

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.3132 Of 2017**

**AND**

**WRIT PETITION NO. 3133 OF 2017**

**AND**

**WRIT PETITION NO. 3135 OF 2017**

|                                     |   |             |
|-------------------------------------|---|-------------|
| Shri Bandopant Chandrappa Dalvi     | ] | Petitioner  |
| Vs.                                 |   |             |
| Masaidevi Shikshan Prasarak Mandal  | ] |             |
| Kaneri Paiki Powarwadi, Ta. Panhala | ] |             |
| Dist. Kolhapur.                     | ] | Respondents |

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Mr. Sachin Chavan, Advocate for the petitioner in all the petitions.

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**CORAM : R. G. KETKAR, J.**

**DATE : 29<sup>th</sup> MARCH, 2017.**

**P.C:**

Heard Mr. Sachin Chavan, learned Counsel for the petitioners in all the petitions at length.

2. Writ Petition No. 3132 of 2017 takes exception to the order dated 4<sup>th</sup> April, 2016 below Exhibit 29 in Change Report No. 1124 of 2000. Writ Petition No. 3133 of 2017 takes exception to the order dated 4<sup>th</sup> April, 2016 below Exhibit 13 in Change Report No.

319 of 2001. Writ Petition No. 3135 of 2017 takes exception to the order dated 4<sup>th</sup> April, 2016 below Exhibit 15 in Change Report No. 1125 of 2005 passed by the Assistant Charity Commissioner-1, Kolhapur Division, Kolhapur. By these orders, Assistant Charity Commissioner allowed the applications made by the first respondent under section 65 of the Indian Evidence Act, 1872 [for short 'Act'] for leading secondary evidence. For appreciating the controversy raised in these petitions, facts from Writ Petition No. 3132 of 2017 are considered.

3. Change Report No. 1124 of 2000 was submitted by the first respondent for deleting names of:

- 1] Shri Bajirao Gundappa Lagare
- 2] Shri Tanaji Dhondiram Powar
- 3] Sou. Alaka Prakash Jadhav
- 4] Shri Tukaram Dnyanu Lagare
- 5] Shri Shahaji Yashawant Powar

and for recording names of:

- 1] Kamlakar Dhondiram Bhosale
- 2] Sou. Jayashri Madhukar Bhosale
- 3] Sou. Anajani Kamlakar Bhosale

Along with Change Report copies of-

- [1] Resignation Letter.
- [2] Notice of meeting and acknowledgment thereof.
- [3] Proceeding books.
- [4] No objection of old trustees, consent letters of new trustees and
- [5] Application for condonation of delay

were annexed.

4. Application was made by Kamalakar Bhosale under Section 65 of the Act seeking permission to lead secondary evidence on the ground that Change Report was submitted by the petitioners/trustees. He had produced original proceeding book and retained rest of the original documents with him. From time to time, respondent No.1 demanded original documents from him. However, he did not hand over original documents to him. He also made application calling upon Bandopant Dalvi to produce original documents which was replied by him by saying that original documents are misplaced. Kamalakar Bhosale, therefore, filed application seeking permission to lead secondary evidence.

5. Reply was filed opposing that application on the ground that Kamalakar Bhosale is no way concerned with the Change Report.

He has also not explained as to how the secondary evidence which he seeks to produce was in his custody and in what capacity. In view thereof, documents which he proposed to produce are suspicious. By the impugned order, the Assistant Charity Commissioner has allowed the application. Against this order, the present petition is filed.

6. In support of this petition, Mr. Chavan submitted that Mr. Kamalakar Bhosale is no way concerned with the Change Report. He further submitted that Mr. Kamalakar Bhosale did not satisfy the conditions laid down in Section 65 of the Act. The impugned order, therefore, is liable to be set aside.

7. I have considered the submissions of Mr. Chavan. I have also perused the material on record. A perusal of the Change Report No. 1124 of 2000 shows that in the meeting of the Executive Committee dated 27<sup>th</sup> March, 2000, Kamalakar Bhosale was elected. Change Report was, therefore, filed for deleting names of five persons and in their place recording names of three person which includes Kamalakar Bhosale. In view thereof, it cannot be said that Kamalakar Bhosale is no way concerned with the Change Report. A perusal of the application made by him also shows that several times Kamalakar Bhosale demanded original documents from Bandopant Dalvi and he

did not hand over those documents. He also filed an application calling upon Mr. Bandopant Dalvi to produce original documents, which was replied by saying that original documents are misplaced. A perusal of the reply does not indicate that these assertions are denied. In view thereof, I do not find that the Assistant Charity Commissioner committed any error in passing the impugned order. Hence, the petitions fail and the same are dismissed.

8. It is made clear that where a final order of Assistant Charity Commissioner is challenged by the petitioner, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by Section 105 (1) of C.P.C.

**[R.G.KETKAR, J.]**