

(2011) 09 GUJ CK 0067

In the Gujarat High Court

Case No : Letters Patent Appeal No. 748 of 2011 in Special Civil Application No. 1407 of 2011 and Civil Application No. 5510 of 2011 in Letters Patent Appeal No. 748 of 2011

Kirankumar Premjibhai Maivaiya

APPELLANT

Vs

Rajesh Keshavlal Visaparmar and Others

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Citation : (2011) 09 GUJ CK 0067

Hon'ble Judges : A.L. Dave, Acting C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Hemant B. Raval, for the Appellant;

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—In this Appeal, the Appellant seeks to challenge the judgment and order dated 14th February 2011 passed by the learned Single Judge in Special Civil Application No. 1407 of 2011, whereby the learned Single Judge refused to grant any relief to the Appellant and rejected the petition confirming the orders passed by the Joint Charity Commissioner, Rajkot and the Gujarat Revenue Tribunal.

2. Facts relevant for the purpose of deciding this Appeal can be summarised as under:

1. It appears that the Appellant - original Petitioner gotten agreement to sell executed in his favour with respect to a property of the Trust - Respondent No. 1

dated 21st January 2006. The said property which was agreed to be sold to the Appellant by the Trust was in possession of Shri Kansara Popatbhai Jadavji as tenant. The sale consideration fixed was to the tune of Rs. 13,11,000=00.

2. It appears that subsequently there was a change in the Board of Trustees and the Board of Trustees applied for grant of permission to sell the said property

before the Joint Charity Commissioner on 6th January 2009.

3. Thereafter, the Joint Charity Commissioner, Rajkot issued public notice inviting tenders for sale of the property and also objections. This came to the notice of the Appellant and he lodged his objections, stating that there is already an agreement to sell in his favor executed by the Board of Trustees in the year 2006 and, therefore, the Trustees cannot seek permission to sell the property to anybody else.

4. Record reveals that the Joint Charity Commissioner, Rajkot, vide order dated 28th July 2010 granted permission in favor of the Trust to sell the property for a total sale consideration of Rest. 33,21,000=00.

5. Record reveals that the Appellant, aggrieved by the said order of the Joint Charity Commissioner, Rajkot granting permission to the Board of Trustees, challenged the same by way of an appeal before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal also dismissed the appeal confirming the order passed by the Joint Charity Commissioner. It is at that stage that the Appellant preferred Special Civil Application No. 1407 of 2011 and challenged the orders passed by the Joint Charity Commissioner and the Gujarat Revenue Tribunal. The learned Single Judge noticed

(i) In the year 2006 when the agreement to sell was executed in favor of the Appellant by the then Board of Trustees, no permission was obtained from the Charity Commissioner.

(ii) The learned Single Judge did not find any substance in the allegations levelled by the Appellant as regards the fraud alleged to have been committed by the Board of Trustees.

(iii) The learned Single Judge also noticed that the Trustees hold the property of the Trust not as their own and they cannot deal with the property without obtaining necessary permission for the same. As no permission was obtained before executing the agreement to sell, the agreement to sell can be said to be no nestin the eyes of law.

(iv) The learned Single Judge also noticed that the property which was agreed to be purchased by the Appellant was for Rest. 13,11,000=00 later on came to be sold at Rs. 33,21,000=00, that means that the Trust derived monetary advantage to a considerable extent. Having noticed all the above referred aspects, the learned Single Judge thought fit not to grant any relief in favour of the Appellant and rejected the petition.

3. Having heard learned advocate appearing for the Appellant and having noticed the relevant aspects taken into consideration by the learned Single Judge while rejecting the petition, we are of the view that no error much less an error of law can be said to have been committed by the learned Single Judge in rejecting the petition, warranting any interference at our hands in this Appeal.

4. In the above view of the matter, we hold that there is no merit in this Appeal and the same is hereby dismissed with no order as to cost. Civil Application stands disposed of.