

Baldevdas Vallabhdas Vs. Devendraprasad

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Court : Mumbai

Decided On : Aug-08-1946

Reported in : AIR1947Bom462; (1947)49BOMLR306

Judge : Macklin and Bavdekar, JJ.

Appeal No. : First Appeal No. 115 of 1942

Appellant : Baldevdas Vallabhdas

Respondent : Devendraprasad

Disposition : Appeal dismissed

Judgement :

Macklin, J.

1. This matter comes before us in the alternative by way of appeal or by way of revision with regard to an order passed by the District Court of Ahmedabad on an application for directions made to it in accordance with the provisions of a scheme framed by this Court in 1934 for the Swaminarayan temple at Ahmedabad. Put generally, the application by the petitioners was made in connection with objections which they had taken to certain items of the budget of the institution framed in 1940. The learned Judge held that the matters with respect to which they had come to him were matters falling within the compass of the scheme, and

also that there was no reason for him to interfere on the merits. It is against this order that the parties have now come to the High Court.

2. Regarded as an application in revision, it is clear that it does not come within the purview of Section 115 of the Code of Civil Procedure, since the scheme itself gives jurisdiction to the Court to hear matters of this sort and the petitioners themselves treated the Court as having jurisdiction in that they applied to the Court. It was within the jurisdiction of the learned Judge to decide the matters which he did decide, and it cannot be said that in exercising his jurisdiction he has been guilty of any material irregularity within the meaning of Section 115 or has in any way offended against any abstract rule of procedure.

3. We are asked to hold that Section 115 is not exhaustive so that we should have jurisdiction to interfere even in matters not expressly covered by that section. That no doubt is true; but as a matter of general principle and particularly with regard to this case we see no reason to extend our jurisdiction to cases not specifically falling within Section 115.

4. Coming to the alternative remedy by way of appeal, the argument is that although there is no specific provision for an appeal either in the Code of Civil Procedure or in the scheme itself, nevertheless an appeal must lie to this Court because the order passed by the Court is an order which either falls under Section 47 or is otherwise a decree within the meaning of the definition in the Code. There is ample authority for holding that this does not amount to an order falling within Section 47. Indeed it may be said that that matter has been conclusively determined by the Privy Council in *Jeranchod v. Dakore Temple Committee* (1925) 27 Bom. L.R. 872. P.C. That was a case where an appeal was made to the High Court from an order of the District Court sanctioning certain rules under a scheme. Though it had apparently not been objected in appeal that this was not an order coming under Section 47, their Lordships held definitely that it did not fall within Section 47; and that decision is of course binding on us. I may also refer to the decision of a bench of this Court in *Chandraprasad v. Jinabharthi* (1930) 33 Bom. L.R. 520 which was a similar case arising out of a scheme. It follows that the only chance for the appellants is to bring the order of the District Court of Ahmedabad

within the purview of the definition of decree. We are told that it satisfies the definition to the extent of being a final determination of the matters in controversy between the parties, and also that the parties whose matters have thus been finally determined are parties to the suit. As to the first point we do not propose to express any opinion, since in our view the appeal must fail on the latter part. In our view the matters in controversy cannot be regarded as matters in controversy between parties in the suit, since the suit had come to an end before the orders under appeal were passed. If we had to decide this matter in the absence of authority, I should, speaking for myself, find it unreasonable to hold that a suit should be deemed to continue as long as the scheme framed in the suit remained in being. There are manifest difficulties, practical and theoretical, in adopting any such view; but quite apart from such abstract considerations as these the matter in our view is fully determined by authority. We have been referred to an unreported decision of the Calcutta High Court, *Srijib Nyayatirtha v. Dandy Swami Jagannath Ashram* : AIR1941 Cal618 , where it was held that the suit did continue at any rate up to the time of the order passed under the scheme. But that was a special case where the scheme itself provided for the continuance of the suit until certain orders were passed under the scheme, and it is of no assistance to us in determining the present application. There is also a remark of Mr. Justice Patkar in *Chandraprasad's ease* where his Lordship refers to the decision in the *Dakore Temple* case and mentions that it was there held that the order could not fall under Section 47 and goes on to say: 'I think that the order in such a case would be an order on an application in the suit under the liberty to apply reserved in the scheme.' No reasons are given for that opinion in so far as it can be regarded as an opinion that the suit must be deemed to continue. In the same case Mr. Justice Broomfield emphatically dissociated himself from the view that the suit could be regarded as continuing. He did not definitely decide the point, but he did say on reference to certain decided cases that it was apparently permissible to hold that the suit was at an end and that any orders subsequently passed were passed under the scheme and not in the suit. It is not inconceivable that there might be cases in which it would be wrong to regard the suit as having come to an end before the passing of the orders of the District Judge on an application made under the provision for liberty to apply; for example, the scheme itself might

provide that the suit should be deemed to continue until the happening of certain events, or it might be possible by implication to treat the intention of the scheme as being that the suit should continue for some definite or indefinite time. Such cases are not inconceivable; but we are satisfied that this is not one of them. In a later case, *Kadri v. Khubmiya*, (1930) 33 Bom. L.R. 546 the same learned Judge repeated his opinion and reaffirmed his doubts that the suit could be regarded as perpetually pending. In the result these last two cases were treated as falling within the revisional powers of this Court and not subject to appeal. There is also a decision of this Court in *Shridhar v. Ganu* : AIR1927 Bom422 , where the mere fact of the scheme providing for reference to the District Judge for directions was held to imply that the District Judge was also to exercise control generally in regard to any question of management that might be properly brought before him, and that the District Court ought therefore to be regarded as the final authority in that particular matter of dispute under the scheme. If these were not enough, we still have the overriding authority of the Privy Council in the *Dakore Temple* case. The general effect of that decision was that the High Court has no power to act in any matter coming under the scheme except to the extent given it under the scheme, and it is evident that their Lordships could not have expressed any such opinion as that if the suit could be regarded as still in being and the order of the District Court could be regarded as a decree.

5. We think therefore that this matter fails both as an application in revision and as an appeal, and that it must be dismissed with costs.

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