

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO.91 OF 2007**

Shri Siddivinayak Mandir,
A Trust registered under Indian
Trust Act, having its office at
Pairaband, Cuncolim, Salcete, Goa,
represented by its President,
Mr. Samir Naik, major in age,
Residing at House No.2507,
Marcut, Cuncolim, Salcete-Goa.

.... Appellant

V/s

- 1 Shri Bharat Mahadev Naik,
son of Mahadev Naik,
45 years, residing at House
No.2/A, Corojem, Cuncolim,
Salcete Goa.
- 1(a) Smt. Bhagyashree Bharat
Naik, widow of late Bharat
Mahadev Naik, Age 46
years.
- 1(b) Ashitosh Bharat Naik,
Son of late Bharat Mahadev
Naik, Age 12 years.
- 1(c) Ankitesh Bharat Naik,
Son of late Bharat Mahadev
Naik, age 6 years,
I(b) and 1(c) are represented
herein through their guardian
Smt. Bhagyashree Bharat
Naik,
All residents of House
No.2508/A, Corojem,
Cuncolim, Salcete Goa.

- 2 Shri Videsh Antu Naik,
Son of Antu Naik, 35 years,
residing at House No.2,
Corojem, Cuncolim, Salcete
Goa.
- 3 Shri Babusso Naik,
son of Krishna Naik, 34
years, Residing at House
No.28, Pairaband, Cuncolim,
Salcete Goa.
- 4 Shri Ajay Naik,
son of Kashinath Naik,
31 years of age,
residing at House No.19,
Paira Band, Cuncolim,
Salcete Goa.

.... Respondents

Mr. V. Menezes and Mr. A. Shirodkar, Advocates for the Appellant.

Mr. D. Pangam, Advocate for Respondent No.1.

CORAM : F.M. REIS, J.

DATE : 18th DECEMBER, 2015

ORAL JUDGMENT :

Heard Mr. V. Menezes, the learned Counsel appearing for the appellant and Mr. D. Pangam, the learned Counsel appearing for the respondent no.1.

2. The above appeal came to be admitted by order dated 19/11/2007 on the following substantial questions of law:

A. Whether the appellate Court was right in holding that the plaintiff was not covered by the provisions of the Indian Trust Act, 1882 and could not maintain a suit for recovery of money from any person on that basis?

B. Whether the appellate court committed an error of law in holding that the provisions of section 92 CPC barred the plaintiff/appellant from maintaining its suit for recovery of money before the Civil Judge and further whether the appropriate Court for filing such a suit was the District Court at Margao.

C. Whether, in the light of the finding that the suit was not maintainable in the Court of the Civil Judge Senior Division, Margao due to want of jurisdiction, the appellate court committed error of law in dismissing the suit, when it was required to return the plaint for presentation before the appropriate Court.

Thereafter, an additional substantial question of law came to be framed pursuant to an order dated 29/10/2015 which reads thus:

(1) Whether the suit filed by the Appellants itself is maintainable as all Trustees have not been made parties to the suit?

3. Mr. V. Menezes, the learned Counsel appearing for the appellant has pointed out that the amount which is claimed in the suit are the amounts collected by the original respondent, who has now expired, much before the constitution of the subject Trust. The learned Counsel further pointed out that as such amounts can be treated to be the property of the Trust, the appellant was entitled to file a suit to recover such

amount. The learned Counsel further submits that both the Courts below have come to the conclusion that in fact the deceased respondent had collected the money and, as such, the Trust was entitled to receive such amount. The learned Counsel further submits that the Lower Appellate Court has allowed the appeal preferred by the respondents only on the ground that as the Trust was a public Trust such suit had to be filed before the District Court in terms of Section 92 of the Civil Procedure Code. The learned Counsel further submits that even assuming the view of the Lower Appellate Court is to be accepted there was no question of dismissing the suit, but however, the plaint filed by the appellant had to be returned. The learned Counsel further points out that considering the concurrent finding of fact arrived at by the Courts below and as the subject Trust is not a public Trust, the finding of the learned Judge to the effect that the Trial Court had no jurisdiction to entertain the suit deserves to be quashed and set aside. The learned Counsel further submits that in any event in terms of Section 92 of the Civil Procedure Code, only specific types of suits are to be filed before the learned District Court and considering the nature of the suit filed by the appellant, such suit would not come within the ambit of the provisions of Section 92 of the Civil Procedure Code. The learned Counsel, as such, points out that the substantial questions of law framed by this Court are

to be answered in favour of the appellant.

4. On the other hand, Mr. D. Pangam the learned Counsel appearing for the respondent no.1 has submitted that even assuming that the subject Trust is not a public Trust, it cannot be disputed that the Trust was a religious Trust. The learned Counsel has taken me through the terms of the constitution of such Trust to point out that it was constituted for a religious purpose. The learned Counsel further submits that even on perusal of some of the terms of the Trust, it clearly shows that the Trust was for the benefit of the public at large and, consequently, the finding of the Lower Appellate Court to that effect cannot be said to be erroneous. The learned Counsel further submits that the contention of Mr. V. Menezes, the learned Counsel appearing for the appellant that the suit filed by the appellant does not fit into the suits specified in Section 92 of the Civil Procedure Code is also erroneous as according to him in terms of Section 92(1)(h) of the Civil Procedure Code any recovery or any relief sought by any person against the Trust has to be filed before the District Court. The learned Counsel, as such, points out that there is no error committed by the learned Judge whilst coming to such conclusion. The learned Counsel further submits that in any event the alleged recovery is on the basis of some amount received by the deceased

respondent much before the constitution of the Trust. The learned Counsel has thereafter taken me through the constitution of the Trust to point out that such amounts were not taken as the property of the Trust. The learned Counsel further points out that only a sum of Rs.10,000/- was treated as property of the Trust whilst constituting the subject Trust. The learned Counsel has also pointed out that even the alleged authority produced on record show that the suit has not been properly filed as the purported resolution has not been passed by the Board of Trustees of the subject Trust but by the Committee of the Devasthan which according to him has nothing to do with the subject Trust. The learned Counsel has thereafter taken me through the alleged resolution to point out that such resolution does not entitle the appellant to file the present suit. The learned Counsel, as such, submits that there is no merit in the appeal which deserves to be rejected.

5. I have considered the submissions of the learned Counsel and have also gone through the records. Without going into the merits of the rival contentions one of the aspects which would be material to examine is whether the learned Judge was justified to come to the conclusion that in terms of Section 92 of the Civil Procedure Code, the learned Trial Court had no jurisdiction to decide the suit. Section 92(1) reads thus:

92. Public charities.- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree-

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme, or
- (h) granting such further or other relief as the nature of the case may require.

On perusal of the said provisions and taking note of the findings of the learned Appellate Court that the subject trust was a religious trust

which otherwise is disputed by Mr. V. Menezes, learned counsel appearing for the appellant, the suit has not been filed in the Court of the original jurisdiction as stipulated therein.

6. In the present case, the alleged claim of the appellant is to claim an alleged property of the subject Trust and, as such, such suit had to be filed before the learned District Court. Though there were rival contentions to point out that the Trust was not a public Trust, nevertheless, the fact that the Trust was a religious Trust has not been disputed by Mr. Menezes, the learned Counsel appearing for the appellant. Hence, on this basis alone, without going into the aspect as to whether the alleged Trust is a public Trust or not the suit filed by the appellant could not be filed before the learned Civil Judge, Senior Division, but had to be filed before the learned District Judge. In this connection, once the Court has come to the conclusion that it had no jurisdiction to decide the suit, it was incumbent upon the Lower Appellate Court to direct the learned Trial Judge to return the plaint to enable the appellant to file such plaint before an appropriate Court. Considering that this contention was not raised before the Trial Court, I find that the learned judge was not justified to dismiss the suit without ordering to return the plaint to the appellant. The third substantial

question is answered accordingly.

7. In view of the finding arrived at whilst deciding the substantial question of law (C) the question of going into the other substantial questions of law framed by this Court would not at all be necessary.

8. Though Mr. Pangam, the learned Counsel appearing for the respondent no.1 has strenuously argued that the suit itself is not maintainable as according to him all the Trustees have not been made parties thereof nor the person who has filed the suit was not duly authorised to file such suit, I find that the question of going into such aspect in the present Second Appeal would not at all be justified. As such contentions were not raised before the Trial Court all the contentions of Mr. Pangam, the learned Counsel, are left open to be examined before the appropriate Court having jurisdiction in case the appellant chooses to pursue with the suit filed by the appellant.

9. In view of the above, I pass the following order;

O R D E R

(i) The appeal is partly allowed.

(ii) The impugned judgment dated 11/06/2007 passed by the Lower Appellate Court stands

modified and the learned Trial Judge is directed to return the plaint to the appellant to enable the appellant to file the plaint before the appropriate Court in accordance with law.

(iii) All contentions of both the parties on merits are left open.

(iv) The appeal stands disposed of accordingly with no order as to costs.

F.M. REIS, J.

NH/-