

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

CIVIL REVISION APPLICATION NO.1067 OF 2014

Shree Mathur Chaturvedi Dharamshala Trust,

a Public Trust

.. Applicant

Versus

Heeralal S/o Murlidhar Chaturvedi and others .. Respondents

Mr. Ankit Lohia with Ms. Neeta Parikh, Mr. Kiran Mohite & Ms. Disha Ponda, for the Applicant.

Mr. D. S. Chandnani, Advocate for Respondent No.1.

Mr. Rajan Pawar, AGP for Respondent No.4.

CORAM : R.M. SAVANT, J.

DATE : 30th JANUARY, 2015

PC.

1. Admit, considering the challenge raised in the above Civil Revision Application, taking up for hearing forthwith.

2. The revisionary jurisdiction of this Court is invoked against the order dated 20th June, 2014, passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order the Trial Court has ruled upon the preliminary issue of jurisdiction and has held that the said Court has jurisdiction to try and entertain the suit.

3. It is not necessary to burden this order with unnecessary details.

Suffice it to state that the suit being Long Cause Suit No.1893 of 2012 has been filed, wherein the substantive relief that is claimed is virtually the execution of the judgment and decree passed in Special Civil Suit No. 3590 of 1962 which was decreed by judgment and order dated 13th February, 1978 and consequentially to direct the Defendant No.1 i.e. present Petitioner and its alleged trustees and members to forthwith remove themselves from Chobe Bhavan situate at 69-E, Bhuleshwawr Road, C.S. No.2371, Mumbai-400 002 and forthwith return quiet, peaceful and vacant possession. The second relief sought is that the Defendant No.1 and anyone claiming through it doesn't have any right of any kind whatsoever, which not only constitutes contempt of this Hon'ble Court and Hon'ble Bombay High Court, but various offences mentioned above. The third relief sought is a declaration in view of the City Civil Court after full-fledged trial having held vide Exhibit H hereto that there doesn't exist any trust and the same having not been set aside by any competent Court, the registration of the Defendant No.1 as public trust by Defendant No.3 is illegal and malicious and therefore the orders relating thereof Exhibits Q, R and S hereto are nullity and the same may be set aside and quashed. There are other reliefs claimed however the same are not relevant in so far as the present Civil Revision Application is concerned. In so far as the decree passed in Special Civil Suit No.3590 of 1962 is concerned, the said

decree is inter-partes i.e. between the father of the present Plaintiff i.e. Respondent No.1 herein and his uncle's family and the dispute was in respect of Room No.1 in the said Chobe Bhavan as a manager. In the said suit, issues 11A and 11B were framed, which were to the following effect-

“(11-A) Whether the suit room belongs to a Public Trust.

(11-B) Whether the Public Trust is duly registered under Section 18 of the Bombay Public Trust Act.”

In so far as issue No.11A is concerned, the same was answered as “Not proved” and so far as issue No.11B is concerned, in view of answer to issue No.11A, the Trial court held that it does not survive and if finding necessary, not registered. The said decree it seems was carried carried by way of First Appeal to this Court by the Defendants in the said suit. In the said First Appeal, the Petitioner herein filed Civil Application No.4535 of 1991 for intervention in the said First Appeal. A Learned Single Judge of this Court (B. N. Shrikrishna, J. as his Lordship then was) passed the following order excerpt of which is reproduced herein under-

“The applicants have no concern with the litigation between the Appellants and Respondents the out come of this Appeal cannot obviously affect their rights, if any as member of the Choube Community or in the pending proceedings before Charity Commissioner.

Hence the Applicants cannot be made parties to the Appeal.”

Hence, the Learned Single Judge held that the Petitioners herein who were the Applicants have no concern with the litigation between the Appellants and Respondents in the said First Appeal.

4. The Applicants herein thereafter filed Charity Application No.2159 of 1978 for registration of the Trust and the said Choube Bhavan as the trust property. Suffice it to state that the said application came to be allowed by the Deputy Charity Commissioner by order dated 17.02.1990. The Deputy Charity Commissioner held that the Applicant No.1 herein is declared as a public trust under the provisions of the BPT Act in respect of the trust property which was mentioned in the application i.e. Choube Bhavan. Aggrieved by the said order dated 17.02.1990 by the Deputy Charity Commissioner, the Plaintiff and his father filed Appeal being 50 of 1990 before the Charity Commissioner under Section 72 of the BPT Act. The said Appeal came to be dismissed by the Charity Commissioner by order dated 12.11.1997 and resultantly the order dated 17.02.1990 passed by the Deputy Charity Commissioner came to be confirmed. The said order dated 12.11.1997 was challenged by the Appellant before the Charity Commissioner by filing Charity Application No.3 of 1998 before the Bombay City Civil Court. The Learned Judge of the Bombay City Civil Court by her order dated 23rd April, 1998 dismissed the said Charity Application by her order dated 23.04.1998 and confirmed the orders by

the Deputy Charity Commissioner and the Charity Commissioner holding that Choube Bhavan is a public Trust and is the trust property of the Trust is in question. There are certain other findings recorded by the Learned Judge which are also germane to the adjudication of the preliminary issues which have been raised by the Applicants in the suit filed by the Respondent No.1. However, this Court does not deem it necessary to refer to the said findings as the parties can urge them at the appropriate stage before the Trial Court. Against the order dated 23.04.1998 the Applicants before the City Civil Court filed First Appeal in this Court being First Appeal No.1117 of 1998 which First Appeal has been admitted. However, the orders passed by the Deputy Charity Commissioner has confirmed by the Charity Commissioner and the Learned Judge of the City Civil Court have not been stayed.

5. It is also required to be noted that the Plaintiff had filed a suit based on title in this Court being Suit No.3513 of 2000 against the Applicants. The said suit came to be withdrawn by the Plaintiff on 8th October, 2009 and the order passed by the Learned Single Judge of this Court discloses that no liberty was sought for neither any liberty was granted to file a fresh suit. It is thereafter that the instant suit has been filed for the reliefs which have been adverted to in the earlier part of this order. The Applicant herein who is the Defendant No.1 in the said suit

filed Notice of Motion No.3610 of 2012 seeking framing of the preliminary issues. In the Affidavit in Support of the said Motion, the Defendant No.1 has referred to the averments made in the plaint, wherein the Plaintiff has referred to the orders passed by the authorities under the BPT Act in respect of the registration of the Respondent No.1 Trust in respect of said Choube Bhavan as also the factum of filing of the earlier suit filed by the Plaintiffs. The Defendant No.1 has also referred to the averments made in paragraph 39 of the plaint, wherein the Plaintiff has admitted that there is some delay which should not come in the way of the Plaintiff from getting the relief which have prayed for in the suit. The Defendant No.1 therefore sought the framing of the following five issues.

“i) Whether the above suit filed by the Plaintiff is barred under Section 80 of the Bombay Public Trust Act, 1950 ?

ii) Whether the above suit is barred by the Law of Limitation ?

iii) Whether the above suit is barred under Rule 1(4) of Order 23 and Section 12 of the Civil Procedure Code, 1908 ?

iv) Whether in view of the above, this Hon'ble Court has jurisdiction to try and entertain the above suit ?

v) Whether this Hon'ble Court has pecuniary jurisdiction to try and entertain the above suit ?”

However, the Trial Court only framed one issue “Whether the Civil Court

has jurisdiction to try and entertain the present suit”. The Trial Court has answered the said issue on the touchstone of the provisions of Section 50 and 51 of the BPT Act by holding that the permission of the Charity Commissioner is not required in view of the answers to issues No.11A and 11B in Suit No.3590 of 1962. Hence, adjudicated upon the issue of jurisdiction, only from the perspective of the provisions of the BPT Act without even referring to the framing of the other issues which relate to the provisions of Order 23 namely, whether the present suit filed by the Plaintiff is maintainable in view of the withdrawal of the earlier suit filed in this Court, whether the suit filed by the Plaintiff is barred by limitation, whether the Trial Court has pecuniary jurisdiction to try and entertain the suit having regard to the nature of the reliefs sought. The Trial Court has therefore adjudicated only one aspect of the issue of jurisdiction which has been raised by the Defendant No.1 in the suit filed by the Plaintiff. It is well settled by the judgments of this Court that once a issue or issues of jurisdiction is/are raised under Section 9A, that the same has/have to be adjudicated by the Trial Court in a proper manner by giving opportunity to the parties. It is also well settled that the issue of limitation is a issue which relates to the jurisdiction of the Court to entertain the suit. A useful reference can be made to the judgment of Division Bench of this Court in **Meher Singh Vs. Deepak Sawhny** reported in **1998(3) Mh.L.J. 940**,

wherein the Division Bench of this Court has held that once the preliminary issue is to be decided, it has to be determined after a proper adjudication and adjudication would postulate furnishing parties an opportunity to lead evidence, if required. In my view, the Trial Court has totally misdirected itself by considering the issue of jurisdiction raised only from one perspective namely on the touchstone of the provisions of the BPT Act and also only on the basis of one fact namely that in Special Civil Suit No. 3590 of 1962 issues No.11A and 11B were answered in the negative. The Trial Court in spite of there being pleadings in the plaint has totally glossed over the said pleadings whilst adjudication upon the said issue which is evidenced from the fact that the issues relating to pecuniary jurisdiction etc. have not been framed. In my view, therefore the impugned order dated 20th June, 2014 is required to be quashed and set aside as there is an error of jurisdiction on the part of the Trial Court in deciding the preliminary issue. The matter would have to be relegated back to the Trial Court for a de-novo consideration of the application i.e. Notice Motion No.3610 of 2012. The Trial Court is directed to frame issues which were sought in the affidavit in support of the Notice of Motion. The Trial Court would adjudicate upon all the issues by giving proper opportunity to the parties including leading of evidence, if the parties so desire. On remand, the Trial Court to decide the said preliminary issues by

31st May, 2015. Civil Revision Application is allowed to the aforesaid extent with parties to bear their respective costs.

[R.M. SAVANT, J]