CASE NO.:
Appeal (civil) 7351 of 2001

PETITIONER:
Pandit Vasudev Vyas (Dead) Thr. LRS.

RESPONDENT:
Board of MGMT, S.S.J.S. Peeth & Ors.

DATE OF JUDGMENT: 25/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The Appellant herein is a Senior Professor and Dean of the Poddar Government Ayurvedic Medical College and Hospital in Mumbai. He was also the Dean of Faculty of Ayurved in the University of Bombay.

The dispute involved in this appeal, which arises out of a judgment and order dated 24th April, 2000 passed by a Division Bench of the High Court of Judicature at Bombay in L.P.A. Stamp No. 11607 of 2000, centers round the appointment to the post and seat of Jagadguru Shankaracharya/ Sole Trustee of the Respondent \026 Trust.

The Appellant contends that he as a disciple of Jagadguru Shankaracharya believes that the spiritual head of well-known Math should be appointed according to traditions, customs and usages recognized by law and he should be a great scholar of Veda, Vedangas and Indian Philosophy. He should have also been initiated into sannyas by a Guru.

One Sankeshwar Peeth was established by Jagadguru Shankaracharya. The said Peeth is situated in the District of Belgaum in the State of Karnataka. Another trust known as Karveer Peeth was established in the District of Kolhapur in the State of Maharashtra.

Whereas the Karveer Peeth is registered in terms of the Bombay Public Trust Act, the Sankeshwar Peeth is registered separately. One Erande Swami is said to have been nominated by his Guru to succeed him as a sole trustee in respect of the said Sankeshwar Peeth. It is, however, contended that he expressed his inability to act as Shankaracharya The Appellant contends that both the Sankeshwar Peeth and Karveer Peeth are branches of a single entity known as Sankeshwar \026 Karveer Peeth. The said contention is denied and disputed by the Respondent.

It is, however, not in dispute that the matter relating to appointment of a trustee in relation to Karveer Peeth came to be considered by the Charity Commissioner in terms of the provisions of the Bombay Public Trust Act. A proposal was made for appointing Shri Ramchandra Narhar Kulkarni the Second Respondent herein as a Sankarcharya of the said Peeth; objections whereto were filed. The Appellant herein was also one of the objectors. By an order dated 11.11.1982, the Charity Commissioner appointed the Second Respondent as sole-trustee of the Karveer Peeth in purported exercise of its power under Section 47 of the Bombay Public Trust Act with the condition that he should take sannyas before he enters upon the charge of the sole-trustee of the Karveer Peeth stating:

"So far as the point that the sole-trustee must be a sannyasi, there is no dispute about it at all. It is a pre-requisition that whoever presides over this Peeth he must be sannyasi."

The Charity Commissioner although opined that there could not be any dispute about the fitness and qualification of Shri Erande Swami for being appointed as the sole-trustee, but proceed to observe that mere learning was not enough under the Scheme to be appointed as a sole trustee of the Peeth and his name could not be considered. In fact the name of Shri Kulkarni was reconsidered although he had withdrawn his claim.

A First Appeal being First Appeal No. 166 of 1983 was preferred thereagainst by the Appellant, Respondent Nos. 4 and 5 herein. The said appeal was dismissed by an order dated 20th January, 2000. A Letters Patent appeal was preferred thereagainst by the Appellant which has been dismissed by reason of the impugned judgment dated 24.4.2000.

In this appeal, we are concerned with a short question, viz., as to whether in terms of the Scheme for the Management and Administration of the Public Trust Shri Swami Jagadguru Shankarcharya Peeth, Kolhapur, the Respondent No. 2 could have been appointed as a sole trustee.

It is the contention of the Appellant herein that at all material point of time, a litigation was pending in the State of Karnataka culminating in Regular First Appeal No. 143 of 1982 before the High Court of Karnataka at Bangalore. The said First Appeal arose out of a judgment and order dated 27.2.1982 passed in OS No. 8 of 1972. In the said judgment, inter alia, the following issues were framed:

"1. Whether the Plaintiff proves that the succession to the office of the Head of Sankareshwar Karvir Math is governed by customs and practice as alleged in para (3) of the Plaint?
2. Whether the Plaintiff proves that the Second defendant was validly dismissed by Shri Guruswami?
3. If so whether the second defendant lost all his rights and privileges as Adhikari Shishya?
4. Whether the Plaintiff proves that the 1st defendant was validly dismissed by Shri Guruswami Shirolkar on or about 8.9.1958?
5. If so, whether the 1st defendant lost all his rights and provisions as Adhikari Shishya?
6. Whether the Plaintiff proves that he was initiated as Adhikari Shishya on or about 15.10.1958 as alleged in para (o) of Plaint?
7. Whether the Plaintiff proves that he is entitled to the office of the trustees of the Math and the suit properties and to the Management thereby?
8. Whether the plaintiff proves the alleged last will and testament of 15.10 of Shri Guruswami Shirolkar?
9. If so, whether the 1st defendant proves that the will is void and does not affect his interests?
10. Whether the Plaintiff proves that the 1st defendant is in illegal and unauthorized possession of the suit properties?
11. Whether the 1st defendant establishes that from 1.7.1957 he became the Shankaracharya Jagadguru and the rightful owner and trustee of the Math and the suit properties as contended by him?
12. Whether 1st defendant shows that Shri Guruswami Shirolkar had ceased to be the

Jagadguru on or about 15.10.1958?
13. Whether the Plaintiff is entitled for the declaration sought?
14. Whether Plaintiff is entitled to get possession of the suit properties?
15. To what reliefs are parties entitled?"

The said appeal was allowed inter alia stating:

"In these circumstances we have no hesitation in reversing the finding of the trial court that the dismissal of the first defendant in the year 1958 was illegal and void. We, therefore, hold that first defendant was dismissed in September, 1958 by a valid order and he ceased to be Adhikari Shishya thereafter.

If the dismissal of first defendant was valid there can be no doubt that Guruswami was competent to initiate first plaintiff as Adhikari Shishya which he did on 15th October, 1958. Plaintiff, therefore, became a valid Adhikari Shishya of Shirolkar Swami and consequently on the death of Shirolkar Swami Plaintiff was entitled to succeed to him as Shankaracharya of Sankeshwar Karbir Mutt and is also entitled to take possession of the properties of the Mutt."

A notice was issued by this Court on 18.9.2000 having regard to the said contention of the Appellant wherein it was noticed:
"It is pointed out by learned senior counsel appearing on behalf of the petitioner that a specific clause in the Scheme of 1963 mentions that there is a pending litigation and that the person who would be declared by the civil court in the pending litigation would be the sole trustee of the Trust and that there could not be a second trustee like the respondent. Once R.F.A. 143/82 was decided on 23.9.92 in favour of the plaintiff in the suit by a Division Bench of the Karnataka High Court allowing the appeal of the plaintiff, the respondent had to be removed as a second trustee.

It is, therefore, contended that in view of the said judgment there cannot be another Sankaracharya for the Trust which is the subject matter of this SLP and that the Petitioner is espousing the cause of the Sankaracharya of the plaintiff in that suit, inasmuch as being a Sankaracharaya he would not pursue the matter in court.

It is also contended that the petitioner could not draw the attention of the Division Bench of the High Court to the relevant clause in the Scheme though a copy of the said judgment of the Karnataka High Court was part of the record before the Bombay High Court. Issue notice."

We may notice that the contention that both the Peeths are in effect and substance the branches of the same entity was negatived by the High Court stating:

"\005The contention has to be stated merely for the

purpose of being rejected since there is a categoric finding that the Karveer Trust is a separately registered Trust under the Bombay Public Trust Act, bearing Registration no. A-1391 (Kolhapur). It is brought to our notice that the affairs of the Sankeshwar Trust are the subject matter of some pending litigation in the Karnataka High Court, at Bangalore. In the first place, those proceedings are not produced for our perusal. Secondly, assuming that there is any controversy about the appointment of the trustee, at Sankeshwar, the Sankeshwar Trust bears a separate Registration Number viz., A-3059 (Belgaum). Thirdly, there is no challenge to the factum of the registration of the Karveer Trust as a separate legal entity in Maharashtra under Registration No. A-1391 (Kolhapur). Fourthly, clause 5 of the Scheme of the Karveer Math specifically contemplates that the presiding Swami at the Karveer Trust shall be the sole trustee of the Trust."

Mr. Srivastava, learned counsel appearing on behalf of the Appellant, would submit that the High Court committed an error of record in holding that the proceedings before the Karnataka High Court had not been produced as the judgment of the Karnataka High Court formed part of the records. A further error of record, according to Mr. Srivastava, has been committed by the Division Bench of the High Court insofar as clause 5 of the Scheme of the Karveer Peeth which specifically contemplates that the presiding Swami at the Karveer Peeth shall be the sole trustee of the Trust, has not been considered.

Mr. Chinmoy Khaladkar, learned counsel appearing on behalf of the Respondents, on the other hand, submitted that having regard to the fact that both the Peeths are separately registered, they cannot be considered to be branches of the same legal entity.

A contention has specifically been raised before us that apart from the aforementioned litigation culminating in the Regular First Appeal No. 143 of 1982 before the High Court of Karnataka at Bangalore, no other litigation was pending. The Appellant contended that the litigation involving the question as to who would be appointed as a trustee was pending before the Karnataka High Court. According to the Respondent, however, no litigation was pending at any point of time before the courts at Karnataka as regards entitlement of a person to be appointed as a sole-trustee in respect of Sankeshwar Peeth.

Having heard the learned counsel for the parties, we are of the opinion that it is not necessary for us to go into the aforementioned question in detail, as the principal question before us is as to who should be appointed as a sole trustee of the Karveer Peeth.

It may or may not be that both the Peeths were branches of the single entity but the question arising herein would have to be considered as to who could be appointed as to the sole trustee of the Karveer Peeth. For the said purpose, we may notice Clause 5 of the Trust Deed which is as under:

"5. The presiding swami Shri Narasimha Krishna Bharati Guru Vidya Shankar Barati Swami Jagadguru Shri Shankaracharya Peeth, Karveer is and shall be the sole trustee of the said trust subject to the decision of the court in pending matters in which case the person decided by the court as a trust shall be the trustee."

The question as to whether both the Peeths are branches of a common entity may also have to be determined having regard to Clause 5 of the Scheme of Trust framed in the year 1963. We, however, refrain ourselves from going into the said question and in particular the history thereof, as we are of the opinion that the High Court did not address itself as regards the import of Clause 5 of the Trust Deed.

The question as regards appointment of a sole trustee is a matter of great importance having regard to the provisions of the Bombay Public Trust Act. The Charity Commissioner and consequently the appellate courts should have made all endeavours to give effect to the desire of the founding trustees, if the said provision is applicable. It is in that view of the matter, we are of the opinion that the heirs and legal representative of original applicant may be permitted to step into his shoes. We, however, do not intend to put our final seal in this regard and the said question may be raised before the High Court.

We would, however, assume that the two Peeths were separately registered but, in terms of the trust deed, there cannot be any doubt whatsoever that Clause 5 of the Scheme was relevant for the purpose of determination of the question as regards the appointment of the sole trustee. The said question was of great relevance, even if it be held that the two Peeths were registered separately and, thus, were two separate entities in the eyes of law. It has not been disputed that the said judgment of the Karnataka High Court formed part of the record before the courts below. Its relevance for the purpose of interpreting Clause 5 of the Scheme cannot be disputed. Whether the said Clause fits in with the Scheme, as has been contended by the learned counsel for the Respondent, is also required to be determined on the basis of the materials on record.

We, therefore, are of the opinion that the matter should be directed to be considered afresh by the Division Bench of the High Court. We direct accordingly.

The learned counsel for the parties, however, state that Erande Swami is now aged about 92 years. The Second Respondent is also aged person about 80 years and, thus, the controversy should be put to an end as early as possible. We agree with the learned counsel. We would, therefore, request the High Court to consider the desirability of disposing of the matter, as expeditiously as possible and preferably within a period of three months from the date of communication of this order.

The judgment of the High Court is set aside. The appeal is allowed. The matter is remitted to the High Court with the aforementioned directions. However, in the facts and circumstances of this case, there shall be no order as to costs.