

(2010) 04 BOM CK 0178

In the Bombay High Court

Case No : Civil Revision Application No. 712 of 2009

Gaud Saraswat Brahmin Temple Trust and Others

APPELLANT

Vs

Vasudeo P. Shetye @ Kamlesh P. Shetye, Dr. Shashakank P. Mulgaokar, Dr. Anand Puroshottam Wagh (being a Managing Trustee) and Mr. Uday Shankar Warty (being a Managing Trustee)

RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(10), 22, 33, 50, 51
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2010) 3 BomCR 499 : (2010) 112 BOMLR 1715

Hon'ble Judges : Mridula Bhatkar, J

Bench : Single Bench

Advocate : V.M. Parshurami and A.B. Kadam, for the Appellant; Suresh Gole, for the Respondent

Final Decision : Allowed

Judgement

Mridula Bhatkar, J.—By consent matter is finally heard and declared. This Civil Revision Application is preferred by the original respondent against the order dated 23rd July, 2009 passed by the learned Judge of the City Civil Court, Bombay below Exhibit 14 in Regular Civil Suit No. 3535 of 2007. The suit is filed by the present respondent No. 1 i.e. the plaintiff for a declaration that the resolution dated 7th September, 2007 passed by the defendant No. 1-trust at its board meeting is arbitrary, illegal and bad-in-law so also the resignation dated 8th September, 2007 submitted by the plaintiff is inconsequential and is of no effect and the plaintiff continues to be a permanent trustee in respect of the defendant No. 1-trust. The plaintiff has also prayed for an injunction restraining the defendant-trust to act upon the said resolution dated 7th September, 2007.

2. On 7th September, 2007 the respondent-trust has resolved that the plaintiff Mr. Vasudeo Purshottam Shetye i.e. the original respondent No. 1 was not qualified to be appointed and continued as holding trustee or managing trustee

as per rule/clause 2 (g) (h) r/w 5 (i) of the constitution of the trust and his appointment was per se illegal and was cancelled. The Judge cast issues including the issue of jurisdiction as the defendants have challenged the jurisdiction of the civil court u/s 50 and 51 and also u/s 80 of the Bombay Public Trust Act, 1950. The Judge held that the civil court has the jurisdiction to entertain and try the suit. Hence, this Revision Application.

3. Mr. Parshurami, learned Counsel for the petitioners has submitted that the subject of removal of the respondent No. 1 i.e. the original plaintiff from a managing trusteeship and his subsequent resignation fall u/s 50 of the Bombay Public Trust Act, 1950 therefore, sanction of the Charity Commissioner u/s 51 of the Act is necessary before filing the suit. It was submitted that Section 51 provides protection to the trust from false and vexatious suits against the trust and its trustees. Moreover, the petitioners have submitted an application u/s 22 of the Bombay Public Trust Act, 1950 for change and during the inquiry under the section, the respondent No. 1 i.e. The plaintiff is going to be a necessary party. In support of his submissions he relied on the following judgments:

- (i) Church of North India Vs. Lavajibhai Ratanjibhai and Others,
- (ii) Prof H.C. Patel and Others Vs. Kaushik Desai and Another,
- (iii) Order dated 12th February, 2008 passed by Hon"ble Mr. Justice J.H. Bhatia in Civil Revision Application No. 98 of 2006.
- (iv) Namgonda Jingonda Patil v. Appasaheb Bapurao Walwekar and Ors. 2000 (Supp.) Bom.C.R. 582.

4. In reply, Mr. Gole learned Counsel appearing for the respondents argued that the order passed by the Judge of the City Civil Court is correct and legal as the respondent has filed the suit not pertaining to a public purpose but, for protection of his private right as a managing trustee of the said trust. He argued that in the suit he wants to vindicate his civil rights or individual rights and therefore, the jurisdiction of the civil court cannot be ousted. The suit necessarily falls within the jurisdiction of the civil court. He further submitted that the respondent No. 1 had submitted the resignation out of frustration and under the pressure of the petitioners and the court will have to go into the facts of the matter. He was removed from the trusteeship because, the managing trustees had formed an erroneous opinion that he does not belong to "Gaud Saraswat Brahmin" caste and the membership of the trust is caste-based. The learned Counsel has relied on the following judgments in support of his claim:

- 1. (i) Sahebgouda (dead) by L.Rs. and Ors. v. Ogeppa and Ors. AIR 2003 Sc 2743;
- (ii) Mt. Janakbati Ghaudhrain Vs. Rameshwar Singh Bahadur

5. A short point whether relief sought by the plaintiff is only civil right or beyond i.e. related to the trust, trustees and its management is to be answered in this

revision application. An exclusion of the jurisdiction of the civil court is not to be readily inferred. While determining the jurisdiction of the civil court it is necessary to look into the averments and the reliefs prayed in the plaint in its entirety. The guidelines laid down in the landmark case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, on the point of Section 9 of the CPC & exclusion of jurisdiction of the civil court, are relied. In the case of Church of North India v. Lavajibhai Ratanjibhai and Ors. reported in (2005) 10 SCC 762 the Supreme Court has held in para 39 thus:

A plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint.

6. Keeping this in view the facts of the case in hand are examined. The respondent/original plaintiff claims that he fulfills the basic criterion of membership laid down in the rules/constitution of the defendant trust and so his removal on the same ground is arbitrary, illegal and the resolution dated 7th September, 2007 is to be declared as void, inconsequential and is bad in law. If the plaintiff would have prayed for simplicitor declaration that he is a "Gaud Saraswat Brahmin" then it would have been a suit for declaration of his individual right and a civil court has jurisdiction to entertain and try such suit. However, he seeks further relief i.e. the decision of his removal taken by the managing committee is bad, so it cannot be said that it is a simplicitor declaration of his civil rights. It is obviously an issue connected with the eligibility criterion of the membership and trusteeship under the scheme and object of the trust.

7. u/s 50 a suit by or against or relating to the public trust or trustees or others can be filed by Charity Commissioner himself or by persons having interest subject to the consent of the Charity Commissioner. The types/nature of the reliefs which can be claimed are specified in "a" to "q" in Section 50 of the Act. u/s 51 if persons having interest in any public trust intend to file a suit for the reliefs specified in Section 50 then they have to obtain consent of the Charity Commissioner in writing. A person having interest is defined u/s 2(10) of the Act and in the case of a temple, person who is:

entitled to attend at or is in the habit of attending the performance of worship or in service in the temple or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof.

The suits described under Sub-sections (i) (ii) and (iii) of Section 50 may be instituted by the Charity Commissioner or two or more persons having interest after obtaining the consent of the Charity Commissioner. Sub-section (iv) of Section 50 states that a suit for any declaration or injunction in favour of or against a public trust or trustees or beneficiary thereof can be filed. The scope of

the reliefs sought u/s (iv) of Section 50 is wider and general in nature compared to the scope under Sub-section (i) (ii) (iii) of Section 50 of the said Act. Hence, a suit under Sub-section (iv) may be instituted not necessarily by two or more persons but, the section enables one or more such persons. The word "such" denotes a person having interest as the said phrase is used in preceding clause. In the present suit, only one person i.e.

The respondent has filed the suit. So it is necessary to examine whether the respondent/original plaintiff can be considered as a person having interest as defined u/s 2(10) of the said Act.

The expression "person having interest" as defined u/s 2(10) is clearly interpreted by the Supreme Court in *Shree Gollaleshwar Dev and Ors. v. Gangawwa Kom Shantayya Math and Ors.* 1986 MH.L.J. 809 in para 12 as under:

By the Bombay Public Trusts (Amendment) Act, 1953 the word "includes" was substituted for the word "means". The definition of the words "person having interest" in Section 2(10) was made inclusive to set at rest all doubts and difficulties as to the meaning of these words, which were intended and meant to be used in a generic sense so as to include not only the trustees but also the beneficiaries and other persons interested in the trust. It would therefore appear that the definition of the expression "person having interest" in Section 2(10) is wide enough to include not merely the beneficiaries of a temple, math, wakf etc but, also the trustees.

I further place reliance on the unreported judgment dated 12th February, 2008 of learned Single Judge of this Court in Civil Revision Application No. 98 of 2006.

Thus, the plaintiff being the managing trustee falls in the definition u/s 2(10) of the Act and hence whatever reliefs respondent claims is against the trustees specified u/s 50 (b) (p) and therefore, consent u/s 51 of the Act is necessary.

8. In the case of *Mt. Janakbati Ghaudhrain Vs. Rameshwar Singh Bahadur* there was a dispute in respect of the management of maintenance of the temple and Thakurbari amongst the families of the plaintiff and families of the respondents. In that matter, it was held that the suit was brought not to establish a public right and remedy of infringement of an individual right are within Section 33 of the said Act.

9. In the case of *Sahibgauda (dead) by L.Rs. and Ors. v. Ogeppa and Ors.* AIR 2003 Sc 2743 Hon^{ble} the Supreme Court has held that the bar of Section 80 of the Bombay Public Trust Act would not apply considering the nature of the suit wherein a suit for injunction was filed by the plaintiffs against the defendants that they should not obstruct the plaintiffs in the performance of puja in the temple. Challenge under Sections 50 and 51 of the Act was not before the court. The ratio in above cases do not support the contentions of the respondents.

10. One more point argued by Mr. Parshurami is to be dealt with. The trust after accepting the resignation of the respondent/plaintiff has filed an application u/s

22 of the Act for change. The Assistant Commissioner is empowered to conduct an inquiry u/s 22 before passing any order of the change and while conducting the inquiry, the Charity Commissioner has to issue notice to the plaintiff, being a necessary party and will have to decide the issue of legality of removal of the plaintiff and the impugned resolution. The Bombay Public Trust Act, 1950 itself is a complete code and under the said Act Deputy/Assistant Charity Commissioner and Charity Commissioner enjoy the procedural powers available under the CPC at the time of enquiry including taking statement, recording evidence etc. The issue in present case falls under specified (b) and (p) of Section 50 of the Act, it is necessary for the plaintiff to obtain the consent of the Charity Commissioner. Section 50 of the Act provides protection to the trust against malafide suits. The Charity Commissioner if thinks fit may avoid duplication of the proceedings or possibility of conflicting decisions if similar question is pending before him/her and before the civil court. If the Commissioner arrives at a conclusion that the issue is to be decided by the Civil Court then he may give consent to file a suit.

11. Considering the facts and circumstances of the present suit, Sections 50 and 51 are applicable and hence the Civil Revision Application is allowed. The order dated 23rd July, 2009 of the City Civil Court is set aside.