

Ramchandra Goverdhan Pandit

Vs

Charity Commissioner of State of Gujarat

Civil Appeal No. 1594 of 1973

(G. L. Oza, V. Khalid JJ)

21.04.1987

JUDGMENT

KHALID, J. -

1. This appeal is by special leave granted by this Court on October 30, 1973 against the judgment and order of the High Court of Gujarat dated September 19, 1972 passed in Letter Patent Appeal No. 72 of 1971. The facts necessary in brief for disposal of the appeal are as hereunder :
2. The Deputy Charity Commissioner, Ahmedabad Region appointed under the Bombay Public Trust Act, 1950 (for short 'the Act') started suo motu enquiry under the Act against the appellant as Enquiry No. 578 of 1958 with regard to the nature of the properties involved in the appeal. The Deputy Charity Commissioner held by his order dated October 20, 1960 that the properties were a public trust. Aggrieved by this order, the appellant filed an appeal before the Charity Commissioner. The Charity Commissioner dismissed the appeal on May 15, 1961. Thereupon the appellant moved the City Civil Court by filing an application under Section 72 of the Act. This application was dismissed on August 6, 1963. The First Appeal No., 448 of 1963, was filed in the High Court of Gujarat against this order of the City Civil Court. This appeal was dismissed by the High Court on September 30, 1970. The appellant then filed Letters Patent before the High Court. It was admitted on February 25, 1971. However, it was dismissed on September 19, 1972 holding that the appeal was not maintainable since the requisite certificate under Clause 15 of the Letters Patent was not obtained by the appellant. Hence this appeal.
3. The Division Bench dismissed the appeal relying upon an earlier judgment rendered by another Division Bench of that court reported in Hiragar Dayagar v. Ratanlal ((1972) 13 GLR 181). This decision was rendered on October 26, 1971. The ratio of the decision is that the Single Judge who disposed of the appeal was hearing an appeal in respect of an order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the High Court and that, therefore it was necessary for the appellant to obtain a certificate from the Single Judge that the case was a fit one for appeal to the Division Bench under Clause 15 of the Letters Patent Appeal. It is this question that we have to consider in the case.
4. For this purpose we will first read Section 72 which is as follows :

72(1) Any person aggrieved by the decision of the Charity Commissioner under Sections 40, 41, 50-A, 70 or 70-A or on the questions whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust may, within sixty days from the date of the decision, apply to the court to set

aside the said decision.

(1-A) No party to such application shall be entitled to produce additional evidence, whether oral or documentary, before the court, unless the Deputy or Assistant Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted or the court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause the court thinks it necessary to allow such additional evidence :

Provided that whenever additional evidence is allowed to be produced by the court, the court shall record the reason for its admission.

(2) The court after taking evidence if any, may confirm, revoke or modify the decision or remit the amount of the surcharge and make such orders as to costs as it thinks proper in the circumstances.

5. The argument put forward before the Gujarat High Court in this case which was repeated before us also is that Section 72(1) speaks only of an application to the court to set aside the decision of the Charity Commissioner, and it does not speak of an appeal. It was argued that while Section 70 and 71 use the word appeal, a deliberate departure is made in Section 72 by using the word "apply" instead of the word "appeal". On this reasoning, a case is attempted to be built up that the proceedings under Section 72 were not in the nature of an appeal and that, therefore, when the District Court exercised its jurisdiction it did not exercise an appellate jurisdiction but a special jurisdiction under the section. This contention was repelled by the Gujarat High Court. It was held that though the well known word "appeal" was not used in Section 72, the absence of that word cannot be regarded as determinative of the nature of the proceedings. The question considered was as to what was the scope, ambit and content of the proceedings before the District Court. Now the question is as to whether it is an appellate jurisdiction, revisional jurisdiction or original jurisdiction that the District Court is exercising under Section 72. The court answered that it was appellant jurisdiction. The District Court while dealing with an application under Section 72 was given the power to confirm, revoke or modify a decision of the Charity Commissioner and the section did not impose any fetters or limits on this power. In an application under Section 72, the entire matter was at large before the District Court and the District Court had complete power to review the decision of the Charity Commissioner either on law or on fact in such manner as it thought proper.

6. A contrary view was taken by the Bombay High Court dealing with the identical section in the decision reported in *Khivaraj Chhaganiram Zavar v. Shivshankar Basappa Lingashetty* (AIR 1974 Bom 40, 46 : (1973) 75 Bom LR 523 : 1973 Mah LJ 782). The Bombay High Court relying upon the phraseology used in Section 72 held that the proceedings under Section 72 was not in the nature of an appeal. The question was answered in favour of the contention raised by the appellant before us as follows :

If it could be held in the present case that the court under Section 72 was itself exercising the appellate jurisdiction, undoubtedly the present appeals filed without the leave of the learned Single Judge are incompetent. Such appeals lie only with his leave and not otherwise. If otherwise it could be held, as the natural meaning of the expression suggests, that Section 72 provides a remedy by way of an application only, and though the inquiry held by the District Court seems to have some semblance of an appellate jurisdiction, it is not a jurisdiction created by the

legislature as an appellate jurisdiction. It is only where the jurisdiction is appellate and a decision in exercise of such jurisdiction is given, and the High Court has also exercised the appellate jurisdiction, that the bar contemplated by Clause 15 of the Letters Patent of obtaining leave of the court seems to come in

We are therefore satisfied that whatever the type of function that the court performs under Section 72 of the Act when an application is received by it from any aggrieved party, it is certainly not appellate jurisdiction as is contemplated by Clause 15 of the Letters Patent. If that is so, the decree or the order of the District Court was not in the exercise of the appellate jurisdiction, even though the High Court exercised the appellate jurisdiction while hearing First Appeals Nos. 830 and 831 of 1965.

7. It would be useful at this stage to refer to another decision of the Bombay High Court also rendered by a Division Bench reported in *D. R. Pradhan v. Bombay State Federation of Goshalas and Panjrapoles* ((1956) 58 Bom LR 894, 896). There also Section 72 of the Act fell for consideration not in the context of a plea similar to the one raised before us but in the context of a plea under the Limitation Act. However, the following observations by Chagla, C.J. can be usefully extracted in support of our conclusion :

Now, although Section 72(1) confers a right upon a person aggrieved by the decision of the Charity Commissioner to apply to the City Civil Court, we must look at and consider the real nature of the right that is conferred by this sub-section. In substance, if not in form, the right is in the nature of an appeal. The application is intended to set aside the decision of the Charity Commissioner and the City Civil Court must consider that decision, and if satisfied that the decision is erroneous must set it aside and give the necessary relief to the party aggrieved by that decision. Therefore, in substance there is very little difference between an application contemplated by Section 72(1) and a right of appeal against the order of the Charity Commissioner.

8. This decision was noted by the Bombay High Court in the decision reported in *Khivraj Chhaganiram v. Shivshankar Basappa* (AIR 1974 Bom 40, 46 : (1973) 75 Bom LR 523 : 1973 Mah LJ 782), but the observations therein were distinguished as follows :

We will at once point out that the learned Judges who dealt with the cases of *D. R. Pradhan v. Bombay State Federation of Goshalas and Panjrapoles* ((1956) 58 Bom LR 894, 896) had a very different proposition before them. Primarily they were concerned with the obstacle of limitation which was being created in the way of a party by resorting to the technical provisions of Chapter 11 and more particularly Section 75 of the Act. It is in that context when the days for obtaining copies were to be excluded that they read the remedy provided Section 72 of the Act in a liberal way for the purpose of bringing it under the provisions of Sections 12(2) and 29(2) of the Limitation Act of 1908. While making this liberal construction, the language used by the learned Judges is worth noting. They point out that the application to the court was in the nature of an appeal but they have nowhere called it as an appeal so provided by the legislature. While considering the nature and type of function performed by the court under Section 72, the learned Judges have construed liberally the provisions of Section 75 of the Act as also Section 12(2) and 29(2) of the Limitation Act, 1908. It is possible that the courts might look at the particular provisions in a liberal manner for the purpose of technical provisions like Limitation

Act. However, when it comes to the construction of provision which awards a positive right to a party it would be appropriate that the provisions are construed in a manner which are conducive to the right of the party.

9. We have considered the reasoning in the three judgments referred above. With respect, we find it difficult to agree with the reasoning in *Khivaraj Chhaganiram v. Shivshankar Basappa* (AIR 1974 Bom 40, 46 : (1973) 75 Bom LR 523 : 1973 Mah LJ 782). We agree with the reasoning in the other two cases. The slender thread on which the appellants' arguments rest is the absence of the word "appeal" in Section 72(1). That alone cannot decide the issue. If the well known word "appeal" had been used in this section that would have clinched the issue. It is the absence of this word that has necessitated a closer scrutiny of the nature, extent and content of the power under Section 72(1).

10. The power of the District Court in exercising jurisdiction under Section 72 is a plenary power. It is true that the Commissioner is not subordinate to the District Court but the District Court has powers to correct, modify, review or set aside the order passed by the Commissioner. All the characteristics of an appeal and all the powers of an appellate court are available to the District Court while deciding an application under Section 72. To decide this case we must be guided not only by the nomenclature used by the section for the proceedings but by the essence and content of the proceedings. That being so, we have no hesitation to hold that the proceedings before the District Court under Section 72(1) are in the nature of an appeal and that District Court exercises appellate jurisdiction while disposing of a matter under Section 72(1). Consequently, the Single Judge of the High Court while deciding the appeal from the order of the District Court deals with a matter made by the District Judge in the exercise of an appellate jurisdiction by a court subject to the superintendence of the High Court and hence Clause 15 of the Letters Patent is directly attracted.

11. The appeal has, therefore, to fail and is dismissed. However, there will be no order as to costs.

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