2019 INSC 719

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4478 OF 2007

SOPANRAO & ANR. …APPELLANT(S)

Versus

SYED MEHMOOD & ORS. …RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J.

1. A suit was filed by Respondent Nos. 1 to 4 herein before the trial court against the present appellants and others in which the main prayers were as follows:

> (i) "That, the lands S.Nos.60, 62, 77, 79/2 and 78 admg. 31 acres 32 gunthas, 15 acres 22 gunthas, 27 acres 18 gunthas, 15 acres 19 gunthas and 9 acres 19 gunthas respectively situated at village Haregaon Tq. Ausa Dist. Latur may be declared as Inam lands of Niyamatullah Shah Dargah Haregaon and the plaintiffs as *Inamdars* of the above lands.
>
> (ii) That, the plaintiffs be put in possession of the lands referred to above from defendant No. 1 to 11."

2. The present appellants and others contested the suit. According to the plaintiffs, the possession of the land in question was illegally given to Namdeo Deosthan Trust (for short 'the Trust') on 19.08.1978 by the Government and it was prayed that the possession of this land be restored to the plaintiffs. The defendants contested the suit on various grounds. One of the main grounds raised was that the suit was not filed within the period of limitation. It was also contended that the suit was bad for non-joinder of necessary parties and it was contended that the suit land belonged to the Trust since time immemorial and the suit be dismissed. The trial court vide judgment dated 14.10.1992 dismissed the suit of the plaintiffs and held that the suit was not filed within the period of limitation. It also held that the suit is bad for non-joinder of parties. Lastly, the trial court held that the plaintiffs had failed to prove that the suit land was *Inam land* or the plaintiffs are *Inamdars*.

3. Aggrieved, the plaintiffs filed an appeal in the Court of District Judge, Latur. The District Judge vide judgment dated 26.11.1997 reversed the judgment and decree of the trial court and came to the conclusion that the land originally belonged to Dargah Niyamatullah Shah Quadri (for short 'the Dargah') and

the plaintiffs and Defendant No. 12 were the *Inamdars* of the suit land. It further held that the Government had wrongly given the possession of the suit property. It was also held that all necessary parties had been joined in the suit. Finally, the first appellate court held that the plaintiffs were entitled to a decree for possession of the suit land and accordingly allowed the appeal and decreed the suit in favour of the plaintiffs and Defendant No. 12 and against Defendant Nos. 1 to 11 and 15.

4. Aggrieved, the present appellants and two others filed an appeal in the High Court of Bombay. This appeal was dismissed vide judgment dated 29.03.2007. However, the High Court modified the decree of the District Judge to the limited extent that the plaintiffs and Defendant No. 12 were held to be descendents of *Mutawalis* and not *Inamdars*. Hence, this appeal.

5. We have heard learned counsel for the parties.

6. During the pendency of this appeal, some of the plaintiffs have died and their legal representatives were not brought on record. Though a preliminary objection was raised that the appeal abates as a whole, we find no merit in this preliminary objection. The plaintiffs have been held to be descendents of

Mutawalis of the properties which is in the nature of a managerial post. As such the appeal does not abate.

7. Learned counsel for the appellants submitted that the plaintiffs had failed to prove that the land was the land of the Dargah. The second submission was that the suit was barred by limitation. It was also contended that the suit was not maintainable and that the High Court had granted reliefs which had not even been prayed for by the plaintiffs.

8. As far as the issue of title is concerned, that, in our view, is a finding of fact arrived at by the District Judge and confirmed by the High Court. This finding cannot be disturbed in this Court. However, on the insistence of learned counsel for the appellants, we have gone through the record and find that the possession of land in question was handed over to the Trust only on 19.08.1978. Nothing has been brought on record to show that prior to 29.01.1973 the land was entered in the name of the Trust. In fact, as per the pleadings of the defendants a change report had been filed before the Assistant Charity Commissioner, Latur and the said authority, without issuing notices to the *Inamdars/Mutawalis*, allowed the said application on

29.01.1973. The plaintiffs had no knowledge of this application but on the basis of this order the Government handed over the possession of the land to the Trust. It was only after the Trust came into the possession of the land that the mutation entry (Exhibit No.115) was made in favour of the Trust. According to the plaintiffs, they came to know about this fact only in 1986 when some publication in this regard was made by the Assistant Charity Commissioner in terms of Section 50A of the Bombay Public Trusts Act, 1950 and, thereafter, they filed the suit. It was the plaintiffs, as observed by the District Judge as well as the High Court, who had proved that the suit land belonged to the Dargah. According to the High Court, the plaintiffs were not actually *Inamdars* and were manning the affairs of the Dargah in the nature of *Mutawalis*. Evidence was led by the plaintiffs to show that they had been held to be the successors of one Nizamuddin, the original *Mutawali* of the Dargah by the competent authority under the Hyderabad Atiyat Inquiries Act, 1952. The High Court made reference to a large number of documentary records proved by the plaintiffs from the year 1915 onwards, which showed that the land had been granted to the Dargah as far back in 1915. Therefore, the Dargah was shown to

be the owner as far back in 1325 Fasli (1915 A.D.) in the official records. Similar entries were made in 1342 Fasli (1932 A.D.), 1943 and 1951, all of which showed that the lands were shown as lands belonging to Dargah. The judgments of the District Court and the High Court are based on evidence. No question of law arises as far as ownership of land is concerned. Therefore, this finding of fact calls for no interference.

9. It was next contended by the learned counsel that the suit was not filed within limitation. This objection is totally untenable. Admittedly, the possession of the land was handed over to the Trust only in the year 1978. The suit was filed in the year 1987. The appellants contend that the limitation for the suit is three years as the suit is one for declaration. We are of the view that this contention has to be rejected. We have culled out the main prayers made in the suit hereinabove which clearly indicate that it is a suit not only for declaration but the plaintiffs also prayed for possession of the suit land. The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Reliance placed by the learned

counsel for the appellants on the judgment of this Court in ***L.C. Hanumanthappa v. H.B. Shivakumar***[1] is wholly misplaced. That judgment has no applicability since that case was admittedly only a suit for declaration and not a suit for both declaration and possession. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff. In the instant case, even if the case of the defendants is taken at the highest, the possession of the defendants became adverse to the plaintiffs only on 19.08.1978 when possession was handed over to the defendants. Therefore, there is no merit in this contention of the appellants.

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[1] (2016) 1 SCC 332

10. It was also urged that the plaintiffs had prayed that they were *Inamdars* and that the High Court had created a new case for the plaintiffs by declaring them to be *Mutawalis*. It was argued that since plaintiffs had not claimed the relief that they were *Mutawalis*, the High Court could not have granted this relief. Reliance has been placed on a judgment of this Court in the case of ***Bachhaj Nahar v. Nilima Mandal***[2]. Para 22 of the said judgment reads as follows:

> "**22.** The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer."

(emphasis supplied)

11. In our view, the aforesaid judgment does not help the appellants and, in fact, helps the respondents. The judgment clearly lays down that the lesser relief or smaller version of the relief claimed or prayed for can be granted. The plaintiffs claimed the status of *Inamdars* which is a higher position than that of

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[2] (2008) 17 SCC 491

Mutawalis. The High Court has granted a lesser or lower relief and not a higher relief or totally new relief and, therefore, we reject this contention also.

12. It was also urged that the civil court had no jurisdiction to decide the suit. No such objection was raised before the trial court. This objection was raised before the High Court but has been rightly rejected. The issue in this case was whether the properties were properties of the Dargah or not and the issue was not whether the properties are wakf properties or not. The High Court rightly held that the plaintiffs were not claiming any personal right in the land but only claiming rights of management over the property of the Dargah. We agree with the finding of the High Court that the civil court had the jurisdiction to decide the suit.

13. At this stage, it would be pertinent to point out that the appellants/defendants, during the course of this appeal, have filed a number of applications to place on record certain documents which were not on the record of the trial court. No explanation has been given in any of these applications as to why these documents were not filed in the trial court. These

documents cannot be looked into and entertained at this stage. The defendants did not file these documents before the trial court. No application was filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 for leading additional evidence before the first appellate court or even before the High Court. Even the applications filed before us do not set out any reasons for not filing these documents earlier and do not meet the requirements of Order XLI Rule 27 of the Code of Civil Procedure. Hence, the applications are rejected and the documents cannot be taken into consideration.

14. In view of the above discussion, we find no merit in the appeal and the same is dismissed. Pending application(s), if any, shall stand disposed of.

..................................J.
(N. V. RAMANA)

..................................J.
(DEEPAK GUPTA)

..................................J.
(INDIRA BANERJEE)

New Delhi
July 03, 2019