

Kanbi Manji Abji and Others

Vs

Kanbi Vaghji Mavji and Others

Civil Appeal No. 1625 of 1978

(Kuldip Singh, P. B. Sawant JJ)

15.10.1992

JUDGMENT

1. The appellants and the respondents before us are the followers of Shri Swaminarayan Sampraday. Shri Abji Bapa was a staunch follower of the said Sampraday. During his lifetime, Abji Bapa enunciated his own views which were respected by number of his followers who came to be known as Bapa Panthis. The respondents-plaintiffs are the followers of Abji Bapa, whereas the appellants-defendants are the followers of Nar Narayan Sect presided over by Acharya Shri of Mota Mandir at Ahmedabad.

2. At village Baladia in Taluka Bhuj Kutch, there is a temple called Chhatedi. In the said temple there is a Dharamshala hall. The idols of Shriji Maharaj, Abji Bapa and Ishwarcharandasji were installed in the said hall. Bapa Panthis were also using the hall for reading religious books. The temple has been registered as a public trust and the appellants-defendants are in possession and management of the trust.

3. The respondent-plaintiffs filed a suit alleging that the appellants-defendants were interfering with their rights of worship and they were not allowing them to read the holy books of Shri Abji Bapa in the Dharamshala hall of the temple. It was also alleged that the appellants-defendants had removed the idols of Abji Bapa and others which were installed in the hall. The said suit was instituted in the representative capacity claiming the following reliefs :

1. That it may be declared that the defendants have no right to remove the idols and portraits of Shri Sahajanand Swami, Shri Abji Bapa, and Shri Ishwarcharandasji installed on the Sihansan in the Dharamshala hall of the temple;
2. That the defendants have no right to interfere with the plaintiff's right of worship or to utilise the Dharamshala hall for such purposes;
3. That the defendants be restrained from using the Dharamshala for any other purpose.
4. That the defendants who have removed the above Idols of Shri Sahajanand Swami, Shri Abji Bapa and Shri Ishwarcharandasji be directed by a mandatory injunction to reinstal them in their original place i.e. on the Sihansan in the Dharamshala hall.

4. The trial Court dismissed the suit primarily on the ground that the Court had no jurisdiction to entertain the suit in view of the provisions of Section 50 of the Bombay Public Trusts Act (the Act). It was also held that the suit being not of civil nature it was barred under Section 9 of the Civil Procedure Code. On appeal, however, the High Court reversed the findings of the trial Court and held that the suit was maintainable. The High Court came to the conclusion that the right to worship in a particular temple being a civil right there was no question of suit being barred by Section 9 of the Civil Procedure Code. The High Court also reversed the finding of the trial Court to the effect that the suit was barred under Section 50 of the Act. This appeal by the defendants is against the judgment of the High Court.

5. We have heard learned counsel for the parties at length. Mr. P. H. Parekh, learned counsel for the appellants has taken us through the judgments of the High Court, the trial Court and the provisions of the Act. We are of the view that the High Court fell into patent error in holding that the suit was not barred under Section 50 of the Act. The High Court set aside the findings of the trial Court holding that none of the prayers in the plaint would fall under any of the clauses of Section 50 of the Act. We are not inclined to agree with the High Court.

6. We have examined the contents of the plaint and also the reliefs claimed therein. By claiming a right to have the idols and portraits in the Dharamshala hall and also the right to read the books propounded by the followers of Abji Bapa, the respondents-plaintiffs in pith and substance are asking for alterations in the scheme of the trust already settled. In any case, the right of trustees to decide the place where devotees would recite the scriptures and also the place where the idols and portraits are to be installed has been questioned in the suit. The respondents-plaintiffs are indirectly trying to interfere with the management of the temple. The main purpose of the suit filed by the followers of Abji Bapa is to establish the superiority of their sect and impose their way of thinking and worship in the management of the temple and as a consequence in the administration of the trust. In this view of the matter, there is no escape from the finding that the suit falls within the purview of Section 50 of the Act, and as such the trial Court rightly dismissed the same.

7. Mr. Parekh does not challenge the finding of the High Court to the effect that right to worship in a particular temple is a civil right.

8. We, therefore, allow the appeal, set aside the judgment of the High Court and restore that of the trial Court. The suit shall stand dismissed. No costs. Appeal allowed.

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