IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 1847 OF 2016

WITH

CIVIL APPLICATION NO. 6475 OF 2016

1. Uttam Vithalrao Tekale,
Age; 50 years, Occ; Agril,

2. Suresh Nivruti Tekale,
Age; 42 years, Occ; Agril,

Both resident of Pimpalgaon Dola,
Tq. Kallamb, District; Osmanabad.

3. Shrinivas Shrikrishna Giri,
Age; 40 years, Occ; Agril,
R/o; Karanjkalla, Tq. Kallamb,
Dist. Osmanabad. ...**APPELLANTS**
(Orig. Deft. Nos. 11 to 13)

VERSUS

1. Rajabhau Sopan Shelke,
Age; 36 years, Occ; Agril,
R/o; Karanjkalla, Tq.Kallam,
Dist. Osmanabad.

2. Rameshwar Sureshrao Jadhav,
Age; 38 years, Occ; Agril,
R/o; Diksal, Tq. Kallam,
Dist;Osmanabad. ...**RESPONDENTS**
(Original Plaintiffs)

3. Pandurang Gunwantrao Kumbhar,
Age; 43 years, Occ; Service,
R/o; Kalpana Nagar, Kallamb,
Tq. Kallam, Dist; Osmanabad.

4. Subhash Ramdas Pawar,
Age; 40 years, Occ; Service,

R/o; Purvalota, Tq. Kallam,
Dist; Osmanabad.

5. Nanasaheb Abusha Pawar,
Age; 39 years, Occ; Agril,
R/o; Kalpana Nagar, Kallam,
Tq. Kallam, Dist; Osmanabad.

6. Baliram Shantiling Gujar,
Age; 53 years, Occ; Agriculture,
R/o; Karanjkalla, Tq.Kallam,
Dist; Osmanabad.

7. Rajabhau Uttam Pawar,
Age; 37 years, Occ; Agril,
R/o; Karanjkalla, Tq.Kallam,
Dist; Osmanabad.

8. Dhamjeet Shripati Randive,
Age; 41 years, Occ; Service,
R/o; Kalpana Nagar, Kallam,
Tq. Kallam, Dist; Osmanabad.

9. Mohammad Mohiddin Khan,
Age; 40 years, Occ; Agril,
R/o; Kalpana Nagar, Kallam,
Tq.Kallam, Dist; Osmanabad.

10. Taufik Abdul Gafur Mulla,
Age; 40 years, Occ; Service,
R/o; Baba Nagar, Kallam,
Tq. Kallam, Dist; Osmanabad.

11. Managal w/o Kisan Dashwant,
Age; 43 years, Occ; Household,
R/o; Pimpalgaon (D),
Tq.Kallam, Dist; Osmanabad.

12. Balaji Parasram pawar,
Age; 45 years, Occ; Agril,
R/o; Karanjkalla,
Tq. Kallam, Dist; Osmanabad.

13. Baliram Shilivan Gujar,
Age; 48 years, Occ; Agril,
R/o; Karanjkalla,
Tq.Kallam, Dist; Osmanabad.

14. The Assistant Charity Commissioner,
Office Samarth Nagar,
Osmanabad. ...**RESPONDENTS**
(Original Defendants)

.....

Shri. V.D.Salunke, Advocate for Appellants
Shri. N.P.Patil (Jamalpurkar), Advocate for Respondent Nos. 1 to 7, 10 and 11.

.....

CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 04/04/2019

Date of Pronouncing Judgment : 18/04/2019

JUDGMENT :

This appeal is directed by Original Defendant Nos. 11 to 13, against the judgment and decree passed by the District Judge-III, Osmanabad, in Trust Suit No. 01 of 2004, whereby the scheme was framed for the proper management of the trust Shri. Sant Goroba Kaka Shikshan Prasarak Mandal, Karanjkheda, Tq. Kalamb, District Osmanabad (hereinafter referred to as the 'Trust'). Respondent Nos. 1 and 2 are Original Plaintiffs and other respondents are Original Defendants. In fact, this is the second round of litigation in between the same parties after the remand of suit by this Court, in accordance with directions given in the First Appeal No. 127 of

2014. (hereinafter the parties are referred in accordance with their status in the original proceeding as Plaintiffs and Defendants).

2. Facts leading to the institution of this appeal are that plaintiffs filed a Trust Suit for approval of the scheme framed for the management of the Trust and for directions to defendant Nos. 1 to 9 to run the affairs of the Trust in accordance with new scheme. The admitted facts in between the parties are that the Trust is registered under the Societies Registration Act, 1860, as well as under the Bombay Public Trusts Act, 1950, vide registration No. MAH-168/91 F-2238 in the year 1991. At the time of registration of the Trust, the Constitution of the Trust was framed and the affairs of the Trust were managed in accordance with the said Constitution.

3. The contention of the plaintiffs is that they are also the Trustees of the said Trust and the Constitution of the Trust is defective, as no provisions are made to empower the President, Secretary, The Treasurers, The Joint Secretary and

other Office Bearers of the Trust to manage all activities of the Trust. As no specific powers are assigned to the Office Bearers of the Trust, complications arise while managing affairs of the Trust. Therefore, plaintiffs framed new scheme for the trust assigning specific powers and duties to the President, Secretary, The Treasurers, the Joint Secretary and the other Office Bearers of the Trust and filed this suit for the approval of the said scheme and for directions to defendant Nos. 1 to 9, to manage the affairs of the Trust in accordance with new scheme.

4. By filing the Written Statement (Exh. 48), defendant No. 1 opposes this suit, on the ground that the District Court has no jurisdiction to entertain the suit and by filing such suit, plaintiffs cannot change rules and regulations, which are for the management of the affairs of the Trust. The contention of the defendants is that the rules and regulations of the Trust can be changed only by filing change report before the Assistant Charity Commissioner and not by filing the Civil Suit. According to defendant, the

change report is already pending before the Assistant Charity Commissioner and therefore, plaintiffs have no right to file such suit. Defendant No. 11 has countered the suit only on the ground of its maintainability.

5. By filing pursis (Exh.59), defendant Nos. 12 and 13 have adopted the Written Statement filed by defendant No. 11. Defendant Nos. 1 to 3, 5, 8 and 9 filed the Written Statement (Exh. 73) and admitted the suit claim.

6. After considering the evidence placed on record by both parties, the Trial Court pleased to decree the suit by accepting the scheme proposed by the plaintiffs and by issuing directions to the defendants/trustees to run the affairs of the management of trust in accordance with the new scheme. The correctness of that decree is under challenge in the present appeal.

7. Heard Shri. V.D.Salunke, the learned counsel for Appellants and Shri. N.P. Patil (Jamalpurkar), the learned counsel for Respondent

Nos. 1 to 7, 10 and 11.

8. Learned counsel for appellants assailed the judgment and decree passed by the Trial Court on the ground that the suit is not maintainable as it is not filed by minimum two persons having interest in the trust. He submits that plaintiff No. 2 is not even member of the trust. Therefore, the suit is not maintainable under Section 50 of the Maharashtra Public Trusts Act, 1950. (hereinafter referred to as the 'Trust Act').

9. The next contention of the learned counsel for appellant is that under Section 50A of the Trust Act, only the Charity Commissioner has exclusive powers to frame a new scheme or to amend the existing scheme of the trust and the District Court has no jurisdiction either to frame or approve the new scheme or to approve or amend the scheme of the trust. Thus, the civil suit is barred under Section 80 of the Trust Act.

10. The next contention of the learned counsel for appellants is that otherwise also

Section 50 of the Trust Act for instituion of the Civil Suit claiming directions to the Trustees to conduct the affairs of the trust in accordance with the new approved scheme and for the relief of sanction of new proposed scheme, the prior consent of the Charity Commissioner is necessary in view of Section 50 read with Section 51 of the Trust Act. He has also pointed out that in the suit the Trust is not made party. He placed reliance on Patel **"Patel Nanji Devji and others v. Patel Jivraj Manaji and others" [AIR 1988 Gujarat 182] .**

11. Learned counsel for respondents replied that in the earlier round of litigation i.e. in First Appeal No. 127 of 2014, this Court has already held that the District Court has powers to sanction the scheme, in view of the law settled by the Division Bench of this Court in **"Khojeste Mistree & Ors. v. Minoo Rustomji Shroff & Ors." [2008(4) Bom. C.R.617].**

12. The next contention of the learned counsel for respondents is that defendant Nos. 1

to 9 and both plaintiffs are the trustees of the trust and therefore, the suit is instituted by two persons having interest in the trust as required under Section 50 (1) of the Trust Act. The next contention of the learned counsel for respondents is that for the institution of this suit, prior consent of the Charity Commissioner is not necessary.

13. After hearing learned counsel of both parties, following points arise for my consideration, I have recorded my findings against each point for the reasons stated below :

SR. No.	POINTS FOR DETERMINATION	FINDINGS
1)	Whether the suit is filed by two or more persons having interest in the Trust ?	No. Plaintiff No. 2 has no interest in the trust.
2)	Whether the suit is bad for want of prior consent of the Charity Commissioner to institute the suit ?	Suit is not tenable in absence of prior permission of Charity Commissioner.
3)	Whether the District Court has powers to sanction new scheme or to amend the	In the affirmative.

	existing scheme ?	
4)	Whether the management of the trust is adversely affected due to lack of powers and duties of the President and Secretary of the trust under the Constitution of the Trust ?	In the negative.
5)	Whether defendant Nos. 1 to 9 can be directed to manage the affairs of the trust in accordance with new scheme ?	In the negative.
6)	Whether the decree passed by the Trial Court is correct and proper ?	In the negative.
7)	What order ?	Appeal is allowed and Suit is dismissed.

R E A S O N S

AS TO POINT NO. 3 :-

14. The judgment and decree passed by the District Court is assailed mainly on the ground that under Section 50A of the Trust Act the Charity Commissioner has exclusive powers to settle the new scheme or to amend the existing scheme. According to defendant No. 11 under Section 50 of the Trust Act, the District Court has no jurisdiction to settle the scheme or to amend the existing scheme of the trust. However, the point regarding the powers of the District

Court to settle new scheme or to amend the existing scheme is no more res-integra. Under Section 50 (j) of the Trust Act, the Court within whose local limits or within whose jurisdiction the whole or part of the subject matter of the trust is situate, can give relief regarding the settlement of the scheme or variation or alteration in the scheme already settled. "Explanation to Section 50 of the Trust Act reads as under :

> "In this Section, "Court" means, in the Greater Mumbai, the City Civil Court and elsewhere, the District Court".

15. Thus, obviously, the District Court, Osmanabad, within whose jurisdiction the subject matter of the trust is situated, can give relief regarding the settlement of new scheme as proposed by the plaintiffs. So also, the Divisioin Bench of this Court in **"Khojeste Mistree & Ors. v. Minoo Rustomji Shroff & Ors."** [supra] after considering the judgment of the Supreme Court in **"Raje Anandrao v. Shamrao" [A.I.R. 1961 S.C. 1206]** held that

> "the 'court' has jurisdiction to frame the scheme and sanction the scheme".

16. In the light of this settled position of law the preliminary objection raised by the learned counsel for appellants regarding the lack of jurisdiction of the District Court to entertain the suit is rejected. I answer point No. 3 in the affirmative.

AS TO POINT NOS. 1 & 2 :-

17. In the case at hand, plaintiffs have sought directions of the Court for proper administration of the public trust under Section 50 (iii) of the Trust Act with additional relief of the settlement of new scheme under Section 50 (j) of the Trust Act. The relevant portion of Section 50 (iii) and (j) reads as under :

Section 50 :- In any case, –

> "(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or
>
> the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons

> having an interest in case the suit is under sub-clauses (I) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentions or not in the Court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate, to obtain a decree for any of the following reliefs :
>
> (j) the settlement of a scheme, or variations or alterations in a scheme already settled"

18. A bare glance at Section 50 (iii) and (j) of the Trust Act makes it clear that for claiming the reliefs which have been sought by the plaintiffs, a suit is to be filed by two or more 'persons having interest' in the trust and having obtained consent in writing of the Charity Commissioner, as provided in Section 51 of the Trust Act. In the case at hand by filing the Written Statement (Exh. 48), defendant No. 11 has specifically denied that plaintiff No. 2 and defendant Nos. 1 to 3 and 6 to 8 are even valid members of the trust. Therefore, the burden lies on plaintiffs to prove that, plaintiff No. 2 and defendant Nos. 1 to 3 and 6 to 8 are the

legal and valid members of the trust. However, after going through the record and proceeding, it emerges that except bare words of plaintiff No. 1 Rajabhau Sopan Shelke (PW 1), no documentary evidence has been placed on record by plaintiffs to prove that plaintiff No. 2 and defendant Nos. 1 to 3 and 6 to 8 are the valid members of the trust. Even Rajabhau Shelke (PW 1) has admitted in his cross-examination that except defendant Nos. 5 & 9, other defendants are not members of the trust. This witness has also admitted that in this suit, he has not filed the resolution of the Executive Committee of the trust, authorizing plaintiffs to institute the present suit. Even plaintiff No. 2 Rameshwar Sureshrao Jadhav (PW 2), though entered into witness box, has admitted in his cross-examination that he was not the member of the First Executive Committee of the trust. He also admits that he cannot tell when he had become member of the trust and he has no documentary evidence to prove that his membership is approved by the Court. Thus, it becomes clear that even plaintiff No. 2 cannot prove that being member of the trust, he has interest in the suit within the meaning of Section 50 read with Section 2 (10) of the Trust Act. Thus, obviously, the suit for direction to the defendant Nos. 1 to 9 and for sanction of the new scheme of the trust is not instituted by two persons having interest in the trust. On this count also suit is not maintainable.

19. Another aspect is that in view of Section 50 of the Trust Act for seeking relief regarding directions to the Trustees for proper management of the trust and relief of sanction of new scheme of the trust, prior consent of the Charity Commissioner is necessary. In the case at hand, undisputedly, prior consent of the Charity Commissioner before institution of the suit is not obtained. Therefore, otherwise also, under Section 50 read with Section 51 of the Trust Act suit is not maintainable as held by Gujrat High Court in "**Patel Nanji Devji and others v. Patel Jivraj Manaji and others**"[supra].

20. Accordingly, my conclusion is that suit

is not maintainable on two counts i.e. as it is not instituted by two or more persons having interest in the trust and for not obtaining prior consent of the Charity Commissioner under Section 51 of the Trust Act, I answer point Nos. 1 and 2 in the negative.

AS TO POINT NO. 4 :-

21. The settlement of new scheme for the trust is sought only on the ground that for the lack of powers of President, Secretary of the trust, the management of the trust is adversely affected. However, after going through the Memorandum of Association of the trust and the Regulations (Exh. 68), it emerges that under Clause 7 of Regulation, the General Body of Trust is the Apex Body, which can control even the work of Executive Committee of the Trust. Even the annual accounts of the trust are to be approved before the General Body of the trust. Clause 10 of the Regulation provides the structure of Executive Committee of the trust which consists of seven Executive Members, including one President, one Vice President, one Secretary, one Joint Secretary

and members. Clause 10 (c) provides that the President and Secretary are permanent life member of the Executive Committee. Clause 12 of the Regulation provides the powers of the President and Vice President of the Executive Committee. Clause 16 and 17 of the Regulation provide powers and duties of the Executive Committee, which includes the powers to appoint and remove servants in the institution. The Executive Committee is empowered to control the entire affairs of the trust and the Executive Committee is also empowered to frame rules to run the proper affairs of the trust. The Executive Committee is empowered to maintain the list of the members, accounts of the Trust, to appoint Sub Committees or to empower even one of the Member to perform any specific duty. Thus, it emerges that Clause 16 to 18 of the Regulation empowers the Executive Committee to look after in the affairs of the trust.

22. Thus, only due to lack of special powers to the President and the Secretary, the affairs or management of the trust is not adversely affected. Even plaintiff Rajabhau Shelke (PW 1) has admitted

in his cross-examination that till the institution of the suit, the affairs of the trust were running as per its Constitution and till the date of the institution of the suit, he did not find any ambiguity in the Constitution of the trust. He has also admitted the Constitution of the trust. Even, plaintiff no. 2 Rameshwar Jadhav (PW 2) has admitted in his cross-examination that the management of trust is conducted as per the regulations of the Trust and the Constitution of the Trust. In view of these admissions, it is to be held that due to lack of special powers to the President and the Secretary of the trust, the management of the trust is not adversely affected, which requires the settlement of new scheme.

23. In view of the above discussion, I have no hesitation to hold that plaintiffs miserably failed to prove that due to lack of powers of the President and the Secretary of the trust, the management of the trust is not adversely affected, which requires the settlement of new scheme. I answer point No. 4 in the negative.

AS TO POINT NO. 5 :-

24. In view of my findings to point Nos. 1 to 4, directions cannot be given to defendant Nos. 1 to 9 to look after the affairs of the trust in accordance with new scheme. Otherwise also, except defendant Nos. 5 and 9, defendant Nos. 1 to 3 and 6 to 8 are not even members of the trust, therefore, they cannot be authorized to look after the management or affairs of the trust. I hold that directions as sought by plaintiffs cannot be issued to defendant Nos. 1 to 9. I answer point No. 5 in the negative.

AS TO POINT NOS. 6 & 7 :-

25. In view of findings against point Nos. 1 to 5, decree passed by the Trial Court, sanctioning new scheme and issuing direction to the defendants, to look after affairs of the trust, is not correct and proper. Therefore, first appeal deserves to be allowed and the suit claim deserves to be dismissed. I answer point No. 6 in the negative and point No. 7 accordingly and proceed to pass following order :

ORDER

1) First Appeal No. 1847 of 2016 is allowed.

2) Decree passed by the District Judge -3,Osmanabad in Trust Suit No. 01 of 2004 is set aside and the Trust Suit No. 01 of 2004 is dismissed.

3) Parties to bear their respective costs throughout.

4) Civil Application No. 6475 of 2016 is disposed of.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/