

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 1428 OF 2017
IN
FIRST APPEAL NO. 28 OF 1996

1. Smt. Gopikabai w/o Krishnabuwa
(Died)
2. Raghunath s/o Narayanbuwa Gosavi,
Age. 52 years, Occu. Agril,
R/o. Paithan, Taluka Paithan,
District Aurangabad. ...Applicants

versus

1. Rangnathbuwa s/o Bhanudasbuwa Gosavi,
(deceased) by his L.Rs.
 - a) Shri. Madhusudan s/o Rangnathbuwa Gosavi,
Age. 70 years, Occu. Agril,
R/o. Paithan, Taluka Paithan,
District Aurangabad.
 - b) Shri. Venumadhav s/o Rangnathbuwa Gosavi,
Age. 68 years, Occu. Agril,
R/o. Paithan, Taluka Paithan,
District Aurangabad.
 - c) Shri. Hari Pandit s/o Rangnathbuwa Gosavi,
Age. 66 years, Occu. Agril,
R/o. Paithan, Taluka Paithan,
District Aurangabad.
 - d) Shri. Meghshyam s/o Rangnathbuwa Gosavi,
Age. 64 years, Occu. Retired,
R/o. Paithan, Taluka Paithan,
District Aurangabad.
(deleted)
2. The Charity Commissioner,
Maharashtra State, Bombay,
83, Dr. Annie Besant Road,
Bombay 18, through Joint
Charity Commissioner,
Aurangabad.

3. Shri. Nandlal Lahoti,
Age. 65 years, Occu. Retired,
The Managing Director of
Shri. Sant Eknath Maharaj
Trust, Paithan, R/o. Paithan,
Tq. Paithan, District Aurangabad. ...Respondents

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Shri V.J. Dixit, senior counsel i/b Mr. A.M. Dabir, advocate for applicants
Shri L. Ravichander, senior counsel i/b Mr. N.S. Tekale, advocate for
respondent Nos. 1-a to 1-c.
Shri V.D. Salunke, advocate for respondent Nos. 3.
Mr. P.N. Walujkar with Mr. A.R. Vaidya, advocates for applicants in C.A.
No. 4099 of 2016.

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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 13.04.2017**

**Date of pronouncing
the Order: 05.06.2017**

ORDER :-

1. This civil application is filed in first appeal No. 28 of 1996, by the applicants Raghunathbuwa Narayanbuwa Gosavi with the following prayer:-

- "A. This Civil Application may kindly be allowed;
B. Pending hearing and final disposal of the First Appeal, the respondent no. 1-C namely Haripandit S/o Rangnathbuwa Gosavi be directed by order of mandatory injunction to hand over the charge of Salpali of both the temples of Sant Eknath Maharaj, at Paithan i.e. Inner Temple and Outer Temple on 21/3/2017 for the year 21/3/2017 to 10/3/2018 to the applicant Raghunathbuwa Narayanbuwa Gosavi/

or in alternative

- C. the respondent no. 3 Managing Trustee of the Trust Shri. Sant Eknath Maharaj Trust Paithan, be directed to carry out the exchange of Salpali in his supervision and submit report thereof in this Honourable Court.
- D. Any other appropriate relief may kindly be granted in favour of the applicant.”

2. Brief facts giving rise to the preset civil application are as follows:-

a) The respondent No.2 herein-Charity Commissioner, Maharashtra State had instituted Regular Civil Suit No. 2 of 1974 in the district Court at Aurangabad for settlement of scheme to administer the trust called “Sansthan Eknath Maharaj” situated at Paithan alongwith consequential prayers for removal of respondent No.1 herein from trusteeship, appointment of new trustees etc. The present applicants came to be added subsequently to the said suit as parties/defendant Nos. 2 and 3. The applicant No.1 Smt. Gopikabai was the widow of Krishnabuwa, who represented the branch of Raghoba of Shri Sant Eknath Maharaj and the applicant No.2 Raghunath Narayanbuwa Gosavi is an adopted son of late Narayanbuwa and as such claimed to be in possession of moveable and immovable properties from the date of adoption i.e. 11.5.1971. Though the applicants have filed written statement in respect of the appointment of new board of trustees and for framing of scheme, they have not raised any objection for settling of scheme for

better administration of the trust provided their rights in respect of both the temples, as recognized by various judgments of the Courts, should not be disturbed. The learned Extra Joint District Judge, Aurangabad after recording evidence of the parties, decreed the suit of respondent No.2 herein on 18.3.1995 and thereby removed respondent No.1 herein from the hereditary trustee and framed separate scheme for administration of the trust. The learned Judge has further directed that till formation of new board of trustees, the receiver appointed by the court (respondent No.3 herein) since discharged should act as first trustee, take appropriate steps for formation of the board of trustees as per the said scheme and further to take charge of the trust's property.

b) Being aggrieved by the said judgment and decree dated 18.3.1995 passed in Regular Civil Suit No. 2 of 1974 passed by the Extra Joint District Judge, Aurangabad, the applicant herein preferred first appeal No. 28 of 1996. Further, heirs of said hereditary trustee also preferred first appeal No. 367 of 1995 and also filed civil application No. 5887 of 1995 and civil application No. 1449 of 1997 seeking stay to the operation of the impugned judgment and order. Shashikantbuwa Jahagirdar, one of the descendant of Sant Eknath Maharaj has also filed first appeal No. 435 of 1997 and civil application No. 1506 of 1997 for staying effect of the impugned order. Similarly, one descendant viz. Shrikrishnabuwa Bhagwatbuwa Gosavi has also filed appeal bearing first appeal (St.) No. 11866 of 1996 and civil application bearing No.

1351 of 1997 for staying effect of the impugned order.

c) The applicants have filed civil application No. 435 of 1996 in first appeal No. 28 of 1996 for staying the operation of the said judgment and decree passed by the Extra Joint District Judge, Aurangabad in Regular Civil Appeal No. 2 of 1974 to the extent that the same is contrary to their interest. It is the case of the applicants that their rights as Salkari has been abolished and they were relegated to the position of paid servants of the said trust, which is contrary to the order passed by this Court in second appeal No. 1628 of 1969 decided on 1.2.1972 and as such, the applicants prayed in the aforesaid civil application for interim stay in terms that respondent No.3 either as first trustee or as the Court receiver be directed by an order of temporary injunction not to interfere in the rights of the applicants as Salkaris and of maintaining both inner and outer temples of Shri Sant Eknath Maharaj at Paithan.

d) It is further case of the applicants that adoption of applicant No.2 by Laxmibai w/o Narayanbuwa Gosavi came to be disputed by the respondents and other descendants of Shri Sant Eknath Maharaj and therefore, said Laxmibai alongwith applicant No.2 as her adopted son under her guardianship and Gopikabai instituted R.C.S. No. 52 of 1971 before the C.J.J.D. Paithan against respondent Rangnath s/o Bhanudasbuwa and other descendants of Shri Sant Eknath Maharaj, seeking a decree of perpetual injunction from causing any obstruction or

interference to their exclusive rights of taking out Palkhi of Sant Eknath Maharaj and carrying out it to Pandharpur every year by definite route and further their right of collecting offerings and gifts placed in front of Paduka and Palkhi, at all times etc. The said suit was strongly contested by the present respondents and other descendants mainly on the ground that the factum of adoption was not taken place and in any case the adoption is against the family custom. After considering the evidence on record, learned C.J.J.D. Paithan by judgment and decree dated 15.3.1997 in R.C.S. No. 52 of 1971 decreed the said suit in terms of its prayers.

e) Being aggrieved by the same, the respondents preferred appeal bearing Regular Civil appeal No. 92 of 1997 before the District Court and then learned District Judge had partly allowed the said appeal by holding that after Laxmibai, Gopikabai has exclusive rights. However, further held that the adoption was not proved and held that custom pleaded by respondent is proved. Being aggrieved by the same, the present applicants had preferred second appeal No. 906 of 1980 in this Court. This Court, by order dated 9.2.2001 dismissed the said appeal. Being aggrieved by the same, the applicants preferred Civil Appeal No. 2058 of 2003 in the Supreme court. The Supreme court by judgment and order dated 29.1.2013 allowed the said appeal and held that the adoption has been duly proved.

f) According to the applicants, as adoption of the applicants by applicant Laxmibai w/o Narayanbuwa is upheld by the Supreme Court and in view of the order of this Court in civil application No. 435 of 1996 in first appeal No. 28 of 1996, the applicants are entitled to take Salpali from 4.4.2013 and in view of the decision of this Court in second appeal No. 1628 of 1969 dated 1.2.1972, the term of Salpali of Laxmibai is at every alternate year and as such, the applicants are entitled to get Salpali from 4.4.2013 from the persons, who were held previous Salpali. Hence, this civil application.

3. Learned senior counsel for the applicants submits that the parties to the litigation are all lineal descendants of Sant Eknath Maharaj of Paithan. The parties belong to two branches of Sant Eknath Maharaj. One Meghashyam's branch and other Raghoba's branch. The applicants belong to Raghoba's branch whereas the respondents belong to Meghasham's branch. Both the branches are 8 Anna (50%) share divided interse between them since beginning with respect to Salpali i.e. charge and management of both the temples of Sant Eknath Maharaj situated at Paithan on year to year basis, starting from *Falgun Vaidya Navami*, with respect to the rights of taking Palkhi of Sant Eknath Maharaj to Pandharpur on account of *Ashadhi Ekadashi*. The dispute is regarding Salpali, mainly because the applicant is adopted son in the branch of Raghoba and the persons belonging to Meghashayam's branch do not accept anyone outsider in adoption

claiming right of Salpali.

4. Learned senior counsel for the applicants further submits that Regular Civil Suit No. 52 of 1971 came to be instituted by Laxmibai, Raghunathbuwa Gosavi (minor) through next friend Gopikabai and Gopikabai against all other living descendants of Shri Sant Eknath Maharaj seeking perpetual injunction restraining them from interfering into their rights of taking Palkhi of Sant Eknath Maharaj and carrying it out to Pandharpur every year by definite route with other consequential prayers thereunder. The learned C.J.J.D. by judgment and decree dated 15.3.1977 decreed the said suit in toto. Though the said suit was instituted seeking decree of perpetual injunction, the issue of validity of adoption was also raised by the defendants/descendants of Shri Sant Eknath Maharaj therein and as such, learned Judge of the trial court has also recorded a finding in affirmative so far as validity of adoption is concerned. Learned Judge of the trial court held that the adoption of Raghunath by Laxmibai is legal and valid. Thus, the applicant Raghunathbuwa is entitled to claim rights similar to the rights of other descendants of Shri Sant Eknath Maharaj. The said judgment and decree came to be challenged by the descendants of Meghesham's branch by filing Regular Civil Appeal No. 92 of 1977. The learned Extra Assistant District Judge, Aurangabad by judgment and order dated 1.8.1980 partly allowed the appeal by maintaining the injunction granted by earlier court, however, reversed the findings of the trial court so far

as the issue of adoption is concerned. The applicants herein have thus preferred appeal before this Court bearing second appeal No. 906 of 1980. This Court by order dated 9.2.2001 dismissed the appeal by confirming the order of the lower appellate court. Being aggrieved by the same, the applicants herein preferred Civil Appeal No. 2058 of 2003 and the Supreme Court by judgment and order dated 29.1.2013 allowed the appeal holding that the said adoption is legal and valid and accordingly restored the judgment and decree passed by the trial court.

5. Learned senior counsel for the applicants further submits that Regular Civil Suit No. 2 of 1974 came to be instituted by the Charity Commissioner, State of Maharashtra against Rangnathbuwa Bhanudas Gosavi only because he was the sole trustee of the Trust viz. Sant Eknath Maharaj. Later on Gopikabai and applicant-Raghunath s/o Narayanbuwa Gosavi were added as defendants Nos. 2 and 3 to the suit as they were held to be necessary parties. The said suit came to be decreed by the Joint District Judge, Aurangabad by judgment and decree dated 18.3.1995 and sole trustee Rangnathbuwa s/o Bhanudasbuwa Gosavi came to be removed and new scheme was framed. The present applicants preferred first appeal No. 28 of 1996 against the same and also filed civil application No. 435 of 1996 seeking interim relief during pendency of the said appeal wherein this Court by order dated 2.4.1997 recognized the rights of the applicants subject to the outcome of adoption proceedings. The learned senior counsel

submits that this Court by order dated 26.6.2013 in civil application No. 5729 of 2013 has observed that, as the right of Laxmibai has been confirmed by this court (Justice Bhole's judgment) and in terms of judgment and decree passed in R.C.S. No. 52 of 1971 has attained finality, the applicants being adopted son has right to claim all rights. Furthermore, in civil application No. 5729 of 2013, this Court by order dated 16.1.2014 has again reiterated earlier order and confirmed the rights of the applicants to Salpali and his right to take Palkhi every year. Despite the earlier observations, the applicants had to approach this court again.

6. Learned senior counsel for the applicants submits that at no point of time, there was any dispute about Salpali enjoyed by either Narayanbuwa or Laxmibai and Gopikabai and it is only after death of Gopikabai in the year 1996, Salpali was denied to the applicant contending that his adoption is under consideration of the court. Now the applicant's adoption is held to be legal in the year 2013 by the Hon'ble Supreme Court and as such the applicant has established his right of Salpali and therefore, he may be held to be entitled for Salpali at every alternate year. As right of Salpali has been accepted by this Court in the earlier order passed in the first appeal No. 28 of 1996, and also in terms of right of the Laxmibai upheld in the second appeal No. 1628 of 1969, the learned counsel submits that the application thus deserves to be allowed in terms of its prayers.

7. Learned senior counsel for respondent Nos. 1-a to 1-c submits that the relief claimed in this civil application amounts to final relief and the same cannot be granted. In the pending first appeal, there is no relief claimed as against respondents 1-a to 1-d and therefore, no relief can be granted against them in the instant civil application. It is a matter of record that, respondents 1-a to 1-d are arrayed as respondents in First Appeal No. 28 of 1996, only as formal parties, as they were defendants 1-a to 1-d in the Trust Suit 2 of 1974. Every application for interim injunction (either prohibitory or mandatory) should stand the test of three basic principles viz. a) Prima facie case, b) Balance of convenience and c) Irreparable loss. The applicants have not even pleaded in the civil application about the existence of any of these factors in respect of his claim. In the absence of existence of any of these basic principles, the application for interim mandatory injunction is not tenable.

8. Learned senior counsel for the respondents Nos. 1-a to 1-c submits that it is pertinent to note that applicant is claiming right of Salpali, every alternate year, on the basis of two decrees viz. (a) Decree in R.C.S. 176 of 1957, as modified by High Court Judgment dated 01.02.1972 in Second Appeal No. 1628 of 1969, and (b) Decree of R.C.S. No. 52/1971, restored by Supreme Court Judgment dated 29.01.2013 in Civil Appeal No. 2058 of 2003. Even otherwise, as

pointed out in oral submissions, para (18) of Civil application No. 435 of 1996 speaks about rights of petitioner "subject to litigation which is going on as regards petitioner being descendant or Salkari by reason of adoption". Learned counsel submits that the applicants if at all wanted to protect his rights, he should have executed the aforesaid decrees. The applicant, however, has avoided to do so. Learned counsel submits that order passed in civil application No. 435 of 1996, particularly para 18 of the order, does not speak about the applicant's entitlement of right of Salpali or Palkhi. The said application No. 435 of 1996 is restricted to prayer clause "C". The issue of applicant being descendant or Salkari by reason of adoption was not raised either in R.C.S. No. 52 of 1971 and consequently in the Apex Court in Civil Appeal No. 2058 of 2003 or in any other matter except R.C.S. No. 53 of 1997, which came to be dismissed as withdrawn 15 years back.

Learned senior counsel submits that even assuming that civil application is maintainable before this Court, even then the applicant is entitled for equitable relief of mandatory injunction. The applicant had filed R.C.S. No. 53 of 1997 for declaration and mandatory injunction in respect of Salpali for every alternate year in both temples. However, he withdrew the suit 15 years back i.e. in the year 2002 with a leave to file fresh suit. However, the applicant has not instituted any fresh suit thereafter and this fact has been deliberately suppressed by the applicant in this civil application. The applicant has also suppressed

from this court that the applicant had filed Regular Darkhast No. 6 of 2013 for the same relief and as such, his present civil application is not maintainable. Prior to the instant civil application, the suit bearing R.C.S. No. 109 of 2016 came to be instituted by respondent Nos. 1-a to 1-d against the applicant and his father Vasant Pandav and the same is pending in the Civil Court at Paithan. The suit is instituted for declaration that the compromise decree passed against deceased father of respondent Nos. 1-a to 1-d viz. Rangnathbuwa in R.C.S. No. 52 of 1971 is not binding on them as the said compromise obtained by filing a false criminal case against father of the respondents. Though the present applicant has filed his written statement in the said suit, he has suppressed this material fact before this court in the aforesaid civil application. Learned counsel for the respondent submits that there is no substance in the civil application and the same deserves to be rejected.

Learned senior counsel for the respondent Nos. 1-a to 1-c in order to substantiate his submissions placed his reliance on the following judgments:-

- i) Judgment of the Supreme Court in the case of Dr. Shehla Burney and others vs. Syed Ali Mossa Raza and others, in Civil Appeal No. 6409 of 2002
- ii) Sheikh Abdul Kayum and others vs. Mula Alibhai and others, reported in AIR 1963 SC 309,

- iii) P.M. Aboobuker vs. K. Kunhamoo and others, reported in AIR 1958 Madras 287.
- iv) Judgment of the Supreme court in the case of Kishoresinh Ratansinh vs. Maruti Corporation and others, in Civil Appeal No. 2186-2187 of 2009.
- v) Shivkumar Sharma vs. Santosh Kumar, reported in AIR 2008 SC 171.

9. I have also heard Shri V. D. Salunke, the learned counsel for the respondent No.3. I have also heard Shri A.R. Vaidya, learned counsel for the applicant in civil application No. 4099 of 2016, filed for intervention in first appeal. Learned counsel Shri Vaidya, has adopted the arguments advanced by learned senior counsel appearing for respondent Nos. 1-a to 1-c.

10. I have carefully considered the submissions advanced by learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the civil application, annexures thereto and the notes of arguments filed by the concerned respondents.

11. It appears that the judgment and decree passed in R.C.S. No. 52 of 1971 has attained the finality in view of the judgment and order passed by the Supreme Court in Civil Appeal No. 2058 of 2013 and further review of the same also came to be rejected. Further, the judgment and decree passed in R.C.S. No. 176 of 1957 has also

attained finality in view of the order passed by this Court in second appeal No. 1628 of 1969 and as such, the respective descendants including the applicants herein have been permitted to enjoy the rights of Salkaries.

12. The Charity Commissioner of State of Maharashtra had instituted Trust suit No.2 of 1974 seeking certain reliefs. The said suit was decreed in terms of its prayers and as such the same has been questioned by the respondents herein and also by the present applicants by filing four separate appeals. So far as the first appeal No. 28 of 1996 preferred by the present applicants is concerned and civil application No. 435 of 1996 came to be filed for staying the effect of the impugned judgment and order passed in Trust suit No. 2 of 1974, this Court by order dated 2.4.1997 in the said civil application No. 435 of 1996 has made observation to the effect that so far as the appellants in first appeal No. 28 of 1996 are concerned, (present applicants) their rights shall be subject to the result of the litigation which is going on as regards they are being descendants of Salkaries by reason of adoption. Now the said rights are crystallized and attained the finality.

13. In earlier orders, this Court has repeatedly held that there is no legal impediment in allowing the applicants to exercise the rights of Salpali as per their turn. Furthermore, in the order dated 16.1.2014 this Court has observed that the parties are expected to arrange annual turn

and in respect of Salpali and Palkhi, as indicated in second appeal without resorting to any application before this Court. Even in the order dated 13.3.2015, this Court has observed that issue as to whether the rights and interest of Salpali can be made subject to scheme framed by the learned District Judge in the judgment and decree which is under challenge in the present first appeal would require separate consideration.

14. In view of earlier orders passed by this Court, I do not find any reason to take any other view. I do not think that the present civil application seeking interim relief is not tenable being outside the scope of the first appeal. In terms of judgment and decree passed in the aforesaid two Regular Civil Suits bearing Nos. 52 of 1971 and 176 of 1957, which now attained the finality, the applicant has established a prima facie case and balance of convenience also lies in his favour.

15. In view of above discussion, civil application is allowed in terms of prayer clause "B" and alternate prayer clause "C" for the period commencing from today i.e. 05.06.2017 till 10.03.2018. Police protection, if required, may be granted for giving effect to the order passed as above, at the costs of the applicants.

16. Civil application is allowed and disposed of.

17. Learned counsel for the applicant in civil application No. 4099 of 2016 filed for intervention in first appeal No. 28 of 1996 has also advanced the arguments. However, since the main first appeal is pending for final adjudication and the said civil application is filed for intervention in first appeal, it would be appropriate to hear and decide the said civil application at the time of deciding the first appeal No. 28 of 1996, finally.

18. At this stage, learned counsel appearing for the intervenor requested for staying the effect of this order. The respondent Shri Haripandit Raghunathbuwa appeared in person today, has also requested this court by filing an application in writing for staying the effect of the order passed by this Court. However, considering the duration of Salpali to be enjoyed by the applicant and earlier orders passed by this court, I do not see any reason to grant stay to the effect of this order. Request stands refused.

(V. K. JADHAV, J.)

rlj/