

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 642 OF 2017
WITH
CIVIL APPLICATION No. 285 OF 2018
IN
FIRST APPEAL No. 642 OF 2017

Shankar Appa Khodagale,
Abated through heirs
Pramod Anant Khodagale & Ors.

...Applicants/
Appellants

Versus

Shri Ballaleshwar Devasthan, Pali
through its trustees
Shrikrishna Govind Apte & Ors.

...Respondents

.....

Mr.C.G. Gavnekar for the Applicants/Appellants.

.....

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JANUARY 24, 2018**

P.C.:

1. The learned Counsel for the applicants/appellants submits that the applicants/appellants have challenged the scheme settled by the learned Assistant Charity Commissioner, Raigad Region, Alibag by order dated 10th January, 1991. The appellants i.e, plaintiffs have

filed Special Civil Suit No. 2 of 1985 for declaration that the appellants/plaintiffs being Guravs are entitled to receive an amount of Rs. 551/- and other things offered by devotee to the deity. The issue involved in this Appeal is very short whether Guravs are entitled to receive Rs. 5/- and below from donation box or “Gurvanchi Pethi” or they are entitled to receive more. He further submits that original respondent nos. 1 to 7 i.e., trustees are now changed and hence the applicants have taken out Civil Application to substitute new trustees i.e. proposed respondent nos. 1 to 7 in the place of old trustees i.e. original respondent nos. 1 to 7. He further submits that the learned Additional District Judge, Raigad, Alibag while deciding Civil Appeal No. 39 of 1991 has already decided Civil Suit No. 2 of 1985. He further submits that in the said Suit, the learned District Judge did not frame issues, but he has considered the evidence tendered by the witnesses. He further submits that procedurally the learned District Judge has gone wrong.

2. On perusal of the judgment and order dated 27th December, 1999 passed by the learned Additional District Judge, Raigad, Alibag, it is found that the learned District Judge has decided the issue involved in other appeals filed by other parties thereby challenging

the scheme settled by the Assistant Charity Commissioner wherein the issue of fixing the entitlement of Guravs was involved. The present appellants have raised the same issue in Civil Suit No. 2 of 1985, as the learned District Judge has decided both the matters by a common judgment. There is no point in remanding the suit of 1985 for a fresh trial. The learned District Judge has referred the evidence of Guravs and, therefore, it is fair, appropriate and will not cause any prejudice to the appellants if this appeal is argued before this Court relying on the evidence tendered by them, as this First Appeal is a continuation of the Suit.

3. In view of the above, Civil Application No. 285 of 2018 for bringing new trustees i.e., proposed respondent Nos. 1 to 7 on record is hereby allowed. Civil Application is allowed in terms of prayer clause (b). Amendment is to be carried out within a period of four working days from today. Registry to call record and proceedings and issue notice to new trustees i.e., proposed respondent nos. 1 to 7 immediately, returnable on **14th February, 2018**. Parties to take note that the matter will be heard finally at the stage of admission.

4. Civil Application is allowed and is accordingly disposed of.

(MRIDULA BHATKAR, J.)