

Date of decision: May 10,1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?
5. Wheth..

Civil Judge?

Mr.P.M.Thakkar, L.A. for the petitioner
Mr.Mr.M.I.Merchant, L.A. for the respondents

Coram: N.J.Pandya,J.
May 10, 1996

C.A.V.JUDGMENT :

Original-Defendant No.1 of Civil Suit No.1 of 1989 of the Court of learned District Judge, Panchmahal at Godhra has filed the present Revision Application being aggrieved by the order of the learned Joint District Judge of the aforesaid Court. The learned Judge

was dealing with Exh.202 of said Civil Suit No.1 of 1989 and disposed it off by order dated 7th January 1995.

2. First, the background of the case is required to be given. There is a religious Trust known as "Manoharnathji Akada Trust at Lunawada. It is registered with the office of the Assistant Charity Commissioner at Nadiad under No.A-349 Panchmahal. It is a Trust with a solitary Trustee. Mode of succession is described to be appointment of a successor by the ruling Trustee known as "Mahant" by executing a Will. In absence of a Will, a person who becomes mahant on Shrinath Maharaj Akada may become the Mahant of a Trust. There appeared to be a dispute as to it in the year 1988-89 and more than one change report came to be filed. First one was 571/88 which came to be withdrawn, second one was in the year 1989 and third one was in the year 1990. By the time, the competent authority i.e. the Assistant Charity Commissioner could decide upon the validity or otherwise of the change report and further to accept any or either of the report, the learned Charity Commissioner felt that Trust should be looked after properly. Therefore, he filed the suit to take care of the interrugnum. As a corollary, the learned Charity Commissioner as a plaintiff, in my opinion, very prudently asked for appointment of a Receiver. The Trial Court granted the request and appointed a practising Advocate Mr.M.B.Patel to be the Receiver. Strictly speaking, the Receiver, in the instant case, would not be a proper party, because, after all, he is occupying the position by virtue of the order of the Court and as a representative of the Court. He is not a party to the proceeding as such, nor can he calim any interest in the Trust. However, further details would clarify as to why at the request of Mr.Patel, the earlier order passed in this revision application was recalled, he was permitted to be joined and was heard also through L.A. Mr.M.I.Merchant.

3. The appointment of the Receiver was challenged by way of appeal and revision and the matter was carried upto the Honourable Supreme Court. Instead of entertaining the petiton before the Supreme Court, the present petitioner was directed to approach the trial Court with a request to get himself appointed as an agent. For this purpose, he was first directed to approach the Receiver himself.

4. The petitioner did so, but the Receiver Mr.Patel for reasons set out almost in the manner of a Judgment of a Court, gave report to the trial Court that he would not accept the petitioner as his agent. It was for the trial

Court, therefore, to examine on 19-11-1994 when application Exh.202 was given where a situation by then has developed whereby the petitioner can be permitted to be the Receiver's agent. The trial Court, ofcourse, would decide either way irrespective of the Report of the Receiver.

5. Unfortunately, it seems that the trial Court was more guided and carried away by the Report of the Receiver. There is further glaring error committed by the learned Judge in para 4 of his order that the Receiver is appointed as an agent by this Court and therefore, it is not necessary again to appoint either a special agent or an agent to the Receiver.

6. The Receiver is not at all an agent. On the contrary, the Receiver, who is like the present one, a practising Advocate, cannot, of necessity, devote sufficient time to the affairs of the subject of the dispute. More so, when the subject happens to be a religious Trust like the present one. Howsoever, devout and sincere the Receiver might be, so far as religious rights and practices of Trust like Akada is concerned, he would be totally innocent.

7. At the same time, by the year 1994, the learned Judge should have borne in mind the fact that atleast the Assistant Charity Commissioner, who is a competent authority, had by his order dated 22-2-1991 accepted the present petitioner to be the successor. In fact, the very purpose of filing the suit was served. There was no hiatus and therefore, the matter should have ended there. May be, it continued further because the said order of the learned Assistant Charity Commissioner was carried before the learned Joint Charity Commissioner by way of appeal under the provisions of the Bombay Public Trust Act. This appeal came to be decided on 5-3-1992 where both the change reports came to be rejected.

8. However, in the meantime, there being the said judgment of the learned Charity Commissioner based upon the claim of the petitioner founded on will said to have been executed by Mahant Reghunathgiri, while considering the request for agency, there was further force in the claim of the petitioner.

9. The main reason given by the Receiver Mr. Patel is that staff members are not happy with the petitioner. It is, indeed, a very curious reason. The Receiver will oversee the operations of the Trust as long as he is there and the paramount interest of the Trust is to be

considered and not that of the Trust Members. Under the aforesaid circumstances, if ultimately the petitioner succeeds in his claim to be the Mahant, the staff members will have no choice but to work under him. The other choice obviously would be to leave the Job.

10. It may be recalled that the suit before the trial Court is not for deciding as to who should be the Trustee of the Trust. That is to be done by the competent authority under the Bombay Public Trust Act.

11. This order would have ended here but for the fact that I have found the Receiver Mr. Patel to be offering his services as Receiver with considerable zeal. From the record it was revealed that he also happens to be another Trustee of the Panchmahal Trust a famous one of Kalikadevi, known as Pavagadh. I sincerely wish that he does have time to pursue his main vocation mainly that of an Advocate. Apart from that, the approach of the appeal seems to be that being a Receiver he is a party. This is wrong. The appointment of a Receiver is on the basis of justness and convenience. The Court itself would like to either take custody of the property or administer. Naturally, the Presiding Judge, will not be able to do so,. Therefore, a Receiver is appointed and through him the Court will get the work done. The property itself is in custodia legis managed through the Receiver. It is for the Receiver to report to the Court regularly and abide by its directions. Receiver has no interest nor is he a party in any manner whatsoever. If he has to represent the subject matter of the suit in any litigation, he should obtain orders from the Court. Receivership is a method developed by equity jurisdiction as it evolved in England when the rigidity of the common law came in the way of administration of justice. The two jurisdictions being distinct, the Chancery Division administering equity evolved this idea. It is essentially a Judge made law whereby ways were found and devices were developed to effectively meet with a given situation.

12. The approach of the Receiver in the instant matter is indeed, curious. I hope this is not so, in respect of other receivership or receiverships that he might be occupying. The application itself indicates that he considers himself to be a party. He argues the case and I do not know whether before approaching the Court he has obtained the permission of the trial Court or not. I also wonder as to how, though a practising Advocate that Mr. Patel is, he has allowed Mr. M. I. Merchant to represent him. For this also, he needed permission of

the Court and a specific order in that regard. The record is silent.

13. Coming back to the Revision Application, I have no hesitation in allowing the same. The order of the learned Judge is set aside. Application Exh.202 is allowed and the present petitioner is appointed to be the agent of the Receiver. It will, ofcourse, be subject to his control and will abide by the directions that the trial Court will issue during the pendency of the suit. Accordingly the Revision Application stands allowed.

14. After the pronouncement of the order today, L.A. Mr.Merchant both on behalf of the Charity Commissioner, the plaintiff as well as the Receiver prays for stay of operation of the judgment and order.

15. His request on behalf of the Charity Commissioner being the plaintiff, I can well understand. He being the plaintiff, he can make this request. However, I fail to see how a Receiver appointed by a Court, can question the order of a Court and try to challenge it before higher forum. I have already expressed myself rather strongly in my order as to the approach of the Receiver Mr.N.B.Patel. The feelings expressed therein are further confirmed as apparently he had instructed Mr.Merchant to make the aforesaid request. It being totally out of hand so far as the request of Mr.Patel is concerned, it is rejected on that score alone. The request made on behalf of the plaintiff also cannot be entertained because, after all, the suit is for interim arrangement. For the reasons stated in the order, I am of the opinion that there is no reason made out for staying the operation of the order. Hence, this request is also not acceded to and is rejected.

(N.J.Pandya,J.)

May 10,1996