



Order Below Exh. 07 in R.C.S. No. 17/2022
(CNR No. MHRT08-000145-2022)

This is a suit whereby the plaintiffs have prayed for declaration and injunction. By the present application, they are seeking temporary injunction.

02. It is the case of plaintiffs that, there is a temple of God Shiva/Mahadeo at village Bhowade, Tal. Sangmeshwar. It is well known as Shri Dev Boreshwar temple ('the temple' in short). Bhagoji Baing was father of plaintiff no. 1 and grandfather of plaintiff no. 2. Bhagoji had two daughters. He prayed before Shri Dev Boreshwar for blessing him with a son. He had also determined that, if he is blessed with son, he would offer *Puja, Jalvrushti, Maharudrabhishek, lighting of sacred lamps, Maha-Aarati and distribution of Prasad* ('such Puja' in short) on occasion of every Mahashivratri. His prayers worked. He was blessed with a son (plaintiff no. 1). Then, since, 1944, Bhagoji was performing such Puja on occasion of every Mahashivratri. It was a part of his private function. He was not only performing such Puja but also, he used to arrange cultural and religious activities. For the whole day and following night, such Puja as well as cultural and religious acts were performed enthusiastically. Although, Bhagoji and members of his family were performing such Puja from morning to afternoon on the day of Mahashivratri, villagers used to participate in and appreciate the same.

03. However, defendants no. 1 to 3 were not happy with this. They are trustees of Shri. Dev Boreshwar Sansthan. These defendants no. 1 to 3 were obstructing and interfering into right of the plaintiffs and defendants no. 4 to 7 to perform such Puja and acts on the occasion of Mahashivratri.

04. In the year 1968, for the first time, such interference was

caused by the predecessor of defendants no. 1 to 3. Then, with the help of some mediators in the village, a solution was reached. It was agreed that, Bhagoji can perform such Puja and rituals in the temple between 06.00 a.m. to 11.30 a.m. on the day of Mahashivratri. It was so continued since 1968. However, due to outbreak of Covid-19, in the year 2021, it was difficult to have such programs. Yet, plaintiffs applied to concerned Sub-Divisional Officer cum Additional District Magistrate for permission to perform above religious function on occasion of Mahashivratri in the year 2021. S.D.O. has granted such permission subject to suitable conditions. However, on the day of Mahashivratri, the defendant no. 1 and 2 did not handover key of temple. With the intervention of police officers, later, such Puja was performed. This hurtled ego of defendants no. 1 and 2. Since, there is continuous danger of violation of legal right of the plaintiffs and defendants no. 4 to 7, by defendants no. 1 and 2, present suit is instituted. Since, defendant no. 3 is one of the trustees, he is made party to the suit although he has not directly interfered in the said legal right. According to plaintiffs, due to the continuous performance of such Puja, they and defendants no. 4 to 7 are entitled to a customary legal right of such Puja on occasion of Mahashivratri. Thus, it is necessary to restrain defendants no. 1 and 2 from interfering in such right of plaintiffs and defendants no. 4 to 7. Hence, by the present suit, they are claiming for declaration of such right and perpetual injunction. By the present application, they have sought for an injunction to restrain defendants no. 1 and 2 from interfering in their aforesaid right and rituals, till decision of the suit.

05. Defendants no. 1 and 2 have filed the written statement and reply to present application. It is at Exh. 17. They have denied contentions of the plaintiff. They specifically contend that, they and defendant no. 3 are from family branches of Rama, Laxman and Govind

who were sons of Daulata Baing. There was a suit between these Rama, Laxman and Govind. It was a Regular Civil Suit bearing no. 30/1943. As per the decree of that suit, Rama, Laxman and Govind, each was conferred a right to look-after the management and to do necessary acts concerning the temple. Such right is to be exercised by them for a year after every two years. Thus, they could exercise the right for a year. For another consecutive two years, the rights could be exercised by other two branches and so on. Such right is being now so exercised by defendants no.1 to 3. In the year 1952, as per decree in R.C.S. No. 30/1943, a trust is created for the temple. As per said decree, initially, Shivram Sona Baing, Babya Guna Baing and Panda Govind Baing, who were elders from the family branches of Rama, Laxman and Govind, respectively, were trustees. Now, as per ancestral right, defendant no. 1 is the trustee of the said trust. Object of the trust is to perform religious acts in the temple. Such religious acts are continuously so performed. There was another litigation bearing RCS No. 04/2014. It was a suit instituted by one Madhukar Shivram Baing. One Tukaram Daulata Baing and present defendants no. 1 and 2 were also parties to that suit. A settlement was arrived by and between parties to that suit. Accordingly, a decree is passed therein.

06. Since 1943, plaintiffs have never claimed any right which they are now claiming. Decrees passed in RCS No. 30/1943 and RCS 04/2014 are not challenged by the plaintiffs. They have never appeared in either of those suits.

07. Further, all the trustees and other members of family of defendants no. 1 to 3 are not made parties to the present suit. Thus, suit is bad for non-joinder of necessary parties. Moreover, it is hit by the provisions of the Maharashtra Public Trusts Act. Accordingly, the present application is liable to be rejected, according to defendants no. 1 and 2.

08. Perused the record. Heard both sides.

09. Learned advocate Shri. S. B. Shahane for the plaintiffs has submitted that, such Puja and rituals are being performed by Bhagoji and thereafter by plaintiffs and defendants no. 4 to 7 from 1944 to 1968 and then from 1968 till present day. According to him, such a continuous acts performed by them conferred a customary legal right on the plaintiffs and defendants no. 4 to 7. He submits that, they cannot be deprived from exercise of such right when it is being exercised without any interference into prayers by others in the temple even on the day of Mahashivratri. According to him, what the plaintiffs are praying is just a right to perform such puja within a specific time on the day of Mahashivratri. Moreover, the plaintiffs have not clarified as to who performed such Puja on the occasion of Mahashivratri, if it is not performed by the plaintiffs or their predecessors.

10. Learned advocate Shri. Shahane has further submitted that, the trust for the temple is a private trust. As such, the provisions of Maharashtra Public Trusts Act are not applicable to the present suit. Further, RCS No. 30/1943 was a suit for partition. It was between predecessors of defendants no. 1 to 3. Plaintiffs were not parties to that suit. Thus, the decision therein would not have any effect on rights of the plaintiffs.

11. Hence, according to him, in any view of the matter, the plaintiffs have established prima-facie case. Balance of convenience lies in their favor. If the plaintiffs right is obstructed, they would suffer irreparable loss. To support his contentions about continuity of exercise of such right and performance of aforesaid religious acts, he has brought to my notice documents at sr. no. 1 to 52 which plaintiffs have produced on record as per list at Exh. 6.

12. Learned advocate Shri. C. V. Limbukar for defendants no. 1 and 2 has submitted that, the documents produced as per list at Exh. 20 show that, the defendants no. 1 to 3 are entitled to exercise rights and to perform acts concerning the temple. According to him, the decree passed in RCS No. 30/1943 and RCS No. 04/2014 shows that, these defendants are entitled to such rights. Defendant no. 1 is the trustee of the trust created for the temple. As such, there is no question of exercise of any right, as alleged, by the plaintiffs. Moreover, a person cannot determine that, the temple has to be in his control for a specified time. The suit ought to be a representative suit as interest of the villagers is involved. The suit is also bad in view of section 52 of the Maharashtra Public Trusts Act. Hence, the application is liable to be rejected.

13. On perusal of record and on hearing both sides, following points arise for determination. I have recorded findings thereon for reasons to follow -

Sr. No.	Points	Findings
1.	Whether the plaintiffs have made out prima-facie case?	No.
2.	Whether the balance of convenience lies in favor of the plaintiffs?	No.
3.	Whether the plaintiffs would suffer irreparable loss, if the temporary injunction as prayed for, is not granted?	No.
4.	What order?	As per final order.

REASONS

As to Point No. 1

14. 'Prima-facie case' denote bona fide contest between the parties. To see that whether prima-facie case has made out by a party, it

should be seen that whether the party claiming it, has made out that there is apparent case in his favour.

15. According to plaintiffs, they are claiming the right on the basis of continuous puja and rituals performed by their predecessor Bhagoji and later by them since 1944. The documents produced on record as per list at Exh. 6 by the plaintiffs are copies of applications made by Bhagoji or the plaintiffs to the concerned authorities for permission to use loud speaker or for ensuring Bandobast on occasion of Mahashivratri. Some of the documents are about grant of permission for use of loud speaker. Some of the documents are about applications made for Bandobast or such permission. Moreover, some of those documents appears to be the hand written or printed invitation cards.

16. The fact which has to be seen that, whether performance of puja and rituals would confer right on a particular person or family to continue the same. According to plaintiffs, it was determination by Bhagoji to perform aforesaid puja and rituals. The determination was part of his prayer. His prayers were resulted in blessings of God. As such, since 1944, he continued the aforesaid acts, according to plaintiffs.

17. Amongst Hindus, Mahashivratri is one of the important festivals. It is celebrated annually in honour of the god Shiva. Shri Dev Boreshwar is the temple of Lord Shiva. Thus, on occasion of such an important day like Mahashivratri, many of the villagers might be willing to perform the aforesaid type of puja and rituals. Now the conflict may occur as to who shall be allowed to do and perform aforesaid puja and rituals. The temple being a public place, all the devotees are equally entitled for the same. To avoid and to resolve the conflicts, if any, at such a public place, it is the trust created for the same to take necessary decisions. As such, at such religious public place, the trust, if any, has a

right to take necessary decisions including one concerning performance of puja and rituals.

18. The right claimed by plaintiffs is based on so called custom. Thus, it is to be seen as to whether such custom is established ? if yes, whether it conferred a right on the plaintiffs, as claimed ?

19. Hibbert, a well-known jurist, defines 'Right' as "a right is one person's capacity of obliging others to do or forbear not by his own strength but by a strength of a third party. If such third party is God, the right is divine. If such third party is public generally acting through opinion, right is moral. If such third party is the State acting directly or indirectly, right is legal." Thus, 'right' to be a 'legal right' necessarily need recognition by the State. 'Custom' can be as source of such right. 'Custom' is a rule which in a particular family, or in a particular district or state becomes established by long usage. It is not that each and every custom can be legally enforced. A custom can be legally recognized and enforced only if satisfies some requirements viz.-

- i. Custom must be ancient i.e. must have an immemorial antiquity.
- ii. Custom must be continuous.
- iii. It must be reasonable.
- iv. It must not be immoral.
- v. It must not be contrary to justice, equity and public policy.
- vi. It must not be contrary to statutory law.

20. In the present case, it is contended that such Puja is performed since 1944. Thus, it does not have immemorial antiquity. Further, in 1968, it was said to have obstructed. In 2021 also, key was not handed by the defendant no.1 until police officers intervened, as contended by the plaintiffs themselves. Thus, continuity is not established. Further, performing such Puja in the temple of Lord Shiva

on occasion of Mahashivratri only by a particular family by negating such right of other villagers is contrary to justice and equity. It is for the concerned trust to ensure that all the concerned are entitled for such Puja either by rotation or by other acceptable method. Thus, in the given circumstances, it cannot be said that the plaintiffs have prima-facie established alleged right due to custom or on any other ground. Hence, this point is answered in the negative.

As to Point No. 2

21. This point is as to 'balance of convenience'.

22. As observed in point no. 1 above, the plaintiffs have prima-facie failed to show alleged customary or other right. Hence, it cannot be said that, balance of convenience lies in their favour. Therefore, this point is answered in the negative.

As to Point No. 3

23. In view of failure of the plaintiff to show prima-facie case and balance of convenience in his favour, it cannot be said that, he would suffer irreparable loss, if the injunction, as sought for, is not granted. Hence, this point is answered in the negative.

As to Point No. 4

24. In view of negative findings as to points no. 1 to 3, application is liable to be rejected. Hence, I pass following order :-

ORDER

Application is hereby rejected.

Date : 16.11.2022

(B. D. Tare)
Civil Judge (Jr. Div.), Deorukh,
Dis. Ratnagiri.

- : C E R T I F I C A T E : -

Judgment/order in (Order below Exh.07 in R.C.S No. 17/2022)

I affirm that the contents of this Pdf file order are same words as per original order.

Name of Stenographer	:- S. S. Thaware (Jr. Clerk)
Court Name	:- The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Deorukh
Date of decision	:- 16/11/2022
Order signed by PO. on	:- 16/11/2022
Order uploaded on	:- 21/11/2022