
(2011) 04 BOM CK 0054

In the Bombay High Court

Case No : Civil Revision Application No. 45 of 2011

Shri Datta Deosthan Trust

APPELLANT

Vs

Shri Milind Govind Kshirsagar and Others

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 19, 50, 79

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 92

Citation : (2011) 5 ALLMR 165 : (2011) 4 BomCR 156 : (2011) 3 CivCC 819 :
(2011) 4 MhLj 763

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : L.V. Anturkar, holding for, S.V. Natu, for the Appellant; V.S. Bedre, A.S. Bajaj and A.P. Bhandari, for the Respondent

Judgement

R.M. Borde, J.—In view of the statement made by counsel for the Petitioner that he does not want to press the instant revision application as against the Respondent No. 2, the name of Respondent No. 2 is deleted.

2. Rule. Rule made returnable forthwith. With consent of the parties, Revision Application is taken up for final disposal at admission stage.

3. Heard arguments advanced by the counsel for respective parties.

4. The Petitioner, original Defendant No. 1 is raising exception to the order passed by the learned Civil Judge, Senior Division, Ahmednagar on 10.1.2011 in an application below Exh.20 in R.C.S. No. 197 of 2006. An application tendered by the Petitioner (hereinafter referred to as "Defendant No. 1") requesting for rejection of plaint as contemplated by Order 7 Rule 11 of CPC has been turned down by the trial court. Respondent No. 1 (hereinafter referred to as "the Plaintiff") instituted R.C.S. No. 197 of 2006 claiming a decree of injunction against Defendants restraining them or anybody claiming through them from interfering in the right of the Plaintiff in respect of performance of -of idols as

well as clamping restraint orders against Defendants restraining them from prohibiting the Plaintiff from entering in the premises noted in para 1-A and 1-B of the plaint. The Plaintiff claims that he belongs to Kshirsagar family and has been appointed as "Shebait" and has been authorized to perform Pooja and other religious activities in respect of family idols. It is not necessary to go into contentions raised in the plaint in detail. Suffice it to state that as pleaded in the plaint, he is ascertaining his private civil right in respect of performance of in respect of idols situate at the premises referred to in para 1-A and 1-B of the plaint.

5. The Defendants resisted the contentions raised by the Plaintiff by filing written statement. The Defendants also presented an application requesting the trial court to reject the plaint in view of bar contained in Section 50 Clause 4 of Bombay Public Trust Act, 1950 (hereinafter referred to as "the Trust Act"). According to the Defendants, the Plaintiff has not obtained sanction of the Charity Commissioner as contemplated by Section 51 of the Trust Act prior to institution of suit and as such the suit is barred by law i.e. provisions of the Trust Act and the objections raised by the Defendants, according to him squarely falls within Order 7 Rule 11 (d) of CPC. Initially, the trial court rejected the application tendered by the Defendant. Another application below Exh.5 tendered by the Plaintiff seeking temporary injunction against the Defendants was allowed by the trial court and both the orders passed by the trial court were subject matter of challenge in Civil Revision Application No. 77 of 2006, which came to be heard and disposed of by this Court in view of order dated 28.2.2007. While disposing of said Civil Revision Application, this Court permitted the trial court to give option to the Plaintiff to choose or elect either to seek permission of the Charity Commissioner as contemplated under the Trust Act, if he wants to proceed against the trust and question its management and working or to restrict challenge to private civil rights. The order passed by the trial court on application below Exh.5 as well as application Exh.20, were set aside in its entirety and matter was remanded to the trial court for adjudication of application presented by Defendant No. 1 under Order 7 Rule 11 as well as application presented under Order 39 Rule 1 of CPC in accordance with the observations made by the court in the judgment. The order passed by the learned single Judge of this Court was also subject matter of review application No. 4955 of 2007 at the instance of the Plaintiff. However, the review application tendered by the Plaintiff came to be rejected in view of order passed by this Court on 7.10.2009 thereby maintaining order passed by the court earlier on 28.2.2007.

6. After remand of the matter, application tendered by Defendant No. 1 was taken up by the trial court for consideration. The Plaintiff also presented an application requesting the Court to permit him to delete certain portion appearing in para 16 of the plaint. The trial court permitted the Plaintiff to effect deletion as requested by him in view of order passed below Exh.70 on 13.1.2010. Defendant No. 1 was not satisfied with the deletion of portion appearing in para 16 of the plaint, which according to the Defendant No. 1 are

merely cosmetic changes and as such tendered an application repeating his request for rejection of plaint on account of non compliance of the order passed in Civil Revision Application No. 77 of 2006. According to Defendant, there are certain other contentions raised in the plaint, which relates to the management and working of the Trust. If Plaintiff wants to proceed with the plaint maintaining contentions raised therein, which according to Plaintiff relates to the functioning and administration of the trust, it would be necessary for the Plaintiff to secure permission of the Charity Commissioner as contemplated by provisions of the trust Act and in absence of such permission, the suit is not entertainable and as such the plaint is liable to be rejected in view of provisions of order 7 Rule 11 of CPC. The trial court directed Defendant No. 1 to clarify as to which of the contentions according to the Defendant relate to administration and management of the Trust and which would require observance of mandate contained in the Trust Act in relation to securing permission of the Charity Commissioner. The Defendant presented pursis at Exh.88 and informed the court that contents noted in para 1-A and B, para 7 as well as contentions raised in para 9, 10 and 12 in its entirety, so also certain portion included in prayer clause para 22-A necessitates permission of the Charity Commissioner, as those contentions relate to functioning and administration of the Trust.

7. The trial court after considering rival contentions raised by the parties was pleased to hold that the contentions raised by the Plaintiff in plaint relate to exercise of his private civil rights which do not warrant permission of the charity Commissioner. The trial court has also having regard to objection raised by Defendant directed the Plaintiff to restrict himself to his private rights only, instead of directing rejection of plaint.

8. Learned Counsel appearing for the Petitioner has contended that plaint as it stands intermixes private civil rights of the Plaintiff with the contentions relating to administration and working of the Trust. According to Defendant, it is not open for the trial court or even for this Court to traverse beyond the order passed earlier in Civil Revision Application No. 77 of 2006 and reconsider the findings recorded by this Court relating to intermixing of the private civil rights by the Plaintiff in the plaint. In effect, it is the contentions of the Defendants that it would not be open for the trial court as well as this Court to proceed to examine as to whether the contentions raised in the plaint, if taken at its face value, in fact relate to private civil rights of the Plaintiff or are in respect of administration and management of the Trust or relating to functions which are required to be discharged by Defendant No. 1. It is also contended by Defendants that trial court or even this Court has no power to restrain the Plaintiff and direct him to restrict his claim to private civil rights only. Issuance of such direction is beyond competence of the trial court. It is thus contended that as the Plaintiff has failed to comply with mandatory observations/directions issued by this Court while dealing with Civil Revision Application No. 77 of 2006, the trial court had no other option but to reject the plaint.

9. In order to appreciate the contentions raised by the Defendant, I have gone through the pleadings contained in the plaint. Description of suit property finds place in para 1-A and 1-B of the plaint. The Plaintiff is claiming his entitlement of performance of in respect of idols placed in a temple situate at property as described in para 1 of the plaint. The Plaintiff is also claiming his entitlement in relation to performance of Pooja and other religious functions in relation to proposed temple to be constructed on final plot No. 127 and 130 described in para 1-B of the plaint.

10. On perusal of the prayers made in the plaint as well as on consideration of description of property contained in para 1-A and 1-B of the plaint, it is clear that the Plaintiff is asserting his entitlement of performance of Pooja and other religious functions in respect of idols placed in a temple situate at property described in para 1-A of the plaint as well as in respect of performance of Pooja and other religious ceremonies in relation to idols which would be put in the proposed temple to be constructed on the property described in para 1-B of the plaint. It is thus clear that the Plaintiff is asserting his entitlement in relation to performance of Pooja and other religious ceremonies in respect of idols. It is contended that in para 1-A of the plaint there is recital in respect of right of access to the property described in the said paragraph but the right claimed is only for limited purpose of performance of Pooja as has been clarified by the Plaintiff.

11. It is contended by the Defendant that Plaintiff is asserting his right in respect of performance of Pooja and other religious ceremonies on the basis of deed of endowment executed by Govind Krishnaji Kshirsagar in his favour on 30.7.1996. It is contended that the Plaintiff is appointed as "Shebait" in respect of family idols and he cannot claim any right of performance of Pooja and other religious ceremonies in respect of idols, which would be placed in the temple which is proposed to be constructed by the Trust. In order to appreciate the contentions raised by Defendant No. 1, it would be necessary for the trial court to record evidence of the parties and only after recording of evidence and appreciation of the same, it can be determined as to whether the Plaintiff shall have any right or entitlement of performance of Pooja in relation to idols which would be installed in proposed temple. The fact however, remains that Plaintiff is claiming his entitlement in respect of performance of Pooja, which is obviously a private civil right and in order to enquire into entitlement of the Plaintiff to exercise his private civil rights, permission of the Charity Commissioner is not required.

12. This Court while dealing with Civil Revision Application No. 77 of 2006 has observed that the Plaintiff has surreptitiously added certain aspects which can be attached to the work of the Trust and as such this Court while deciding the said Revision Application gave option to the Plaintiff to delete the portion which requires permission of Charity Commissioner. The Plaintiff has accordingly exercised his option and deleted the portion, which according to him, and also to the satisfaction of the trial court, relates to administration of the Trust.

13. Reference is inevitable to the judgment of the Apex Court in the matter of Church of North India Vs. Lavajibhai Ratanjibhai and Others, . In para 41 of the said judgment, it is observed thus:

41. The same however, would not mean that in a given case if the court has the jurisdiction to determine a part of the relief claimed, it will not confine itself thereto to reject the plaint in its entirety. For the purpose of determination of question as to whether the suit is barred, the averments made in the plaint are germane.

14. In Vinayaka Dev Idagunji and Ors. v. Shivaram and Ors. 2005 SAR (Civil) 673, the dispute was relating to right of hereditary "archaks" (Pujari) in a temple and a share in the offering made to the deity. The Defendant in the said case took a plea that relief claimed would be barred by Section 50 of the Trust Act. While considering the issue involved arising out of the facts in the aforesaid matter, the Apex Court in para 14 observed thus:

14. 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.

It would be relevant to refer to the judgment of the Apex Court in case of Sahebgouda (dead) by Lrs. and Others Vs. Ogeppa and Others, . The matter was concerning a suit for declaration by Pujaries in respect of pujariki right i.e. right of performance of Pooja and decree of injunction was sought restraining the Defendants from interfering in the aforesaid rights and objection was taken by Defendants as regards maintainability of civil suit in view of bar contained in Trust Act. However, while turning down objection, the Apex Court held that the suit did not come within ambit of Section 19 and 79 of the Act which give

jurisdiction to the Assistant Charity Commissioner to decide certain issues like existence of public trust or whether the property is Trust property. The Apex Court recorded that the suit relate to asserting of private civil rights and as such is entertainable without requiring the Plaintiffs to secure the permission of the Charity Commissioner. A reference can also be made to a judgment in the matter of *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*, . The relevant observations of the Apex Court are quoted thus:

What is required in law is not the piecemeal reading of the plaint but in its entirety. Whether the reliefs would be granted on the pleaded facts and the evidence adduced is totally different from the relief claimed. All the reliefs claimed may not be allowed to a party on the pleadings and the evidence adduced. Whether part of the relief cannot be granted by the Civil Court is a different matter from saying that because of a combined claim of reliefs the jurisdiction is ousted or no cause of action is disclosed. Considering the reliefs claimed vis-a-vis the pleadings would not mean compartmentalization or segregation. However, if the Plaintiffs want to relinquish some reliefs prayer in that regard shall be done before the trial court.

15. It is not requirement of law nor is it necessary to read the contentions noted in the plaint in piecemeal. However, those are required to be considered in its entirety. It is the contentions of the Plaintiff that averments made in para 9, 10 and 11 are necessary to be raised for proper determination of the controversy arising between the parties before the court. According to the Plaintiff, contentions raised in the aforesaid paragraphs are "material facts". The facts which are necessary to formulate a complete cause of action are required to be stated. Omission of single material fact leads to incomplete cause of action and statement of claim. According to the Plaintiff facts stated in para Nos. 9, 10 and 11 are "material facts".

16. So far as the objection raised by Defendant No. 1 as regards the permissibility of the trial court to issue directions to the Plaintiff to restrict himself to his private civil rights only, in my opinion, the civil court dealing with the trial of the proceedings can very well ensure that the Plaintiff restrict his case to the issues which are triable by the civil court. In this context, the observations of the Apex Court contained in para 98 of the judgment in the matter of *Church of North India (supra)* are relevant, which reads thus:

98 ...The civil court will have no jurisdiction in relation to a matter where over the statutory authorities have the requisite jurisdiction. On the other hand, if a question arises, which is outside the purview of the Act or in relation to a matter, unconnected with a administration or possession of the trust property, the civil court may have jurisdiction.

17. In *Sopan Sukhdeo's* case the dispute related to continuance of tenancy, terms of tenancy and period of tenancy of Appellants. The other reliefs claimed require permission of Charity Commissioner u/s 51 of the Trust Act. Trial Court

proceeded to reject plaint considering bar contained in Section 51 of the Trust Act. The apex Court while setting aside order of rejection of plaint ruled that main dispute raised in suit falls within ambit of enquiry of Civil Court. The apex Court while permitting Plaintiff to present application as warranted in law for relinquishing or giving up claim of other reliefs also issued directions to Civil Court that adjudication in the suit would be restricted to the question of tenancy, terms of tenancy and period of tenancy only. In the instant matter also, Plaintiff has taken steps to delete the part of pleadings which according to Plaintiff as well as to the satisfaction of trial court is beyond scope of enquiry by Civil Court. The Civil Court has also rightly directed Plaintiff to restrict his claim in respect of only such issues which are triable by Civil Court.

18. In this view of the matter, I do not find that the trial court has traversed beyond its jurisdiction in directing the Plaintiff to restrict himself to his private civil rights only.

19. For the reasons recorded above, Civil Revision Application does not call for any interference. The order passed by the trial court is legal and proper and thus stands confirmed. Civil Revision Application is dismissed. Rule discharged. In the facts and circumstances of this case, there shall be no order as to costs.

20. It is brought to my notice that issues in the matter are framed on 30.11.2006. The suit pertains to the year 2006, as such it would be appropriate to direct the trial court to decide the suit as expeditiously as possible and preferably by the end of year 2011. Order accordingly.

21. At this stage, counsel appearing for Defendant No. 1 requested for continuation of interim relief for further period so as to enable Defendant No. 1 to avail of the appropriate remedies. Considering the reasons recorded above and considering the facts that the suit pertains to the year 2006 and is yet pending in spite of framing of issues by trial court in 2006 itself, I do not deem it necessary to grant request and continue interim stay. Request made therefore stands rejected.