
(1961) 10 GUJ CK 0016
In the Gujarat High Court

Dahyabhai Nathubhai

APPELLANT

Vs

Suleman Isaji Dadabhaj and Another

RESPONDENT

Date of Decision : 04-10-1961

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 16, 16(1), 16(2)
Bombay Public Trusts Act, 1950 — Section 19, 72, 72(1), 72(1), 72(4)

Citation : (1962) 3 GLR 877

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Judgement

P.N. Bhagwati, J.—The question arising on this Revision Application lies in a very narrow compass-and turns on the provisions of Section 72 of the Bombay Public Trusts Act 1950 and Section 16 of the Bombay Civil Courts Act 1869 The petitioner claims to be a tenant of opponent No. 1 in respect of certain lands situate in village Kolwad Taluka Kamrej District Surat. Sometime in January 1957 opponent No. 1 created a public trust in respect of the lands by a registered document and got the same registered u/s 19 of the Bombay Public Trusts Act 1950 The petitioner preferred an appeal before the Charity Commissioner Bombay against the order passed by the Assistant Charity Commissioner Baroda registering the trust created by opponent No. 1 as a public trust. The learned Charity Commissioner however dismissed the appeal on the ground that the petitioner was not entitled to be heard in an inquiry u/s 19 of the Bombay Public Trusts Act 1950 merely because he was a protected tenant. The petitioner being aggrieved by the order of the learned Charity Commissioner filed an application in the District Court Surat u/s 72 of the Bombay Public Trusts Act 1950 for setting aside the said order. The learned District Judge transferred the application to the Assistant Judge by an order dated 8th August 1958. The application thereafter came up for hearing before the learned Assistant Judge on 26th June 1959. At the hearing of the application a preliminary objection was raised on behalf of the petitioner that the learned Assistant Judge had no jurisdiction to hear the application. The contention was that u/s 72 of the Bombay Public Trusts

Act 1950 it was the District Judge alone who was entitled to hear the application and that he had no jurisdiction to transfer the application to the learned Assistant Judge and that the learned Assistant Judge was therefore not competent to hear the application. The learned Assistant Judge rejected the contention urged on behalf of the petitioner and held that he had jurisdiction to hear the application and accordingly fixed the hearing of the application on 3rd July 1959. The petitioner thereupon filed the present Revision Application before this Court.

2. Mr. N.R. Desai learned advocate appearing on behalf of the petitioner contended that u/s 72 of the Bombay Public Trusts Act 1950 any person aggrieved by the decision of the Charity Commissioner under Sections 40, 41, 70 or 70A on the questions whether a trust exists or whether such trust is a public trust or whether any property is the property of such trust can within sixty days from the date of the decision apply to the Court to set aside the decision. The Court is defined in Section 2(4) of the Bombay Public Trusts Act 1950 to mean the District Court. An application to set aside the decision of the Charity Commissioner on the question whether a trust exists and whether such trust is a public trust can therefore argued Mr. N.K. Desai lie only to the District Court. Mr. N.K. Desai urged that in the present case it was the petitioners contention that no public trust was created by opponent No. 1 in respect of the lands and this question was decided by the Charity Commissioner u/s 70 on appeal from the order of the Assistant Charity Commissioner u/s 20 and the petitioner had therefore made the present application to the District Court to set aside the said decision. According to Mr. N.R. Desai the application could be heard and disposed of only by the District Judge who constituted the District Court and the learned Assistant Judge was not competent to hear the application. The contention of Mr. N.R. Desai was that the learned Assistant Judge could not be said to constitute the District Court and that the application could not therefore be heard by the learned Assistant Judge. This contention is however in my opinion fallacious and ignores the provisions of Section 16 of the Bombay Civil Courts Act 1869 Section 16 of the Bombay Civil Courts Act 1869 consists of three clauses. The first clause provides that the District Judge may refer to any Assist he appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds ten thousand rupees. It is therefore clear that u/s 16 of the Bombay Civil Courts Act 1869 the District Judge is entitled to refer to any Assistant Judge subordinate to him three classes of cases namely (1) original suits of which the subject-matter does not amount to fifteen thousand rupees in amount or value (2) applications or references under Special Acts and (3) miscellaneous applications; and jurisdiction is conferred on the Assistant Judge to try all such cases and to dispose of all such applications and references. Section 72 of the Bombay Public Trusts Act 1950 no doubt provides that an application under that section should be made to the District Court and but for the provisions of Section 16 of the Bombay Civil Courts Act 1869 there would have been in my opinion considerable force in the contention of Mr. N.K. Desai that the application can be heard only by the District Judge. Section 16

however empowers the District Judge to refer the application to any Assistant Judge subordinate to him. I am of course for the purpose of this argument assuming that an application u/s 72 of the Bombay Public Trusts Act, 1950 falls within one of the three classes of cases specified in tant Judge subordinate to him original suits of which the subject-matter does not amount to fifteen thousand rupees in amount or value applications or references under special Acts and miscellaneous applications. The second clause confers jurisdiction on the Assistant Judge to try such suits and to dispose of such applications or references. The third clause prescribes the forum to which appeals would lie from the decrees and orders made by the Assistant Judge. The provision made by these clauses is that where the Assistant Judges decrees and orders are appealable Section 16 of the Bombay Civil Courts Act 1869 whether the application falls or not in one of these three classes of cases is a matter which I will consider a little later. But assuming that the application does fall within one of these three classes of cases I do not see why the District Judge cannot refer the application to an Assistant Judge subordinate to him u/s 16 of the Bombay Civil Courts Act 1869 There is no repugnance between Section 72 of the Bombay Public Trusts Act 1950 and Clauses (1) and (2) of Section 16 of the Bombay Civil Courts Act 1869 Both can operate together without creating any inconsistency and once an application is made to the District Court u/s 72 of the Bombay Public Trusts Act 1950 the District Judge can refer such application to an Assistant Judge subordinate to him under Clause (1) of Section 16 of the Bombay Civil Courts Act 1869 and the Assistant Judge to whom the application is so referred has jurisdiction to dispose of such application under Clause (2) of that section. Mr. N.R. Desai protested against this construction of Section 16 of the Bombay Civil Courts Act 1869 and contended that if Section 16 were held applicable an inconsistency would arise. Mr. N.R. Desai referred me to the provision for appeal contained in Clause (3) of Section 16 of the Bombay Civil Courts Act 1869 and contended that if the amount or value of the subject-matter of an application u/s 72 of the Bombay Public Trusts Act 1950 did not exceed ten thousand rupees and if such application was referred by the District Judge to the Assistant Judge subordinate to him under Clause (1) of Section 16 and was disposed of by the Assistant Judge under Clause (2) of Section 16 an appeal against the order of the learned Assistant Judge would under the provisions of Clause (3) of Section 16 lie to the District Judge whereas u/s 72 of the Bombay Public Trusts Act 1950 the appeal must lie to the High Court. This argued Mr. N.K. Desai would result in an inconsistency between the provisions of the two Acts and Bombay Public Trusts Act 1950 being a special Act the provisions enacted in Section 16 of the Bombay Civil Courts Act 1869 which is the general Act must give way in favour of the provisions contained in Section 72 of the Bombay Public Trusts Act 1950 Mr. N.K. Desai is in my opinion right in his contention that in a case such as the one given by him an inconsistency would arise inasmuch as under the provisions of Clause (3) of Section 16 of the Bombay Civil Courts Act 1869 the appeal would lie to the District Judge whereas u/s 72(4) of the Bombay Public Trusts Act 1950 the appeal would lie to the High Court. But the inconsistency would be only between

the provisions contained in Clause (3) of Section 16 of the Bombay Civil Courts Act 1869 and the provisions contained in Section 72(4) of the Bombay Public Trusts Act 1950 Now it is a well settled Rule of construction that when there is repugnance between a general enactment and a special enactment the special enactment must prevail over the general enactment and the general enactment must yield in favour of the special enactment; but only to the extent of the repugnance and no more. It is only to the extent of the repugnance that the special enactment must be applied in preference to the general enactment. Where there is no repugnance the general enactment as well as the special enactment must operate together and effect must be given to both without discarding the one in favour of the other. There is as I have pointed out above repugnance between the provisions of Clause (3) of Section 16 of the Bombay Civil Courts Act 1869 and the provisions contained in Section 72(4) of the Bombay Public Trusts Act 1950 in so far as applications u/s 72(1) of the Bombay Public Trusts Act 1950 are concerned the amount or the value of the subject-matter of which does not exceed ten thousand rupees. To this extent the provisions of Section 72(4) of the Bombay Public Trusts Act 1950 will prevail against the provisions contained in Clause (3) of Section 16 of the Bombay Civil Courts Act 1869 But apart from this there is no inconsistency between the provisions of Section 16 of the Bombay Civil Courts Act 1869 and the provisions of Section 72 of the Bombay Public Trusts Act 1950 Clauses (1) and (2) of Section 16 of the Bombay Civil Courts Act 1869 must therefore apply and if an application is made to the District Court u/s 72(1) of the Bombay Public Trusts Act 1950 the District Judge can refer such application to an Assistant Judge subordinate to him under Clause (1) of Section 16 and the Assistant Judge can dispose of such application under Clause (2) of that section.

3. The next contention of Mr. N.K. Desai was that the application made by the petitioner u/s 72(1) of the Bombay Public Trusts Act 1950 did not fall within any one of the three Clauses of cases specified in Clause (1) of Section 16 of the Bombay Civil Courts Act 1869 and that the learned District Judge was therefore not entitled to refer the application to the learned Assistant Judge. The argument is in my opinion devoid of any merit. The only ground on which the argument was advanced before me was that the application was a miscellaneous application in the nature of an appeal and was therefore not comprised in any one of the three classes of cases mentioned in Clause (1) of Section 16 of the Bombay Civil Courts Act 1869 Mr. N.K. Desai for the purpose of this argument relied on Clause (1) of Section 16 of the Bombay Civil Courts Act 1869 as it stood prior to its amendment by Bombay Act 94 of 1958. Prior to this amendment the third class of cases consisted of miscellaneous applications not being in the nature of appeals and the contention was that since the application was in the nature of an appeal it did not fall within the third class of cases and if it did not fall within the third class of cases it could not fall within any of the other two classes of cases and was therefore outside the scope and ambit of Clause (1) of Section 16. This contention of Mr. N.K. Desai however cannot be accepted for the

words not being in the nature of appeals were deleted by the amendment made by the Bombay Act 94 of 1958 and it is Clause (1) of Section 16 after the amendment which must apply to the present case. At the date when the learned District Judge made the order transferring the case to the learned Assistant Judge the amendment had already come into force and as a result of the amendment the third class of cases comprised miscellaneous applications whether they were in the nature of appeals or not. But apart from this there is another equally fatal answer to the contention of Mr. N.K. Desai. The application of the petitioner did not fall within the third class of cases but it was the second class of cases which covered the application. The application being u/s 72(1) of the Bombay Public Trusts Act 1950 was an application under a special Act and it therefore fell within the second class of cases mentioned in Clause (1) of Section 16 of the Bombay Civil Courts Act 1869 So far as the second class of cases was concerned there is no limitation as regards the nature of the applications or references under special Acts which can be referred by the District Judge to an Assistant Judge subordinate to him and it is immaterial whether the applications or references under special Acts comprised in the second class of cases are in the nature of appeals or not. It is therefore clear that the application in the present case was within the scope and ambit of Clause (1) of Section 16 of the Bombay Civil Courts Act 1869 and that the learned District Judge was entitled to refer the application to the learned Assistant Judge under the said clause and it must equally follow that the learned Assistant Judge had jurisdiction to dispose of the application. The order made by the learned Assistant Judge was therefore clearly right and no reasons have been shown why the same should be set aside.

The result is that; the Revision Application fails and will be dismissed with costs.