

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 127 OF 2014
WITH
CIVIL APPLICATION NO. 11717 OF 2013

1. Uttam s/o. Vithalrao Tekale,
Age 50 years, Occu. Agriculture,
R/o. Pimplgaon Dola Tq. Kallamb
Dist. Osmanabad.
2. Balaji s/o. Parasram Pawar,
Age 45 years, Occu. Agriculture,
3. Baliram s/o. Shilivan Gujar,
Age 48 years, Occu. Agriculture,
4. Shrinivas s/o. Shrikrishna Giri,
Age 40 years, Occu. Agriculture,

All R/o. Karanjikalla, Tq. Kallamb,
Dist. Osmanabad.

**....Appellants.
Third party**

Versus

1. Rajabhau s/o. Sopan Shelke,
Age 36 years, Occu. Agriculture,
R/o. Karanjikalla, Tq. Kallam,
Dist. Osmanabad.
2. Rameshwar s/o. Sureshrao Jadhav,
Age 38 years, Occu. Agriculture,
R/o. Diksal, Tq. Kallam,
Dist. Osmanabad.
3. Pandurang s/o. Gunwantrao Kumbhar,
Age 43 years, Occu. Service,
R/o. Kalpana Nagar, Kallam,
Tq. Kallam, Dist. Osmanabad.
4. Subhash s/o. Ramdas Pawar,
Age 40 years, Occu. Service,
R/o. Purvalota, Tq. Kallam,
Dist. Osmanabad.

**....Respondents.
Ori. plaintiffs.**

5. Nanasaheb s/o. Abusha Pawar,
Age 39 years, Occu. Agriculture,
R/o. Kalpana Nagar, Kallam,
Tq. Kallam, Dist. Osmanabad.
6. Baliram s/o. Shantiling Gujar,
Age 53 years, Occu. Agriculture,
R/o. Karanjalla, Tq. Kallam,
Dist. Osmanabad.
7. Rajabhau s/o. Uttam Pawar,
Age 37 years, Occu. Agriculture,
R/o. Karanjalla, Tq. Kallam,
Dist. Osmanabad.
8. Dhamjeet Shripati Randive,
Age 41 years, Occu. Service,
R/o. Kalpana Nagar, Kallam,
Tq. Kallam, Dist. Osmanabad.
9. Mohammad Mohiddin Khan,
Age 40 years, Occu. Agriculture,
R/o. Kalpana Nagar, Kallamb,
Tq. Kallamb, Dist. Osmanabad.
10. Taufik Abdul Gafur Mulla,
Age 40 years, Occu. Service,
R/o. Baba Nagar, Kallam,
Tq. Kallam, Dist. Osmanabad.
11. Sau. Mangal Kisan Dashwant,
Age 43 years, Occu. Household,
R/o. Pimpalgaon (D), Tq. Kallam,
Dist. Osmanabad.
12. Assistant Charity Commissioner,
Office Samarth Nagar,
Osmanabad.

**....Respondents.
Ori. Defendants**

Mr. V.D. Salunke, Advocate for appellants.

Mr. N.P. Patil-Jamalpurkar, Advocate for respondent Nos. 1 to 5,
7, 10, 11.

Mr. P.N. Mule, AGP for respondent No. 12.

CORAM : T.V. NALAWADE, J.

DATED : 8th July, 2015.

JUDGMENT :

1) Appeal is **admitted**. Notice after admission is made returnable forthwith. Both the sides are heard for final disposal.

2) The appeal is filed to challenge the judgment and decree of District Court, Osmanabad given in Trust Suit No. 1/2004. The District Court has accepted the scheme submitted by the plaintiffs in respect of Sant Goroba Kaka Shikshan Prasarak Mandal, Karanjkala and further directions and further relief are given that defendant Nos. 1 to 3, 5, 8 and 9 are to look after the management of the trust. In the suit, there was contention of present respondents (original plaintiffs and defendants) that defendants of the suit were trustees and office bearers of the trust. It was contended that the plaintiffs were also trustees and they were in the managing committee. It was contended that though there was scheme already framed, it had become necessary to make some amendment in the scheme to specify the powers of the office bearers of the trust. The defendants did not file written statement and so, the relief was granted as prayed in the plaint.

3) It is the case of appellants that they were the trustees of the aforesaid trust and neither the plaintiffs nor the defendants of the said trust were trustees at the relevant time, but by making false contentions and behind the back of the trustees on the record, approval is obtained by the plaintiffs of the said suit, present defendants to a scheme. It is contended that it was a collusive suit and exparte decree was obtained.

4) It is contended in the appeal and it was also submitted by the learned counsel for the appellants that the District Court has no power to prepare or approve the scheme. On the other hand, the learned counsel for original plaintiffs submitted that the present appeal is not tenable.

5) The learned counsel for respondents placed reliance on the case reported as **2008 (4) Bom.C.R. 617 (Division Bench) [Khojeste Mistree & Ors. Vs. Minoo Rustomji Shroff & Ors.]**. In this case, the provision of section 50 of the Bombay Public Trust Act, 1950 is considered and it is observed that the 'Court' has jurisdiction to frame the scheme and sanction the same. There is no force on the ground taken on this point by the appellants. The provision of section 72 of the Act

shows that if the decision amounts to decree, appeal lies to High Court and so, there is no force on the ground of tenability taken by the plaintiffs, present respondents.

6) The record is produced like orders made on change report submitted and the schedule with regard to changes noted in the office of Assistant Charity Commissioner. It appears that by filing change report bearing No. 432/97, the side of plaintiffs of the suit had requested to enter the names of members of new managing body. It was contended that elections had taken place. In the order made by the Assistant Charity Commissioner in the year 2011, the developments which took place and the litigations between the parties are discussed. The record shows that the aforesaid change report was approved on 16.1.1998, but this order was challenged by present appellants and the Joint Charity Commissioner set aside the order of Assistant Charity Commissioner and order was made to consider afresh the matter. This order was challenged again by filing proceeding in District Court, but District Court dismissed the proceeding and order was given to comply the order of Joint Charity Commissioner. Ultimately, in the year 2011, the authority held that the change report submitted by the side of present respondents/plaintiffs need to be rejected.

7) The record shows that prior to 1996-97 Suresh Tekale and others, the side of the appellants, were working as managing trustees. Only due to change report given by aforesaid Pawar, their names were removed. As ultimately the matter was decided in favour of appellants, their names were restored as managing trustees. On this point, a submission was made by the learned counsel for original plaintiffs that the term of previous body had expired and it was necessary to take elections and as elections were not held, it cannot be said that the trustees who were managing the trust prior to 1996-97 continued to manage the trust afterwards also. This submission made by the learned counsel for original plaintiffs, present respondents cannot be accepted as the fact remains that on record the present appellants were shown as trustees, who were managing the affairs of the trust. Admittedly, they were not made parties to the suit filed in District Court. It cannot be disputed that they have the right to say something about the change in the scheme which includes the specification of power of office bearer of the trust. Without hearing them, the scheme proposed by the plaintiffs, who were not managing the trust, is accepted by the District Court. This decision of the District Court cannot sustain in law.

8) In the result, the appeal is allowed. The judgment and decree of District Court is set aside. The matter is remanded back to the District Court for fresh decision in which the present appellants will be entitled to file the written statement and raise all the contentions, defences in the suit. The District Court is to decide the matter within six months from the date of decision of this matter. Parties to appear in District Court on 10.8.2015.

9) In view of the decision of the appeal, the application filed for stay does not survive and disposed of accordingly.

[T.V. NALAWADE, J.]

SSC/