

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 490 OF 2016

Dhun And Maneck Shroff Memorial Trust .Applicant
through its trustees

Vs.

Anosh Keki Shroff & ors. .Respondents

Mr. Siddharth R. Ronghe, Advocate, for the Applicant
Mr. Suresh M. Sabrad, Advocate, for the Respondent No. 1

CORAM : REVATI MOHITE DERE, J.

DATE : 13.01.2020

P. C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant - Trust has impugned the order dated 21.03.2016 passed by the learned 9th Jt. C. J. S. D., Pune, below Exh. 88 in Special Civil Suit No. 1006 of 2013, by which the Applicant's Application to reject the suit under O. VII, Rule 11(d) of the Code of Civil Procedure was rejected.

3. The principle submission of the learned counsel for the Applicant is that the learned Judge had failed to consider the provisions of Sections 18 & 19 of the Bombay Public Trusts Act, 1950. He submitted that the Applicant - Trust was formed pursuant to the Will of

the deceased testator – Maneck Shroff. He submitted that therefore, the question of impleading the Applicant - Trust as party Defendant in the suit did not arise.

4. Learned counsel for the Respondent No. 1 (Original Plaintiff) opposed the Application and submitted that no interference was warranted in the impugned order. He submitted that the learned Judge has rightly held that the Applicant is a proper party to decide the dispute completely and effectively. He further submitted that the learned Judge has also observed that the relief claimed by the Original Plaintiffs goes to the root cause of all malafide actions purportedly done by the Original Defendant Nos. 1 to 8. He further submitted that the Applicant has filed Special Civil Suit No. 1006 of 2013 as against the Original Defendant Nos. 1 to 5 (Original Respondent Nos. 2 to 6) and had sought administration of the estate of the deceased as one of the reliefs amongst several other reliefs. He submitted that the alleged Will dated 28.07.2011 of the deceased - Maneck Shroff is void ab initio and as such, the question of formation of the trust under the said Will does not arise.

5. Perused the papers as well as the impugned order dated 21.03.2016. As noted above, the Respondent No. 1 (Original Plaintiff No. 1) has filed Special Civil Suit No. 1006 of 2013 in the Court of the

learned C. J. S. D. , Pune and has sought administration of the estate of the deceased and for distribution of the same amongst the legal heirs of the deceased i. e. between the Original Plaintiff No. 1 (Respondent No. 1) and the Original Defendant Nos. 10 to 18, as per their respective shares. Certain other reliefs have also been sought in the said suit. Amongst other reliefs, is a relief seeking declaration that the alleged Will dated 28.07.2011 allegedly executed by the deceased - Maneck Shroff be declared as void ab initio and unenforceable. Cancellation of the said Will has also been sought. It is not in dispute that under the alleged Will dated 28.07.2011, the Applicant - Trust has been formed. No doubt, under Section 80 of the Bombay Public Trust Act, jurisdiction of the Civil Court is barred and grievances with regard to the jurisdiction of the Public Trust can be ventilated before the Charity Commissioner. However, in the present case, the Applicant - Trust has been impleaded as party Respondent only as the said Applicant - Trust has been formed under the alleged Will. Although no relief has been sought against the Applicant - Trust, the Applicant - Trust appears to be a proper party for deciding the dispute completely. The learned Judge has rightly observed that the relief claimed as against the Original Defendants jointly goes to the root of the matter and with respect to the alleged malafide actions of the Original Defendant Nos. 1 to 8. The learned Judge has also observed that the Applicant - Trust would not be prejudiced and has every right to seek relief of damages, if

it is found that the Applicant - Trust was unnecessarily dragged in the controversy. No infirmity can be found in the impugned order. Accordingly, the Application is dismissed.

(REVATI MOHITE DERE, J.)