Chairman Madappa

Vs

M. N. Mahanthadevaru and Others

Civil Appeal No. 957 of 1963

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

11.10.1965

JUDGMENT

WANCHOO, J. –

This is an appeal by special leave against the judgment of the Mysore High Court. Brief facts necessary for present purposes are these. There is a muth in village Davanur. A suit was brought in 1942 under s. 92 of the Civil Procedure Code for framing a scheme for the management of the muth. A decree was passed on March 17, 1948 by the High Court by which a scheme was settled and two persons were appointed as joint managers thereunder. In 1959 the two managers were the appellant Madappa who was the chairman and the respondent Mahanthadevaru. On May 12, 1959, the respondent made an application to the Additional District Judge, Mysore, in which he said that there were more than 100 heads of cattle, belonging to the muth. But the estimated income of the properties was barely sufficient to meet the cost of worship of the deity and that no funds were available to maintain the cattle. He also said that it was unnecessary and expensive to incur the feeding charges and pay for the staff needed to take care of the cattle. He therefore prayed for an order for the sale of cattle as a measure of economy and practical utility. Further it appears that there were some lands belonging to the muth, which were being cultivated through servants. It was suggested in this application that the lands might be leased out for cultivation for one year by public auction for cash consideration in order to increase the income of the muth.

On this application, notice was issued to the appellant. He objected that the application had been made without consulting him. He also objected to the sale of the cattle, his reason being that their upkeep did not involve any expenditure and that they were necessary for the supply of milk to the muth and also as the chief source of manure for the lands. He also added that it would be sacrilegeous to sell them away. He further objected to the leasing out of the lands of the much year by year on the ground that according to the existing practice, lands of the muth were being cultivated and the crops harvested by the people of the village and there was no expenditure to the muth in that behalf. It appears that thereafter there were consultations between the two managers in order to meet the charge that the respondent had not consulted the appellant before making the application. But the two managers were unable to agree.

Thereupon the Additional District judge heard both parties and by his order, dated June 7, 1960, directed that keeping hundreds of cattle with no proper arrangements to look after them would result in great loss to the muth. He therefore ordered that ten milch cows might be retained for the use of the muth for the purpose of milk and the remainder sold by public auction. As to cultivation of lands, the Additional District Judge was of the view that by the method of carrying on cultivation with the cooperation of villagers the muth stood to lose. He therefore ordered that the right of

cultivation of lands belonging to the muth be sold for cash from year to year.

Thereupon the appellant went in revision to the High Court. Apart from challenging the correctness of the order made by the Additional District Judge, the appellant further contended that the Additional District Judge had no jurisdiction to make such an order in view of the provisions of s. 92(1) cl. (f) of the Code of Civil Procedure. The High Court held in view of paragraphs (11) and (12) in the scheme that the Additional District Judge had jurisdiction to pass the order which he did. Further it refused to interfere with the discretion exercised by the Additional District Judge in the matter. The appellant then obtained special leave from this Court; and that is how the matter has come up before us.

The only point urged on behalf of the appellant is that in view of s. 92(1), cl. (f) of the Code of Civil Procedure the Additional District Judge had no jurisdiction to make the order which he did. The respondent on the other hand relies on paras (11) and (12) of the scheme for the contention that the Additional District Judge had jurisdiction in the matter.

It is now well-settled by the decision of this Court in Raje Anandrao v. Shamrao ((1961) 3 S.C.R. 930.) that it is open in a suit under s. 92 for the settlement of a scheme to provide in the scheme itself for modifying it whenever necessary by inserting a clause to that effect. It is also settled that a suit for the settlement of a scheme is analogous to an administration suit and so long as the modification in the scheme is for the purpose of administration, such modification could be made by an application under the relevant clause of the scheme, without the necessity of a separate suit under s. 92 of the Code of Civil Procedure the provisions of which were not violated by such a procedure. The principle of this decision will apply in the present case which is concerned with the ordinary administration of the muth.

Paragraph (11) of the scheme provides for the appointment of two managers for a period of five years who will be eligible for re-appointment. One of the managers appointed under the scheme of 1948 was the then first defendant in the suit of 1942. The last part of para. (11) is in these terms :-

> "If the first defendant neglects or refuses to cooperate with his co-manager, the co-manager or any two of the veerashaivas interested in the institution may apply for necessary directions to the court."

Paragraph (12) reads as follows :-

> "The parties herein or any two veerashaivas interested in the institution and either of the managers are at liberty to apply for directions to the District Court as and when occasion arises for carrying out the scheme."

The contention on behalf of the respondent is that these two provisions have clearly reserved power in the District Court to give directions for carrying out the scheme whenever occasion arises for the same. It is contended that by these provisions power was reserved in the District Court to give directions as to the ordinary administration of the muth in order to carry out the purposes of the scheme. We are of opinion that this contention on behalf of the respondent is correct. We cannot accept the contention on behalf of the appellant that these paragraphs merely provide for carrying out nitya poojas and vishesh poojas mentioned in the scheme and nothing else. The generality of the words used in these paragraphs clearly show that power was reserved in the scheme to get directions of the court for the ordinary administration of the muth from time to time and that such directions

could be sought amongst others by either of the co-managers. We are further of opinion that it cannot be disputed in the present case that the directions asked for by the respondent were in the nature of directions for the ordinary administration of the muth. It is obvious that in order to carry on the ordinary administration of an institution like the present, the managers have the power to dispose of movable property and deal with lands in such manner as to maximise the income of the muth. Therefore, when the respondent asked for directions of the court in the interest of economy and practical utility for the sale of cattle and for selling the right of cultivation of lands from year to year on payment of cash, he was only asking for directions in connection with the ordinary administration of the muth, and the court would have power under these paragraphs of the scheme to give such directions as it thought necessary for that purpose.

Let us now see if there is anything in s. 92(1) cl. (f) which prohibits the giving of such directions even if there is a provision to that effect in the scheme. Section 92(1) provides for two class of cases, namely, (i) where there is a breach of trust in a trust created for public purposes of a charitable or religious nature, and (ii) where the direction of the court is deemed necessary for the administration of any such trust. The main purpose of s. 92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General, or two or more persons having an interest in the trust with the consent in writing of the Advocate General. The object clearly is that before the Advocate General files a suit or gives his consent for filing a suit under s. 92, he would satisfy himself that there is a prima facie case either of breach of trust or of the necessity for obtaining directions of the court. The reliefs to be sought in a suit under s. 92(1) are indicated in that section and include removal of any trustee, appointment of a new trustee, vesting of any property in a trustee, directing a removed trustee or person who has ceased to be a trustee to deliver possession of trust property in his possession to the person entitled to the possession of such property, directing accounts and enquiries, declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust, authorisation of the whole or any part of the trust-property to be let, sold, mortgaged or exchanged, or settlement of a scheme. The nature of these reliefs will show that a suit under s. 92 may be filed when there is a breach of trust or when the administration of the trust generally requires improvement. One of the reliefs which can be sought in such a suit is to obtain the authority of the court for letting, selling, mortgaging or exchanging the whole or any part of the property of the trust, as provided in cl. (f) of the reliefs.

We are however of opinion that prayer for such a relief though permissible in a suit under s. 92 does not in any way circumscribe or take away from trustees or managers of public trusts the right of ordinary administration of trust-property which would include letting, selling, mortgaging or exchanging such property for the benefit of the trust. We cannot infer from the presence of such a relief being provided in a suit under s. 92(1) that the right of trustees or managers of the trust to carry on the ordinary administration of trust-property is in any way affected thereby. If this were so, it would make administration of trust-property by trustees or managers next to impossible. This will be clear from a few examples which we may give. Suppose there is a lot of odds and ends accumulated and the trustees or managers of a public trust want to dispose of those odds and ends if they are of no use to the trust. If the interpretation suggested on behalf of the appellant is accepted, the trustees or managers could not sell even such odds and ends without filing a suit for authorising them to sell such movable property. Obviously this could not have been the intention behind cl. (f) in s. 92(1). Take another case where the public trust has a good deal of land and arranges to cultivate it itself and gets crops every half year. If the produce is not all required for the trust has to be sold, the presence of cl. (f) in s. 92(1) does not require that every half year a suit should be filed

by trustees or managers with the permission of the Advocate General to sell such crop. The absurdity of the argument on behalf of the appellant based on cl. (f) of s. 92(1) is therefore obvious and that clause does not in our opinion have the effect of circumscribing the powers of trustees or managers to carry on ordinary administration of trust-property and to deal with it in such manner as they think best for the benefit of the trust and if necessary even to let, sell, mortgage or exchange it. It seems that cl. (f) was put in inter alia to give power to court to permit lease, sale, mortgage or exchange of property where, for example, there may be a prohibition in this regard in the trust deed relating to a public trust. There may be other situations where it may be necessary to alienate trust property which might require court's sanction and that is why there is such a provision in cl. (f) in s. 92(1). But that clause in our opinion was not meant to limit in any way the power of trustees or managers to manage the trust-property to the best advantage of the trust and in its interest, and if necessary, even to let, sell, mortgage or exchange such property. Further if cl. (f) cannot be read to limit the powers of trustees or managers to manage the trust-property in the interest of the trust and to deal with it in such manner as would be to the best advantage of the trust, there can be no bar to a provision being made in a scheme for directions by the court in that behalf, If anything, such a provision would be in the interest of the trust, for the court would not give directions to let, sell, mortgage or exchange the trust property or any part thereof unless it was clearly in the interest of the trust. Such a direction can certainly be sought by the trustees or managers or even by one manager out of two if they cannot agree, and there is nothing in cl, (f) in our opinion which militates against the provision in the scheme for obtaining such direction. We may add that we say nothing about obtaining of such directions by persons other than managers or trustees, for this is not a case where the direction was sought by a person other than a co-manager. Whether such a direction can be sought by persons other than trustees or managers or one of two managers as provided in paras (11) and (12) of the scheme is a matter which does not arise for consideration in the present case and we express no opinion thereon. We are dealing with a case where the prayer is made by one trustees and the order passed thereon relates to mattes which are incidental to acts of management of the trust-property and we have no doubt that cl. (f) in s. 92(1) cannot be read in such a way as to hamper the ordinary administration of trust-properties by trustees or managers thereof; and if that is so, there can be no invalidity in a provision in the scheme which directs the trustees or managers or, even one out of two co-managers when they cannot agree to obtain directions of the court with respect to the disposal or alienation of the property belonging to the trust. We are therefore of opinion that cl. (f) does not apply to the circumstances of this case and in suit under s. 92 was necessary in consequence. The Additional District Judge had jurisdiction to give directions which he did under paras (11) and (12) of the scheme, as these directions are of the nature of ordinary administration of trust-property and do not fall within cl. (f) in s. 92(1) of the Code of Civil Procedure.

In the view that we have taken, the High Court was right in holding that the Additional District judge had jurisdiction in the matter. The appeal therefore fails and is hereby dismissed with costs, which will be paid by the appellant personally.

Appeal dismissed.

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