

(1982) 08 GUJ CK 0020
In the Gujarat High Court
Case No : Second Appeal No. 177 of 1976

Bhupendra Rasiklal Kapadia	Vs	APPELLANT
Jayantilal Vrajlal Shah		RESPONDENT

Date of Decision : 24-08-1982

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 17, 19, 20, 21, 22
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1983 Guj 52 : (1982) GLH 1055 : (1982) 2 GLR 805

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Advocate : N.R. Oza, for S.H. Sanjanwala, for the Appellant; D.D. Vyas, for the Respondent

Final Decision : Allowed

Judgement

N.H. Bhatt, J.

1 to 10. x x x x

11. The learned Judges also held that the suit property, namely, S. No. 228, was not the property of the plaintiff's predecessor and, therefore,

cannot be the property of the plaintiff also. Here also, the learned Judges have clearly gone wrong. They have relied upon two judgments of M. U.

Shah J. One is the case of Bapalal Godadbhai Kothari v. Charity Commr. (1966) 7 GLR 825 and the other is the case of Lallubhai v.

Vrijbhushanlal (1967) 8 GLR 42. These judgments can be said to be no good law. Prior to these judgments, there was holding the field a single

Judge's judgment. It is the case of Ishwarlal Nanalal v. Ghanchi Chimanlal R. ILR (1963) Guj 767 which was delivered by late Mr. Justice Mody.

There was one earlier judgment of J. M. Shelat J. in the case of Kuberbhai

Shivdas and Another Vs. Mahant Purshottamdas Kalyandas and

Others, , which held that the enquiry held by the Deputy or the Charity Commissioner u/s 19 was by no means an administrative or an executive

enquiry. This judgment of Justice J. M. Shelat also dealt with the scope of Sections 21 and 22A of the Act. The learned Judge stated in the course

of his judgment as follows:--

Though retaining the final and conclusive character of the findings and entries made under Sections 20 and 21, Sections 22 and 22A make

provision for changes to be made where such changes appear to be necessary either as a result of a change having occurred subsequent to the date

of the entries or as a result of some particular having been left out from consideration in the previous inquiry.

Late Justice Mody's judgment clinched the question and he in unambiguous terms laid down that even if the enquiry was held ex parte, the items

mentioned u/s 19 of the Act are conclusive and the person, who felt aggrieved thereby, had to take recourse to Section 22A in order to ventilate

his grievance. So the judgments of M. U. Shah in the above-mentioned two cases cannot be said to be good law. A single Judge is bound to

follow the earlier judgment delivered by a single Judge. However, this particular aspect need not detain us any further, because there is the

judgment of the Division Bench of this court in the first Appeal No. 222 of 1975 decided on 10-11-75. While upholding the view of Rane J. in the

case of Bhatt Chimanlal Ratanji v. Patel Nanu Ladhu 13 GLR 95 (1972 13 GLR 955), the Division Bench approved the reasoning of Rane J.,

who was a party to the Division Bench, and held that they were, therefore, of the opinion that ""if the plaintiff is assumed for the sake of argument to

fall in the category of a third party and it is such a third party who has come to the ordinary civil court for a declaration about the title to the

immovable property, which was held to be a property of the public trust in an inquiry held u/s 19 of the Act, the civil court's jurisdiction is ousted

in view of the provisions of the Act to decide that question"". They further held that ""the remedy to challenge the decision of the officer or the

authority under the Act was as contemplated, in our opinion, by Section 22A of the Act...."". Finally the Division Bench confirmed that the learned

trial Judge had rightly reached the conclusion that the suit was barred by the

provisions of the Act and such a suit was not maintainable.

12. The sum and substance of what has been stated above is this that it is the settled view of the Division Bench of this court that once a finding

about a particular property being the property of the public trust is reached and an entry is made pursuant thereto in the register kept u/s 19(17) of

the Act, the said entry becomes conclusive, unless it is varied by the subsequent order under S- 22-A of the Act. The present defendant

challenged the inclusion of this property S. No. 228 as the property belonging to the plaintiff's predecessors-Sajana trust. He wanted to get that

point adjudicated upon in this suit, which it was not open to the civil court to do. Then the defendant in the course of the protracted hearing of this

suit before the learned trial Judge had given an application Ex. 11 to the learned Judge with a request to stay the suit so that he may make an

application to the competent authority under the Bombay Public Trusts Act, in order to get the property registered in the name of his trust Nothing

of the sort was done by him there-after and he went to the trial. So the finding stands that the property was the property of the trustees of the

Sajana trust, the predecessor-in-title of the plaintiff, and that those trustees had validly sold that property to the plaintiff as per the sale deed Ex. 67

dated 12-12-67 and as the said sale deed had been effected by the trustees after seeking the Charity Commissioner's permission, Ex. 94, u/s 36

of the Act, the said sale deed was absolutely valid and it is not open to the defendant to challenge that entry existing in the public register at the

relevant time.

13-14. xxxxx