

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9342 OF 2017

KAMLABAI PARASRAM TEKALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Shri Deshmukh Arvind
AGP for Respondents 1 & 2 : Shri Kendre S.N.
Advocate for Respondents 3, 5 to 8 : Shri Rathi S.S.
Advocate for Respondent 4 : Shri Pimpalwadkar A.A.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 03, 2017

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PER COURT :-

1. The petitioners are aggrieved by the order dated 4.7.2017, by which, the trial Court has concluded that it has no jurisdiction to entertain RCS No.243 of 2017.

2. I have heard the learned Advocates for the respective sides at length on 27.9.2017, 28.9.2017 and today.

3. There is no dispute that a preliminary issue was cast with regard to the jurisdiction of the learned Civil Judge S.D. Nanded in entertaining the suit and neither of the parties have led oral evidence on the said issue.

4. The grievance of the respondents is that the District Collector, Nanded and the Tahsildar, Ardhapur have been unnecessarily arrayed as defendants. In fact, the Tahsildar, Ardhapur is appointed as the Administrator of the Trust by name "Lord Satya Ganpati Trust". Only because the petitioners desired that the suit should be preferred before the learned Civil Judge S.D. that the District Collector and Tahsildar have been arrayed as defendants 1 and 2. In fact, no allegations are made against them in their official capacity and no prayers are put forth.

5. During the course of the hearing of this matter, I proposed to the petitioners that they could delete the District Collector and the Tahsildar from the cause title and array the Administrator of the "Lord Satya Ganpati Trust" as the matter is against the Trust. Learned counsel for the petitioners, submits on instructions, that the petitioners desire to pursue RCS No.243 of 2017 as it is, and they neither desire to delete the District Collector and the Tahsildar, nor do they desire to array the Trust or the Administrator of the Trust in the pending suit.

6. In the above back drop, I have considered the impugned order and it is quite obvious that after the preliminary issue was being tried peremptorily, the litigating sides could have been given the opportunity of leading evidence. After grant of such opportunity, if evidence closing purshis would have been filed, then the said submission of the petitioners would not have been entertained.

7. Considering the above, the impugned order dated 4.7.2017 is quashed and set aside and the preliminary issue is remitted for a fresh adjudication before the learned Civil Judge S.D. Nanded, specifically in the backdrop of the contentions and statements of the petitioners and the submissions of the respondents. They would choose to lead evidence.

8. Consequentially, the petitioners would now be precluded from arraying the trust or the Administrator of the Trust as a defendant, since it would change the jurisdiction of the Court dealing with the said suit at present. Similarly, in the event the suit undergoes a complete trial and finally it is

concluded that the District Collector and the Tahsildar were unnecessary parties, liberty to seek costs from the petitioners is kept open, in the light of the submissions of the learned AGP.

9. This petition is, therefore, partly allowed in the above terms.

(RAVINDRA V. GHUGE, J.)

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