

(1955) 10 BOM CK 0029**Bombay High Court****Case No:** A.F.A.D. No. 470 of 1953

Sapta Koteswar Godat Goa
Endowment (Trust)

APPELLANT**Vs**

Ramchandra Vasudeo Kittur and
Others

RESPONDENT**Date of Decision:** Oct. 4, 1955**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 12

Citation: AIR 1956 Bom 615**Hon'ble Judges:** Shah, J**Bench:** Single Bench**Advocate:** K.G. Datar, for the Appellant; R.G. Samant, for the Respondent

Judgement

Shah, J.

The plaintiff claiming to be the wahiwatdar of Shri Sapt Koteswar Deo filed civil suit No. 464 of 1949 in the Court of the Civil Judge, Junior Division, at Shahapur, against the defendants for a decree for possession of two rooms in a house belonging to the deity, and for an injunction restraining the defendants from obstructing the plaintiff in his wahiwat, and for recovery of costs of the suit.

It was the plaintiff's case that the property in suit is a part of their property C. S. No. 1229, that the property originally belonged to one Vyankaji Mahadev Kittur who by his will dated 19-5-1898 dedicated the property together with other properties to Shri Saptkoteswar Deo of Goa. Under the will one Nagesh Pandurang and others were appointed executors and trustees for management.

In 1913 there were disputes between Nagesh Pandurang and other executors and Nagesh Pandurang filed suit No. 13 of 1913 in the Court of the District Judge, Belgaum, for removal of the defendants Rayappa Dasharath and Krishnaji Hari from the office of trustees of Shri Saptkoteswar Deo.

On 2-10-1914 the parties arrived at a compromise and Nagesh Pandurang was declared to be the sole vahiyatdar and trustee of the Shri Saptkoteshwar Deo. On 27-3-1915 Nagesh Pandurang made and published a will whereby he devised the right of management of properties of Shri Saptkoteshwar Deo to one Vasudeo. After the death of Nagesh Vasudeo entered upon the management of the properties purporting to make vahiyat accordingly.

On 16-2-1928 Vasudeo in his turn made a will whereby he devised the right of management in favour of the plaintiff, and constituted the plaintiff as the sole trustee of Shri Saptkoteshwar Deo.

The plaintiff then filed suit No. 464 of 1949 out of which this second appeal arises against the defendants for a declaration that S. No. 1229 of which S. No. 1229/29 is a part belongs to Shri Saptkoteshwar Deo and for an injunction restraining the defendants from obstructing the plaintiff in making vahiyat of the house (the two rooms) and for future mesne profits.

2. The suit was resisted by the defendants. They denied the will dated 16-2-1928 made by Vasudeo, and they contended that in any event the, will was not valid. They also denied that the property in suit was trust property.

The defendants further contended that the trust was illegal and invalid, and that the plaintiff was not a legal trustee of the property. They further contended that the defendants had acquired a right to reside in the suit house. The defendants also challenged the plaintiff's right to file a suit in the form in which it was filed.

3. The learned trial Judge held that the suit house was a trust property and that the trust was legal and valid but the plaintiff was not a lawful trustee of the property and that the plaintiff failed to prove the will dated 16-2-1928. The learned trial Judge accordingly dismissed the plaintiff's suit. In appeal to the District Court at Belgaum, the decree passed by the trial Court was confirmed.

The learned District Judge held that the suit property was dedicated to Shri Saptkoteshwar Deo as alleged in the plaint. He further held that Nagesh Pandurang was not competent to appoint his son a trustee by will and the plaintiff could not be appointed a trustee by the will made by Vasudeo on 16-2-1923.

The learned Judge held that the will dated 16-2-1928 was duly proved, but the plaintiff acquired no right or title thereunder. He also held that the defendants were occupying the suit property by leave and license of the plaintiff. It is evident that the learned District Judge non-suited the plaintiff on the view taken by him, that the plaintiff was not a lawful trustee of the properties which, were dedicated to Shri Saptkoteshwar Deo. Against the decree passed by the District Court the plaintiff has come to this Court in second appeal.

4. It may be mentioned that the plaintiff originally filed the suit seeking to obtain possession of the properties in disputes from the defendants on the allegation that

the properties were his personal properties. Thereafter the plaintiff amended the plaint and alleged that the properties belonged to Shri Saptkoteshwar Deo and he was merely the manager of the properties.

The learned Judges in [he Courts below appear to have taken the view that under the consent decree passed in suit No. 13 of 1913 Nagesh Pandurang was not competent to appoint a trustee by his will. In their view the right to appoint a trustee could not have been devised by Nagesh Pandurang in favour of Vasudeo.

The decree in suit No. 13 of 1913 according to the learned Judges in the Courts below did not constitute. Nagesh Pandurang the sole trustee, and in view of the direction in the decree that If Nagesh desired to surrender the management, the right to manage the property was to devolve upon the surviving trustees, they held that Nagesh Pandurang could not be regarded as the sole surviving trustee competent to devise by will the right of management in favour of persons other than the remaining trustees.

It is unnecessary for me to decide the question whether Nagesh Pandurang was competent to devise the right of management in favour of his son Vasudeo. It may be sufficient to note that purporting to act on the authority of the will executed by Nagesh Pandurang, Vasudeo acted as a trustee of the property of Shri Saptkoteshwar Deo during his lifetime, and the plaintiff, since the death of Vasudeo, has been acting as the trustee and manager of the properties of Shri Saptkoteshwar Deo.

Even if there was some defect in the title of Vasudeo on the assumption that Nagesh Pandurang had no authority to execute a will devising his right of management to any one, Vasudeo must be regarded as a de facto trustee. Similarly the plaintiff must also be regarded as a de facto trustee if the defendants claimed that they were in possession of the property for and on behalf of the deity, and the defendants had accepted the title of the deity and were seeking to hold the property in assertion of a right as trustees, different considerations might have arisen.

But evidently the defendants have denied the title of the deity, whereas the plaintiff who is acting as a manager of Shri Saptkoteshwar Deo is seeking to restore the property to the benefit Of the deity, the defendants are denying the right of the deity.

If the title of the deity is established, the defendants would not be entitled to resist the claim made by the plaintiff for and on behalf of the deity on the allegation that there is some defect in the title claimed by the plaintiff as a lawful trustee of Shri Saptkoteshwar Deo.

In my view even as a de facto manager the plaintiff was entitled to file a suit. The learned District Judge has pointed out that even the plaintiff appears to be mismanaging the properties.

According to the learned District Judge the plaintiff was enjoying a substantial portion of house No. 1229 and was paying a nominal rent of Rs. 250/- per annum and therefore there was no justice in permitting the plaintiff to occupy the entire house without paying rent and to enjoy the handsome income of the lands and to turn out the defendants -- his own brothers -- from the two rooms which they were occupying.

In my view that ground for non-suiting the plaintiff appears to be entirely unsustainable. If the learned appellate Judge was of the view that even though the plaintiff pretended to make a claim for and on behalf of the deity, in substance he was seeking to advance his own interests, the learned Judge could by proper directions have protected the interests of the deity by putting the plaintiff on terms or by giving such other directions as were called for in the circumstances of the case.

But evidently there was up ground for nonsuiting the plaintiff and permitting the defendants to remain in occupation of the property belonging to the deity, especially when the defendants were denying the title of the deity.

5. Mr. Samant, who appears on behalf of the defendants" contended that the defendants were ill-advised in denying the title of the deity, when in fact they had a right to remain in possession of the property for and on behalf of the deity and have a lawful right to manage the property.

I need express no opinion on the question whether the defendants have or have no right under the decree passed in suit No. 13 of 1913 or otherwise to manage the properties of the deity Shri Saptkoteshwar

But the defendants in this suit have denied the title of Shri Saptkoteshwar and having denied the title of the deity they must hand over the property into the possession of the de facto manager of the deity -- the plaintiff.

6. The decree passed by the Courts below dismissing the plaintiff's suit must, therefore, be set aside. In order however that the interests of the deity be protected, I propose to give the following directions.

7. The appeal will be allowed and there will be a decree in favour of the plaintiff for possession of the suit property together with future mesne profits and costs of the suit in all the three Courts, Future mesne profits will be ascertained under Order 20, Rule 12, Clause (1) (c), Civil P. C.

The plaintiff should submit accounts in respect of the entire property which is in his occupation as the vahiyatdar of Shri Saptkoteshwar Deo to the District Judge, Belgaum, and shall deposit rents and profits received by him in the District Court at Belgaum and shall make disbursements there out with the sanction of the District Judge.

This arrangement will ensure so long as the Charity Commissioner does not pass proper orders for management of the property under the provisions of the Bombay Public Trust Act, 1950.

8. Appeal allowed.