

(2012) 10 BOM CK 0187

In the Bombay High Court

Case No : First Appeal No. 3061 of 2009

Seth Kasturmal Dalsukh Dharmashala

APPELLANT

Vs

Smt. Shantidevi Agrawal and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 17, 19, 2(4), 21, 22
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2013) 2 ALLMR 524 : (2013) 1 BomCR 636 : (2013) 1 MhLj 695

Hon'ble Judges : S.V. Gangapurwala, J

Bench : Single Bench

Advocate : S.P. Shah, for the Appellant; P.B. Pawar, Advocate for Respondent Nos. 1 to 5 and Smt. R.K. Ladda, A.G.P. for Respondent Nos. 6 to 8, for the Respondent

Judgement

S.V. Gangapurwala, J.—The present appeal is heard finally at the stage of admission with the consent of learned counsel. The record and proceedings are also received. The only issue involved in the present appeal is about the jurisdiction of the District Court, to try and entertain the suit for declaration of ownership and recovery of possession in view of Sec. 79 and 80 of the Bombay Public Trust Act (hereinafter referred to as the "B.P.T. Act" for the sake of brevity).

2. The plaintiff a public trust registered under the provisions of the B.P.T. Act has filed a suit for declaration of ownership and possession. The District Court dismissed the suit for want of jurisdiction holding that, in view of Sec. 80 read with Sec. 79 of the B.P.T. Act, the Civil Court does not have the jurisdiction to try and entertain the suit.

3. Shri S.P. Shah, the learned counsel for the plaintiffs/appellants submits that the suit was filed for possession and declaration of ownership after seeking necessary sanction from the Charity Commissioner U/Sec. 51 of the B.P.T. Act. The said suit was perfectly maintainable within the meaning of Sec. 50 of the B.P.T. Act. According to the learned counsel, suit was instituted before the District

Court as is contemplated U/Sec. 2(4) of the B.P.T. Act. The suit of the plaintiffs was perfectly maintainable as per Sec. 50 (iv) (a), (p) and (q).

4. The learned counsel relies on the judgment of Full Bench of this Court in a case of Keki Pestonji Jamadar Vs. Rodabai Khodadad Merwan Irani reported in 1972 Mh. L.J. 427.

5. Shri Pawar, the learned counsel for respondents submits that the office of the Charity Commissioner has held that the suit property is not a trust property. Now again the Civil Court cannot go into the said question. In view of Sec. 79, 80 and 19 of the B.P.T. Act the jurisdiction of the Civil Court is barred from deciding the issue of ownership. The learned counsel relies on the judgment of the Apex Court in a case of Church of North India Vs. Lavajibhai Ratanjibhai and Others, .

6. The learned counsel further submits that, even if it is assumed that the Civil Court has got right to grant relief of possession, still first the issue of ownership will have to be adjudicated by the Charity Commissioner and then only the suit for possession can be filed before Civil Court. The learned counsel relies on the judgment of the learned Single Judge of this Court in a case of Dev Chavta and another Vs. Ganesh Mahadeo Deshpande and another reported in 1970 AIR (Bom.) 412.

7. Before I advert to the submissions canvassed by the learned counsel, it would be relevant to refer to the relevant clauses of Sec. 50 of the B.P.T. Act which reads as follows :

50. Suit by or against or relating to public trusts or trustees or others In any case,

(i)

(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 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)

(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 subclauses (i) to (iii), or one or more such persons 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 situate, to obtain a decree for any of the following relief's :

(a) an order for the recovery of the possession of such property or proceeds

thereof;

(b)

(c)

(d)

(e)

(f)

(p) declaring or denying any right in favour of or against, a public trust or trustee or trustees or beneficiary thereof an 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 relief's or is necessary in the interest of the trust:

8. It is an admitted fact that, the Charity Commissioner has accorded sanction to the plaintiffs to institute the suit in the Court as per Sec. 51 of the B.P.T. Act and it is only after obtaining sanction from the Charity Commissioner, the suit has been instituted in the District Court.

9. The suit filed is not the one invoking the general Civil Jurisdiction of the Court within the meaning of Sec. 9 of the Code of Civil Procedure, but is a suit filed before the District Court i.e. the Court as contemplated U/Sec. 2(4) r/w Sec. 50 of the B.P.T. Act.

10. Perusal of Sec. 50 of the B.P.T. Act it is manifest that the trust or two or more persons having obtained the sanction in the writing of the Charity Commissioner as provided in Sec. 51 can institute the suit in the Court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situated for the purpose of a decree for recovery of possession or even for any relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief or is necessary in the interest of the trust.

11. U/Sec. 50 (iv) of the B.P.T. Act a suit can be filed in the Court even for relief of declaration and injunction in favour or against a public trust. Section 50 also explicitly provides that a suit for possession can be filed in the Court. Sub-Clause (q) of Sec. 50(iv) further empowers the Court to grant any other relief which would be a condition precedent or consequential to any of the relief provided in Sec. 50. For claiming relief of possession, a decision on question of ownership would be relevant. Unless the plaintiff proves his ownership or any other status as regards the property of which possession is sought, he would not be entitled for relief of possession. As such, relief of declaration as to the status of plaintiff qua the property would be condition precedent for grant of relief of possession.

12. In the instant case, the plaintiff has sought possession of the property on the ground that property is owned by it. The enquiry into the title and relief of

declaration of ownership would be pre-requirement for relief of possession. In the light of said fact also the relief claimed would be within the realm of the District Court.

13. In the present case, as observed supra the sanction of the Charity Commissioner has been obtained by the plaintiffs before filing the suit. The suit is also not a suit filed U/Sec. 9 of the C.P.C. invoking ordinary civil jurisdiction, but is a suit filed invoking provisions of Sec. 50 of the B.P.T. Act i.e. the special statute before the District Court i.e. a Court contemplated and defined under Sec. 2(4) of the B.P.T. Act. The distinction will have to be made in respect of suit filed in the Civil Court in its ordinary civil jurisdiction invoking Sec. 9 of the C.P.C. and a suit filed U/Sec. 50 of the B.P.T. Act before the District Court i.e. the Court as defined U/Sec. 2(4) of the B.P.T. Act.

14. The B.P.T. Act is a special local Act. The suit U/Sec. 50 is a special remedy before a special forum under the Act. The bar as envisaged under Sec. 79 and 80 of the B.P.T. Act would not be attracted in view of the provisions of Sec. 50 and 51 of the said Act. Sec. 80 of the B.P.T. Act deals with Bar of jurisdiction of Civil Court, but the said section proceeds and begins with the phraseology "Save and expressly provided by this Act" connoting thereby that other provisions of the Act are saved and shall not be affected by the Bar engrafted in said sections. The suits or applications as are expressly provided in Sec. 50, 51, 56A and 72 are saved and Court of competent jurisdiction can entertain it. The Sections 50, 51, 79 and 80 of the B.P.T. Act will have to be read in harmony. Attempt will have to be made to reconcile them to avoid repugnancy. The provisions of the statute have to be read in a manner they co-exists. Head on collision of the provisions of same statute has to be avoided. One provisions of the statute cannot be read in a manner that would render other provision superfluous or a dead letter.

15. The Full Bench of this Court in a case of Keki Pestonji Jamadar Vs. Rodabai Khodadad Merwan Irani referred supra has observed thus :

38. The decision of Chitale J. in Shri Adinath etc. Mandir V. Shantappa that "a person who was not a party to the proceedings under the Bombay Public Trusts Act, 1950, but finds that his property is registered as trust property pursuant to the said proceedings, is not precluded under sections 79 and 80 of the Act from filing a suit for declaration of his title to such property in a civil Court.", is, with respect, correct, but we must add that the same result would Follow whether the person who raises the question regarding his title to the property was or was not a party to the proceedings u/s 19. The question of ouster u/s 80 has to be decided by applying an objective test:"

16. In a case of Church of North India Vs. Lavajibhai Ratanjibhai and others referred supra, the Apex Court was also dealing with the aspect of the jurisdiction of the Civil Court vis-a-vis the provisions of the B.P.T. Act. It appears that the said case was arising out of the provisions of the Bombay Public Trust Act as applicable to Gujrat. The relevant provisions as contemplated in Clause

(iv) (p) and (q) of Sec. 50 applicable to Maharashtra is not available in Sec. 50 as applicable to Gujrat. Moreover, the Apex Court in the said case of Church of North India Vs. Lavajibhai Ratanjibhai and others referred supra was considering the jurisdiction of the Civil Court and not the Court as contemplated in Sec. 2(4) read with Sec. 50 of the B.P.T. Act.

17. In para 76 of the said judgment, the Apex Court has observed thus :

Grant of prayer (c) for perpetual injunction would also give rise to adjudication on the question as to whether the Appellant herein had the legal right to own the properties of the First District Church of Brethren and administer or manage the same although at the relevant time it was not registered trust and although no amendment had been effected in the registers and books maintained by the Charity Commissioner in terms of Section 17 read with Sections 21 and 22 of the Act. The plaintiffs with a view to obtain an order of injunction furthermore were required to establish that they could file a suit for enforcement of right of the Appellant as a religious trust and such a legal right vests either in the plaintiff or in the Appellant herein indirectly. Such a prayer, related to the possession of the property, comes squarely within the purview of the B.P.T. Act. If the question as regard recovery of possession of the property belonging to a public trust squarely falls within the purview of Section 50 of the Act, had such application been filed before the Charity Commissioner he was required to go into the question as to whether the plaintiffs are persons having interest in the trust and whether a consent should be given to them to maintain a suit. Only when, inter alia, such consent is granted, a suit could have been filed in terms of Section 51 of the Act. In the event of refusal to give consent, the persons interested could have preferred an appeal.

18. Even in the said judgment, the Apex Court has held that, if the Charity Commissioner grants sanction, a suit could have been filed in terms of Sec. 51 of the B.P.T. Act.

19. In the light of the above discussion and so also as valid sanction has been obtained by the plaintiff to file a suit for possession and declaration of ownership, the suit was perfectly maintainable U/Sec. 50 of the B.P.T. Act before the District Court.

20. The defendants have raised a plea of res-judicata. The Court would consider the same on its own merits. In view of the above, the impugned judgment and decree is quashed and set aside. It is held that the District Court has jurisdiction to try the instant suit. The parties shall appear before the concerned District Court on 30.10.2012. Hearing of the suit is expedited.