



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 190 OF 1995
WITH
CIVIL APPLICATION NO. 1335 OF 1997**

Ghanshyam S/o Sudam Gaikwad,
Since deceased through his L.Rs.

- i) Baban S/o Ghanshyam Gaikwad,
age Major, Occu. : Service,
R/o Yarmala, Tq. Kallam,
Dist. Osmanabad.
 - ii) Bhagwat S/o Ghanshyam Gaikwad,
Age : Major, Occu. : Service,
R/o Latur.
 - iii) Roopdas S/o Ghanshyam Gaikwad,
Age : Major, Occu. : Labour,
R/o Yermala, Tq. Kallam,
Dist. Osmanabad.
 - iv) Dattatraya S/o Ghansyam Gaikwad,
Age : Major, Occu. : Pujari,
R/o as above.
- .. Appellants

Versus

- 1. Dasa S/o Daji Kambale,
Age : 58 Years, Occu. : Labour,
Resident of Ermala, Tq. Kallam,
Dist. Osmanabad,
Since deceased through his L.Rs.
- 1/i) Sampat S/o Dasa Kamble,
- 1/ii) Baba S/o Dasa Kamble,

1/iii) Uttareshwar S/o Dasa Kamble,

1/iv) Ramesh S/o Dasa Kamble,

1/v) Mandabai W/o Dasa Kamble,

All R/o Yermala, Tq. Kallamb,
Dist. Osmanabad.

2. Yadav Limba Kambale,
Age : 53 Years, Occupation and
Resident of as above.

.. Respondents

Mrs. M. A. Kulkarni, Advocate for the Appellants.

Ms. P. S. Talekar, Advocate i/by Talekar and Associates for the
Respondent Nos. 1/iii and 1/iv.

Appeal stands abated/dismissed as against Respondent Nos. 1/ii
and 2.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 14.07.2025

JUDGMENT PRONOUNCED ON : 17.07.2025

JUDGMENT :-

. Heard both sides.

2. Being aggrieved by judgment and decree dated 30.07.1994 passed by the Trial Court in R.C.S. No. 111 of 1986 dismissing the suit, which is further confirmed by judgment and decree dated 20.04.1995 passed by the lower Appellate Court in R.C.A. No. 240 of 1994, appellant/original plaintiff has preferred present second appeal. The suit for declaration and injunction was filed staking claim as Pujari or Archakship of Matangdevi, a deity,

which is located at Yermala, Tq. Kallamb, Dist. Osmanabad.

3. Present appeal is admitted stating that the status of plaintiff as Pujari of the temple is a substantial question of law. By way of written arguments submitted by the learned counsel for the appellant further substantial question of law stated in para No. 3 of the submissions are pressed into service. Learned counsel for the respondent did not object for consideration of further substantial question of law and she readily addressed those questions also. Parties are ready to go for final hearing without any further substantial question of law.

4. It's a case of the appellant – plaintiff that he is Pujari/archak of Matangdevi, which is hereditary right. Since his forefathers he is conducting the puja and collecting offerings of the deity. It is contended that plaintiff and his forefathers are rendering services of maintenance of temple, cleaning and lightening since last 80 years. He is being obstructed by the respondents unauthorizedly and he was constrained to file suit for declaration and injunction.

5. The respondents/defendants contested the suit denying the claim of the appellant. It is contended that plaintiff had no right to collect any offerings and he was not concerned with the deity. The deity is located in temple of Yedeshwaridevi. The defendant maintains and looks after Yedeshwaridevi as well as Matangdevi and receives the offerings.

6. Parties went on trial by examining three witnesses each. Both the Courts below recorded findings that no evidence was produced by the appellant to show that he or his forefathers were entrusted with work of archakship. The certificates at Exhibit 45 and 48 are discarded by the Courts below. It is further held that P.W. No. 2 – Shankar gave vital admissions against appellant/plaintiff. It is further held that case of the defendants appears to be probable. Lower Appellate Court further held that custom could not be proved by the appellant.

7. Learned counsel for the appellant submits that there is interim relief in favour of the appellant since 1995 and continuously he was working as Archak till his lifetime and the work is continued by his heirs. It is submitted that a trust is formed of the Matangdevi temple and the certificate has also been issued by the trust in favour of the appellant.

8. Learned counsel Mrs. M. A. Kulkarni for the appellant submits that the appellant has better claim than the respondents and is continuously working as archak since eighty years. It is further submitted that certificates at Exhibit 45 and 48 are wrongly discarded by the Courts below. Those would prevail. She would further submit that so called admissions of the P.W. No. 2/Shankar are inconsequential. It is vehemently submitted that P.W. No. 3-Tukaram, who happens to be sarpanch at the time of filing of the suit has corroborated the appellant's case,

which is not appreciated. The written statements are also pressed into service to make out a point that both the Courts below ought to have decreed the suit.

9. Per contra, Ms. Pradnya Talekar, learned counsel for the respondent Nos. 1/iii and 1/iv submits that burden was on the appellant being plaintiff to show that there was any such custom in the family of the appellant and archakship was the hereditary right. No evidence has been placed on record. The witnesses P.W. No. 1 and 3 are interested. Both the Courts below have rightly discarded certificates at Exhibit 45 and 48. It is submitted that there is no trust and Matangdevi does not fall under any trust of Yedeshwaridevi. She supports impugned judgments and decrees. It is contended that admissions given by P.W. No. 2 are rightly appreciated and detrimental to the appellant's claim.

10. Having considered rival submissions of the parties and having gone through the substantial questions of law, the issue needs to be addressed as to whether appellant proves that he is archak of Matangdevi, being a hereditary right.

11. Appellant is relying on certificate at Exhibit 45 issued by the P.W. No. 2 – Shankar, the then sarpanch. It is stated in the certificate that appellant looks after maintenance, cleaning and archana of Matangdevi and the services are being rendered since his forefathers as they belonged to Mahar community. It is not

understood as to in what capacity sarpanch issued said certificate. The village panchayat has no role to administer Matangdevi. The sarpanch cannot have right to declare anything like that. There is no material to show that Matangdevi temple is part of any trust, which is being looked after by village panchayat or sarpanch. The Trial Court has rightly discarded Exhibit 45 by assigning plausible reasons that it was issued at the say of appellant's son, who happens to be driver on the vehicle of District Superintendent of Police.

12. Further reliance is placed on Exhibit 48 issued by P.W. No. 3 – Tukaram, who is also sarpanch. The probative value of this letter is also suspicious. It is incomprehensible as to in what capacity the certificate has been issued. Both the Courts below have rightly discarded certificates at Exhibit 45 and 48. I find no merit in the submissions of Mrs. M. A. Kulkarni, learned counsel for the appellant that certificates corroborate appellant's claim.

13. I have considered cross examination of P.W. No. 2 – Shankar. He has given vital admissions damaging the appellant's claim. He was sarpanch since 1969 to 1979. He clearly admitted that certificate Exhibit 45 was issued by him at the say of appellant's son and in fact Puja was being performed by the defendants. He has further admitted that appellant did not qualify to be archak as against that the defendant undertakes the work carrying of cattle. Plaintiff's own witness has deposed against him, which cannot be overlooked. It cannot

be countenanced that documentary evidence would prevail over deposition of P.W. No. 2 – Shankar. Both the Courts below have rightly appreciated his evidence.

14. I have also considered the findings of Courts below and evidence of P.W. No. 3. Nothing substantial revealed from his deposition to corroborate the appellant's claim. Appellant has miserably failed to prove that archakship is hereditary right of his family. Some cleaning and sweeping the temple and residing in the vicinity of the temple would not take his case any further. There are no pleadings and supporting evidence for making out a custom or hereditary right. Lower Appellate Court has rightly dealt with this aspect of the matter. In the absence of any tangible and convincing evidence, I do not find that appellant is successful in making out his case.

15. Both Courts below have recorded concurrent findings of facts. The reasonings are plausible. No case is made out to cause any interference. Although it is contended that Matangdevi has become part of the trust, but this is not corroborated by any evidence. Though by interim orders appellant till his lifetime and thereafter his heirs continued to perform Puja, does not mean that they succeeded in establishing the custom or hereditary right. There is evidence to show that even the respondent was also performing puja.

16. I find no merit in the substantial question of law. Second

appeal is devoid of merits. Same is dismissed. Needless to state that interim relief granted earlier stands vacated. There shall be no order as to costs.

17. The civil application stands disposed of.

[SHAILESH P. BRAHME J.]

18. After pronouncement of the judgment, learned counsel for the appellant prays for continuation of the interim relief. Learned counsel for the respondent opposes the prayer.

19. As the interim relief is in operation, I find it fit to continue it for further period of four (04) weeks from today. However, it shall stand vacated on lapse of four weeks without reference to this Court.

[SHAILESH P. BRAHME J.]

bsb/July 25