A PARAYYA ALLAYYA HITTALAMANI

v.

SRI PARAYYA GURULINGAYYA POOJARI AND ORS.

OCTOBER 12, 2007

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[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Code of Civil Procedure, 1908:

C *Decree—Consent decree—Interpretation of—Consent decree not referring to entire disputes between the parties—Some vagueness remaining—Held: In such a case, factual background as also the manner in which existence of rights have been claimed by the parties would be relevant—Evidence Act, 1872—s.92.*

D

Parties hereto are the hereditary 'poojaris' of the temple in question. They are entitled to bless the devotees, receive alms and other offerings made by the devotees throughout the year. Dispute between the parties in regard to right of inheritance of offering 'poojas' in the E **said temple was resolved in terms of a consent decree which was accepted by Court. Subsequently, there arose a dispute between the parties with regard to share in the offerings made by the devotees which led to a civil suit. The suit was decreed. The decree was affirmed in appeal. Second appeal was filed before High Court which held that the** F **decree passed was liable to be set aside as it was perverse and arbitrary being based upon irrelevant material and being contrary to the terms of said consent decree which was binding upon both the parties. Hence the present appeal.**

Allowing the appeal, the Court

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HELD: 1.1. A consent decree is a contract between the parties with the seal of the Court superadded to it. Such consent decree may operate as an estoppel. [Paras 14 and 15] [334-B, C]

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1.2. However, while construing a decree, the court can and in appropriate case ought to take into consideration the pleadings as well as the proceedings leading upto the decree. In order to find out the meaning of the words employed in a decree, the Court has to ascertain the circumstances under which these words came to be used. In the event the document is vague, the same must be construed having regard to surroundings and/or attending circumstances.

[Paras 16 and 17] [334-C, D, E]

Baldevdas Shivlal & Anr. **v.** *Filmistan Distributors (India) P. Ltd. & Ors.*, **[1969] 2 SCC 201;** *Hindustan Motors Ltd.* **v.** *Amritpal Singh Nayar & Anr.*, **100 (2002) DLT 278;** *Sailendra Narayan Bhanja Deo.* **v.** *The State of Orissa,* **AIR (1956) SC 346 and** *Bhavan Vaja & Ors.* **v.** *Solanki Hanuji Khodaji Mansang & Anr.*, **AIR (1972) SC 1371, relied on.**

2.1. The nature of the document also plays an important part for construction thereof. The suit filed by the parties, *inter alia,* involved the question of interpretation of the said consent decree. Parties adduced evidences, *inter alia,* in regard to the nature of poojas and offerings made to the priest in their individual capacity. The dispute between the parties related to right of worship upon inheritance thereof from their predecessor. Their rights in regard to offer poojas in the temple are itself not in dispute. In a case of this nature where a consent decree does not refer to the entire disputes between the parties and some vaguness remained, the factual background as also the manner in which existence of rights have been claimed by the parties would be relevant. The consent decree appears to be meant to be operative for a limited period viz. 1956 and 1961. Section 92 of the Evidence Act in a situation of this nature, cannot be said to be attracted. [Para 18] [334-E, F, G; 335-A]

2.2. The right of the parties to offer pooja had not been disputed. Clause 2(A) of the consent decree was not determinative of the status of the parties. Their rights and obligations are not clearly spelt out thereby. In the aforementioned situation, the recital to the effect that Pooja has to be performed as usual is significant. Clause 2(C), however, speaks of offerings of non-perishable goods were to be offered to the defendant No.1 in his individual capacity. The parties to the compromise knew as to why the said expression had been used. If any of the party

A **to the suit was entitled to keep with him even such non-perishable goods which were to be offered to the Deity, the question of using the terms "in his individual capacity" was not necessary. The parties, therefore, were allowed to lead evidence, to show as to what ceremonies are performed by the Priest in his individual capacity and not necessarily**
B **offering pooja to the Deity. A devotee may arrange a special ceremony or a special pooja and entrust the same to be done by one or the other Priest of the said temple. The courts, therefore, were required to construe the terms implied in the consent decree having regard to the customs in regard to holding of religious and other functions in the temple by**
C **the devotees. [Paras 19 and 20] [335-B, C, D, E, F]**

2.3. Equally important was the conduct of the parties soon thereafter. The father of the defendant No.1 executed deeds of sale in favour of the plaintiff's father. The relationship between the parties and
D **their status were referred to therein. Defendant No.1's father in the said document accepted the right of the plaintiff's father of having equal right to the offerings and offer poojas during the turn of said Neelawwa. It is not the case of the defendants that such statements came to be made by reason of any fraud or inducement or threat on the part of the**
E **plaintiff's father. That being so, the said statements were relevant. The Trial Judge as also the Court of the First Appeal cannot be said to have committed any mistake in taking the same into consideration for determining the rights of the parties. The High Court was, thus, not correct in reversing the judgment and decree passed by the Trial Judge**
F **as also the Court of Appeal.**

[Paras 21 and 22] [335-F, G, H; 336-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4887 of 2007.

G From the Judgment and final Order dated 20.01.2005 of the High Court of Karnataka at Bangalore in Regular Second Appeal No. 250 of 1992.

S.K. Mahale and Rajesh Mahale for the Appellant.

H G.V. Chandrashekhar and Anjana Chandrashekar for the

Respondents. A

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. There is a temple in the village Terdal under the Jharkhandi Taluk in the State of Karnataka, commonly known as 'Sri Prabhudeva Temple'. Parties hereto are the hereditary poojaris of the said temple. They are entitled to bless the devotees, receive alms and other offerings made by the devotees throughout the year. The turn of worship has been amicably divided and settled, *inter alia*, amongst the plaintiffs and the defendants. B C

3. There were three branches with which we are concerned; one is the branch of the plaintiff, second is the branch of the defendants and the third is the branch represented by Parayya Allayya Hittalamani. The said Allayya and his wife Neelawwa died without any issue. The plaintiffs and the defendant No.1 inherited their right to worship. D

4. Disputes and differences having arisen between the parties in regard to right of inheritance of offering poojas in the said temple, the father of the plaintiff filed a suit which was marked as OS No.143 of 1956. Parties therein purported to settle their disputes. The consent terms were filed which were accepted by the Court. The said terms are : E

> "For the present year and the turn of Pooja which will come after 12 years, the defendant No.1 with the plaintiff herein and with his help perform the pooja as usual of Prabhudeva in Neelavva's pooja turn. F
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> During the abovesaid pooja's time the offerings of Naivedya to Prabhudeva, fruits corns Oil and Milk and Curd, Sugar, Jaggery etc. in perishable goods, defendant No.1 should give half share of perishable goods to plaintiff and take half of the perishable goods to himself. G
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> In the abovenoted pooja turn the defendant No.1 in his individual capacity as a poojari receiving gold, silver, offering (dakshina) etc. the non-perishable goods the defendant No.1 shall take in that he H

need not give any share or goods."

5. Indisputably, the turn of worship so far as the said Allayya was concerned, comes once in 12 years. After 1956, the said turn came in 1968. There exists a dispute as to how the parties hereto shared the offerings in 1968. However, when the turn again came in 1980, the plaintiffs filed a suit praying, *inter alia*, for the following reliefs :

> "It may be declared that plaintiffs and their family members have a joint right of pooja and receiving offerings of Prabhudev Temple at Terdal along with defendant No.1 or his successors regarding the turn of deceased Neelawwa's branch once in 12 years in perpetually.
>
> Consequently perpetual injunction may kindly be issued against the defendants, their relatives and agents from threatening, obstructing or causing obstruction to the joint right of the plaintiffs to perform the Pooja and receive offering during the turn of Neelawwa's branch every twelve years."

6. The said suit was decreed by the learned Trial Judge. Defendants preferred an appeal thereagainst. The learned Court of First Appeal also affirmed the said decree, *inter alia*, opining :

> "The term in para 2 of Ex.P-2 makes it clear that silver, Gold, money which are non-perishable commodities given to deft.1 in his individual capacity being a poojari should be taken by himself and he need give any share to the plaintiff therein. It makes it clear that any non-perishable commodities offered to deft.1 in his individual capacity as poojari of the deity such as gold, sliver and money should be taken by himself and he need not give share therein to the plaintiff. So, any offerings given in individual capacity of deft.1 as poojari should be taken by deft.1. Once example is sufficient to what kind of offerings given to poojari in his individual capacity is given, i.e., if the poojari removes heirs of a child during Javala ceremony and parents of the child given any offerings such gold, silver and money to poojari he should take it as it is given to him being poojari in his individual capacity for performing Javala

ceremony. Such offerings made to poojari in his individual capacity should be taken by the father of deft.1 and deft.1 should take same but not offering made in the form of gold, silver and money to deity and they should be shared by deft.1 and plaintiffs together as per the decree at Ex.P.2 If it was the intention of the parties, the father of deft.1 should have taken all the offerings made to deity in non-perishable commodities for himself in 1955-56 and 1968-69." A B

7. Both the Trial Judge as also the First Appellate Court furthermore took into consideration the documents marked as Exhibit P-1 as also Exhibit P-3 executed by the father of the defendant No.1 in favour father of the plaintiff wherein it was categorically stated that plaintiff's branch had equal right in worshipping the deity during the turn of Nilawwa and he had right to receive alms equally. In this respect, the learned Court of appeal held : C

"This goes to prove that father of deft.1 has admitted that father of the plaintiffs was the nearest heir of Neelawwa and he has also right in the property of Neelawwa such as land Sy. No. 759 and right to worship of Prabhuswami. Ex.P.3 is dated 23.03.1965. Even subsequent to Ex.P.2 father of deft.1 confirmed that father of the plaintiffs is nearest heir to Neelawwa and he has no objection for the property to be shared by father of the plaintiffs such as land and right to worship during turn of Neelawwa. The evidence led by the plaintiff is overwhelming the evidence of the defendants and as such after considering the evidence the learned Munsiff has rightly held that the plaintiffs are entitled to receive half of non-perishable offerings such as gold, silver and money made to deity and deft.1 should perform pula along with the plaintiffs and they have equal right in worshipping deity and there is no distinction between the plaintiffs and deft.1 in worshiping the deity and he has rightly decreed the suit of the plaintiffs." D E F G

8. Defendants filed a second appeal before the High Court which was marked as Revision Second Appeal No. 250 of 1992. The High Court, however, was of the opinion that as both the parties would get their turns alternatively, i.e., once in 12 years, the courts below committed H

A a mistake in mixing up that issues wrongly with the real dispute, stating :

> "The reference to the individual functions in the decree is very clearly to the fact that since the right to perform the pooja was alternative, that it was a reference to the functions performed by the party in that particular year when the officiating party was in charge. This cannot be confused with a situation whereby the poojari may perform individual functions at some other place de hors these functions and for which he may receive separate offerings. This is basically the essence of the matter and since it has been very clearly and conclusively decided in the earlier compromise terms, there could be no question of re-opeining that issue. To this extent, therefore, the submission canvassed by the appellant's learned counsel that the suit itself as farmed was not maintainable, is full justified."

D 9. The matter, however, was taken to this Court by the respondents being SLP (C) No. 2109 of 1999 and on leave having been granted, this Court by a judgment and order dated 15.9.2004 noticed that even no substantial question of law was formulated by the High Court whereupon the same was set aside and the matter was remitted to the High Court E for formulating substantial questions of law.

10. The High Court thereafter formulated the following substantial questions of law :

> "(1) Whether both the Courts ignored the weight of preponderating F circumstances while construing the contents of compromise decree arrived at between the predecessors-in-title of the parties to the suit and allowed their judgments to be influenced by inconsequential matters, whether High Court would be justified in re-appreciating the evidence and in coming to its own independent conclusion?
>
> G (2) Whether both the Courts below erred in misconstruing Ex.P-2, the compromise arrived at between the predecessors-in-title in question for purposes of ascertaining the foundation of the suit itself and if so whether that error is to be interfered with in the exercise H of High Court's power under Section 100 of CPC?"

11. Both the aforementioned questions were answered by the High Court in the affirmative. It was of the view that as compromise decree was binding between the parties and the dispute between them was governed by the said compromise decree, the plaintiffs' suit was not maintainable, stating :

> "It is clear from the conditions of performance of pooja as per the terms of the compromise decree that the right of performing pooja during the turn of Neelawwa and Allayya is conferred upon the father of the first defendant and the pooja during that turn has to be performed by the father of the first defendant with the assistance of the father of the plaintiffs and no joint right has been conferred and regarding the offerings made by the devotees so far as the perishable articles are concerned, they are to be divided equally and non-perishable offerings such as gold, silver, dakshina (cash) etc. which are not perishable, offered individually to the father of the first defendant shall be taken by him exclusively and no such offerings shall be given to Parayya Allayya Hittalamani, i.e., father of the plaintiffs and the plaintiffs being the legal representatives, being the sons of Parayya Allayya Hittalamani cannot claim of a higher share than that is conferred upon them by the father of the defendant and which is in fact the basis of the plaint and, therefore, it is clear that the judgment and decree passed by the Courts below cannot be sustained and the same are liable to be set aside as they are perverse and arbitrary being based upon irrelevant material and being contrary to the terms of compromise decree which is admitted by both the parties as binding upon them."

12. Mr. Mahale, learned counsel appearing on behalf of the appellant, submitted that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that in terms of condition No. 2(C) of the agreement, the first respondent was not entitled to gold, sliver and money etc. which were offered to the deity and not to himself in his personal capacity.

13. Mr. Chandrashekhar, learned counsel appearing on behalf of the first respondent, on the other hand, urged that the High Court having

A rightly arrived at a decision that the plaintiff's suit was barred by res judicata and the disputes between the parties being covered by the consent decree, the impugned judgment is unassailable.

14. A consent decree, as is well known, is a contract between the parties with the seal of the Court superadded to it. {See *Baldevdas Shivlal & Anr.* v. *Filmistan Distributors (India) P. Ltd. & Ors.*, [1969] 2 SCC 201 and *Hindustan Motors Ltd.* v. *Amritpal Singh Nayar & Anr.*, 100 (2002) DLT 278}.

15. We are, however, not oblivious of the fact that such consent decree may operate as an estoppel. {See *Sailendra Narayan Bhanja Deo.* v. *The State of Orissa,* AIR (1956) SC 346}.

16. It is equally well settled that which construing a decree, the court can and in appropriate case ought to take into consideration the pleadings as well as the proceedings leading upto the decree. In order to find out the meaning of the words employed in a decree, the Court has to ascertain the circumstances under which these words came to be used. {See *Bhavan Vaja & Ors.* v. *Solanki Hanuji Khodaji Mansang & Anr.*, AIR (1972) SC 1371}.

17. It is now also a trite law that in the event the document is vague, the same must be construed having regard to surroundings and/or attending circumstances.

18. The nature of the document also plays an important part for construction thereof. The suit filed by the parties, *inter alia*, involved the question of interpretation of the said consent decree. Parties adduced evidences, *inter alia*, in regard to the nature of poojas and offerings made to the priest in their individual capacity. The dispute between the parties related to right of worship upon inheritance thereof from their predecessor. Their rights in regard to offer poojas in the temple are itself not in dispute. In a case of this nature where a consent decree does not refer to the entire disputes between the parties and some vaguness remained, the factual background as also the manner in which existence of rights have been claimed by the parties would be relevant.

The consent decree, appears to be meant to be operative for a limited period viz. 1956 and 1961. A

Section 92 of the Evidence Act in a situation of this nature, in our opinion, cannot be said to be attracted.

19. A consent decree must be construed keeping in view the lega principles as noticed hereinbefore. The right of the parties to offer pooja had not been disputed. Clause 2(A) of the consent decree was not determinative of the status of the parties. Their rights and obligations are not clearly spelt out thereby. In the aforementioned situation, the recital to the effect that Pooja has to be performed "as usual" is significant. B C

20. No difficulty arises in giving effect to clause 2(B) of the consent decree. It is not necessary for us to consider the same. Clause 2(C), however, deserves our attention. It speaks of offerings of non-perishable goods were to be offered to the defendant No.1 in his individual capacity. The parties to the compromise knew as to why the said expression had been used. If any of the party to the suit was entitled to keep with him even such non-perishable goods which were to be offered to the Deity, the question of using the terms "in his individual capacity" was not necessary. The parties, therefore, were allowed to lead evidence, to show as to what ceremonies are performed by the Priest in his individual capacity and not necessarily offering pooja to the Deity. A devotee may arrange a special ceremony or a special pooja and entrust the same to be done by one or the other Priest of the said temple. The courts, therefore, were required to construe the terms implied in the consent decree having regard to the customs in regard to holding of religious and other functions in the temple by the devotees. D E F

21. Equally important was the conduct of the parties soon thereafter. We have noticed hereinbefore that the father of the defendant No.1 executed deeds of sale in favour of the plaintiff's father. The relationship between the parties and their status were referred to therein. Defendant No.1's father in the said document accepted the right of the plaintiff's father of having equal right to the offerings and offer poojas during the turn of said Neelawwa. It is not the case of the defendants that such statements came to be made by reason of any fraud or inducement or threat on the G H

A part of the plaintiff's father.

22. That being so, the said statements were relevant. The learned Trial Judge as also the Court of the First Appeal, in our opinion, cannot be said to have committed any mistake in taking the same into consideration for determining the rights of the parties. The High Court, in our opinion, was, thus, not correct in reversing the judgment and decree passed by the learned Trial Judge as also the Court of Appeal.

23. We, however, make it clear that we have not gone into the question as to whether any offerings made in Hundies for development shall go to any of the parties or not. Such a question having not been gone into by the courts below, we refrain ourselves from doing so.

24. For the reasons mentioned above, the impugned judgment is set aside. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

B.B.B. Appeal allowed.