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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.719 OF 2017  
WITH  
CIVIL APPLICATION NO.961 OF 2017  
IN  
APPEAL FROM ORDER NO.719 OF 2017**

Shri Mahant Tejnarayandas Shishya of  
Mahant Shyamaldas & Anr. ...Appellants

V/s.

Shri Chandradevdas Badriprasad @  
Chandradevdas Guru Kamaldas & Ors. ...Respondents

....

Shri Atul G. Damale, Sr. Advocate I/b Shri Vijay Killedar,  
advocate for the appellant.

Shri R.S. Datar, advocate for the respondent No. 1.

Shri M.B. Babu I/b Shri Ganesh S. Bhat, advocate for the  
respondent No. 2.

Shri G.S. Godbole I/b Shri Tushar Dahibawkar, M/s.  
Dahibawkar & Co., advocate for the respondent No. 3.

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**CORAM : M.S.KARNIK, J.**

**DATE : 11<sup>th</sup> JUNE, 2019**

**P.C. :**

The challenge in this Appeal from Order is to an  
order passed by the trial Court dated 6<sup>th</sup> June, 2015 whereby the  
application made by the plaintiff for injunction has been  
rejected.

2. It is the case of the appellant No.1 that he is entitled to act as a 'Mahanta' in respect of the 'Bairagi Sect'. It is not in dispute that if at all the appellant is to succeed, he is to establish his claim that he is the successor of Mahanta Shri Shamaldas who died on 25/12/2009. The dispute essentially is between the appellant No.1 and respondent No.1. Both claim to be lawful successors of Mahanta Shri Shamaldas.

3. Learned Senior Counsel Shri Damale invited my attention to the averments made in the Plaint. He specifically invited my attention to the writing dated 2<sup>nd</sup> May, 2002 which was made by Mahanta Shri Shamaldas naming the appellant as the successor. He also invited my attention to the certificate dated 14/2/2010 issued by Shri Mahanta Devendraprasad Acharya, Badi Gaddi, Bada Sthan, Ramkot, Ayodhya, to the effect that the appellant would succeed Mahanta Shri Shamaldas after his death. Learned Senior Counsel would submit that these documents clearly indicate appellant No. 1 succeeded Mahanta Shri Shamaldas. He would further submit that while refusing

relief of injunction, the trial Court has not taken into consideration these documents. He would submit that the trial Court has only proceeded on the basis of some photographs relied by respondent No.1 in respect of “Mahantai Ceremony” which was performed on 11/1/2010 anointing respondent No.1 as 'Mahanta'. Learned Senior Counsel Shri Damale would submit that he was not present for “Mahantai Ceremony”. Appellant No.1 therefore filed the suit challenging the said “Mahantai Ceremony”. This was one of the prayer made in the suit amongst other reliefs claimed.

4. Learned Senior Counsel Shri Damale would further submit that the respondents are dealing with the property during the pendency of the suit. He points out that not only a Development Agreement was executed in the year 2007 in respect of some portion of the suit property, but even in the year 2014, during subsistence of the suit, development rights and conveyance in the property was transferred in favour of defendant No.4 by defendant No.1.

5. Lastly he would submit that there is an ad-interim order which was in operation in this Appeal which was continued by this Court from time to time and the same is in existence even as on today. He would submit that the suit is of the year 2012 and having regard to the issues involved, he prayed that the suit be expedited. He states that the status quo granted earlier be continued till the disposal of the suit in the interest of justice.

6. Learned Counsel appearing on behalf of the respondents invited my attention to the findings recorded by the trial Court. Shri Datar and Shri Godbole made submissions in support of the order passed by the trial Court.

7. Learned Counsel Shri Datar appearing on behalf of respondent No.1 submitted that at the “Mahantai Ceremony” of respondent No.1, the appellant was very much present. It is this ritual of “Mahantai Ceremony” that would make respondent No.1 a successor of Mahanta Shri Shamaldas. Shri Datar would further submit that the appellant though present at the

ceremony did not lodge any protest or take any steps to challenge the same. The suit was filed much later in the year 2012.

8. Another submission made by Shri Datar is that as per the traditions of the Bairagi Sect only a Shishya who is not married can be anointed as a Mahanta. The appellant is married, therefore, cannot be anointed as a Mahant.

9. Shri Godbole would submit that in 2007 the development rights were given by Mahanta Shri Shamaldas during his lifetime. The respondent No.3 claim under this development agreement. In any case, in respect of the Development Agreement executed by the then Mahanta Shri Shamaldas, who was authorised to enter into such an agreement in his capacity as a Mahanta, no injunction can be claimed by the appellant in respect of the suit property which is subject matter of the said agreement.

10. I have heard learned Counsel for the parties at some length.

11. Learned Senior Counsel Shri Damale relied on two documents dated 2/5/2002 and 14/2/2010 to contend that the appellant is entitled to succeed Mahanta Shri Shamaldas. It, however, cannot be lost sight of the fact that at the “Mahantai Ceremony” of respondent No.1 which was held on 11/1/2010 after the death of Mahanta Shri Shamaldas, the appellant was very much present in the ceremony. Even if the contention of learned Senior Counsel Shri Damale that appellant No.1 was not present at the ceremony on 11/1/2010 is accepted, even then I find that the suit is filed by the appellants only in June 2012. Nothing has been placed on record to indicate that immediately after the Mahantai Ceremony, the appellant took objection to the anointment of respondent No.1 as a Mahanta. The photographs which are filed on record prima facie indicate that the appellant was present at the Mahantai Ceremony.

12. For all these reasons, I am not inclined to interfere with the well reasoned order of the trial Court. In any case, in respect of the development agreement of 2007 executed by Mahanta Shri Shamaldas during his lifetime, the appellants

would not be justified in seeking any injunction restraining the respondent No.3 from dealing with the property. Pursuant to the development agreement the respondent No.3 has submitted plans and also development charges have been paid. It is therefore made clear that there shall be no injunction in so far as the property which is the subject matter of the development agreement of 2007 and subsequent deeds on the basis of this agreement. However, considering the fact that the suit is of the year 2012, I am of the opinion that in the interest of justice and considering the nature of the controversy, the suit deserves to be expedited.

13. The trial Court is requested to hear the suit as expeditiously as possible preferably within a period of one year from today. The parties undertake to co-operate with the trial Court for expeditious disposal and will not ask for unnecessary adjournment.

14. Since I have expedited the suit, the status quo so far as the creation of third party rights in the remaining properties

(except the property which is subject matter of the development agreement of 2007) need to be continued till disposal of the suit to protect the rights of the both sides.

15. It is however made clear that the appellants will not obstruct or cause any hindrance to respondent No.1 in discharging the duties as a Mahanta in respect of the said Sect and from performing the religious activities. It is also made clear that even the appellant No.1 can take part in the religious rituals in his capacity as a Shishya of the Bairagi Sect.

16. Needless to mention that all the observations made by me in this order as well as by the trial Court are prima facie in nature for the purpose of deciding the application Exhibit 5 and the application Exhibit 63. The trial Court while deciding the suit will not be influenced by any of the observations made by me in this order.

17. The Appeal is disposed of in the above terms.

18. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

**(M.S.KARNIK, J.)**