IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1022 OF 2001
(Corrected as per order dated 24th November 2021)

Gopinath S/o. Hona Chauhan
By L.Rs.
1A. Shivaji Gopinath Chauhan
Since deceased per L.Rs.
1A/1 Dr. Nagorao Shivaji Chauhan
Age 37 years,
Occu. : Medical Service,
R/o Prachi Heritage, Flat No.7,
Tank Road, Shanti Nagar,
Vishrantwadi, Yerwada, Pune
1A/2 Dr. Jeevan Shivaji Chauhan
Age 32 years,
Occ : Medical Service,
R/o. C/o. Shri N. Munde,
Prasad Building, Adarsh-Ganesh
Nagar, Juna Nagar,
Nagar Road, Beed
1B. Ratan Gopinath Chauhan
(Original Opponents) ...Appellants
vs.
1. The Charity Commissioner
2. Shri Ashok Sitaram Chauvan
3. Shri Uttam S/o. Laxman Kulthe
(Original Respondents) ...Respondents

Mr.Vaibhav Sugdare, Advocate for appellants.
Mr.Harshad E. Palwe a/w. Mr.Sudip Mallick, Advocate for respondents.

CORAM : N. J. JAMADAR, J.
DATE : 26th OCTOBER , 2021

JUDGMENT :

1. This appeal is directed against the judgment and order dated 31st July 1999 passed by learned 2nd Extra Joint District Judge,

Nashik in Civil Misc. Application No. 356 of 1995, whereby the application preferred by the appellants under section 72(1) of the Maharashtra Public Trust Act, 1950 ('the Trust Act') came to be dismissed affirming the order dated 19th January 1993 passed by learned Assistant Charity Commissioner, Nashik under section 50A(2) of the Trust Act, 1950, whereby the learned Assistant Charity Commissioner had amalgamated the trusts namely Shri Sati Devi, Vadangali Trust, Tal. Sinnar, Dist. Nashik (P.T.R. No.A-552) with Shri Sati Devi Dharmashala Vadangali, Taluka Sinnar, Dist. Nashik (P.T.R. No. A-553) and settled a scheme, appended to the said order as Annexure-A, for the management of the said trust.

2. Shorn of superfluities, the background facts leading to this appeal can be stated as under :

(a) Shri Sati Devi, Vadangali Trust, Tal. Sinnar, Dist. Nashik (P.T.R. No.A-552) and Shri Sati Devi Dharmashala Vadangali, Taluka Sinnar, Dist. Nashik (P.T.R. No. A-553) were the trusts registered under the Trust Act. Gopinath, the deceased appellant, was the sole trustee. Gopinath had been discharging the duties and obligations of the sole trustee of the said trust. The mode of succession to the office of trustee was hereditary.

(b) The respondent Nos.2 and 3 preferred an application, being Application No.2/1992 under section 50A(2) of the Trust Act for amalgamation of the above named Trusts and for framing a common scheme, on the ground that the deceased Gopinath was not residing at Village Vadangali, and, thus, had not been managing the affairs of the Trust properly.

(c) By an order dated 19th January 1993, the learned Charity Commissioner, Nashik was persuaded to amalgamate the trusts and frame a common scheme for the proper management and administration of the above trusts.

(d) Aggrieved thereby, the deceased appellant preferred an application under section 72(1) of the Trust Act. The deceased appellant asserted that the said order was passed in flagrant breach of fundamental principles of judicial process.

(e) By the impugned order, the learned District Judge dismissed the application holding, *inter alia,* that the scheme, as settled by the learned Assistant Charity Commissioner, was necessary for the proper management and effective administration of the Trust.

3. Being further aggrieved by and dissatisfied with the impugned order, the deceased appellant preferred this appeal. Upon the demise of Gopinath, his legal representatives are prosecuting this appeal.

4. I have heard Mr. Vaibhav Sugdare, the learned counsel for the appellants, Mr. Harshad Palve, the learned counsel for the respondent No.2 and Mr. Y.Y. Dabke, the learned AGP for the State at length. With the assistance of the learned counsels for the parties, I have perused the material on record including the orders impugned herein.

5. Mr.Sugdare, the learned counsel for the appellants strenuously urged that the impugned orders suffer from a manifest error which warrants correction by this Court. Inviting the attention of the Court to entries in the PTR of the Trusts, as originally registered, which indicate that the initial mode of

succession was hereditary, Mr. Sugdare submitted that the authorities could not have completely ousted the sole hereditary trustee from the management and administration of the affairs of the trust, even when a case for settling of the scheme was made out.

6. To bolster up this submission, Mr. Sugdare placed a strong reliance on the judgment of the Supreme Court in the case of ***Kakinada Annadana Samajam, ETC. Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Ors.*** [1] and the judgments of this Court in the cases of ***Pandurang Tatoba Gurav since deceased through L.Rs. Parvati Pandurang Gurav & Ors. Vs. Narayan Bhau Pawar & Ors.***[2] and ***Subhash Trimbakrao Inamdar & Ors. Vs. Pandurang Tansingh Savner & Ors.*** [3].

7. Mr. Palwe, the learned counsel for the respondent No.2 and Mr. Dabake, the learned AGP for the State supported the impugned orders. The thrust of the submission on behalf of the respondents was that the authorities have decided to amalgamate the trusts and frame a common scheme for better management

1 1970(3) SCC 359
2 2002(3) Mh.L.J. 695
3 2003(3) Mh.L.J. 131

and effective administration of the trusts, and, thus, there is no error which would warrant interference by this Court.

8. To begin with, the nature of the appellate jurisdiction exercised by the High Court under section 72(4) of the the Trust Act (as it stood) before section 72 came to be deleted by the Maharashtra Act No.LV of 2017 with effect from 10th October 2017). Sub-section (4) of section 72 read as under :-

> **Section 72. Application from Charity Commissioner's decision under section 40, [41, 50A, 70 or 90A] etc.**
> .....
> (4) An appeal shall lie to the High Court, against the decision of the Court under sub-section (2) as if such decision was a decree from which an appeal ordinarily lies.
>
> [Explanation – In this section, the expression "decision" shall include a scheme framed or modified under section 50A]

9. Though an appeal under section 72(4) of the Trust Act partakes the character of 'first appeal' against the judgment and order passed by the District Court under section 72(2) of the Trust Act, yet, the fact remained that the District Court decided the matter in exercise of appellate jurisdiction. A question thus arose as to whether an appeal filed under section 72(4) of the Trust Act is subject to restrictions and limitations imposed on a 'second

appeal' as prescribed under section 100 of the Code of Civil Procedure, 1908 ('the Code')?

10. A Division Bench of this Court in the case of ***Shivprasad Shankarlal Pardeshi Vs. Leelabai Badrinarayan Kalwar*** [4] considered the question, whether the appeal under section 72(4) should be treated as a "First Appeal" as understood under section 96 of the Code which deals with appeals from original decree or whether this appeal, though styled as 'First appeal', is in substance and effect a Second Appeal and subject to the limitations of section 100 of the Code, where an appeal can be entertained only if the High Court is satisfied that the case involves a substantial question of law. After adverting to the pronouncements of the Supreme Court in the cases of ***Ramchandra Govind Pandit & another v. Charity Commissioner, State of Gujarat*** [5] and ***Nanabhai Dayabhai Patel and another v. Suleman Isubji Dadabhai*** [6]**,** the Division Bench answered the aforesaid question, as under :

> *"25 In view of the law laid down by the Apex Court in the two cases discussed in paras 22 and 23 above Chunilal Vithaldas's case and Maharani Kam Sundari's*

4 1998 (1) Mh.L.J. 444
5 AIR 1987 SC 1598
6 AIR 1996 SC 1184

> *case (supra) as also the view expressed by the Full Bench of the Punjab & Haryana High Court in Ganpat's case para 24 above coupled with the fact that the ratio of the Apex Court decision in Ramchandra Pandit's case (supra) has been reiterated in Nanabhai Dayabhai Patel's case (supra) and having regard to the fact that section 72(4) of the Bombay Public Trusts Act, does not confer any powers wider than those conferred by section 100 C.P.C. while dealing with a Second Appeal, we are clearly of the view that the answer to the first part of first question referred by the learned Single Judge must be in the affirmative. We, therefore, hold that an appeal filed under section 72(4) of the Bombay Public Trusts Act, is subject to the restrictions and limitations imposed under section 100 C.P.C. while entertaining Second Appeal. Consequently it would follow that an appeal under section 72(4) would lie to this Court only if the High Court is satisfied that the case involves a substantial question of law. In substance, such an appeal will be subject to the same limitations as are prescribed under section 100 C.P.C. since there is nothing in section 72(4) of the Bombay Public Trusts Act which confers a wider jurisdiction upon this Court while hearing such an appeal, though styled as a First Appeal."*

11. In the light of the aforesaid limitation on the exercise of appellate power under section 72(4) of the Trust Act, it is imperative to ascertain whether the instant appeal involves a substantial question of law warranting consideration and interference by this Court.

12. The learned counsel for the appellant would urge that the non-consideration of the consequences which emanate from the

deceased Gopinath being the hereditary trustee and complete exclusion of said trustee from the management of the affairs of the Trusts gives rise to a substantial question of law. This submission, appears well merited. The learned Assistant Charity Commissioner and the learned District Judge have not adverted to the question of complete exclusion of the deceased trustee from the management of the affairs of the trust, though the mode of succession was hereditary.

13. In the light of the material on record and the submissions canvassed across the bar, the instant appeal gives rise to following substantial question of law :

> *Whether a person, who is the hereditary trustee, can be completely excluded from the management and administration of the affairs of trust where the mode of succession is "hereditary"?*

14. The learned Assistant Charity Commissioner has proceeded on the premise that the deceased appellant, who was then the sole trustee, was not residing at Vadangali, where the trusts were situated. The deceased appellant was then residing in a village, falling within Gevrai Taluka, District Beed and visited Vadangali occasionally and at the time of annual festival. The learned

Assistant Charity Commissioner was thus of the view that the deceased appellant was not in a position to look-after the day today management of the aforesaid trusts.

15. The learned District Judge did not find any infirmity in the aforesaid view of the learned Assistant Charity Commissioner. In the backdrop of the fact that the learned Assistant Charity Commissioner had followed the requisite procedure for amalgamation of the two trusts and framing the scheme, the learned District Judge found no reason to interfere with the order passed by the learned Assistant Charity Commissioner.

16. In the light of the reasons ascribed by the learned Assistant Charity Commissioner and the learned District Judge which reflect upon the inability of the deceased appellant to effectively manage the affairs of the trust, as the deceased appellant was not permanently residing at Vadangali, and for the better and effective management of the affairs of the trusts, this Court does not find any justifiable reason to take a different view of the matter so far as the amalgamation of the trusts and settlement of the scheme for better administration.

17. The moot question that wrenches to the fore is whether the learned Assistant Charity Commissioner and the learned District Judge were justified in excluding the deceased appellant completely from the management of the affairs of the trust, especially in the backdrop of the fact that the mode of succession was “hereditary” and, indisputably, the deceased appellant was then the sole trustee of both the trusts. Answer to this question hinges upon the appreciation of the nature of the right of a hereditary trustee.

18. To start with, the powers of the Assistant Charity Commissioner to amalgamate two trusts and frame a scheme under section 50A are coached in wide terms. The jurisdictional condition which is required to be fulfilled before settling a scheme under section 50A is recording of satisfaction by the Charity Commissioner that in the interest of proper management and administration of the public trust, it is necessary or expedient to settle a scheme for the management and administration of the trust. Thus, the fact that the mode of succession to a given trust is “hereditary”, by itself may not constitute an impediment in the Charity Commissioner framing a scheme for the better

management and administration of the affairs of the trust, if he is satisfied about the necessity or expediency thereof. The Charity Commissioner exercises *Parens patriae* jurisdiction and therefore the mode of succession itself can be modified to achieve the object of better management and administration of the trust.

19. The position of a hereditary trustee was explained by the Supreme Court in the case of ***Kakinada Annadana Samajam, ETC*** (Supra). In the said case, the Supreme Court considered the question as to whether the office of hereditary trusteeship is “property” within the meaning of Article 19(1)(f) of the Constitution of India (as it stood then). While answering the said question in the negative, the Supreme Court held that the position of a hereditary trustee does not appear to be in any way different from that of a Dharamkartha or a mere manager or custodian of an institution or endowment. The position of Dharamakartha is not that of a Shebait of a religious institution or of the head of a math. These functionaries have a much higher right with larger power of disposal and administration and they have a personal interest of beneficial character. The observations in paragraph 8 are instructive and thus extracted below :

> *"8 In cases in which the office of hereditary trusteeship has been held to be property within the meaning of Article 19(1) (f) the true character and incidents of that office do not appear to have been fully kept in view. It was common ground before the High Court and has not been disputed before us that the hereditary trustees of the institutions with which we are concerned have only claimed a bare right to manage and administer the secular estate of the institution or the endowment and in no case any hereditary trustee has claimed proprietary or beneficiary interest either in the corpus or in the usufruct of the estate. <u>The position of a hereditary trustee does not appear to be in any way different from that of a Dharamkartha or a mere manager or custodian of an institution or endowment. There is one exception only. The hereditary trustee succeeds to the office as of right and in accordance with the rules governing succession. But in all other respects his duties and obligations are the same as that of Dharamkartha. No one has ever suggested that a hereditary trustee can be equated to a Shebait of a religious institution or a Mathadhipati or the Mahant. The ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant as also a Shebait and a Mathadhipati. The position of Dharamakartha, on the other hand, is not that of a Shebait of a religious institution or of the head of a math. These functionaries have a much higher right with larger power of disposal and administration and they have a personal interest of beneficial character; [See Srinivasa Chariar v. Evalappa Mudaliar(1)]. There would thus be no justification for holding- that since the office of the aforesaid functionaries has been consistently held by this Court to be property the office of a hereditary trustee is also property within Article 19 (1) (f)."</u>*
>
> (emphasis supplied)

20. In the context of the aforesaid nature of the right of a hereditary trustee, this Court had an occasion to deal with the question as to whether while settling a scheme under section 50A

of the Trust Act, a hereditary trustee can be totally excluded from the management of the affairs of the trust, in the case of ***Pandurang Tatoba Gurav since deceased through L.Rs. Parvati Pandurang Gurav & Ors.*** (Supra). It was observed, *inter-alia,* as under :

> *"4 Upon hearing the learned Advocates and on perusal of the records, the substantial question of law which arises in the matter is whether the authority acting under Section 50-A of the said Act could have modified the scheme of the trust thereby denying the right to the appellants to be the member of the board of trustees as well as denying the right of succession to the heirs of Pandurang once he having been granted lifetime membership of the board of trustees and in that regard whether the exercise by the authorities under the said provision of law can be considered as proper and just.*
>
> *5. ....Though the authority found it necessary to have one of the family members of the appellants as member of the Board of Trustees for the lifetime, however no reason has been disclosed in the order to deny such right to the successor of Pandurang. Once it is admitted that the management was all throughout with the family of the appellants and even the function of Pujari in the temple was performed by their family members, it is not understood as to why the inclusion of the member of the family of the appellants in the management was restricted only during the lifetime of Pandurang. In this connection as rightly submitted by the learned Advocate for the appellant, the authorities have to bear in mind while acting under Section 50-A that when the management of the temple is in the hands of Pujari for number of years and for generations, interest in the form of hereditary trustship is created in favour of such persons, subject of course to the limitations and*

> *restrictions which may be specifically provided for under the statutes applicable to the administration of the subject matter in relation to which such interest is created."*

21. This Court referred to a judgment of the Madras High Court in the case of ***Venkatraman Vs. I A. Thangappa*** [7] and held that, in the facts of the said case, the authority which took action under Section 50A had not applied its mind to the point regarding the management of the Trust for a long time with the appellant therein nor any justification was offered for denying the right of succession to the heirs of the appellant therein. Thus, by setting aside both the decisions, the matter was remanded to the Charity Commissioner to reconsider the decision after proper enquiry.

22. In the case of ***Subhash Trimbakrao Inamdar & Ors.*** (Supra), where the Assistant Charity Commissioner had excluded the appellant from the management of the trust as there were allegations of acting in a manner detrimental to the trust and the trust property against the appellant therein, this Court held that the decision was irregular as the Charity Commissioner had failed to consider their right to participate in the management of the Trust, of which they were the hereditary Trustees, and,s therefore,

7 AIR 1972 Madras 119

the Assistant Charity Commissioner was directed to reexamine the scheme by taking into consideration the entitlement and eligibility of one of the appellants therein, to be appointed on the Board of Trustees after hearing the parties.

23. In the case at hand, the impugned orders passed by the learned Assistant Charity Commissioner and the learned District Judge do not reveal that the learned Assistant Charity Commissioner and the learned District Judge were fully alive to the aspect of hereditary trusteeship, prescribed by the mode of succession under the trusts in question, and yet they took a conscious decision not to allow the deceased appellant to participate in the management of the affairs of the trust. The sole reason was that the deceased appellant was residing at a different place. No finding of mismanagement or mal-administration was recorded against the deceased appellant. There can be no qualm over the proposition that, in the given circumstances, for the better management and administration of the trust, settlement of the scheme might be found necessary and expedient. However, in the absence of consideration of the nature of the office of hereditary trustee and desirability or otherwise of including the

deceased appellant in the first Board of Trustees to manage the affairs of the amalgamated trust, the impugned order suffers from an infirmity which warrants interference.

24. The question which now wrenches to the fore is whether, at this length of time, the impugned orders be set aside and the matter be remitted to the Assistant Charity Commissioner for determination afresh. In my considered view, the said course, in the backdrop of the fact that the enquiry under section 50A was initiated in the year 1992, may not be expedient as the affairs of the trust are being managed in accordance with the scheme settled in the year 1993. Setting aside the very order of settling the scheme would, in the circumstances of the case, be counter productive. Instead, it would be appropriate to allow the appellants to seek modification of the scheme under section 50A of the Trust Act, to the extent of representation to the heir of the deceased appellant (the then sole hereditary trustee) in the management of the affairs of the trust.

25. For the foregoing reasons, the appeal deserves to be partly

allowed to the aforesaid extent. Hence, the following order :

O R D E R

(i) The appeal stands partly allowed.

(ii) The impugned orders stand affirmed subject to the following modification :

The appellants shall be at liberty to make an application before the learned Assistant Charity Commissioner, under section 50A of the Trust Act, seeking modification in the scheme settled by the impugned order passed by the Assistant Charity Commissioner dated 19th January 1993 to the extent of representation to the heirs of the deceased appellant in the management of the affairs of the trust, within a period of six weeks from the date of uploading of this order.

(iii) In the event, such an application is filed, the learned Assistant Charity Commissioner shall decide the same in accordance with law and without being influenced by any of the observations made hereinabove, as expeditiously as possible, after providing an effective opportunity of hearing to all the parties.

In the circumstances, there shall be no order as to costs.

(N. J. JAMADAR, J.)