

A VIRUPAKSHAYYA SHANKARAYYA
v.
NEELAKANTA SHIVACHARYA PATTADADEVARU

MARCH 21, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Bombay Public Trust Act, 1950—Sections 50 and 51—Recovery of trust from person not holding adversely—Whether maintainable.

C *Evidence Act, 1872—Section 42—Whether an earlier Judgment in separate proceeding relevant for determining status of a person.*

D The respondent-plaintiff filed a suit for possession of the math (a public trust) at Jamkhandi claiming himself to be the validly installed Padadayya of the math. He challenged the validity of installation of defendant Nos. 1 and 2 as Padadayya. He further challenged the installation of one S as Padadayya who had nominated defendant No. 1 as Padadayya.

E In an earlier proceeding initiated by A, the installation of S as Padadayya was challenged. The Privy Council (High Court of Bombay being so designated by the erstwhile Rules) had held that S had been validly installed as Padadayya as he had been nominated before his marriage. The plaintiff was not a party to the said proceedings.

The High Court held that the installation of S as well as the appellant was vitiated. Hence the present appeal.

F Allowing the appeal, this Court

G HELD: 1. The Privy Council having held in an earlier proceeding that Shivalingayya was duly nominated and installed as Padadayya inasmuch as he had been so nominated by Shankarayya before his marriage, which is the only ground on which Shivalingayya's nomination has been held to be vitiated in the present proceedings by the High Court; the contrary conclusion arrived at in the present proceedings in favour of plaintiff does not deserve to be confirmed. [824-F-G]

H 2. The Judgment of Privy Council, even though the same did not bind the plaintiff on the principle of res-judicata, was definitely a relevant

circumstance to be taken notice of because of what has been stated in Section 42 of the Evidence Act. There is no denial that the foundation of the case of Anadanayya was the infirmity in the nomination and the installation of Shivalingayya as Padadayya; and it is precisely this which the Privy Council had not accepted. [825-B-A]

3. If the present suit has to be regarded as one for possession of suit property simpliciter, as is the prayer in the plaint, it would be hit by Section 50 read with 51 of the Bombay Public Trust Act, 1950. [825-F]

4. Clause (ii) of Section 50 does not visualise suit for recovery of possession only from a person holding adversely to the public trust, as it has clearly stated about recovery of possession "from any person". This would include a person who may not claim adversely to the public trust, as is the case of defendant No. 1 in this case. [824-D]

Gollaleshwar Dev v. Gangawwa Kom Shantayya Math, [1985] Supp. 3 SCR 646, distinguished.

5. If the present suit be taken as a suit for declaration, then it was hopelessly barred, because the declaration sought is that the plaintiff had become Padadayya after Virupakshayya-I had died in 1903. As the suit was filed in 1954 it was apparently much beyond time. [822-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1769 of 1975.

From the Judgment and Order dated 6.10.75 of the Karnataka High Court in R.S.A. No. 1302 of 1971.

S.S. Javali, Ms. Anu Mehale and Ranjit Singh for the Appellant.

S.B. Wad, Ms. J. Wad and Ms. Usha Reddy for the Respondent.

The Judgment of the Court was delivered by

HANSARIA, J. The respondent-plaintiff has placed himself within two horns of a bull and it is not possible for him to avoid strike by one or the other. And the bull is no ordinary one, as it has the backing and the blessings of no less powerful a body than Privy Council of Jamkhandi State, within whose territorial jurisdiction the suit property was situate, for the

A recovery of which the respondent made his claim by filing the present suit on 4.2.1954. It is a pity that despite the case of the appellant- defendant having received support from the Privy Council, he came to lose on the same point, to start with, at the hand of Civil Judge. The High Court, which ultimately upheld the view of the Civil Judge, should not have allowed this piquant situation to prevail.

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2. The broad facts of the case at hand consist in filing of the present suit by respondent No. 1 in 1954, seeking possession of the suit property, as validly appointed Padadayya (Mathadhipati) of the math at Jamkhandi. The plaintiff claimed this property on the assertion that he had been duly installed as Padadayya on 30.1.1944, as a successor to Virupakshayya I, who had died as early as 1903. According to him, defendant Nos. 1 and 2 had not been duly installed as Padadayyas; so also, one Shivalingayya, who according to defendant No. 1 had been installed as Padadayya in 1935 and had in turn nominated him as Padadayya in 1943. There is no dispute at all between the parties that if Shivalingayya had been validly nominated and installed as Padadayya, the plaintiff cannot succeed. And it is precisely this aspect of the case which had come to be decided in favour of Shivalingayya by the Privy Council in an earlier litigation began by one Andanayya in 1934, to which, of course, the present plaintiff was not a party, but, according to him, it was the aforesaid Andanayya who had installed him as Padadayya on 30.1.1944.

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3. Now, If the present suit has to be regarded as one for possession of suit property simpliciter, as is the prayer in the plaint, it would be hit by Section 50 read with 51 of the Bombay Public Trusts Act, 1950 (the Act). To save this blow by the bull, Shri Wad, appearing for the respondent No. 1, first urged that the suit was really not for possession simpliciter but was for declaration of the status of the plaintiff as Padadayya and prayer for possession may be treated as consequential relief. But, if the present be taken as a suit for declaration, then it was hopelessly barred, because the declaration sought is that the plaintiff had become Padadayya after Virupakshayya I had died in 1903. As the suit was filed in 1954 it was apparently much beyond the time. Faced with this situation, Shri Wad's effort was to convince us that the suit is not hit by Sections 50 and 51 of the Act.

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4. Let it be seen whether this contention can be accepted. Section 50

of the Act deals with suits relating with public trusts. The relevant part of this section reads as under: A

"In any case -

(i) xxx . xxx xxx B

(ii) where a declaration is necessary that that a particular property is a propety belonging to a public trust or where a direction is required to recover the possession of such property or the property or proceeds thereof *from any person* including a person holding adversely to the public trust. C

(iii) xxx xxx xxx

The Charity Commissioner or two or more persons having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit.....to obtain a decree for any of the following reliefs: D

(a) an order for the recovery of the possession of such property or proceeds thereof,

xxx xxx xxx E

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 a provision thereof.

xxx xxx xxx F

(Emphasis ours)

Section 51 deals with giving of consent by the Charity Commissioneer for the institution of suit.

5. Shri Wad contends that clause (ii) applies only when recovery of possession is sought from person holding it adversely to the public trust, which is not the case at hand. This contention is sought to be advanced on the basis of what was held by this Court in *Gollaleshwar Dev v. Gangawwa Kom Shantayya Math*, [1985] Suppl. 3 SCR 646, in which case the view taken by a Full Bench of the Mysore High Court in case of the aforesaid G
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A parties as reported in AIR 1972 Mysore 1 was not approved.

B 6. The contention is mis-conceived, because in the aforesaid case this Court was called upon to decide whether two or more trustees of a public trust (the math at hand is also a public trust), could file suit for possession of property belonging to public trust from a person holding it adversely to the trust. The Mysore High Court took the view that the expression "a person having interest", of which mention has been made in Section 51(1), did not include the trustees, because of the definition of this expression in Section 2(10) of the Act. This Court, however, did not endorse the view of the Full Bench by observing that the definition in Section 2(10) was an inclusive one and there was no lawful justification to exclude trustees from the same. As in that case the suit was filed to recover possession from a person holding adversely to the trust, about which also mention has been made in clause (ii) of Section 50, it does not follow that clause (ii) visualises suit for recovery of possession only from a person holding adversely to the public trust, as it has clearly stated about recovery of possession "from any person". According to us, this would include a person who may not claim adversely to the public trust, as is the case of defendant No. 1 in this case.

E 7. It is because of this factual and legal position that we have stated that the plaintiff is within two horns of the bull. If to take care of the restriction imposed by Section 50 read with 51 of the Act, the nature of the suit is sought to be changed to be one of declaration with consequential relief of possession, it would be hit by limitation.

F 8. The above apart, what is more material is that the Privy Council having held in an earlier proceeding that Shivalingayya was duly nominated and installed as Padadayya inasmuch as he had been so nominated by Shankarayya before his marriage, which is the only ground on which Shivalingayya's nomination has been held to be vitiated in the present proceedings by the High Court, we are of the firm view that the contrary conclusion arrived at in the present proceedings in favour of plaintiff does not deserve to be confirmed. It may be that principle of res judicata has no application, despite what has been stated in Explanation VI of Section 11 C.P.C., inasmuch as in the earlier proceeding the present plaintiff was not a party and Andanayya (the plaintiff therein) had not claimed possession of the property as Padadayya but as Charanti contending that as the office of Padadayya was lying vacant because of invalidity in the nomination

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and the installation of Shivalingayya, he had stepped into shoes of Padadayya. There is, however, no denial that the foundation of the case of Andanayya was the infirmity in the nomination and the installation of Shivalingayya as Padadayya; and it is precisely this which the Privy Council had not accepted. A

9. In the aforesaid premises, the judgment of the Privy Council, even though the same did not bind the plaintiff on the principle of *res judicata*, was definitely a relevant circumstance to be taken note of, because of what has been stated in Section 42 of the Evidence Act. What we, however, find is that the High Court had only referred to the earlier decision without examining the question as to whether law permitted a contrary view to be taken on the self same issue. According to us, the issue having been finally determined at the highest level, the same could not have been re-examined, which exercise, to start with, was undertaken even by a Civil Judge. B C

10. Shri Wad contends that even the defendants did not take such a stand throughout the litigation, which is apparent from the fact that they tried to establish their case *de novo* by leading fresh evidence. Though this is so, we are of the view that the defendants were wrongly advised and we have to set right the dent caused to the decision of the Privy Council. The only way available to us in this proceeding to do so is to restore the view that taken by that high powered Committee. D E

11. We hold that the plaintiff could not have taken stand in the present proceeding that Shivalingayya's nomination and installation as Padadayya was invalid, which would render his entire exercise futile and one akin to shadow boxing. It may also be stated that his suit was either barred by limitation or was hit by the provisions contained in Section 50 read with 51 of the Act. F

12. We, therefore, allow the appeal, set aside the impugned judgment of the High Court, with the result that the suit filed by respondent No. 1 stands dismissed. In the facts and circumstances of the case, we make no order as to costs. G

B.K.M.

Appeal allowed.