PRIVY COUNCIL

Sevak Jeranchod Bhogilal

Vs.

The Dakore Temple Committee

Privy Council Appeal No.95 of 1923
(Lords Atkinson CJ Carson, Sir John Edge and Mr. Ameer Ali JJ.)

30.03.1925

JUDGMENT

SIR JOHN EDGE J.

1. This case has come before their Lordships in the form of an appeal to His Majesty in Council from an order of the High Court of Bombay. On the 31st March, 1920, the High Court certified that the appeal involved a substantial question of law and was otherwise a fit one for appeal to His Majesty in Council, and on the 26th July, 1920, the High Court admitted the appeal and ordered notice to be given to the respond dents. The question which their Lord ships have to consider is whether the appeal lay. For that purpose it is necessary to refer as briefly as possible to the history of the case to see if any appeal in this case to His Majesty in Council arose or was admissible.

2. The case relates to the management of a public Hindu temple at the village of Da kore which is within the jurisdiction of the Court of the District Judge of Ahmedabad. In the temple is installed the Idol of *Shri Ranchhod Raiji,* which is much revered by Hindus. Disputes arose as to the management of the temple and at least two suits were brought in respect of the management, one of which came on appeal to His Majesty in Council as to a scheme for the management which had been sanctioned by the High Court of Bombay. On the 14th May, 1912, the Board having made some alterations in the scheme and having advised that the scheme, as altered should be affirmed, His Majesty with the advice of His Privy Council, confirmed the scheme, as altered by the Board, and made an order in Council accordingly.

3. The Dakore Temple scheme so confirmed by His Majesty's Order in Council of the 14th May, 1912, provided, amongst other things, for the appointment of The Dakore Temple Committee to consist of five members who should be Hindus pro fessing faith

in Shri Ranchhod Baiji, and empowered the Committee to take the Temple property into their custody and to make rules for the guidance of their business and for the management of the Temple and for other purposes. The purposes for which such rules might be made were specified in Clause 12 of the scheme, and it was provided that the rules, when sanctioned by the District Court of Ahmedabad, should have the same force as if they were part of the scheme.

4. Clause 20 of the scheme, as confirmed by His Majesty's Order in Council, is as follows:-

> "20. The provisions of this scheme may be altered, modified or added to by an application to His Majesty's High Court of Judicature at Bombay." The Temple Committee, having been duly appointed, framed a body of rules, as the Committee was empowered to do, and those rules came before Mr. B. C. Kennedy, as the District Judge of Ahmedabad, for the sanction of his Court, and he, on the 5th December, 1914, made certain alterations in the rules, and, as altered by him, sanctioned the rules. On the 23rd March, 1915, certain members of the Trawadi Mewada Brahmin caste, who had exercised certain rights in the temple or were otherwise interested in the management of the temple, presented to the High Court of Judicature at Bombay an "Application under Clause 20 of the scheme for modification of the rules sanctioned by the District Judge." To that application the managing member of the Temple Committee and another were made respondents. The sanction given by the District Judge to the rules was apparently considered in the High Court, although erroneously, to be an Order made under Section 47 of the Code of Civil Procedure, 1908, and appeals from it were presented to the High Court at Bombay. The appeals, and the application, came before a learned Judge of the High Court for disposal, and he, obviously doubting that the appeals lay, said in his Judgment of the 22nd September, 1919, as follows :-
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> These appeals and applications relate to the rules which have been framed under Clause 12 of this scheme and sanctioned in 1914, by Mr. Kennedy the District Judge of Ahmedabad. The appeals have been filed as appeals from Orders in execution passed under Clause 12 (7) of the scheme by the District Judge of Ahmedabad. We think we ought to deal with them as such as no objection has been taken. No orders need therefore be passed on the applications filed ex majors cautela as applications under Clause 20 of the scheme reserving general power of interference to the High Court.

5. Thereupon the learned Judge wrote and delivered a judgment in which he expressed his views as to the rules which had been sanctioned by the District Judge. The appeals to the High Court did not lie and should have been rejected.

6. The learned Judge should have remembered that parties cannot by acquiescence or consent confer upon a Court a jurisdiction which it has not got. The High Court at Bombay had power conferred upon it by Clause 20 of the scheme confirmed by His Majesty's Order in Council upon an application made to it with that object to alter, modify or add to the rules sanctioned by the District Judge, but it had no other power, and that power it did not exercise ; it may, however, still be exercised upon application properly made to it.

7. There was no right of appeal to His Majesty in Council from the judgments of the High Court of the 11th April, 1919, and 22nd September, 1919, or from any decrees which were drawn up, except on the sole ground that the judgments or decrees were incompetent. The term "judgment" in the Letters Patent of the High Court means in civil cases a decree and not a judgment in the ordinary sense. This appeal to His Majesty in Council should not have been admitted.

8. Their Lordships will humbly advise His Majesty that this appeal should be allowed and the judgment or decrees be set aside, as these judgments appealed from were incompetent. There will be no costs of this appeal.

Appeal allowed.