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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6933 OF 2015

Smt.Mangal Jitendra Shah and another ... Petitioners

Vs.

Shri Zopadi Ramdev Mandir Trust and others ... Respondents

Mr.Prabhakar Jadhav i/b Vishal L.Kolekar, Advocate for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 21st JULY, 2015

P.C. :

. Heard Mr.Prabhakar Jadhav, learned Counsel for the petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as defendants No.2 & 3 have challenged the judgment and order dated 07/10/2013 passed by the learned 3rd Joint Civil Judge, Senior Division, Pune in Misc. Application No. 627 of 2010. By that order, learned trial Judge allowed the application filed by respondents No. 1 to 3, hereinafter referred to plaintiffs and directed to submit original plaint which was returned to them from the Court for fulfilling the requirements under Sections 50 & 51 of Maharashtra Public Trusts Act (for short 'Act') in original Special Civil Suit No. 1461 of 2005 and after its receipt, same be restored to its original stage.

3. In support of this Petition, Mr.Jadhav submitted that Suit was instituted by the plaintiffs without obtaining permission of the Charity Commissioner as contemplated by provisions of the Act. Defendant No.1, therefore, filed application under Section 9-A of the Code of Civil Procedure, 1908 (for short 'C.P.C.') contending inter alia that plaintiff No.1 is a registered trust and plaintiffs No. 2 & 3 are the trustees. Defendant No.1 is also a trustee of the said trust. Under Section 50 of the Act, consent of the Charity Commissioner is necessary. Without obtaining prior consent of the Charity Commissioner, Suit is instituted and therefore is not maintainable. By order dated 27/02/2009, the learned trial Judge returned the plaint to the plaintiffs for fulfilling the requirements under Sections 50 & 51 of the Act. He submitted that thereafter on 17/03/2010, plaintiffs obtained permission of the Charity Commissioner and filed Misc. Application No. 627 of 2010 on or about 30/06/2010 for restoration of the Suit. He submitted that original Suit was instituted by the persons who are not the present plaintiffs. In other words, he submitted that Misc. Application filed by applicants is not maintainable as they have no locus to institute the proceedings. Secondly, it is also barred by limitation.

4. I have considered the submissions advanced by Mr.Jadhav. I have also perused the material on record. As noted earlier, defendant No.1 had earlier raised objection in Special Civil

Suit No. 1461 of 2005 on the ground that Suit was instituted without obtaining prior consent of the Charity Commissioner. By order dated 27/02/2009, the learned trial Judge ordered return of the plaint to the plaintiffs for fulfilling the requirements under Sections 50 & 51 of the Act. The said order was not challenged. It is not in dispute and is rather matter of record that consent of the Charity Commissioner was obtained on 17/03/2010 by the applicants- Ramesh Lohia and Ghanashyam Laddha to institute Suit for the reliefs as claimed. In pursuance thereof, Misc. Application was filed on 30/06/2010. Mr.Jadhav did not seriously dispute that applicants No. 2 & 3 namely Ramesh Vegaram Sharma and Shreegopal Shrikant Rathi are the trustees of plaintiff No.1 trust. I, therefore do not find any merit in the submission of Mr.Jadhav that they have no locus to maintain application. As noted earlier, they are the trustees as also Charity Commissioner gave them permission along with Ramesh Lohia and Ghanashyam Laddha to institute the Suit.

5. Mr.Jadhav further submitted that application is clearly barred by limitation. It is also not possible to accept his submission. Defendants No.2 & 3 did not challenge the order dated 27/02/2009 passed by the learned trial Judge. In pursuance of that order, permission was sought from the Charity Commissioner. On 17/03/2010, permission was granted and thereafter on 30/06/2010 Misc. Application for restoration was filed.

6. In view thereof, I do not find that the learned trial Judge committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)