

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL (ST) NO. 22471 OF 2019****ALONGWITH
CIVIL APPLICATION NO. 1179 OF 2019
IN
SECOND APPEAL (ST) NO. 22471 OF 2019**

**Ambadas Dattatraya Pawar,)
Since deceased through his legal)
Representatives) (Org.Plaintiff)**

**1. Smt. Kamalabai Ambadas Pawar,)
age : 70 years, Occupation : Household,)**

**2. Smt.Shobha Jayant Salunke,)
age : 50 years, Occupation : Household,)**

**3. Pramod Vijay Pawar,)
age : 48 years, Occupation : Pujari,)**

**4. Smt.Rupadevi Ajitsingh Jagtap,)
age : 45 years, Occupation : Household,)**

**5. Shri Raju Vijay Pawar,)
age : 43 years, Occupation : Pujari,)**

**6. Shri Sanjay Vijay Pawar,)
age : 43 years, Occupation : Pujari,)**

**7. Shri Sachin Vijay Pawar,)
age : 38 years, Occupation : Pujari,)**

**All residing at Sri Rupa Bhavani Mandir)
Compound, Bhavani Peth, Solapur) Appellants**

VERSUS

Ramanna Amannappa Masare,)
Since deceased through legal heirs) (Org.Deft)
1. Shri Mallinath Ramanna Masare,)
age : 53 years, Occupation : Agriculturist,)

2. Sunil Ramanna Masare,)
age : 48 years, Occupation : Agriculturist,)

3. Anil Ramanna Masare,)
age : 45 years, Occupation : Agriculturist,)

4. Smt.Prabhavati Ramanna Masare,)
age : 72 years, Occupation : Agriculturist,)

5. Vasanti Mallikarjun Khanapure,)
age : 55 years, Occupation : Household,)

6. Kavita Kashinath Chincholi,)
age : 52 years, Occupation : Agriculturist,)

7. Mrs.Geeta Gahininath Maharaj)
(Ausekar),)
age : 51 years, Occupation : Agriculturist,)

All residing at 896, North Kasba, Solapur,)
District : Solapur) Respondents

Mr.Prasad K.Dhakephalkar, Senior Advocate, i/b. Mr.Surel S. Shah for the Appellants.

Mr.Vineet B. Naik, Senior Advocate, a/w. Mr.R.S.Alange, Mr.Ajit V.Alange for the Respondent nos. 1 to 4.

CORAM : R.D. DHANUKA, J.

DATE : 20th SEPTEMBER, 2019

ORAL JUDGMENT :

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original plaintiffs) have impugned the judgment and decree dated 16th May, 2019 passed by the learned Principal District Judge, Solapur in Civil Appeal No.131 of 2012 arising out of the judgment and decree dated 7th August, 1996 passed by the learned Joint Civil Judge, Senior Division, Solapur in Special Civil Suit No.33 of 1992 thereby allowing the said Appeal No. 131 of 2012 and setting aside the judgment and decree dated 7th August, 1996 passed by the learned Joint Civil Judge, Senior Division dismissing the Special Civil Suit No.33 of 1992 filed by the appellants herein. Some of the relevant facts for the purpose of deciding this appeal are as under :-

2. The predecessor of the appellants was original plaintiff whereas the predecessor of the respondents was the original defendant before the trial court. The appellants were impleaded as legal representatives of Mr.Ambadas D.Pawar, the original plaintiff whereas the respondents were impleaded as legal heirs and representatives of Mr.Ramappa A. Masare, the original defendant.

3. On or about 17th August, 1933, Smt.Gangubai Babu Pawar filed a suit (Regular Civil Suit No.1660 of 1933) against the predecessor in title of the respondents for a declaration that they had right to perform pooja and collect the offerings of the deity Roopabhavani during Navaratra Mahotsav i.e. Ashwin Shuddha – 1 to Ashwin Shuddha – 15 every year.

4. On 5th December, 1934, the parties to the said suit filed the consent terms. The trial court in the said suit passed a decree in terms of the consent terms. It is the case of the appellants that as per the said consent decree, the predecessor in title of the appellants was entitled to get one half share in the offerings along with other co-sharer Ms.Indirabai Dattatraya Pawar. During the festival period sealed box was kept before the deity and both the pujaris after deducting the expenses were entitled to get one half share each in the amount and the things found in the sealed box.

5. On or about 30th May, 1952, the original respondent no.1 Mr.Ramappa A. Masare as a sole trustee and the manager of Roopabhavani Temple filed an application under section 18 of the Maharashtra Public Trust Act for registration of the said temple as a public trust. In the said application, Mr.Ramappa A.Masare mentioned the mode of succession to trusteeship and managership and pointed out that the male member in the family of the original defendant was to act as Vahiwatdar and if there were more than one male member, they were to make the selection of the members succeeding to the post of trusteeship and managership. Nobody outside the family of the respondents will have any right to the temple. It was mentioned that the said Mr.Ramappa A.Masare was the only Vahiwatdar of the temple. It was disclosed that there were two poojaries in the temple having alternate right of worship every week and that the poojaries take all income before the deity every day as their personal income in lieu of pooja. The respondents had nothing to do with the same.

6. It was further mentioned in the said application that during Navaratra festival every year, the respondents had got the right of

pooja as Vahiwatdar and sole trustee and has further right of collecting all the offerings before the deity during Navaratra Mahotsav. There was a reference made to the decree in Suit No.1660 of 1933 in the said application.

7. On or about 15th February, 1953, the learned Assistant Charity Commissioner, Pune Region, Pune after conducting an enquiry and after due notices to Smt.Indirabai Dattatraya Pawar and Smt.Gangubai Babu Pawar and other interested parties registered the said Roopabhavani Temple as a public trust. It is the case of the respondents that since prior to the registration of the temple as a public trust, the predecessor of the respondents and after them the respondents have been exercising their right of performing pooja and collecting all the offerings during Navaratra Mahotsav till today.

8. It is the case of the respondents that during Navaratra Mahotsav in October, 1988, the appellants started denying the right of the respondents of performing pooja of Roopabhavani Temple and the right of collecting the offerings offered to the deity during the said Navaratra Mahotsav. The respondents thus filed an application under section 41A of the Maharashtra Public Trust Act (Application No.15 of 1988) on 5th October,1988 before the Joint Charity Commissioner at Pune *inter alia* praying for permanent injunction against Mr.Ambadas D. Pawar and Mr.Bhanudas Dagadu Patange prohibiting them from obstructing the respondents from performing pooja and collecting offerings offered to the deity during Navaratra Mahotsav.

9. On 5th October, 1988, the respondents filed an application for temporary injunction before the learned Joint Charity Commissioner, Pune. The learned Joint Charity Commissioner granted *ad-interim*

injunction in the said application in favour of the respondents on 5th October, 1988. It is the case of the respondents that inspite of such *ad-interim* injunction on 5th October, 1988 passed by the learned Joint Charity Commissioner, the appellants continued their illegal activities and started threatening the respondents and distributing the right of the Vahiwat, management and administration of trust.

10. Sometime in the year 1989, the respondents filed an application (14 of 1989) under section 41-A of the Maharashtra Public Trust Act seeking administrative direction against the predecessor of the appellants and Mr.Bhanudas Dagadu Patange not to collect the offerings before the deity donations, subscriptions during Navaratra Mahotsav and seeking further directions that those parties, their servants, agents, relatives should not interfere and disturb the legal rights of the respondents of performing pooja of the deity during 15 days of Navaratra Utsav and for other reliefs.

11. On 21st August, 1989, the predecessor of the appellants filed his Say in the Application No. 14 of 1989. Mr.Bhanudas Dagadu Patange though appeared did not file written statement. On 22nd September, 1989, the learned Joint Charity Commissioner passed a common order in the Application No.15 of 1988 under section 41-E and Application No.14 of 1989 under section 41-A of the Act thereby issuing directions to the effect that the predecessor of the respondents was entitled to perform the annual utsav of the Roopabhavani Temple during Navaratra Mahotsav and he was entitled to collect the offerings before the deity during the said period. The original appellant and Mr.Bhanudas Dagadu Patange were restrained from obstructing the predecessor of the respondents during Navaratra Mahotsav, in any manner from performing pooja and from collecting offerings before the

deity.

12. The original appellant filed Civil Misc. Application No.248 of 1989 (Application No.15 of 1988) before the District Court at Solapur against the said order passed under section 41E of the Act. The original appellant also applied for stay by filing an application at Ex.5 in the said appeal before the District Court. The learned District Judge did not grant any stay in favour of the original appellant however passed an order on 28th September, 1989 thereby appointing Mr. S.B. Lamgunde, an advocate practicing in Solapur as a court commissioner with a direction to visit the temple and seal the cash collection box in the presence of the parties and keep the key of the box with himself till further orders. The original appellant preferred Writ Petition bearing No.4203 of 1989 in this court on 6th October, 1989 challenging the common judgment and order dated 22nd September, 1989 passed in the Application No.15 of 1988 and Application No.14 of 1989 and also prayed for stay of the operation of the order passed by the Additional District Judge.

13. On 5th April, 1990, the Division Bench of this court dismissed the said writ petition. The original appellant thereafter preferred a Special Leave Petition No.11617 of 1990 impugning the order dated 5th April, 1990 passed by this Court. By an order dated 8th October, 1990, the Hon'ble Supreme Court dismissed the said Special Leave Petition.

14. On 11th October, 1989, the learned Second Additional District Judge, Solapur dismissed the application at Ex.5 in Civil Misc. Application No.248 of 1989 filed by the original appellant. On 29th November, 1989, the original appellant preferred a writ petition bearing no. 1677 of 1990 in this court impugning the order dated 11th

October, 1989 passed by the learned Second Additional District Judge below Ex.5. On 19th February, 1991, this court dismissed the said Writ Petition No.1677 of 1990 filed by the original appellant.

15. On or about 29th September, 1991, the original appellant filed a Regular Darkhast No. 287 of 1991 in the Court of Civil Judge, Senior Division at Solapur for execution of the decree in Civil Suit No.1660 of 1933 *inter alia* praying that the respondents be detained in civil prison for disobeying the decree passed in the said Civil Suit No.1660 of 1933. The respondents opposed the said application by filing a reply. By an order dated 15th October, 1991, the learned Joint Civil Judge, Junior Division, Solapur rejected the said objections filed by the respondents and directed that the Regular Darkhast No.287 of 1991 to be proceeded further. The respondents filed a writ petition bearing no.3174 of 1992 in this court on 2nd May, 1992 impugning the said order dated 15th October, 1991. By an order dated 30th July, 1992, this court admitted the said writ petition and granted stay of the further proceedings in Regular Darkhast No.287 of 1991.

16. On or about 14th January, 1992, the original appellant filed a suit being Special Civil Suit No.33 of 1992 in the Court of learned Senior Division at Solapur claiming compensation or damages of Rs.1,00,000/- for the alleged loss of income during the Navaratra Mahotsav of the years 1988 to 1991 and towards the damages towards the mental injury alleged to have been caused to the respondents to the original appellant. The said suit was resisted by the predecessor of the respondents. Civil Misc.Appeal No.248 of 1989 which was filed by the original appellant and was pending before the learned District Court was also dismissed. The original appellant thereafter filed First Appeal No.1081 of 1996 in this court. The said first appeal is abated

by an order dated 8th August, 2019 passed by this court. It is the case of the appellants that the application for setting aside the said order dated 8th August, 2019 filed by the appellants is pending.

17. On 7th August, 1996, the learned Joint Civil Judge, Senior Division at Solapur passed a decree in Special Civil Suit No.33 of 1992 for Rs.48,000/- against the respondents together with proportionate costs. First Appeal No.1158 of 1996 filed by the respondents against the said order dated 7th August, 1996 in this court was subsequently transferred to District Court, Solapur and was numbered as Civil Appeal No. 131 of 2012. By a judgment and decree dated 16th May, 2019, the learned Principal District Judge, Solapur allowed the Civil Appeal No.131 of 2012 preferred by the respondents and set aside the decree dated 7th August, 1996 in Special Civil Suit No. 33 of 1992. The appellants have impugned the said judgment and decree dated 16th May, 2019 passed by the Principal District Judge, Solapur in this second appeal.

18. Mr.Dhakephalkar, learned senior counsel for the appellants invited my attention to some of the findings rendered by the learned Principal District Judge in the impugned judgment and decree dated 16th May 2019, order dated 5th April, 1990 passed by the Division Bench of this court in Writ Petition No.4203 of 1989 dismissing the writ petition filed by the original appellant against the order passed by the learned Joint Charity Commissioner in Application No.15 of 1988 and Application No.14 of 1989 dated 22nd September, 1989, some of the paragraphs of the judgment of this court in case of ***Ramanna Amannappa Masare & Ors. vs. Bhanudas Dagadu Patange & Ors., 2017(2) Bom.C.R..371.***

19. It is submitted by the learned senior counsel that the First Appellate Court has misinterpreted the judgment of Supreme Court in case of ***Church of North India vs. Lavajibhai Ratanjibhai and Ors., 2005(10) SCC 760***. He submits that the subject matter in the proceedings before the learned Joint Charity Commissioner was not relating to the trust or the property or income of the trust but was regarding the personal income of the predecessor of the appellants and thus the suit filed by him was for enforcement of the civil right and was thus maintainable. He submits that the findings rendered by the First Appellate Court that the suit for declaration and recovery of offerings made to the temple was not maintainable is perverse and contrary to the view already by this court in the judgment delivered by this court in case of ***Ramanna Amannappa Masare & Ors.*** (supra).

20. In support of this submission, learned senior counsel invited my attention to some of the paragraphs from the said judgment of this court and would submit that the findings rendered by the First Appellate Court regarding maintainability of the suit filed by the appellants is *ex-facie* contrary to the view already taken by this court in the said judgment.

21. It is submitted by the learned senior counsel that though the First Appellate Court in paragraph (40) of the said impugned judgment and decree has held that the power exercised by the Charity Commissioner is administrative in nature while acting as judicial or quasi judicial authority under section 41A of the Maharashtra Public Trust Act, and thus such administrative order passed by the Joint Charity Commissioner would never be equated as adjudication of issue to say that it would operate as *res-judicata*, the First Appellate Court contrary to such finding, allowed the appeal preferred by the respondents

herein.

22. In support of this submission that the powers exercised by the learned Joint Charity Commissioner are administrative in nature and thus there is no question of applicability of the principles of *res-judicata* based on the findings rendered in such administrative order is concerned, the learned senior counsel placed reliance on the judgment of the Division Bench of this court in case of ***Vanmala Manoharrao Kamdi and Ors. vs The Deputy Charity Commissioner, Nagpur Division, Nagpur and Ors., 2012(3) Mh.L.J.594*** and in particular paragraphs 31 and 39, judgment of this court in case of ***Ramchandra Sheshgiri Kamath Vs. Janardan Vishwanath Hegde, AIR 1969 Bom. 111*** and in particular paragraphs 7 to 9, 11, 14 and 16. He also placed reliance on the judgment of Privy Council in case of ***Babu Bhagwan Din vs. Gir Har Saroop, Volume XLII Bombay Law Report 190*** and more particularly relevant paragraph at page 195 of the said judgment.

23. It is submitted by the learned senior counsel that neither this court in the said judgment in case of ***Ramanna Amannappa Masare & Ors.*** (supra) nor the proceedings before the trial court or first appellate court in the said proceedings has decided, the personal right of the appellants. The said dispute was basically between the predecessor of the respondents herein and Mr.Bhanudas Dagadu Patange. The findings thus rendered by the trial court, the First Appellate Court and this court arising out of the said suit which culminated into the judgment and decree of the two courts below and the judgment of this court were not binding on the appellants.

24. It is submitted by the learned senior counsel that the findings of the First Appellate Court against the appellants is totally contrary to the

aforesaid judgments relied upon by the learned senior counsel. He submits that when this court decided the second appeal in case of ***Ramanna Amannappa Masare & Ors.*** (supra), the proceedings arising out of the application under section 41A filed by the appellants in this court was pending. He submits that though the writ petition filed by the appellants in this court i.e. Writ Petition No.4203 of 1989 was dismissed by the order dated 5th April, 1990, the said writ petition was dismissed summarily and thus even based on the said order passed by the Division Bench of this court, no findings of *res-judicata* or the principles analogous to *res-judicata* under section 11 of the Code of Civil Procedure, 1908 could be rendered by the First Appellate Court. He submits that the application for restoration of the first appeal filed by his clients against the order passed under section 41E of the Maharashtra Public Trust Act by the Joint Charity Commissioner is pending.

25. It is submitted by the learned senior counsel that there are various inconsistent findings and contradictions in the judgment and decree passed by the First Appellate Court which warrant interference by this court in the second appeal.

26. Mr.Vineet Naik, learned senior counsel for the respondents on the other hand would submit that the judgment delivered by this court in case of ***Ramanna Amannappa Masare & Ors.*** (supra) squarely applies to the facts of this case. The said second appeal was arising out of the decree passed by the two courts below deciding the rights *inter se* between all the parties including the appellants herein. He submits that it is an admitted position that in the said judgment, this court has already held that the principle analogous to *res-judicata* would apply to all the parties to the said proceedings and not only the respondents

herein and Mr.Patange. He submits that the appellants have not disputed before this court that the Writ Petition No.4203 of 1989 filed by the predecessor of the appellants impugning the common order passed by the learned Joint Charity Commissioner in Application No.15 of 1988 and Application No.14 of 1989 dated 22nd September, 1989 passed under sections 41A and 41E respectively came to be dismissed and upheld by the Supreme Court. He submits that it does not lie in the mouth of the appellants now to urge before this court that the findings rendered by the Joint Charity Commissioner in the application filed under section 41A would not be binding.

27. Learned senior counsel submits that the First Appellate Court has bifurcated the issue of *res-judicata* in two parts i.e. (1) *res-judicata* as to the findings recorded in the Regular Civil Suit No.849 of 1997 and the findings rendered in the common order dated 22nd September, 1989 in Application Nos.15 of 1988 and 14 of 1989 under sections 41A and 41E. He submits that no case is thus warranted in the judgment and decree passed by the First Appellate Court in this second appeal.

REASONS AND CONCLUSION :-

28. There is no dispute that the ancestors of the appellants had filed a suit bearing Regular Civil Suit No. 1660 of 1933 against the great grand father of Amannappa Masare and another in respect of the rights to take the income of the deity Goddess Shree Rupa Bhavani between the predecessor of the appellants and the respondents herein. In the said suit there was a compromise decree passed on 5th December, 1934. Under the said compromise decree the predecessor of the appellants were entitled to certain share in the income of the deity. There is no dispute that in 1952 an application for registration of the said Goddess

Shree Rupa Bhavani temple as a public Trust was made by the predecessor of the respondents herein describing himself as a sole trustee of the said Trust. The mode of succession to Trusteeship and Managership was provided in the said application. It was clearly mentioned that the male member in the family of the predecessor of the respondents was to act as Vahiwatdar and if there were more than one male members, they were to make the selection of the members succeeding to the post of Trusteeship and Managership.

29. It was further provided that no body outside the family of the respondents had any right to the temple and that the predecessor of the respondents was the only Vahiwatdar of the temple. There was a disclosure made about the two Pujaris in the temple having alternate right of worship every week and that the pujaris were taking all income before the deity everyday as their personal income in lieu of pooja. It was further provided that however during the Navratra Mahotsav every year, the predecessor of the respondents have to get their right of pooja as Vahiwatdar and sole trustee and further right of collecting all the offerings before the deity during the said Navratra Mahotsav. In the said application, there was also a reference to the decree passed in Regular Civil Suit No. 1660 of 1933, which suit was filed by the predecessor of the appellants. It is not in dispute that the said order of registration of the Trust has not been impugned by the appellants or the other parties to the said decree passed in the year 1933.

30. A perusal of the record further indicates that two separate applications were filed by the predecessor of the respondents under Section 41-A and 41-E of the Maharashtra Public Trust Act, seeking administrative directions against the appellants and Patanges not to collect offerings before the deity by way of donations and

subscriptions during Navratra Mahotsav and for other reliefs. The predecessor of the respondents had also prayed for the directions to the effect that he was entitled to perform the annual Utsav of Rupa Bhavani during the Navratra Mahotsav and were entitled to collect the offerings before the deity during the said period. Various reliefs were granted in this two proceedings filed by the predecessor of the respondents under Sections 41-A and 41-E of the Maharashtra Public Trust Act. There is no dispute that the appellants herein had filed a Writ Petition bearing No. 4203 of 1989 impugning the common judgment and order dated 22nd September, 1989 passed by the Joint Charity Commissioner in those applications filed under Sections 41-A and 41-E of the Maharashtra Public Trust Act by a common order dated 22nd September, 1989. By an order dated 5th April, 1990, the Division bench of this Court dismissed the said Writ Petition no. 4203 of 1989 filed by the predecessor of the appellants. Special Leave Petition filed by the predecessor of the appellants against the said order dated 5th April, 1990 came to be dismissed by an order dated 8th October, 1990. The said common order dated 22nd September, 1989 passed by the Joint Charity Commissioner thus attained finality.

31. It is also not in dispute that the appellants had filed an Execution Application in the Court of learned Civil Judge, Junior Judge in the year 1991 for execution of the decree in Civil Suit No. 1660 of 1933. The said application was registered by the respondents herein. The objections filed by the respondents were rejected by the learned Civil Judge, Junior Division. The respondents thereafter filed a Writ Petition in this Court bearing No. 3174 of 1992. The said writ petition came to be admitted and the execution proceedings came to be stayed.

32. It is not in dispute that sometime in the year 1997, one of the

pujari named as Bhanudas D. Patange had filed a suit (Regular Civil Suit No. 849 of 1997) against the respondents herein. The predecessor of the appellants was also a party to the said suit as defendant no.1. The said suit filed by the said Bhanudas Patange was dismissed. Being aggrieved by the said judgment and decree, the said Bhanudas Patange preferred an appeal before the learned District Court at Solapur. The learned Principal District Judge, Solapur, allowed the said Regular Civil Suit No. 47 of 2007 filed by the Patange. The said judgment and decree was challenged by way of Second Appeal before this Court (148 of 2016). By a judgment dated 21st December, 2016. This Court had set aside the judgment and decree dated 30th September, 2015 passed by the First Appellate Court allowing Civil Appeal No. 47 of 2004 and dismissing the cross-objection filed by the predecessor of the respondents. This Court also dismissed the Civil Appeal No. 47 of 2004 filed by the said Patanges before the District Court and allowed the cross-objection filed by the respondents.

33. This Court upheld the decree passed by the learned Trial Judge in Regular Civil Suit No. 849 of 1997 and dismissed the Regular Civil Suit No. 849 of 1997. Being aggrieved by the said judgment delivered by this Court, the Patanges filed Special Leave Petition before the Hon'ble Supreme Court, which came to be dismissed. In so far as the appellants herein are concerned, they did not challenge any part of the judgment delivered by this Court including the findings rendered therein.

34. In the judgment delivered by this Court in the said second appeal in which the appellants herein were the parties, this Court referred to various contentions raised by the appellants herein also regarding their alleged share in the offerings made to the deity Goddess Rupa Bhavani

under the decree passed in Regular Civil Suit No. 1660 of 1933. This Court also referred to the orders passed by the Joint Charity Commissioner in his proceedings filed under Sections 41-A and 41-E of the Maharashtra Public Trust Act by the respondents, the orders passed by the Division bench of this Court against the common order passed by the Joint Charity Commissioner on an application filed under Sections 41-A and 41-E of the Maharashtra Public Trust Act dismissing the said writ petition and the order passed by the Hon'ble Supreme Court confirming the said order.

35. This Court while allowing the said second appeal held that though the provision of Section 11 of the Civil Procedure Code, 1908 may not apply in respect of the finding rendered by the Joint Charity Commissioner as binding on the Civil Court, the principles analogous to *res-judicata* were applicable in view of the facts of this case since the writ petition challenging the common order passed by the Joint Charity Commissioner granting various reliefs in the applications filed under Sections 41-A and 41-E of the Maharashtra Public Trust Act had been rejected and the said order passed by this Court had been upheld by the Supreme Court. The Special Leave Petition filed against the judgment delivered by this Court in the said second appeal filed by the respondents herein reported in 2017(2) Bom.C.R. 371 also came to be dismissed. The appeal filed by the appellants in this Court impugning the order passed by the Joint Charity Commissioner under Section 41-E is also abated. An application for restoration of the said first appeal appears to be pending. This Court held in the said judgment that the Patanges and the appellants had lost before the learned Joint Charity Commissioner in respect of the same subject matter and in respect of the same property in the dispute between the same parties, which order

was upheld by the learned District Court, this Court and the Supreme Court and thus the Civil Court in the suit filed by the Patanges could not have taken a different view in the matter. In these facts and circumstances, this Court held that the orders passed by the *quasi* judicial authority between the same parties, which orders were upheld by the Courts, could not be brushed aside by the Civil Court.

36. A perusal of the record indicates that in those proceedings various findings rejecting the rights claimed by the Patanges and the appellants pertaining to 15 days period of Navratra Mahotsav were rejected, right upto Supreme Court. In paragraph 114 of the judgment delivered by this Court reported in 2017(2) Bom. C.R. 371 to which the appellants herein were parties, this Court recorded that not only the respondents but the appellants herein also had argued at length before the learned District Judge regarding their alleged rights of worship and thereafter during Navratra Mahotsav. The appellants herein had participated in all the proceedings before the Joint Charity Commissioner, District Court and thereafter before this Court and Supreme Court though Patanges were absent in some of the proceedings.

37. In paragraph 131 of the said judgment of this Court, this Court after considering the rival submissions made by all the parties including the submissions made by the appellants in respect of their alleged right for performing the pooja and to have share in the offerings made to the deity, this Court held that impugned judgment and decree passed by the First Appellate Court in which the appellants herein also were the parties was passed totally overlooking the evidence led by the parties and was based on the presumption and surmises. The First Appellate Court in the said judgment, which was

the subject matter of the second appeal had rendered a finding that the Patanges and the appellants were entitled to worship during Navratra Mahotsav for a period of 15 days on the premise that there was no dispute in respect of performing pooja and recovery of offerings by Patanges and the appellants during the balance period of 11 and half months. This Court held that the impugned judgment and decree, which was in favour of the Patanges and the appellants herein based on the alleged *Hulnama* was not in accordance with the provisions of the Indian Evidence Act, 1872 and was in teeth of Exh. 108 and 111 before the Trial Court in those proceedings.

38. This Court in the said judgment had formulated one of the substantial question of law as under :-

“Whether the learned District Court has appreciated Exh.86 i.e. ‘*Halnama*’ alleged to have been executed on 1st December, 1919 between the predecessor of the Patanges, Pawars and Masares on one part and the owner Mr. Manikchand Shah in accordance with the provisions of Indian Evidence Act, 1872 or the said document is exhibited in the teeth of 108 and 118?”

This Court has held that the learned District Court had not appreciated ‘*Halnama*’ in accordance with the provisions of the Indian Evidence Act, 1872. The said document is exhibited in the teeth of Exh.108 and 118 and answer the said question accordingly.

39. This Court had framed substantial question (b) as under :-

“Whether the order dated 22nd September, 1989 passed by the learned Joint Charity Commissioner and confirmed by the order dated 5th April, 1990 passed by this Court had merged with the order dated 8th

October, 1990 passed by the Supreme Court and had attained finality and was binding on Patanges also?”

In paragraph 136 of the said judgment, this Court held that order dated 22nd September, 1989 passed by the learned Joint Charity Commissioner, which was confirmed by the order of this Court and also by the Supreme Court had attained finality and was binding on Patanges and the appellants herein also. This Court further held that though order passed by the Supreme Court was dismissing Special Leave Petition filed by the appellants in limine and the order passed by this Court could not have been merged in the order of the Supreme Court, the order passed by this Court dismissing the writ petition and upheld the findings and conclusion drawn by the Joint Charity Commissioner was binding having attained finality.

40. In my view, the said judgment of this Court in the said second appeal was binding not only on the Patanges and the respondents herein but also the appellants who had agitated their rights not only before the Trial Court, First Appellate Court but also before this Court in the second appeal.

41. In so far as the submission of Mr. Dhakephalkar, learned Senior Counsel of the appellants that the findings rendered by the Joint Charity Commissioner in the proceedings under Sections 41-A and 41-E of the Maharashtra Public Trust Act could not have been considered as *res-judicata* or analogous to Section 11 of the Code of Civil Procedure, 1908 or not, on the premise that the order passed by the Joint Charity Commissioner under Sections 41-A and 41-E were administrative orders is concerned, learned Senior Counsel for the appellants could not dispute that the learned Joint Charity

Commissioner had passed a common order granting various reliefs in favour of the respondents and rendering various findings against the appellants. His clients had filed a writ petition impugning both the orders in this Court. The said writ petition was admittedly dismissed by this Court, which order was upheld by the Supreme Court.

42. Mr. Dhakephalkar, learned Senior Counsel also could not dispute that his clients was a party to the suit filed by Patanges as defendant no.1 and had participated all through out in the said suit, the first appeal and the second appeal. He did not dispute that even in this Court in the second appeal, the appellants had agitated their rights based on the compromise decree passed on 5th December, 1934 in Regular Civil Suit No. 1660 of 1933. He also did not dispute that predecessor of the respondents had applied for registration of a Trust in respect of the same property. Succession of the trustees was clearly prescribed in the said application for registration of Trust where also a reference to the said decree passed by the Trial Court in the said Regular Civil Suit No. 1660 of 1933 was made. The appellants had not challenged the registration of the Trust, the objects and purposes of the Trust, the scheme of the Trust by a filing an appropriate proceedings. In my view, there is thus no substance in this submission of the learned Senior Counsel for the appellants.

43. In so far as the submissions of the learned Senior Counsel for the appellants that the finding of the First Appellate Court that the suit filed by the appellants itself was not maintainable is contrary to the judgment of this Court in the said second appeal is concerned, a perusal of the order passed by the First Appellate Court clearly indicates that the First Appellate Court has decided the merits of the suit filed by the appellants. First Appellate Court has held that the said

suit was based on the decree passed in Regular Civil Suit No. 1660 of 1933 and was very much maintainable and was not hit by Section 47 of the Code of Civil Procedure, 1908.

44. In so far as the issue of *res-judicata* raised by the learned Senior Counsel for the appellants is concerned, the findings rendered by the First Appellate Court are based on the law laid down by this Court in the said judgment in case of **Ramanna A. Masare and Ors.** (supra), which judgment is upheld by the Supreme Court. I do not find any infirmity with this part of the judgment and decree passed by the First Appellate Court. The First Appellate Court divided the issue of *res-judicata* in two parts and has separately dealt with those issues in paragraphs 30 to 43 of the judgment. The Court has to read the entire judgment to ascertain whether any perversity is found in the findings rendered by the First Appellate Court or not and not an isolated paragraph in the said Judgment.

45. The First Appellate Court after considering the oral and documentary evidence has held that the appellants have failed to prove that they are entitled to receive half share from the share of pujaris ($\frac{1}{4}$ of total share) by way of damages, failed to prove that the appellants are entitled to the offerings before the deity Goddess Shree Rupa Bhavani during Navratra Mahotsav in every year as decided in Regular Civil Suit No. 1660 of 1933 even after coming into force of Maharashtra Public Trust Act, 1950.

46. The First Appellate Court also considered the relevant fact that the appellants or their predecessor have not challenged the said registration at any stage. In my view, after registration of the Trust, the appellants could not rely upon terms in the Compromise Deed. The

registration of the Trust was effected by the Charity Commissioner after considering the Compromise Decree passed in the said Regular Civil Suit No. 1660 of 1933.

47. In my view, the judgment of Division Bench of this Court in case of ***Vanmalal Manoharrao Kamdi and Ors.*** (supra), judgment of this Court in case of ***Babu Bhagwan Din*** (supra) and judgment of this Court in case of ***Ramchandra S. Kamath*** (supra) would not apply to the facts of this case in view of the fact that the orders passed by the Joint Charity Commissioner being a common order under Sections 41-A and 41-E, is upheld by this Court and by Supreme Court.

48. In my view, various findings of fact rendered by the First Appellate Court being not perverse, cannot be interfered with by this Court in this Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908. No substantial question of law arises in this appeal. The appeal is devoid of merit and is accordingly dismissed. Application made by the learned Senior Counsel for continuation of the interim protection granted before the Courts below, if any, is rejected. There shall be no order as to costs.

49. In view of the dismissal of the second appeal, Civil Application No. 1179 of 2019 is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)