

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

WRIT PETITION NO. 4445 OF 2016

Shamrao Anandrao Buchade,
R/at Bhagatsingh Road, Kodoli,
Tal. Panhala, Dist. Kolhapur; & ors.

... Petitioners

v/s

1. Indian Canadian Press Briterian Mission,
Indore, alias Foreign Mission of the
Presbiterian Church in USA, through
Power of Attorney holder
Deepak Namdeo Gaikwad,
R/at Kodoli, Tal. Panhala, Dist.Kolhapur;

2. Commission of Ekuminical Mission and
Relation of Untied Pressbriterian Church
in USA, registered Trust, through
Shri Subhash Pandurang Kamble,
R/of Shivaji Nagar, Pratik Plaza Apt.,
G-2, Miraj, Dist. Sangli.

... Respondents

Mr.Chetan Patil for the petitioners.

Mr.H.G.Katekar along with Jayesh Mestry for Resp. No.1.

Mr.B.S.Baraskar along with A.B.Baraskar for Resp. No.2.

Coram: N.M. Jamdar, J.

Dated: 19 September 2016

ORAL ORDER:

Rule. Rule made returnable forthwith. Respondents waive service. By consent of parties, taken up for final disposal.

2 The Petitioners have challenged the order dated 30 October 2015, passed by the learned Civil Judge, Junior Division, Panhala, rejecting the application taken out by the Petitioners for impleadment in the suit filed by the Respondent No.1 Plaintiff.

3 Heard learned counsel for the parties.

4 The suit which is filed is not a usual suit between two individuals but between two Public Trusts. Respondent No.1- Plaintiff - Indian Canadian Press Briterian Mission, Indore, alias Foreign Mission of the Presbiterian Church in USA, is registered as a Public Trust. Respondent No.2/ Defendant in the suit, is also a registered public Trust. The dispute between the parties involved in the suit pertains to properties which are situated at village Kodoli, Tal. Panhala, Dist. Kolhapur.

5 In the suit, Respondent No.1 Trust has sought for declaration that the ownership of Respondent No.1 Plaintiff has not been extinguished as noted in diary dated 3 July 1967, and for the prayer of injunction against Respondent No.2 Defendant. In this suit, the Petitioners moved an application on 25 September 2014 stating that by collusion between the Plaintiff and Defendant, the property of

Defendant Trust is being lost and the said outcome will be contrary to the decision in Regular Civil Suit No.212 of 2000. The learned Civil Judge has rejected the application on the ground that the Petitioners have no locus and, therefore, the Petitioners cannot be joined in the suit.

6 The fundamental position of law is being lost sight of in the present dispute. Both the parties in the suit are public Trusts and under the provisions of Maharashtra Public Trust Act the parties are under mandate to maintain and look after the properties vested in the Public Trust and a public trust cannot divest itself of the property without due sanction from the Charity Commissioner. The Courts will have to be on guard that the properties of a public trust are not divested by recalcitrant trustees. The argument advanced by the learned counsel for the Respondents Plaintiff/Defendant that the suit is only for mere declaration, prima facie, does not appear to be so. The outcome of such declaration would be that Defendant Trust would have divested of the property. Therefore, apart from the position whether the Petitioners have independent locus to be joined, this aspect of matter must be looked at by the learned Civil Judge before proceeding further with the suit. Therefore, a direction to the learned Civil Judge under the power of superintendence of this Court under Article 227 of the Constitution of India, is required.

7 The learned counsel for the Petitioners has pointed out that the

Defendant has accepted the ownership of the Plaintiff in the written statement and the Plaintiff has already filed an application for decree of admission. Therefore, if such an application is granted, the consequence may be that the property of the Defendant Trust is affected. Therefore, the grievance made by the Petitioners cannot be said to be unjustified. If there is going to be divesting of property of the Trust, the involvement of the Charity Commissioner is necessary.

8 The writ petition, therefore, can be disposed of by directing the learned Civil Judge to frame preliminary issue regarding Section 50 of the Maharashtra Public Trusts Act, as to whether the suit is maintainable in view of the permission of the Charity Commissioner, before taking up the application for decree on admission or taking up the suit any further. Considering the fact that both the parties have expressed their intentions in the pleadings, for fair adjudication of this issue and for assistance to the learned Civil Judge to consider an opposing point of view, the Petitioners are permitted to address learned Civil Judge when the argument on the preliminary issue takes place. In case the learned civil Judge comes to the conclusion that the permission of the Charity Commissioner is necessary, then, the Charity authorities would step in the controversy and further presence of the Petitioners may not be required. Consequently also, if it is held that there is going to no divesting to the property of the Defendant Trust, then also the presence of the Petitioners may not be required.

9 In the circumstances, the writ petition is disposed of by the following order.

(a) The learned Civil Judge, Junior Division, Panhala, will frame issue as to whether permission of the Charity Commissioner under Section 50 of the Maharashtra Public Trusts Act, is required for institution of the suit and for the reliefs that are prayed for.

(b) The learned Civil Judge will take up the hearing on the issue so framed before proceeding with the suit or the application filed by the Plaintiffs.

(c) The notice of hearing on the preliminary issue will be given to the Petitioners who will be permitted to address the Court on the said issue and file compilation, if necessary, and for that purpose the impugned order will not come in the way of the Petitioners.

(d) After the issue so framed is decided by the learned Civil Judge, the learned Civil Judge, will proceed with the suit as per law.

(e) All contentions of the parties regarding the issue on merits, are kept open to be considered by the learned Civil Judge.

10 The writ petition is disposed of in the above terms.

11 It is open to the parties to make a request to the learned Civil Judge for an early disposal on the decision of the issue framed.

(N. M. Jamdar, J.)