(2010) 02 BOM CK 0033

In the Bombay High Court

Case No : Civil Revision Application No. 526 of 2008

Maharashtra Shetkari Seva Mandal APPELLANT

Vs

Bhaurao Bayaji Garud RESPONDENT

Date of Decision : 04-02-2010

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 1(4), 50, 51, 56, 80

Civil Procedure Code, 1908 (CPC) — Section 92, 9A

Citation : (2010) 2 ALLMR 816 : (2010) 3 BomCR 83 : (2010) 112 BOMLR 625

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.K. Shinde, instructed by Sagar Kasar, for the Appellant; Anilkumar Patil, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The applicant is aggrieved by the decision of the trial Court by which the objection raised by it regarding the maintainability of the suit and the jurisdiction of the Court was rejected. The impugned order has been passed on 16.7.2008 by the Civil Judge, Junior Division, Manmad City.

2. Regular Civil Suit No. 23 of 2008 was filed by the respondent/plaintiff for a perpetual injunction and for a declaration. An application for interim relief by way of temporary injunction was also preferred by the plaintiff. The plaintiff contended that in the year 1971, he had permitted the applicant/defendant trust to use his land admeasuring 4 acres .According to the plaintiff this land was part of his ancestral land and he had permitted the trust to use the land because of the good work carried on by the trust for the farmers'' benefit. The applicant constructed a godown on this plot of land which was being used by the agriculturists for storing agricultural produce. It appears that the farmers discontinued using the godown for storing agricultural produce and on the request of the plaintiff one of the trustees returned the land to the plaintiff alongwith the godown standing thereon. The plaintiff then found that the

trustees were obstructing his possession of the suit property and therefore apprehending that he would be dispossessed the plaintiff filed the aforesaid suit in June 2008.

3. The applicant trust defended the suit and contended that the suit was not maintainable and that the civil Court had no jurisdiction to entertain the suit in view of the provisions of Sections 50, 51 and 80 of the Bombay Public Trust Act. Preliminary issues were framed on the application made by the applicant trust u/s 9A of the CPC. These issues were answered in favour of the respondent-defendant and hence, the present civil revision application.

4. The leaned counsel appearing for the applicant - trust submits that the provisions of Section 50 clearly mandate that before a suit can be filed in a civil Court against the public trust, the permission of the Charity Commissioner must be obtained. He submits that no suit by or against or relating to public trusts can be instituted before a Civil Court unless such sanction is granted by the Commissioner. The learned Counsel further points out that u/s 80 of the Bombay Public Trusts Act, civil suits are barred in respect of any issue which can be decided or dealt with by an officer or competent authority under the Public Trusts Act. He points out that in the present case, no sanction has been applied for and, therefore, not obtained from the Charity Commissioner for instituting the suit against the trust. Reliance is placed by the learned Counsel on the judgment in the case of Mahibubi Abdul Aziz and Others Vs. Sayed Abdul Majid and Others, . He also points out the judgment in the case of Virupakshayya Shandarayya Vs. Neelakanta Shivacharya Pattadadevaru, and in the case of Yasinmian Amirmian Faroqui and Ors. v. I.A. Shaikh and Ors. 1977 GLR 54.

5. The learned Counsel for the respondent submits that the issue as to whether a person who has no connection with the Trust can file a civil suit without obtaining permission from the Charity Commissioner is no longer res integra in view of the decision of the learned Single Judge of this Court in the case of Sainath Mandir Trust Vs. Vijaya Mandale and Others, . He submits that a person, not being interested in the trust, who agitates his civil rights against the trust need not seek the sanction of the Charity Commissioner prior to filing of a suit. He also relies on the judgment of the Supreme Court in the case of Vinayaka Dev, Idagunji v. Shivaram (2005) 6 SCC 641. The learned advocate further points out that the bar of Section 80 would not operate in the present case as the respondent is not a person interested in the trust and he is merely ensuring that his civil rights are not jeopardised.

6. It would be advantageous to consider the provisions of Section 50 of the Bombay Public Trusts Act. Section 50 reads as under:

Section 50. Suit by or against or relating to public trusts or trustees or others.- In any case:

(i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees,

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or the proceeds thereof or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee,

(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or

(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof.

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub clauses (i) to (iii), or one or more such persons having an interest in case the suit is under Sub-clause (iv) 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 situated, 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) the removal of any trustee or manager,

(c) the appointment of a new trustee or manager,

(d) vesting any property in a trustee,

(e) a direction for taking accounts and making certain inquiries,

(f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or willful default.

(g) declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust,

(h) a direction to apply to the trust property or its income cy pres on the lines of Section 56 if this relief is claimed alongwith any other relief mentioned int he section.

(i) a direction authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged, or in any manner alienated on such terms and conditions as the court may deem necessary

(j) the settlement of a scheme, or variations or alterations in a scheme already settled,

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same

(j) an order for winding up of any trust or applying the trust for other charitable purposes

(m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust

(n) an order exonerating the trustees from technical breaches etc.

(o) an order varying altering amending or superseding any instrument of trust

(p) declaration or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases or

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid reliefs or is necessary in the interest of the trust.

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:

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled:

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under Sub-section (4) of Section 1.

7. The present suit has been filed for a declaration of the plaintiff''s title over the suit property and for a perpetual injunction. Section 50(iv) would come into play when an injunction is sought against a public trust. The sanction of the Charity Commissioner for institution of a suit for the aforesaid reliefs is required only if it is filed by "a person having an interest". The suit must be instituted for the reliefs stipulated u/s 50. These reliefs mainly relate to the working of the trust and its trustees. Therefore, permission of the Charity Commissioner would be required when a suit is instituted by "a person having interest" for a decree in terms of the reliefs delineated in Section 50. The submission of the learned Counsel for the applicant that sanction of the Charity Commissioner is required since the suit is filed for a declaration and injunction is without merit. The declaration and injunction sought by the plaintiff relate to his contention about his title to the suit property. Apart from this the plaintiff is not "a person having interest" as defined u/s 2(10) of the Act.

8. Section 80 would not come into play in the present case as it is only such questions which can be decided or dealt with by any officer or authority under

the Act which cannot be decided by civil Court. The cause of action giving rise to the present suit and the reliefs claimed therein cannot be decided by any officer or authority under the Act. In the case of Sainath Mandir Trust (supra), a learned Single Judge of this Court (Kanade, J.) after referring to the judgment of another learned Single Judge of this Court (Khanwilkar, J.) in the case of Mahibubi Abdul Aziz v. Sayed Abdul Majid (supra) has observed that a suit for enforcement by the plaintiff of his own civil rights cannot be barred by the provisions of Section 80. While drawing this conclusion Kanade, J. has referred to the judgment of this Court (Dhabe, J.) in the case of Vidarbha Kshatriya Mali Shikshan Sanstha v. Mahatma Fuley Shikshan Samiti, Amravati 1986 Mh.L.J. 773 wherein the scope of Section 50 was considered. In the facts and circumstances of the case of Sainath Mandir Trust (supra), the Court observed that the plaintiff had filed a suit for enforcement of his own civil rights since it was his contention that he had purchased the property by a registered sale deed from the trust. He claimed possession of the property and therefore it was held that permission of the Charity Commissioner is not necessary prior to institution of such a suit.

9. In the case of Vinayaka Dev (supra), a suit for declaration that the plaintiffs were hereditary Archaks in the temple entitling them to a share in the offerings made to the deity was filed. Consequential reliefs were also prayed for restraining the defendants from interfering with the plaintiffs'' rights. The trust pleaded that the temple was a public trust registered under the Bombay Public Trusts Act and since statutory permission of the Charity Commissioner as required under Sections 50 and 51 of the Act was not obtained, a suit was not maintainable. The court considered whether a suit to establish a right to be hereditary Archaks in a temple and a share in the offerings made to the deity is a suit in relation to the personal/private right of the Archak or in the nature of exercising of public right in a public trust. In paragraphs 13 and 14, the Court has observed as follows:

13. What is to be seen is the relief the plaintiffs are seeking from the court. First of all, they are seeking a declaration about their hereditary right as archaks of the temple. This right is claimed in their personal capacity as a family of archaks who have been performing the functions of archaks since the day the temple was established and the deity was consecrated. It is different matter whether ultimately the plaintiffs'' contention is accepted by the court or not. Surely, the plaintiffs are entitled to have their claim examined by the court. If they fail to establish their claim, they will be out of the court. However, if they succeed in establishing the claim they will be entitled to the declaration sought. They cannot be non suited at the threshold unless the suit is expressly barred by any statute. We have seen the provision of Section 50 of the Bombay Public Trusts Act relied upon by the appellants-defendants. The said section does not cover a suit of the present type. Analogy has been drawn of Section 92 of the CPC while considering Section 50 of Bombay Public Trusts Act. Both provisions are in the nature of representative suits which pertain to public trusts and protection of public interest in the trusts. In the present case, there is no public interest involved.

The only interest is that of the plaintiffs and their families. The right of archakship is claimed on the basis of inheritance. It is a hereditary personal right which they want to establish. The right is purely of a private nature. We are of the view that Section 50 of the Bombay Public Trusts Act is not attracted at all in the facts of the present case.

14. We have seen the object of the Bombay Public Trusts Act. Appropriately the Act seeks to regulate and make better provision for administration of public religious and charitable trusts. Such trusts cater to things of public interest, i.e .things which concern large sections of public. Unless such trusts are properly administered public interest will suffer. Therefore, matters affecting administration of such trusts are covered u/s 50 of the Bombay Public Trusts Act. This situation is somewhat similar to suits u/s 92 of the Code of Civil Procedure. These suits are suits in representative capacity and pertain to matters of public interest. In contrast the suit which has given rise to the present appeal is a suit to establish an individual right. The plaintiffs claim that they are hereditary archaks of the temple since time immemorial and are entitled to exercise this right which cannot be taken away from them. No public interest is involved. Public is not concerned whether A acts as an archak or B acts. Such a suit, therefore, cannot be covered by Section 50 of the Act. Law is settled on this aspect as per various judgments of this Court.

10. Therefore, in my view, the right claimed in the present suit for a declaration and an injunction in respect of a property over which the plaintiff, who is not a "person interested" claims title cannot be said to be barred u/s 80 of the Act nor is the consent of the Charity Commissioner required prior to institution of such a suit.

11. Civil revision application is dismissed. No costs.

