

(2017) 01 KAR CK 0095
In the Karnataka High Court
Case No : C.R.P. No. 100097 of 2015

Romit Jeevandar Sadalge

APPELLANT

Vs

Shantappa Yashwanth Mirje

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Section 2(11)

Citation : (2017) 1 AirKarR 826

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : R.M. Kulkarni, Advocate, for the Petitioner; Raviraj C. Patil, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mrs. S. Sujatha, J.—This revision petition is directed against the order passed on IA No. 11 in Misc. P. No. 169/2009 pending on the file of V Addl. District and Sessions Judge, Belgaum, dated 25.08.2015.

2. Marshalling of the facts is necessary to appreciate the case on hand in view of multiple rounds of litigation.

3. Briefly stated the facts are, a Public Charitable Trust by name Sri. 108 Acharya Ratna Deshabhushanmuni Digambar Jain Ashram Trust in Chikodi Taluk, (the "Trust" for short) was registered under the Bombay Public Trust Act, 1950, as on 31.05.1968. The General Body of the Trust consisted of 3 categories of members, namely, grand patrons, patrons and ordinary members. There was a Management Committee consisting of 9 members of whom five were chosen from amongst the grand patrons, three from the patrons and one from the ordinary members. The general body was required to elect the Managing Committee for a term of three years at a time. As per the report filed with the Assistant Charity Commissioner there were 22 members and 9 elected Trustees. The said report was approved in Enquiry No. 19/68 as on 11.07.1968. A change

report was filed by Sri. Malagouda Jinagouda Patil on 23.12.1988 which was numbered as Inquiry No. 877/1988 which was accepted as on 23.12.1988. It was indicated in the said change report that after the death of the Secretary Sri. N. T. Mukare, a General Body Meeting was held on 5.4.1977, Sri. N.B. Pinake, was elected as Secretary and Sri. Shantappa Yeshavant Mitji was elected as Chairman. This change report was alleged to be not genuine, the same was challenged by one Sri. Malagouda Jinagouda Patil and three others before the Charity Commissioner, Belgaum in appeal 5/1989. The said appeal was allowed and the change report was set-aside by an order dated 27.02.1989 and it was directed that Sri. Malagouda Jinagouda Patil along with 4 others who claimed to be the surviving Trustees to meet and co-opt a Secretary, who shall then convene a General Body in the month of April 1989, shall elect a Managing Committee under the supervision of an Inspector to be deputed from the Office of the Assistant Charity Commissioner. In the said order, it was observed that no election of the Managing Committee or Secretary in the year 1977 was held and a change report filed by Sri. Shantappa Yeshavant Mirji was false. Sri. Shantappa Yeshavant Mirji supported by his group had again filed a change report on 4.5.1989 claiming that a General Body Meeting was held on 30.4.1989 and that 9 trustees have been elected to the Managing Committee as well as the Chairman, Secretary and the Treasurer. This change report was numbered as Inquiry No. 316/1989. Another group led by Sri. B.A. Patil, filed another change report on 19.04.1989 claiming that a General Body Meeting was held on 16.04.1989 and that he and eight others were elected as Trustees and he was elected as Secretary and others as other office bearers. This report was numbered as Inq. No. 270/1989. These two reports were clubbed and common evidence was recorded. The Assistant Charity Commissioner rejected both the change reports after hearing the parties as on 12.06.1990.

4. Sri. Shantappa Yeshavant Mirji had challenged the order passed against Inq.No.316/ 1989 in Appeal No. 17/1990 whereby the Charity Commissioner has accepted that 14 new members were admitted to the General Body as per the resolution dated 09.06.1988. The appeal was accordingly allowed which was challenged in M.A. No. 50/91 before the Principal District Judge, Belgaum. The order of the Charity Commissioner was confirmed in M.A. No.50/91 as on 28.8.2000, against which M.F.A. No. 60/2001 was filed before this Court. This court allowed the appeal observing thus:

"15. However, in the fitness of things, it would now be necessary to issue appropriate directions to the Charity Commissioner, Belgaum, as regards the administration of the affairs of the Trust.

16. The Charity Commissioner, Belgaum, is directed to issue public notice of his intention to appoint Trustees, in the absence of adequate membership in the Trust, to initiate the process of a democratic election. He shall invite and consider representations from all quarters in considering the appointment of Trustees in addition to those surviving trustees, as on date."

In Review Petition No. 388/2006, in view of repealing of Bombay Public Trust Act, this Court directed the Principal District Judge, Belgaum to conduct the elections to appoint trustees.

5. This order was challenged by Sri. Shantappa Yeshavant Mirji and others in SLP No. 18401/2005 which came to be dismissed, pursuant to which Misc.P. 169/2009 was filed by Sri. Shantappa Yeshavant Mirji seeking implementation of the order passed in M.F.A. No. 60/2001 on 04.07.2005 and the order passed in Review Petition No. 388/2006 dated 10.06.2009. It transpires on 17.02.2015, Sri. Shantappa S/o Yeshavant Mirji expired. Hence, a petition was filed by the petitioner herein on 17.07.2015 contending that in view of death of original applicant, the proceedings got abated and requested for dismissal of the Misc. P. No. 169/2009. The present respondent submitted application under Order 22, Rules 3 and 10 read with Section 151 of the Code of Civil Procedure, seeking himself to come on record as petitioner No. 1A, claiming to be the Chairman of Trust. The said application was objected by the petitioner herein contending that the applicant is not the Member and his claim has been denied by the Assistant Charity Commissioner and the same has been confirmed by the Hon''ble High Court and the Apex Court. Hence, the applicant has no right to come on record as legal representative or Member or Chairman of the Trust. After considering the arguments advanced by both the parties, the Court below allowed the application. Being aggrieved, petitioner has filed this revision petition.

6. The learned counsel Sri. R.M. Kulkarni appearing for the petitioner assailing the impugned order would contend that the applicant suppressing the material facts, clandestinely filed the application to come on record as the legal representative of Sri. Shantappa S/o Yeshavant Mirji who had filed the Misc. P. 169/2009 as the Chairman of Sri. 108 Acharya Ratna Deshabhushanmuni Ashram Trust. The Assistant Charity Commissioner, Belgaum, passed orders in Inquiry No. 316/1989 and also in Appeal No. 5/1989 which was challenged before this Court in M.F.A. No. 60/2001 confirmed by the Hon''ble Apex Court in SLP No. 18401/2005 as on 12.09.2005. Thus, it is clear that the applicant is not the elected member of the Trust. The material facts were suppressed by the applicant. The learned counsel further contended that the application (IA No. 11) was not tenable in view of the fact that legal heirs or the relatives of the deceased Trustees cannot be brought on record as legal representatives of the deceased members of the Trust who have no personal interest in the Trust. The applicant manipulated the Resolution No. 3, as the resolution passed by the General Body members of the Trust electing the applicant as the Chairman of the Trust. Despite the material facts were brought to the notice of the Court below, the same was ignored, without addressing the arguments advanced by the petitioner, IA was allowed. The learned counsel contends that the Misc. Petition No. 169/2009 abates in view of the death of the Chairman, no application filed by the respondent in the capacity of the elected chairman is maintainable in view of the earlier proceedings stated above. Thus, the learned counsel seeks to set aside the impugned order.

7. Per contra, Sri. Raviraj C. Patil, learned counsel appearing for the respondent supporting the impugned judgment and order would contend that the revision petition filed against the order on IA No. 11 in pending Misc. P. 169/2009 is not maintainable. Secondly, he contends that the petitioner has no locus standi to challenge the impugned order. The petitioner was not a party to the proceedings in Civil Misc. No. 169/2009. It was submitted that O.S. No. 179/2005 was filed by the applicant where under a decree of permanent injunction has been granted against Sri. Malagouda Jinagouda Patil. A perusal of the said judgment discloses that the suit had been filed by the Trust represented by Sri. Shantappa Yeshavant Mirji and five others. The civil court, having declared that notice issued by the defendant therein convening the Annual General Body meeting of the trust was void, restrained the defendants therein from interfering with the administration of the public Trust ran by the plaintiffs therein, until the order of this court in M.F.A. No. 60/2001 was complied with. The injunction granted in O.S.No. 179/2005 has been challenged by the petitioner herein in R.A. No. 64/2014 whereby the order of injunction passed in O.S. No. 179/2005 is stayed except the applicant/defendant No. 4 in the said suit.

8. Heard the learned counsel for the parties and perused the material on record.

9. Civil Misc. No. 169/2009 was instituted by the petitioner Sri.Shantappa Mirji seeking the relief as under:

"(a) The order passed in M.F.A. No. 60/20001 [BPT] and so also the order passed in Review Petition No. 388/2006 be implemented.

(b) consequential relief of Permanent injunction be issued against the respondent, his agents, servants or anybody acting on his behalf from holding any type of meeting in violation of the orders passed in M.F.A. No. 60/ 2001 & Review Petition No. 388/2006."

10. Sequence of events as narrated above, clearly establishes that on the change report filed by one group of the Trust headed by Shantappa, s/o Yeshwant Mirji before the Charity Commissioner under the Bombay Trust Act and the appeal thereon, numbered as Appeal No. 5/1989, order passed in Appeal No. 5/1989 was held to prevail as per the Judgment passed in MFA 60/2001 and connected matters disposed of by this Court on 4.7.2005. This observation was made by this court considering the shady conduct of the respondents in Appeal No. 5/1989 (Shantappa Yeshwant Mijji and others) in managing the affairs of the Trust for two decades without accountability to any General Body. Blatant manner in which 14 new members were included into the Trust in the year 1988 for the first time before the Charity Commissioner in Appeal No. 17/1990 pertaining to the period upto 27.12.1988 was considered to be contrary to the respondents' own declaration at the earliest point of time. This court in MFA 60/2001 and connected matters has directed the Charity Commissioner, Belgaum to issue public notice of his intention to appoint trustees to initiate the process of democratic election. This was further reviewed in Review Petition No. 388/2006

(DD 10.6.2009), pursuant to the repeal of Bombay Public Trust Act. The District Judge, Belgaum was directed to conduct the elections by formulating the procedure in consonance with the provisions of the Bombay Public Trust Act and the Bye-laws of the Trust in pursuance to the directions issued. This order was confirmed by the Hon"ble Apex Court in SLP (Civil) No. 18401/2005.

11. The objects of the trust as per the Trust bye-law are as under:

"(a) To impart education including opening and starting of High Schools, Secondary Schools, College for Medical, Engineering, Arts, Technical, Scientific and other studies.

(b) To open residential hostels with or without boarding arrangements for the students.

(c) To award scholarship to deserving students for prosecuting studies either in India or abroad.

(d) To do any other charitable objects of general public utility and purpose insofar as the same relates to charitable purposes of public utility in Indian Union with benefits to Indian National without distinction of class, creed or religion. The Trustees shall have power to utilise not only the income but also corpus or any part of the corpus of the charitable funds for any of the above said charitable objects.

(e) The Trustees shall collect funds at their discretion invest the trust fund all moneys in their hand which may require investment in the purchase of such investments including immovable properties and securities as they may consider expectant with power from time to time at their discretion to convert or vary any investments solely for the purpose of the charitable objects."

12. In pursuant to the directions issued by this Court, the District and Sessions Judge, Belgaum was ceased of the matter to conduct election to appoint trustees in a democratic manner. Strangely, Shantappa, s/o Yeshwant Mijji, original petitioner in Misc. Petition 169/2009 filed the petition for implementing the orders passed by this court. Thereafter several interim applications were filed in the proceedings. The evidence of the parties was recorded and the arguments were heard. As submitted by the learned counsel for the parties, at the time of passing of the final judgment and order, the original petitioner died. The present applicant filed the I.A. to come on record. It is imperative that though directions were issued by this court way back as on 4.7 2005 and 10.6.2009, both the groups of the Trust, in the guise of fighting the litigation are not allowing the District and Sessions Judge to implement the judgment and order passed by this court in conducting the elections, as directed. The Trust is a Charitable Trust founded with the avowed object of rendering charitable services to the general public as stated above. Placing the objects of the trust to a comer both the groups are fighting the legal battle to take over the management alleging each other.

13. IA No-11 was filed under Order 22, Rule 3 and 10 r/w Section 151 of Code of Civil Procedure by the applicant contending to be one of the Managing committee member and Chairman of "108 Acharya Ratna Deshabhushan Muni Digambar Jain Ashram Trust" in Civil Misc. No. 169/2009 to be brought on record as the legal representatives of the Trust since the former chairman Shantappa, S/o Yeshwant Mirji, petitioner in Civil Misc. No. 169/2009 died on 17.7.2015. The applicant placed reliance on resolution No. 3 of the Trust for the applicant being elected as the chairman. This application was contested by the petitioner herein.

14. Order 22, Rule 3 of C.P.C. contemplates the procedure in case of death of one or two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representatives of the deceased plaintiff to be made a party and shall proceed with the suit within the time limited by law. Legal representatives is defined under Section 2(11) of the Code which runs thus:

"legal representative" means a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

It is thus clear that legal representative is a person, who, in law, represents the estate of a deceased person.

15. Order 22, Rule 10 of the Code provides the procedure in case of assignment before final order in a suit. In cases of an assignment, creation or devolution of any interest during the pendency of the suit, the suit may by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. The Hon"ble Apex Court in the case of Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (Deceased) through his Chela Shiam Dass reported in AIR 1975 SC 2159 while considering the applicability of Order 22, Rules 10, 3 and 4 of CPC has held thus:

" Order 22, Rule 10 is based on the principle that trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during the pendency of the suit but that suit may be continued against the person acquiring the interest with the leave of the Court. When a suit is brought by or against a person in a representative capacity and there is a devolution of the interest of the representative, the rule that has to be applied is Order 22, Rule 10 and not Rule 3 or 4, whether the devolution takes place as a consequence of death or for any other reason, Order 22, Rule 10 , is not confined to devolution of interest of a party by death; it also applies if the head of the mutt or manager of the temple resigns his office or is removed from office. In such a case the successor to the head of the mutt or to the manager of the temple may be substituted as a party under this rule. Accordingly, the devolution of interest in the subject matter of the suit takes place when the

successor is elected as Mahant after the death of the previous Maliant. The word "interest" in O.22, Rule 10 means interest in the property i.e., the subject matter of the suit and the interest is the interest of the person who was the party to the suit."

16. Order 22, Rule 10 of CPC, as aforesaid r/w the judgment of Riku Dev (supra) would make it clear that the devolution of interest in the subject matter of the suit takes place when the successor is elected. The original petitioner had filed Civil Misc. Petition in the capacity of the chairman and the member of the Managing Committee for a cause to implement the directions issued by this court. After the death of the original petitioner, the applicant had come on record contending to be the successor of the original petitioner. The Hon"ble Apex Court in the case of Amit Kumar Shah v. Farida Katoon reported in AIR 2005 SC 2209 has held that under Order 22, Rule 10 , no detailed enquiry at the stage of granting leave is contemplated. The court has to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about existence and validity of the assignment or devolution can be considered at the time of final hearing of the proceedings. The court only has to be prima facie satisfied for exercising discretion in granting leave for continuing the suit.

17. The grievance of the petitioner claiming to be the Secretary of the Trust is, the applicant is not a member of the Managing Committee as held by this court, confirmed by the Hon"ble Apex Court. In such view of the matter, what the appellant cannot achieve directly cannot be made to achieve indirectly, coming on record as the legal representative of the deceased Shantappa Miiji. It is trite that Order 22, Rule 3 , CPC is applicable to bring the legal representatives to cases where legal representatives are to be brought on record who represents the estate of the deceased. In the factual matrix of the case, Order 22, Rule 10 of the Code would be relevant where it is contended by the applicant that an interest is devolved upon him on the death of the original petitioner. It is significant to note that the original respondent in Civil Misc. Petition No. 169/2009 viz., Malagouda Jinagouda Patil died during the proceedings on 3.9.2010 and in his place one Gundu Tippanna Gajannavar came to be substituted, who, in turn, having resigned, the present petitioner is contending to be continued as the Secretary of the Trust in terms of resolution No. 2, said to have been passed by the Trust as on 15.1.2015. It is strongly contended by the learned counsel appearing for the respondent/applicant that this petitioner has no locus standi to maintain this petition since he is not impleaded as a party to the proceedings in Civil Misc. 169/2009. Adjudicating on these issues relating to the locus of the parties, would divert the paramount consideration of conducting the elections in a democratic manner to the Trust.

18. The learned counsel appearing for the applicant/respondent would fairly submit that without going into the merits or demerits of the issue of the status of

the parties to prosecute the case pending before the court below, it would be suffice if an order is passed in directing the District and Sessions Judge to implement the orders passed by this Court in MFA No. 60/2001 and connected matters to conduct the elections for the appointment of the trustees.

19. It is also significant to note that the filing of O.S. 179/2005 by the respondent where-under a decree of permanent injunction has been granted against Malagouda Jinagouda Patil and further R.A. No. 64/2014 filed by Gundu Thippanna Gajannavar, representing Malagouda patil and the stay order granted in the said R.A. 64/2014 against respondents No. 1 to 3 and respondents No. 5 and 6 would not assist the parties to postpone the elections directed by this court.

20. Keeping these aspects in mind this court is of the considered opinion that expediting the implementation of the directions issued by this Court in MFA No. 61/2001 and Review Petition No. 388/2006 is necessary in the facts and circumstances of the case. The parties to the proceeding are delaying the process by filing frivolous petitions and successive interim applications which is evidenced from the records. As observed by the Hon"ble Apex Court in the case of Amit Kumar Shah (supra), it is to continue the Civil Misc. proceedings, the applicant can be brought on record, which do not mean that his chairmanship to the Trust is approved by the court. To achieve the objects of the Trust, it is necessary to conduct the elections as observed by this court for the appointment of the trustees, which would not depend on the concurrence given by the parties. Thus, the order of the court below in allowing the applications filed by the applicant/respondent is approved with the object of implementing the directions issued by this court. It is made clear that the applicant is allowed to come on record only for a limited purpose, to continue the proceedings in Civ. Misc. No. 169/2009. The management committee i.e., the trustees shall be appointed by democratic election in terms of the orders passed by this Court in MFA No. 60/2001 and Review Petition No. 388/2006 passed by this Court.

In the result, the petition stands disposed of in terms of the above.