

CASE NO.:
Appeal (civil) 2273 of 2002

PETITIONER:
Sudhir G. Angur and Ors.

RESPONDENT:
M. Sanjeev and Ors.

DATE OF JUDGMENT: 27/10/2005

BENCH:
S.N. VARIAVA & DR. AR. LAKSHMANAN & S.H. KAPADIA

JUDGMENT:
JUDGMENT

S. N. VARIAVA, J.

This Appeal is against the Judgment of the Karnataka High Court dated 4th October, 2001.

Briefly stated the facts are as follows:

1st Appellant is the husband of the 3rd Appellant. Appellants 2 & 3 are the father and mother of the 1st Appellant. 4th Respondent is a educational trust which has been brought into existence with the 1st Appellant as the Founder Chairman/Trustee along with Respondents as fellow Trustees. Disputes having arisen between the 1st Appellant and his wife (3rd Appellant) resulted in a number of litigations including this litigation. According to the Appellants, Respondent No. 3 resigned from the trusteeship of the 4th Respondent Trust on 11th February, 1999. Appellants 2 and 3 were inducted as additional Trustees on 15th March, 1999. On 1st July, 1999 Respondents 1 & 2 were removed from trusteeship. On 28th September, 1999 the Respondents instituted Suit No. 8355/99 before the Principal City Civil Judge, Bangalore under Section 92 of the Code of Civil Procedure claiming that there was forgery of the purported letter dated 11th February, 1999 by which Respondent No. 3 had supposedly resigned. Allegation of mis-management of the 4th Respondent Trust and its properties are also made. Removal of the Appellants as trustees is prayed for. A prayer is also made for cancellation of a Lease of the Trust properties granted in favour of Appellants 2 & 3.

Under Section 92 of the Civil Procedure Code, 1908 a suit can only be filed by the Advocate General or by two or more persons having an interest in the trust after having obtained the leave of the Court. The Appellants opposed grant of leave. Their submissions were not accepted and the Court granted leave on 10th November, 1999. The Revision filed by the Appellants was dismissed on 11th February, 2000. Whilst contesting grant of leave the Appellants did not contend that a suit under Section 92 was not maintainable in view of the provisions of the Mysore Religious and Charitable Institutions Act, 1927 (hereinafter referred to as the Mysore Act).

After the Revision was dismissed the Appellants applied for rejection of the Plaint under Order VII Rule 11 C.P.C. According to the Appellants the suit was not maintainable by virtue of Section 40 of the Mysore Act. This application was dismissed by the trial Court on 6th August, 2001. The trial court held that the question whether the Mysore Act applied or not would have to be decided evidence. The Appellants filed a Revision before the High Court of Karnataka which has been dismissed by the impugned Judgment.

At this stage, it must be mentioned that the Mysore Act has been repelled in the year 2003. Thus, even presuming the application under Order VII Rule

11 was required to be allowed, even then the Plaint would only have to be returned for presentation to the proper Court. Now the proper Court would be the Court of the Principal City Civil Judge, Bangalore which is the same Court. Thus it would be an idle formality to have the Plaint rejected to be presented again to the same Court. In such a case no question of limitation would arise as the time taken in the earlier suit would get excluded. In the above view no further consideration was necessary. However, as the matter has been fully argued, we deal with all the contentions.

Mr. Venugopal submitted that the Mysore Act is a complete Code in itself. He submitted that all matters/issues raised could only have been raised in an enquiry under Section 17 and could only have been dealt with by an Order under Section 18 of the Mysore Act by the Muzrai Officer. He submitted that by virtue of Section 40 of the Mysore Act the suit was barred. In order to consider this submission it is necessary to set out the relevant provisions of the said Mysore Act. Sections 2(1), 17, 18, 19, 20, 21, 37, 38, 40 and 40A of the Mysore Act read as follows:

"2(1). "Religious or Charitable Institution" includes an endowment for the carrying out of any religious or charitable object.

17. When it is brought to the notice of the Muzrai Officer that any religious or charitable institution dedicated for the benefit of the public or a defined section of the public or any property pertaining thereto is being grossly mismanaged, he may institute an enquiry into the truth of the allegations against the persons in possession and management of the property or the institution.

18. If it is proved that there has been gross mis-management of the institution or of any property pertaining thereto or any misapplication or misappropriation of any part of the property, or any breach of trust in respect thereof, the Muzrai Officer may, with the previous sanction of the Government.

(1) take the institution under the management of Government;

(2) order that the property which has been mismanaged or misappropriated shall be delivered back either to the institution or to the possession of the Government on behalf of the institution;

(3) obtain security for the proper performance of the trust or management of the property;

(4) frame a scheme for the proper management of the institution or management of its property and the application thereof; and

(5) pass such other ancillary or necessary orders as the case may require in accordance with justice and equity.

19. (1) where property belonging to a religious or charitable institution has been wrongfully alienated or transferred by way of sale, barter, mortgage, lease or otherwise the Muzrai Officer may, within six years from the date of such alienation or transfer, give notice to the alienee or transferee and hold a summary enquiry in accordance with the provisions of Chapter XII of the Mysore Land Revenue Code and direct that possession of such property be restored to the institution or that the Government assume possession thereof on behalf of the institution;

(2) when property belonging to a religious or charitable institution is taken possession of by the Government under sub-section (1) it shall be subject to the same incidents as property belonging to a Muzrai Institution so long as it continues to be in the possession of Government.

20. Where the whole or part of the objects of religious or charitable trust has failed, the Muzrai Officer may, subject to such general rules or special orders as the Government may have issued, after notification in the Official Gazette and hearing such parties as may appear in an enquiry, pass an order directing that the property or the proceeds thereof in respect of which the object has failed, may be utilized for some object of a similar nature, and may frame a scheme for administration thereof.

21. Any person who is aggrieved by an order of the Muzrai Officer passed under sections 18, 19, 20 may, within six months from the date on which such order is communicated to him, file a suit in the Court of the District Judge, in whose jurisdiction the greater part of the property is situate, for cancellation of such order, making the Muzrai Officer one of the defendants.

If no such suit has been filed or if it has been filed and dismissed by the Court, the Muzrai Officer, may, after the lapse of six months from the date of the communication of his original order or after the dismissal of the suit as the case may be, execute his order and may exercise for that purpose all the powers of a Civil Court in exercising decrees:

Provided that in cases in which the property to be disposed of under section 20 exceeds Rs.3,000 in value or the annual income thereof is more than Rs.300 in value, the sanction of Government shall have been obtained for the order.

37. The enquiry referred to in sections 10, 17, 20, 26 and 80 shall be conducted in manner prescribed for a formal enquiry under the Mysore Land Revenue Code, after issue of notices to the parties interested and the Muzrai Officer or other person or persons holding enquiry shall have all the powers of a Revenue Officer empowered to conduct such formal enquiry.

38. (1) Every order passed under this Act by a Muzrai Officer which is not liable to be set aside by a suit filed under any of the provisions of this Act, shall be subject to appeal to the Muzrai Commissioner:

Provided that when the order is passed by an Assistant Commissioner exercising the powers of a Muzrai Officer, it will be a appealable in the first instance to the Deputy Commissioner.

(2) An appeal will lie to the Government against every order passed by the Muzrai Commissioner, provided that no such appeal shall lie to the Government from an appellate decision passed by the Muzrai Commissioner except on a point of law or usage having the force of law.

(3) The Government may at any stage, withdraw any appeal or proceeding pending before the Muzrai Commissioner and dispose of the same or re-transfer the same for disposal to the Muzrai Commissioner.

(4) The Government may transfer to the Muzrai Commissioner for disposal all or any of the appeals that may be pending before them when this Act comes into force.

(5) No appeal shall be brought after the expiration of thirty days if the decision or order complained of have been passed by an officer inferior in rank to a Deputy Commissioner, nor after the expiration of ninety days in any other case.

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

40. In all matters in which a Muzrai Officer, the Muzrai Commissioner or the Government, has power to pass any order or to take any action under this Act, Civil Courts shall exercise jurisdiction only to the extent allowed by this Act.

40A. Any order passed under this Act or the rules issued thereunder by a Muzrai Officer or by the Government shall not bar a suit under the provisions of section 92 of the Code of Civil Procedure, 1911."

Mr. Venugopal submitted that Section 18 is wide enough to cover all disputes sought to be raised in the suit. He submitted that under Section 18(5) the Muzrai Officer has the power to pass all ancillary and necessary orders as may be required in accordance with justice and equality. He submitted that this sub-section enables the Muzrai Officer to deal with all contingencies including questions of mis-management, mis-appropriation, framing of scheme, removal of trustees and recovery of trust properties etc. He submitted that in respect of trusts covered by the Mysore Act the only remedy of a person was to apply to the Muzrai Officer for an enquiry under Section 17 and for an Order under Section 18. He submitted that if a person was thereafter aggrieved by any order passed by the Muzrai Officer, then a Suit could be filed under Section 21. He submitted that Section 40 categorically barred the jurisdiction of a Civil Court in all matters in which a Muzrai Officer had power to pass any Order or take any action. In support of his submission Mr. Venugopal relied upon the case of State of Karnataka v. Vishwabharathi House Building Coop. Society and Ors., reported in [2003] 2 SCC 412 where it is held that a power to pass an Order also includes a power to implement the Order.

We are unable to accept this submission. An enquiry contemplated under Section 17 is a summary enquiry of the type held under the various Land Revenue Codes. That it would be a summary enquiry is clear from Section 37 of the Mysore Act. Such summary enquiries do not bar jurisdictions of Civil Courts. Even otherwise, we are unable to accept the submission that Section 18(5) allows the Muzrai Officer to deal with cases where serious allegations of fraud and/or forgery are made. Section 18(5) merely enables the Muzrai Officer to pass ancillary or necessary orders in respect of matters covered by sub-sections 1 to 4 of the Section. The enquiry has to be in respect of matters laid down in sub-sections 1 to 4 of Section 18. Further an order under Section 18 can only be passed by the Muzrai Officer with the previous sanction of the Government. This also shows that these provisions are not meant to be a substitute for judicial proceedings.

A perusal of the Plaint shows that there are serious allegations of forgery, fraud, diversion of trust properties in favour of Appellants 2 & 3 and the brothers of the 1st Appellant. Such serious allegations can never be enquired into, in a summary manner by a Muzrai Officer in the type of enquiry contemplated under Section 17 of the Mysore Act. These are matters which can only be gone into by a Court. The trial court was thus right in holding that these are matters which would require issues to be framed and which were required to be determined on evidence.

Even otherwise, Section 40A of the Mysore Act categorically provides that a suit under Section 92 of the Code of Civil Procedure, 1911 is not barred, even though an order may have been passed by the Muzrai Officer or by the Government. If a suit is not barred after an Order is passed, then it obviously follows that the suit under Section 92 CPC will not be barred when no such order has been passed. Undoubtedly, Section 40A refers to Section 92 of the Code of Civil Procedure, 1911. This was the Code which was prevailing in the Mysore State in 1927 when the Mysore Act was enacted. At that time, the Civil Procedure Code, 1909 did not apply to Part B States like the Mysore State. However, by the Code of Civil Procedure (Amendment) Act, 1951 the Civil Procedure Code, 1908 was made applicable to the whole

of India including Part B States. Thus, with effect from 1st of April, 1951 the Civil Procedure Code, 1908 became applicable even to the State of Mysore. Section 20 of the Amendment Act repeals Codes which were prevailing in Part B States. Therefore, the Code of Civil Procedure, 1911 (as prevailing in Mysore) got repealed. Section 20(3) of the Amendment Act reads as follows:

"20(3) In every law or notification passed or issued before the commencement of this Act in which reference is made to or to any Chapter or section of any law hereby repealed, such reference shall, so far as may be practicable, be taken to be made to the said Code or its corresponding Part, Order, section or rule."

Thus, now in Section 40A the reference to Section 92 of the Code of Civil Procedure, 1911 would mean Section 92 of the Code of Civil Procedure, 1908. It is therefore clear that in 1999 when the suit was filed, suits under Section 92 of the Civil Procedure Code, 1908 were not barred.

Even otherwise leave to file the suit was granted after hearing parties. Once leave was granted the question of rejecting the Plaint under Order VII Rule 11 did not arise. An application for rejection of the Plaint should have been made prior to the leave having been granted or at the time when the Appellants opposed grant of leave. Having lost in their opposition to grant of leave it was not open to the Appellants to then apply for rejection of the Plaint under Order VII Rule 11 CPC.

In our view, Mr. G.L. Sanghi is also right in submitting that it is a law on the date of trial of the suit which is to be applied. In support of this submission, Mr. Sanghi relied upon the Judgment in the case of Shiv Bhagwan v. Onkarmal, reported in A.I.R. (1952) Bombay 365, wherein it has been held that no party has a vested right to a particular proceeding or to a particular forum. It has been held that it is well settled that all procedural laws are retrospective unless the Legislature expressly states to the contrary. It has been held that the procedural laws in force must be applied at the date when the suit or proceeding comes on for trial or disposal. It has been held that a Court is bound to take notice of the change in the law and is bound to administer the law as it was when the suit came up for hearing. It has been held that if a Court has jurisdiction to try the suit, when it comes on for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted. We are in complete agreement with these observations. As stated above, the Mysore Act now stands repelled. It could not be denied that now the Court has jurisdiction to entertain this suit.

It must lastly be mentioned that on 18th March, 2002, at the request of the Appellants, the name of Respondent No. 4 was deleted from the array of parties in this Appeal. Respondent No. 4 is the concerned Trust. It is not only a proper party but a necessary party. The whole dispute relates to the management of the trust and the properties of the trust. By deleting Respondent No. 4 the Appellants have deleted a proper and a necessary party. For that reason also, the Appeal is required to be dismissed.

For all the above reasons, the Appeal stands dismissed. There will be no order as to costs.

As the Suit is old, we direct the trial court to dispose of the Suit as expeditiously as possible, preferably within a period of one year from today.