

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 16 OF 2015

Shripad Seva Mandal
& Others .. Applicants.
V/s.
Shri Ulmas M. Alave
& Others .. Respondents.

Mr. Himanshu Kode with Mr. Abhishek Deshmukh, for the Applicants.

CORAM: G.S.KULKARNI,J.

DATE : 26th FEBRUARY, 2015.

P.C:-

This Civil Revision Application impugns the order dated 27th November, 2014 passed by the learned District Judge, Sindhudurg whereby an application below Exh. 90 filed by the Applicants /Defendants raising objection to the jurisdiction of the District Court to try and decide the trust-suit, has been rejected.

2 Respondent No.1 had filed a trust-suit against the Applicants before the learned District Judge, Sindhudurg, inter alia, praying for a relief of declaration that the gift deed dated 7.3.1996 by which property was gifted to the Applicants by the father of Respondent No.1, is illegal as also for the possession of the properties.

3 The Applicants filed an application before the learned Trial Court raising an objection to the jurisdiction of the Court to entertain the trust-suit on the ground that Respondent No.1 has not obtained a prior

permission under Section 51 of the Bombay Public Trust Act, 1950 (for short 'the Act') from the Assistant Charity Commissioner, Pune under whom, the Applicants' trust was registered but has obtained the same from the Assistant Charity Commissioner, Sindhudurg which was not acceptable. It was the case of the Applicants that the trust-suit ought to have been filed before the Court of District Judge, Pune and not before the Court of District Judge at Sindhudurg.

4 Respondent No.1 in its reply to the said application of the Applicants contended that the objection to the jurisdiction of the District Court, Sindhudurg, as raised by the Applicants, was not maintainable as Respondent No.1 had obtained permission as required under Section 51 of the Act from the Assistant Charity Commissioner at Sindhudurg within whose jurisdiction property in question was situated. Respondent No.1 also urged that the Applicants' intention was to delay the proceedings.

5 By the impugned order the learned District Judge rejected the said application filed by the Applicants and held that the suit filed by Respondent No.1 was maintainable at Sindhudurg as the necessary permission from the Assistant Charity Commissioner, Sindhudurg as required under Section 51 of the Act was obtained by Respondent No.1. It was observed that the permission granted by the Assistant Charity Commissioner was not challenged by the Applicants.

6 Learned Counsel for the Applicants in assailing the impugned order submits that the learned District Judge ought to have held that the permission issued by the Assistant Charity Commissioner, Sindhudurg was not relevant as the Assistant Charity Commissioner,

Sindhudurg had no jurisdiction on the ground that the said Trust was originally registered at Pune. He submits that the trust-suit before the learned District Judge was not maintainable and a Regular Civil Suit ought to have been filed by Respondent No.1. However, this is not the objection raised in the application by the Applicants, before the Trial Court.

7 The submission on behalf of the Applicants though attractive at the first blush, appears to be not tenable. It appears to be an admitted position that an application was moved by Respondent No.1 as per the requirement of Section 51 of the Act before the Assistant Charity Commissioner at Sindhudurg who passed an order on 23rd February, 2007 in Enquiry Application No.1 of 2004 permitting Respondent No.1 to file a suit. It is not the case of the Petitioners that they were not aware of the proceedings of the Enquiry Application No.1 of 2004. In fact these very objections were raised by the Applicants before the Assistant Charity Commissioner in Enquiry Application No.1/2004 on which the Assistant Charity Commissioner, Sindhudurg granted permission under Section 51 of the Act to Respondent No.1 to file the suit in question. These objections were within the scope of enquiry before the Assistant Charity Commissioner as the same pertained to the jurisdiction of the respective Assistant Charity Commissioners to grant such permission. Objections raised by the Applicants before the Assistant Charity Commissioner, Sindhudurg were accordingly dealt by the Assistant Charity Commissioner under the provisions of the Act. The Applicants accepted the orders passed by the Assistant Charity Commissioner, Sindhudurg and thereafter raised the same objections in the suit. This was inappropriate. This is for the reason that applying for permission to file a suit was required to be done

under the specific provisions of the Act namely Section 51 of the Act and was required to be dealt in the manner the Act provides. Once this enquiry is completed within the frame work of the Act and which decision is accepted by the Applicants then the Applicants were precluded from raising the same objections in the suit. The learned Counsel for the Applicants has fairly conceded that the order passed by the Assistant Charity Commissioner at Sindhudurg was not challenged by the Applicants and, thus, it had attained finality.

8 Further, indubitably the fallacy in the submissions on behalf of the Applicants also becomes clear by a bare look at the scheme of some of the provisions. Section 3 of the Act provides for appointment of the '*Charity Commissioner*' and stipulates that the State Government may, by notification in the Official Gazette, appoint an Officer to be called the '*Charity Commissioner*;' who shall exercise such powers and shall perform such duties and functions as conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may pass, superintend the administration and carry out the provisions of this Act through out the State. Section 5 of the Act provides for appointment of Deputy and Assistant Charity Commissioner and stipulates that the State Government may appoint such number of Deputy and Assistant Charity Commissioners in the "*office of the Commissioner*" or for such regions or as may be deemed necessary.

9 Further, a perusal of Section 51 of the Act makes it clear that an application is required to be made by a person having interest in any public trust to the Charity Commissioner to obtain his consent in writing for institution of a suit as specifically required under Section 50 of the Act.

It is, therefore, clear that the permission is required to be sought from the Charity Commissioner and not the Assistant Charity Commissioner. It is not the case of the Applicant that the powers of the Charity Commissioner could not be exercised by the Assistant Charity Commissioner, Sindhudurg and that he was not a delegate of the Charity Commissioner. The only assertion is that the Assistant Charity Commissioner, Pune would have jurisdiction and not the Assistant Charity Commissioner, Sindhudurg. This submission on behalf of the Applicants cannot be accepted in view of the clear reading of the provisions of Section 51 of the Act. The cumulative reading of the above referred provisions clearly indicate that ultimately the decision which is required to be taken under Section 51 is the decision of the Charity Commissioner or his delegate who would be so authorized to take such decision. In the present case, only because the decision has been taken by Assistant Charity Commissioner, Sindhudurg under Section 51 cannot render the same to be not a decision of the Charity Commissioner as this would render Section 51 and the delegation of powers to the Assistant Charity Commissioner to exercise powers under Section 51 nugatory.

10 The other contention as raised on behalf of the Applicant is that the trust-suit is not maintainable before the learned District Judge. Though this issue was not raised before the learned District Judge and thus there was no occasion for the Respondents to contest the said issue, I may observe that the same has no merit inasmuch as 'a suit' as referred in Section 50 of the Act can be instituted in the Court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situated. Section 2 sub-section (4) of the Act defines 'Court' as under:-

“(4) 'Court' means in the Greater Bombay, the City Civil Court and elsewhere, the District Court.”

It is therefore, apparent that there was nothing improper in District Court entertaining the suit in question.

11 In view of the aforesaid discussion, I find that there is no merit in the Revision Application. **Revision Application is summarily dismissed.** No order as to costs.

(G.S.KULKARNI,J.)