction for restraining the respondents from interfering with the aforesaid rights of the plaintiffs. The facts of this case are somewhat similar to those of the case in hand. It was held that the case was clearly out of the purview of the barring provisions of the Bombay Public Trusts Act. We are in respectful agreement with the view taken in this judgment. It is held that the present suit is not barred by provisions of the Bombay Public Trusts Act. Accordingly, no interference is called for with the judgment under appeal. The appeal is without merit and is hereby dismissed. Since the trial of the suit on merits has been already sufficiently delayed, the trial court may dispose of the suit on priority basis as directed by the High Court in the impugned judgment.