

PART

I

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SA 462 | 1933 DISTRICT:

Criminal Appeal
Application No. of 20
Writ Petition
Revision Application

Appellants :

(Advocate Shri.

Versus

Respondents :

(Advocate Shri.

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of Judicature,
bay

S. A. 462/1933



In His Majesty's High Court of Judicature,
Appellate Side, Bombay

(CIVIL JURISDICTION)



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Appeal No. **462** of 19 **33** from Appellate Decree

*1. Dattaraj Ganodas Vaidya;
and others,*

} Appellants

(Original *Plffs.*)

versus

*1. Dr. Shrinivas Ramji Ambekar
member of Joint Parliamentary
Committee London, and
others,*

} Respondents

al. Sept
Claim for pleader's fee.

W. B. Virkar

for no. 1.

In His Majesty's High Court of Judicature,
Appellate Side, Bombay

Second APPEAL

CIVIL REVISION APPLICATION No.

462

OF 1933

District.

Thane.

No. of paper

Particulars

I. Papers to be preserved.

- 1 } Copy of the Judgment of the lower appellate Court if printed.
- 2 } Copy of the Judgment of the original Court (if printed).
- 3 Interlocutory Judgment of the High Court (if any).
- 4 Findings.
- 5 Judgment (Final) of the High Court.
- 6 3 Decree of the High Court.
- 7 Judgment in Review Petition.
- 8 Judgment of the High Court in the matter of leave to appeal to the Privy Council.
- 9 Judgment, decree and order of the Privy Council.
- 10 Printed copy of the Privy Council record.
- 11 Memo. of appeal in appeals or applications summarily dismissed.

II. Papers to be destroyed under the Rules.

- 1 Memo. of appeal (in admitted cases).
- 2 Manuscript copy of the Judgment of appellate Court.
- 3 Manuscript copy of the decree of appellate Court.
- 4 Manuscript copy of the Judgment of original Court.
- 5 Manuscript copy of the decree of original Court.
- 5A. Application for return of the above copies.
- 6 Vakalatnama of Mr. *V.B. Virkar* for the appellants
- 7 Civil application for delay being excused with affidavit.
- 8 Application for copies.
- 9 Application for search.
- 5) Letter intimating dismissal where the order is of dismissal.
- 8) Notice
- 8) Letter transmitting notice with District Judge's endorsement thereon, etc.
- 9 R. and P. writ.

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Application No.

of 193

for substitution of heirs.
fresh notice.

No. of paper

Particulars

- 15 Fresh Notice (to hear).
- 16 Letter transmitting notice with District Judge's endorsement thereon, etc.
- 17 10 Vakalatnama of Mr. *B. G. Modak* for the respondent. *no. 1.*
- 18 ~~Memo of cross-objections.~~
- 19 Application for copies.
- 20 Application for search.
- 21 Writ sending down issues when there is a separate Judgment.
- 22 Notice of receipt of findings.
- 23 Objections to findings.
- 24 11 Writ communicating final decree or order to the lower Court.
- 25 12 Receipt of R. and P. by the District Judge.
- 26 Review Petition.
- 27 Affidavit in support of do. if any.
- 28 Vakalatnama if any.
- 28A. Application for a certificate to appeal under the Letters Patent.
- 29 Application for leave to appeal to His Majesty's Privy Council.
- 30 Notice in do.
- 31 Writ for R. and P. in do.
- 32 Certificate granting leave to appeal.
- 33 Writ or letter of intimation in cases where rule is discharged.
- 34 Receipt of papers.

W. B. B. B.

Clerk.

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Assistant Sheristedar.
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

day the day of 193

APPEAL No. 462 OF 1933 FROM APPELLATE DECREE.

1 Narhari Damodar Vaidya ; 2 Ramanarayan Girdhari Marwadi
3 Ganpat Bhiku Gandhi ; 4 Balkrishna Narayan Bagde ;
5 Narayan Anandrao Deshpande ; 6 Ramchandra Dharmaji
Jadhav ; 7 Maruti Sitaram Vadke ; 8 Ramchandra Atmaram
Shetye

Appellants.

(Original Plaintiffs Nos. 2 to 9)

versus

1 Dr. Bhimrao Ramji Ambedkar, member of Joint Parliamentary
Committee, London ; 2 Sitaram Namdev Sivtarkar ; 3 Kutan-
nak alias Krishna Sayanak Mahar ; 4 Ganya Malu Chambhar ;
5 Kanu Vithal Mahar

Respondents.

(Original Defendants)

Claim—Rs. 10 for all purposes.

The Plaintiffs-touchables sued for a declaration that the Choudhari Tank situate at Mahad belonged to them, that they alone had a right to the user thereof, that the Defendants-untouchables were not entitled to use the same and for an injunction against the Defendants not to use the suit tank.

The Original Suit No. 405 of 1927 was decided by the Second Class Subordinate Judge of Mahad who dismissed the Plaintiff's suit ordering each party to bear its own costs.

The Appeal No. 32 of 1931 of the District File was decided by the Second Assistant Judge of Thana who confirmed the decree of the Court of first instance and dismissed the appeal and cross-objections with costs.

An appeal has been admitted in the High Court from the decision of the lower Court. Notice was ordered to issue by the Honourable Mr. Justice Wadia on the 18th day of August 1933.

The grounds of objection to the decision appealed against are :—

1. The lower Courts are wrong to hold that the Choudhari Tank in suit is not private property but that it is of Municipal ownership.

2. The Defendants have not proved that the tank belongs to the Municipality of Mahad.

3. The lower Courts failed to see that the Municipality never came forward to set up their own title to the tank in dispute nor that the Municipality ever denied the private ownership of it.

4. The lower Court was wrong to hold that the ancient custom, among the touchable Hindus, of using the tank-water to the exclusion of the untouchables, is not recognisable as a legal right.

5. The touchables and untouchables being the divisions amongst the Hindu community since immemorial time, according to Hindu religion and law, it was, and it is now also, impossible to give tank-water for their joint use having regard to the principles of Hindu religion and to the long-standing religious feelings and sentiments of the Caste Hindus.

6. Assuming that the tank has vested in the Municipality it has succeeded in it as a trustee and the beneficiaries, who are the Plaintiffs, have got a right of exclusive user as against the untouchable classes by virtue of the immemorial custom which is a part and parcel of the Hindu law and religion.

7. The legal doctrine of "Lost grant and implied dedication" should have been applied to the facts of this case according to law.

8. The Madras ruling in 18 India Cases at page 979 applied, on all fours, to the case and the lower Appellate Court was wrong to distinguish it from the facts of this case. There is no distinction in principle applying to both the cases.

9. The facts show that the tank has been dedicated to the exclusive user by the touchable classes only.

10. The lower Appellate Court has misread and misconstrued the evidence establishing the immemorial custom of excluding the untouchables from the use of the water in question.

11. The water or the tank is a religious institution according to the Hindu religion and there is as much sanctity about it as about a temple under the Hindu Law. The lower Appellate Court's view, in this respect, is not according to law.

12. It should have been held that the Plaintiffs are entitled to a declaration and injunction as claimed.

13. The decision is against law, equity and justice and is opposed to the facts of the case.

14. Order as to costs is wrong.

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S.—391/33

APPEAL No. 462 OF 1933 FROM APPELLATE DECREE.

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APPEAL No. 32 OF 1931.

Grounds.

(1) The lower court is wrong to hold that the Plaintiffs have not proved that the Chaudhari Tank in dispute is the private property.

(2) It should have held that the Plaintiffs have proved, at this distant date even, the private ownership of the Tank in dispute, by ample circumstantial and positive evidence.

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(3) The Defendants have not proved that the Tank belongs to the Municipality of Mahad absolutely.

(4) The lower court should have seen that the Municipality never came forward to set up its title (absolute) over the Tank in question nor did it deny the private ownership of the Tank.

(5) The lower court has misappreciated the evidence on record bearing on the point of the private ownership of the tank.

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(6) The lower court is wrong to hold that the ancient custom among the touchable Hindus of using the tank water to the exclusion of the untouchables is not recognisable as a legal right.

(7) The lower court should have held on the evidence in the case that the Plaintiffs have established their right to use the said water as untouched by the untouchables and exclusively of the latter.

(8) The touchables and the untouchables being the divisions amongst the Hindus, since very ancient times, according to the Hindu Religion and Law, it was or is impossible to have one tank-water for the joint use of both those divisions, having regard to the principles of the Hindu religion and to the long-standing religious feelings and sentiments of the Hindus.

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9. The lower court has not properly understood the Plaintiff's case either in the main or in the alternative.

(10) Assuming that the tank has vested in the Municipality it has so vested in it as trustee and the beneficiaries who are the Plaintiffs have got an exclusive right of user as against the untouchables by virtue of the immemorial custom of the Plaintiffs' exclusive user.

(11) Issues were not properly framed.

(12) The decision is contrary to Law and the weight of evidence.

S.—391/33.

APPEAL NO. 462 OF 1933 FROM APPELLATE DECREE.

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CROSS-OBJECTIONS IN APPEAL No. 32 OF 1931.

EXHIBIT No. 19.

(1) That the lower court erred in disallowing the Defendants' costs in the suit.

(2) That the lower court erred in holding that "the Defendants incurred heavy costs on points which they failed to prove".

(3) That the lower court failed to appreciate the contentions raised on behalf of the Defendants and the true significance of the evidence and authorities by which they were supported.

(4) That the lower court erred in holding that it was needless "to enter into the labyrinth of the several texts quoted on either side".

(5) That untouchability as a custom whether ordained by the *shastras* or not was not in accordance with the principles of justice, morality and good conscience, and was unenforceable in a court of law.

(6) That the precepts with regard to untouchability are not mandatory and are of a hygienic and sanitary origin and quality and liable to be tested, modified or abrogated in the light of modern scientific research.

(7) That it is in evidence that "no untouchability attaches to watering places".

(8) That the imposition of the necessary safeguards with regard to the use of the tank-water is the peculiar privilege and duty of a sanitary committee.

(9) That apparently no safeguards have been devised or thought necessary to prevent the cattle from muddling the tank at places or from wallowing in the mud.

(10) That it is in evidence that the tank is not inaccessible to Muhammadans or other non-Hindus.

(11) That the lower court was wrong in holding "that the Defendants were untouchables according to the *shastras* and the later treaties thereon".

(12) That it is in evidence that at the public temple of Jakhmata Devi at Mahad, and on the day of the fair, the Defendants' communities enter the assembly hall of the temple for removing the *pardhi*.

(13) That it is further in evidence that at the Vireshwar temple at Mahad, all sorts of Hindus including the communities to which the Defendants belong, join the procession at the *chabina*, and that the whole procession enter the pavilion for *darshan*.

(14) That further all the people including the so-called untouchables use the water in the temple tank on the *chabina* day and bathe the deity herself with that water.

(15) That it is in evidence that the present-day untouchables are not mentioned in the *shastras* and that the custom of untouchability is not *sadachar*.

(16) That the lower court's finding on issue no. 3 is wrong and that the Plaintiffs failed to establish a "long-standing custom of excluding untouchables".

(17) That the access to any natural or artificial reservoir of water which is not private property is among the elementary rights of humanity and that the declaration sought by the Plaintiffs is subversive of these rights.

(18) That the lower court's use of the word "untouchability" is not free from ambiguity and in any event it would be wrong to hold that the waters of a tank or any other reservoir of water are liable to be rendered untouchable by the contact of any member of the human species.