

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

FIRST APPEAL NO.241 OF 2000

Bhausahab Somaji Dumate,
(died through L.Rs.) -

1. Smt.Laxmibai Bhausahab Dumate,
(deleted vide order
dt. 14.1.2015)
2. Bhagwan Bhausahab Dumate
Age: 51 occu. Serlvice,
3. Kalisas Bhausahab Dumate,
Age: 40Yrs., occu. Serlvice.

All R/o "Parwati Niwas"
Opp.Maliwada Post office,
Maliwada, Ahmednagar.

= **APPELLANT**
(orig. Opponent)

VERSUS

1. Jagannath Pandharinath Agarkar,
(since dead, his L.Rs.)
- 1-A) Abhay Jagannath Agarkar,
Age: 50 Yrs., occu. Advocate,
R/o Agarkar Mala, Station Rd.,
Ahmednagar.
2. The Charity Commissioner,
Maharashtra State,
83, Dr.Annie Besant Road,
Worli, Bombay 400 018.

= **RESPONDENT**
(Orig. Applicant)

Mr.VS Bedre,Advocate for Appellants;

Mr LB Pallod, Advocate for Respondent No.1A;

Respondent No.2 is duly served.

CORAM : P.R.BORA, J.

RESERVED ON : 18th February, 2019

PRONOUNCED ON : 26th April, 2019

JUDGMENT

1. Judgment and order dated 10th August, 1999 passed by 2nd Additional District Judge, Ahmednagar in Misc. Application No.14 of 1991 is challenged in the present appeal. The aforesaid Misc. Application before the District Court was filed by the present appellant against the judgment and order of dismissal of appeal No.61/1989 by the Joint Charity Commissioner under Section 70 of the Bombay Public Trusts Act on 23rd October, 1985. The aforesaid appeal was filed by the present appellant against the order passed by the Assistant Charity Commissioner, Nasik Region, Nasik on 22nd August, 1989. The learned Assistant Charity Commissioner, vide order passed on 22nd August, 1989 had held that the property CTS No.4287 admeasuring 106.2 sq.mtrs. was the property of the subject trust. The matter relates to a public trust named as "Maliwada Panch Mandal Devasthan and Dharma Fund, Ahmednagar. It is a duly registered as public trust in the office of Assistant Charity Commissioner, Ahmednagar bearing registration No.

A-242 (Ahmednagar).

2. In Change Report No.470/1985 it was reported that the immovable property, i.e. CTS No. 4287, admeasuring 106.2 sq.mtrs., was gifted to the trust by Shri Sadashiv Shivram Nisal in the year 1979. The change report so filed was objected to by the present appellant. It was the contention of the appellant that said Sadashiv Nisal was not having any right or authority to gift the property in question since said Nisal was never holding the title to the said property or was in possession of the said property. It was the further contention of the present appellant that the subject property was owned by deceased Parubai Wagh and said Parubai had bequeathed the said property to the appellant by a registered Will-deed and as such after death of Parubai, the appellant had become the owner of the said property.

3. As against it, it was the contention of the present respondent that the subject property was purchased by Sadashiv Nisal in court auction and was gifted to the trust by him.

4. The learned Assistant Charity Commissioner upheld the contention of the respondent and accepted the Change Report and accordingly held the CTS No.4287 as the trust property.

5. The present appellant though preferred the appeal before the Joint Charity Commissioner and then Misc. Application before the District court, as noted herein above, both the courts have affirmed the decision rendered by the Assistant Charity Commissioner.

6. Shri VS Bedre, learned counsel appearing for the appellant/s, assailed the impugned judgment on the ground that the Assistant Charity Commissioner was not having any authority to decide the title to the property in question and as such, the order passed by the Assistant Charity Commissioner was without jurisdiction and hence non-est. The learned counsel, relied upon the judgment of this court in the case of Keki Pestonji Jamadar Vs. Rodabai Khodadad Merwan Irani - 1972 Mh.L.J. 427, to buttress his argument.

7. Opposing the submissions made by Shri Bedre, learned Counsel Shri Pallod, appearing for the respondent, submitted that the Assistant Charity Commissioner has rightly recorded the property in the name of the subject trust and the District Court has also, by recording elaborate reasons, confirmed the order passed by the Assistant Charity Commissioner. The learned counsel submits that no interference is required in the order so passed.

8. I have given due consideration to the submissions made by the learned counsel appearing for the parties. I have perused the impugned judgment and the other material placed on record. The only objection, as has been raised by learned counsel Shri Bedre is that, when the title of Shri Sadashiv Nisal to the subject property was itself disputed by the present appellant, the Assistant Charity Commissioner should have restrained himself from dealing with the matter and could not have held the said property to be the trust property. The contention so raised by Shri Bedre is, however, difficult to be accepted. The material on record

and the discussion made by the learned Assistant Charity Commissioner in his order passed in the Change Report proceeding reveals that Sadashiv Nisal has on 12th March, 1979 executed a registered Gift-deed as regards the subject property in favour of the subject trust, i.e. Maliwada Panch Mandal Deosthan. The material on record further reveals that the said property was purchased by said Shri Sadashiv Nisal in the Court auction. It is the contention of the present appellant that said Sadashiv Nisal was not having any title to the said property and the subject property was, in fact, belonging to deceased Parubai. It was the further contention of the appellant that Parubai had executed a Will-deed in his favour in respect of the subject property and he had, therefore, become owner of the said property. As has been observed by the learned District Judge in the impugned order, the Gift-deed dated 12th March, 1979 was the registered gift-deed, which raised a presumption in favour of the trust and the objectors did not rebut the said presumption. It is further observed that though the objectors were claiming that the property was owned by deceased Parubai and she had

executed the Will in their favour, the said contention was not substantiated by them. Considering the facts, as aforesaid, it does not appear to me that the learned Assistant Charity Commissioner has committed any error in rejecting the objections raised by the present appellant. The learned District Judge has also, by making elaborate discussion, turned down the objections raised by the objectors and has confirmed the order passed by the Assistant Charity Commissioner.

9. As stated herein above, the only objection raised by the appellant is that the Assistant Charity Commissioner was not authorized or was not having any right or authority to decide the title of the subject property. In fact, it appears that the appellant himself in the proceeding before the Assistant Charity Commissioner, raised the dispute as about the title of Sadashiv Nisal to the subject property. The appellant could not have raised such dispute before the Assistant Charity Commissioner. If the appellant was of the

opinion that the property sought to be entered in the name of the subject trust was owned by him and said Shri Sadashiv Nisal was not having any title to gift the said property, proper remedy for the appellant was to approach the Civil Court and get resolved the dispute as about the title to the subject property. The appellant, admittedly did not adopt such course and preferred to agitate the issue before the Assistant Charity Commissioner. The Assistant Charity Commissioner on the basis of the proved documents has held the property to be the trust property and it does not appear to me that any error has been committed by the learned Assistant Charity Commissioner in recording such finding, which has been affirmed by the learned District Judge. I, therefore, see no reason for causing any interference in the orders, impugned in the present appeal. The appeal being devoid of any substance, deserves to be dismissed and is accordingly dismissed. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/
fldr 18.4.19