

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL REVISION APPLICATION NO. 273 OF 2011
IN
SPECIAL CIVIL SUIT NO. 8 OF 2003**

1. Shri Samarth Seva Mandal
Sajjangad, A Trust registered under the
Bombay Public Trusts Act, 1950
Having registered No. F-1 and having
Registered office at Sajjangad, Taluka
and District : Satara,
Through Trustees-
2. Shri Maruti Ganpati Bhosale
Ramdasi, President and Trustee
Age-63 years, Occ. Religious
R/o C/o Shri Samarth Seva Mandal
Sajjangad, Taluka and District : Satara
3. Shri Narayan Dattatraya Khuperkar
President and Trust
Age 72 years, Occ. Retired
Residing at 10B, Anjali Colony,
Arkashala Nagar, Opp. Arkashala
Gondmal, Satara
4. Shri Arvind Vishnu Abhyankar Ramdasi
Trustee, age 60 years, Occ. Religious,
R/o C/o Shri Samarth Seva Mandal
Sajjangad, Taluka and District : Satara
5. Shri Madhav Balkrishna Abhayankar
Trustee, Age 67 years, Occ. Business
Residing at Limb, Taluka and Dist:Satara
6. Shri Ramkrishna Vinayak Vaidya
Trustee, age 50 years, Occ. Hotel Business
R/o At Hotel Anandvan Bhavan
Dutches Road, Mahabaleshwar
Taluka Javli, District : Satara

7. Shri Vijay Balkrishna Deshpande
Trustee, age 43 years, Occ. Service,
Residing at F-2, Shreyas Apartment,
1st Floor, 115, Yadogopal Peth, Satara
8. Shri Ramesh Buva Shembekar Ramdasi
Trustee, age 57 years, Occ. Religious
Work, R/o C/o Shri Samarth Seva Mandal
Sajjangad, Taluka and District : Satara
9. Shri Arun Ramkrishna Godbole, Advisor
Age 60 years, Occ. Tax Consultant
R/o Anandi Niwas, 69, Shanivar Peth,
Satara-2
10. Shri Vishnu Ramchandra Sohoni
President, age 74 years, Occ. Nil
R/o at 912, Prasanna Apartment,
Adjacent to M.S.E.B. Office
Bhandarkar Road, Pune 411 004

...

Applicants

Versus

1. Shri Ramdas Swami Sansthan Trust
Registered under the B.P.T. Act, 1950
Having registration No. A-955, and
Having its registered office at
Bhavani Peth, Soman Smarak Mandir,
Near Rajwada, Satara 415 002
Through its Trustees
2. Shri Suryaji Gavalaksh Swami
President and Chief Swamy
Age 59 years, Occ. Chartered Accountant
Residing at "Raghuchandra", 500A/4,
Sadar Bazar, Satara
3. Shri Gangadhar Ramchandra Chaphalkar
Swami, age 65 years, Occ. Retired
Residing at Plot No. 12, Asmita Apartment
Behind Kamat Hotel, Happy Colony,
Pune 29

4. Shri Narayan Mahadev Kulkarni
Trustee, age 78 years, Occ. Retired
District Judge, Residing at Amrutwel
456/1, Sadar Bazar, Opp, D.S.P. Bungalow
Satara 1
5. Dr. Subhash Digambar Dabhre
Trustee, age 53 years, Occ. Doctor
Residing at 501, C. Sadar Bazar,
Satara 1
6. The Collector and Court of Wards,
Collector's Office, Satara
7. Sou. Jyotsana Chandrashekhar Kolhatkar
age 53 years, Occ. Residing at 146,
Chamanpur Peth, Satara
8. Shri Janardhan Ganesh Gadre
Trustee, age 75 years, Occ. Religious Work
Residing at C/o. Shri Samarth Seva Mandal
Sajjangad
9. Shri Narhari Anant Kulkarni
Trustee, age 52 years, Occ. Editor
Residing at Smrutikamal, Shri Chhatrapati
Shivaji Nagar Hsg. Society,
Sadar Bazar, Satara 1
10. Shri Samarth Seval Mandal
Sajjangad Permanent Deposit Trust
Duly registered under the Bombay Public
Trusts Act, 1950 having registered
No. A-1732, Having its office at
Western India Trustee And Executor
Company Limited, 218, Pratpaganj Peth,
Satara-2, Through Trustees
11. Western India Trustee and Executor
Company Limited, Trust,
218, Pratapganj Peth, Satara

12. Shri Vinayak Kashinath Velankar
Trustee, age 80 years, Occ. Retired
Residing at Vishram Ashram,
476, Vakilwadi, Sadar Bazar,
Satara 1

13. Shri Narayan Mahadev Karmarkar Trustee
Age 74 years, Occ. Religious Work
Residing at c/o. Shri Samarth Seva Mandal
Sajjangad, Taluka and District : Satara

14. Shri Bhaskar Dattatraya Paranajape
Age 62 years, Occ. Retired
Residing at Paranajape Wada,
Shanivar Peth, Satara

... Respondents

Mr. G. S. Godbole with Mr. P. M. Arjunwadkar for Applicants.
Mr. A. V. Anturkar, Senior Advocate i/b. S. B. Deshmukh for Respondent
No. 2.

CORAM : B.R. GAVAI, J.

JUDGMENT RESERVED ON: 26th APRIL 2011

JUDGMENT PRONOUNCED ON : 3rd MAY 2011

JUDGMENT :

Admit. By consent of parties, heard finally.

2. The applicants take exception to the order dated 9th August 2010, passed by the learned 2nd Joint Civil Judge, Senior Division, Satara, below exhibit-110 and 113 in Special Civil Suit No. 8 of 2003 vide which the learned Trial Judge has held that it has the jurisdiction to entertain the suit in question.

3. The respondent-plaintiff No. 1 is a trust registered under the provisions of the Bombay Public Trusts Act, 1950 (“said Act” for short). The rest of the plaintiffs are the trustees of the plaintiff No. 1 trust. The defendant No. 1 is also a trust registered under the said Act. Defendant Nos. 2 to 13 are the trustees, office bearers and patrons of the defendant No. 1 trust. The defendant No. 14 is also a trust registered under the said Act. Defendant Nos. 15 to 18 are the trustees of the said defendant No. 14 trust.

4. It is the contention of the plaintiffs that there was a compromise entered into between the plaintiff trust and the defendant trust on 26th October 2009 and a compromise pursis was tendered before the Assistant Charity Commissioner, Kolhapur. Contending that the respondent trust and its trustees have breached certain terms of the compromise, the plaintiffs have prayed various reliefs including for recovery of possession of the properties mentioned in the suit and also for direction to the defendant trust to pay certain amounts. In the said suit, an application came to be filed under Section 9-A by the defendants below exhibit 110 and 113 for framing preliminary issue regarding jurisdiction. The learned Trial Court vide order dated 9th August 2010 allowed the said application and framed following preliminary issues:

Preliminary Issue:

- i. Whether this Court have jurisdiction to entertain, decide or any try the present suit in view of section 2(4), 50, 51(4), 52 and 80 of Bombay Public Trust Act, 1950 ?
- ii. What Order ?

5. Vide the impugned order, the said issue has been answered in the affirmative and it has been held that the court has jurisdiction to entertain the suit. Being aggrieved thereby, the present revision application under Section 115 of the Code of Civil Procedure.

6. Mr. Godbole, the learned Counsel for applicants submits that a suit as filed by the respondents-plaintiffs is not tenable in view of the provisions of Sections 50 and 80 of the said Act. The learned Counsel, in this respect, relies on the judgment of the Apex Court in the case of *Church of North India Vs. Lavajibhai Ratanjibhai and others* reported in **(2005) 10 SCC page 760**. The learned Counsel also relies on the judgment of the Apex Court in the case of *Shree Gollaleshwar Dev and others Vs. Gangawwa Kom Shantayya Math and others* reported in **(1985) 4 SCC page 393**. The learned Counsel further relies on the judgment of the learned Single Judge of this Court in the case of *Lakhanlal Brijlal Purohit and others Vs. Marwadi Samshan Hanuman Mandir* reported in **2006 (4) Bom. C.R. page 827** and *Mr. Maulana Mohamed Yusuf Ismail Vs. Madarsa Vejajulu Ulum Kuran and others* reported in **2001 (4) All MR page 211**.

7. As against this, Mr. Anturkar, the learned Counsel appearing on behalf of respondents submits that Section 50 of the said Act would be applicable only when the suit is being filed by the persons interested in the trust. He submits that the plaintiffs, on the contrary, are the persons whose interests is totally adverse to the interests of the defendant trust. He further submits that even if the person interested is concerned, he can file a suit without permission of the charity commissioner for the enforcement of the independent civil right. It is further submitted that the remedy available under the said Act, is

independent of the other remedy available under ordinary law, and therefore, the suit is not barred. The learned Counsel also relies on the judgment of the Apex Court in the case of **Shree Gollaleshwar Dev** (*supra*) which is relied on by the applicants. In addition thereto, the learned Counsel relies on the judgment of the Division Bench of this Court in the case of *Amirchand Tulsiram Gupta and others Vs. Vasant Dhanaji Patil and others* reported in **1992 (2) Bom.C.R. page 22** and the judgment of the learned Single Judge of this Court in the case of *Surayya Afzal Khan Vs. Raza Shah Fakir Takiya & Masjid Trust* reported in **2006 (4) Mh.L.J. page 544**, *S. H. Jawandhiya and others Vs. Onkareshar Birbal Prasad Mishra* reported in **1996 (2) Mh.L.J. page 897**, *Maharashtra Shetkari Seva Mandal Vs. Bhaurao Bayaji Garud* reported in **2010 (2) Mh.L.J. page 612**, *Vidarbha Kshatriya Mali Shikshan Sansta Vs. Mahatma Fuley Shikshan Samiti Amravati* reported in **1986 (0) BCI page 64** and in the case of *Pandurang Sakharam Patil Vs. Nanded Parsi Anjuman Trust* reported in **2011 (1) Mh.L.J. page 524**.

8. For ascertaining the issue regarding the jurisdiction of the learned Trial Court, what would be relevant is the averments in the plaint. Equally, the averments in the plaint will have to be read conjointly and not in piecemeal. It is the specific case of the plaintiffs that the defendant has breached various conditions which were agreed in the compromise pursis dated 26th October 1959. It is the further case of the plaintiffs that the defendant No. 1 was collecting the donations as an agent of plaintiff No. 1. It was their case that as such, the amounts, collected by the defendant No. 14 and illegally transferred to the defendant No. 1, were required to be paid back to the plaintiffs. It was also the claim of the plaintiffs that the plaintiffs are entitled to recover

the possession of property mentioned in the suit. It could, thus, clearly be seen from the averments of the plaint, that the plaintiffs are not claiming to be the persons interested in the defendant No. 1 trust. On the contrary, it is the claim of the plaintiff that the plaintiff trust is entitled to the property and the donations collected by the defendant No. 1 trust.

9. In the case of **Vidarbha Kshatriya Mali Shikshan Sansta** (*supra*), in-0.85" identical facts, there was a dispute between two public trusts. The plaintiff as well as the defendant were the public trusts. There was an agreement arrived at between the parties, according to which the plaintiff trust was allowed to conduct school classes in some of the rooms in a building belonging to the defendant trust. According to the said agreement, after the academic session is over, the plaintiff was to hand over the class rooms to the defendant for being let out for the marriage or some other functions, so as to enable it to get income from the same. It was further agreed that after the summer vacation was over, the rooms were to be handed over back to the plaintiff for running the school classes. Contending that as per the amendment, the defendant has not handed over the possession after the summer vacation of 1980, a suit came to be filed by the plaintiff, seeking an order restraining the defendant from interfering with its rights to run the school classes. An application filed by the defendant trust under Section 9-A of the Code of Civil Procedure raising an issue regarding the jurisdiction was rejected by the trial court. In the revision filed before this Court, this Court has observed thus:

4. A perusal of the above provisions would show that in relation to the public trusts, a special right is created even in the third person like the "Charity Commissioner" or the "persons having interest" who may not have their own civil rights to enforce to institute

a suit in respect of any matter covered by the said section which would not ordinarily be there if their own rights were not involved. It may be seen that such a special suit lies not in the normal forum where any suit under the Code lies but in the special forum of the District Court, as provided thereunder. In my view, section 50 of the Act is a section analogous to section 92 of the Code although to a certain extent as regards the subject-matter it may be wider than it. However, what is most important is that the definition of the expression “persons having interest” given in section 2(1) of the Act include only certain classes of persons. The suit contemplated by section 50 can be instituted either by the “Charity Commissioner” or the “persons interested” with his consent. Since all persons who want to enforce their civil rights are not covered by the definition of the expression “persons having interest” they would be left to the mercy of the Charity Commissioner or the persons having interest covered by the definition clause for enforcement of their private rights if the suit can be instituted only in the manner as provided in section 50. Even assuming that such persons are covered by the definition clause, they would still be at the mercy of the Charity Commissioner for enforcement of their personal rights. Such a consequence in my view is not contemplated by Section 50 of the Act. The persons who have their own rights to enforce cannot, therefore, be compelled to follow the procedure laid down in the said section. A suit to enforce one’s own civil right instituted under the Code in the ordinary forum provided for the same is thus competent.

(Emphasis supplied)

It can, thus, clearly be seen that this Court in unequivocal terms has held that to enforce one’s own civil rights instituted under the Code in the ordinary forum provided for the same is thus competent.

10. In the case of **Amirchand Tulsiram Gupta** (*supra*), the suit was filed by the trustees of the trust seeking a declaration that the plaintiffs or the trustees of the charitable trust were the owners of the

suit land and that the defendants be directed to handover vacant and peaceful possession of the suit lands and for a permanent injunction, restraining the defendants from entering upon the suit lands. The learned Single Judge of this Court held that the suit was not maintainable in the absence of the permission of the court commissioner. The Division Bench of this Court allowing the appeal and reversing the finding of the learned trial judge has observed thus:

7. It is necessary in this connection to refer to the decision in A.I.R. 1986 S.C. 231 (Shree Gollaleshwar Dev and others v. Gangawwa Kom Shantayya Math and others). The Supreme Court held that section 50 created and regulated a right to institute a suit by the Charity Commissioner or by two or more persons interested in the trust, in the form of supplementary statutory provisions without defeasance of the right of the manager or trustee or a shebait of an idol to bring a suit in the name of idol to recover the property of the trust in the usual way. In other words, the Supreme Court accepted the view taken by the Division Bench of this Court that the right of a trustee to bring a suit in the usual way, that is in exercise of rights under the Common Law is not affected by provisions of section 50 of the Public Trusts Act. The ratio laid down by the Supreme Court was followed by a Single Judge of this Court in the decision reported in 1986 Mah.L.J. 773 (Vidarbha Kshatriya Mali Shikshan Sanstha v. Mahatma Fuley Shikshan Samiti, Amravati), holding that trustees who want to enforce their civil rights are not covered by definition of the expression “person having interest” and are entitled to file suits without obtaining prior permission. The same view was taken by another Single Judge in the decision reported in 1988(2) Bombay Cases Reporter 429, (Leelavati w/o Vasantrao Pingle v. Dattraya D. Kavishar and others). The same view was taken by another Single Judge in an unreported decision dated September 13, 1990 delivered in Original Side Suit No. 958 of 1975 and the decision of the Single

Judge was confirmed in Appeal No. 1315 of 1990 by the Division Bench by judgment dated March 14, 1991. The Division Bench specifically disapproved the view taken by the trial Court in the present case holding that the decision reported in 69 Bom.L.R. 472, Rajgopal Raghunathdas Somani v. Ramchandra Hajarimal Jhavar, still holds field and section 50 does not prohibit a suit being filed by trustees to recover possession from a trespasser without obtaining prior permission. We are in respectful agreement with the view taken by the Division Bench and the learned Single Judges, and we entirely disagree with the finding of the trial Judge that the suit was not maintainable in absence of permission. The learned trial Judge was clearly in error in holding that after amendment of section 50 and section 2(10)(e), it is incumbent upon the trustees to obtain prior approval of the Charity Commissioner to institute suit against a trespasser for recovery of possession. As the finding of the trial Judge on this count is set aside, consequently the finding that the High Court had no jurisdiction to entertain the suit and the suit could be filed only in the City Civil Court after obtaining prior approval cannot stand.

(Emphasis supplied)

11. The learned Single Judge of this Court in the case of **Maharashtra Shetkari Seva Mandal** (*supra*) has also taken a view that the right claimed in the suit for declaration and injunction in respect of property over which the plaintiff, who is not a “person interested” claims title, cannot be said to be barred under Section 80 of the Act nor is the consent of the charity commissioner required prior to institution of such a suit. An identical view has been taken by another learned Single Judge in the case of **Pandurang Sakharam Patil** (*supra*). In the case of **Surayya Afzal Khan** (*supra*), the another learned Single Judge of this Court has held that in a suit filed by trustees of a charitable trust for

eviction of a trespasser or for a recovery of possession and/or such action, the permission of the charity commissioner is not necessary. The learned Single Judge of this Court in the case of **S. H. Jawandhiya** (*supra*) has also held that Section 51 is applicable only to the suits which are filed by persons having interests in the trust. As already discussed hereinabove, the present applicants cannot be said to be the persons interested in the defendant trust. On the contrary, their interest is adverse to the interests of the defendant trust.

12. Insofar as reliance placed by the learned Counsel for applicants on the judgment of Church of North India is concerned, undisputedly, the plaintiffs therein were the persons who were having interests in the trust and as such the said judgment would not be applicable to the facts of the present case. So also in the case of the **Lakhanlal Brijlal Purohit** (*supra*) and **Mr. Maulana Mohamed Yusuf Ismail** (*supra*), the plaintiffs were the persons interested in the trust. In that view of the matter, those judgments would not be applicable to the facts of the present case.

13. In that view of the matter, it cannot be said that the findings of the learned Trial Court, that it has jurisdiction to entertain the suit in question, are erroneous or illegal. No interference is warranted. Rejected.

14. At this stage, Mr. Arjunwadkar, the learned Counsel appearing on behalf of Applicants requests for stay to the further proceedings before the learned Trial Court.

15. Mr. Tanaji Mahatugude, the learned Counsel appearing on behalf of respondent No. 2, vehemently opposes the application.

16. The suit is of the year 2003. In the light of the observations made by me, I do not find that the case is made out for entertaining such a request. Rejected.

(B.R. GAVAI, J)