(1966) 03 MP CK 0006

Madhya Pradesh High Court (Indore Bench)

Case No: F.A. No. 47 of 1962

State of M.P.		APPELLANT
	Vs	
Mahant Udaygir Guru Rewagir		RESPONDENT

Date of Decision: March 4, 1966

Acts Referred:

- Specific Relief Act, 1963 - Section 42

Citation: (1966) JLJ 807

Hon'ble Judges: M.A. Razzaque, J; H.R. Krishnan, J

Bench: Division Bench

Advocate: Balwantsingh, Govt. for State, for the Appellant; V.V. Kulkarni, for the Respondent

Final Decision: Allowed

Judgement

H.R. Krishnan, J.

This is an appeal by the State of Madhya Pradesh from the judgment and decree in favour of the plaintiff-respondent granting him a bare declaration, from which according to that trial Court certain consequential reliefs automatically follow which have been evaluated at Rs. 1,25,000 for purposes of jurisdiction but have not been taxed. The questions for decision are, firstly, whether this suit is in contravention of the proviso to section 42 of the Specific Relief Act: secondly, whether in view of Government"s inherent power to terminate and resume a jagir grant, the order of the Rajpramukh of Madhya Bharat resuming the jagir of this particular mahant is justiciable at all. Thirdly, on merits, whether the plaintiff has established that he was not only a disciple but also the heir to Mahant Rewadas, who in his turn, was the properly appointed Mahant-successor to Balramdas and had properly nominated or otherwise appointed the plaintiff as his successor.

2. The parties have gone through the history over about a century and a half of certain jagir and inam grants granted to some "Geer Gosai" Mahants as long ago as 1813 or

1814 A. D. There had all the time been the practice of religious people doing what is called the "Narmada parikrama", walking along one bank bill the river entres the sea, then crossing over and walk back along the other bank. At different places by the river-side "maths" and similar institutions were established with the purpose of caring for such pilgrims and affording them food and rest. Anyway, in the Dhar State two villages Pathori in jagir and Sundrel in inam were granted to one Mahant Udaygir (for convenience described as "Udaygir 1") in 1813. About the same time in the Holkar State two villages were granted to the same Udaygir for the same purpose, they being Nigarni and Itavadi. We are not in this suit concerned directly with the Holkar grants but certain Orders made by the Holkar authorities have been referred to apparently as foreign judgments having an evidentiary but not conclusive force. Anyway, the succession to the Dhar grant (as also the Holkar grants) was by shishyaparampara, that is to say, inheritance through disciples though the instruments themselves do not indicate in what manner each grantee or mahant was to select the particular disciple; that obviously was left for a practice to develop. Fifth in descent was one Balramgir who became the mahant towards the end of the last century. Presumably he was the mahant:also for the Holkar grants; but we are now concerned with the grant in the Dhar State. All these mahants, at least till Balramgir and including him were unmarried sanyasis; but Balramgir''s own loose morals in this regard came under notice of the Dhar State. It is not clear whether they came under similar notice of the Holkar authorities; but it is in evidence that the authorities in the two different States took different lines in dealing with these mahants. In the Dhar State Balramgir was declared unfit and the two villages granted to him in jagir and inam were taken over by the Court of Wards in 1898. This continued till 1954, the authorities of the Dhar State till 1948 and of the Madhya Bharat afterwards funding the income separately till there was an accumulation of Rs. 53,000 as an accretion to this jagir and inam. Though it is suggested at one place that the intention was to forfeit the grant, till 1954 the position was that there was a theoretical possibility of the return of the jagirs, in whatever form it existed at the appropriate moment, to a person recognized as the mahant. Ultimately the Court of Wards did release the two villages as well as the income in deposit which went to the Government and not to the mahant, for reasons to be stated presently.

3. A point of great significance is that in 1952 the Madhya Bharat Abolition of jagirs Act came into force and after that date "jagir" and "inam" really meant nothing more than an amount lying with the Government as compensation and in certain cases some area of agricultural land granted to the Ex-jagirdar or mafidar. It is in this sense that the "Jagir" has to be understood after 1952, in the present case it also including the accretion of Rs. 53,000.

4. Meanwhile there had been changes in the institution also, Balramgir died in 1907 while the two villages in the Dhar State were under the Court of Wards. Sometime later one Rewagir (who for convenience can be called "Rewagir II" to distinguish him from the mahant of the same name who immediately succeeded to the original grantee) claimed to

be the mahant and wanted mutation. This was being enquired into and though some recommendations were made by the subordinate authorities no order was passed in this regard by the Dhar Durbar, Rewagir himself dying in 1928 when this matter was still under investigation. About seven years after his death the present plaintiff Udaygir (again "Udaygir II" to distinguish him from the original grantee) applied that his name should be mutated in place of Rewagir. Actually Rewagir himself not being recognized yet, the plaintiff was only prosecuting Rewagir"s application by what can be called a substitution. As a matter of detail, he was at that time a minor and his case was being conducted by a guardian who is plaintiff"s witness No. 1 in this suit. This was again pending and no final orders had been passed till about 1955 by which time of course many other changes had already occurred.

5. One change has been already referred to, namely, that jagir or mafi or inam after 1952 had a very restricted meaning, namely, the amount of compensation if any, plus some agricultural land in certain cases. The whole matter was placed before the Rajpramukh in 1955 and he passed an order which is summarised below and in regard to which the plaintiff has urged that it should be declared null and void and should be set aside. What was originally a question whether or not Rewagir should be mutated in the place of Balramgir"s and whether again the plaintiff should be so mutated in the place of Rewagir, now became the basic question regarding the right to the jagir and the inam. The Rajpramukh considered the question. He ordered on 18-10-1955 (Ex. P/10) that the question of the title to the jagir and the right to inheritance having been raised he held that the plaintiff could not be recognized as the mahant because he was a married man and had broken the condition that the occupant of the gaddi should be a celibate (nihang). Accordingly:-

With effect from this date the jagir was being resumed by the Government and what-ever income had been funded and held on its behalf is being remitted to the treasury.

It is significant that the order expressly refers to only the jagirdari village of Dathora and makes no mention of the mafi inam of Sundrel. However, Government has taken possession of both the villages as well as the total accumulated deposit in the time of Court of Wards from both, and also the compensation payable in respect of them under the Abolition of Jagirs Act.

6. It is of interest to note that while all this was going on in the Dhar State and later on in the Madhya Bharat in regard to those villages, the two jagirdari villages in the Holkar State had been in the enjoyment both of Rewagir and in time of the plaintiff, they being recognized as the properly appionted mahants by the Holkar authorities and consequently allowed to continue by those of the Madhya Bharat in those villages. We are here concerned only with the areas in the erstwhile Dhar State.

7. Upon this the plaintiff has brought this suit for a bare declaration that he is the mahant of this "thikana" including the Pathora jagir and Sundrel inam and that the order of the

Rajpramukh resuming them is illegal and inoperative. He has also asked that the Court should direct the payment to him of the accumulated income of the time of Court of Wards and the compensation payable for the jagir and also put him in possession of the properties. What exactly they are over and above the compensation is not clear. The suit itself had been valued for jurisdiction at Rs. 1,25,000 but the plaintiff has paid court fee for the bare declaration on the assumption that the reliefs he was asking "automatically" followed from the declaration and need not be separately asked for and taxed.

Question No. 1.

8. The first question that arises is whether the suit itself is not hit by the proviso to section 42 of the Specific Relief Act. Had the plaintiff, when this defect was pointed out in the written statement, accepted the position and sought leave to amend the plaint and pay ad Valoram court-fee for the reliefs he sought indirectly, the matter would have been simple. In fact no Court, would like to dismiss a suit on such formal grounds if the plaintiff was prepared to remedy the defect when pointed out. But the present plaintiff"s position is one of persistence in that this is not a case where it is necessary for him to ask for a further relief than the declaration. This therefore has to be examined.

9. The proviso to section 42, Specific Relief act runs:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

The key to this provision is that the plaintiff should be able to ask for a consequential relief then and there and should all the same befalling to do so. "Possible" obviously means "possible", having regard to the course of events and also with reference to the statutory provisions otherwise applicable to the case.

10. Broadly speaking, four types of declaratory suits are possible and in each of them the availability and necessity of a further relief might takes slightly different form. The simplest is where the statute itself enables the plaintiff to ask for a mere declaration of title, the typical cases being claim suits under Order 21, Rules 63 and 103, Code of Civil Procedure. Here it should be noted the declaration is in respect of something that arises in course of another judicial proceeding.

11. Then there is the type where the declaration is to be sought not as an end in itself but as a step for pursuing some other proceedings already initiated in the revenue or other special Courts. In most States, for example, certain class of partition and other suits relating to agricultural land are disposed of by special Courts; but when in any special Court a party raises a question of title it hold its hands till that party goes to the civil court and gets a declaration. A typical case of this type is the one reported in Mt. Munnabai v. Mt. Sharadabai 1946 N L J 381 : A I R 1946 Nag. 235 : I L R 1946 Nag. 312 from which the learned trial Court had drawn a general conclusion which is of course wrong. There it is neither possible, nor necessary for the party going to the civil Court on a single isolated

issue to ask for further relief; all that it has to do is to take the civil Court''s finding back to the revenue or the other special Court to enable it to proceed further in implementing; this finding thus, the consequential relief,-if it is to be so called-is sought in the special Court.

12. There is then a third type where it is still premature to ask for a consequential relief, A typical case is where an owner with a life-interest or interest otherwise limited disposes of the property as if he is a full owner and the presumptive reversioners at that time seek a declaration that the reversioners are not bound by the transfer. In such a case no consequential relief is called for or possible at that time; but occasion might arise when the reversion opens.

13. All these types have to be distinguished from the last class of cases, where there has been a dispossession and the plaintiff really wants to get back what he has been divested of. In such a situation the further relief, that is the relief of restoration or recovery of possession is possible and has to be sought in a proper manner. Omission to do so leads to the dismissal of the suit. In such a situation a bare declaration is of no value whatsoever because it leads to nothing without some further step by way of a suit or application. It is most often sought with the ulterior purpose of securing without paying the court-fee what the law insists upon taxing ad valorem. In the instant case, for example, it has been seriously argued that once the plaintiff succeeds in getting a declaration he is the mahant of this Thikana it would ''automattically'' follow that he should be given the monies in deposit both on account of the compensation and the accumulated profits. One fails to see who this follows at all unless it is sought in an appropriate manner with the court-fee paid as required by the Court-fees Act. This has to be done in the instant suit itself.

14. On this subject case-law is ample and we need only cite a few typical ones. The ruling reported in AIR 1938 369 (Lahore) which came to be known as the Shahid Ganj Mosque case is to the point. When the Moslem community suing for a declaration that a particular place of worship was a mosque would not ask for restoration of possession, the majority view was that the suit had to be dismissed.

Where a suit is filed on behalf of the Mahomedan community which could have sued for possession of a mosque in possession of non-Muslims even though the individuals of that community cannot sue for such relief, but the relief asked for is only for a mere declaration and injunction, the suit is not maintainable.

This judgment sets out the case-law on the subject. In Kandaswami Thambiran v. Vegheesam Pillai A I R 1941 Mad. 622, which is also a Full Bench case it was decided-

The plaintiff who is asking for a declaration of his title to the office of a mahant and who is not in possession of its properties must by reasons of S. 42 ask for possession. His failure to do so vitiates his suit.

This is based on the reasoning-

The office of a mahant cannot be separated from the properties which form the endowments of the office.

In the Allahabad ruling reported in Mahant Indra Narain Das Vs. Mahant Ganga Ram Das and Another, , the different possibilities in a declaratory suit have been separately considered. Where the further relief is not possible or available at the time of the suit the plaintiff need not seek it; but where there is a relief-

Which the plaintiff must seek in order to get the actual substantial relief suitable for him, that is a relief which the plaintiff would have to seek by means of some subsequent suit or application in order that he may make the declaratory relief fruitful to him self, he must ask for it in the suit itself.

15. In the instant suit the plaintiff does want that he should get the 53,000 accumulated profit, and the compensation for the jagir and the inam; but he assumes that he would "automatically" get them without further suit or application by merely getting himself declared to be entitled to the gaddi of the mahant. It is difficult to see how it is possible because it would be necessary for him at least to make an application to Government on the strength of the declaration if any that he succeeds in obtaining. At that stage, the failure to have obtained this relief from the civil court would become a bar.

16. The lower Court seems to have felt that the Nagpur ruling reported in Mt. Munnabai v. Mt. Shardabai 1946 N L J 381 : A I R 1946 Nag. 235 : I L R 1946 Nag. 312 supports the plaintiff"s stand that by merely asking for declaration he could pursue the suit and succeed in getting the reliefs. Actually that ease was a special one. The parties concerned were before the Tahsildar for partition and separate possession of an occupancy holding. The defendant questioned the title of plaintiff as a complainant. The Tehsildar held that there being a question of title no partition could be made until it was decided by the civil Court whereupon the plaintiff sought a bare declaration. But that is not the position in the present suit; the further relief has to be sought in the civil Court itself in the same suit in which the declaration is sought. In fact, that ruling has clearly stated after summarising the case-law-

a declaratory decree ought pot be made unless there be a right to some consequential relief which, if asked for, might have, been given by the Court, or unless in certain cases, a declaration of right is required as a step to relief in some other Court.

17. The result of the foregoing discussion is that even if the plaintiff has a case, the suit as framed by him is bad in view of the proviso to section 42 of the Specific Relief Act and on that ground alone calls for a dismissal.

Question No. 2-

18. This takes us to the next basic ground, namely, the justiciability or otherwise of the order of the Rajpramukh resuming this jagir on the ground that the plaintiff was no more

entitled to it. By the time the Rajpramukh made his order Government had been dealing with the properties of this thikana in three different departments. Firstly, there was the taking over of the two villages in the erstwhile Dhar State by the Court of Wards in 1898 which continued in effect till the end of 1954. There the Government was not dealing with any question of title or of a succession or even of mutation; but it was the trustee or the manager on behalf of the mahant for the time being, whoever it was and whoever it might be found to be either by Government or by the law Courts. This of course was terminated and if nothing else had happened, the accumulated income in deposit and the equivalent of the villages in the new setup would have been handed over to whomsoever was found on investigation to be the mahant properly appointed. The second department in which these villages were being dealt with was of the Jagir Commissioner. The Jagirs being abolished and the mafi-inam in the Dhar State partaking of the nature of jagir had been resumed under the law subject to compensation and allotment of agricultural holdings in certain circumstances. In the event of any question of succession or title to the property on the date of the vesting, Government had to make a decision on the materials being furnished by the Jagir Commissioner. Thirdly apart from the general question the revenue authorities were dealing with the prayer of the plaintiff that his name should be entered. This by itself does not raise any question of title. These questions were being investigated after 1952 by Government on the report of the Jagir Commissioner. There was one more question whether, other things being the same, the plaintiff (Udaygir II) was personally qualified to be the mahant. The order concerned dealt with the second and the third aspects of the question, the first having been already disposed of by an order that the Court of Wards might release the property. The problem was whether it could be released in favour of the plaintiff or of anybody else, or it should be taken by Government without any compensation.

19. The personal disqualification mentioned is the marriage, that is, the admitted marriage of the plaintiff. We have to answer to questions; firstly, whether the reasoning given by the Rajpramukh in his order is sufficient and secondly, whether the answer is at all justiciable.

20. It is convenient to take the second question at first. At the stage in which this order was being passed, the Madhya Bharat Abolition of Jagirs Act had come into force and the Court of Wards was realising the villages and Government was called upon to answer the question of title such as is mentioned in section 17 of the Act.

17. If, during the course of an inquiry by the Jagir Commissioner, any question is raised, in respect of a Jagirdari title to or right in, Jagir lands resumed u/s 3, and such question has not already been determined by the Government, the Jagir Commissioner shall proceed to enquire into the merits of such question and refer the matter for decision to the Government whose orders shall be final.

Now u/s 34-

(1) No Civil Court shall have jurisdicion to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tehsildar, the Collector, the Jagir Commissioner, the Board of Revenue or the Government.

(2) Except as otherwise provided in this Act, no order of the Tahsildar, the Collector, the Jagir Commissioner or of the Board of Revenue or the Government under this Act shall be called in question in any Court.

We have to see whether it is provided in the Act itself that the civil Courts are competent to investigate the correctness or legality of the order made by Government u/s 17. It is admitted that there is no provision in this Act; but the argument is that the proceeding for mutation was pending all the time and this order should be related to it in which case the civil Court has jurisdiction under the Madhya Bharat Land Revenue and Tenancy Act. It is difficult to agree. As the order shows Government was dealing with the entire question on the report by the authorities and deciding not merely that the mutation should be refused to the applicant plaintiff-which would leave the question of title open before the civil Court, but expressly forfeiting or taking back the jagir village into Government''s possession, and also appropriating to Government treasury the accumulated profits. Thus we would hold that the Courts have no jurisdiction to examine whether or not the reasoning given by the Rajpramukh was sufficient.

21. Even on merits, the reasoning impresses one as satisfactory and adequate for the taking back of the jagir without any compensation. Evidence has been led from a number of so called Gosai-members of a class more or less similar to the one to which the plaintiff belongs, with however, one difference. These Gosais state they are married, but they also clarify the position that the grants given to them were "vansh parampara" grants, that is to say, such as would descend to the children of the flesh of the owner. This type of grant is to be distinguished from the type describable as "shishya parampara" grant, whose the succession is by a "shishya" or disciple-which one of the possible several to be determined according to the practice in the institution concerned. In a vansh-parampara grant no question would arise of there being a disciple because such disciple, if any, will have no right to inherit the property. Similarly, in a shisya-parampara grant, while it is theoretically conceivable that some of the claimants are children of the flesh and some the disciples; in such a case the succession would devolve only on the latter. But such a situation would be anomalous and the evidence does not show that there is even a single ease with the knowledge of the witnesses of a shishya-parampara grant in which the occupant for the time-being is still allowed to marry and then to disinherit the children of the flesh and give the property to the disciples as he is bound to.

22. Another point to note is that the five mahants from beginning were celibate. It is of course theoretically conceivable first, that a shisya parampara inheritance can stilt co-exist with a permission to marry, and secondly, that the permission to marry was not availed of for five successive generations in this thikana. But that would be too much of a coincidence. The very fact of the grant being shisya-parampara and further the five

successive mahants being unmarried would show that it was a thikana in which the occupant was to be celibate, that is, unmarried from the very beginning or, if married earlier, bound to give up family life and become a sanyasi. Thus, even if the order of the Rajpramukh was justiciable we would not find the reasoning unsatisfactory or illegal. There is, therefore, no justification any way for interfering with the Rajpramukh''s order.

23. One thing, however, has to be mentioned here. The Rajpramukh''s order is only in regard to the Jagir village of Pathora and not the inam-mafi village of Sundrel, though as a matter of fact Government has taken possession of both the properties as also of the profits accumulated by the Court of Wards from both. If the plaintiff''s suit had been properly framed and if he succeeds in establishing that he is the heir to mahant Rewagir appointed in accordance with the conditions of the grant and the established practice of the thikana and if he shows further that Rewagir had been in his time similarly appointed, he could get a decree for the return of the mafi village Sundrel and the accumulated profits attributable to that village.

Question No. 3-

24. The sheet anchor of the plaintiff''s case is that mahant Rewagir, though not recognized in the Dhar State, was still the successor to mahant Balramgir and subsequently he in his turn made the plaintiff his successor in a manner consistent with the conditions of the grant and the custom in the thikana.

25. It is in this connection that we find that the plaintiff''s averments are very vague, altogether insufficient to substantiate his claim. The plaintiff has tried to aver in his plaint that be is a disciple of Rewagir who in his turn had been a disciple of Balramgir; but how he, or Rewagir as for that matter, from being a disciple became the disciple qualified to inherit is not mentioned anywhere in the plaint or in the evidence. What the plaintiff should have done was to outline in the plaint the process by which a particular disciple became the heir and how in his case these steps were taken.

26. The grant itself says that the succession shall be by shishya-parampara; but that is not sufficient. There will be a number of disciples and which one out of the several should take would depend upon the practice that would develop. Four alternatives are possible; First, that the disciple that is senior-most in continuous membership of the institution might become the heir which corresponds to the rule of primogeniture. Secondly, the disciple nominated as the heir in the presence of the brotherhood by the head of the establishment might take whether or not he is the senior most disciple a practice that is fairly well known. A third alternative is where a particular disciple is accepted on the approval or ratification by the grantor-in this case Government, in such a situation the head of the establishment would make either a single recommendation or recommendations in order of preference one out of which will be formally approved by the grantor. Finally, there is the case which is very rare or even non-existent in practice or which is still theoretically conceivable, namely, the mahant can have only one disciple at

a time and be takes.

27. whichever is the alternative that according to the plaintiff is in vogue in this establishment, he has to plead expressly in the plaint and prove by evidence. Here unfortunately there is complete silence. The most the plaintiff has tried to show is that there had been the adoption of disciples, on one occasion by a circular letter sent to various associated establishments and on the another occasion by formally calling the members and tying a turban over the head of the disciple. The evidence is not very impressive; but that is not the real point now; it is that even accepting the evidence and holding that on the occasion Rewagir was the disciple to Balramgir and on a later occasion Udaygir was made the disciple of Rewagir, still the plaintiff cannot win his case because he has to prove not merely that he was a disciple but also that he was the disciple called upon to inherit the gaddi in one of the four ways already set out. This he has failed to establish and in fact even to plead. This again is a single ground which suffices to unsuit him.

28. The learned lower Court has mentioned two circumstances to justify its finding that the plaintiff has inherited the thikana. The first is that Rewagir had in his time applied for the mutation of his name in place of Balramgir. Secondly, that in a somewhat similar situation the authorities in the Holkar State had recognized at the first instance Rewagir as the successor to Balramgir and again the plaintiff as the successor to Rewagir himself.

29. The first is of no significance in any case. The mere fact of somebody applying to be recognized as such-and-such does not in any manner prove his claim. Again, the fact that the opposite party admits that there had been such an application does not by that fact amount to an admission that the application was based on sufficient aid proper grounds. These are two different matters. On the second circumstance we have to note that an anomaly has crept in this thikana because originally these mahants were holding jagirs or similar grants in two different States with two different and mutually foreign Governments. What the Holkar Government did was not binding on the Governments. Dhar after the merger of both the Governments with the Madhya Bharat and later on Madhya Pradesh, the anomaly had continued. For certain purposes the new Government was bound by the acts of the outgoing Governments unless it had been under consideration and not finalised on the date of the merger. So it is possible that the State of Madhya Bharat thought itself bound by what the Holkar Government had done. The facts are not all before us; but if at any time a similar controversy comes up before the Court in regard to the jagir villages of the erstwhile Holkar State it should be considered on its own merits independently of what has happened in the Dhar State. But as far as the villages in the Dhar State are concerned, the new Government was in a position to apply its mind openly which is exactly what it has done. There again, its present order is only in respect of one village. Thus the mere fact that the Holkar Government had recognized these mahants does cot conclude the issue. It is a piece of evidence at the most like all foreign judgment; how much weight should be given depends upon its bearing on the whole problem. On their consideration we have to hold that the Holkar recognition notwithstanding the

plaintiff cannot succeed to the gaddi.

30. The result of the foregoing discussion is that the plaintiff has not succeeded in proving all the basic requirements on which alone he could get any relief. The suit itself, as already noted, has been improperly framed. The appeal is therefore allowed and the decree of the trial Court is set aside. The suit stands dismissed. The plaintiff shall pay costs throughout to Government along with pleader''s fee according to rules.