

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

SECOND APPEAL NO. 311 OF 2015

Shamsundardas s/o Nareshdas

Age : Major, Occ. Service,

R/o : Pimprala, Tq. & District : **APPELLANT/**
Jalgaon. **[ORI. DEFENDANT]**

V E R S U S

1. Shriram Mandir Sansthan
Maheshwar @ Balaji Mandir
Sansthan, Pimprala,
Tq. & District : Jalgaon
(Trust) through Trustees.
2. (Shivchandra Shankarlal Jakhete)
Rameshwar Anandram Jakhete
Age : Major, Occ. Business,
R/o : 73, Navi Peth, Jalgaon.
3. Bhagirath Kesharlal Somani
Age : 50 Yrs., Occ. Business,
R/o : 7, Vijay Colony, Jalgaon.
4. (Kashinath Kesharlal Somani)
Subhashchandra Murlidhar Jakhete
Age : Major, Occ. Business,

R/o : 7, Vijay Colony, Jalgaon.

5. (Pandharinath Modiram Asava)
Surendra Pandharinath Asava
Age : Major, Occ. : Business,
R/o : 49, Kailash Bungalow,
Shahunagar, Jalgaon.
6. Kedarnath Ramnath Somani
Age : 50 Yrs., Occ. Business,
R/o : Plot No. 11, Shriramnagar,
Jalgaon.
7. Onkarnath Murlidhar Jakhete
Age : 63 Yrs., Occ. Business,
R/o : Plot No. 11, Shriramnagar,
Jalgaon.
8. (Narendra Navinchandra Mundada)
Prakash Shivchandra Jakhete
Age : Major, Occ. Business,
R/o : Plot No. 11, Shriramnagar,
Jalgaon.
9. Sham Narayan Asava
Age : 50 Yrs., Occ. Business
10. (Kashinath Motilal Birle)
Kamalnayan Hiralal Mantri
Age : Major, Occ. Business,

R/o : Shahunagar, Datta Colony,
Jalgaon.

At present All R/o Shriram Mandir
Sansthan Pimprala, Tq. & Dist.**RESPONDENTS/**
Jalgaon. **[ORI. PLAINTIFFS]**

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Mr. L.V.Sangeet, Advocate for Appellant.
Mr. V.B.Patil, Advocate for R – 1,2, 4 to 7
& 8 to 10.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 08/06/2016

JUDGMENT :

1. The Appeal is filed to challenge the Judgment and Decree of R.C.A. No. 145/2002 which was pending in the Court of the District Judge - 1, Jalgaon. The Appeal filed by the respondents, a Trust, having a temple to challenge the Judgment and decree of R.C.S. No. 192/1999 which was pending in the Court of the Civil Judge [Jr.Division], Jalgaon is allowed by the District Court and decree of possession is given in favour of the plaintiffs. Heard Both sides.

2. The Suit was filed in respect of some portion of house No. 811 situated at Pimprala. In city survey record, this property is numbered as 118 and 119. On this property, there is temple and there are some rooms and there is also open space. It is the case of plaintiffs that defendant/present appellant is occupying one room from this property.

3. Original plaintiff/respondent No. 1 herein is a public Trust and the Suit is filed by the persons, who are trustees on record. It is the case of the plaintiff that the other rooms of the property are given on rent basis by the Trust and as the defendant was appointed to perform puja in the temple, he was allowed to use one room for residential purpose. It is contended that from March, 1995 he was paid monthly salary of ₹ 750/- and only in that capacity he was allowed to use the said room. It is contended that prior to the defendant, one Budharamdas was working as Priest of this temple.

4. It is the case of the plaintiff that the conduct of the defendant is not good and for no reason he is quarreling with the trustees and he has started making

false allegations against the trustees. It is contended that the defendant is addicted to liquor and as he was harassing everybody including the devotees, complaint was required to be given to the police. It is contended that he has given threats to the trustees that he will not allow the solemnization of marriages and one marriage was to take place on 17/06/1999.

5. It is the case of the plaintiff that in the meeting of management committee of the Trust dated 20/02/1999, resolution was made to terminate the services of defendant and to take back the possession. It is contended that this resolution was acted upon and notice of termination was given. It is contended that the defendant promised to leave the campus within 1 or 2 days, but under one or the other pretext he avoided to vacate the premises. As the defendant was not vacating the premises, Suit was filed for the aforesaid relief and also for the relief of injunction to prevent him from interfering in puja, performing religious functions, etc. in the temple.

6. The defendant filed Written Statement and

contested the matter. He denied everything including right of the trustees to file Suit. He contended that as per Guru-Shishya parampara, a tradition of Guru-shishya, he became become priest of the temple and he was not appointed by the trustees to perform puja. He denied that he was getting salary of ₹ 750/- per month. He contended that by making false representation to him, his signatures were obtained on documents viz. pay roll, but that is false record. He has contended that as he has become priest due to tradition of the temple, he can not be evicted from the premises and he can not be prevented from working as the priest. He denied that his conduct is not good and notice in that regard was also given. The defendant made counter claim and requested to issue order against the plaintiff to prevent them from alienating the properties of the temple - Trust. The Written Statement was filed by the plaintiff to this counter claim.

7. Issues were framed. Both sides gave evidence. The trial Court had dismissed the Suit by holding that the record regarding termination is doubtful in nature and there was no proper termination of service.

The first appellate Court has held that the Trust had right to terminate the services even without giving notice in view of the nature of the appointment. The first appellate Court held that the notice of termination was also served and the defendant has no right to perform puja and he has no right to continue the possession of the room.

8. While admitting the Appeal, on 22/07/2015 this Court formulated following substantial questions of law.

[1] Whether the appellant/defendant could prove that he was appointed as per Gurushishya parampara as priest and would be entitled to appoint his disciple who would succeed him as priest ?

[2] Whether the appellant/defendant could prove that he has life time interest in the post of 'Pujari' of the temple run by the public Trust ?

9. The plaintiff examined one of the trustees to

give evidence and the evidence is in accordance with the pleadings in the plaint. The relevant record viz. copy of resolution, copy of notice of termination is produced on record. Certificate of posting under which the notice was sent is also produced at Exhs. 61 to 63. The record of payment of salary was confronted to witness of plaintiff during cross examination by the counsel of the defendant and so it is given Exh. 67. It is already mentioned that in the Written Statement defendant has admitted that he has signed on this record. The record shows that monthly salary of ₹ 767/- was paid though in one month i.e. July, 1996 salary of ₹ 645/- was paid. This difference can not make much in favour of the defendant as the record was to be used only for the purpose of showing that on the basis of payment of wages, appointment of the defendant was made by the Trust. Evidence is given that the defendant was also taking for himself the offerings given by the devotees in the temple. The witness of plaintiff has denied that there is interpolation in the resolution made by the trustees for removing the defendant and he has given evidence on the bad conduct of the defendant. The defendant himself has admitted that he has made complaints against the

trustees. The evidence is given that the defendant was not allowing the trustees to supervise the Trust. Copy of a schedule from the trust register is produced on record to show that this witness and others are shown as trustees of the said Trust. This Court has carefully gone through the resolution under which it was decided to terminate the services of the defendant. Office copy of the notice of termination is produced and this Court has perused the certificate of posting also. The note book in which the receipts of salary are given is also perused by this Court. Clerk of the Trust namely Nemichand is examined and his evidence shows that he had prepared the receipts of salary and they are duly proved in his evidence.

10. In view of the substantial questions law formulated by this Court, burden was on the defendant/appellant to show that by tradition he became priest and he was not appointed as priest on wages. He admits that one Budharamdas was priest prior to him. He has no record whatsoever regarding his nomination made by Budharamdas. He admits that he had dispute with the trustees. He has deposed that he was even collecting rent which was paid by the persons who were

occupying other rooms and he had used that rent. He admits that the trustees had asked him to vacate the premises and he was informed that his services were terminated. He has however denied that the notice of termination was served on him. His evidence shows that he is not educated even in religious function and he does not know sanskrit. He has avoided to admit many things which are relevant including the name of his Guru. His case about the tradition to appoint priest as per Guru-shishya parampara is not specific and he has not given the names of such Guru and disciples. Thus, on one hand there is record to show that he was appointed on wages and his services are terminated and on the other hand defendant has no record to prove that he is there as per Guru-shishya parampara.

11. For the Trust, case reported in **AIR 1935 Allahabad 802 [B.Roshan Lal Goswala Vs. District Board Aligarh and Anr.]** was cited. In this case, the High Court had laid down that such offices are held either “at pleasure or during good behaviour”. It is further laid down that the office is held at pleasure, the holder thereof is subject to dismissal at any time without

any cause being assigned and no notice or no framing of charge is necessary for that. Thus, it was not necessary for the plaintiff to give any reason, but they have given the reasons and the defendant himself has admitted that he had dispute with the trustees and he had made complaints against them also.

12. As there is virtually nothing with the defendant to prove that by tradition he is entitled to occupy the premises and perform puja in the temple, the substantial questions of law formulated are answered against him and the Appeal stands dismissed. In view of dismissal of Second Appeal, Civil Application does not survive and stands disposed of.

[T.V.NALAWADE, J.]

KNP/S.A. 311.2015 - [J]