

KAHV510033802022



**IN THE COURT OF THE III ADDL. SENIOR CIVIL JUDGE
& J.M.F.C., RANEBENNUR**

**PRESIDED OVER BY SRI. MAHANTESH G.BHUSAGOL,
B.A, (Law) LL.B.
III Addl. Sr. Civil Judge & J.M.F.C,
RANEBENNUR.**

O.S No.149 of 2022

Dated this 26th day of March - 2026

Plaintiff : Santhosh S/o Malatesh Pujar.

-Vs-

Defendant : Shivappa S/o Ajjappa Uppar @ Banakar
and others.

Parties to IA No.VII

Applicant :1. Sri Mallappa S/o Ningappa Airani,
(Defendants Age : 58 Years,
No.10 &11) Occ : Agriculture,
R/o Devaragudda,
Tal : Ranebennur, Dist : Haveri.

2. Sri Nagaraj S/o Ningappa Airani
Age: 56 years,
Occ : Agriculture,
R/o Devaragudda,
Tal : Ranebennur, Dist: Haveri.

- Vs -

Respondent : Santosh S/o Malatesh Pujar,
Age : 45 years,
Occ : Archak & Agriculture,



R/o Guddaguddapur,
Tq: Ranebennur, Dist: Haveri.

ORDER ON I.A. No.VIII

The application arises out of an IA No.VII filed by the defendants No.10 and 11 under Order VII Rule 11 (d) of C.P.C. and Sec.80 of Bombay Public Trust Act 1950 R/w Sec.151 CPC, praying to reject the plaint on the grounds of barred by law and no jurisdiction to decide the question involved in the present case.

2. It is stated in the affidavit accompanying the application that, the plaintiff filed this suit, by claiming damages and also restraining from causing obstruction to the plaintiff in performing of offering poojas, Arati, Naividyas, Mahamangalaraties etc, to the god "Sri Malatesh @ Sri Mailaraling" deity and also "Mahalasa @ Gangamalavva" and other associated temples in Devaragudda village. The entire administration of all these temples are under the committee, which is represented by defendant No.12. The said committee is registered under Bombay Public Trust Act and it is



headed by the Principal District and Sessions Judge Dharwad as an Ex office chairman of committee and the Tahshildar Ranebennur is an Ex officio Secretary of the Committee. Therefore, as per Section 80 of Bombay Public Trust Act, the present suit is not maintainable. This suit cannot be filed before this court for any relief, hence, suit may kindly be dismissed in limine in this regard the issue No.4 also framed and as such the plaint deserves to be rejected.

3. On the other hand, the plaintiff has filed his objections, stating that the application filed by the defendant No.10 and 11 are false and frivolous, the application is filed with mala-fide intention to harass the plaintiff and drag the matter in hand. This application filed by defendants No.10 and 11 are filed under section 80 Bombay Public Trust Act 1950. but, the said Act is repealed and the said provisions are no more in force. Further contended that after coming into force of Karnataka Hindu Religious Institutions Act Charitable Endowment Act 1997 the Bombay Public



Trust Act 1950 has been repealed. The institution/temples in the suit are not covered under Karnataka Hindu Religious Institutions and Charitable Endowment Act 1997. The present suit is for the relief of permanent injunction on the basis of Hereditary Poojary. Hence, the suit cannot be barred under any law. If there is a suit for declaration for the relief of existence of trust any dispute with regard to trust property, then which comes under the purview of Section 19 and 79 of the Bombay Public Trust Act. Then only as per section 80 of the Bombay Public Trust Act will be applicable. Since, the provisions of section 80 of Bombay Public Trust Act dose not attracts to the present case. Hence, prays to dismiss the application.

4. Points that would arise for my consideration are as under;

1. Whether the suit of the plaintiff is barred by law as per Section 80 of Bombay Public Trust Act 1950. Hence plaint to be rejected?

2. What order?



5. My answer to the above points are as follows:

Point No.1: In the Negative.

Point No.2: as per final order,
For the following;

REASONS

6. **Point No.1**:- Before discussing the fact in issue, it is necessary to narrate the gist of the case. The plaintiff filed the present suit for the relief of damages for directing the defendants No.1 to 11 to pay damages of Rs.7,00,000/- and also sought for the relief of permanent injunction to restrain the defendants from performing pooja and etc.

7. The present application moved by the defendants No.10 and 11 stating that, the suit of the plaintiff is barred under section 80 of Bombay Public Trust Act. The present suit cannot be decided by this court, as this court has no jurisdiction to decide the same. Under such circumstances prays to reject the plaint.



8. As against, it is the contention of the plaintiff that, after coming into force of the Karnataka Hindu Religious Institution and charitable Endowment Act 1997, it has been repealed the Bombay Public Trust Act 1950. Accordingly, the said provisions are not attract to the present case. The suit is for the relief of permanent injunction and not for the relief of declaration. Hence, Section 80 of Bombay Public Trust Act does not attract to the present case.

9.The suit is filed by the plaintiff claiming that, the plaintiff and his forfather's are performing the pooja of lord Sri. Malatesha @ Mailaralinga deity. The entire administration of all these temples are under the committee and same is represented by defendant No.12. Further the said committee is registered under Bombay Public Trust Act and it is headed by the Principle District and Sessions Judge, Dharawad, as an ex-officio, the Chairman of the committee and the Tahasildar Ranebennur is an ex-officio, the Secretary of the committee. The defendants No.1 to 11 are falsely



claiming as Archakas and they are colluding with each other causing obstructions to the plaintiff in performing pooja to the deity.

10. Section 1(4) of Karnataka Hindu Religious Institution and Charitable Endowment Act 1997 reads as follows;

4. It shall apply to, all religious institutions or charitable endowments notified under Section 23. Section 53 and chapter VIII shall apply to all religious institutions are charitable endowment other than those notified under section 23.

Provided that, it shall not to applied to a Math are temple attached to or managed by Math.

Explanation: For the purpose of this Act a mutt means a religious institution presided over by a person whose principal duty is to engage himself in the teaching and propagation of religion, teachings and philosophy of the denomination, sect or sampradaya to which the mutt belongs and in imparting religious instruction and training and rendering spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples; and includes any place or places of religious worship, instruction or training which are pertinent to the institution.



11. Section 23 Karnataka Hindu Religious Institution and Charitable Endowment Act 1997 reads as follows;

23. Notified Institutions.- The State Government shall as soon as may be after the commencement of this Act publish by notification in respect of each revenue district, a list of;

(a) all Charitable Institutions and Hindu Religious Institutions which on the date of commencement of this Act are in the sole charge of the State Government 1 [under the provisions of Mysore Religious and Charitable Institutions Act, 1927]1 or for the benefit of which. (i) any monthly or annual grant in perpetuity is made from public revenues: or (ii) tasdik allowance under section 19 of Mysore Religious and Charitable Inams Abolition Act, 1955 is paid.

(b) all institutions registered under the Book of Endowments under the Hyderabad Endowment Regulations, 1349 F;

(c) all institutions governed by the then Madras Hindu Religious and Charitable Endowments Act, 1951;

(d) all institutions in Kodagu District which are governed by the Coorg Temple Funds Management Act, 1956; 2

[(e) All Hindu Religious Institutions registered under the Bombay Public Trust Act, 1950; (ee) All Hindu Religious Institutions which are in receipt of any monthly or annual grant from public revenue



or any amount under the Karnataka Certain Inams (Abolition) Act, 1977.]2

(f) Sri Renuka Yellamma Temple, Saundatti, governed under the Renuka Yellamma Devasthana (Administration) Act, 1974;

12. Further Sec.78 of the Karnataka Hindu Religious Institutions and Charitable Endowment Act.1997 which reads as follows;

Sec.78. Repeal and Savings:

(1) The following enactments, namely:-

(a) The Religious Endowments Act, 1863 (Central Act XX of 1863);

(b) The Charitable Endowments Act, 1890 (Central Act VI of 1890);

(c) The Charitable and Religious Trusts Act, 1920 (Central Act No.XIV of 1920); shall not apply to the Charitable Endowments and Hindu Religious Institutions governed under this Act.

(2) The following enactments namely:-

(a) The Bombay Public Trust Act, 1950 (Bombay Act No. XXIX of 1950);

(b) The Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951);

(c) The Coorg Temple Funds Management Regulation, 1892 (Regulation IV of 1892).



(d) the Mysore Religious and Charitable Institutions Act, 1927 (Mysore Act VII of 1927); and

(e) the Hyderabad Endowment Regulations, 1349F;

(f) The Renuka Yellamma Devasthanam (Administration) Act, 1974 (Karnataka Act 34 of 1974).

(g) The Coorg Temples Fund Management Act, 1956 (Coorg Act VIII of 1956). are hereby repealed; Provided that section 6 of the Karnataka General Clauses Act, 1899 (Karnataka Act III of 1899) shall be applicable in respect of the repeal of the said enactment and section 8 and section 24 of the said Act shall be applicable as if the said enactments are repealed and re-enacted by this Act.

13. So, on combined perusal of these provisions, wherein it is clear that, after the commencement of this act which applied to all religious institution or charitable endowment, even notified U/Sec.23 of the Act. Further as per section 23(e) of the said act which includes those who are religious institutions registered under the Bombay Public Trust Act, 1950 , which are repealed as per Sec.78 of the said Act Karnataka Hindu Religious Institution and



Charitable Endowment Act 1997. Therefore, those religious institutions registered under Bombay Public Trust Act, are repealed as per the Karnataka Act of 33/2001.

14. In this case, as admitted by both the parties the subject matter of Sri Malatesh @ Mailarling deity is under registered of Bombay Public Trust Act and headed by the committee. Therefore, as per the above provisions those religious institutions registered under the Bombay Public Trust are repealed after the commencement of the new act.

15. The learned counsel for plaintiff in support of his argument he has relied upon the judgment decided in **Sri. Vinayaka Deva, Idagunji and Ors V/s Shivaram and others reported in ILR 2004, Karnataka 2125** wherein the Hon'ble Court at para 27 decide the question regarding when the Archakas claimed the hereditary rights, is a matter to be decided at the final disposal thereby the Civil Court has jurisdiction not only to entertain the suit, but also to



grant injunction. Further the Hon'ble Court observed in para No.27 reads as follows;

27. "This makes clear when the Archaks claim the hereditary rights, is a matter to be decided at the final disposal thereby the Civil Court has jurisdiction not only to entertain the suit but also to grant injunction".

16. Further the Hon'ble Court at para No.39 of its judgment has observed that, adjudication of civil rights the consent or permission of the charity commissioner dose not arise. That, apart none of the provisions of the Bombay Public Trust Act 1950 specifically bares filing of the suits which are of civil in nature for adjudication of personal rights.

17. Thus, the ratio laid down by the Hon'ble Court, which is directly applicable to the present case in hand. In the present case, the question of suit filed for objecting performing the pooja of Malatesh @ Mailaralinga Deity. The defendants have claiming their right showing that they are archakas. Thus, the



question before the court is Civil in nature and same has to be tried by the Civil Court.

18. On the other hand, the learned counsel for defendant No.7 to 9 relied upon the judgment which was passed by the Hon'ble High Court of Karnataka in Civil Appeal No.5641/2004. The said case was decided by the Hon'ble Supreme Court of India between **Vinayaka Dev Idagunji and Ors Vs. Shivaram and Ors reported in 2005 SAR (Civil) 673**, in this case, the crucial question involved before the Hon'ble Court that,

“Whether the suit filed by the plaintiffs is one which pertains to administration of a public trust or is it a suit to establish a private right to Archakship or workshop in the temple filed by the persons claiming to be having such a right”?

The Hon'ble court a paragraph No.13 observed as follows;

13. “This was also case in which right to archakship was claimed and it was held to be a private personal right which had nothing to do with administration or management of the trust and the suit was held to be maintainable in a civil



court. In the case in hand respondents plaintiffs are trying to establish their hereditary right to act as archaks in the temple in suit. This has nothing to do with administration of the trust”.

19. Therefore, on a plain reading of above ratio laid down by the Hon’ble Court that, the right of Pujaris to conduct pooja is the private right and does not fall in the category of suits under Sec.92 of the Code of Civil procedure. Further it is also held in the said case that, the right to Archkaship was claimed and it was held to be a private personal right, which had nothing to do with administration. Therefore, the suit is maintainable in a civil court. Under such circumstances the Hon’ble Court held that, the Bombay Trust Act 1950 does not apply to the said case.

20. In the present case, the plaintiff has also claiming damages and permanent injunction for obstruction to the plaintiff in performing poojas. So, the suit in the nature of Civil right, and it is not in the nature of declaration. Further in the plaint averments it



is contended that, the plaintiff is the Archakaship to the schedule deity by hereditary. Therefore, the ratio laid by the Hon'ble Supreme court in Vinayaka Dev and Idagunji and others (Supra Case) directly apply to the present case.

21. It is worth to note here that, prior to this suit the ancestors of plaintiff had filed OS No.132/1971, for the relief of declaration and possession and suit for permanent injunction against Sri. Malatesh @ Mailarlinga Temple Trust Committee of Devaragudaa and others, the said suit was decreed and permanently restrained from interfering in the right of performing the pooja, in the suit temple along with other temples situated there, as prayed by them.

22. So, the judgment copy of OS No.132/1971 by the plaintiff, which also extract before the court that, on the similar grounds court was decreed and restrained the defendants from causing disturbance to pooja from plaintiff's ancestors. Thus, the same question was decided by the civil court.



23. It is worth to note here that, as per the contention of the defendants that, the suit is not maintainable under Sec.80 of Bombay Public Trust Act, 1950, but, as per the act passed by the Karnataka Government in Hindu Religious Institutions and Charitable Endorsements Act 1997, as per Sec.79 repealed the provisions of the Bombay Public Trust Act 1950 and other enactments.

24. Thus, when the Act is repeals any enactments then, it must be considered as if it had never existed. Object of repeal is to obliterate the act from the statutory books, except for certain purposes as provided under Sec.6 of the General Clauses Act, 1897. Therefore, once the act is repealed thereafter, it cannot be considered as it is existed.

25. Order VII rule 11 (d) CPC reads as under:

11. Rejection of plaint: The plaint shall be rejected in the following cases:-

- (d) where the suit appears from the statement in the plaint to be barred by any law;



26. It is settled principle that, while deciding the application U/o VII Rule 11 (D) of C.P.C, the court cannot go into any disputed question of fact. The relevant facts which need to be looked into for deciding the application are the averments of plaint only. If an entire and meaningful reading of the plaint, it is found that the suit is manifestly, vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power U/o VII Rule 11 of C.P.C. The averments in the written statement as well as the contentions of the defendants are wholly immetiral while considering the prayer of the defendant for rejection of the plaint.

27. Further the provision of Order VII Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.



28. A careful perusal of plaint shows that the plaintiff filed the present suit for the relief of permanent injunction by restraining the defendants from performing the pooja of the suit deity temple. Though, the defendants claiming the suit is not maintainable U/Sec.80 of the Bombay Trust Act 1980, but, the said Act is repealed by the State Government by passing notification, as per the Karnamtaka Act No. 33/2001. Therefore, when the provisions are repealed then, as per Sec.6 of General clauses Act, the said Act does not exist, as per the Karnataka Act No. 33/2001. Under such circumstances the present suit is not barred by any law. Accordingly I answer the point No.1 in the Negative.

29. Point No.2:- In view of my findings on Point No.1, I proceed to pass the following;

ORDER

The application filed U/o VII Rule 11(d) of C.P.C is hereby rejected.



No order as to costs.

(Dictated to the Stenographer on computer, the same is corrected and then pronounced by me in the open court on this 26th day of March - 2026)

(MAHANTESH G. BHUSAGOL)
III Addl. Sr. Civil Judge
& JMFC, Ranebennur.