

BOMBAY HIGH COURT

Dev Chavata

Vs.

Ganesh Mahadeo Deshpande

A.F.O.D. No. 816 of 1961 and C.A. No. 600 of 1969

(Vaidya, J.)

05.08.1961. 27.02.1970

JUDGMENT

Vaidya, J.

1. This is a plaintiffs' first appeal against the judgment and decree dated August 5, 1961, passed by the District Judge at Kolhapur dismissing the plaintiffs' suit under Section 50 of the Bombay Trusts Act, 1950. The plaintiffs filed the suit on behalf of Sri Dev Chavata of Tambulwadi in Chandgad Taluka for recovery of possession from defendant No. 1 of an agricultural land bearing survey No. 77-/2 admeasuring 26 gunthas, assessed at Rs. 3.48 np., relying on a decision of the Assistant Charity Commissioner dated November 5, 1954. A certified copy of the decision of the Assistant Charity Commissioner is at Ex. 86. The said decision was given by the Assistant Charity Commissioner under Section 79 of the Bombay Public Trusts Act on an application made by plaintiff No. 1 for a certificate to declare that the suit land was the Devasthan Inam land of Shri Dev Chavata. The certificate given by the Assistant Charity Commissioner is at Ex. 106.

2. Defendant No. 1 (respondent No. 1) admitted in his written statement that he had appeared before the Assistant Charity Commissioner and contended that the suit land was his private property but the Assistant Charity Commissioner declared that the suit land was the Devasthan Inam land of Shri Dev Chavata. The second defendant, the Charity Commissioner, supported the plaintiffs' claim. But defendant No. 1 resisted the suit on the ground that he and his ancestors were in possession of the suit land for more than 60 years as owners adversely to the deity, and hence the suit was barred by limitation. The learned Judge upheld this contention and dismissed the suit, though he found the title of the Deity to the suit land established.

3. The learned Judge, in my opinion, was quite right in holding that the decision of the Assistant Charity Commissioner that the suit land belonged to the deity was final and conclusive under Section 79 of the Bombay Public Trusts Act, 1950. That decision was given after hearing the

objections of defendant No. 1 and under Section 79 read with Section 80, the Assistant Charity Commissioner had exclusive jurisdiction to decide the question as to whether the suit land belonged to the deity. The decision is binding on respondent No. 1 and cannot be challenged by him before me in this appeal.

4. The only question, therefore, which arises in this appeal is as to whether the learned District Judge was right in holding that the suit was barred by limitation. He has not cared to record under what Article of the Limitation Act the suit was barred. But from what he has found ultimately after the discussion of facts, it appears that he applied the provisions of Article 142 of the Limitation Act, 1908, to the suit and found that since the plaintiffs failed to prove their possession of the suit land within 12 years before suit, the suit was barred.

5. In my judgment, there is nothing in the Bombay Public Trusts Act, 1950, which is a special local Act, which makes the provisions of the Indian Limitation Act, 1908, or of the Limitation Act of 1963 applicable to a suit under Section 50 of the Bombay Public Trusts Act. The suit under Section 50 is a Special remedy before a special forum under the Act. The present suit having been filed on July 21, 1955, the question which will have to be considered is as to whether the Indian Limitation Act, 1908, will apply to it. Section 75 of the Bombay Public Trusts Act applies certain provisions of the Indian Limitation Act only to the filing of appeals and applications.

6. The Indian Limitation Act, which is the general law of the land relating to limitation, is applicable in the circumstances mentioned in Section 29 of that Act in the case of suits and proceedings under Special or Local Law. Now, Section 29(2) comes into operation when a Special or Local Law prescribes for any suit a period of limitation. See *Vidyacharan Shukla v. Khubchand Baghel*¹, and *Shankar v. Chunila*² However, there is nothing in Section 50 or in any other provision of the Bombay Public Trusts Act, 1950, which prescribes any period of limitation for a suit under Section 50. The suit is to be instituted outside Greater Bombay before a special forum, viz., the District Court, as provided in the section read with Section 3(4). I am, therefore, of the opinion that the Limitation Act is not at all attracted to any suit under Section 50 of the Bombay Public Trusts Act. Section 52-A lays down that suit against even an assignee for valuable consideration is not barred by any length of time and hence it is clear that legislature could not have intended to apply the law of limitation to suits under Section 50. The learned District Judge was therefore, wrong in applying presumably Article 142 and in dismissing the suit.

7. For these reasons the relief prayed for by the plaintiffs for recovery of possession of the suit property must be granted. Respondent No. 1 (defendant No. 1) shall deliver possession of the suit land to plaintiff No. 1 as trustee for and on behalf of the deity Shri Dev Chavata. An enquiry shall be held under Order 20, Rule 12 (c) of the Civil Procedure Code, with regard to the mesne profits which shall be paid by defendant No. 1 to plaintiffs from the date of the suit till delivery of possession. The plaintiffs and respondent No. 2, the Charity Commissioner, shall recover the

costs from respondent No. 1 throughout. In view of the above order, no order in Civil Application No. 600 of 1969 and no order as to costs thereof. Appeal is allowed with costs as directed above.

Appeal allowed.

¹ AIR 1964 SC 1099

²(1958) 60 Bom LR 901