

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2849 OF 2016

IN

FIRST APPEAL NO.1327 OF 2015

The Bombay Diocesan Trust Association

Pvt. Ltd. and others

.. Applicants

IN THE MATTER BETWEEN

The Bombay Diocesan Trust

Association Pvt. Ltd. Through

its duly elected trustees

.. Appellants

Versus

Rev. Dr. P. B. Amolik and others

.. Respondents

ALONGWITH

CIVIL APPLICATION NO.2850 OF 2016

IN

FIRST APPEAL NO.1244 OF 2015

The Bombay Diocesan Trust Association

Pvt. Ltd. and others

.. Applicants

IN THE MATTER BETWEEN

Mr. Nitin J. Salve

.. Appellant

Versus

Mr. James Baker and others

.. Respondents

ALONGWITH

CIVIL APPLICATION NO.2854 OF 2016

IN
FIRST APPEAL NO.1250 OF 2015

The Bombay Diocesan Trust Association
Pvt. Ltd. and others .. Applicants

IN THE MATTER BETWEEN

Rev. Dr. P. B. Amolik and another .. Appellants
Versus

James Baker and others .. Respondents

ALONGWITH
CIVIL APPLICATION NO.2852 OF 2016

IN
FIRST APPEAL NO.1328 OF 2015

The Bombay Diocesan Trust Association
Pvt. Ltd. and others .. Applicants

IN THE MATTER BETWEEN

The Bombay Diocesan Trust
Association Pvt. Ltd. Through
its duly elected trustees .. Appellants
Versus

Lt. Col. A. M. Gnanakan and others .. Respondents

Mr. U. P. Bobade i/by Robin Thomas for the Applicants.

Ms. Prachi A. Tatake for the Appellants in First Appeal No.1244/2015.

Mrs. V. V. Thorat a/w S. L. Shah i/by Shah Legal for the Appellants in
First Appeal No.1250/2016.

Mr. Ivor Peter D'cruz for the Appellants in First Appeal No.1327/2015

& First Appeal No.1328/2015.

Mr. Mehul Shah for Respondent Nos.3 and 4 in First Appeal No.1327/2015, for Respondent Nos.5 and 6 in First Appeal No.1328/2015 and for Respondent Nos.1 and 2 in First Appeal No.1244/2015 and First Appeal No.1250/2015.

Mr. Daljeet Singh Bhatia for Respondent Nos.6, 8, 10 and 11 in First Appeal No.1327/2015, for Respondent Nos.1 to 4 in First Appeal No.1328/2015, for Respondent Nos.5, 7, 9 and 11 in First Appeal No.1244/2015 and for Respondent Nos.4, 6, 8 and 9 in First Appeal No.1250/2015.

**CORAM : R.M. SAVANT, J.
DATE : 9th AUGUST 2016**

PC.

1 The above Civil Applications have been filed in each of the above First Appeals for the following relief :-

“(b) the Applicants be kindly permitted to intervene in the matter, and they be impleaded as party Respondents in the above referred First Appeal and also Civil Application/Civil Applications taken out therein;”

2 The above First Appeals have been filed challenging the judgment and order dated 30.10.2015 passed by the Learned Judge of the City Civil Court, Mumbai, by which order, the Charity Application Nos.1 of 2013 and 2 of 2013 filed by one Nitin Salve came to be rejected. The said Charity Applications have its genesis in the proceedings filed under Section 41-D of the Bombay Public Trust Act, 1950 (Now known as “The Maharashtra Public Trust Act, 1950”). The said proceedings were initiated

by some of the Respondents abovenamed before the Learned Joint Charity Commissioner. The said proceedings culminated in the order dated 17.12.2012 passed by the Learned Joint Charity Commissioner in the said Application No.28 of 2009 and the Learned Joint Charity Commissioner has propounded the action to be taken against the erring trustees in the said order dated 17.12.2012. The trustees against whom the action was propounded filed Charity Application Nos.1 of 2013 and 2 of 2013 taking exception to the said order dated 17.12.2012. As indicated above, the said Charity Applications have been rejected by the impugned order dated 30.10.2015. The trustees or the persons who claim to be trustees and against whom the action is propounded vide the said order dated 17.12.2012 have filed the above four First Appeals against the said order.

3 The above Civil Applications are founded on the fact that the Applicant No.2 and the Applicant No.3 are the trustees of the trust in question i.e. Bombay Diocesan Trust Association that they have been legally and validly elected and that they have been conducting the affairs of the trust. A reference to the change reports filed by the Applicants which are pending before the Learned Joint Charity Commissioner have been mentioned in paragraph 2(i) of the Application. It is the case of the Applicants that the said change reports are pending consideration of the Learned Joint Charity Commissioner. It is therefore the case of the

Applicants that having regard to the nature of the order dated 17.12.2012 passed by the Learned Joint Charity Commissioner wherein the Learned Joint Charity Commissioner has adversely commented as regards the manner in which the Applicants in the said 41-D proceedings as well as the Respondents have been conducting themselves the present Applicants are therefore in a best position to conduct/manage the affairs of the trust and that they would be prejudiced if they are not heard in the above First Appeals. This is the foundation laid in all the four Civil Applications filed by the Applicants for seeking information.

4 An affidavit in reply has been filed on behalf of the original Appellant one Nitin Salve and the claims and contentions raised in the said applications are disputed. In the affidavit the order dated 26.07.2013 passed in Chamber Summons No.483 of 2013 has been annexed. The said Chamber Summons was filed by the present Applicant No.2 i.e. Shri. R. R. Salvi and his brother Shrikant R. Salvi and Rev. Baiju F. Gavit. The said application was for the same relief as claimed in the instant applications i.e. for being permitted to intervene and being joined as parties to the proceedings. The Learned Judge of the City Civil Court after giving elaborate reasons has rejected the said Chamber Summons filed by the Applicants. Hence, the attempt of the Applicants to intervene in the proceedings whilst the said Charity Applications were pending in the City

Civil Court was turned futile. It is an undisputed position that the matter was not carried further by the Applicants and therefore in so far as the rejection of their applications is concerned, the same has become final and binding. Apart from the fact that an application filed by the Applicants in the Trial Court has been rejected. In my view, the presence of the Applicants is not necessary as the Applicants are neither the complainants nor the persons against whom action is proposed but seek their intervention only with a view to assert their right if any in respect of the trust in question. Hence, no relief can be granted to the Applicants. The Civil Applications are accordingly rejected.

5 The First Appeals to be listed on 01.09.2016. The order dated 07.06.2016 would continue to operate.

[R.M. SAVANT, J]