



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO.344 OF 2001

1) Ku. Vandana d/o Deorao Petkar
@ Vandana Mahesh Gahukar,
Aged – Adult,

2) Rajendra s/o Deorao Petkar,
Aged 34 years,

3) Gajendra s/o Deorao Petkar,
Aged 32 years,

All residents of Pension-Pura, Gandhi
Nagar, Sindhi Camp, Akola, Tq. and
District Akola.

.... **APPELLANTS**

VERSUS

Shrikrishna Dnyan Mandir
(Mahanubhao Mandal) Borgaon-Manju,
Tq. and District Akola,
through its President

.... **RESPONDENT**

Shri A.M. Ghare, Counsel for the appellants,
None for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 9th APRIL, 2019.

ORAL JUDGMENT :

By order dated 18-2-2019, the Hon'ble Supreme Court was

pleased to direct that the appeal be disposed of within six months.

2. I have heard Shri A.M. Ghare, learned Counsel for the appellants. None appears on behalf of the respondent although the hearing was adjourned only to afford an opportunity to the learned Counsel for the respondent to assist the Court.

3. The appellants are the legal heirs of original defendant 1 and are defendants 2 to 4 in Regular Civil Suit 765/1996 brought by the respondent-plaintiff for declaration that the document styled as 'Gift-deed/Sale-deed' dated 18-4-1994 is null and void and for possession of the suit property. By judgment and decree dated 14-8-1997, the 3rd Joint Civil Judge (Junior Division), Akola dismissed the suit. The plaintiff preferred Regular Civil Appeal 181/1997 which is allowed by the 2nd Additional District Judge, Akola by judgment and decree dated 13-7-2001, which is assailed in this appeal preferred under Section 100 of the Civil Procedure Code.

4. Basic facts may now be noted. The suit property is described as open space admeasuring 1113 square meters situated at Gram-Panchayat Borgaon Manju, Tahsil and District Akola. The

plaintiff contends that the suit property is allotted to the plaintiff trust by the Borgaon Manju Gram-Panchayat on 30-8-1993 and one Mahant Shrikrishna Muni Shewalkar Mahanubhao was placed in possession. The plaintiff contends that Mahant Shrikrishna Muni Shewalkar Mahanubhao applied for registration of the trust under the provisions of the Maharashtra Public Trusts Act, 1950 ("Act" for short). The trust was registered on 09-7-1996. The plaintiff contends that on 18-4-1994 defendants 2 to 4 obtained the signatures of Mahant Shrikrishna Muni Shewalkar Mahanubhao on some papers under the pretext that the signatures are required for construction of temple of Lord Shrikrishna at Borgaon Manju. After few days, Mahant Shrikrishna Muni Shewalkar Mahanubhao realized that defendants 2 to 4 practised fraud and executed some documents. The nature of the documents which were allegedly executed fraudulently is not elaborated in the plaint nor are the particulars of the fraud specifically pleaded. However, from the paragraph dealing with the valuation of the suit and the prayer clause, it is discernible that the case of the plaintiff is that a document styled as 'gift-deed or sale-deed' is executed and registered.

5. The defendants filed written statement raising several objections to the tenability of the suit. The defendants contended that

the previously instituted suit for declaration and injunction, which was based on identical cause of action was sought to be withdrawn and though the plaintiff sought permission to institute fresh suit, the trial Court rejected the prayer. The previously instituted suit ultimately came to be dismissed on 07-12-1996, in default. The defendants contended that the suit is, therefore, barred by virtue of the provisions of Order II Rule 2 of the Civil Procedure Code. The defendants contended that Mahant Shrikrishna Muni Shewalkar Mahanubhao executed gift-deed in favour of defendant 1 on 18-4-1994 and handed over possession of the suit property to defendant 1. The defendants contended that the suit property, which then was open land, was developed, the temple of Lord Shrikrishna was constructed and a school was started by defendant 1. The defendants further questioned the maintainability of the suit on the ground that prior permission of the Charity Commissioner was not obtained before instituting the suit.

6. The trial Court recorded a finding of fact on appreciation of evidence on record that the plaintiff failed to prove that the registered document of gift dated 18-4-1994 is null and void. The trial Court did not accept the version of the plaintiff that the signature of Mahant Shrikrishna Muni Shewalkar Mahanubhao was obtained on the

document fraudulently. The trial Court held that the defendants proved the execution of the gift-deed and that defendant 1 was placed in possession of the suit property pursuant to the gift-deed. The plaintiff urged that the gift-deed of the property of the public trust is null and void in the absence of prior sanction under Section 36 of the Act. The trial Court repelled the contention holding that when the gift-deed was executed, the suit property was not the property of the trust.

7. The first appellate Court did not consider the validity of the gift-deed on the touchstone of fraud on which the edifice of the plaint is constructed. The first appellate Court noted that the plaintiff is registered as public trust on 09-7-1996 and the suit property is recorded as the property of the public trust by entry dated 05-8-1996. The first appellate Court observes that notwithstanding the gift-deed dated 18-4-1994, which is accepted as genuine by the trial Court, in view of the recording of the suit property as the trust property by order dated 05-8-1996, the jurisdiction of the civil Court to enquire into the title is barred.

8. The first appellate Court considers the effect of the recording of the suit property as the property of the public trust thus :

“12. The Trial Court by the judgment upheld the defendant's claim that the gift is valid and binding upon the plaintiff and that the defendants on the basis of the said gift have been in possession of the suit property. Even if we go by the finding recorded by the learned Trial Court, still it appears that the learned Judge of the Trial Court has not taken into consideration in its true perspective the effect of the registration of plaintiff as a Public Trust and the suit property as the trust property in the name of the plaintiff-Trust. Even then there was a gift as has been held by the Court below still the fact remains that there has been a declaration given by the competent authority made after due enquiry, may be at a later point of time.

13. The real question that thus arises is as to what would be the effect of a declaration of a particular property as the trust property on the gift of the same property made on some previous date. To my mind, when the Assistant Charity Commissioner or the Deputy Charity Commissioner under the provisions of Bombay Public Trusts Act gives a declaration that a particular property is a trust property then the jurisdiction of the Civil Court is barred to enquire into the question of title. All questions relating to whether a particular property is a trust property or not are necessarily required to be enquired into and decided by the Assistant Charity Commissioner or Deputy Charity Commissioner under the provisions of Bombay Public Trusts Act. In order to understand the real position, it would be useful to refer to section 80 of the Bombay Public Trusts Act, which reads thus :

“Save as expressly provided in this Act no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, or in respect of which the decision or order of such officer or authority has been made final and conclusive.”

14. Section 80 of the Bombay Public Trusts Act in its term postulates an express bar on the jurisdiction of the Civil Court to decide or deal with any question which is required to be dealt with and decided by Officer or an authority under the said Act.

This takes me to sections 18 and 19 of the Bombay Public Trusts Act under Chapter-IV relating to registration of Public Trusts, Section 18 of the Act deals with the registration of Public Trust to which the Act applies, the authority to whom the application is to be made, what the application should contain, how it is to be signed and verified and by whom. Section 19 then contains a provision relating to enquiry to be made by the Deputy Assistant Charity Commissioner. Section 19 lays down thus ..

“On receipt of an application under Section 18 or, upon an application made by any person having interest in a public trust or in his own motion, the Deputy or Assistant Charity Commissioner shall make an enquiry in the prescribed manner for the purposes of ascertaining ..

(i)

(ii) Whether any property is the property of such trust,

(iii) etc.”

15. On a conjoint reading of Section 80 with Sections 18 and 19 of the Act, it can safely be found that it is the Assistant Charity Commissioner or the Deputy Charity Commissioner who is required to make an enquiry as to whether a particular property is a trust property and if any such declaration is given by such authority under the Act, then by application of Section 80, the jurisdiction of the Civil Court to enquire into the question of title will be clearly barred. This conclusion can further be fortified by sub-section (4) of Section 21 of the Act which states that ..

“the entries so made shall subject to the provisions of this Act and subject to any change recorded under the following provisions be final and conclusive.”

It is thus apparent that when once an entry is made regarding registration of trust in the register and property is declared as the trust property by making an entry thereof in the public trust register then the entries shall be deemed to be final and conclusive.

16. Even if thus the registration of the suit property as the trust property is subsequent to the alleged Gift, in favour of defendant No.1, the Civil Court has no jurisdiction to say that the gift is valid and the defendants are the owners by ignoring

the declaration given by the Assistant Charity Commissioner as per Exhibit 26. If even the defendants have any grievance with respect to the declaration so given by the Assistant Charity Commissioner their remedy cannot be before the Civil Court nor can they deny the claim of the Trust for possession of its property merely on the ground that there has been a document of gift in their favour.”

9. Be it noted, that it was the plaintiff trust which invited the civil Court to adjudicate upon the validity of the gift-deed dated 18-4-1994 executed by Mahant Shrikrishna Muni Shewalkar Mahanubhao in favour of defendant 1. The civil Court considered the pleadings and the evidence on record and recorded a finding of fact that the plaintiff failed to prove that the gift-deed is a fraudulent or forged document. The nature and the extent of the enquiry conducted by the authority under the Act before recording the suit property as the trust property is not brought on record. Presumably, the enquiry is conducted under Section 19 of the Act. It is not even the case of the plaintiff that the anterior document which is the gift-deed dated 18-4-1994 was brought to the notice of the authority or that the defendants were noticed or were otherwise privy to the enquiry which may have been conducted. Axiomatically, the authority under the Act was not called upon to consider the validity of the gift-deed dated 18-4-1994 or the issue whether in the teeth of the gift-deed dated 18-4-1994 the suit property

was indeed the property of the public trust. Notwithstanding these glaring facts, what is in essence articulated by the first appellate Court, is that in view of the entry taken in the register maintained under the Act, the civil Court was obligated to hold the suit property as the property of the plaintiff trust and to decree the suit.

10. This Court formulated the following substantial questions of law while admitting the appeal :

- 1) Whether the suit without permission of Sections 50 and 51 of the Bombay Public Trusts Act is maintainable ?
- 2) Whether the effect of the jurisdiction of civil Court about to decide the title to the properties is excluded by virtue of registration of Public Trusts Act showing the property to be a Trust property by the Charity Commissioner ?
- 3) What is the effect of registration of Trust as a Public Trust on the Gift-deed ?

No submissions are canvassed on substantial question (1). The substantial questions (2) and (3) can be considered and answered compositely.

11. Sections 19(i) and (ii) of the Act provide that the authority has to make an enquiry for the purpose of ascertaining whether the trust exists and whether such trust is a public trust and whether any property is the property of such trust. Sections 20 of the Act stipulates that on completion of the enquiry under Section 19, the authority shall record his findings with the reasons therefor and Section 21 provides that the authority shall make entries in the register kept under Section 17 in accordance with the findings recorded under Section 20. Sub-section (2) of Section 21 of the Act declares that the entry so made shall, subject to the provisions of the Act and subject to any change recorded, be final and conclusive.

Section 79(1) of the Act provides that whether or not a trust exists and such trust is a public trust or particular property is property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner as provided by the Act and Section 80 is the ouster clause which provides that save as expressly provided in the Act, no civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act and in respect of which the decision or order of such officer or authority has been made final and conclusive.

12. The crucial question is whether the authority is statutorily empowered to adjudicate the dispute qua an interior title in the enquiry under Section 19 of the Act. The statutory scheme was considered by the Full Bench of this Court in ***Keki Pestonji Jamadar vs. Rodabai Khodadad Merwan Irani*** reported in **1972 Mh.L.J 427** and the Full Bench held that the question whether the author of the trust had title to the property conveyed to the trust is beyond the scope of the enquiry under Section 19 of the Act. It would be relevant to reproduce the following observations of the Full Bench :

“20. The third question relegated to the decision of the Deputy or Assistant Charity Commissioner is whether the "particular property is the property of such trust". This clause is couched in words of doubtful import leading to the expression of divergent views as regards its scope. Learned Counsel for the appellant contends for the view that as the question whether the particular property is the property of the trust cannot be answered without deciding whether the author of the trust had the right or title to the property conveyed to the trust, the authorities must decide this latter question and, indeed, it is their function and duty to decide it. It is urged that questions of title to the particular property are thus required to be decided in inquiries under [section 19](#) and the jurisdiction of the Civil Court to decide those questions is barred under [section 80](#). The contesting respondents contend for the rival view that the question whether the author of the trust had title to the property conveyed to the trust is outside the scope of the inquiry under [section 19](#) and therefore, the jurisdiction of the Civil Courts to decide or deal with that question is not barred. The learned Government Pleader has pointed out the merits and demerits of both the views but he has given good reasons why the contention of the Respondents should be accepted in

preference to that of the appellant. Having considered the matter in all the aspects presented before us, we are of the opinion that the respondents are right in their contention. The purpose of the Act, the procedure prescribed in inquiries under [section 19](#), the absence of any remedy under the Act to those who were not parties to the inquiry under [section 19](#) but whose anterior or superior title would be concluded by the decision in that inquiry and the general scheme of the Act, all tend to show that questions of title to the trust property are outside the scope of the inquiry under [Section 19](#).

21. The short title of the Act shows that it is "[An Act](#) to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay". The preamble of the Act is in the same terms. The statement of Objects and Reasons shows that the then Government of Bombay had appointed a Committee under the Chairmanship of the late Mr. Justice Tendolkar "to investigate into the question of the administration and management of trusts and endowments in the Province of Bombay for public purposes". Under the terms of reference, the Committee was directed to investigate into the question of the administration of public, religious and charitable trusts for the benefit of the Hindu and Jain Communities with special reference to the prevailing abuses in the administration of such trusts, measures necessary for removing such abuses, steps to be taken for an effective supervision, regulation and control of the administration and management of such trusts etc. The recommendations of the Committee were accepted by and large, and were embodied in the Act which has been made applicable to religious and charitable trusts created for the benefit of all communities. It is thus clear that the dominant purpose of the Act, is to regulate the administration of public trusts and not to settle disputed titles to the property alleged to belong to the trust. Towards that end the Act contains copious provisions in regard to "Accounts and Audit" (Chapter V), Control over Public Trusts (Chapter VI), Functions and Powers of Charity Commissioner (Chapter VII) and regarding the Public Trust Administration Fund (Chapter VIII).

22. The procedure prescribed by the Act for the conduct of inquiries under [Section 19](#) is wholly unsuited to a proper and

effective adjudication of disputed titles to the trust property. Under Section 19 the Deputy or Assistant Charity Commissioner has to conduct an inquiry "in the prescribed manner". Rule 7 which deals with the manner of inquiries provides that the procedure prescribed for the trial of the suits under the [Presidency Small Cause Courts Act, 1882](#) or the [Provincial Small Cause Courts Act, 1887](#), as the case may be, would apply to the proceedings under [Section 19](#). Under [Section 19\(d\)](#) (e), (f) and (g) of the [Presidency Small Cause Courts Act, 1882](#) and under Item 4 of the Second Schedule of the [Provincial Small Cause Courts Act, 1887](#), the jurisdiction of Small Causes Courts to decide questions of title to immovable property is expressly excluded and the procedure devised for trials under these Acts is consequently far too summary for a proper adjudication of such titles. The provision in Rule 7 that a party to an inquiry can appear through an agent and the power of the Tribunal to exclude lawyers from the inquiries reveal to some extent the narrow nature of the inquiry envisaged by [Section 19](#).

23. Rule 11 provides that the officer holding the inquiry may only make a memorandum of the substance of what each witness deposes. It is unthinkable that questions of title could be permitted to be decided by a Tribunal finally and conclusively without any obligation to record the evidence fully. It is matter of common experience that subtle shades of evidence are often missed in a memorandum containing merely the substance of the evidence.

24. Even perhaps of greater importance than these rules is the provision contained in Rule 7-A. It provides, to the extent material, that on receipt of an application, the Deputy or Assistant Charity Commissioner shall cause a public notice to be given calling upon all persons having interest, to submit their objections. It is significant that until this rule was introduced on 28th December 1967, there was no provision whatsoever in the Act or the Rules for giving any notice, public or individual to any person before the commencement of the inquiry under [Section 19](#). [The Act](#) was passed on August 14, 1950 and was made applicable to public trusts on January 21, 1952. For over 15 years, inquiries under [Section 19](#) could be and were in fact conducted without issuing any notice to any one whatsoever. It seems to us plain that such inquiries could not possibly conclude

disputed titles. The introduction of Rule 7A makes no difference to that position, because it provides for a public notice only and that too, "calling upon all persons having interest", to submit their objections. Stated briefly, [Section 2\(10\)](#) of the Act says that "person having interest includes" in the case of a temple, persons who are entitled (for example) to attend it, in the case of a math (for example) the disciples of the math, in the case of a wakf, persons who are entitled to receive benefits from the wakf etc., in the case of a society registered under the [Societies Registration Act, 1860](#), a member of the society and in the case of any other public trust, any beneficiary. The word "includes" which was substituted in [Section 2\(10\)](#) for the word "means" by Bombay Act XXVIII of 1953 may show that the definition is not exhaustive but the inclusion of a particular class of persons only in the definition affords a strong indication of the scope of the inquiry under [Section 19](#). We are also not unmindful that the definition in [Section 2\(10\)](#) is for the purpose of the Act but normally, similar expressions used in the Act and the Rules must bear the same meaning. [Section 2\(10\)](#) shows that the Deputy or Assistant Charity Commissioner is expected and required to decide questions raised at the instance of persons who are interested in the trust. It is no part of their function under [Section 19](#) to decide claims which are adverse to the trust and which are made in assertion of titles which are hostile to the trust. Such titles cannot be held concluded in violation of the principles of natural justice.

25. Neither the Act nor the Rules contemplate that persons who claim adversely to the trust or who dispute the right or title of the author of the trust to the trust property must be heard in the inquiry under [Section 19](#). In fact, [Section 19](#) and Rule 7A (1) only reckon applications under [Section 18](#) which are to be made by trustees and applications by "any person having interest in a public trust". Surely, persons in the position of Rodabai and Baimai are not persons "having interest in a public trust". They are interested in the assertion of their own private title to the property and in disputing the right of Jamshedji to convey that property to the trust. We might mention that in [A. Karim v. Raipur Municipality](#), the Supreme Court held that contested questions of title did not fall within the scope of inquiry which the "Registrar" is authorised to hold under Section 5 of the Madhya Pradesh Public Trust Act, 1951. We

cannot , however, draw on that decision as the provisions of the M. P. Act were different in material respects.

13. It is irrefutable, that the gift-deed is executed on 18-4-1994. It is clear that the authority was persuaded to record the finding that the suit property is the property of the trust since the execution of the gift-deed dated 18-4-1994 was not brought to his notice. It is not in dispute that defendant 1 in whose favour the gift-deed is executed was neither noticed nor heard by the authority in the enquiry under Section 19 of the Act. The first appellate Court, therefore, erred in holding that the finding recorded under the Act binds the civil Court leaving no option to the Civil Court to decree the suit for declaration that the gift-deed is void and for possession of the suit property.

14. In the factual matrix, the conclusion is inevitable that the registration of the public trust on 09-7-1996 and the entry to the effect that the suit property is the trust property which is recorded on 05-8-1996 has no effect on the validity of the gift-deed dated 18-4-1994 and that the jurisdiction of the civil Court to decide the title to the suit property is not excluded by either the registration of the public trust or the entry that the suit property is the property of the public trust. The substantial questions of law are answered accordingly.

15. The first appellate Court has not considered the issue of the validity of the gift-deed on merits. The appeal is allowed only on the basis that the civil Court was bound by the finding recorded in the enquiry under Section 19 of the Act that the suit property is the property of the public trust. I, therefore, deem it necessary to remit the matter to the first appellate Court for recording findings on all issues arising therein, except the issue which is concluded by this judgment.

16. The appeal is allowed. The judgment and decree dated 13-7-2001 is set aside and Regular Civil Appeal 181/1997 is remitted to the first appellate Court for fresh decision in accordance with law.

JUDGE

adgokar