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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

SECOND APPEAL NO.629 OF 1993

Shri Ganapati Maharaj Devasthan Sanstha
(Trust) of Miraj, represented by its trustees

1. Satyanarayan Mansaram
Adult, Occupation Advocate
2. Ganapati Maruti Pise
Adult, Occupation Tailor
3. Appaya Nagayya Swami
Adult, Occupation Agriculturist,
All residents of Miraj, Distrcit Sangli ... Appellants

v/s

1. The State of Maharashtra,
represented by the Collector of Sangli,
District Sangli
2. Navayug Mahila Mandal,
Miraj, Shaniwar Peth, Miraj,
District Sangli
3. Bapu Hasainsaheb Kalawant
Adult, deceased by his heirs
 - (i) Appasaheb Bapusaheb Inamdar,
Adult,
 - (ii) Noormohamad Bapupsaheb
Inamdar, Adult,
 - (iii) Mayarajbi Bapusaheb Inamdar,
Adult,
 - (iv) Jannat Bapusaheb Inamdar,
Adult,
 All Traders of Miraj, Near Bharucha
Haud, Shaniwar Peth, Miraj ... Respondents

Mr Rupesh Lanjekar i/b Mr M.L. Patil for the Appellants.
Mr Yogesh Dabke, AGP for the Respondent No.1.
Mr P.M. Arjunwadkar for Respondent No.2.

CORAM : N.M. Jamdar, J.

DATE : 25 January, 2018.

ORAL JUDGMENT :-

By this Second Appeal, the Appellant – Shri Ganapati Maharaj Devasthan Sanstha, Miraj is challenging the concurrent judgments and orders passed by the learned Assistant Judge, Sangli and the learned District Judge, Sangli dismissing the Suit and Appeal filed by the Appellant.

2. The Appellant – Plaintiff filed a Regular Civil Suit bearing No.1 of 1977 in the Court of Assistant Judge, Sangli. The Suit was filed in respect of two properties, C.S. Nos.2487 and C.S. No. 2487/1 situated in Shaniwar Peth, Miraj. The case of the Appellant – Plaintiff was as follows. The suit properties were owned by one Appaji Kalawant and others. They sold the properties to Shri Dattagiri Guru Haridwar Giri Buwa of Miraj and his successor Shri Bhavanigiri Guru Ganeshgiri Buwa. Shri Bhavanigiri created a Trust in the name of Shri Ganapati Maharaj Devasthan Sanstha and gifted the properties in the year 1920 to the Trust and

the Trustees were put in possession of the suit properties. There was also a tank in the premises with an engraving that it was built by Sidgiri Guru Haaridwar Giri in the year 1870. The properties were wrongly described in the city survey record as Government properties. The Defendants tried to encroach in the suit property, therefore, the Suit bearing No. 1 of 1977 was filed seeking declaration and injunction that the properties owned by the Trust and that the Defendants i.e. State of Maharashtra, Navyug Mahila Mandal and Bapu Kala Mandir, be restrained from interfering with the possession of the Plaintiff - Trust.

3. The Defendant - State filed a written statement and contended that the properties viz. C.S. No.2487 and 2487/1 are separate properties. C.S. No.2487 is owned by the State Government and C.S. No.2487/1 is owned by Defendant No.2 – Navyug Mahila Mandal. It was denied that the properties were owned by Dattagiri Guru Haridwar Giri Buwa of Miraj, and there was no such gift deed. The dilapidated tank in the suit premises was used by the Municipality only for storing garbage. Though, Sidgiri Guru may have taken part of in the construction of the property, the property did not belong to him, but to the State Government. The suit property belonged to erstwhile Miraj State and in the City Survey record, it was so declared in the City Survey and the declaration not became final. City Survey No.2487 was sold

to Defendant No.2 – Navyug Mahila Mandal and they are in possession of the same.

4. The Defendant No.2 – Navyug Mahila Mandal filed written statement and contended that the properties were purchased by them. The properties were owned by Dhundiraj Patwardhan, who had purchased it in the auction in the year 1945, and on 29th March 1968, Patwardhan had sold the property to Defendant No.2 by a registered sale-deed. After purchasing the property, Defendant No.2 had filed civil suits for getting possession of the premises from the tenants. Defendant No.3 filed written statement and contended that he is in lawful possession of the portion of the suit properties and since the time of his forefathers for the last 100 years, the properties are used by them.

5. The learned Assistant Judge framed issues as to whether the Plaintiff proved that the suit property originally belong to Appaji Kalawant and answered the same in the negative. The Assistant Judge did not accept the theory put-forth by the Plaintiff that, in the year 1923, a gift was executed in favour of the Plaintiff Trust. The Assistant Judge also observed that the Plaintiffs were not in actual possession of the suit properties. The Assistant Judge noted that the gift-deed which was to be placed on record was in Modi language and it was not translated and merely because it was a 30 year old

document, it could not be stated that the contents were proved. The Assistant Judge also considered the other material on record such as the admissions given by the witness of the Plaintiff in the municipal record and held that there was no evidence at all that the property belonged to Bhavangiri Guru Ganeshgiri at any time. Considering this position, the Assistant Judge declined to grant any declaration as regard title in respect of the property bearing C.S. No.2487. As regards C.S. No.2487/1, the Assistant Judge held that it was purchased by sale-deed by one Patwardhan and thereafter by Defendant No.2. The Assistant Judge also noted that the said purchase was pursuant to the auction held by the Court. After considering the evidence on record, the Assistant Judge concluded that the Plaintiffs were not in possession of the suit properties. Accordingly, by judgment and order dated 7th November 1979. The Suit was dismissed.

6. An Appeal No.459 of 1982 was filed by the Plaintiffs in the District Court, Sangli. The learned District Judge re-appreciated the evidence on record and confirmed the finding of the Assistant civil Judge that the Plaintiffs did not have title to the suit properties. The District Judge, accordingly dismissed the Appeal by judgment and order dated 11th November 1991.

7. Second Appeal was admitted on 20th March 1994 as per

substantial questions of law as framed in ground Nos.1 to 3 in the memo of appeal. The questions of law framed are regarding the finding of both the Courts in respect of the gift-deed stated to be executed in favour of the Appellant Trust. I have heard the learned counsel for the parties on the questions of law so framed.

8. Though the Assistant Judge framed as many as 30 issues, the District Judge was right in framing one issue as to whether the Appellant – Plaintiff had proved that the suit properties were owned by them. Since the Appellants are claiming claim on title to the suit properties, this is the main issue to be considered.

9. The case of the Appellants is based on a document styled as a gift-deed. Neither the Appellants nor the Respondents nor the learned Judge could read this script. It is stated to be of the year 1923. This gift-deed is admittedly in Modi script. The Appellants did not bother to provide translation. The learned counsel for the Appellants submitted that because the learned Judge did not follow modi script, the Suit could not have been dismissed. This submission is unfair to the learned Judge. When a Suit is filed based on a document in a language which is no longer in use and the Plaintiff wanted to assert its rights based on the document, it was the duty of the Appellants to produce translation. The Suit was instituted in the year 1977 and it was decided in the year 1979. The

appeal was filed in the year 1982 and decided in the year 1991. Even after the finding rendered by the learned Civil Judge in the year 1979, the Appellants had 12 years to place the translation on record. Nothing is shown as to whether the appellants were restrained from placing the translation on record. The only conclusion can be drawn is that the Appellants avoided to place the translation on record as there was nothing in it in their favour. Both the Courts have rightly held that merely because the document was more than 30 years old and it was exhibited, it cannot be said that the contents were proved. It cannot be that a party comes to the Court for establishing its rights and the entire burden is upon the learned Judge to either learn the language or to direct the party to provide translation. If the Plaintiff does not choose to produce evidence, he cannot succeed. Therefore, I do not find any legal error committed by both the Courts below while deciding the issue on the gift-deed.

10. Even otherwise, there are various other factors which which would indicate that the appellants – Plaintiffs are not owners of the suit properties and the District Judge was right in holding that the appellants did not prove C.S. Nos.2481 and 2481/1 were referred to in their document. The name of the Appellant Trust was not recorded in the municipal record till date. The municipality was established in the year 1923. If there was such a gift-deed, the names of the appellants would have been mentioned in the municipal

record. It appears that Bhavangiri Guru died on 14th December 1925. The property, portion of C.S. No.2481 was put to auction and it was purchased by one Patwardhan and auction certificate was produced on record. A Sanad was also issued on 8th February 1947 in favour of Shri Patwardhan, the property was thereafter purchased on 29th March 1978 by Defendant No.2. From this record, it is clear that after the demise of Shri Bhavangiri Guru, the property was legitimately purchased by Defendant No.2. In spite of the claim of creation of the Trust in the year 1923, it was not registered as such till the year 1975. Therefore, two factors clearly emerge; that the Appellants have not acted upon the said document to make any entries in the revenue record, and the properties were purchased in auction by Defendant No.2. As regards the inscription on the tank, nothing turn on the same, as mere inscription cannot be considered as title-deed.

11. On aspect of possession, the claim made by the appellants – Plaintiffs was on basis of some photographs and ornaments. The District Judge has rightly noted that in respect of open government properties which are not well guarded, some functions are held by private person and from that, neither legal possession nor title can be established. Considering all these aspects, both the Courts have rightly negated the claim of the appellants on the basis of the gift-deed.

12. As regards the question of law framed whether the Appellate Court was justified in discarding the gift-deed without giving opportunity to the parties to give translation, nothing was shown that the Appellants were prevented in any manner in furnishing such a translation. If the Appellants have withheld the translation, they cannot get any benefit out of the same, to the prejudice of the Respondents. Since the year 1923, for more than 52 years, the Trust was not registered and the fact that there were no entries in the Records were rightly held to be suspicious circumstances by the District Judge. The question of law framed therefore will have to be answered against the Appellants. There is no perversity committed by both the Courts in appreciation of the evidence.

10. The Second Appeal is dismissed. No order as to costs.

(N.M. Jamdar, J.)