

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 702 OF 2014

Sakru Vithoba Girkar (Deceased)
through legal heirs Suryakant Sakru
Girkar & Ors.

... Appellants

Vs.

Ramchandra Narayan Bhalekar (Decd.)
through his legal heirs Lahu Ramchandra
Bhalekar & Ors.

... Respondents

Mr. S.N. Naik, Advocate for the appellants.

Mr. Aniket P. Ranade, Advocate for respondent nos. 2A, 3, 4A to 4D,
6(A), 7(A), 8(A), 10(A) and 12.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 10th April, 2018.

P.C.:

Admit. By consent, the Second Appeal is heard finally and
decided at the stage of admission.

2. This Appeal is directed against the judgment and order dated
8th August, 2014 passed by the learned Principal District Judge,
Ratnagiri thereby dismissing Regular Civil Appeal No. 7 of 2010 and
also the judgment and decree dated 29th July, 2010 passed by the
learned Civil Judge Junior Division, Rajapur thereby dismissing the
Regular Civil Suit No.38 of 1973.

3. The appellants are the original plaintiffs, who have filed the suit for declaration that the respondents/original defendants have no right to reconstruct and repair the temple and also for declaration that the plaintiffs are to be declared as Manager and priest of the said temple. It is the case of the appellants/plaintiffs that temple of Lord Shree Dev Gango is constructed by the people of Kumbharwadi and appellants/plaintiffs have been worshiping the said deity since generations, however, the respondents/defendants have started repairing and reconstructing the temple and they threatened that they will not allow the appellants/plaintiffs to enter the temple, i.e., suit premises and would obstruct them from offerings and worshiping the deity. The defendants appeared in the suit, contested and resisted the suit. It was contended that earlier in 1923 the defendants have repaired the temple and they have participated in the worship of the deity. It is the public place and they have constructed some portion with the permission of the revenue authority in the year 1923. The trial Court framed issues. The plaintiffs and defendants tendered oral as well as documentary evidence and the trial Court held that it is a public place and deity and temple is not a private property of either of

the parties. The deity and temple is to be maintained on account of peoples participation and therefore, no declaration can be given in favour of the plaintiffs that they are the Managers or priests. The defendants cannot be enjoined from repairing the temple, if it is repaired by obtaining necessary permission of the authority. The defendants challenged the said judgment and order by filing the Appeal. The First Appellate Court took similar view and upheld the order passed by the trial Court that the appellants/plaintiffs could not prove that they have exclusive right to maintain the affairs of the temple of Lord Dev Gango to perform puja and offerings and celebrate annual functions and festivals. The Appellate Court held that the appellants/plaintiffs have failed to prove that it is a private temple or the property exclusively owned by the plaintiffs and also held that the plaintiffs failed to prove that the defendants have illegally started reconstruction of the temple. Hence, this Second Appeal.

4. The learned counsel for the appellants has submitted that there was the order of Collector by which the respondents/defendants were prohibited from participating religious activities of temple Lord Shree

Dev Aadinath and temple of Lord Shree Dev Ravalnath. This fact is not considered by the trial Court and the Appellate Court. The learned has further submitted that the District Magistrate while passing the order dated 16th August, 1983 did not give hearing to the appellants/plaintiffs and thus the said order cannot be relied, as there was non-joinder of parties.

5. The learned counsel for the respondents, while opposing the Second Appeal, has relied on the finding given by the learned Judge of the Appellate Court especially in paragraph 14 in respect of Exhibit 33, i.e., notice issued by the District Magistrate, Ratnagiri on 15th February, 1926 in respect of temple Lord Shree Dev Gango and other two temples and Exhibit 38, i.e., compromise pursis which was recorded by District Magistrate in respect of three temples. He pointed out that there was no restriction or prohibitory order against respondents/defendants in respect of temple of Lord Shree Dev Gango, i.e., suit property. He also relied on the finding given by the trial Court on all the issues.

6. Considered the submissions. Perused the record and

proceedings and the orders passed by the trial Court. It is a concurrent finding given by both the Courts. Considering the facts and also the finding given by both the Courts which is legal and correct, no substantial question of law is made out. Hence, Second Appeal is dismissed.

(MRIDULA BHATKAR, J.)