

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1243 OF 2015
WITH
CIVIL APPLICATION NO. 4020 OF 2015 IN F.A. NO. 1243 OF 2015
WITH
FIRST APPEAL NO. 1126 OF 2015
WITH
CIVIL APPLICATION NO. 3425 OF 2015 IN F.A. NO. 1126 OF 2015
WITH
FIRST APPEAL NO. 1127 OF 2015
WITH
CIVIL APPLICATION NO. 3426 OF 2015 IN F.A. NO. 1127 OF 2015
WITH
FIRST APPEAL NO. 1128 OF 2015
WITH
CIVIL APPLICATION NO. 3427 OF 2015 IN F.A. NO. 1128 OF 2015

Bhausahab Babasaheb Patil
Vs.

... Appellant

Nivrutti Anna Shinde & Ors.

... Respondents

a/w.

FIRST APPEAL NO. 1131 OF 2015
WITH
CIVIL APPLICATION NO. 3443 OF 2015 IN F.A. NO. 1131 OF 2015
WITH
FIRST APPEAL NO. 1132 OF 2015
WITH
CIVIL APPLICATION NO. 3444 OF 2015 IN F.A. NO. 1132 OF 2015
WITH
FIRST APPEAL NO. 1133 OF 2015
WITH
CIVIL APPLICATION NO. 3445 OF 2015 IN F.A. NO. 1133 OF 2015

Janardan Krishnarao Kharade & Anr.
Vs.

... Appellants

Nivrutti Anna Shinde & Ors.

... Respondents

Mr. Umesh Mankapure, Advocate for the appellants/applicants in

FA/1243/2015, FA/1126/2015, FA/1127/2015 and FA/1128/2015.

Mr. H.G. Wakshe, Advocate for the appellants/applicants in FA/1131/2015, FA/1132/2015 and FA/1133/2015.

Mr. Sandesh D. Patil a/w. Ms. Anusha Amin, Advocate for the respondent no. 1 in all the matters.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 10th JANUARY, 2018.

P.C.:

In First Appeals no. 1243 of 2015, 1126 of 2015, 1127 of 2015 and 1128 of 2015, the appellant is same, who is a trustee. In First Appeals no. 1131 of 2015, 1132 of 2015 and 1133 of 2015, the appellants are same, who were not trustee earlier but now they are one of the trustees. All these Appeals are decided by a common judgment and order, as the issue of remand of matter is involved. The appellants are one of the trustees, who has filed change reports before the Assistant Charity Commissioner in the year 1997. Though the change reports were accepted by the Assistant Charity Commissioner by order dated 13th October, 1997, these orders of change reports were challenged in the year 2003 under section 22A of Bombay Public Trust Act and subsequently a Writ Petition was filed. The order dated 8th July, 2008 passed by this High Court in Writ Petition No. 4344 of 2008 was subsequently challenged. The matter was decided in Letters Patent Appeal. However, thereafter the present respondents have filed Revision Applications under section

70A of Bombay Public Trust Act on 15th December, 2008 challenging the order dated 13th October, 1997 of the Assistant Charity Commissioner accepting the change reports. In the said Revisions Applications, the Joint Charity Commissioner by orders dated 9th March, 2010 remanded all the Revision Applications for a fresh trial before the Assistant Charity Commissioner. The said orders of remand is challenged by the present appellants in the Applications filed under section 72 of the Bombay Public Trusts Act before the District Judge, Sangli but by the orders dated 5th March, 2015 the learned Judge upheld the order passed by the Joint Charity Commissioner and dismissed all the Applications. Hence, these First Appeals.

2. The learned counsel Mr. Mankapure has challenged the order of remand on five grounds – (i) The trust is not made party in the Revision Applications and hence, it is not maintainable; (ii) The orders of acceptance of the change reports which were passed in the year 1997 were challenged in the year 2008 before the Joint Charity Commissioner. Thus, after a gap of 10 years, further change reports were submitted and accepted and the trust has acted upon it and hence there is considerable change for number of times in the

constitution of the trustees and thus, the issue has now only remained academic; (iii) He submitted that the respondents in fact should have filed the Appeal under section 70 of the Act, however, it was not filed at the relevant time and in order to overcome the period of limitation which was only for 60 days, the respondents have filed the Revision Applications under section 70A of Bombay Public Trust Act where the limitation is not prescribed; (iv) The learned counsel has pointed out that the present appellant was also prosecuted under the charges of fraud and forgery by the respondents by filing private complaint and the appellant is acquitted from the criminal prosecution and it is a relevant fact. The learned counsel further submitted that the order of the learned Judge of the District Court is to be set aside; and (v) The learned submitted that respondent no. 1 was one of the trustees when the change reports were filed before the Assistant Charity Commissioner and therefore, he was beneficiary of the change reports.

3. Per contra, the learned counsel for the respondent no. 1 opposed these Appeals and submitted that while accepting the change reports, it was necessary for the Assistant Charity Commissioner to issue notices which were not sent. He further

submitted that the minutes and resolutions of the Trust were manipulated and prepared only to get the change reports accepted. He further submitted that in the resolution of the trust, the person who was shown present was already dead and death certificate was also produced. He further submitted that the grounds which were raised in the Appeal before this Court were not raised before the District Court as well as before the Joint Charity Commissioner. Therefore, the opportunity to meet these challenges were not available to the respondents.

4. Considered the submissions. Perused the impugned orders so also the Revision Applications filed before the Joint Charity Commissioner. The challenge is given on the ground of fraud in the Revision Applications. The points argued by the learned counsel for the appellant appears that they are not presented before the learned District Judge. Therefore, I am of the view that all the points are to be argued before the Joint Charity Commissioner where Revision Applications are filed. The nature of the allegations of fraud can be determined on the basis of documentary evidence, which is available to the Joint Charity Commissioner. Under such circumstances, the order of remand cannot be justified. I, therefore, hereby set aside the

order of remand dated 9th March, 2010 passed by the Joint Charity Commissioner so also the order passed by the learned District Judge dated 5th March, 2015. Revision Applications are hereby restored to the file of Joint Charity Commissioner, Kolhapur. Parties to appear before the Joint Charity Commissioner on 21st January, 2018 at 11 a.m. The Joint Charity Commissioner to expedite the hearing of the Revision Applications on or before 31st March, 2018. Parties to cooperate. All the contentions are kept open.

5. The First Appeals are allowed.

6. Civil Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)