IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.480 OF 2016
ALONG WITH
CIVIL APPLICATION NO.974 OF 2016
IN
SECOND APPEAL NO.480 OF 2016

Shri Govind Narayan Mehetar R/o. Village Apte, Taluka Panvel, District Raigad.	]]] …	Appellant
Versus		
Ramji Devsthan Trust, Through its President Mr. Keshav Purushottam Gadre, R/o. Khopoli, Taluka Khalapur, District Raigad.	]]]] …	Respondent

…

Mr. Surel Shah with Mr. Rahul More for the Appellant.

Mr. Ram Apte, Sr. Advocate with Mr. A.A. Garge i/b Kashyap Bhalerao for the Respondent.

…

CORAM : SMT. BHARATI DANGRE, J.

DATED : 16TH MARCH, 2020.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent of the parties, Appeal is taken up for final hearing.

2. The present Appeal filed by the Appellant questions the legality of the judgment dated 29/02/2016 delivered by the Principal District Judge, Raigad, Alibag in Civil Appeal No.91 of 2009. By the said judgment, the Principal District Judge has allowed the Appeal filed by Ramji Devasthan Trust and has set aside the judgment dated 02/05/2009 delivered by the 3rd Civil Judge, Junior Division, Panvel in Regular Civil Suit No.132 of 2004. As a consequence of the said judgment dated 29/02/2016, the suit filed by the Devasthan for possession of the suit land is decreed and the Defendant (the Appellant) is directed to hand over vacant possession of the suit land by removing the structure at its own costs, within one month from the date of the said judgment.

3. The necessary facts leading to the present verdict can be briefly summarized as under:

Ramji Devasthan Trust, a Registered Trust filed Regular Civil Suit No.132 of 2004 claiming possession of the suit property. In the said suit, the claim set out was to the effect that the said Trust is a Public Trust registered with the Charity Commissioner, Raigad. The suit property is the one located at Mauje Apte, Plot No.126, Hissa No.0 and the Trust has obtained the necessary certificate under Section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948. It was pleaded that the suit land was entrusted to the Defendant as a tenant and, in terms of the Tenancy Act, the Defendant was paying the rent. The tenancy was annual, beginning on 1st April every year and coming to an end on 31st March on the next year. The plaint further proceeded to state that as the Trust was not able to cater to its expenses, the details of which were stated in the plaint, a decision was taken to terminate the tenancy and to put the land assigned to the Defendant for the benefit of the Trust. The notice was issued to the Defendant on 10/09/2003 informing that from 31/03/2004, the tenancy rights have ceased to exist and seeking possession of the land. Failure to comply, constrained the Plaintiff to institute the suit.

4. The Defendant contested the claim as stated in the plaint; admitting that the Trust was a Registered Trust, a specific denial was made to the plea that exemption was sought in respect of the suit land from operation of Section 32G of the Bombay Tenancy and Agricultural Lands Act by obtaining a certificate under Section 88(i) of the Act. On the contrary, it was pleaded that the Defendant was cultivating the suit land and was paying the rent to the land owner. The mutation entries in favour of Ganpat Chougule and his wife Venubai G. Chougule were relied upon to state that the suit land never belonged to the Devasthan.

5. The Court of original Fora i.e. Civil Judge, Junior Division framed the issues. The first issue being framed; Whether the Plaintiff has established that the suit land is owned by the Trust came to be answered in the negative. The second issue as to whether the Plaintiff has proved that the suit land has been exempted from the operation of Section 32G

has also been answered in the negative. The issue as to whether the Plaintiff is entitled for possession came to be answered in the negative. The issue as to whether the Defendant had proved that he is the legal heir of the erstwhile tenant and, therefore, entitled for cultivation of the suit land came to be answered in the affirmative. On answering the issues against the Devasthan, the suit came to be dismissed.

6. The Certificate granted under Section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948 which was relied upon by the Plaintiff to be the exclusive evidence for being the owner of the suit land did not find much weightage with the learned Civil Judge since he recorded a finding that in the proceedings in which the Certificate was obtained, the Defendant was not impleaded as a party. Further, the person, whose name was mutated in the 7/12 extract i.e. Ms. Indirabai Bivalkar is also not impleaded as party to the proceedings. The Court recorded that the witness of the Plaintiff Mr. Keshav Gadre though had admitted in his cross-examination that the suit property was cultivated by Ms. Indirabai Bivalkar and tenancy rights were recorded in her name, she was not impleaded as a party. According to the learned trial court, notice to the tenant was mandatory and in the absence of any opportunity being afforded to the tenant, the Certificate issued under Section 88B could not have been a conclusive evidence of ownership of the property by the Devasthan.

7. Another quiver in arrow of the Plaintiff staking his claim for

possession was the Will of late Umabai Dhamankar dated 09/10/1920 and the case of the Plaintiff being that the property has been made over to the Devasthan by the said Will and the cultivation rights being made over to Shrimant Babasaheb Bilawalkar Inamdar. The Trial Court, on the basis that the description of the property in the Will did not conclusively prove that it is the suit property, declined to accept the case of the Plaintiff that it is through this Will, the property was made over to the Plaintiff-Trust. Recording a finding that the Plaintiff is not the owner of the entire property and it, therefore, has no right to seek its possession from the Defendant and seek compensation, the suit was dismissed. Accepting the revenue entries exhibited as Ex-65 where the name of late Ganpat Chougule was recorded with a *fer-far* vide No.247 being recorded in the name of his wife Ms. Venubai Chougule, the Trial Court recorded that the entries have been effected by the revenue officers in terms of the Bombay Tenancy and Agricultural Lands Act, 1948.

8. On an appeal being preferred before the Principal District Judge, Raigad, the Appellate Court reversed the said finding. Answering the issue about the ownership of the Plaintiff in the affirmative and also the issue of exemption of the suit land from the provisions of the Bombay Tenancy and Agricultural Lands Act in the affirmative, the Defendant was held to have not proved that he was in possession of the suit land as the legal representative of Ms. Venubai G. Chougule. The Trial Court having been erred on the aforesaid account, the judgment of the Trial Court was reversed by the Appellate Court.

9. The Appellate Court recorded that the Plaintiff-Trust was registered on 08/05/1953 and on the 7/12 extract, its name was entered in addition to the name of Vinayak Bilawalkar as *vahivatdar.* It was further recorded that the Trust obtained Certificate of exemption as per the provisions of Section 88B of the Bombay Tenancy and Agricultural Lands Act on 28/04/1989 and an endorsement was made on the 7/12 extract in the year 2003.

10. On the issue that while certifying the exemption under Section 88B, the Defendant was not afforded any opportunity of hearing, the Appellate Court held that the entries in the Register are maintained after an enquiry to be made by the office of the Charity Commissioner and once the entries are made in the Register, there is a presumption that the entries are correct. On perusal of the Register where in the column of "immoveable property", survey numbers of the plots in Village Apte, Taluka Panvel are mentioned, it is held that though there were two lands bearing Survey No.126 with different areas, since the suit land was one of them, the Appellate Court held that it did not find any reason to conclude that the Plaintiff-Trust is not the owner of the suit land.

11. As far as the Will on which the Plaintiff/Appellant before it has placed reliance, the Court returned a finding that the Will was not proved. As far as ownership of Ms. Indirabai Bivalkar is concerned, which was determined as an incidental issue, the Appellate Court

recorded that the Trial Court did not refer to a single document which came to be exhibited as Ex-62 to Ex-67. The Court recorded that the Plaintiff had challenged the entry in the name of Ms. Indirabai Narayan Bivalkar which was decided by the Additional Collector in RTS Appeal and the Appellate Court recorded that the mutation entry was cancelled by the Additional Collector and by his order the land was entered in the name of the Trust.

12. On the issue as to the exemption from the provisions of Bombay Tenancy and Agricultural Lands Act and the point on which the Trial Court had led much emphasis that the Defendant was not a party to the proceedings, the Appellate Court after referring to the position of law on this point recorded that there was no need for issuance of notice since it was a matter between the Trust and the Collector. The issue as to whether the Defendant was a legal representative of Ms. Venubai Chougule and, therefore, a successor to her rights, the Appellate Court differed with the finding of the Trial Court. The Court held that the Trial Judge has not interpreted the effect of exemption under Section 88B of the Bombay Tenancy and Agricultural Lands Act and, resultantly, allowed the Appeal filed by the Trust.

13. Being aggrieved, the Original Defendant has filed the present Appeal and questioned the findings of fact and of law recorded by the Appellate Court. The Appeal questions the decision of the Appellate Court as regards the provisions of Section 88B of the Bombay Tenancy

and Agricultural Lands Act in the light of the fact that after examining the necessary details, the Certificate was issued by the SDO to which the Appellant was not impleaded as party. On the issue as to whether the Will of Ms. Umabai Dhamankar dated 09/10/1920 is proved or not, the Appellant submits that the Appellate Court has clearly held that the Will is not proved and, therefore, the genesis that the property is owned by the Trust and it has come to the Trust through the said Will, according to the Appellant, is also not proved.

14. In the light of the aforesaid ground raised in the Appeal, heard Mr. Sural Shah along with Mr. Rahul More for the Appellant and Mr. Ram Apte, learned senior counsel instructed by Mr. Kashyap Balerao for the Respondent.

15. During the course of hearing, a compilation of documents comprising copy of Will relied upon by the Plaintiff and so also Certificate of eligibility of the Trust for exemption under Section 88B granted in favour of the Trust along with the necessary documents of enquiry carried out while conferring Registration has been placed on record.

16. The first issue that arise for consideration is whether the Certificate of exemption granted under Section 88B is conclusive evidence that the suit property belonged to the Devasthan, it being a Registered Public Trust.

17. Section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948 reads thus:

> *"Section 88B Exemption from certain provisions to land of local authorities, universities and trusts :*
>
> *(1) Nothing in the foregoing provisions except section 3, SECTION 4B, SECTION 8, SECTION 9, SECTION 9A, SECTION 9B, SECTION 9C, SECTION 10, SECTION 10A, SECTION 11, SECTION 13, and SECTION 27 and the provisions of Chapters VI and VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in sections mentioned above shall apply:-*
>
> *(a) to lands held or leased by a local authority, or University established by law in the [Bombay area of the State of Maharashtra]; and*
>
> *(b) to lands which are the property of a trust for an educational purpose, [a hospital, Panjarapole, Gaushala] or an institution for public religious worship:*
>
> *Provided that: -*
>
> *(i) such trusts is or is deemed to be registered under the Bombay Public Trusts Act, 1950, (Bom.XXIX of 1950) and*
>
> *(ii) the entire income of such lands is appropriated for the purpose of such trust;*
>
> *(c) to lands assigned or donated by any person before the 1st day of August 1956 for the purpose of rendering any of the following services useful to the community, namely:-*
>
> *(d) to lands taken under management temporarily by the Civil, revenue or Criminal Courts by themselves, or through receivers appointed by them, till the decision of the title of the rightful holders:"*

18. It is to be noted that the Certificate under Section 88B has been granted to the Trust on 28/04/1989, almost three decades back. In the cross-examination of the Defendant, he has admitted that he has already filed an Appeal before the competent authority praying that the said Certificate issued in favour of the said Trust should be cancelled and the said proceedings are instituted by him four years' back. When he stood in the witness box, he made a statement that the said proceedings are pending. The Certificate granted under Section 88B exempt a Trust from application of the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 and, in terms of Section 88B (1-b), such exemption can be granted subject to two stipulations viz. (i) that such Trust is or is deemed to be registered under the Maharashtra Public Trusts Act and (ii) the entire income of the said Trust is appropriated for the purpose of such Trust.

19. It is the claim set out in the plaint that the Trust is registered and if we go by the Certificate of registration granted in favour of the Trust on 08/05/1953 on the basis of an Application preferred by the Trust seeking its registration on 30/05/1952, the document pertaining to which has been placed before the Appellate Court, so also before this Court in the form of a compilation while hearing of the appeal, the form of Application for Registration of the Public Trust vide Appendix-II submitted by the Trust seeks registration of the Trust under Section 18 of the Bombay Public Trusts Act, 1950. The names of the Trustees and Managers are mentioned which included the name of Vinayak

Dhondiraj Bivalkar. The objects of the Trust are mentioned as performance of pooja, lighting of lamps before the deity, celebrations of religious functions and maintenance of the four temples. In column No.7 of the said Application form, the mention of two lands from Apte village is to be found. This includes the land vide Survey No.126/0 and land Survey No.123/0 with its measurement and, the manner in which the lands have come to the Trust is mentioned as gift. The source of income of the Trust include donation and gift. The column which required the name of the person in whose possession the details of the property owned by the Trust are to be found, inscribed the name of Bivalkar and Bedekar. The said Application has been preferred on 30/05/1952. The inquiry as contemplated under Section 19 of the Bombay Public Trusts Act, 1950 has been conducted and the inquiry report is signed by the Assistant Charity Commissioner. On the basis of the Report submitted by the independent Assessors, on the issue as to whether a Trust existed and the issue as to whether the property as shown in the Application is the property of the Trust, have been answered in the affirmative. The Report has been signed by the three Assessors on 13/01/1953 thereby unanimously opining that the Trust existed and the property of the Trust covered the property in Survey Nos.123/0 and 126/0 of Village Apte. The order passed on 08/05/1953 while granting registration to the Trust records as under:

> *"Shri Govind Anand Joshi, CA of the Trustee Shri V.D. Bivalkar present. Perused the contents of the Application and the Affidavit along with evidence on*

> *record and after considering the Assessors' opinion recorded at Ex-7, I find as above and order that the Trust be registered".*

20. The *khate utara* in favour of Ramji Devasthan through the occupiers Shri Vinayak Dhondiraj Bivalkar contained mention of Survey Nos.123 and 126 and the land is described as an old and now *kird* and *vargas* land. On this inquiry being conducted as contemplated under Section 19, the Certificate of Registration is granted in favour of the Trust on 08/05/1953. The record of right thereafter made an entry in respect of mauje Apte, Taluka Panvel, District Raigad, in the name of Ramji Devasthan and Vinayak Dhondiraj Bivalkar (old occupant prior to the conduct of survey) and the two Survey numbers which find mention in the said document are Survey Nos.123 and 126. The Hissa form No.4 of *mauje Kasbe* Apte, a copy of which has been obtained on 06/03/2003 also records the name of Devasthan and Vinayak Dhondiraj Bivalkar on land Survey Nos.123 and 126. While issuing the certificate, it is certified that on an Application preferred by Sanjay Sriram Joshi, Trustee of Devasthan, the extract has been prepared in Gunakar book of mauje Kasbe Apte. The revenue survey number extract pertaining to Survey Nos.123 and 126 obtained under the Right to Information Act records the name of Sriram Devasthan and Vinayak Dhondiraj Bivalkar. The extract of the land records obtained from the office of the Collector, the date of which is unknown in relation to Village Apte records the name of Alienees as Umabai, wife of Dhondiraj Vinayak Biwalkar and the class of alienation is described as class-II – Political inam and the

particulars of sanad are recorded to be vide Bombay Government Resolution No.171 dated 09/01/1983.

21. Perusal of the document thus reveals that at the time when the Application for registration of the Trust was preferred i.e. on 30/05/1952, the property belonged to the Trust and allotted Survey number in Village Apte was entered into the Application as the property which had come to the Trust by donation. The Charity Commissioner, on conducting the inquiry contemplated under Section 19 of the Bombay Public Trust Act has certified that the property belonged to the Trust and, thereafter, admitting the existence of the Trust on the said property has granted Certificate of registration under the Bombay Public Trusts Act in favour of the Trust.

22. The property i.e. land bearing Survey Nos.126 and 123 of Village Apte on the basis of which the Trust was registered, according to the Trust, was alienated to it by gift. The Gift Deed which was exhibited at Ex-61 therefore calls for an introspection. The said Deed is executed by Umabai, wife of Govind Dhamankar of Apte Village. By the said Deed, she has bequeathed the property inherited by her from her husband Govind Narayan Dhamankar and gifted to her by the daughter of her brother-in-law Gopal Narayan and this entire immoveable property which vests in her in Village Apte i.e. described as old land and new (now kird); land description of which is contained in the document and this land by the said document is stated to be gifted to the Devasthan. Its

occupancy had, by the said document, made over to Srimant Babasaheb Bilvalkar Inamdar, resident of Apte, who was authorized to cultivate the said land and the income thereof, after deducting the tax due to the Government and the expenses, was to be rendered to the Devasthan for conduct of the Utsav (a special occasion) and for conducting certain other religious ceremonies mentioned in the said Deed. The Deed (Ex-61) further clarified that the land which has been made over to Ramji Devasthan did not suffer from any encumbrances. The Deed also mentioned that the original Gift Deed should be retained by Srimant Babasaheb Bilvalkar Inamdar and a copy of which should be retained by Yamunabai. The Deed bears the left hand thump impressions of Umabai and also Yamunabai. The other attesting witnesses of the document have also signed the said document.

23. The Appellate Court has held that the Will (Ex-61) which was a certified copy is not proved since the attesting witnesses of the said Will are not examined. The Appellate Court records that the Trust cannot be expected to be in custody of the original Will. However, the Appellate Court did not agree with the finding recorded by the Trial Court that in the Will of Umabai Dhamankar, the suit land is not described. The Will describes the land in Village Apte being the old and new land with its type and also description of the land is to be found by describing the existing possession with reference to the boundaries on four sides. The year of the Will being 1920, the survey was not carried out in village Apte and, therefore, Will does not mention the survey number.

However, the said land which has been bequeathed by Umabai in favour of the Trust was included as a part and parcel of the land belonging to the Trust when it preferred the Application for its registration and to be precise, on 30/05/1952. The inquiry being carried out by the Assistant Charity Commissioner about the existence of the said land and whether it belonged to the Trust, based on the Assessors' opinion, the Survey Nos. of the land being 126/0 and 123/0 corresponded with the actual description of the land to be found in the Will and while answering the point for determination as to whether the property shown in the Application is the property of the Trust, the three Assessors had accorded their positive findings. Thus, from the year 1952, Survey Nos.126/0 and 123/0 in Village Apte are recorded in the name of the Trust. A copy of the Will also forms part of the inquiry before the Charity Commissioner. The suit property, of which possession had been sought in the plaint, is one of the properties located in Gat No.126, Mauje Apte with area of 1.34 hectors. The plaint itself contains an averment that the said land was given on tenancy to the Defendant as annual tenancy. It was pleaded that the land is owned by the Devasthan and since it had terminated the tenancy, it sought possession of the suit land and, on failure to do so, the suit for possession was instituted.

24. In the defence, as culled out from the Written Statement, there is a denial by the Defendant that the land belonged to the Trust. On the other hand, it was averred that the original land owner of the suit property was Smt. Indirabai Narayan Bivalkar. There is a mention in the

Written Statement about another tenant Pittu, who by depositing the price of the land, had become owner of the land by virtue of Section 32G. As regards land bearing Survey No.123, which was acquired by the Collector, Raigad for the purpose of village extension, the compensation price has been mentioned to be received by Shri Bilvalkar and another tenant Shri Naik.

25. On perusal of the Written Statement and the evidence of the Defendant, it is clear that he has not established that he had ever availed the benefit under Section 32G.

26. The claim of the Defendant before the Courts below is to the effect that he has inherited the suit land from his maternal aunt Venubai Chougule, who was the wife of the tenant Ganpat Aatya Chougule. In the cross-examination, the Defendant has particularly deposed that he does not remember whether Ganpat Chougule was declared as a protected tenant nor any averment is to be found as regards he being declared so under Section 32G of the Act. His lineage and successor-ship to the suit land has also not been established but the case pleaded by the Defendant is that the suit land had a mutation entry of Ganpat Aatya Chougule and on his demise, name of Venubai Chougule and thereafter his name came to be mutated. He is not the member of Chougule family and on what basis the successor ship to the said property as a tenant was devolved on him has not been established. In order to claim that Chougule was a protected tenant, he ought to have demonstrated his

possession on the said land prior to the tillers day, 1st April, 1957. On 01/04/1957, the position, which is apparent, is that Survey No.123 was recorded in the name of the Trust since the Certificate of registration of the Trust is dated 08/05/1953 and the property of the Trust included the property in Survey No.126 which is the suit property. Since the Trust is already recorded as owner of the said property prior to the tillers day, the tenant Chougule could not become the owner of the suit land. The Appellate Court has relied upon the verdict to that effect in case of ***Sakaram Gaikwad v. Janardan Balaji reported in 2000 (1) Mh.L.J. 696***. Grant of exemption under Section 88B is distinct from the registration of the Trust on the properties mentioned in the Application and the status being the owner established, on an inquiry being conducted under Section 19 of the Bombay Public Trusts Act. The Certificate issued in favour of the Trust granting exemption is already questioned by the Appellant in distinct proceedings and the said issue in any case cannot be gone into in a suit filed by the Plaintiff (Devasthan) seeking possession of the said property and, hence, the argument that opportunity ought to have been given before the Certificate is issued under Section 88B of Act of 1948, do not deserve consideration here in this appeal.

27. So far as the mutation entries are concerned, pursuant to the Trust being registered, the mutation entry No.635 placed collectively as Ex-65 recorded the name of Indirabai Narayan Bivalkar as per the order of the Government. Prior to this, the suit land was in the custody of the Courts of Wards for management. The entry when challenged before the

revenue authority in an appeal, the Additional Collector cancelled the mutation entry No.1068 recording the name of Indirabai Narayan Bivalkar and re-assigned the said land in the name of the Trust. Considering that the mutation entries would not be conclusive proof of the title, the Appellate Court had relied upon it to a limited extent. The name of Bilvalkar family featured in the land record on account of the Will where for the purposes of occupancy Srimant Baburao Bilvalkar came to be appointed. The evidence of the witnesses examined on behalf of the Defendant i.e. Shri Naik and Abdul Reheman Mohamad, pertained to land bearing Survey No.123. The witnesses Abdul Reheman Mohmed Naik and Faiz Ahmed have deposed that they are cultivating the land and Bivalkar is the owner of their land and, therefore, they had deposed that Bivalkar was the land owner of the Defendant's land. However, in absence of any documentary evidence being placed on record by the Defendant to establish that the tenancy of his predecessor Ganpat Chougule emanates from Bivalkar and, on the contrary, the Trust demonstrating its title to the suit property on the basis of the Registration of the Trust on the said property along with the Certificate issued under Section 88B, the Appeal assailing the judgment by the Appellate Court does not deserve any consideration.

The questions of law framed in the Memorandum of Appeal do not fall within the ambit of 'substantial questions of law' and, therefore, the Appeal deserves to be dismissed by upholding the judgment passed by the Principal District Judge, Raigad, Alibag in Civil Appeal No.91 of

2009. Rule is discharged. Decree be drawn up in terms of judgment dated 29/02/2016.

[SMT. BHARATI DANGRE, J.]

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