

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7187 OF 2013

**K Bhaskaran : Petitioner
versus
Suresh Chand Ramgopal Gupta and ors. : Respondents.**

Mr. G S Bhat for the Petitioner.

Mr. Suresh Chand Ramgopal Gupta – Respondent No.1 present in person.

CORAM : R. M. SAVANT, J.

DATE : 29th October 2015

ORAL ORDER

1 The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 17/06/2013 by which order the Trial Court has framed the following three issues :-

- 1] Does the Defendant No.1 prove that he is a trustee of defendant no.2?
- 2] Is he entitled for the relief claimed?
- 3] What order and decree?

2 The suit in question being S.C. Suit No.1735 of 2011 has been filed by the Respondent No.1 – original Plaintiff inter-alia for the following substantial reliefs :-

- (a) To declare by and decree that the defendant no.1 is not

a trustee of the defendant no.2 Trust

- (b) To declare by an order and decree that acts done by the defendant no.1 in respect of flat no.18 of Vijaya Vilas Building of Shri Krishna Madhav Trust i.e. defendant no.2 be declared as null and void”

In respect of the said prayers averments have been made in the plaint questioning the status of the Petitioner herein who is the Defendant No.1 to the suit as the trustee of the said Shri Krishna Madhav Trust. In the suit the Plaintiff seeks to rely upon various documents which according to him show that the Defendant No.1 is not the trustee of the said Shri Krishna Madhav Trust. The Plaintiff has also questioned the appointment of the Defendant No.1 as a trustee of the said Shri Krishna Madhav Trust as according to him the Defendant No.1 was never appointed as a trustee of the said Shri Krishna Madhav Trust and he is usurping the office of the trustee of the said Shri Krishna Madhav Trust.

3 In the said suit the Defendant No.1 i.e. the Petitioner herein has filed his written statement and has denied that he is not the trustee of the said Trust. He claims that he has been appointed as a trustee by the Chairman of the said Trust Shri Jyotiraditya Scindia. The Defendant No.1 has taken a stand that the issue as to whether who is a trustee of the said Trust can be gone into

only by the Charity Commissioner and that the City Civil Court does not have jurisdiction to go into the said aspect. The Defendant No.1 has also raised the issue of jurisdiction of the City Civil Court to try the suit.

4 In so far as the jurisdiction of the City Civil Court to try the suit is concerned, in view of the said issue raised by the Defendant No.1 in his written statement and the application filed by him under Section 9A of the Code of Civil Procedure, a preliminary issue to the following effect came to be framed :-

“Whether this Court has jurisdiction to try and entertain the suit”

The Trial Court i.e. the learned Judge of the City Civil Court by order dated 31/07/2012 decided the said preliminary issue and ruled that the City Civil Court has jurisdiction to try and entertain the suit. Hence in so far as the jurisdiction of the City Civil Court to try and entertain the suit is concerned, the same stands concluded and no issue therefore can be framed in that regard. However, the other issue whether the City Civil Court can grant reliefs which are sought by the Plaintiff in the suit still remains. The Trial Court as indicated above has framed three issues which have been adverted to herein above. In terms of Order XIV Rule 1 of the Code of Civil Procedure the issues are to be framed on the basis that material propositions of fact or law is affirmed by one party and denied by other party. What are the material proposition of law are

also explained in the said provision.

5 In my view, the City Civil Court in framing the said 3 issues has not taken into consideration the pleadings of the parties i.e. the plaint and the written statement. Though it is the case of the Plaintiff that the Defendant No.1 is usurping the position as the trustee of the said Trust, by the Issue No.1 which is framed the burden is sought to be placed on the Defendant No.1. This is only cited by way of one example. In my view, therefore, the issues framed by the impugned order dated 17/06/2013 would have to be quashed and set aside and are accordingly quashed and set aside and the matter is relegated back to the City Civil Court for framing of the issues de-novo. The City Civil Court to frame the issues by keeping in mind the mandate of Order XIV Rule 1 of the Code of Civil Procedure. It seems that the suit is to be listed before the City Civil Court on 03/11/2015. The City Civil Court would proceed to frame the issues on the said day or any other subsequent day as per its convenience. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]