



shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.20 OF 2024
WITH
CIVIL APPLICATION NO.63 OF 2024
WITH
CIVIL APPLICATION NO.1853 OF 2024 (F)

MAZANIA OF SHREE NAVADURGA
SAUNSTHAN MADKAI THR. ITS
ATTORNEY SAEESH S. KAMATAPPLICANT
Versus
SHRI DEVI NAVADURGA PRATISHTHAN
THR. ITS TRUSTEES R. NOS. 2 TO 11 AND
26 ORS.RESPONDENTS

Mr. Shivan Desai with Mr. Aniroodh Sardesai, Ms. Tahira Menezes
and Ms. Riya Amonkar, Advocates for the Applicant.

Mr. Jitendra P. Supekar with Mr. Roger D'Souza, Advocates for
Respondent No. 1 to 3 and 5 to 23.

CORAM: **BHARAT P. DESHPANDE, J**

RESERVED ON: 18th November, 2024.

PRONOUNCED ON: 05th December, 2024

ORDER :

1. Heard Mr. Shivan Desai with Mr. Aniroodh Sardesai,
Ms. Tahira Menezes and Ms. Riya Amonkar, Advocates for the
Applicant and Mr. Jitendra P. Supekar with Mr. Roger
D'Souza, Advocates for Respondent No. 1.

2. This is a revision filed against order dated 07/12/2023. The Applicant is the Original Defendant No. 3 in the suit filed by the Respondent Nos. 1 to 23 seeking declaration and consequential reliefs.

3. The Applicant/Defendant No. 3 filed an application for rejection of the plaint under Order VII Rule 11 (a) and (d) of the Civil Procedure Code, 1908 (C.P.C. for short) which came to be rejected by the Trial Court by the impugned order.

4. Mr. Desai would submit that there is no actual cause of action to the Plaintiffs to file the suit and statements made in the plaint are only an attempt to create an illusory cause of action. He submits that infact the Plaintiffs are not having any right to sue and therefore, there is no cause of action accruing in their favour seeking declaration and consequential reliefs. He would submit that the averments made in the plaint nowhere shows any right accruing in favour of the Plaintiffs under any law and particularly, about the reliefs claimed as well as Article 25 of the Constitution of India.

5. He would submit that the Temple/Devasthan is admittedly governed by the Devasthan Regulations which are

infact holding the field in Goa and said Devasthan Regulations clearly provide that there has to be a Committee of the Mahajans who will look after the entire administration for the Temple. He submits that Plaintiffs are not at all Mahajan but some of Villagers who formed the Trust and thereafter filed a suit. Mr. Desai would further submit that Devasthan Regulations as well as Compromisso which has been accepted by the authorities would clearly show that Temple and the Devasthan is managed by the Mahajans and the Committees.

6. Mr. Dessai would submit that the Temple cannot be separated from its deity and therefore, the right claimed by the Plaintiffs qua the deity has to be considered with regard to the Temple and the Devasthan.

7. Mr. Desai would further submit that the Order passed by the Trial Court is perverse as the rejection of the application under Order VII Rule 11 is on the ground that it was belatedly filed. He submits that such application can be filed even at any stage and it is the duty of the Court to consider such an application and allow it, if there is no cause of action in favour of the Plaintiff disclosing the right to sue as well as such claim is barred by limitation. He would submit that the Trial Court

was influenced by the submissions that the application was filed after 7 long years and thus, such contentions require interference.

8. Mr. Desai while inviting attention of this Court to the prayers and more particularly, the contentions raised in the plaint would submit that the Plaintiffs are trying to contradict the provisions of Devasthan Regulations and Compromisso and are trying to claim that the Temple is an institution of public character and that the Defendants are not entitled to substitute the idol. He submits that such prayer is not available to the Plaintiffs, even though, they are claiming to be the Devotees as the Temple is admittedly, governed by the Compromisso and the Regulations.

9. Mr. Desai placed reliance on the following decisions (a) ***Mazania Shri Navadurga Temple Vs. Govind Shablo Gavde and others, 1992 SCC OnLine Bom 261;*** (b) ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others, (2020) 7 SCC 366*** and (c) ***Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman Vs. Ponniamman***

***Educational Trust represented by its
Chairperson/Managing Trustee, (1012) 8 Supreme
Court Cases 706.***

10. Per Contra, Mr. Supekar appearing for the Plaintiffs would submit that the Plaintiffs are the Villagers/Worshippers of the deity and by forming a Public Trust, they are challenging the decision of the Defendants with regard to substituting the old idol which is infact the idol existing from time immemorial and thus, the Villagers are having right to worship such idol. He would submit that the Plaintiffs are not claiming any right with regard to the Temple however, their only trust is with regard to the idol/deity which the Defendants are trying to replace.

11. He submits that the suit was filed about 7 years back and even while arguing the application for temporary injunction, it was specifically argued that the devotees are clearly against the decision of the Defendants to change the idol/deity and such Defendants have no right to replace such deity. He submits that the Plaintiffs are having right to worship a particular deity/idol which cannot be taken away by whims and fancies of the Defendants.

12. Mr. Supekar would submit that plaint clearly discloses cause of action as well as right to sue and thus, application has been rightly rejected by the Trial Court. He would further submit that only after change of Advocate by the Defendants and that too after 7 years, application under Order VII Rule 11 was filed with *malafide* intention and to prolong the proceedings.

13. Mr. Supekar would further submit that the scope of interference in the present revision is limited and this Court should not replace its own findings with that of the Trial Court when there is no perversity or illegality. Mr. Supekar placed reliance on the following decisions: **(a) *D. Sasi Kumar Vs. Soundararajan, (2019) 9 SCC 282*; (b) *Gromax Agri Equipment Limited Vs. Hindustan Earthmovers Private Limited, oral Judgment dated 06/06/2023 in R/Civil Revision Application No. 190/2023 of the High Court of Gujarat at Ahmedabad and (c) Smt. Rajbir Kaur and Anr. Vs. M/s S. Chokesiri and Co., (1989) 1 SCC 19.***

14. Rival contentions fall for determination.

15. The law with regard to Order VII Rule 11 C.P.C. is well settled as of now. In a recent decision in the case of ***Dahiben (supra)***, the Apex Court has considered its earlier decisions and more particularly, described what is cause of action, and the duty of the Court to find out whether plaint discloses real cause of action or illusory cause of action is being created by clever drafting.

16. While relying on the decision in the case of ***Liverpool & London S.P. & I Asson. Ltd. Vs. M.V. Sea Success & Anr.,(2004) 9 SCC 512***, it has been observed in Para 23.11 that whether the plaint does or does not disclose a cause of action must be found out from the reading of the plaint itself. For that purpose, averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the Plaint are taken to be correct in their entirety, a decree would be passed.

17. The Apex Court further considered the Case of ***Hardesh Ores Pvt. Ltd. Vs. M/s Hede and Company, 2007 AIR SCW 3456*** wherein it has been observed that it is not permissible to cull out a sentence or a passage of the plaint and to read it in isolation. The plaint has to be construed as it

stands without any addition or subtraction of word. If the allegation in the plaint *prima facie* show cause of action, the Court cannot embark upon an enquiry whether allegations are true in facts. Then it has been observed that on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without merit and does not disclose a right to sue, the Court would be justified in exercising the power under Order VII Rule 11 of C.P.C. It is further observed that power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit i.e. either before registering the plaint or after issuing summonses to the Defendants or even before the conclusion of the trial.

18. It is further observed that the provisions of Order VII Rule 11 is mandatory in nature as the word “shall be rejected” shows the mandate of law and the Court, if found that the plaint does not disclose a cause of action or the suit is barred by any law, the Court has no option but to reject the plaint. The Apex Court while placing reliance in the Case of ***T. Arivandandam Vs. T.V. Satyapal & Another, 1977 AIR 2421*** held that what is required to be decided is whether the plaint discloses the real cause of action or something

purely illusory, by clever drafting, which is to be nipped in the bud at the first hearing.

19. In the case of ***Church of Christ (supra)*** the Apex Court has considered the provision of Order VII Rule 11 CPC and observed that the Plaint could be rejected against some of the Defendants if it does not disclose any cause of action qua such defendants.

20. In case of ***Smt. Rajbir Kaur (supra)***, the Apex Court discussed scope of revisional jurisdiction which cannot be equated with a jurisdiction, as observed in para 42 and 43. In the case of ***D. Sasi Kumar (supra)*** the Apex Court observed that the revision cannot be considered in the nature of an appeal and appreciation of evidence is not permissible while considering a revisional jurisdiction.

21. In the case of ***Gromax Agri Equipment Ltd (supra)***, the learned Single Judge of Gujarat High Court, though considered all the Apex Court decisions is quoted above and observed that application under Order VII Rule 11 can be exercised at any stage, rejected such application on the ground that it was filed after a gap of 33 years. Such decision

of Gujarat High Court turned on its own facts as the same is not having a binding effect but only a persuasive value. Once it is observed that application under Order VII Rule 11 of CPC can be filed at any stage and if the Court is of the considered opinion that there is no cause of action or that the suit is barred by law, it has no other option but to reject the plaint.

22. In the present matter, the learned Trial Court has considered Article 25 of the Constitution of India to claim freedom of practice and propagation of religion. It is true that every person is having such freedom of conscience and free profession, practice, and propagation of religion, and such right though considered to be a fundamental right, it cannot be invoked against an individual or a private entity. That is why the Plaintiffs in the suit are trying to seek a declaration that Temple/Devasthan is having a public character. Besides, the right of free profession, practice and propagation of religion has to be considered in the light of the contentions raised in the plaint as it is not the case of the Plaintiffs that the Defendants are restraining them from performing their religious cult in any manner.

23. The entire controversy in the present suit, started when the Defendant/Management of the temple decided to replace the deity, as some part of the said deity/idol is considered to be damaged. A public trust is created by the Plaintiffs consisting of villagers and some of the members of the society claiming the rights and the relief as found in the plaint.

24. In order to have a meaningful reading of the actual cause of action or the right to sue, the prayers in the plaint are required to be quoted, which reads as under:-

(a) That the Hon'ble Court be pleased to declare, order and decree that the suit temple is a Hindu religious institution of a public character having the temple of Shri Navadurga as main temple and the affiliated seven temples in the seven wards of village Madkai.

(b) That the Hon'ble Court be pleased to declare, order and decree that the Defendants No. 3 and 4 are not entitled to dismantle, change, substitute the suit idol

under the Regulation and the Compromisso of Defendant No. 3 framed thereunder.

(c) That the Hon'ble Court be pleased to prohibit Defendants No. 3 and 4 from dismantling, changing, substituting the idol of Shri Devi Navadurga from the temple of Shri Navadurga of Madkai by means of a permanent injunction.

(d) That the Hon'ble Court be pleased to grant prayer (c) by means of a temporary injunction.

(e) Any other fit and proper order be passed in the circumstances of the matter.

25. The suit is filed for declaration and permanent injunction. Plaintiff No. 1 is a Trust, which was formed by elderly persons of village Madkai whereas Plaintiff Nos. 2 to 23 are the villagers and Hindu by religion. The Plaintiffs claimed that they are the devotees and worshippers of the deity of Shri Devi Navadurga of Madkai, which is called as their Gram Devta. The suit is filed in the capacity of the Trustee of Plaintiff No. 1 as well as in their personal capacity.

26. The plaint further discloses that Government of Goa through its Revenue Secretary have the administrative control over Defendant No. 3 that is *Mazania* of Temple of Shri Devi Navdurga, Madkai represented through its Attorney. It claims that such control of Defendant No. 1 is under the provisions of *Regulamento Das Mazanias* as approved by Diploma Legislativo 645 dated 30/03/1933, and amended by Diploma Legislativo No. 1898 dated 29/05/1959. it further claims that Defendant No. 3 is constituted as Hindu Religious Association of Members(*mazanias*) under the provisions of *Regulamento Das Mazanias*, and as approved by the Diploma Legislativo of 1933 and 1959.

27. It further shows that Defendant No. 3 is governed by the *mazania* regulations, the by-laws framed and acting through its Attorney as well as the President. It claimed that the then Portuguese Government brought regulations of *mazanias* only for economic and administrative governance of *mazanias* of Hindu Temples and the object of such regulations is to legislate the Temples. The plaint further disclosed that by provisional Government Order No. 584 dated 30/10/1886 was repealed by *Regulamento Das Mazanias* and thereafter, the

Compromisso of Defendant No. 3 was approved by the Governor General on 22/04/1910.

28. Paragraph 8 of the plaint discloses in great details, the content of Compromisso of the Temple of Shri Devi Navadurga and the affiliated Temples. Para 9 of the plaint then described Article 2 of the Compromisso, which deals with founder members of the Temples along with other communities.

29. The plaint further discloses that the main Temple is having its affiliated Temples. However, in the main Temple, the deity of Shri Devi Navadurga is the main idol established by religious ceremonies. However, it is not known as to when such idol was founded/installed.

30. The plaint further discloses that the dispute arose as regard to the origin of the said idol when Defendant No. 3 and 4 started claiming ownership over the said idol at the main Temple. Plaint, paragraph 13 would state that though Compromisso was executed by some person of a particular caste, there was no change in the religious beliefs, faith and religious cult, practised in the same Temple by other caste and communities residing in village Madkai.

31. Paragraph 14 of the plaint would state that somewhere in the year 2006, Managing Committee of Defendant No 3 and Defendant No 4 raised a dispute regarding celebration of ‘*Rath*’ (Chariot festival) by a particular community. Such dispute was solved by Defendant No 2, However, Managing Committee has failed to submit the budget for various years as required under the *mazania* regulation.

32. Plaint paragraph 17 discloses about complaint filed in the year 2008 on the dispute regarding decoration of *palkhi* of Devi Navadurga. Paragraph 18 of the plaint discloses about some appeal filed in the year 2010 with regard to improvement of infrastructure at the Temple. Paragraph 19 of the plaint refers to year 2013, when a letter addressed by Defendant No 4 to some of the Committee disclosing that the deity has given her consent (*Kaul/prasad*) to substitute the idol. However, there was no action to that effect. The villagers opposed such an attempt on the part of the Defendant No 4 to substitute the idol and even called some of the experts for the purpose of preservation of the said idol.

33. Paragraph 22 of the plaint discloses, about the cult and the practices performed at the said temple by various communities on various occasions.

34. Paragraph 23 of the plaint discloses the Trust which has been formed as Plaintiff No. 1 and the purpose of it. It is further claimed that the Villagers are having freedom of religion, which is practised by them at the suit Temple and more particularly, the idol which is present in the said Temple.

35. Paragraph 28 of the plaint discloses the decision taken by the Gram Panchayat of village Madkai somewhere in the year 2015, not to substitute the ancient idol of Devi Navadurga. Paragraph 30 of the plaint discloses the history of origin of the suit idol and the religious cult in Goa.

36. Paragraph 31 of the plaint claims that the suit Temple is a Hindu public Temple of the deity Shri Devi Navadurga of Madkai and the villagers of Madkai are entitled to worship the said deity and the idol which is present as their ancestors worshipped it from generations together. It claims that the suit temple is a religious institution of a public character to all classes and Sections of Hindus. Accordingly, it is claimed that

Defendant Nos. 3 and 4 cannot be allowed to change the suit idol as the villagers are having faith in the said idol, which is spiritual and emotional to them.

37. Further, it is claimed in paragraph 38 of the plaint that there are no provisions under the *mazanias* regulation regarding the idol. Similarly, the Compromisso by the Defendant No. 3 does not give powers to the Managing Committee to dismantle or remove the idol.

38. Finally, in paragraph 39 of the plaint, it is claimed that the cause of action to file the suit arose on 23/12/2015 when Defendant Nos. 3 and 4 denied the right to worship to the Plaintiffs and Villagers of Madkai by claiming that the suit Temple is their private Temple and that of deity of Shri Devi Navadurga is founded by the ancestors of the members of Defendant Nos. 3 and 4 and that they are the owners of suit Temple as well as idol of Shri Devi Navadurga

39. Paragraph 9 in the plaint pleads about Article 2 of Compromisso which clearly demonstrates that the founder members of the Temple of Shri Devi Navadurga are the Brahmins, all of Goa Saraswat classes and descendants of four

gotras who are the components of Comunidade of Madkai and belongs to 8 *Vangors*. It further says that the male descendants belonging to the 8 *Vangors* are the innates, Mahajans/Administrators and benefactors of the temple of Shri Devi Navadurga by right of foundation of Temple and donation of immovable and movable properties and other incomes for the permanent maintenance of the cult and celebrations of festivities

40. Admittedly, this Compormisso were drawn and approved by the then Governor General on 22/04/2010. These Compromisso were drawn as per the Diploma Legislativo No.645 of the year 1933 and the Diploma Legislativo No. 1898 of 1959 which is disclosed in paragraph no. 2 of the plaint, and earlier one which were replaced by above Diplomas.

41. The plaint itself shows that from the time of foundation of the said Temple, the Compromisso disclosed that the founder members of the said Temple are as mentioned in Article 2 of the said Compromisso.

42. Paragraph 13 of the plaint would then state that though such Compromisso was so executed by some person of

Brahmin Caste there was no change in the religious beliefs, faith and religious cult practiced at the Temple by the Villagers of Madkai.

43. On one hand, the Plaintiff admit that the Temple is governed by the Diploma Legislativo of 1933 and 1959 and Compromisso drawn in the year 1910 as well as it is governed under the Devasthan Regulations (*Mazania* Regulations). Thus, a meaningful reading of plaint along with paragraph 39 wherein cause of action is disclosed, it would be clear that such cause of action which is claimed in the plaint is only illusory cause of action as the pleadings in the plaint would go to show that the suit Temple is managed and governed under the Compromisso., the diplomas and *Mazania* regulations since the beginning wherein the founder members of the Temple are the *Mahajans* of the particular caste. Only male members of such 8 *Vangors* are entitled to be innates, *Mahajans* and Administrators of the said Temple by the right of the foundation of the Temple and donation of immovable and movable properties and other incomes for the permanent maintenance of the cult and celebration of festivities

44. It is therefore, clear that from the beginning the temple is considered and accepted to be governed under the Compromisso and the *Mazania* regulations by the *Mahajans* including the maintenance of cult and celebrations of festivities.

45. The Plaintiffs tried to claim in Paragraph 38 that there is no provision under *Mazania* regulations regarding the idol and that such Compromisso does not govern power to Defendant No. 3 to dismantle and remove the idol. At this stage, it is necessary to note that the Temple without idol/deity, is only a structure which cannot be termed as Temple. Existence of an idol/deity makes such structure as a Temple. Thus, when the Compromisso discloses that the Temple of Shri Devi Navadurga was founded by a particular caste and more particularly, by 8 *Vangors*, it certainly includes the idol/deity.

46. In the plaint it is clearly admitted that the Temple exists with an idol and management of the Temple is governed by *Mahajan*. Once this fact is admitted by the Plaintiffs including the fact that the Compromisso were approved by the Government, it pre-supposes that all necessary rituals and

religious cult is required to be performed as per the procedure which is mentioned in the said Compromisso. Applying the test in the case of **T. Arivandandam (supra)**, it is required to be decided as to whether the plaint discloses real cause of action or its created by clever drafting. The matter in hand would go to demonstrate that the Plaintiffs at one hand admits that Compromisso were approved by the Government in the year 1910, on the other hand claimed that the same were not followed and the Villagers continued to perform the rituals as per the religious cult in the said Temple by other castes and communities residing in the village of Madkai. It thus, shows that the contention of the Plaintiffs that though Compromisso was approved in the year 1910, there was no effect given to its Articles which is clearly taking a stand contrary to regulations as well as the Compromisso which were approved long back. The Articles of Compromisso would clearly suggest that the *Mahajans* of a particular caste and most particularly of 8 *Vangors* are the Founders and the Managers of the said Temple. It is, therefore, clear that by clever drafting and claiming that now Defendant Nos. 3 and 4 are trying to claim that the suit Temple and the idol is their private property, claimed that they have a cause of action, which is clearly

against the Compromisso which has been admitted and approved by the Government and followed from the year 1910 without any demur or disclaimer.

47. The prayer for declaration found in prayer clause (a) is therefore clearly shows that there is no cause of action or right to sue for the Plaintiffs. The other prayers are also not available to the Plaintiffs since they are not the *Mahajans* of the said Temple and thus, cause of action as far as other prayers are concerned is also considered to be illusory and created by clever drafting.

48. The observations of the learned Single Judge would give a clear idea about the *Mazania* Regulations and the body of members including *Mahajans*. Once, the Compromisso are admitted and approved by the Government in the year 1910, such Compromisso cannot be now challenged claiming that the Temple is not particularly belonging to one caste.

49. Thus, the Compromisso which is claimed for the suit is not actually the cause of action and no right to suit exists for the Plaintiffs on such pleadings

50. Once the Court comes to the conclusion that the cause of action disclosed in the plaint is illusory and not actual cause of action and there is no right to sue, there is no other option but to reject the plaint under Order VII Rule 11 of CPC.

51. The Revision is therefore, required to be allowed.

52. The impugned order is quashed and set aside, application filed by the present Applicant/Defendant No. 3 under Order VII Rule 11 C.P.C. stands allowed and accordingly, plaint in Civil Suit No. 12/2016 stands rejected.

BHARAT P. DESHPANDE, J

ORDER CONTINUED ON 05.12.2024

53. At this stage, Mr. Supekar appearing for the Respondent prayed that the order passed today be stayed for a period of 8 weeks.

54. Mr. Desai appearing for the Applicant objected for granting a stay to the present order.

55. Considering such request and the fact that the order is passed by rejecting the plaint, the order passed today is hereby stayed for a period of 6 weeks. However, it is made clear that during the period of 6 weeks, the proceedings before the Trial Court shall be considered as stayed.

BHARAT P. DESHPANDE, J.