Controller Of Court Of Ward, Kolhapur ... vs G.N. Ghorpade And Ors. on 12 December, 1972

Equivalent citations: AIR1973SC627, (1973)4SCC94, AIR 1973 SUPREME COURT 627, 1973 4 SCC 94, 1973 MPLJ 811, 1973 MAH LJ 744

Author: J.M. Shelat

Bench: J.M. Shelat, Y.V. Chandrachud

JUDGMENT

J.M. Shelat, J.

1. These two appeals by certificate challenge the Judgment and order dated August 20, 1965/October 18, 1965, passed by the High Court of Bombay in two special civil applications filed by respondent 1, by which the High Court ordered the appellants to hand over possession of the lands in question to respondent 1.

2. The facts leading to the dispute between the parties may first be stated. Respondent 1 was at all material times the jagirdar of Ichalkaranji, having succeeded to the jagir on the death of his father Narayanrao in 1943. It appears that in 1919 the said Narayanrao assigned Survey No. 8 of Ichalkaranji village to the family deity, Vyankatesh Dev and other deities established in his Wada, i.e., in his residence. Entries relating to such assignment were duly made in the revenue records of the village then maintained by the jagir. Similarly, Narayanrao assigned Survey Nos. 106, 107, 108 and 135 of Bhadwandi to Narayan Dev, another temple in Ichalkaranji village. These survey numbers were thereupon entered in the said revenue records as having been so assigned to the said deity.

3. In 1943, when respondent 1 succeeded his father to the jagir, he was a minor. The Kolhapur State, therefore, took over the management of the jagir property as also the private property of the jagirdar. This management continued with the Kolhapur State until its merger with the then Bombay State in March 1949. On such merger the Government of Bombay took over the management of the said properties. On April 4, 1957, the State Government handed over the said properties to respondent 1 but not the said survey numbers assigned as aforesaid by Narayanrao to the said deities.

4. While the said properties were under the management first of the Kolhapur State and then of the Bombay Government, the income arising from the said survey numbers used to be deposited in the treasury to the credit of the said deities. According to respondent 1, the Government passed a

resolution, dated April 19, 1954 whereby it recognised Vyankatesh Dev and Narayan Dev and other deities installed in the said temples at Ichalkaranji village as the private deities of respondent 1. On August 28, 1956, the Collector of Kolhapur directed that the accumulated income of the said properties under management of the Government should be handed over to the Court of Wards. Before this order could be implemented, respondent 1, presumably because he must have by that time attained majority, was handed over possession of the said estate as also the. said accumulated income. Possession of the said survey numbers, however, was not handed over to respondent 1 on behalf of the said deities, although the said deities were recognised by Government as the private deities of respondent 1. It was the case of respondent 1 that ever since 1949 the Government had been paying to the pujari of Vyankatesh Dev certain amounts from time to time out of the income of the lands in dispute. On August 7, 1953, the Collector passed an order sanctioning the payment of arrears and continuance of future payment to the said pujari. Similar payments on behalf of Narayan Dev temple were also made from time to time to respondent 1 from out of the income of the survey numbers assigned to that deity.

5. On August 15, 1960, respondent 1 dedicated the Narayan Dev Temple to the public. He also got prepared a scheme for the management of that temple and had the said trust registered as a public trust. The Commissioner of Charities accepted the said scheme for management prepared by respondent 1.

6. The said survey numbers, however, remained in possession of the Government as Government on one ground or the other refused to part with their possession notwithstanding demands made therefore by respondent 1. On July 80, 1963, the Government issued a notification declaring under Section 56(c) of the Bombay Public Trusts Act, 1950 a large number of temples, mosques and other endowments including the said two temples to be public trusts. Before that, the Mamlatdar by his order dated January 9, 1958 had directed that Survey No. 8, assigned as aforesaid to the deity Vyankatesh Dev, should be entered in the revenue records as belonging to Government. A little later on an entry was made in the Mutation Register showing that survey number as revenue fallow and a direction was issued for its disposal as Government waste land.

7. In these circumstances and in view of the persistent refusal by Government to hand over possession of the said survey numbers, respondent 1 filed the said special civil applications in the High Court on January 13, 1964 inter alia for an order to quash the said notification so far as the family deity, Vyankatesh Dev was concerned, for restraining the Government from taking any action in that regard under the said notification and for an order directing the Government to return possession of the said survey numbers to respondent 1 together with the income therefrom so far collected by the Government.

8. The two special civil applications reached hearing on February 8, 1965. As the appellants had not by then filed their affidavit-in-reply, they were adjourned at their instance for three weeks. The writ petitions again appeared on board on March 2, 1965. The appellant once again applied for and obtained a week's adjournment to enable them to file their counter-affidavit. The writ petitions again came up for hearing on April 27, 1965 and once again at the instance of the appellants they were put off to enable them to file their affidavit. The result was that they had to be adjourned

beyond the summer vacation.

9. On June 29, 1965, the Government cancelled the said notification by which the two temples of Vyankatesh Dev and Narayan Dev were declared to be public trusts. It was said that the appellants thereupon assumed that respondent 1 would not proceed with his special civil applications and on such assumption they did not file their affidavit. But, according to the High Court, it was pointed out on behalf of respondent 1 that the said applications did not end with the cancellation of the said notification since the question of possession of the said survey numbers still remained for decision.

10. On the reopening of the Court, the said applications appeared on board for hearing and continued to so appear until June 29, 1965. The appellants had, however, not filed any affidavit until then, although on several occasions they had obtained adjournments for filing it. When the two applications reached hearing on June 29, 1965, counsel for the Government was also absent. Consequently, the High Court proceeded with the said applications ex parte and even delivered its Judgment. At the end of the day, counsel for the Government appeared and requested that he should be heard. That request was granted and counsel was heard. His arguments continued the next day. Even at that stage affidavit of the appellants was not ready. Counsel, therefore, asked for another adjournment, but the request was rejected. The arguments on behalf of the appellants were not over on that day. Since the Division Bench hearing those arguments was busy with other matters, the said arguments could not be resumed until July 13, 1965. On July 13, 1965, the appellants sought to tender their reply affidavit. That request was turned down and the Court had finally to decide the special civil applications without there being any reply to them on behalf of the appellants. On that day the learned Advocate-General appeared before the Court and sought to raise certain technical points. These were rejected as being without any merit. He also applied that respondent 1 should be made to appear before the Court as a witness to enable the appellants to cross-examine him. No such notice having been previously given to respondent 1, he was not expected to and was in fact not present in Court. The High Court rejected that application also on the ground of inordinate delay and also on the ground that the appellants had ample opportunity to traverse the statements made on affidavit by respondent 1 in his said special civil applications. Those statements, Were according to the High Court evidence on affidavit and in the absence of their having been traversed, constituted a prima facie case of his right to possession of the said survey numbers. The High Court ultimately allowed the said special civil applications and directed the appellants to hand over to respondent 1 possession of the said survey numbers.

11. Mr. V.S. Desai, appearing for the appellants argued that the High Court erred in rejecting the appellants' application for filing their counter-affidavit and thus enable them to challenge the correctness of the statements made by respondent 1 in his two special civil applications. He also argued that the appellants were not to be blamed for not having filed their counter-affidavit in time since they were under the impression that the special civil applications would not be proceeded with after the Government had cancelled the said notification. That notification, however, was cancelled on June 29th, 1965. Before that date the appellants had obtained adjournments and had got the special civil applications put off for hearing beyond the summer vacation only on the ground that they should have time to prepare and file their affidavit. Though the appellants had thus obtained time, they did not file their affidavit even on the re-opening of the High Court. Even when the

special civil applications ultimately reached hearing on June 29, 1965, the counter-affidavit was not ready and was not filed. Indeed, counsel for the appellants was not even present when the special civil applications reached hearing and the hearing commenced. In these circumstances the High Court cannot be blamed when it rejected a fresh attempt to have the matters adjourned to enable the appellants to file an affidavit. The High Court also cannot be blamed for refusing to accept the affidavit on July 13th, 1965, on the ground of inordinate delay. If, on that ground the High Court refused in its discretion to permit the affidavit to be filed, it is impossible to say that that discretion was exercised wrongly or in breach of any principle or practice. It was, no doubt, a pity that in such a case the High Court had to proceed with the special civil applications without the aid of a reply to them. But for that the appellants had clearly to blame themselves. The ground taken by the appellants that they did not file the reply on the assumption that the special civil applications would not be proceeded with after the cancellation of the said notification has no merit, firstly, because the appellants were told, as the High Court has pointed out in its Judgment, that the cancellation of the notification did not end the matter, and secondly, because the appellants were not willing after that cancellation to hand over the said survey numbers to respondent 1. There was, therefore, no ground for the appellants to assume that the special civil applications would not be proceeded with. In these circumstances it is impossible to find any fault with the High Court for refusing to allow the counter-affidavit to go on record at that belated stage. Apart from the question as to delay, that would have also meant a further adjournment to enable respondent 1 to prepare and file his rejoinder.

12. There being thus no reply to the two special civil applications, the High Court had to accept the statements made on affidavit by respondent 1 therein as prima facie evidence of his right to possession of the lands in question. Mr. Desai frankly told us that that was the inevitable result flowing from the absence of any counter-affidavit denying the assertions made on affidavit by respondent 1. The consequence of the absence of any reply affidavit was that Mr. Desai could not urge any specific ground upon which the Judgment of the High Court could be challenged by him.

13. That being the position, there is no alternative except to dismiss the appeals with costs. Respondent 1 will get the costs in one set only. Order accordingly.