

(1960) 11 BOM CK 0002

In the Bombay High Court

Case No : Civil Revision Application No. 535 of 1959

Gurusiddappa Tipanna Muger

APPELLANT

Vs

Miraj Education Society

RESPONDENT

Date of Decision : 03-11-1960

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 72

Citation : (1961) 63 BOMLR 312

Hon'ble Judges : Naik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Naik, J.—The suit giving rise to this revision application was filed by opponent No. 1, Miraj Education Society, through its President, Dr. Dattatraya Shivram Bhadbhade (hereafter called the plaintiff) against the petitioner and opponent No. 2 (hereinafter referred to as defendants Nos. 1 and 2 respectively) for a declaration that the plaintiff is entitled to recover a sum of Rs. 25,000 kept in fixed deposit by the deceased, Tippanna Satappa Muger in the Belgaum Bank. Defendant No. 1 is the son and defendant No. 2 is the widow of the deceased. The material facts may be briefly stated as follows: The deceased, Tippanna Satappa Muger had kept a sum of Rs. 15,000 in the Miraj Branch of the Belgaum Bank on July 9, 1956, and another sum of Rs. 10,000 on May 7, 1956, in the Jayasingpur Branch of the said Bank, as fixed deposits. The period of these fixed deposits was for one year. Tippanna was ailing and was taking treatment in a hospital at Miraj under the guidance of one Dr. Gosavi. On August 10, 1956, Tippanna sent an application through post to the Belgaum Bank stating that he had donated the amounts in the aforesaid fixed deposits in favour of the plaintiff. The same day, he handed over the receipts of the fixed deposits to the plaintiff. On August 11, 1956, the plaintiff wrote two letters, one to the Miraj Branch and the other to the Jayasingpur Branch of the Belgaum Bank, stating that the sums in those Branches were donated to them (the plaintiff) and demanding the return

of the said amounts under the said fixed deposits. On August 24, 1956, the plaintiff wrote another letter to the Head Office at Belgaum in that respect. Tippanna died on August 14, 1956, at Belgaum. It appears that prior to his death, a telegram was received by the Belgaum Bank purporting to be in the name of Tippanna in which it was stated that the donation was revoked by Tippanna. The defendants made an application to the District Court, Belgaum, for a succession certificate and obtained the same on September 18, 1957. On November 5, 1957, the plaintiff gave a notice to the Belgaum Bank calling upon the latter to pay the sums under the said deposits. On November 9, 1957, the Bank informed the plaintiff that the latter must obtain a declaration from a competent Court that they are the owners of the fixed deposits. Accordingly, the plaintiff filed a suit on November 25, 1957, for a declaration that they are the owners of the amounts under the two sets of fixed deposits.

2. Several defences were raised on behalf of the defendants and as many as 14 issues were framed covering the contentions arising out of the pleadings. Issues Nos. 1 to 4 were treated as preliminary issues. Those issues were as follows:

1. Whether this Court has no jurisdiction to try the suit as contended by the defendants in paragraph 7 of their written statement?

2. Whether permission in writing of the Charity Commissioner is necessary to the institution of this suit as contended by the defendants in paragraph 9 of their written statement?

3. Whether the suit for declaration is tenable?

4. Whether the Charity Commissioner is a necessary party to the suit?.

The trial Court held that it had jurisdiction to try the suit. It further held that permission of the Charity Commissioner was not necessary for the institution of the suit. It also held that the Charity Commissioner was not a necessary party to the suit. On issue No. 3, it found that the suit for declaration was tenable. Consequently, it directed that the/suit should be proceeded with. It is against these findings that defendant No. 1 has come up in revision.

3. Mr. Sukthankar for the petitioner, contended in the first place that the civil Court had no jurisdiction to decide the question involved in the suit inasmuch as exclusive jurisdiction is vested in the Deputy Charity Commissioner or Assistant Charity Commissioner in the first instance and the Charity Commissioner in appeal u/s 70 and the Court u/s 72 of the Bombay Public Trusts Act (hereinafter referred to as the Act of 1950). In that connection he relied upon the provisions of Sections 79 and 80 of the Act. Secondly, he argued that assuming that the civil Court has jurisdiction to decide the suit, the consent of the Charity Commissioner not having been obtained, as required by Section 50 of the Act, the suit is bad and therefore, will have to be thrown out.

4. I will deal with these contentions in the same order in which they were argued before me by Mr. Sukthankar. Firstly, I will deal with the argument based on

Sections 79 and 80 of the Act. Section 79 of the Act provides:

(1) Any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided by this Act.

(2) The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall, unless set aside by the decision of the court on application or of the High Court in appeal, be final and conclusive.

Section 80 is complementary to Section 79 of the Act and it runs thus:

Save as expressly provided in this Act, no civil court shall have jurisdiction to decide or deal with any question, which is by or under this Act to be decided or dealt with by any officer or authority under this Act, or in respect of which the decision or order of such officer or authority has been made final and conclusive.

In order to appreciate the scope and ambit of Sections 79 and 80 of the Act, it is necessary to refer to certain other provisions of the Act viz., Sections 18, 19, 20, 21, 70 and 72. Sections 18 to 21 of the Act adumbrate a scheme under which the jurisdiction, to decide certain matters is vested in the charity organization. Section 18(7) relates to the registration of public trusts and in effect it provides that it shall be the duty of the trustee of a public trust to make an application for the registration of the public trust. It is not necessary to set out the remaining sub-sections of Section 18 of the Act. Section 19 deals with the enquiry, which is required to be made by the Deputy or Assistant Charity Commissioner in the matter of registration. The enquiry is to be made in respect of the following questions:

- (i) Whether a trust exists and whether such trust is a public trust;
- (ii) Whether any property is the property of such trust;
- (iii) Whether the whole or any substantial portion of the subject-matter of the trust is situate within his jurisdiction;
- (iv) The names and addresses of the trustees and manager of such trust;
- (v) The mode of succession to the office of the trustee of such trust;
- (vi) The origin, nature and object of such trust;
- (vii) The amount of gross average annual income and expenditure of such trust, and
- (viii) any other particulars as may be prescribed under Sub-section (5) of Section 18.

Section 20 provides that on completion of the inquiry, the Deputy or Assistant

Charity Commissioner shall record his findings with the reasons therefore as to the matters mentioned in the said section, and may make an order for the payment of the registration fee. Section 21 incorporates consequential provisions and lays down that appropriate entries be made in the register in accordance with the findings recorded u/s 20 of the Act. Section 70 provides for appeals from the orders of the Deputy or Assistant Charity Commissioner to the Charity Commissioner including an order u/s 20 of the Act. Section 72 provides for an application to be made to the District Court from the order passed by the Charity Commissioner.

5. Now, it is in respect of these orders passed by the Deputy or Assistant Commissioner or the Charity Commissioner or the District Court, as the case may be, that Section 79 of the Act provides that the decision shall be final and conclusive. Section 80 of the Act, as stated above, is a corollary to Section 79 and excludes the jurisdiction of the civil Court in respect of questions, which have been decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner or the District Court, as the case may be, under the appropriate sections. In the present case, no decision has been recorded either by the Deputy or the Assistant Charity Commissioner or by the Charity Commissioner or by the District Court. As a matter of fact, no reference has been made to these authorities. Section 19 of the Act provides that an enquiry may be held by the Deputy or Assistant Charity Commissioner either on receipt of an application u/s 18 or upon an application made by any person having interest in a public trust or on his own motion. Whether the enquiry is initiated by an application or on his own motion, Section 19 presupposes an enquiry in the first instance to be held by the Deputy or Assistant Charity Commissioner. No such enquiry has been held in the present case. In my opinion, therefore, the bar of Sections 79 and 80 of the Act could not possibly apply to the present suit. Section 19 has set out the matters on which the Deputy or Assistant Charity Commissioner has jurisdiction to hold an enquiry. Mr. Sukthankar relied upon Clause (ii) of Section 19 of the Act, which runs thus:

Whether any property is the property of such trust, that is, the public trust.

Mr. Sukthankar contended that the question involved in this case is whether the amounts claimed by the plaintiff is the property of the public trust and, therefore, it is a matter, which could be enquired into or ought to have been enquired into by the Deputy or Assistant Charity Commissioner, as the case may be. As stated above, since no enquiry has been held and no decision has been taken by the authorities specified above, the question of bar imposed by Sections 79 and 80 of the Act does not arise for consideration. Apart from that, I am not inclined to accept the argument advanced by Mr. Sukthankar that the question involved in the present suit falls under Clause (ii) of Section 19 of the Act viz., whether the claim made in the plaint relates to the property of a public trust. The emphasis in Section 19 and also other relevant sections of the Act is on the existence of a public trust and the property belonging to a public trust. In the present case, the

dispute lies between the plaintiff on the one hand and a private person on the other, the private person claiming the property as his own. I will discuss this question at length when considering the bar u/s 50 of the Act. Before doing so, I must dispose of the argument advanced by Mr. Sukthankar that the present case falls within the ratio of the ruling in *Taraben Baldevdas Parikh Vs. Charity Commissioner, Greater Bombay Region and Others*, In that case, the question was whether a trust was created in respect of an amount of Rs. 20,000 lying in deposit with certain persons. In this suit, it is nobody's case that a trust has been created in respect of the amounts lying in fixed deposits with the Belgaum Bank. What the plaintiff is contending for in the present suit is that the amounts of the fixed deposits have been gifted away to them. That being the case and also for the reasons discussed above, the decision in *Tara Ben's* case is of no avail to the defendants in the present case.

6. That takes me to the main question viz., whether the suit is bad, because the consent of the Charity Commissioner has not been obtained as provided by Section 50 of the Act. Section 50 of the Act runs thus:

In any case-

- (i) where it is alleged that there is a breach of a public trust,
- (ii) where a declaration is necessary that a particular property is a property belonging to a public trust or where a direction is required to recover the possession of such property or the proceeds thereof or for an account of such property or proceeds from any person including a person holding adversely to the public trust, or
- (iii) where the direction of the court is deemed necessary for the administration of any public trust,

the Charity Commissioner or two or more persons having an interest in the trust and having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentious or not in the court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:

- (a) an order for the recovery of the possession of such property or proceeds thereof,
- (b) to (h)...

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust except in conformity with the provisions thereof.

It will thus be seen that in respect of matters covered by Clauses (i) to (iii) of Section 50, a suit has got to be instituted either by the Charity Commissioner or two or more persons interested in the trust after obtaining the consent of the Charity Commissioner. The reliefs for which such a suit can be instituted have.

been set out in Sub-clauses (a) to (h) of Clause (iii) of Section 50 of the Act. It is clear that the present case does not fall within Clause (i) of Section 50 of the Act. Mr. Sukthankar contended that the ease falls under the first part of Clause (ii), which runs thus:

where a declaration is necessary that a particular property is a property belonging, to a public trust.

Mr. Sukthankar's argument was that the present suit was a suit for declaration, that the amounts lying in fixed deposits belong to the plaintiff, which is a public trust and is, therefore, directly covered by Clause (ii) of Section 50 of the Act. He also laid emphasis upon the relief set out at sub-cl (a) of Clause (iii) of Section 50 of the Act viz., an order for the recovery of the possession of such property or proceeds thereof. I am unable to accept this contention. Section 50 must be read as a whole and reading all the clauses of that section together, it appears to me clear that the scheme of the section is to provide for a suit either by the Charity Commissioner or two or more persons interested in the trust with the consent of the Charity Commissioner in cases where any question relating to the management of the property of the public trust arises. It is true that the wording of Clause (ii) of Section 50 of the Act is apparently wide; but, it is not wide enough to cover a case where the property is claimed by the public trust as its own and that claim is disputed by a stranger. This interpretation finds some support, from the expression used in the second part of cl, (ii) of Section 50 of the Act viz., from any person including a person holding adversely to the public trust. In my view, Clause (ii) as a whole applies to a case where either there is no dispute about the property belonging to the trust and the dispute relates only to the trust being a public trust or to a case where some person has taken possession of the trust property and holds it adversely to the public trust. Clause (ii) is wholly inappropriate to a situation where the trust claims the property as having been donated to it and a third person disputes that donation and sets up title in himself on the basis of being the rightful owner of the property or an heir to the donor thereof. The underlying object of Section 50 of the Act is to put an embargo on frivolous litigations and the consent of the Charity Commissioner is regarded as a sort of safety valve for avoiding acrimonious and frivolous litigations. Ordinarily, the trustees of a trust can institute a suit against a third person for the recovery of the trust property. Order XXXI, Civil Procedure Code, lays down the procedure to be followed in respect of suits to be filed by the trustees against third persons. Rule 1 of Order XXXI, Civil Procedure Code, runs thus:

In all suits concerning property vested in a trustee,... where the contention is between the persons beneficially interested in such property and a third person, the trustee... shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit....

It is significant to note that Section 50 of the Act does not contemplate a suit by the trustees as such. It contemplates a suit either by the Charity Commissioner

or two or more persons having an interest in the trust provided that they had obtained consent in writing of the Charity Commissioner. If Mr. Sukthankar's argument is accepted, it will lead to startling results viz., that in respect of all charities spread over the vast territories of the Bombay State, it is open to the Charity Commissioner to file a suit on behalf of the trusts against trespassers or third persons. Ordinarily, suits against third persons who claim title in themselves must be filed by the trustees who are legal owners and as such represent, the beneficiaries. The Charity Commissioner is a public functionary and cannot ordinarily represent the trust in disputes between the trust on the one hand and a private person on the other. It is only in respect of disputes arising out of administration of and management of the public trusts that the Charity Commissioner comes into the picture and Section 50 of the Act, provides that the Charity Commissioner or two or more persons interested in the trust can file a suit for the various reliefs that have been set out in Sub-clauses (a) to (A) of Clause (iii) thereof. In my opinion, the relief claimed in the present suit raises a dispute between the trust, which happens to be a public trust vis., the plaintiff, on the one side and a private person, who claims title in himself, on the other. It is not necessary for the institution of such a suit to obtain the consent of the Charity Commissioner. The consent of the Charity Commissioner u/s 50 of the Act is necessary for persons who are not trustees but who are merely interested in the trust property.

7. The result is that the application fails and the rule is discharged with costs.