

(1958) 01 BOM CK 0007

In the Bombay High Court

Case No : A.F.O. No. 160 of 1957 with A.O. No. 168 of 1957

Institute Indo-Portuguese and Others

APPELLANT

Vs

Theotonio Borges and Others

RESPONDENT

Date of Decision : 07-01-1958

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 17, 19, 22, 47, 51
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, 9, 92
Constitution of India, 1950 — Article 9

Citation : AIR 1959 Bom 275 : (1958) 60 BOMLR 660 : (1958) ILR (Bom) 1055

Hon'ble Judges : Datar, J

Bench : Single Bench

Advocate : M.R. Parpia, instructed by Smetham Byrne and Lambert, Attorneys, for the Appellant; Soli J. Sorabji, instructed by Little and Co., Attorneys, F.S. Nariman, instructed by Godambe and Joglekar, Attorneys and Y.V. Chandrachud, Assistant Government Pleader, for the Respondent

Judgement

1. There is, in the City of Bombay, a Public Trust established and administered in the name of Institute:Indo-Portuguese. This institution is a juridical body created in the City under the Legislative Diploma No. 1066 dated 31-8-1939, issued by the governor-General of Portuguese India in the exercise of the powers conferred upon him by Articles 28 and 30 of the colonial Act and by Article 43 of the Ordinance of the Portuguese Colonial Empire. The object for which this institute appears to have been created is "to give assistance and protection to the Indo-Portuguese emigrants, we are residents in British India, by inciting them to a patriotic ideal, civil conscience and feeling of national solidarity". Under the Legislative Diploma aforesaid, the institution is to be managed by a Managing Committee consisting of a President and four members, who are to be appointed every three years by the Governor-General from among the Portuguese citizens residing in this city. It is also stated that the committee of the management, which is to be appointed by the governor-General, is to select from among its own members one member who will serve as Secretary. By Article 7 of the said

Diploma, it is stated that all the receipts and the funds of the institute shall be deposited in the National City Bank of New York, Bombay, and their withdrawals shall be made by means of cheques signed by the President and also by the Secretary of the Managing Committee.

2. It may be noted that this institute was registered as a public trust under the provisions of the Bombay Public Trusts Act, 1950. It appears that, at the time when it was so registered, the Managing Committee consisted of four members, who were Sergio D'Souza, Prince Lobo, T.V. Mascarenhas and J. Boadita, and the President was one B.G. Fonseca. After the institution was registered under the provisions of the Bombay Public Trusts Act, the names of the aforesaid four members of the Managing Committee and that of the President were entered in the register kept u/s 17 of the Bombay Public Trusts Act.

3. Sometime in June 1955, J. Boadita was deported out of India under the Foreigners Act, 1946 by reason of his pro-Portuguese political activities. Thereafter, Mr. Fonseca, the President gave a change report on 28-1-1956, stating that Mr. Leo Lawrence had been appointed member, and therefore his name be entered as such member in place of J. Boadita in the register maintained by the Charity Commissioner u/s 17 of the Bombay Public Trusts Act. The Deputy Charity Commissioner accepted the change suggested by the President Fonseca, and entered the name of Mr. Leo Lawrence in place of J. Boadita. Sometime in August or September 1956 the President Fonseca was himself deported under the Foreigners Act, 1946. Mr. Leo Lawrence, whose name, as I have already mentioned above, had been entered in the records of the Charity Commissioner as a member in place of J. Boadita, claimed that he was a member having been duly appointed, and after Fonseca was deported in September 1956, he was appointed President of the Institute on 5-9-1956.

4. Plaintiffs, as the Portuguese citizens residing in India and as persons interested in the aforesaid public trust, have filed suit No. 604 of 1957 with the consent of the Charity Commissioner u/s 51 of the Bombay Public Trusts Act against Sergio D'Souza, Prince Lobo, T.V. Mascarenhas and Leo Lawrence, who are impleaded as Defendants Nos. 2 to 5 in the suit. Defendant No. 6 is the Charity Commissioner, who has also been made a party to the suit. The charity itself has been made party Defendant No. 1, in the suit. It is the contention of the Plaintiffs that there have been disputes and dissensions between Defendants Nos. 2 and 3 on the one hand and Defendants Nos. 4 and 5 on the other, and the result of such disputes and dissensions has been that the first defendant Institute has not at all been able to function itself and carry on the objects of the trust for which it has been founded. The plaintiffs have also stated that defendants Nos. 2, 3 and 4 are members of the Managing Committee and that defendant No. 5 claims to be a member of the Managing Committee. They have, in their suit, prayed for the removal of defendants Nos. 2 to 4, who are members of the Managing Committee, and also of defendant No. 5, who claims to be a member of the Managing Committee, and they have also prayed for the appointment of a

new trustee or trustees.

5. This suit was filed on 7-3-1957. On 29-3-1957 a Notice of Motion was taken out on behalf of the plaintiffs praying that a receiver be appointed during the pendency of the suit for the management and administration of the trust property of the first defendant Institute. They contended in the Notice of Motion that the dissensions and disputes between the members of the Committee "inter se" rendered the smooth working of the Institute impossible, and brought its affairs to a standstill causing great loss and hardship to the beneficiaries under the trust. This application for the appointment of the receiver was hotly contested by defendants Nos. 4 and 5. It may be stated that it was defendant No. 5, who opposed the application from stage to stage by filing necessary affidavits and also documents in support of his contention. Defendant No. 4 did not take any active part in opposing the application, except by filing an affidavit in support of his contentions and by adopting the other contentions raised by defendant No. 5. Defendant No. 5 contended that it was really defendants Nos. 2 and 3, who in spite of the fact that they had been validly removed from their offices in the Managing Committee by the Governor-General of Portuguese India, caused obstruction in the management of the trust property.

6. The Notice of Motion came up for hearing on the 10th of April 1957. The learned Judge gave an opportunity to the parties, and particularly to defendant No. 5, to manage the affairs of the first defendant, as the fifth defendant contended that there was no deadlock at present in the institute, and that the institute could very well function, if proper opportunity was given to the present members of the Managing Committee to do so. With a view to ascertain whether the deadlock complained of, by the plaintiffs had really disappeared, or had still continued, the learned Judge gave an opportunity to the fifth defendant, as the President of the Managing Committee, to take such steps as he might think necessary for the purpose of showing that there was no deadlock, or any statement in the Institute at present, and that the Institute could function. He accordingly gave an adjournment of two weeks, to enable the fifth defendant to show that there was no deadlock and that the charity was functioning in a satisfactory manner.

7. In the meanwhile, on 18-4-1957, the fifth defendant himself filed a suit, being Suit No. 1011 of 1957, against defendants Nos. 2 and 3, contending that they were unnecessarily causing him obstruction in the management of the affairs of the trust, although they had been validly removed from their offices by the Governor-General of Portuguese India on 19-3-1957. He accordingly prayed for a declaration that defendants Nos. 2 and 3 were no longer members of the Managing Committee of the first defendant, and that they be permanently restrained from causing him any obstruction in the management of the trust. The plaintiff, who was Defendant No. 5 in the earlier suit, took out also a notice of motion for a temporary injunction during the pendency of the suit against defendants Nos. 2 and 3.

8. The trial Judge heard both the Notices of Motion together and disposed of them by one common judgment. He was of the view that the charity was not functioning, and was not carrying out the objects for which it had been created as there were serious disputes and dissensions between the members of the managing Committee inter se, and therefore, it was imperative, under the circumstances in which the charity was placed, that a Court Receiver should be appointed to carry out the objects for which the charity was founded by the Portuguese Government. Accordingly, he appointed the Court Receiver was Receiver of the property of the Defendant-Institute in Suit No. 604 of 1957.

9. Against the order appointing the Receiver, appeal from Order No. 160 of 1957 has been preferred by the 4th and 5th defendants. Consistently with the order appointing the Receiver that was passed by the learned trial Judge in Suit No. 604 of 1957, he did not pass any order in the other Notice of Motion taken out in suit No. 1011 of 1957. Against the order such as it was which had been passed by the learned Judge in the Notice of Motion taken out in suit No. 1011 of 1957, the other appeal from Order No. 168 of 1957 has been filed by the fifth Defendant.

10. The only question that falls to be considered in these two appeals is, whether it is just and convenient to appoint a Receiver, and whether in so appointing the Receiver the learned trial Judge has exercised his discretion properly or otherwise.

11. It may be stated that there cannot be any the least doubt that there have been serious disputes and dissensions between defendants Nos. 2 and 3 on the one hand and defendants Nos. 4 and 5 on the other. the very fact that defendant No. 5 felt the necessity of instituting a suit against defendants Nos. 2 and 3, even though, according to him, they had been removed by the proper authority from their offices in the Managing Committee, shows that they continued to obstruct and cause interference in the management of the trust. It is not now necessary fro the purpose of these two appeals to consider whether the conduct, which is or wrong; whether the defendants are right or wrong in their claim that they still continued to be the lawful members of the Managing Committee, the fact is indisputable, and that is that there has been a serious dispute between them on the one hand and defendant No. 5 on the other. Defendant No. 5 has relied upon a notification issued by the Governor-General on 19-3-1957, in which it has been stated that defendants Nos. 2 and 3 have been removed from their offices in the Managing Committee of the trust. That notification also mentions the names of two other persons as having been appointed by the said authority as members of the Managing Committee in the vacancies created by the removal of defendants Nos. 2 and 3 from their offices. It may be noted that the two new persons who are stated to have been appointed by the notification of 19-3-1957 as members of the Managing Committee have not been made parties, either to the first suit, or to the second suit which has been instituted by defendant No. 5 himself. Defendants No. 2 and 3 as I have already stated, have been mentioned

as members of the Managing Committee in the records maintained by the Charity Commissioner u/s 17 of the Bombay Public Trusts Act. It has been argued by the learned counsel on behalf of defendants Nos. 2 and 3 that although it is true that there is a notification purporting to have been issued by the Governor-General of Portuguese India to the effect that defendants Nos. 2 and 3 have been removed from their offices, still it would not mean that they lose their offices automatically, unless and until appropriate steps are taken under the provisions of the Bombay Public Trusts Act to get them removed from their offices. There is considerable force in this contention. But it is not necessary for me to consider the correctness or otherwise of this contention, because it is sufficient for the present purpose to say that they are claiming to be the members of the managing Committee even today, and that claim receives some support, be it so small, from the fact that their names appear in the records of the Charity Commissioner as the members of the Managing Committee. The entries in the records of the Charity Commissioner would, in my judgment, have at least some prima facie evidentiary value to show that these persons, namely defendants Nos. 2 and 3, are members of the Managing Committee of the trust.

12. Then, there is a further, and to my mind, an insurmountable, difficulty in the way of defendant No. 5 himself. The plaintiffs in the first suit, suit No. 604 of 1957, have nowhere admitted in their plaint the status of defendant No. 5 as a validly appointed member of the managing Committee. In all the averments they have only stated that it is the claim of defendant No. 5 that he is a member of the Managing Committee. In the prayer clause of the plaint, plaintiffs have made it clear that defendant No. 5, who claims to be member of the Managing Committee, be removed from the office which he is stated to hold. It is true that in an affidavit which has been filed on behalf of defendant No. 2 there is, if I may say so, some sort of an implied admission that defendant No. 5 was a member; but whatever the value of that admission against the deponent of the affidavit, it would not have any evidentiary value at all against the plaintiffs, who are relators and who are persons interested in the clarity. So far as the plaintiffs are concerned they have throughout made a statement in their affidavits that they do not admit defendant No. 5 to be a validly appointed member.

13. Then, I may also advert to another circumstance, which is on the record, and that circumstance is that after the Deputy Charity Commissioner entered the name of Mr. Leo Lawrence in place of J. Boadita as a member in the records of the Charity Commissioner, an appeal was taken to the Charity Commissioner against the order or against the direction entering the name of Mr. Leo Lawrence in the books of the Charity Commissioner. In that appeal it was contended before the Charity Commissioner that Mr. Leo Lawrence was not a validly appointed member, because he was not a Portuguese citizen resident in the City of Bombay, but he was an Indian national. This contention prevailed, and the Charity Commissioner held upon the evidence that Mr. Leo Lawrence was not a Portuguese citizen resident in the City of Bombay, but was an Indian national, and therefore was incompetent to hold the office of a member in the Managing

Committee of the defendant trust. It is contended that the decision of the Charity Commissioner given by him in appeal u/s 22 of the Bombay Public Trusts Act is final and conclusive. Section 22 of the Bombay Public Trusts Act makes the amendment of the entry made in the register maintained by the Charity Commissioner final and conclusive. Therefore, it may not be that the decision of the Charity Commissioner to the effect that Mr. Leo Lawrence was an Indian National and was not a Portuguese citizen resident in the City of Bombay, and therefore was not competent to become the member of the Managing Committee was final and conclusive. All what Section 22 says is that the amendment of the entry in the records would be final and conclusive. Even so, if there has been such an amendment, in pursuance of the decision made by the Charity Commissioner in appeal against the order of the Deputy Charity Commissioner, that decision, in pursuance of which the amendment is made, would have some prima facie evidentiary value and would show that defendant No. 5 was not recognised as a member. This would, in law, throw an additional burden upon defendant No. 5 to vindicate his status as a member, if it has been denied, as it has been denied by the plaintiffs in their suit, and if the Charity Commissioner has given the decision in the way in which he has given his decision in the appeal; but apart from what has been stated in the affidavit made by defendant No. 5 and in the plaint filed by him in the other suit there is nothing on the record to show that he had been duly appointed by the proper authorities as a member of the Managing Committee.

14. There is a further difficulty in the way of defendant No. 5. Defendant No. 5 says that he was appointed as a President of the Managing Committee on the 5th of September 1956. There is no clear evidence on the record as to when the former President Fonseca was deported. In the plaint filed by the beneficiaries it is stated that he was deported sometime in August 1956; while Mr. Parpia has drawn my attention to another affidavit filed on behalf of defendant No. 2, wherein it has been stated that Fonseca was deported in September 1956. If defendant No. 5 was appointed as President on the 5th of September 1956 as sworn to, by him in his affidavit, then, it must have been sometime after Fonseca was deported from India.

15. Then, even assuming that this appointment of defendant No. 5 as President was made after Fonseca was deported, we have no document on record to show that he was appointed as such President by the order of the Governor-General of Portuguese India. The constitution to which I have alluded, namely, the Legislative Diploma, makes it obligatory that the President has got to be appointed by the Governor-General. So far as the records of these two cases go, there is nothing to show that he was so appointed by the Governor-General on the 5th of September 1956.

16. Defendant No. 5 further says that Estanoslav Virvato Furtado was appointed a member of the Managing Committee on 29-2-1957. Here also, apart from what is stated by defendant No. 5 in his affidavit and in his plaint in the other

suit, there is no order of appointment coming from the Governor-General of Portuguese India.

17. The constitution as embodied in the Legislative Diploma of the trust required that there was to be a Managing Committee of four members and one President, and that the Secretary was to be elected from amongst the members of the managing Committee. The Secretary of the Managing Committee at the time when the trust was registered under the provisions of the Bombay Public Trusts Act was defendant No. 2. his name must have been presumably entered as such in the records of the Charity Commissioner after the charity was registered under the said Act. I have already referred to the said notification issued by the Governor-General on 19-3-1957, in which it has been mentioned that defendant No. 2 was removed from his office as a member, and there as a Secretary. But then, if, according to defendant No. 5. defendant No. 2 has been removed from his office as a member, we have to find as to who has been appointed in his place as Secretary of the Managing Committee. The case of defendant No. 5 as made out in the plicant in the other suit No. 1011 made out in his plaint in the other suit No. 1011 of 1957 is that defendant No. 4 has been appointed as Secretary of the managing Committee. This case, however, has not been made out clearly by defendant No. 5 in his affidavit, which he filed in the Notice of Motion taken out in the earlier suit No. 604 of 1957. Therein he has not mentioned the name of the Secretary at all. It is only for the first time we see that in his plaint he has mentioned that defendant No. 4 was the Secretary of the Managing Committee. Furthermore, defendant No. 4, who is a party-defendant to the earlier suit filed by the beneficiaries and who is also a party to the Notice of Motion taken out in the suit, has not in his affidavit stated that he was appointed as the Secretary of the Managing Committee after the removal of defendant No. 2 from that office. Deft. No. 4 filed his affidavit on 9-4-1957, and in his affidavit he expressly mentions that the fifth defendant was the President of the first defendant Institute, but he does not mentioned the fact that he had been appointed or elected as Secretary of the Managing Committee. This to my mind, seems to be significant and considerably detracts from the truthfulness of the case that is tried to be made out by defendant No. 5 in the plaint filed by him in the other suit.

18. Thus, in the absence of the necessary orders from the appointing authorities so far as Estanoslav Furtado and defendant No. 5 are concerned, it would be difficult for me to hold that there is today in existence any properly constituted Managing Committee, which can undertake the responsibility cast upon it by the constitution embodied in the Legislative Diploma. It may be noted that in the constitution it is only the President and the Secretary who can together operate upon the accounts of the Bank and withdraw the amounts by cheques signed by both these officials. But from the evidence that is now before me, it will be difficult to hold that defendant No. 5 has been duly appointed as President and that defendant No. 4 has been duly elected as the Secretary of the Institute. The other members who are stated to be the members of the Managing Committee

have not been made parties, and they have also not chosen to support the case of defendant No. 5 by filing any independent affidavits on their behalf.

19. If, therefore, there is no properly constituted Managing Committee, it is obvious that any one or other member, either by himself, or with the assistance of any other member, cannot function and cannot carry out the objects of the trust. It is on account of this deadlock which has been created in the affairs of the trust that the learned trial Judge thought it fit to appoint the Court Receiver as the manager of the property during the pendency of the suit. As I have already stated, the evidence on the record does not show that there are already appointed the requisite number of members of the committee as required by the constitution, and defendant No. 5 is not shown to have been validly appointed as the President of the managing Committee. In this state of affairs, therefore, it is no wonder if a deadlock has been created and the affairs of the trust have come to an stand-still. It may be, as contended by defendant No. 5, that such a deadlock has been created by the unhelpful attitude and obstructionist methods adopted by defendants Nos. 2 and 3. But when there is no properly constituted Managing Committee, it would not, I think, at all be possible for defendant No. 5, with the best of intentions, to function as a President and effectively carry out the objects of the trust in accordance with the articles of the constitution. Whatever may be the blame that may be apportioned to defendants Nos. 2 and 3, the fact remains that it has been rendered wholly impossible for the managing Committee, even if there be any such Managing Committee, to discharge its duties as trustees and managers of the defendant trust. I am, therefore, of the view that the learned Judge was perfectly justified in the circumstances of the present case to appoint the Court Receiver for the management of the defendant Institute.

20. Mr. Parpia has then contended that the reliefs which have been claimed for by the plaintiffs in suit No. 604 of 1957 could not be granted, in view of the provisions of Section 47 of the Bombay Public Trusts Act, and if the reliefs could not be ultimately granted to the plaintiffs, then says Mr. Parpia, the appointment of the Receiver, which would have the effect of virtually displacing the lawful trustees, who were in management of the property, could not also be granted even on an application for the appointment of a Receiver under Order XL, Rule 1. It may be noted that, for the purpose of deciding the question that arises in this case, it is not necessary for me to consider whether the Court would be in a position to grant the reliefs that have been prayed for in the suit. All what I am now concerned with is to consider whether there has been any occasion for the Court to appoint a Receiver for the management of the trust day finds that the affairs of the trust have been brought to a standstill, particularly for the reason that there has been no constituted managing Committee to undertake the responsibility of discharging its duties under the constitution, then, whatever may be the reliefs claimed in the suit, and whether those reliefs could be granted to the plaintiffs or not, at the time of the final hearing of the suit the Court, in my judgment, would be entitled to appoint the Receiver for the proper

management of the property during the pendency of the suit before it. In this view, it would not be necessary for me to consider in detail the contention of Mr. Parpia made in this behalf.

21. Then, it was also contended by Mr. Parpia that the Receiver has in his management taken the services of the second defendant for his assistance. I do not find that the Receiver has committed any error, even if it is open to me to consider the propriety of the action of the Receiver in taking the service of defendant No. 2 in his management. Defendant No. 2 was after all acting as a Secretary for quite a few years before the institution of the present litigation. He was admittedly a member of the Managing Committee. He had been elected as Secretary of the Managing Committee, and he was functioning as such Secretary for some years. It was, therefore, only proper for the Receiver if he took defendant No. 2 to help him in the management of the defendant trust.

22. Then, Mr. Parpia raised a larger question as to the jurisdiction of the Court in entertaining the suit and then in passing an order for the appointment of the Receiver. Strictly speaking, in my view, when these appeals come before me in the applications for the appointment of the Receiver and for the order of ad interim injunction, I do not think it would be open for the appellant to contend that the Court, which appointed the Receiver and which refused to pass an order for ad-interim injunction, had no jurisdiction to pass an order appointing the Receiver and to refuse to pass the order for ad interim injunction. The question whether the Court has jurisdiction to entertain the suit for the reliefs claimed therein would be an appropriate question in the suit itself, and may, if the defendants so choose, be made the subject-matter of a separate issue that might be properly raised in the suit itself. But Mr. Parpia contends that this question will be a relevant question, even when the Court is called upon to appoint a Receiver, or to grant an ad interim injunction. It is true that the point of jurisdiction may be regarded as a relevant question even while considering whether the court has jurisdiction to appoint a Receiver or not. But the other question, namely, whether the Court had jurisdiction to entertain the suit or not, cannot in my opinion, be raised in these proceedings. When the Court is called upon to appoint a Receiver under the provisions of Order XL, Rule 1, the Court assumes that the suit, during the pendency of which the appointment of the receiver is sought for, has been properly filed in a Court, which had jurisdiction to entertain it, and it is upon that basis that the Court proceeds to consider the application that may be made before it for the appointment of the Receiver.

23. However, even assuming that this question is a relevant question for my consideration in the present proceedings, I am definitely of the view that the Court had jurisdiction to entertain the suit, and therefore the application for the appointment of the Receiver. It is true that the public trust has been created by the Governor-General of Portuguese India, who is a foreign sovereign; but the trust has been created in the City of Bombay. The entire property and the assets of the trust are all situated in Bombay. The members of the managing

Committee, as mentioned in the plaint in the earlier suit, and also as stated by defendant No. 5 in his affidavit and in his plaint in the second suit, are all resident of the City of Bombay, and the beneficiaries entitled to receive the benefit under the trust are also within the jurisdiction of the City of Bombay. Further, this Institute has been registered as a public trust under the provisions of the Bombay Public Trusts Act. The fact that it has been registered as a trust under the Bombay Public Trusts Act, makes it subject to the provisions of the Act, and obviously the trust would be governed by the provisions of that Act. The decision which was given by the Deputy Charity Commissioner, in the first instance, and then confirmed in appeal by the Charity Commissioner, and by the City Court in the application filed thereafter u/s 79 of the Bombay Public Trusts Act will be final and conclusive, in view of the provisions of Section 79(2) of the Bombay Public Trusts Act. One of the questions which the Deputy Charity Commissioner had to decide u/s 19 was whether there existed a trust, and whether such trust was a public trust. The Deputy Charity Commissioner recorded his decision that there was a trust and that trust was a public trust. This decision was confirmed in appeal by the Charity Commissioner. An application was thereafter made by the aggrieved party u/s 79 in the City Court. The learned Judge disposed of the application by agreeing with the view taken by the Charity Commissioner in appeal and also by the Dy. Charity Commissioner in the application. Mr. Parpia has drawn my attention to some of the observations made by the learned Judge who disposed of the application u/s 72 of the Public Trusts Act. The observations upon which Mr. Parpia relies are:

"By the present order of the Charity Commissioner it is not sought to do anything against the constitution of the Diploma. All that is sought to be done is that in its working it should conform to the provisions of the Municipal Law namely by registration of the Institute under the Trusts Act. For the moment, at any rate, no question arises in regard to any interference with its constitution. If it arises at some future date, if at all it does, it may perhaps will be open to Mr. Desai to agitate that question. For the moment no such question arises. In any event its being asked to be registered under the Trusts Act seems to me no infringement of any principle of private International Law. On the contrary in my humble view the municipal Courts have jurisdiction to see that Foreign Corporation working in its country do it in conformity with local law and not in infringement of it. This argument of Mr. Desai, therefore, avails him not."

The observations which have been quoted above do not seem to be relevant for the consideration of the question now before me. What I wish to emphasise is that, even in the application which was decided by the City Court Judge, the finding of the subordinate authorities, namely, the Dy. Charity Commissioner and the Charity Commissioner, to the effect that there was a trust and that trust was a public trust and therefore liable to be registered was upheld. To this extent the findings of the two aforesaid authorities were confirmed in the application, by the City Court Judge, and this decision, which was ultimately arrived at by the City Court Judge in the application referred to above would be final and conclusive,

and it would not be now open to me to say, even for the purpose of this application, that there is no public trust subject to the provisions of the Bombay Public Trusts Act of 1950. It may be noted that the provision of Section 80 of the Bombay Public Trusts Act says:

"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."

It must therefore be taken that, whatever the constitution which created the defendant trust, that trust was a public trust subject to the provisions of the Bombay Public Trusts Act.

24. If then we have to deal with the public trust which is made subject to the provisions of the Bombay Public Trusts Act, the question whether this is a foreign charity or not does not, in my opinion, arise at all. In the first place, it is difficult to say how this charity can be called a foreign charity, and I may, in fairness to Mr. Parpia, state that it was not contended by him before me that it was a foreign charity in the sense that this charity was created and was intended to function outside our own dominion. If this is not a foreign charity, and if this charity has already been made subject to the provisions of the Bombay Public Trusts Act, then, I do not see how, when a suit which is purported to have been filed for the removal of the trustees, if the Court during the pendency of the suit finds that it is just and convenient to appoint a Receiver for the management of the trust property, seeing that there has been a deadlock in the affairs of the trust, the Court would not have any jurisdiction to entertain such a suit in the first instance, and to make an appointment of the Receiver thereafter. It may be noted that in the case of AIR 1944 39 (Privy Council) , their Lordships of the Judicial Committee quoted with approval a passage which appears in the judgment of the then learned Chief Justice and which has been reported in Shivnarayan Sarupchand Vs. Bilasrai Juharmal, . The passage is:-

"Now this charity, as appears from the plaint, is foreign charity. It conducts a hospital in Jaipur State, and it is a well established principle that the administration of a charity depends upon the law, and is controlled by the Court, of the country where the charity is conducted".

If, therefore, this is a charity which has been created in this country, it must be controlled by the Court of the country where it is created and where the charity is to be conducted. I have, therefore, no difficulty in holding that the civil court had jurisdiction to entertain the suit and to make the appointment of the Receiver in regard to the affairs of the defendant trust.

25. Then, Mr. Parpia argued mainly by reference to the article of the constitution that the Institution, namely, the first defendant in the earlier suit, was an official Institution. It was a part of Government of Portuguese India. The members of the managing Committee were, in terms of Article 9 of the constitution, to

correspond to the authorities of the Government. Therefore, if the civil court were to appoint a Receiver, it would be affecting the rights of the Government of Portuguese India and infringing with the constitution which has been set forth in the Legislative Diploma. In support of this contention, reliance was placed by Mr. Parpia on a passage in Private International Law, Fifth Edition, by Cheshire, which is mentioned at page 90:-

"The first is that the courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings, whether the proceedings involve process against his person or seek to recover from him specific property or damages.

The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control."

Mr. Parpia says that even to-day the property, which is endowment property of the trust, is still in the control of the Portuguese sovereign, and, therefore, if anything is done in the suit which has been instituted by the beneficiaries so as to affect the rights of the sovereign, or the powers of his control, then, that would be entirely without jurisdiction and no municipal Courts would have jurisdiction so as to affect the rights of the sovereign. This is no doubt the position in law. But we have to remember that the property, with which we are now dealing, has been declared to be the public trust subject to the provisions of the Bombay Public Trusts. Act. It is true that the constitution has given certain powers of the appointment to the Governor-General. He has also the right to call upon the members of the Managing Committee to render accounts. The disbursements of the income of the trust have also to be made under the supervision of the Governor-General. But even so, it cannot be stated that the rights of the sovereign as such will be affected by anything done, or purported to be done, in the course of the present suit. If there has been a trust, and if this trust is created by a foreign sovereign, it does not mean that the foreign sovereign has created this trust in the exercise of his sovereign powers. In my view, when a trust is created even by a sovereign, the sovereign would be no better than a settlor amenable to the law of the country in which the charity is created and is to be conducted. I, therefore, do not think that the observations relied upon by Mr. Parpia would, in any way, help him in the present case.

26. for these reasons, I agree with the view of the learned Judge that it was pre-eminently a case where there was great necessity of appointing the Receiver, and that in the interests of justice and convenience the appointment of the Receiver was wholly justified.

27. The result is that the appeal fails and is dismissed. The appellants will pay the costs of the respondents in A.O. No. 160/57. There will be no order as to costs in A.O. No. 168/57.

28. Appeal dismissed.