

(2014) 07 BOM CK 0288
In the Bombay High Court
Case No : Second Appeal No. 309 of 2013

Vasantrao Ganpatrao Gurjar

APPELLANT

Vs

Jyoti Deepakrao Bhople

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Citation : (2014) 5 ABR 479

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : R.S. Parsodkar, Advocate for the Appellant; A.M. Ghare, Advocate for the Respondent

Judgement

A.B. Chaudhari, J.—Being aggrieved by the Judgment and Decree dated 24th January, 2013 passed by District Judge-12, Nagpur, in Regular Civil Appeal No. 240 of 2008, and order dated 22nd March, 2013 passed in Misc. Civil Application No. 155 of 2013 for review, the present Second Appeal has been filed by the original plaintiff. Regular Civil Appeal No. 240 of 2008 was filed by the original defendants before the District Judge, Nagpur, against the Judgment and Decree dated 30th March, 2007 passed by Second Joint Civil Judge (Senior Division), Nagpur, in Special Civil Suit No. 1630 of 1998 for specific performance of contract. In the said appeal, Adv. Mr. R.S. Parsodkar appeared for respondent, i.e., original plaintiff Vasantrao Gurjar and also filed Written Notes of Arguments under his signature.

MENT AND DEC Heard. Admit. Taken up for final disposal with the consent of the rival parties.

1A. Counsel for the parties were heard at length on the last date and the matter was adjourned only to make the order.

2. It is not in dispute that when originally the scheme was framed in the year 1970 for the religious Trust in question, following clauses, namely Clauses 7, 9 and 17 were inserted in the Scheme. Those Clauses read thus:--

7. Number of Trustees:-- Number of Trustees shall be not less than seven and not more than Nine. At least two Trustees shall be salaried officers of Government but not more than two Trustees shall be salaried officers of Government. The Civil Judge, Junior Division, Saoner, and the Tahsildar, Saoner shall always be the two Trustees as salaried officers of Government.

9. Tenure of Trusteeship and mode of appointment after the expiry of the term or during.....vacancies:--(a) All the Trustees excluding the salaried Govt. servants i.e., the Civil Judge Jr. Div., Saoner and Tahsildar Saoner, shall held the office for a period of three years after the expiry of the term of office, fresh appointment shall be made by the District Judge, Nagpur, in appointing the new Trustees, the District Judge shall call the recommendations of the Civil Judge, Jr. Division, Saoner and Tahsildar Saoner. After considering those recommendations the District Judge may appoint such persons as are deemed fit to be the Trustees. All the Trustees to be appointed under the scheme shall be adult members and having faith in deity and believing in the worship of Lord Ganesh.

(b) In case of death, resignation or expulsion of any of the Trustees excluding the two salaried Govt. Servants, a vacancy may be filled in by the District Judge, Nagpur, in accordance with the principles referred to above.

17. Chairman of the meeting: The Civil Judge, Jr. Division, Saoner, shall be ex-officio Chairman at every meeting of the Trustees at which he is present. If Civil Judge, Jr. Div. Saoner, shall be absent, the Tahsildar, Saoner, shall be the Ex-officio of that meeting if he is present in that meeting. If the Tahsildar Saoner shall be absent, the managing Trustee shall be Chairman at the Meetings of the Trustees. If the Managing Trustee also shall be absent the other Trustees who are present at such meeting shall elect one of themselves as Chairman as such meetings of the Trustees.

3. Thereafter, due to reorganization of Talukas, the Trusts temple and properties fell in Kalmeshwar Taluka in place of the earlier Taluka Saoner. Therefore, an application was made for making a change of Taluka in the Scheme and consequently, Civil Judge (Junior Division) and Tahsildar. The matter went to the District Court and the District Court reversed the order of Deputy Charity Commissioner, who had effected the change from Saoner to Kalmeshwar and also had given a new scheme, consequently providing also for the elections and so and so forth. However, Mr. Sunil Manohar, learned Senior Counsel with Mr. Abhyankar for the appellants, submitted that except for change of Taluka from Saoner to Kalmeshwar, he is not claiming any other reliefs in respect of other aspects and they can be left open for being adjudicated, if necessary, in future. The District Judge has given a reason for doing so in para 43 of his judgment, which reads as under:--

43. After perusing this reason to frame the new scheme or modify the existing scheme which is not sufficient reason to frame the scheme or modify the existing scheme. This reason is not expectable and proper to accept the proposed scheme

or modify the existing scheme. Changing the Taluka and Deosthan come in Kalmeshwar Taluka now which was previously in Saoner Taluka, it is technical reason and meaningless. Nobody can restrain to become a trustee than Taluka of Kalmeshwar. A person having interest in Deosthan should be a trustee either he may from Kalmeshwar Taluka, Saoner Taluka or throughout Nagpur district or from elsewhere because after appointed him as trustee he has to administer the work of Deosthan according to provisions. It is against the interest of said person who having interest in the work of administration of trust. Therefore, a reason the trustees required from Kalmeshwar Taluka is not proper in the interest of justice and in the interest of proper administration or management of Deosthan.

4. Upon hearing learned counsel for the rival parties and upon perusal of the said reason recorded by the learned District Judge, this Court is astonished to see the same and hence the following Substantial Question of Law, particularly because Mr. Manohar has not pressed for other reliefs:--

Answer

Whether the reasoning adopted by the learned District Judge in para 43 of his judgment that change of Taluka on coming into existence of Kalmeshwar as a separate and independent Taluka, it having been carved out from Saoner Taluka and it is not necessary to effect the said change in the Scheme is perverse and absurd?

.... Yes.

5. It is not in dispute that earlier before reorganization of talukas, the Trust and its property fell in Saoner Taluka and that is why in the scheme that was framed in the year 1970, Civil Judge (Junior Division), Saoner, or Tahsildar, Saoner, were mentioned as the persons in the Board of Trustees. After reorganization of Talukas, it is also not in dispute that the Trust and its property have now gone in Kalmeshwar Taluka and, therefore, Civil Judge (Junior Division) and Tahsildar, Kalmeshwar obviously will have jurisdiction over the said area it being within their territorial jurisdiction. However, the District Judge has called it a technical aspect. The reason is perverse and absurd. Civil Judge (Junior Division), Kalmeshwar and Tahsildar, Kalmeshwar will exercise powers conferred on them under various laws, and if Saoner Taluka is treated as the territorial jurisdiction, there is bound to be a conflict here and there. It is only because of reorganization of Talukas, the request was made for changing the Taluka and for a change from Civil Judge (Junior Division), Saoner, to Civil Judge (Junior Division), Kalmeshwar and that was perfectly a justified application, which was rightly allowed. The powers to be exercised by Tahsildar or by Civil Judge (Junior Division) in respect of the matters falling within their jurisdiction cannot be exercised by Tahsildar, Saoner, once the territorial jurisdiction of Saoner having been placed into Taluka of Kalmeshwar. Therefore, in my opinion, the reason given by the learned District Judge is neither legal nor proper. The question is, therefore, will have to be answered accordingly.

6. Mr. Manohar then submitted that the old scheme has been completely substituted by the Deputy Charity Commissioner. But under the impugned Judgment and Order, the District Judge has reversed that order of Deputy Charity Commissioner, with the result that the old scheme sans Tahsildar, Kalmeshwar and Civil Judge (Junior Division), Kalmeshwar, is retained by the District Judge. That being so, the Judgment and Order made by the District Judge will have to be modified. Hence I make the following order:--

ORDER

(a) Second Appeal No. 467 of 2013 is allowed.

(b) The observations made in para 43 (quoted above) by the District Judge-7, Nagpur, in the impugned Judgment and Order dated 28th October, 2013, in Regular Civil Application No. 7 of 2013 are modified with the substitutions as under:--

(d) Rest of the Judgment and Order made by the District Judge is maintained.

(e) Parties are at liberty to apply.

(f) Since, originally the District Judge was empowered to constitute the board, District Judge is expected to constitute the new board in accordance with law.

In the circumstances of the case, there shall be no order as to costs.