

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Revision Application No.88 of 2016
[Gulam Abbas Hassonjee Vs. Muzaffer Hussain Abdeali Education Society & others]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Mr. M.A. Qureshi, Adv., for the applicant.
 Mr. A.A. Naik, Adv., for respondent no.1.
 Mr. H.G. Katekar, Adv., for respondent nos. 2 to 5.

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CORAM : A. S. CHANDURKAR, J.

DATE : 08th March, 2017

01. In view notice for final disposal issued earlier, learned counsel for the parties have been heard at length.

02. The applicant, who is defendant no.4 in the suit filed by the non-applicant no.1, is aggrieved by the order passed by the trial Court below Exh.47 by which the application moved by defendant no.4 under provisions of Order-VII Rule 11 (d) of the Code of Civil Procedure, 1908 [for short, "the Code"] has been rejected.

03. Facts relevant for adjudicating the challenge are

that on 4th December, 2008, two Gift-Deeds came to be executed on behalf of non-applicant no.2 in favour of the non-applicant no.1-Society with regard to two plots of land. Two Civil Suits bearing Special Civil Suit Nos. 712 and 713 both of 2011 came to be filed seeking declaration that the execution of said Gift-Deeds was illegal and prayer for cancellation of the same also came to be made. Yet another suit came to be filed for declaration that the defendant nos. 1 to 3 therein had no right to dispose of the property of the Company being RIG Explosives Pvt. Ltd. On 19th July, 2014, compromise decree came to be passed in the said suits. As per said compromise decree, the gift deeds were treated as inoperative. The title of the donor was recognized and sale-deeds of the aforesaid property were to be executed by the Company in favour of the present applicant. On that basis, on 7th November, 2014, such sale-deed came to be executed. In June, 2016, the non-applicant no.1 filed a suit for declaration that the aforesaid sale-deed executed by defendant no.3 in the said suit in favour of defendant no.4 was not binding on the Trust. In the said suit, the defendant no.4, in whose favour sale-deed was executed, moved the application under provisions of Order-VII Rule 11 (d) of the Code seeking rejection of the plaint on the ground that no permission from the Charity Commissioner was obtained before filing the suit. By the impugned order, the trial Court rejected said application.

04. Shri M.A. Qureshi, learned counsel for the applicant, submitted that considering the nature of reliefs sought in the suit, it was necessary for the plaintiff to have obtained permission of the Joint Charity Commissioner. He referred to the provisions of Section 50 (iv) (f) and (p) of the Maharashtra Public Trusts Act, 1950 [for short, “the said Act”], to urge that the relief sought by the plaintiff could not have been sought without obtaining such permission. He referred to the plaint averments and submitted that allegations were made against defendant no.3 who was the executor of the sale-deed and in that background, unless the permission from the Charity Commissioner was obtained, the suit could not have been filed. He submitted that the trial Court without considering the nature of relief sought erroneously rejected the said application. He placed reliance upon the judgments in **[a] Namdeo Pandurang Khedkar Vs. Shahi Gupta Masjid, Chandrapur** [2014 (4) Mh. L.J. 209], and **[b] Mr. Maulana Mohamed Yusuf Ismail Vs. Madarsa Vejajulu Ulum Kuran & others** [2001 (4) ALL MR 211] in that regard. According to him, as the property of the Trust was sought to be recovered, prior permission of the Charity Commissioner was necessary. He also submitted that the decisions relied upon by the learned counsel for the plaintiff before the trial Court were distinguishable. Thus, according to him, the plaint was liable to be rejected on that count.

05. Shri A.A. Naik, learned counsel for the Non-applicant no.1, supported the impugned order. According to him, by virtue of execution of the sale-deed, the suit property ceased to be a trust property and, therefore, there was no question of seeking prior permission of the Charity Commissioner under Section 50 of the said Act. He submitted that it was the case of the plaintiff that the sale-deed in question was obtained by practising fraud and, therefore, cognizance of such grievance could not be taken by the Charity Commissioner. According to him, if the Charity Commissioner was not in a position to grant the reliefs sought in the civil suit, there would be no question of such suit being barred before the Civil Court. Moreover, the plaintiff was espousing the civil rights of the Trust and hence for said purpose, prior consent was not necessary. It was, therefore, submitted that the trial Court rightly rejected the application in question. In support of his submissions, learned counsel placed reliance on the decisions in **[1] Pratap Shivaji Chumbale Vs. Deepak Vishwanath Pingale & others** [2014 (2) Mh.L.J. 589], **[2] Vidarbha Kshatriya Mali Shikshan Sanstha Vs. Mahatma Fuley Shikshan Samiti, Amravati** [1986 Mh.L.J. 773], and **[3] Yamunabai Dhankude Vs. Raosaheb Mohanlal Chimanlal Maniyar Trust** [2012 (2) Mh.L.J. 55].

06. For the purposes of considering the application

moved under provisions of Order-VII Rule 11 (d) of the Code, it is only the plaint averments that are required to be taken into consideration. In the plaint, the plaintiff has pleaded the background in which the property in question was initially received by the Trust through two Gift-Deeds after which the name of the Trust was mutated in the revenue records. It is then pleaded that without knowledge of members of the Trust, the defendant no.3 as President had executed a sale-deed of the property in favour of defendant no.4. In para 7 of the plaint, it is alleged that execution of said sale-deed was a fraudulent act by the defendant no.3. It is in that background that the aforesaid reliefs have been sought. It is also the case of the plaintiff that it continued in possession of the suit property and hence a prayer for injunction was also made.

07. Considering the averments in the plaint after reading it as a whole, it can be seen that the basis for seeking relief of cancellation of the sale-deed is the unauthorized and fraudulent execution of the sale-deed in favour of defendant no.4. By virtue of the sale-deed, the property ceased to remain a trust property and the plaintiff as a person interested was not precluded from approaching the Civil Court for seeking relief. The provisions of Section 50 (iv) (f) and (p) of the said Act that were sought to be relied upon by the learned counsel for the applicant cannot be made applicable to the facts of the present case considering the plaint

averments. On the contrary, in somewhat similar facts, this Court in *Pratap Shivaji Chumbale* [supra] has held that suit of such nature was maintainable without the prior permission of the Charity Commissioner. The decision of the Honourable Supreme Court in **Shree Gollaleshwar Dev & others Vs. Gangawwa Kom Shantayya Math & others** [1986 Mh.L. J. (SC) 809] recognizes the right of a person interested to file such suit in the Civil Court.

08. In *Namdeo Pandurang Khedkar* [supra], it can be seen that there was absence of express sanction or authorization to indicate entitlement of the Secretary to file the suit. The same is a matter to be considered at the trial and the plaint cannot be rejected on that count. In *Maulana Mohd. Yusuf Ismail* [supra], it was specifically held that the relief sought pertained to the administration and management of the Trust property and, therefore, such permission was necessary. As observed earlier, on execution of the sale-deed, the suit property deceased to be trust property. The reliefs sought do not relate either to the administration or management of the Trust. Hence, ratio of said decision cannot be made applicable to the facts of the present case.

09. In view of aforesaid, I do not find that the trial Court committed any error when it refused to reject the plaint. By clarifying that observations made in this order

are only for deciding the Revision Application, the same stands dismissed with no order as to costs.

Judge

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