IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3764 OF 2016

1. Smt. Ambabai w/o. Bhaurao Bharati,
   Age : 62 years, Occ: Household,
   R/o. Mhaismal, Tal: Khultabad,
   Dist : Aurangabad.

2. Umesh s/o. Bhaurao Bharati,
   Age : 32 years, occ: service,
   R/o. as above.

3. Babasaheb s/o. Bhaurao Bharati,
   Age : 30 years, occ: Agril,
   R/o. as above. **... Appellants**
   (Ori. applicants)

VERSUS

1. Laxmibai w/o. Santaram Bharati,
   Age : 60 years, occ: Household
   R/o. Mhaismal, Tal: Khultabad,
   Dist : Aurangabad.

2. Narayan s/o Santaram Bharati, (abated)
   Age: 40 years, Occ: service,
   R/o. as above.

3. Chandrakala w/o Pandit Bharati,
   Age : 32 years, occ: Household
   R/o. as above.

4. Deepak s/o Pandit Bharati,
   Age : 10 years, minor,
   U/g. Of real mother i.e.
   Respondent no.3.

5. Rani d/o Pandit Bharati,
   Age : years, minor,
   U/g. Of real mother i.e.
   Respondent no.3.

6. Swati d/o. Pandit Bharati,
   Age : years, student,
   U/g. Of real mother i.e.
   Respondent no.3.

7. Nandu s/o. Santram Bharati,
Age : 30 years, occ: service,
R/o. as above.

8. Smt. Leelabai w/o Rangnath Puri,
Age : 45 years, occ: Household,
R/o. as above.

9. Sow. Nirmalabai w/o. Chagan Giri,
Age: 35 years, occ: Household,
R/o. Golegaon, Tal: Sillod,
Dist : Aurangabad.

10. Sugandhabai w/o. Bhimrao Giri, (rejected)
Age: 28 years, occ: Household,
R/o. Kapuswadgaon, Tal: Vaijapur,
Dist: Aurangabad.

11. Ramesh s/o Ganpat Bharati,
Age: 36 years, occ: Agri,
R/o. Mhaismal, Tal : Khultabad,
Dist : Aurangabad.

12. Laxmibai w/o. Ganpat Bharati,
Age: 60 years, occ: Household,
R/o. as above.

13. Dagadu s/o Ganpat Bharati, (deleted)
Age : Major, occ: Agril,
R/o. as above.

14. Ambadas s/o. Ganpat Bharati,
Age: Major, occ: Agril,
R/o. as above.

15. Vitthal s/o. Ganpat Bharati,
Age: Minor, occ: Student,
u/g. of his real mother,
respondent no.12,
R/o. as above.

16. Kishan s/o Laxman Bharati-died-LR's
16/A Kamalbai Kishan Bharati,
Age : Major, Occu : Household
R/o. Mhaismal, Tq. Khultabad, Dist. Aurangabad.

16/B Raju Kishan Bharati,
Age : Major, Occu: Agri
16/C Sanju Kishan Bharati,
Age : Major, Occu: Agri
16/D Girija Kishan Bharati,
Age : Major, Occu: Household
All R/o. C/o. Kamalbai Kishan Bharati,
Mhaismal, Ta. Khultababd, Dist. Aurangabad.

17. Dattu s/o Dhondiram Harane, (deleted)
Age : 60 years, occ : Business,
R/o. as above.

18. Tahsildar,
Khultabad in the capacity of
Trustee of Shri Girja Devi
Mandir Trust at Mhaismal,
Taluka Khultabad, Dist : Aurangabad. **... Non – Applicants (Ori. Respondents)**

...

Advocate for Appellant : Mr. Sabnis h/f Mr. V.D. Gunale
Advocate for respondent nos. 1, 7 and 8 : Mr. S.V. Adwant
Advocate for respondent nos. 3 to 6 : Mr. C.V. Thombre
Advocate for respondent nos.11,12,14,15 and 16B to 16D : Mr. K.F. Shingare

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 06.11.2019
Pronounced on : 15.01.2020

JUDGMENT :

Heard all the parties finally at the stage of admission.

2. The checkered history leading to the filing of this appeal under Section 72 (4) of the Maharashtra Public Trust Act is as under:

Girija Devi Mandir Trust, Mhaismal, Taluka Khultabad, District Aurangabad was being managed initially by the Tahsildar, Khultabad as a sole trustee. In *suo moto* Scheme Proceeding No.133/1978 by the judgment and order dated 26.03.1979 the Deputy Charity Commissioner framed a scheme for the trust under Section 50-A(1) of the Maharashtra Public Trust Act (herein after the Act). According to the clause 6 of the Scheme, number of trustees was fixed at not less than three and not more than seven. According to clause 7 the First Board of Trustees consisted of Tahsildar Khultabad, one Deorao Bala Bharati, Ganpat Deoshankar Bharati and Laxman Arjunrao Bharati. According to clause 8(A) these three individuals were also appointed as pujaries of the Temple and were entitled to receive 20% of the income for their maintenance as remuneration and the remainder of the income was to be credited to the trust funds.

3. The clauses of the scheme were subsequently modified by the Charity Commissioner. Originally clause 10 of the scheme empowered the surviving trustees to appoint a new trustee in place of the deceased one, by majority. In Application No.8/1987 under Section 50-A(3) of the Act, by the judgment and order dated 25.01.1989, this clause 10 was modified as under:

> *"In case of appointment of new trustees from amongst three Pujaries, trustees nos.2, 3 and 4, their eldest son shall become the trustee of the said trust."*

4. After demise of original trustee Laxman Bharati his son Kishan, the original respondent no. 16 was appointed as a trustee. Then original trustee Deorao Bharati also died. He was survived by two sons, Shantaram and Bhaurao. Bhaurao in fact predeceased Deorao and is survived by the appellants, the appellant no. 1 widow and the appellant no.2 and 3 – sons.

Pursuant to such amended clause 10, however, eldest son of Deorao by name Shantaram was appointed as a trustee in his place. The respondent nos. 1 to 10 are the widow and other legal heirs of Shantaram. Respondent nos. 11 to 15 are the legal heirs of the original trustee Ganpat Bharati.

5. Being aggrieved and dissatisfied by appointment of Shantaram being the eldest son of Deorao as a trustee to the exclusion of any right to the appellants, they preferred MARJI No.306/1995 under Section 72 of the Act and challenged the judgment and order passed by the Joint Charity Commissioner Aurangabad in Application No.8/1987 whereby clause 10 was modified as mentioned herein above. By the judgment and order dated 28.07.1999, the application preferred by the appellants was dismissed by the Additional District Judge thereby upholding the modified clause 10 of the scheme confirming trusteeship by succession upon Shantaram. It is necessary to note here that this decision has become final.

6. It further appears that while deciding the Application No.8/1987 whereby clause 10 was modified as aforesaid, the appellants herein asserted their claim to a share in the income being derived by Deorao. The learned Joint Charity Commissioner in the impugned judgment while considering the claim of the appellants observed that there was a dispute raised by Shantaram about the appellant no.1 being the legally wedded wife of his brother Bhaurao. Observing that such a dispute could not have been considered by him, he directed her to seek redressal to their grievance before the proper forum.

7. In view of such observation of the learned Joint Charity Commissioner, the appellants filed Regular Civil Suit No.662/1992 seeking a declaration to the effect that they were the hereditary pujaries and were entitled to 4 anna share in performance of puja and rendering services to the Deity and also sought perpetual injunction restraining Shantaram from causing any obstruction in their such performance of puja and services to the Deity according to their turn i.e. 4^{th} year in perpetuity. By the judgment and order dated 30.03.1994 the suit was decreed as prayed for. Shantaram and after his demise his legal heirs impugned the judgment of the civil court by preferring Regular Civil Appeal No.157/1994. By the judgment and order dated 23.11.1999 the appeal was dismissed.

8. Since the civil court had recognized appellants' right to perform puja and services to the Deity and to have share in the income earmarked for the trustees which was apparently not compatible with clauses 8(A) and 10 of the scheme as those stood modified from time to time, the appellants filed Application No.1/1999 before the Joint Charity Commissioner, Aurangabad under Section 50-A(3) of the Act. The learned Joint Charity Commissioner by the judgment and order dated 07.07.2000 allowed the application and modified clause 8(A) (sic) as under :

> ***"Rule 8(A):-*** *The rights of Pujaries shall be governed by their personal law, hereditary rights and customs. Their term of office will be for a period of one year i.e. with effect from Rakhee Pournima every year to a date earlier than Rakhee Pournima of the next year. Out of the total annual income of the Mandir; 20% income shall be set apart and paid towards the remuneration of the said Pujaries for their maintenance and the rest of the income shall go to the trust funds. Except the said amount of the other*

> *income of the Mandir received from rent of the land, offerings made to the deity specially during the Yatra and the other income shall go to the trust funds."*

9. Aggrieved by such judgment and order, heirs of original trustee Ganpat and Laxman i.e. the respondent nos. 11 to 16 herein preferred a proceeding under Section 72 of the Act before the District Court bearing MARJI No.261/2001. Pertinently, respondent nos. 1 to 10 herein did not dispute/challenge such modification of Rule 8(A). By the judgment and order dated 25.10.2002 the learned Additional District Judge allowed that application partly. He quashed and set aside the impugned order passed by the Joint Charity Commissioner modifying Rule 8(A) and holding that such modification would result in undesirable consequences, he remanded the matter to the Joint Charity Commissioner for decision afresh.

10. After such remand, by the impugned judgment and order dated 15.05.2006, the learned Joint Charity Commissioner allowed the application partly and directed modification of Rule 8(A) as under:

> *" **Rule 8-A:-** Each branch represented by elder son followed by next younger, for the year of its rotation shall be entitled to right to worship (Pooja and Archa) in that particular year and to receive 20% of income from trust fund for all his joint family. He shall be responsible to distribute the same amongst members equally.*
>
> *Similar arrangement shall be for next two branches to follow:-*
>
> *Except the said amount of the other income of the Mandir received from rent of the land, offerings made to the deity specially during the Yatra and the other income shall go to the trust funds."*

11. The appellants challenged that judgment and order by preferring MARJI No.195/2006 and by the impugned judgment and order dated 07.09.2007 the learned Additional District Judge dismissed the

application preferred by the appellants and confirmed the modification of Rule 8(A) which is being challenged in this appeal under Section 72 of the Act.

12. It is also pertinent to note here that Shantaram had filed Regular Civil Suit No.497/1988 against the appellant No.1 seeking a declaration that the appellant No.1 was not the legally wedded wife of his brother Bhaurao and he was exclusively entitled to receive half of the income as a pujari of the trust after demise of his father Deorao. The suit was dismissed by the judgment and order dated 29.03.1996 and the counter claim of the appellant no.1 herein restraining Shantaram from interfering in her possession over the properties of the trust at Mhaismal and Lamangaon and to perform puja as per the order of the Charity Commissioner. Apparently even this decision has reached finality.

13. Bearing in mind this checkered history, let us now consider the rival submissions.

14. The learned advocate Mr. Sabnis for the appellant vehemently submitted that when the civil rights of the appellants to succeed to the hereditary office of pujari according to their turn on every fourth year has been duly recognized by the civil court and has reached finality, the proposed modification of Rule 8(A) by the impugned order of the Joint Charity Commissioner as confirmed by the District Court is clearly inconsistent and incompatible with such civil rights. In fact, the Joint Charity Commissioner while deciding Application No.8/1987 had clearly

observed that it was open for the appellant to get their rights decided through proper forum. The decision of the civil court having become final, clause 8(A) could not have been modified in the fashion which deprives them of reaping the benefits of such duly recognized civil rights. The learned advocate would further point out that not only the respondent nos. 1 to 10 herein but even the respondent nos. 11 to 16 were the parties to the suit before the civil court. It is only after extending the opportunity to them to defend the claim being put forth by the appellants that the rights have been decided finally.

15. The learned advocate would further point out that in fact, the appellants were seeking to succeed to the hereditary office of pujary and to receive income from out of the rights of their predecessor Deorao to have 8 anna share i.e. 50% share. Their such right to have a share in this 50% i.e. 1/4 is merely a right from out of the 50% share to which otherwise Shantaram and his legal heirs would be entitled to receive. Therefore in fact it was Shantaram and his legal heirs i.e. the respondent nos. 1 to 10 who should have been aggrieved by the judgment of the civil court and it is they who had challenged that decision by preferring Regular Civil Appeal No.157/1994. The learned advocate would point out that the respondent nos. 11 to 16 herein who were the defendants in the suit had not preferred any appeal against the judgment and decree of the civil court. The learned advocate would therefore submit that if such was the state of affairs, the Joint Charity Commissioner ought not to have modified Rule 8(A) in

derogation to the rights of the appellants but should have modified it so as to give effect to their rights recognized by the civil court and which had reached finality. Without adverting to the decisions of the civil court, by the impugned judgment and order the Joint Charity Commissioner has directed modification of Rule 8(A) which deprives the appellants of their valuable rights to perform puja and to receive 4 anna share in the income. Even the District Judge has overlooked all these aspects and has confirmed the judgment and order of the Joint Charity Commissioner. The impugned orders therefore be quashed and set aside and the modification as was originally approved by the Joint Charity Commissioner by the judgment and order dated 07.07.2000 be confirmed.

16. Per contra, the learned advocates Mr. Adwant for respondent nos. 1, 7 and 8, learned advocate Mr. Thombre for the respondent nos. 3 to 6 and learned advocate Mr. Shingare for the respondent nos. 11 to 16 vehemently submitted that the decision of the civil court would not be binding on the Joint Charity Commissioner and cannot curtail his eminent power to frame/modify the scheme for a public trust by invoking the powers under Section 50-A of the Act. When the learned Joint Charity Commissioner in exercise of his such powers has reached a conclusion that Rule 8(A) has to be modified in the aforementioned manner which takes care of the civil rights of the parties branch wise, there is no illegality committed by him.

17. I have carefully considered the record and all the judgments

and orders referred to herein above. At the out set it is necessary to note that though there is a reference in the proceedings before the civil court to the effect that all the three original trustees Deorao, Ganpat and Laxman were to be pujaries, a careful reading of the entire scheme does not demonstrate as to how Deorao was entitled to receive 8 anna i.e. 50% of the income and the other two trustees i.e. Ganpat and Laxman were entitled to get only 4 anna i.e. $1/4^{th}$ each. I am emphasizing this fact only to demonstrate that in the proceedings before the civil court, the appellants had laid such a claim and had sought to assert their right to receive 4 anna share i.e. half of what their predecessor Deorao was entitled to receive.

18. True it is that the respondents herein were all the parties to that suit and the decision has also become final. But when it is quite apparent that the scheme nowhere provides for such unequal distribution of income amongst the original three trustees Deorao, Ganpat and Laxman. One will have to proceed on the premise that such distribution which is inconsistent with the scheme particularly clause 8(A) which lays down the names of the pujaries and the remuneration to be paid to them is liable to be ignored/over looked. In other words, when the document in the form of a scheme framed for a trust under Section 50-A of the Act does not carve out unequal distribution of income amongst the three original pujaries, the same situation should in fact continue.

19. I am referring to this aspect just to demonstrate as to how, the learned Joint Charity Commissioner while directing modification of Rule

8(A) by the impugned order has not apparently committed any error in expecting the distribution of the income amongst the three branches equally.

20. It is important to note that the Joint Charity Commissioner is the best person to ascertain as to how the trust can be managed in a better way. If in doing so, by the impugned order he has framed/modified Rule 8(A) so as to make it compatible with the rights of the heirs of the original pujaries according to the law of succession to which they belong, in my considered view, there is nothing to demonstrate or question the impugned order of the Joint Charity Commissioner branding it to be illegal.

21. It is pertinent to note that the Joint Charity Commissioner himself was not a party to the civil suit and the appeal, wherein, the appellants were agitating their right to succeed as a pujari and to have a share in the income. Therefore, the judgment and order passed in the civil proceedings would not be binding on the Joint Charity Commissioner.

22. Apart from the fact that the Joint Charity Commissioner has an inherent power to frame/modify a scheme for a public trust under the provision of Section 50-A of the Act, even the decision of the civil court would not curtail his such powers.

23. In view of all the aforementioned aspects the impugned modification merely seeks to decide the mode of succession and also the manner in which the income has to be shared by each of the three branches of the three original trustees/pujaries. The modified Rule 8(A) also takes care of the succession to the office of trusteeship and pujariship as well as

distribution of income to be received by them. The proposed modification in fact, recognizes rights of the appellants to the pujariship as well as a share in the income, in rotation.

24. Under these circumstances, there is no merit in the appeal and it is dismissed.

(MANGESH S. PATIL, J.)

habeeb