

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

FIRST APPEAL NO. 1820 OF 2019

Sonubai Tatyrao Jadhav ... Appellant
V/s.
Shri. Vishwanath Sakharam Jadhav & Ors. ... Respondents

Mr. Rohan Prakash Surve a/w. Mr. Kunal Naik for the Appellant.
Mr. Ajit J. Kenjale a/w. Mr. Suraj Bansode for the Respondent Nos.1 to 7.
Mr. Yogesh Dabke, AGP, for the State-Respondent No.31.

CORAM : R.D.DHANUKA,J.

DATE : 28th January, 2020.

P.C.:-

1] By this First Appeal, the appellant (original Opponent No.24) has impugned order dated 19th July 2019 passed by the learned Joint Charity Commissioner, Pune Region, Pune allowing application filed by the Respondent Nos. 1 to 7 (Original applicants) in Application No.02 of 2019 filed under Section 41(E) of the Maharashtra Public Trust Act, 1950. The said application was filed by the applicants *inter-alia* praying for various reliefs in so far as Opponent Nos. 1 to 7 and Opponent No.24 are concerned. An injunction was prayed against Opponent No.24 for collecting rent from Opponent Nos.8 to 23 and causing danger to the Trust property.

2] Insofar, appellant is concerned, she is widow of Mr. Tatyrao Jadhav who was one of the founder Trustee of the Gramseva Mandal, Pusegoan, Tal. Khatav, Dist. Satara, a registered Public Trust.

3] The appellant claims to be owner of property bearing No. 174/2, Gat No.74 admeasuring 8R and has been collecting rent in respect of the said property various occupants since 1965.

4] Learned counsel for the appellant submits that in the said application filed under Section 41(E) of the Maharashtra Public Trust Act, 1950 by the Respondent Nos.1 to 7 herein, though various reliefs were sought against the Opponents No.1 to 23 no relief was sought against the appellant. The learned Joint Charity Commissioner however has granted relief also against the appellant and has restrained her from collecting rent from opponent No.8 to 23. It is submitted by the learned counsel for the appellant that the said order passed by the Joint Charity Commissioner, Pune Region, Pune against appellant is totally without jurisdiction and is in violation of Section 41(E) of the Maharashtra Public Trust Act, 1950.

5] It is submitted by the learned counsel for the appellant that his client has already filed a suit for declaring title as owner by the adverse possession in the Trial Court. One of the Trustee also has filed a separate suit in respect of the said property against the appellant. He submits that the rent being recovered by his client is the only source of income of his

client for last several decades and thus order passed by the Joint Charity Commissioner, Pune Region, Pune warrants interference.

6] Learned counsel for the respondent Nos. 1 to 7 (Original applicants) on the other hand would submit that under section 41(E) of the Maharashtra Public Trust Act, 1950, the Joint Charity Commissioner has wide power to pass an order in respect of any trust property, which is in danger, have been vested, damaged, improperly alienated by any Trustee or any other person. He submits that the appellant has not disputed that the property in question is notified as one of the Trust property. He submits that the suit filed by the appellant is also for declaration of ownership being alleged to be adverse possession of the suit property.

7] Insofar as submission of the learned counsel for the appellant that there was no prayer in the application filed by the Respondent Nos. 1 to 7 against the appellant is concerned, it is submitted that the appellant herself had applied for impleadment in the said application filed by the Respondent Nos. 1 to 7 before the Joint Charity Commissioner, Pune Region, Pune and after hearing all the parties the learned Joint Charity Commissioner, Pune Region, Pune passed the said impugned order on 19th July 2019 by exercising power under Section 41(E) of the Maharashtra Public Trust Act, 1950.

8] It is submitted that in the impugned order passed by the Joint

Charity Commissioner, Pune Region, Pune he has directed the Inspector of the Charity Commissioner, Satara to ascertain the amount of rent collected by the appellant from Opponent No.8 to 23 since 21st January 1992 and to submit a report before the Joint Charity Commissioner within three months from the date of receipt of said order. It is submitted that the appellant being not the owner of the said property and since the said property being a property of the Trust, the appellant, cannot be allowed to recover any rent.

9] It is not disputed by the learned counsel for the appellant that said property bearing survey No. 174/2 Gat No. 74 admeasuring 8R is one of the notified property of the Gramseva Mandal, Pusegoan Trust. The appellant herself has filed a suit for declaration of ownership claiming to be in adverse possession. The suit filed by the appellant is still pending before the Trial Court.

10] Insofar as submission of the learned counsel for the appellant that there was no prayer against the appellant in the said application filed by the Respondent Nos. 1 to 7, in Application 2/2019 under section 41(E) of the Maharashtra Public Trust Act, 1950 is concerned, learned counsel for the appellant does not dispute that his client had applied for impleadment before the learned Joint Charity Commissioner, Pune and was impleaded as a respondent in Application No. 02/2019. It is the case of the appellant that learned Joint Charity Commissioner had not heard to the appellant.

A perusal of the impugned order indicates that appellant had appeared through an advocate before the Learned Joint Charity Commissioner, Pune. In view of the suit property standing in the name of Trust since 21st January 1992, in my view the Joint Charity Commissioner, Pune Region, Pune has rightly restrained the appellant from collecting rent from opponent Nos. 8 to 23, and has appointed an Inspector of Charity Office, Satara to ascertain the amount of rent recovered by appellant since 21st January 1992 from Opponent Nos.8 to 23.

11] I do not find any infirmity in the impugned order passed by the learned Joint Charity Commissioner, Pune Region, Pune. However, since Civil Suit filed by the appellant for Declaration is pending, if the appellant succeeds in the suit and is declared as owner of the suit property, the appellant would be at liberty to apply for recovery of amount of rent which would be collected by the Trust.

12] First Appeal No. 1820 of 2019 is accordingly dismissed with aforesaid clarification. No order as to costs.

13] In view of the dismissal of the First Appeal, Civil Application No.01/2019 does not survive and is accordingly disposed of.

[R.D.DHANUKA, J.]