

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9183 OF 2015**

Kantilal Mohanlal Shetiya	)	
Age 60 years Occ Business	)	
R/a, 39/1A+39/2/51	)	
Manik Baug Industrial Estate	)	
Vadgaon BK Sinhagad Road,	)	
Pune 411051	)	..Petitioner

Vs.

Smt. Smita Pradeep Shah	)	
Age 60 years Occ Business	)	
R/a 18 Raghupati,	)	
Shri Raghupati Co-op Hsg Soc.	)	
Opp Deepak Nitrate Ltd.,	)	
Sinhagad Road, Pune 411030	)	..Respondent

**WITH
WRIT PETITION NO. 9184 OF 2015**

Satish Madhav Kulkarni	)	
Age 60 years Occ Business	)	
R/a, 39/1A+39/2/51	)	
Manik Baug Industrial Estate	)	
Vadgaon BK Sinhagad Road,	)	
Pune 411051	)	..Petitioner

Vs.

Smt. Smita Pradeep Shah	)	
Age 60 years Occ Business	)	
R/a 18 Raghupati,	)	
Shri Raghupati Co-op Hsg Soc.	)	
Opp Deepak Nitrate Ltd.,	)	
Sinhagad Road, Pune 411030	)	..Respondent

**WITH
WRIT PETITION NO. 9185 OF 2015**

Satish Madhav Kulkarni	)	
Age 60 years Occ Business	)	
R/a, 39/1A+39/2/51	)	
Manik Baug Industrial Estate	)	
Vadgaon BK Sinhagad Road,	)	
Pune 411051	)	..Petitioner

Vs.

Smt. Smita Pradeep Shah	)	
Age 60 years Occ Business	)	
R/a 18 Raghupati,	)	
Shri Raghupati Co-op Hsg Soc.	)	
Opp Deepak Nitrate Ltd.,	)	
Sinhagad Road, Pune 411030	)	..Respondent

**WITH
WRIT PETITION NO. 9186 OF 2015**

Anil Gopal Rupade	)	
Age 60 years Occ Business	)	
R/a, 39/1A+39/2/51	)	
Manik Baug Industrial Estate	)	
Vadgaon BK Sinhagad Road,	)	
Pune 411051	)	..Petitioner

Vs.

Smt. Smita Pradeep Shah	)	
Age 60 years Occ Business	)	
R/a 18 Raghupati,	)	
Shri Raghupati Co-op Hsg Soc.	)	
Opp Deepak Nitrate Ltd.,	)	
Sinhagad Road, Pune 411030	)	..Respondent

**WITH
WRIT PETITION NO. 9187 OF 2015**

Milind M Raut	)	
Age 57 years Occ Business	)	
R/a, 39/1A+39/2/51	)	
Manik Baug Industrial Estate	)	
Vadgaon BK Sinhagad Road,	)	
Pune 411051	)	..Petitioner

Vs.

Smt. Smita Pradeep Shah	)	
Age 60 years Occ Business	)	
R/a 18 Raghupati,	)	
Shri Raghupati Co-op Hsg Soc.	)	
Opp Deepak Nitrate Ltd.,	)	
Sinhagad Road, Pune 411030	)	..Respondent

**WITH
WRIT PETITION NO. 9188 OF 2015**

Dhanashree Anil Rupade	)	
Age 54 years Occ Business	)	
R/a, 39/1A+39/2/51	)	
Manik Baug Industrial Estate	)	
Vadgaon BK Sinhagad Road,	)	
Pune 411051	)	..Petitioner

Vs.

Smt. Smita Pradeep Shah	)	
Age 60 years Occ Business	)	
R/a 18 Raghupati,	)	
Shri Raghupati Co-op Hsg Soc.	)	
Opp Deepak Nitrate Ltd.,	)	
Sinhagad Road, Pune 411030	)	..Respondent

Mr. Y. R. Mehta for the Petitioners in all the Petitions
Mr. M.J. Jamdar for the Respondent in all the Petitions

CORAM : R. M. SAVANT, J.
DATE : 3rd DECEMBER, 2015

ORAL JUDGMENT

1 Rule, having regard to the challenge raised in the above Petitions made returnable forthwith and heard.

2 The above Petitions taken exception to the judgment and orders all dated 20-7-2015 passed by the Lower Appellate Court i.e. the Learned District Judge-24, Pune, by which orders, the Appeals came to be partly allowed and resultantly the judgment and decree dated 13-1-2014 passed by the Trial Court i.e. the Learned Judge of the Small Causes Court, Pune, in Civil Suit No.146 of 2011, and the other Suits came to be modified to the extent mentioned in the operative part of the impugned order.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the matter had reached this Court by way of Writ Petition No.11232 of 2014 and companion matters. The challenge in the said Petitions was the order dated 10-11-2014 by which order, the Lower Appellate Court had held that the application filed by the Defendants for notice being issued to the Charity Commissioner under Section 56-B of the Bombay Public Trust Act, 1950, would be decided along with the Appeals. This course of action was required to be adopted in view of the fact that the Plaintiff was

asserting that the suit premises were that of the ownership of one Hirachand Shah whereas it was the case of the Defendants that it was the property of a trust as an endowment was made by the said Hirachand Shah in favour of the said trust. Section 56-B mandates that a notice is required to be given to the Charity Commissioner in respect of any Suit or legal proceeding involving question affecting a public, religious or charitable purpose. The said Writ Petitions came to be disposed of by a Learned Single Judge of this Court (N.M. Jamdar, J.) by order dated 29-4-2015 and in the context of the present Petitions, paragraph 4 of the said order is relevant and is reproduced hereinunder for the sake of ready reference :

“All that the learned District Judge has done by the impugned order is to defer the hearing of the application to be decided along with the main appeals. The learned District Judge has observed that, considering the rival contentions, the relief sought for in the applications is intermixed with the merits of the appeal and unless the matter is heard finally it will not be possible to decide the application in isolation. This is the discretion of the District Judge while conducting the appeals. It is not necessary to interfere with the impugned order as the applications are yet to be decided on merits. As regard the apprehension of the petitioners that the appeals will be decided without deciding the applications, it is unwarranted. The learned District Judge will no doubt decide the applications and appeals in such a manner to take care of the apprehension of the petitioners.”

4 Hence it has been observed in paragraph 4 that the adjudication of the application filed by the Defendants for notice being issued to the Charity Commissioner was deferred on the ground that the said reliefs sought by way of the applications is intermixed with the merits of the Appeals and unless the matter is heard finally, it will not be possible to decide the application in isolation. The apprehension expressed on behalf of the Petitioners has also been recorded in the said order and to assuage the said apprehension, the Learned Judge has observed that the Learned District Judge would no doubt decide the application in the Appeals in such a manner to take care of the apprehension of the Petitioners. It is after the said order dated 29-4-2015 was passed by the Learned Single Judge of this Court that the Appeals in question were taken up for hearing by the Lower Appellate Court i.e. the Learned District Judge. The Lower Appellate Court by the impugned judgment and orders which are all identical has decided the Appeals and as indicated above has modified the decree passed by the Trial Court to the extent mentioned in the operative part. However what is of significance in the context of the present Petitions is that the application filed by the Defendants has not been decided by the Lower Appellate Court and it is only the Appeals which have been decided wherein a finding has now been recorded that the property is not a trust property and is a property of the said Hirachand Shah and since the property is now bequeathed to the Respondent who is the daughter of the said Hirachand Shah, she has become the landlady and the Defendants are

therefore her tenants. The said judgment and orders passed by the Lower Appellate Court as indicated above are taken exception to by way of the above Petitions.

5 The principal contention of the Learned Counsel appearing on behalf of the Petitioners is that the mandate of the order dated 29-4-2015, has not been followed by the Lower Appellate Court in as much as the application has not been decided along with the Appeals and therefore is as yet pending.

6 Per contra the submissions of the Learned Counsel appearing on behalf of the Respondent in all the above Petitions is that though the application has not been decided, however in view of the findings recorded by the Lower Appellate Court the said issue no more survives for consideration and therefore there is no warrant to remand the matter back to the Lower Appellate Court for deciding the applications.

7 In my view, it is not possible to accept the said contention urged on behalf of the Respondent. The order dated 29-4-2015 expected the Lower Appellate Court i.e. the Learned District Judge to adjudicate upon the application filed by the Defendants along with the Appeals. In fact the said course of action propounded by the Lower Appellate Court was endorsed by this Court and the apprehension of the Petitioners in the said Writ Petitions

who are the Defendants in the Suit was sought to be assuaged by the observations made in the said order. It was therefore expected of the Lower Appellate Court that it would decide the said application. In my view it is not possible to accept the contention urged on behalf of the Respondent in the light of the order dated 29-4-2015. It is also required to be noted that the Lower Appellate Court had appreciated that the reliefs sought for in the application is intermixed with the merits of the Appeals and unless the matter is heard finally, it would not be possible to decide the application in isolation.

8 In my view therefore, it would be necessary for the Lower Appellate Court to decide the Appeals as well as the application together and the submissions urged on behalf of the Respondent to hold that the application is deemed to have been decided in view of the findings recorded by the Lower Appellate Court cannot be accepted. In that view of the matter the impugned judgment and orders all dated 20-7-2015 passed by the Lower Appellate Court are required to be quashed and set aside on the said limited ground and the matter is required to be relegated back to the Lower Appellate Court for a denovo consideration of the Appeals in the light of the order dated 29-4-2015 passed by the Learned Single Judge of this Court. On remand the parties to appear before the Lower Appellate Court on 17-12-2015. The Lower Appellate Court to thereafter carry out the exercise of deciding the Appeals latest by 31-1-2016.

9 The Petitions are allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petitions.

150 The parties to act upon a copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]