

CASE NO.:
Appeal (civil) 1352-53 of 1993

PETITIONER:
Sahebgouda (dead) by LRs. & Ors.

RESPONDENT:
Ogeppa & Ors.

DATE OF JUDGMENT: 28/03/2003

BENCH:
S. Rajendra Babu & G.P. Mathur

JUDGMENT:

JUDGMENT

G.P. Mathur, J.

These appeals by special leave have been preferred by the appellants against the judgment and decree dated July 24, 1992 of the High Court of Karnataka by which the Second Appeals preferred by the respondents were allowed and the suit filed by the appellants was dismissed on the ground that the same was barred by Section 80 of Bombay Public Trust Act, 1950 (hereinafter referred as 'the Act').

The question in issue relates to the jurisdiction of the Civil Court to entertain the suit, which was instituted by the appellants in the Court of Principal Munsiff, Bijapur. The case of the appellants in brief was that they are the ancestral Pujaris of the Amogsidda Temple situated in Survey No. 214, particularly Survey No. 214-B of Jalgeri Taluka Bijapur, and prior to them their father and grand-father performed Puja by turns. The appellant No.1 has eight annas right of Puja and other appellants have the remaining right of Puja which right the appellants and their ancestors had been exercising by turns. The appellants performed Puja throughout the year and at the time of annual Jatra of Chhatti Amavasya get the offerings made by Bhaktas to the God Amogsidda in the aforesaid temple and this has been going on for a long time probably from the time of Amogsidda's death and construction of Samadhi about six hundred years back. The Samadhi is the God of Amogsidda in the suit temple and the appellants have been performing Puja and getting the benefit of offerings and serving them as ancestral wahiwatdar Pujaris of the temple being descendants of Amogsidda. The respondents come from Arkeri village and claimed to be related to Amogsidda being Kurbars and disputed the right of the appellants and their ancestors. The respondents and some others filed a suit for injunction against the ancestors of appellants being OS No. 88 of 1944 but the same was dismissed. Thereafter they again started obstructing the appellants in performance of Puja in the temple in 1967 and therefore the present appellant no.4 and father of appellant no.3 had filed OS No.347 of 1967 for injunction for restraining the respondents from causing any obstruction in the performance of Puja but the suit was dismissed for want of prosecution. The appellants have been continuously exercising their right of Puja till now without any objection and the annual Jatra taking place in the area around the temple is managed by a Panchayat led by Siddalingappa Karbasappa Siralshetty and the Pujari. It was further pleaded that the appellants and Bhaktas had taken steps to get the temple and the land annexed to it registered as Public trust with the Assistant Charity Commissioner at Belgaum and in that connection Inquiry No.321 of 1980 had been instituted in his office. The reliefs claimed in the suit are as under :

- (A) A decree of declaration that plaintiffs are the ancestral wahiwatdar-Pujaris and thus have the Pujariki rights of performing Puja at all times of the Amogsidda God in suit temple at all times by turns among themselves as stated above;
- (B) A consequential decree of permanent prohibitory injunction

restraining defendants, their agents and assigns or representatives from interfering in any manner whatsoever with the plaintiff's right of Puja of Amogsidda God in the Temple;

(C) Any other relief, the Court deems fit in the circumstances of the case. The respondent No.1 filed written statement denying the allegations made in the plaint, and pleaded that as the suit instituted by the appellants in the year 1967 had been dismissed in default, the present suit was barred by order IX Rule 9 C.P.C. The respondent No.4 filed written statement contesting the suit on the grounds, inter alia, that the appellants did not have any right whatsoever to perform the Puja as Pujaris in the temple and that the Amogsidda temple is situate in Mammatti Gudda in RS No.214/B of Jalageri village; that neither the appellants nor their ancestors ever performed Puja in Amogassidda Temple nor have they received any offerings made by the Bhaktas and that the allegations made in the plaint that the respondents had put any obstructions and started picking up quarrels was false.

On the pleadings of the parties the learned Munsiff framed 11 issues and Issue No.8 was whether the suit is barred on account of Sections 79 and 80 of the Act. The learned Munsiff decided issue No.8 in favour of the appellants and held that the suit was not barred by the aforesaid provisions of the Act. After appraisal of the oral and documentary evidence he partly decreed the suit for a declaration that the appellants and the respondents are the Pujaris of the suit temple situate at Mammatti Gudda. The appellants along with a Devasthan Committee of Jalageri village shall perform Puja and Jatra of Amogsidda temple situate at Mammatti Gudda upto 15th day of coming Chatti Amavasya of 1986 and they shall hand over the possession of the suit temple from 16th day of Chatti Amavasya of 1986 to the respondents and the respondents shall perform Puja and also jatra of the suit temple till 15th day of future Chatti Amavasya. It was also declared that the appellants and respondents have got right of Puja and celebration of Jatra on yearly turn as stated aforesaid. The appellants and also the respondent Nos. 2, 4 and 6 preferred appeals against the decree passed by the learned Munsiff. The First Appellate Court allowed the appeal of the appellants and dismissed the appeal of the respondents and the decree passed by the trial court was modified. The appellants were held to be the hereditary Pujaris of Amogsidda temple situated at Mammatti Gudda and other temples surrounded by it situated both in Jalageri and Arakeri village limits. The respondents were further prohibited from causing obstruction in the peaceful performance of Puja by the appellants in Amogsidda temple. Feeling aggrieved by the judgment and decree of the First Appellate Court, the respondents preferred second appeals before the High Court. The High Court has observed that a very important point regarding the effect of filing of the application for registration of the temple before the Assistant Charity Commissioner, Belgaum and the pendency of inquiry before him regarding registration of the temple as a Trust escaped the notice of the courts below. It was held that the question whether the temple is a public trust could only be decided by the Assistant Charity Commissioner and this point could not be decided by the Civil Court as the jurisdiction of the Civil Court was barred under Section 80 of the Act. It was further held that the appellants are claiming rights not only as Pujaris but as Pujari-cum-trustees and therefore it cannot be said that the suit of the appellants was only for Pujariki rights. It was accordingly held that the jurisdiction of the civil court was barred under Section 80 of the Act, in view of the inquiry which was pending before the Assistant Charity Commissioner Belgaum. On these findings the second appeals were allowed and the suit filed by the appellants was dismissed.

Learned counsel for the appellants has submitted that bar of the jurisdiction of the civil court is created by Section 80 of the Act but the said provision has no application on the facts of the present case and therefore the view taken by the High Court that the suit filed by the appellants is barred by the aforesaid section is clearly erroneous in law. Learned counsel for the respondents has, on the other hand, submitted that on the pleadings of the parties the question which requires adjudication comes expressly within the purview of the Bombay Public Trusts Act and therefore the bar created by Section 80 of the said Act was applicable and the Civil Court had no

jurisdiction to try the suit or to grant a decree in favour of the appellants and consequently the High Court was perfectly correct in holding that the suit was barred by the aforesaid provision.

As the preamble shows, the Bombay Public Trusts Act, 1950 has been enacted to regulate and to make better provision for the administration of public, religious and charitable trusts. Section 2 (13) defines a public trust and it means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860. Section 2 (18) defines a trustee and it means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager. Section 18 provides that it shall be the duty of the trustee of a public trust to which the Act has been applied to make an application for the registration of the public trust and such application is to be made to the Deputy or Assistant Charity Commissioner of the region. Sub-section (5) of this Section enjoins that the application shall, inter alia, contain the particulars regarding matters enumerated in clauses (ai) to (viii), thereof, namely, the names and addresses of the trustees and the manager, the mode of succession to the office of the trustee, list of the movable and immovable trust property with their descriptions and particulars, the approximate value of movable and immovable property, average annual income and expenditure, etc. Section 19 lays down that on receipt of an application under Section 18 the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining whether a trust exists and whether such trust is a public trust, whether any property is the property of such trust, the names and addresses of the trustees and manager, the mode of succession to the office of trustee, the origin, nature and object of such trust and the amount of gross average annual income and expenditure thereof. Section 79 provides that any question whether or not a trust exists and such trust is a public trust or particular property is the property of such trust shall be decided by the Deputy or Assistant Charity Commissioner or in appeal by the Charity Commissioner as provided by the Act. The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, unless set aside by the decision of the Court on application or by the High Court in appeal, shall be final and conclusive. Section 80 is important and it reads as under :-

"80 Bar of Jurisdiction: Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive."

The question whether the suit filed by the appellants is barred by the provisions of Section 80 of the Act has to be examined in the light of the provisions referred to above. Section 9 of Code of Civil Procedure clearly lays down that the Civil Court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is well settled that the Civil Court has jurisdiction to try all suits of civil nature and the exclusion of jurisdiction of the Civil Court is not to be rightly inferred. Such exclusion must be either explicitly expressed or clearly implied. In *Musamia Imam Haider Bax Razvi Vs. Rabri Govindbhai Ratnabhai & Ors.* AIR 1969 SC 439 (para 7) this Court observed that it is necessary to bear in mind the important principle of construction which is that if a statute purports to exclude the ordinary jurisdiction of a civil court it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion. This principle was reiterated in *Dewaji v. Ganpatlal* AIR 1969 SC 560.

It is also well settled that a provision of law ousting the jurisdiction of a Civil Court must be strictly construed and onus lies on the party seeking

to oust the jurisdiction to establish his right to do so. In VLNS Temple Vs. I. Pattabhirami Reddi AIR 1967 SC 781 Subba Rao, J. speaking for the Court held as under in para 13 of the reports:

"Under Section 9 of the Code of Civil Procedure, the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is a well settled principle that a party seeking to oust jurisdiction of an ordinary civil court shall establish the right to do so. Section 93 of the Act does not impose a total bar on the maintainability of a suit in a civil court. It states that a suit of the nature mentioned therein can be instituted only in conformity with the provisions of the Act; that is to say, a suit or other legal proceeding in respect of matters not covered by the section can be instituted in the ordinary way. It therefore imposes certain statutory restrictions on suits or other legal proceedings relating to matters mentioned therein."

The allegations made in the plaint are that the appellants are the ancestral Pujaris of the temple and prior to them their father and grand-father had been performing Puja by turn and they also get the offerings made by the Bhaktas to the God Amogsidda in the temple. The appellants claimed that their ancestors have been performing Puja and getting the offerings ever since the Samadhi was made about six hundred years back. This right they claimed as ancestral wahiwatdar Pujaris of the temple being descendants of Amogsidda. According to the appellants, the cause of action for filing the suit arose when the respondents created obstruction in performance of Puja by the appellants in the temple and they took away some Puja articles from there. The reliefs claimed are for a declaration that the appellants are wahiwat Pujaris and thus have the Pujariki rights of performing Puja in the temple at all times and also a decree for injunction restraining the respondents from interfering in any manner whatsoever with the appellants' right of Puja. It may be noted that Section 18 of the Act casts a duty upon the trustee of a public trust to which the Act has been applied to make an application for the registration of the public trust. The Deputy or Assistant Charity Commissioner to whom such an application is made is required under Section 19 of the Act to make an inquiry for the purpose of ascertaining matters enumerated in clauses (i) to (viii) thereof and they relate to the question whether a trust exists and whether the same is a public trust, whether any property is the property of such trust, the names and addresses of the trustees and manager of such trust, the mode of succession to the office of the trustee, the origin, nature and object of such trust, the amount of gross average annual income and expenditure thereon. The allegations made in the plaint show that the only right claimed by the appellants is that of being ancestral Pujaris of the temple. The appellants do not claim themselves to be the trustees of any trust as defined under Section 2(18) of the Act. No declaration regarding the existence or otherwise of a trust or that any particular property is the property of such trust which comes within the purview of the Deputy or Assistant Charity Commissioner under Section 79 of the Act has been claimed. The only relief claimed is a declaration regarding the right of the appellants to function as hereditary Pujaris or their Pujariki rights of performing Puja in the temple and a consequential decree for injunction for restraining the respondents from interfering with the aforesaid rights of the appellants. The reliefs so claimed do not at all come within the ambit of Section 19 or Section 79 of the Act on which the Deputy or Assistant Charity Commissioner has the jurisdiction to hold an inquiry and give a decision. Therefore, the bar of Section 80 of the Act which by the express language used is confined to "any question which is by or under this Act be decided or dealt with by any officer or authority under this Act and in respect of which the decision or order of such officer or authority has been made final and conclusive" would not apply.

The only ground given by the High Court for holding that the suit is barred by the aforesaid provision is that in para 3 of the plaint it is admitted that the appellants and other remaining Bhaktas have taken steps to get the temple and land annexed to it, registered as public trust with the Assistant Charity Commissioner at Belgaum and that one of the appellants admitted in his statement that he along with others had moved an application for registering temple property as a public trust and inquiry in that regard was pending. In our opinion the mere fact that the appellants along with others had taken steps to get the temple and the land annexed to it registered as public trust by moving an application to that effect under Section 18 of the Act before the Assistant Charity Commissioner cannot in any manner oust the jurisdiction of the Civil Court in view of the allegations disclosed in the plaint and the relief claimed therein. The cause of action for filing the suit is that in the night of March 3, 1982 respondents created obstruction in the performance of Puja by the appellants in the temple and taking away of certain Puja articles by them which made it impossible for the appellants to proceed with the Puja. In our opinion the decision of the controversies raised in the suit do not at all require adjudication of any such matter which may have to be done by the Assistant Charity Commissioner while exercising his powers under Section 19 of the Act on the application which was pending before him for registration of the temple and its property as public trust. We are, therefore, of the opinion that the view taken by the High Court is clearly erroneous in law and the judgment and decree passed by it must be set aside.

In the result, the appeals succeed and are hereby allowed. The judgment and decree dated July 24, 1992 passed by the High Court is set aside and the matter is remanded for a fresh decision of Second Appeals No.708 and 709 of 1990 expeditiously and in accordance with law. The appellants will be entitled to their costs.