

(1971) 02 BOM CK 0016

In the Bombay High Court

Case No : Civil Revision Application No. 238 of 1970

The Charity Commissioner, (M.S.), Bombay

APPELLANT

Vs

Syed Yasin and Others

RESPONDENT

Date of Decision : 23-02-1971

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 16, 16(1), 16(2), 2(4)

Bombay Public Trusts Act, 1950 — Section 50, 72

Civil Procedure Code, 1908 (CPC) — Section 17, 26

Citation : AIR 1971 Bom 314 : (1971) MhLj 611

Hon'ble Judges : Bhole, J

Bench : Single Bench

Advocate : C.S. Dharmadhikari, Addl. Govt. Pleader, for the Appellant; M.W. Samudra and M.P. Deshmukh, for the Respondent

Judgement

1. Being aggrieved by the order passed by the Joint District Judge, Akola, in an appeal, the Charity Commissioner of the State of Maharashtra, has come here in revision.

2. The plaintiffs Syed Yasin and Hussainkhan had filed a suit u/s 50 of the Bombay Public Trusts Act in the Court of the District Judge. Akola, with a prayer that some of the trustees of Naigaon Masjid Trust, Akola should be removed, and they also wanted a direction for appointment of new trustees. There were other incidental prayers. This suit was filed in the District Court and the District Judge transferred the suit for disposal to the Assistant Judge, Akola. The learned Assistant Judge dismissed the suit and, therefore the plaintiffs filed an appeal before the District Judge. A preliminary objection on behalf of the applicant here was raised as to the tenability of the appeal. The learned Joint District Judge rejected the preliminary objection and ordered the appeal to proceed. This revision was heard by my learned brother Mr. Justice Chandurkar on 8th and 9th of October, 1970.

3. A question whether a suit u/s 50 of the Bombay Public Trusts Act can be

transferred to the Assistant Judge was also raised there. It was not possible for my learned brother to ascertain from the record how the suit was transferred to the Assistant Judge for trial. In order therefore to know whether the suit was in fact properly transferred, a report was called from the District Judge, Akola, as to how the suit was transferred by him and on what date the order for transfer was passed. We have now received the report of the District Judge, Akola. The District Judge, Akola, had by an order dated 10th of June, 1968 transferred certain civil matters including Civil Suit No. 1 of 1967 which is the subject-matter of this revision to the Assistant Judge, Akola, for disposal according to law. This order appeared to be u/s 16 of the Bombay Civil Courts Act where-under the District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter did not exceed Rs. 15,000/-. The Assistant Judge u/s 16 shall have jurisdiction to try such suits and to dispose of such applications,

4. It is now contended on behalf of the applicant that the learned Joint District Judge should have seen that he had no jurisdiction to entertain the appeal before him as it should have been filed, according to the learned Additional Government Pleader, in the High Court. It is further contended that although the subject-matter in dispute was valued at Rs. 1,000/- the plaintiffs have also stated in their plaint that they were not able to state the pecuniary value of the subject matter in dispute and, therefore, it was incumbent on the learned District Judge to enquire about the correct value of the subject-matter of the dispute before entertaining any appeal. Now, let us, therefore, see what exactly has happened in the Courts below.

5. The plaintiffs have admittedly filed this suit u/s 50 of the Bombay Public Trusts Act and valued for the purposes of court-fee a fixed fee of Rs. 30/- and for the purposes of jurisdiction Rs. 1,000/-. The applicant here has given his written statement in the court below at Exh. 27 but did not raise any objection to the jurisdiction of the Court. Although the plaintiffs after valuing for the purposes of jurisdiction at Rs. 1,000/- have stated in para 11 of their plaint that it was not possible for them to state the pecuniary value of the reliefs claimed, and therefore, it was not possible to state the pecuniary value of the suit, nothing was said by the applicant here in his written statement. The other defendants have also in so far as para 11 of the plaint is concerned have merely mentioned that the contents of this para are formal and therefore need not be replied. It is, therefore, clear from the record that neither the applicant here nor the other defendants have raised any objection to the value of Rs. 1,000/- in the plaint for the purposes of jurisdiction. This Court, therefore, cannot allow the applicant to raise any such contentions now at this stage of the proceedings.

6. The only point therefore that remains for consideration is whether the appeal from the order passed by the Assistant Judge lies to the District Judge or whether it lies to the High Court.

7. We are admittedly concerned with a suit relating to a public trust u/s 50 of the Bombay Public Trusts Act. Under this section, the Charity Commissioner after

making such enquiry as he thinks necessary or two or more persons having an interest in the trust and 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 reliefs mentioned in the section. The expression "Court" in section 50 is also defined in Section 2(4) of the said Act. Under this section "Court" means in the Greater Bombay, the City Civil Court and elsewhere the District Court. Therefore suits relating to public trusts u/s 50 have to be instituted in the District Court. The instant suit was also instituted in the District Court. The learned District Judge, after it was instituted, transferred amongst other civil matters also the instant civil suit No. 1 of 1967 to the Court of Assistant Judge. Akola, for disposal on 10th of June 1968. This he did u/s 16 of the Bombay Civil Courts Act.

8. Section 16 of the Bombay Civil Courts Act is as follows:--

"16. The District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter does not amount to fifteen thousand rupees in amount or value application or reference under special Acts, and miscellaneous applications.

The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications or references.

Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds ten thousand rupees."

9. The language of Section 16 clearly shows that the District Judge can transfer to any Assistant Judge original suits of which the subject-matter does not amount to fifteen thousand rupees in amount or value. We have seen that the plaintiffs have valued their civil suit for the purposes of jurisdiction at Rs. 1,000/-. No objection was raised to this, value. The District Judge therefore can properly transfer this suit u/s 16 of the Bombay Civil Courts Act to the Assistant Judge who also has jurisdiction to try such suits and to dispose of such suits.

10. Now under the scheme of the Bombay Civil Courts Act, there shall be in each district a District Court presided over by the District Judge. The District Judge shall ordinarily hold the district court at the said station in the district but may with the previous sanction of the High Court hold it elsewhere within the district. The District Court also under the scheme is the principal court of original civil jurisdiction in the district within the meaning of the Code of Civil Procedure, Moreover, except as provided in Sections 16, 17 and 26, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which the appeal lies under any law for the time being in force. The scheme of the said Act also contemplates appointment of the District Judge or the Assistant Judge by the State Government in any district to be also a joint

Judge in another district. The State Government also may appoint one or more Assistants to the District Judge, and they are the Assistant Judges. The Assistant Judges have to ordinarily hold their courts at the same place as the District Judge, but the Assistant Judge may also hold his Court elsewhere within the District whenever the District Judge shall with the previous sanction of the High Court direct him so to do. Therefore, the District Judge as well as the Assistant Judges constitute the District Court which is the principal court of the original civil jurisdiction in the district within the meaning of the Civil Procedure Code. u/s 2(4) of the Civil Procedure Code, "district" means the local limits of the jurisdiction of principal Civil Court of original jurisdiction hereinafter called a "District Court" and includes the local limits of the ordinary original civil jurisdiction of also a High Court. Therefore, under the scheme of the Bombay Civil Courts Act, there is only one District Court and the Assistant Judges attached to this Court are only all Assistants to the District Court. When therefore a suit is instituted u/s 50 of the Bombay Public Trusts Act in the District Court, the District Judge u/s 16 of the Bombay Civil Courts Act may transfer to any Assistant Judge subordinate to him such original suits of which the subject-matter does not amount to fifteen thousand rupees. It appears to me, therefore, that the transfer by the District Judge to the Assistant Judge for disposal of this suit is quite legal and proper.

11. Now, turning to the principal question as to whether the appeal against the order of the Assistant Judge lies before the District Judge or the High Court, we have to look again at Section 16 of the Bombay Civil Courts Act. u/s 16, where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge if the amount or value of the subject-matter does not exceed ten thousand rupees. Such an appeal will lie to the High Court only when the amount or value of the subject-matter exceeds ten thousand rupees. We have seen that the plaintiffs have valued the subject-matter at Rs. 1,000/-. No objection to this value was taken either by the applicant here nor by any other party in the suit before the Assistant Judge. It was also not taken before the District Judge when the preliminary objection to the maintainability of the appeal was raised by the Charity Commissioner. The ground given in the preliminary objection was that the jurisdiction of the Assistant Judge, Akola, was concurrent to that of the District Judge and when the suit was dismissed by the Assistant Judge, The appeal therefore would lie only to the High Court. The objection was therefore that the District Judge has no jurisdiction to try the appeal. Therefore, even in this preliminary objection before the learned District Judge where the appeal, was filed, no objection was taken as to the amount or value of the subject-matter. In that event, u/s 16 of the Bombay Civil Courts Act, the appeal would lie only to the District Judge and not to the High Court because the value of the subject-matter of the instant suit does not exceed ten thousand rupees.

12. A point is also raised here as to the competency of the Assistant Judge in disposing of the suit u/s 50 of the Bombay Public Trusts Act. It is contended that

the suit could only be heard and disposed of by the District Judge who constituted the District Court and the learned Assistant Judge was not competent to hear the application. It is contended that the Assistant Judge could not be said to constitute the District Court and that the application could not therefore be heard by the Assistant judge. It does not however appear to me that this contention is correct because of the scheme of the Bombay Civil Courts Act.

13. In *Dahyabhai v. Suleman Isaji*, (1962) 3 Guj LR 877, the Gujarat High Court was dealing with Section 72 of the Bombay Public Trusts Act and Section 16 of the Civil Courts Act. That High Court was dealing with the question as to what constituted the District Court. It was also held by that Court that once an application was made to the District Judge, the District Judge can refer such applications to an Assistant Judge subordinate to him u/s 16(1) of the Bombay Civil Courts Act and the Assistant Judge has jurisdiction to dispose of such applications under Sub-section (2) of that section.

14. For the aforesaid reasons, therefore, this revision application cannot be entertained. I, therefore, confirm the order of the learned Joint District Judge and dismiss this revision application with costs.

15. Revision dismissed.