

(1985) 08 GUJ CK 0006
In the Gujarat High Court

Saiyad Mohamad Baker El-Edroos (Decd.) through his Heir and LRs. Sajjadanasin Sayed Zain APPELLANT

Vs

Abdulhabib Bin Hasan Arab and Others RESPONDENT

Date of Decision : 12-08-1985

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 50A, 50A, 72(1)

Citation : (1986) 1 GLR 295

Hon'ble Judges : P.R. Gokulakrishnan, C.J.;S.B. Majmudar, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—This letters Patent Appeal is against the order passed by the learned Single Judge of our High Court wherein the learned single Judge has summarily dismissed the appeal filed by the appellant herein, originally, an application was filed before the Charity Commissioner and he has initiated the scheme proceedings No. 5 of 1973 u/s 50-A of the Bombay Public Trusts Act, 1950. The said proceedings are still pending before the Charity Commissioner. On 23rd January 1979, original applicant No. 2 Hasan Bin Abubaker died. Since nobody had action to prosecute the matter, the son of the original applicant No. 2, Abdul Habib Bin Hasan, gave application Ex. 44 on 11th October 1983 to be joined as a party to the said proceedings on the ground that he is interested in the said trust. On the same day, another person, Hussain bin Avadhbhai, claimed to be one of the trustees of Hazarat Chhota Edroos Masjid and Durgah Trust and also as a person interested in the Hazarat Bada Edroos Trust gave application Ex. 45 for being joined as an applicant in the scheme proceedings. It is unnecessary for us to state the other facts of the case and suffice it to say that the Charity Commissioner added them as parties. The appellant agitated the matter u/s 72, Sub-section (1) of the Bombay Public Trusts Act before the City Civil Court. The City Civil Court also confirmed the order of the Charity Commissioner. As against that First Appeal No. 478 of 1985 was filed and the learned single Judge of our High Court after observing that the adding of the parties by the Charity Commissioner as confirmed by the City Civil Court is proper and that the

advocate for the appellant herein has not given any valid reason as to why the applicant of applications Exs. 45 and 53 could not be joined as an opponent. The learned Judge has further observed that it was not in dispute that the proposed persons are interested in the Trust. After observing so, the learned Judge has summarily dismissed the appeal. It is as against this appellate order that the present Letters Patent Appeal has been filed by the appellant under Clause 15 of the Letters Patent.

2. As regards the facts of case the Charity Commissioner, the City Civil Court and the High Court uniformly came to the conclusion that the persons sought to be added as parties to the charity proceedings before the Charity Commissioner are proper and necessary parties. Such a factual finding, in our, view, cannot be interfered with at the Letters Patent stage. Apart from this factual aspect of the case a Bench of our High Court in *Hiragar Dayagar and Anr. v. Ratanlal Cbunilal and Ors.* 13 GLR 181 has correctly held:

That therefore when the District Court deals with an application u/s 72, it exercises appellate jurisdiction and the order made by the District Judge in the present case which was confirmed by the single Judge of the High Court was consequently an order made in the exercise of appellate jurisdiction by a Court subordinate to the High Court and no Letters Patent Appeal against the decision of the single Judge could be filed by the appellants without obtaining a certificate from the Single Judge that the case was a fit one for appeal.

3. This grant of certificate which was one of the procedure available before the CPC amendment of 1976, is also not there as on date. Hence following the decision reported in 13 GLR 181 we do not think that the Letters Patent Appeal is maintainable on the side of the legal aspect of the case.

4. No doubt, the learned Counsel appearing for the appellant, pressed into I service the decision in the case of *Khivaraj Chhagniram Zavar and Another Vs. Shivshankar Basappa Lingashetty and Another*, . When we have a decision of the Bench of our High Court, we have to follow the same and hence the decision in the case of *Hiragar Dayagar v. Ratanlal Chunilal (supra)* will cover the facts of this case, both on the factual aspect and also on the legal aspect of the case.

5. For all these reasons, there is absolutely no merit in the Letters Patent Appeal and this appeal is accordingly dismissed.