

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.456 of 2015
(Mr. James Baker v. Lt. Col. A.M. Gnanakan and others),

Second Appeal No.457 of 2015
(Mr. James Baker v. Mr. Nitin J. Salve and others),

And

Second Appeal No.458 of 2015
(Mr. James Baker v. Rev. Dr. P.B. Amolik and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri G.S. Godbole i/b Shri S.M. Shettigar, Advocates for Appellants.

Smt. V.V. Thorat, Advocate i/b Shah Legal for Respondent Nos.1, 2 and 10.

Shri H. Toor i/b Shri Daljeet Singh Bhatia, Advocates for Respondent Nos.4, 6, 8 and 9.

Shri Ivor Peter D'Crus, Advocate for Respondent Nos.13, 14 and 16 to 20.

Coram : R.K. Deshpande, J.

Dated : 22nd June, 2015

Heard the learned counsels appearing for the parties.

Admit, on the following substantial question of law :

Whether the lower Appellate Court was right in setting aside the decision of the Joint Charity Commissioner

merely on the ground that some persons claiming to have an interest in the Trust were not joined as parties in the proceedings before the Joint Charity Commissioner, without going into the merits of the matter?

All the appellants before the lower Appellate Court and the original applicants before the Joint Charity Commissioner are served. The learned counsels waive service of notices. It is not necessary to serve the other parties, who have accepted the order of the Joint Charity Commissioner. Heard finally by consent of the learned counsels appearing for the parties.

The learned counsels appearing for the parties agree that the lower Appellate Court should have gone into the merits of the matter and the question of condemning the persons claiming to have an interest in the Trust did not arise. In view of this, the judgment and order passed by the lower Appellate Court cannot be sustained and it will have to be quashed and set aside with an order of remand.

In the result, the second appeals are allowed, holding that the lower Appellate Court was committed an error of law in setting aside the decision of the Joint Charity Commissioner solely on the ground that the persons claiming to have an interest in the Trust were not joined as parties to the proceedings before the Joint Charity Commissioner. The common judgment and order dated 27-3-2015 passed by the learned Judge, City Civil Court, Mumbai in Charity Applications No.1, 2 and 5 of 2013 is hereby quashed and set aside. The matter is remitted back to the lower Appellate Court to decide the same on its own merits. The lower Appellate Court may permit such persons claiming to have an interest in the Trust to appear and argue the matter as interveners. The parties are at liberty to move appropriate application for grant of interim relief, if any. The lower Appellate Court shall make an endeavour to decide the matter expeditiously.

The second appeals stand disposed of accordingly.

Judge.

Lanjewar