

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5990/2014

Shrikant Kalyanrao Londe & Ors.

... Petitioners

V/s.

Miraj Christian Church Public Trust, Miraj & Ors.

... Respondents

Mr. Umesh Mankapure for the petitioners

CORAM: K.K. TATED, J.

DATED : JUNE 29, 2016

P.C. :

1. Heard the learned counsel for the parties. By this petition under Article 227 of the Constitution of India, the petitioner defendant challenges order dated 07.01.2014 granting injunction restraining the petitioner defendant from obstructing the works of "Parent" V. D. Mane and work of trust, till disposal of the suit. The defendant also challenges the order dated 20.02.2014 passed by the District Judge 3 Sangli in Misc. Civil Appeal No.15/2014 by which the appellate court confirmed the order passed by the trial court below exhibit 5.

2. In the present proceedings, the respondent plaintiff filed Regular Civil Suit No. 324/2013 in the court of Civil Judge, Junior Division, Miraj for an order of injunction restraining the defendant from obstructing day to day business of the trust through newly appointed "Palak" Shri V. D. Mane. In that suit, the plaintiff made an application

under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 for temporary injunction. The defendant filed reply dated 11.11.2013.

3. Considering the submissions made by both the parties, the trial court by order dated 07.01.2014 allowed the application made by the plaintiff below exhibit 5. The operative part of the said order reads thus:

- “1. *The application is allowed.*
2. *The defendants are hereby temporarily restrained from obstructing the works of “Parent”, V. D., Mane and work of trust, till disposal of the suit.*
3. *Cost in cause.”*

4. Being aggrieved by the order dated 07.01.2014 passed by the 2nd Jt. Civil Judge, Junior Division, Miraj below exhibit 5 in Regular Civil Suit No.324/2013, the defendants preferred Misc. Civil Appeal No.15/2014 in the court of Principal District Judge Sangli. The appellate court, after considering the objections raised by the defendant about the maintainability of the suit observed that the suit filed for the relief of injunction against the third person who was not a trustee as contemplated under the said Act. Hence, permission from the Charity Commissioner was not necessary to file the suit and held that the defendant failed to make out any case for interfering with the order passed by the trial court on 07.01.2014. Hence, the Writ Petition.

5. The learned counsel for the defendant submits that both the courts below failed to consider that the suit filed by the plaintiff covers under section 50 and 51 of the Maharashtra Public Trust Act, 1950

(said Act). He submits that if the relief claimed by the plaintiff is against the trust or trustees, they require permission from the Charity Commissioner to file the suit. He submits that the reliefs claimed by the plaintiff in Regular Civil Suit No. 324/2013 covers by section 50 of the said Act. Hence, the trial court has no jurisdiction to entertain the suit and in spite of that both the courts below restrained the defendants from interfering with the day to day business of the “Parent” Mr. D. V. Mane. In support of this contention, he relies on the judgment of the apex court in the matter of *Church of North India Vs. Lavajibhai Ratanjibhai* AIR 2005 SC 2544 and also the judgment of this court in the matter of *Gaud Saraswat Brahmin Temple Trust & Ors. Vs. Vasudeo P. Shetye @ Kamlesh P. Shetye & Ors.* 2010 3 BCR 499. He submits that once the issue of maintainability is raised, then that issue has to be decided before passing any interim orders. In support of this contention, he relies on the judgment in the matter of *M/s. Patel Enterprises Vs. M. P. Ahuja* ILR 1992 KK 3772. On the basis of this submission and the authority, the learned counsel for the petitioner defendant submits that the impugned orders passed by both the courts below restraining the defendant from interfering with day to day activities of the trust are liable to be set aside.

6. Heard the learned counsel for the parties at length. Bare reading of the plaint filed by the plaintiff being Regular Civil Suit No.324/2013 shows that the said suit was filed by the plaintiff for perpetual injunction restraining the defendant from interfering with the day to day business of the “Palak” V.D. Mane. Even para 10 of the plaint shows that the suit was valued at Rs.1000/- on the basis for

perpetual injunction. These facts were considered by both the courts below. The trial court in order dated 07.01.2014 recorded that Mr. V. D. Mane was appointed as a “Parent” to look after the day to day activities of the trust. Considering these facts and the provisions of section 50 and 51 of the said Act, the trial court passed temporary injunction restraining the defendant from interfering with the work of “Parent” V D. Mane. Same view is taken by the appellate court also. The appellate court, in its order dated 20.02.2014 considered the objections raised by the defendant on the basis of section 50 and 51 of the said Act and held that the suit filed by the plaintiff for injunction is maintainable.

7. Even the authority relied upon by the defendant in the matter of Lavajibhai Ratanjibhai (Supra) is not applicable in the present case. In that matter, the suit was filed for declaration and the apex court held that if the suit is filed for declaration, the provisions of section 50 and 51 of the said Act are applicable. Similarly, the authority in the matter of Vasudeo P. Shetye (supra) is also not applicable for the case in hand. In that authority, the suit was filed by the plaintiff for declaration. Hence, this court held that the suit for declaration of the resolution is not maintainable in view of section 50 and 51 of the said Act. When sections 50 and 51 are not applicable, there is no question of applicability of the authorities cited by the defendant in the matter of M/s. Patel Enterprises (supra).

8. Considering the above mentioned facts and as there are concurrent findings of fact recorded by the courts below, I do not find

any reason to interfere with the well reasoned order passed by the courts below. Hence, the Writ Petition stands rejected.

9. At the time of deciding the suit, all contentions of both the parties are kept open.

(K.K. TATED, J.)