

(1982) 03 BOM CK 0066
In the Bombay High Court
Case No : First Appeal No. 645 of 1974

Amin Ibrahim and Others

APPELLANT

Vs

Sayed G. Jamalbhai and Others

RESPONDENT

Date of Decision : 23-03-1982

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 50, 51, 79, 80

Citation : (1983) 1 BomCR 481

Hon'ble Judges : V.S. Kotwal, J

Bench : Single Bench

Advocate : Mohan Pungliya, for the Appellant; D.S. Marathe, for Respondents
Nos. 1 to 3, for the Respondent

Judgement

V.S. Kotwal, J.—A religious Masjid located in Hadapsar in Pune District has prominently figured in these proceedings. It has been registered with the Charity Commissioner, Pune Region under the Bombay Public Trusts Act, 1950 (shortly stated as the "Act"), in the name of "Masjid Hadapsar, Taluka Haveli, Trust", which event occurred in the year 1952. The said Masjid shall be referred to as the suit "Trust". Initially 8 persons were appointed as trustees and managers to look after the said Mosque. The four appellants herein are amongst group of the said 8 trustees, though unfortunately the remaining four trustees died from time to time. Leaving behind in the field only the present appellants in that capacity and it may be incidentally observed at this juncture itself that no attempt was made by them to fill up those vacancies. Thus, the number continued to be four, though it was necessary to be eight. The mode of succession to trusteeship and managership was prescribed by nomination by the jamat. The dominant object of the trust is claimed to be nomination by the jamat. The dominant object of the trust is claimed to be the maintenance and upkeep of the Masjid as also performance of religious rites and offer facilities to the religious-minded people who visit the mosque to offer their prayers. It is clear that the Trust properties consist of a Mosque and a Kabrastan which are located in City Survey No. 530 having corresponding Municipal No. 158 within the limits of Hadapsar and it also

includes a building adjacent to the said Mosque which building was formerly used as an education institution, being Urdu School. It is further claimed that in addition to these properties, the Trust possesses and owns two agricultural lands bearing Survey Nos. 74 and 75 which were initially granted as Inam in ancient time by Badshah Alamgir. It is alleged by the first three respondents herein, who are the original plaintiffs. That several acts of omission and commission amounting to misconduct are attributable to the said four trustees. The break up of those items are five in number.

2. In effect it is contended that though the said two survey numbers were granted to the Trust as Deosthan Inam land the said trustees treated both the lands as of their private ownership and even effected partition into 72 sub-plots and they have been appropriating the income of the said lands to their own personal benefit. The second item pertains to two sale instances effected on March 2, 1968 without obtaining the necessary permission from the Charity Commissioner and appropriating the sale proceeds for their own use. Those relate to sub-plots from the said two survey numbers. The third item mentions that the premises in a building adjoining the Mosque have been unauthorisedly rented out to the tenants for their residences, the income of which is also appropriated by the trustees and the second plank of this allegation is that this would hurt the religious feelings as residence of a family near the Mosque is contrary to the tenets of the Muslim religion. The fourth item relates to non-rendering of the accounts throughout and also misappropriation of large amount. The last item pertains to not appointing of four more trustees to make the total number as eight as so prescribed.

3. The plaintiffs claim that they are persons interested in the Trust since not only they have faith in the religion but they physically visit the Mosque to offer prayers. They, therefore, moved the Charity Commissioner by an Application No. 20 of 1971 alleging misconduct against the said four trustees and their acting diverse to the interests of the Trusts, and asked for the consent to file a suit for the appropriate reliefs as required under the law.

4. That application was contested by the defendants whose contentions were negatived and the Dy. Charity Commissioner by his order dated August 4, 1971, granted the necessary consent.

5. On being armed with the said consent and the legal requirement, the plaintiffs/respondents filed Civil Suit No. 9 of 1971 against the said four trustees as also formally impleading the Charity Commissioner as co-defendant, the District Court at Pune u/s 50 of the Act being Civil Suit No. 9 of 1971. The allegations as incorporated in the plaint are already indicated at the threshold. The plaintiffs, therefore, asked for the reliefs of removal of the said four trustees as the trustees and managers; appointment of new trustees in their place; formation of a proper scheme for the proper administration of the Trust and calling upon the trustees to render true and correct accounts and to reimburse the Trust if found necessary. This suit was filed in September 1978.

6. The suit was resisted by the defendant-trustees practically on all counts, including raising technical objections also. It was, inter alia, contended that the plaintiffs cannot be properly styled as the persons being interested in the Trust and thus they have no locus. The representative capacity of the plaintiffs was thus placed under challenge. A dispute was also raised about the cause of action. On merits it was contended that the agricultural lands in reality belonged to them and are of their individual ownership and have nothing to do with the Trust and as such they are not liable to render any account in that behalf nor they have committed any misconduct vis-a-vis the income of the said lands. As regards the other property, the defendants relied on the accounts produced by them which according to them have been duly certified and authenticated by the auditors. In effect, therefore, they denied all the adverse allegations and contended that no case has been made out for their removal from the trusteeship.

7. The learned Extra Asstt. Judge, Pune, who was in charge of the said proceeding framed the necessary issues and upheld the plaintiffs' claim about the alleged misconduct on the part of the trustees on all counts and he also held that the trustees were acting against the interests of the Trust and in fact they have lost interest in the Trust itself. Practically all the items of the alleged misconduct as catalogued earlier, have been accepted on merits. It was also held that the properties in question including the two agricultural lands, are the properties belonging to the Trust and are not of individual ownership of the defendants. The liability to render account was also upheld.

8. In keeping with these findings, the suit was decreed. The learned Judge directed removal of the four defendants from acting as trustees and managers. It was stipulated for the appointment of new 8 trustees after observing the necessary formalities. The Charity Commissioner was directed to check out and submit a scheme for the proper management of the Trust. The defendants were made liable to render accounts from the year 1952. In addition to these reliefs and directions, the learned Judge appointed a local Advocate as a receiver to take charge of the Trust properties and also as a Commissioner to take accounts of the income. A preliminary decree was thus directed to be drawn accordingly. This decree dated 31st July, 1974 is being impugned in this first appeal on behalf of the original defendants .

9. I have already given at the threshold the details and the crux of the controversy and as such repetition is not necessary. Mr. Pungliya, the learned Counsel for the appellants, mainly submitted that the original three plaintiffs has no locus to file the suit as they cannot be said to be the persons interested in the Trust. It is also claimed that no cause of action accrued at least in favour of the original plaintiffs Nos. 2 and 3. Reliance was placed on the provisions contained in section 50 of Act in support of the contention that since it falls under sub-clause (1), the minimum number of persons entitled to file the suit is lacking in the instant case. Relying on the provisions of sections 79 and 80 of the Act an endeavour was made to suggest that the Civil Court has a no jurisdiction to

decide whether the property in reality belonged to the Trust or not since it is the privilege under those provisions rendered only on the Charity Commissioner. Reliance was also placed on some of the documents and the evidence of the 1st plaintiff to support the defendants' contention that the agricultural lands really are of their individual ownership. Mr. Marathe, the learned Counsel for the plaintiffs, has countered all these submissions and virtually adopted the reasons assigned by the learned trial Judge. Smt. Shenoy, the learned Assistant Government Pleader appearing on behalf of the Charity Commissioner supports the judgment of the trial Court.

10. The trial Court has considered in proper perspective the real nature of the controversy and the force of contentions raised on behalf of the defendants and in my opinion on a proper assessment of the evidence, has arrived at a correct decision with which no fault can be traced by any yard-stick. I am, therefore, inclined to endorse all the findings as also uphold the process of appreciation which makes it rather unnecessary to go into all the details and the finer shades of the controversy. However, some of the submissions can be conveniently dealt with.

11. So far as the main contention based on the provisions contained in section 50 of the Act is concerned it is obviously devoid of any substance. Mr. Pungliya, the learned Counsel, submits that the case would fall at the most under sub-clause (1) of section 50 of the Act, when a direct misconduct is alleged on the part of the trustees and the submission further flows on the basis that in that event it is the Charity Commissioner, after making the enquiry from two or more persons having interest in the suit property, who is entitled to file the suit. The learned Counsel submits that in the first instance it is only the 1st plaintiff who has given evidence and secondly he could not have personal knowledge to substantiate that plaintiffs Nos. 2 and 3 are also persons interested. Admittedly, the suit is not filed by the Charity Commissioner. In the first instance, this submission itself is difficult to be accepted inasmuch as notwithstanding the so-called admission of the 1st plaintiff about his having no personal knowledge about plaintiffs Nos. 2 and 3 physically visiting the Mosque for offering prayers, it is relevant to note that the three plaintiffs, really speaking, fall in the same category or a group residing at the same place and having a common interest and in the nature of things, it is not difficult to uphold the contention of Mr. Marathe, the learned Counsel. That plaintiffs Nos. 2 and 3 also must have been visiting the mosque. It is important to note that a recital in that behalf finds place prominently in the pleading and what is more relevant is that even in the application before the Charity Commissioner, a formal recital in that behalf pertaining to all the three plaintiffs finds place. This submission of the appellants, therefore, obviously could not be upheld. It is also worth noting that in addition to sub-clause (1) the case may fall under sub-clause (4) also inasmuch as it stipulates a declaration of any kind either in favour of or against the trustees and it becomes apparent that the allegations of misconduct without any relief cannot be merely in the vacuum but implied therein would be a relief for declaration that

these persons are unfit to act as trustees by virtue of their misconduct. These two things, really speaking are inseparable and that is precisely what has been reflected in the pleading. In the event what is contemplated under the Act is the filing of the suit even by one individual who can assume the capacity as a person interested and in which event at least the 1st plaintiff has made a positive statement in that behalf, though one may hasten to add that he has also positively asserted that other two plaintiffs also offer prayers in the mosque.

12. The capacity about being a person having interest in the Trust must be enquired into with reference to the definition clause contained in section 2 sub-clause (10) of the Act and particularly sub-clause (c) which, inter alia, vests that capacity in a person who has a right to perform any religious rites or offer prayers in Mosque. This entitlement in the instant case goes little further when there is a positive evidence that in fact the plaintiffs visit the Mosque and offer prayers. The capacity of the three plaintiffs, therefore, would squarely fall under this definition, and therefore, they are the persons interested in the Trust.

13. Admittedly, consent of the Charity Commissioner was obtained before the filing of the suit and, therefore, all the legal requirements are followed . It is in that context worth noting that the Charity Commissioner has applied his mind to all the contentions and it is only after holding an enquiry that the consent was accorded . In fact, the defendants appeared and contested that application on merits and actually tendered documents and it is only thereafter that their contentions were negated and the Charity Commissioner deemed it proper to accord the consent as contemplated by sections 50 and 51 of the Act.

14. As regards the provisions contained in sections 79 and 80 of the Act, the contention resting on the same is equally devoid of any merits. It was sought to be suggested that these provisions preclude the Court from deciding the question as to whether the property really belongs to the Trust or not, which consideration lies entirely within the domain of the Charity Commissioner. It is in that behalf worth noting that in the enquiry held at the time of granting the consent, all these contentions were raised and considered on merits and the Charity Commissioner held and recorded a clear finding that all the properties, including Survey Nos. 74 and 75 really belong to the Trust. No protest is made against that finding nor any proceeding initiated. Consequently, in fact that finding is properly recorded on merits by the Charity Commissioner, and, therefore, this contention of lack of jurisdiction raised by Mr. Pungliya, must topple down.

15. Some of the features can be incidentally referred to with interest. It is very eloquent to note that when the trust was registered, certain formalities are required to be observed and in the Register of the Public Trust the extract of which is produced at Ex. 77, the two Survey Numbers 74 and 75 along with their pot-Hissas have been unmistakably shown as trust property by persons none other than the defendants themselves. This is not the end of the matter, since there is further formidable feature. It is interesting to note that no accounts are maintained from the year 1952 onwards for nearly 20 years, and the most

striking feature is that it is only after the filing of the suit that accounts for the proceeding 20 years have been dumped in the bulk making a show that the accounts have been regularly maintained . Now relevance alias in the fact that even in the year 1971, when the accounts were so filed, there is a clear mention by the defendants themselves under their signatures that these agricultural lands also belong to the Trust. It would thus be clear that the Charity Commissioner's order granting consent was, passed in August, 1971; the suit was filed in September 1971 and the bulk of account was filed in October 1971 when by that time the defendants were fully aware of the contentions of the plaintiffs vis-a-vis two agricultural lands belonging to the Trust and despite this realisation the defendants came out with the case as reflected through these documents in consonance with the plaintiffs "case that the two agricultural lands also belong to the Trust. This has been rightly commented upon by the learned trial Judge. This would be a square answer to an of repeated submission of Mr. Pungliya, the learned Counsel, that his clients are illiterate persons who do not know what documents were they supposed to sign and that the documents might have been prepared by some accountant or Income Tax consultants. It is also worth noting that theses accounts have been audited and authenticated by the auditor. The learned trial Judge has also rightly observed that there was a systematic scheme on the part of the defendants to hurriedly prepare these accounts, but they over did it. The defendants in response to the Charity Commissioner's letter, in July 1971, made a counter request to supply them with the copies of their accounts which they have already submitted, when the Charity Commissioner, on enquiry found that no accounts have been submitted. This was obviously to make a show that the accounts were submitted even prior to the filing of the suit which is belied even by the date of the accounts and the endorsements thereon which is definitely subsequent to the suit. The learned trial Judge has rightly relied on these features and held that these properties did belong to the Trust.

16. As regards C.T.S. No. 530 on which the Mosque is located, there is hardly any controversy about it being belonging to the Trust. This is admitted by the defendants in their written statement, though a very clumsy attempt was made when it was indicated that even this property was deliberately shown to be located on the land belonging to the Trust though in fact it was otherwise merely because the defendants were advised that by such a show there would be proper up-keeping of the property. The explanation does not deserve any credit. The fact, therefore, remains that there is no serious controversy so far as that property is concerned.

17. It is fully borne out by the two sale instances that the two sub-plots were sold by defendants or some of them in their individual capacity without crediting the sale-proceeds to the accounts of the Trust. The sale deeds are at Ext. 55-A and 55-B and the mutation entries have also been accordingly made and it is rightly observed that this has been done almost on the eve of the suit or immediately thereafter. The contention that the revenue records show names of the defendants individually vis-a-vis the agricultural lands has been considered

and highly negated in the force of other evidence.

18. It is admitted by the defendants that they have rented out a house which is located near the Mosque for the residence of other persons for which they are getting yearly rental of Rs. 900/- which is also not utilised for the benefit of the Trust. The finding in that behalf is also rightly recorded. The non-maintenance and non-submission of accounts at any time have been fully established.

19. It is worth noting that nobody from the defendant side bothered to enter the witness box to deny the positive assertion of the 1st plaintiff made on oath. This also must have its own impact. I may also incidentally refer to a document which is at Ex. 56 dated August 13, 1958 which pertains to the proceedings before the Collector of Pune vis-a-vis two agricultural lands bearing Survey Nos. 74 and 75 and this document, the genuineness of which is not in controversy very strongly supports the plaintiff's case and the finding of the trial Court that these lands really belong to the Trust and were never allotted to the defendants or their forefathers as their individual properties. It contains a finding by the Asst, Inam Commissioner to the effect that the lands in question shall continue prominently as the Inam of the Masjid. This would fully reinforce the finding of the trial Court in that behalf. That the other four vacancies have not been filled in though it was so obligatory is also beyond controversy.

20. In effect, therefore the findings on all the issues is properly recorded on the correct assessment of the evidence and the suit has been properly decreed and there is absolutely no reason whatsoever to upset the said decree. In the result all the allegations are established against the defendants. It is obviously undesirable to continue the appellants to be the trustees as found by the learned trial Court, specially when the institution relates to the process of generating religious faith in the mind of the people of that community so that there should be no dent to that faith and it is absolutely essential in the interest of that community at large that there should be a proper management for which a stipulation is already made by the trial Court for chalking out the scheme.

21. There is thus no substance in this appeal and it is dismissed with costs.