

(2014) 04 BOM CK 0243
In the Bombay High Court
Case No : Second Appeal No. 441 of 2011

Sheikh Yusuf

APPELLANT

Vs

Haji Mohammad Jamil

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 70, 72
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 13, Order 1 Rule 9,
Order 41 Rule 20, Order 41 Rule 21

Citation : (2015) 1 ALLMR 120 : (2015) 2 MhLj 209

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : J.T. Gilda and N.W. Kalwaghe, Advocate for the Appellant; M.G.V.V. Bhangde and V.P. Panpalia, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.—This appeal is preferred against the judgment and decree passed in M.J.C. No. 42/2009 by District Judge-1, Yavatmal on 17/09/2011.

2. The relevant facts of the case are briefly stated as under:

There is an Anjuman Urdu Education Society, Ner Parsopant, Tq. Ner, District Yavatmal, registered under the Registration of Societies Act of 1980 and also the Bombay Public Trust Act, 1950 ("BPT Act", for short). As per the constitution of the Society, general body is required to be convened in every 5 years for election of the Managing Committee. The society has 13 members. By a notice issued on 30/09/2002, by the then President of the society, a meeting of the general body was convened on 12/10/2002 for electing the members of the Managing Committee. Accordingly, elections were held and elected members, through appellant no. 1, the reporting trustee, filed a change report u/s 22 of the BPT Act, upon which inquiry bearing no. 267/2002 was instituted. The matter was heard and the learned Assistant Charity Commissioner, by his order passed on 18/08/2008, rejected the change report.

3. Dissatisfied with the said order of Assistant Charity Commissioner, the reporting trustee filed an appeal u/s 70 of the BPT Act before the Joint Charity Commissioner, Amravati. Joint Charity Commissioner, after hearing both sides, by his order dated 30/07/2009 allowed the appeal and set aside the order of rejection passed by the Assistant Charity Commissioner.

4. Being aggrieved by the said order, the respondents herein challenged the said order of Joint Charity Commissioner by filing an application u/s 72 of the BPT Act before the Court of District Judge, Yavatmal. The learned District Judge, by his order passed on 20/01/2010, rejected the application and, therefore, the respondents in the present appeal, who were objectors in the inquiry before the Assistant Charity Commissioner, preferred a Second Appeal in the High Court bearing Second Appeal No. 230/2010. The High Court, on 14/12/2010 partly allowed the Second Appeal and set aside the judgment and order dated 20/01/2010 and remanded back the matter to the Court of District Judge for deciding the M.J.C. No. 42/2009 on merits, in accordance with law.

5. After remand of the matter, the learned District Judge reheard the case and by his order passed on 17/09/2011, allowed the application and set aside the order passed by the Joint Charity Commissioner, Amravati on 30/07/2009, thereby maintaining the order of the Assistant Charity Commissioner, Yavatmal in inquiry no. 267/2002 passed on 18/02/2008. It is this order which has been challenged in the present appeal.

6. I have heard Shri J.T. Gilda, learned Counsel for the appellants, Shri V.V. Bhangde, learned Counsel for respondents no. 1 & 2 and Shri V.P. Panpalia, learned Counsel for respondent no. 3. With their assistance, I have carefully gone through the impugned judgment and order and also the judgments and orders of the lower Courts and paper book of this appeal.

This Court, while admitting the appeal on 3/09/2013, formulated two substantial questions of law and also formulated on 18/10/2013 three more substantial questions of law. These substantial questions of law, having regard to the arguments canvassed, however, would have to be rearranged in an order so that those are taken up first for answers on which the others are dependent for being resolved. These substantial questions of law, arising for my consideration in the re-arranged order, are:

1) Whether the learned lower appellate Court has committed an error of law by holding that two objectors namely 1) Haji Ismail s/o. Haji Musa Seth and 2) Hamid Khan s/o. Majid Khan were necessary parties in the Appeal No. 42/2008 filed by the appellant No. 1 before the learned Joint Charity Commissioner, as none of the objectors/respondents had raised the said ground of non-joinder of party to appeal before the learned lower appellate Court?

2) Whether two objectors namely (1) Haji Ismail s/o Haji Musa Seth and (2) Hamid Khan s/o Majid Khan should have been joined as the parties-respondents to Appeal No. 42/2008 by the learned Joint Charity Commissioner in view of the

principles analogous to Order 41 Rule 20 and also to Order 1, Rule 10 of the Code of Civil Procedure?

(3) Whether it is necessary to permit the appellants to join two objectors namely (1) Haji Ismail s/o. Haji Musa Seth and (2) Hamid Khan s/o. Majid Khan as the parties-respondents to Appeal No. 42/2008 filed before the learned Joint Charity Commissioner in the interest of justice and administration of trust by remanding the matter for fresh adjudication?"

4) Whether the learned lower appellate Court and the Assistant Charity Commissioner should have rejected the case of objectors that the reporting trustees have committed fraud and forgery while holding the meeting for elections of Governing/Executive Committee on 12.10.2002, as the objectors have failed to make specific allegations of fraud, forgery and filing of fabricated documents in their written statements/objections.

5) Whether the learned lower appellate Court and the Assistant Charity Commissioner are right in ignoring the conduct of the objectors as they have denied their signatures which have appeared on objections to change report, Vakalatnama etc., particularly looking into the fact that they have also simply denied their signatures made on the notice of meeting of election and proceedings book etc.?

7. Learned Counsel for the appellants has submitted that the first appellate Court has committed a serious error of law by holding that two of the objectors, Haji Ismail and Hamid Khan, were necessary parties to the appeal filed before Joint Charity Commissioner and that for nonjoinder of parties, the appeal was liable to be dismissed. He submits that the objection as regards the non-joinder of these parties in view of the provisions of Rules 9 and 13, Order 1, Civil Procedure Code, ought to have been taken at the earliest possible opportunity and having not taken, the objection of non-joinder was deemed to have been waived. He further submits that these two objectors in the inquiry held in respect of the change report by Assistant Charity Commissioner had, in the course of their respective cross-examinations, denied their signatures on the objection vide Exhibit 2 and also the Vakalatnama and, therefore, it ought to have been held by the first appellate Court that these two persons had in fact not objected to the change report and, as such, were not necessary parties.

8. Learned Counsel further submits that the first appellate Court misconstrued the order of remand dated 14/12/2010 passed in Second Appeal No. 230/2010 by the learned Single Judge of this Court directing the learned District Judge to consider the issue whether Haji Ismail and Hamid Khan were necessary parties to the appeal filed before the Joint Charity Commissioner or not. He submits that when the High Court directed the learned District Judge to consider this issue, it only meant that it was to be considered and adjudicated upon in accordance with law. He also submits that there has been no failure of justice occasioned by non-joinder of said two persons, who had in fact denied their signatures on the

objection and had thus impliedly admitted the change report.

9. Learned Counsel for respondents no. 1 and 2 has submitted that the conclusion reached by the first appellate Court that Haji Ismail and Hamid Khan were necessary parties is absolutely in accordance with well settled principles of law. He submits that there is a distinction between a proper party and necessary party and the provisions as contained in Rules 9 and 13 of Order 1, Civil Procedure Code, are required to be considered in the light of difference between these two categories of parties and also whether any failure of justice is going to be occasioned by non-joinder of the party. He submits that if a party is a necessary party due to whose non-joinder there is a miscarriage of justice, the objection as to nonjoinder can be raised even at a later stage, as it would be an objection of law. He submits that the order dated 18/08/2008 rejecting the change report passed by the Assistant Charity Commissioner was common and inseparable and, therefore, such an order in appeal could have been either reversed or upheld against all the parties and it could not have been reversed as against only some of the parties.

10. Learned Counsel further submits that the order of rejection of the change report operated against the appellants and in favour of all the seven objectors and when in the appeal filed u/s 70 of BPT Act, the two of the objectors, Haji Ismail and Hamid Khan, were left out from the array of respondents, the order passed by the Joint Charity Commissioner allowing the appeal, amounted to accepting the change report only in respect of the five objectors and resulted in confirming of the order of the Assistant Charity Commissioner operating in favour of the remaining two objectors, Haji Ismail and Hamid Khan. He, therefore, submits that the said two objectors were necessary parties, non-joinder of whom resulted in failure of justice and, therefore, no fault could be found with the conclusion reached in this regard by the first appellate Court.

11. The learned District Judge-1, Yavatmal in his order impugned herein has held that two objectors, Haji Ismail and Hamid Khan, were necessary parties to the appeal. The finding so recorded by the learned District Judge has to be viewed from the context in which it has been recorded. The context is not of as to when the objection as regards nonjoinder should have been taken. The context is of an order of the Assistant Charity Commissioner rejecting change report of respondent no. 1 on the objections taken by seven objectors, which order has been challenged by filing an appeal u/s 70 of the BPT Act as against only five objectors, leaving apart two objectors having order of rejection of the change report in their favour. This was the factual scenario which gave rise to a question of law-whether such an order could be set aside against some of the objectors only while it is confirmed against the remaining objectors?, to be decided by the appellate Court, in the light of the law laid down by the Hon''ble Supreme Court in the case of Rajeswari Amma and another Vs. Joseph and another,

12. In the said case of Rajeswari Amma (supra), which was cited before the learned District Judge as well as this Court by learned Counsel for respondents

no. 1 & 2, the Hon''ble Apex Court has held that when there is a common and inseparable decree in favour of three persons, such decree in appeal filed against only two persons cannot be set aside only against two persons. It would be useful to refer to the observations of the Hon''ble Apex Court in this regard (page 160) which read thus:

"Since the order of delivery of possession in favour of the decree-holders is common and inseparable and since it has become final as against Neelamma, the High Court was not right in setting aside the order as against the appellants. No doubt, as rightly pointed out by the learned counsel for the respondents this contention was not raised before the High Court. But being a question of law, it is open to be raised and can be considered as the order is an inseparable one. Since the order against Neelamma had attained finality, we think that the High Court was not right in reversing the order of the executing court as against two respondents."

13. Same factual scenario being present in the instant case, the learned District Judge, rightly applied the ratio of the above referred case and recorded a finding that the two objectors, Haji Ismail and Hamid Khan, were necessary parties as without their impleadment, the learned Joint Charity Commissioner could not have set aside the order of the learned Assistant Charity Commissioner and accepted the change report.

14. If the learned District Judge had not held so, it would have resulted in an anomalous situation, where there would have been two conflicting decrees, one accepting the change report as against the five objectors and other rejecting the change report in favour of the two objectors. This being the question of law, even though not raised before the learned Joint Charity Commissioner in appeal filed u/s 70, BPT Act, it could have been raised in the appeal before the High Court. Therefore, the reference made to the provisions of Rules 9 and 13 of Order 1, CPC and also the case law referred to me by learned Counsel for the appellants in respect of these provisions, would not help the case of the appellants. The cases so referred to me by the learned Counsel for the appellants are as follows:

1. State of U.P. Vs. Ram Sawrup Saroj,
 2. Sri Ram Pasricha Vs. Jagannath and Others,
 3. Y.G. Chavan Vs. Parvatibai,
 4. Ukha Chamatya Bhil Vs. Chatursingh Bilji Bhil and Others,
 5. Ramchandra Jamnadas Katariya Vs. Nuruddinbhai Ali and Others,
 6. Addepalli Venkata Laxmi Vs. Ayinampudi Narasimha Rao and others,
 7. Choudhury Bhagaban Mahapatra and Another Vs. Palturam Singh and Another,
- These cases lay down principles that objection as regards nonjoinder of parties must be taken at the earliest possible opportunity and it cannot be permitted to

be raised for the first time before the appellate Court, unless it has occasioned failure of justice and that if the objection is not taken in any case at or before the settlement of the issues, it is deemed to be waived. As already said, the main issue involved in the case was a question of law with regard to power of the Court to set aside a decree, existing in favour of several persons, only against few of them, when the decree itself is common and inseparable, as held by the Hon'ble Apex Court in the case of *Rajeswari Amma & Anr. (supra)*. Such an objection is open to be raised and liable to be considered at the appellate stage, even when it was not taken earlier. Even in the case of *Firdous Omer (D) by LRs. and Others Vs. Bankim Chandra Daw (D) by LRs. and Others*, the Hon'ble Apex Court has laid down the same law when it held that in a proceeding challenging decree existing in favour of several persons, the Court cannot pass an inconsistent decree in the same proceeding by granting the decree to the other legal representatives of the plaintiffs, while the decree of dismissal as against one legal representative has become final.

15. Having regard to the law settled by the Hon'ble Apex Court on nonjoinder, I may state, the question of non-joinder of a party is also required to be examined from another point of view of the consequences it would entail in respect of the rights of the parties. In the case of *Ram Swarup Saroj (supra)*, the Hon'ble Apex Court, in paragraph 9, has held that the plea as to non-joinder of party cannot be permitted to be raised for the first time before the Hon'ble Apex Court, if the same was not taken before the High Court and had not occasioned a failure of justice. This case has been relied upon by the learned Counsel for the appellants, but it helps more the case of the respondents, than the case of the appellants. The reason being that without impleadment of two objectors, Haji Ismail and Hamid Khan, in the appeal proceedings before the learned Joint Charity Commissioner, no order of setting aside of the order of the Assistant Charity Commissioner could have been made against only five of the objectors, as the order of the Assistant Charity Commissioner operated commonly and inseparably in favour of all the seven objectors. So, the order passed by the learned Joint Charity Commissioner, in the absence of these two objectors, has occasioned a failure of justice and resultantly the objection of non-joinder could have been taken for the first time before the High Court or at the appellate stage.

16. Viewed in this way, the finding recorded by the learned Additional District Judge that these two objectors were necessary parties and for their non-joinder in the appeal before the learned Joint Charity Commissioner, the appeal was liable to be dismissed, cannot be found to be perverse or against any principle of law. The first substantial question of law is, therefore, answered as in the negative.

17. The next substantial question of law relates to what the learned Joint Charity Commissioner should have done regarding joining of the two objectors, Haji Ismail and Hamid Khan, in view of the provisions of Order 1 Rule 10 and Order 41 Rule 20, Civil Procedure Code.

18. Rule 20 Order 41 confers power upon the Court to adjourn hearing and direct a person appearing to be interested in the result of the appeal to be made respondent. Under Rule 10 Order 1, when it appears to the Court that the suit has been instituted in the name of wrong plaintiff or there is a doubt whether it has been instituted in the name of the right plaintiff and mistake is bonafide, the Court may, if it is satisfied that it is necessary to do so for determination of the real matter in dispute, order any other person to be substituted or added as plaintiff, upon such terms as the Court thinks just. Here the question involved was of addition of the two objectors as respondents and, therefore, provision of Rule 10 Order 1, would not come into picture. However, the provision of Rule 20 Order 41, would be relevant.

19. In the case of Salim Khan Bashir Khan V/s. Karamat Ali Hussain Ali in Second Appeal No. 25/2011, decided on 14/10/2011, by learned Single Judge of this Court, referred to me by the learned Counsel for the appellants, it has been observed that in the fact situation obtaining therein, the learned District Judge was under a duty to exercise his power under Rule 20 Order 41 and then to proceed to decide the matter on merits.

20. In the case of Notified Area Committee Buria Vs. Gobind Ram Lachhman Dass and Others, referred to me by learned Counsel for the appellants, Full Bench of the High Court of Punjab, has held that no inflexible rule of interpretation of the words "interested in the result of the appeal" in order 41 Rule 21 can be stated and it has to be decided in the facts and circumstances of each particular case.

21. In the case of Paras Ram Vs. Maharaj Ekling Singhji and Others, referred to me by learned Counsel for respondents no. 1 & 2, the Division Bench of Rajasthan High Court has interpreted the expression "interested in the result of the appeal" as meaning a person, who is to be affected by any decree or order to be passed in the appeal and not otherwise and that the interest must be determined with reference to a time when he is not brought on record. It is further explained that it cannot be accepted that such a party continues to have any interest in the appeal, if the decree in his favour had become final by reason of an appeal not having been presented against it.

22. In the case of Ammukutty Amma and Another Vs. Madhavi Amma, referred to me by learned Counsel for respondents no. 1 & 2, Full Bench of Kerala High Court has taken a similar view as in the case of Paras Ram (supra). It is held that a person who is "interested in the result of the appeal" is the person against whom right of appeal has not become barred by limitation.

23. In case of Ch. Surat Singh (Dead) and Others Vs. Manohar Lal and Others, referred to me by learned Counsel for respondents no. 1 & 2, the Hon"ble Apex Court has held that an application for impleadment of a necessary party made before the Supreme Court at a belated stage giving no reasons could not be allowed. This case does not throw any light on the issue, whether a person

against whom right of appeal has become time barred can be impleaded as a party or not, which issue is involved herein, and, therefore, may not be of any assistance to us.

24. It is clear from the principles enunciated in the above referred cases that the appellate Court has the power to direct impleadment of a party as respondent, if it is satisfied that such party is interested in the result of the appeal and that the expression "interested in the result of the appeal" has to be understood with reference to the time for which the party was not impleaded as a respondent. In other words, a person cannot be impleaded as a party respondent in exercise of power under Rule 20 Order 41, if the remedy of appeal against that party is barred by limitation.

25. In the instant case, it appears that necessity of impleadment of the two objectors was not brought to the notice of the learned Joint Charity Commissioner and it was argued only before the High Court in Second Appeal No. 230/2010. The order of Assistant Charity Commissioner was passed on 18/08/2008 and it was set aside by the Joint Charity Commissioner on 30/07/2009, which was challenged in M.J.C. No. 42/2009 before Additional District Judge, Yavatmal. The said application was dismissed by the Additional District Judge by his order dated 20/01/2010, which order was challenged before the High Court in Second Appeal No. 230/2010. This Second Appeal was disposed of by this Court on 14/12/2010, by directing the remand of the case to the Additional District Judge, Yavatmal for a decision afresh on merits. In the remand order, this Court also directed the learned Additional District Judge to consider as to whether or not said two objectors were necessary parties to the appeal filed before the Joint Charity Commissioner. So, from 18/08/2008 till filing of the Second Appeal in the year 2010, no question as regards impleadment of the said two objectors came up for consideration and the result was that the order passed on 18/08/2008 became final with remedy against it getting barred by limitation, so far as these two objectors were concerned. Therefore, applying the above referred principles of law, it has to be said that these two objectors were no longer the parties interested in the result of the appeal. As such, there was no scope for their being considered to have been joined as party respondents in the proceedings before the lower Courts. Even the learned Joint Charity Commissioner at the time of deciding the appeal no. 42/2009, which appeal was decided by him on 30/07/2009 could not have exercised the power under Rule 20 Order 41 directing impleadment of these objectors, with the remedy of appeal available against them having become barred by limitation. The second substantial question of law, therefore, is answered as in the negative.

26. If the remedy of appeal against the two objectors, Haji Ismail and Hamid Khan, has become barred by law of limitation, question of granting any permission to implead the objectors as party respondents in the proceedings before the lower Courts by relegating the matter to them would not arise. No doubt, this Court has adequate power to remand the case to the lower Court

under Order 41 Rule 23A as held in the case of Setu Madhavrao Vs. Food Corporation of India, referred to me by the learned Counsel for the appellants, but the question of remand would not arise as the objectors, for the reasons stated earlier, cannot be impleaded at this belated stage. The third substantial question of law is, therefore, answered as in the negative.

27. This takes me to the fourth and fifth substantial questions of law which relate to the findings recorded by the first appellate Court and Assistant Charity Commissioner with regard to commission of fraud and forgery while ignoring conduct of the objectors in denying their signatures on objection and Vakalatnama.

28. Learned Counsel for the appellants has submitted that without giving specific details of the fraud, forgery and fabrication of documents, the first appellate Court and the Assistant Charity Commissioner should not have held that there was substance in the case of the objectors that the reporting trustee committed fraud and forgery while holding the meeting for electing the Managing Committee on 12/10/2002. He also submits that these Courts have wrongly placed burden upon the appellants to prove the case that there was no fraud or fabrication of documents committed by the appellants in holding of the meeting on 12/10/2002 as the averments in this regard were made by the objectors. He has also submitted that conduct of the objectors who denied their signatures on objection (exhibit 2) to the change report and Vakalatnama should have been appropriately considered by the first appellate Court and the Assistant Charity Commissioner before coming to conclusion that the appellant could not prove service of notice upon the objectors.

29. Learned Counsel for respondents no. 1 & 2, on the other hand, submits that both the Courts below have appropriately considered the conduct of the objectors, who denied their signatures on the objection and the Vakalatnama and have arrived at right conclusions. He further submits that since it was the case of the appellants that notices for the meeting scheduled to be held on 12/10/2002 were issued to all the thirteen trustees and that at least nine of the trustees who were present in the meeting held on 12/10/2002, had signed the proceeding book and this case was specifically denied by the objectors, it was for the reporting trustee to prove his case. He submits that if the objectors while denying their signatures on the notices and also in the proceeding book, had stated that the signatures appearing on these documents were fabricated and fraud was committed, no further details as to how the forgery or fraud was committed, were required to be given inasmuch as they were not within the knowledge of the objectors. Therefore, the burden of proof in this regard was rightly placed upon the appellants and no infirmity in the conclusion drawn in this regard by the first appellate Court as well as the Assistant Charity Commissioner could be seen, so submits the learned Counsel.

30. As regards the contention that the allegation of fraud and forgery should have been supported by giving specific details of the fraud and forgery, I am of

the view that these allegations were only incidental to the denial of signatures of the objectors on the copies of the notice and in the proceeding book and, therefore, it was not necessary for the objectors to give any further details in support of the said allegations. It would have been a different case if the objectors had admitted their signatures on the documents and had contended that signatures were obtained by fraud. Such being not the case here and the case being of only denial of the signatures coupled with the allegation that the signatures were forged and fabricated, it was not necessary for the objectors to have given further specifics in support of the main allegation of the denial of the signatures.

31. As regards the contention that burden of proof should not have been placed upon the reporting trustee to disprove allegation of fraud and forgery, I must say that here also the appellants are not right. The appellants had come to the Court with the case of service of notice of the meeting upon the objectors and it was the case of the objectors that they did not receive the notice and that their signatures appearing on the copies of the notice and in the proceeding book were forged. In such a case, it becomes necessary for the parties i.e. the appellants, who propounded the documents to prove them by showing that the signatures appearing thereon were genuine and not forged or fabricated. In this regard, I would like to draw support from the observations of the Hon''ble Apex Court in the case of Thiruvengada Pillai Vs. Navaneethammal and Another, referred to me by learned Counsel for respondents no. 1 & 2, appearing in paragraph 19 of the judgment. The Hon''ble Apex Court has observed thus:

"....The first appellate Court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate Court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative."

The ratio of the above referred case squarely applies to the facts of the instant case and, therefore, I find no substance in the argument canvassed in this behalf on behalf of the appellants.

32. In view of the above, fourth substantial question of law is answered as in the negative.

33. The last contention of the appellants is with regard to the effect of conduct of the objectors, Haji Ismail and Hamid Khan, upon the overall defence of the objectors that they never received the notice of the meeting. According to the learned Counsel for the appellants, this conduct which was disclosed from their denial of their signatures appearing on the objection (exhibit 2) and Vakalatnama indicated that either they had no objection to the change report filed by the

reporting trustee or they were not trustworthy witnesses whose version in the examination-in-chief that they did not receive notice of the meeting deserved outright rejection.

34. Learned Counsel for respondents no. 1 & 2 disagrees and submits that stray admissions of witnesses cannot be read in isolation and used for drawing convenient inferences. He submits that evidence has to be considered in its entirety, which is what has been done by the learned Assistant Charity Commissioner in giving his finding that notice was not received by the objectors. This finding has been confirmed by the first appellate Court, the final fact finding Court and it being based upon evidence available on record cannot be interfered with in Second Appeal, so further submits learned Counsel for respondents no. 1 & 2.

35. On a careful perusal of the order of the learned Assistant Charity Commissioner, I find that learned Counsel for respondents no. 1 & 2, is right when he submits that the learned Assistant Charity Commissioner upon overall consideration of the evidence available on record has concluded that notice of the meeting was not received by the objectors. This finding is based upon the evidence available on record and is not the result of ignorance of any material evidence on record or consideration of any extraneous material. It has also been confirmed by the first appellate Court. Therefore, the fifth substantial question of law does not arise at all for its consideration and it is answered accordingly.

36. Even assuming, just for the sake of argument, that the said substantial question of law does arise and the Courts of Assistant Charity Commissioner and District Judge have ignored the conduct of the two objectors, still the finding concurrently recorded by them that notice of the meeting was not received by the objectors can not be interfered with by this Court in exercise of its power u/s 100, Civil Procedure Code, as it is based upon the consideration of entire evidence available on record and is not perverse. Only because another view is possible, it would not be open to this Court exercising jurisdiction in Second Appeal to substitute the view of lower Courts by its own view, unless the view taken is so absurd that it cannot be taken at all. Such is not the case here. Law in this regard is well settled and it has been developed to the extent that even an erroneous finding of fact, howsoever grave in nature, as long as it is based upon consideration of evidence on record, could not be interfered with in Second Appeal. Useful reference in this regard could be made to the law laid down by the Hon'ble Apex Court in the cases referred to me by learned Counsel for respondents no. 1 & 2. These cases are of Ram Prasad Rajak Vs. Nand Kumar and BOrs. and Another, , Pakeerappa Rai Vs. Seethamma (Dead) by LRs and Others, and Christopher Barla Vs. Basudev Naik (D) by Lrs.,

37. In view of the above, the appeal deserves to be dismissed. In the result, the appeal stands dismissed. In the circumstances of the case, there shall be no order as to costs. Decree be drawn up accordingly.