

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

FIRST APPEAL NO. 115 OF 2022

Balaji Mandir Girnare & Ors.

..Appellants.

v/s.

Ramchandra Devasthan Girnare & Ors.

..Respondents

Mr. Sachin Gite for the Appellants.

Mr. C.G.Gavnekar a/w. Ashutosh Gavnekar for the Respondent Nos.1, 2, 6, 8 and 9.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 19th AUGUST, 2022.**

P.C.

1. The Appellants herein have challenged order dated 15.04.2019 whereby the learned Assistant Charity Commissioner, Nashik has rejected the application filed by the Appellants under Section 51 of the Maharashtra Public Trust Act, 1950.

2. The Appellants herein had filed an application before the Charity Commissioner seeking consent of the Charity Commissioner to file suit against the Respondents. The Appellant No.1 claimed to be the owner of the property under Survey Nos.172 and 173 (old) presently surveyed under Survey No.403/1 and 403/2 of Village Girnare, Taluka Nashik. The Appellants claimed that the said properties were originally owned

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by Shimpi Family and gifted to the Appellant No.1 Trust by Gift Deed dated 16.10.1922. It is the case of the Appellants that the Respondent No.1 Trust has no right or title to the suit property. It is alleged that the Respondent No.1 has converted the said property to non-agricultural property and after layout of the land, sold the plots to 128 - 130 persons. The Appellants claim that the said sale deeds are illegal. The Appellants therefore sought leave to file suit for declaration that the Appellant No.1 Trust is the owner of the said property. The Appellants have also sought cancellation of the sale deeds executed by the Respondent No.1 trust in favour of several persons and further sought to restrain the Respondent No.1 from transferring or creating third party right in respect of the suit property and/or interfere with its possession in respect of the suit property.

3. Learned Commissioner, conducted inquiry and upon considering the material on record observed that the Appellant No.1 had failed to prove that the property was transferred to Shreeram Mandir. Learned Commissioner has also taken note of the admission of witnesses examined by the Appellants that the said properties have been sold to Ramchandra Devasthan by sale deed executed in the year 1922, and that the Appellants herein have not challenged the said sale deed. Learned Charity Commissioner observed that also took note of the fact that in the previous suit No. RCS 563 of 1960 a finding has been recorded that the said land belongs to the Respondent No.1 Trust.

4. Learned Charity Commissioner has observed that the property was purchased by Respondent No.1 Trust in the year 1922, the Trust was registered in the year 1960 and the properties were sold with the consent of the Charity Commissioner and hence concluded that the Appellants herein had failed to make out prima facie case for instituting the suit against the Respondent No.1 Trust. Being aggrieved by this order, the Appellants have filed this appeal.

5. Heard learned Counsel for the Appellants and learned Counsel for the Respondents. Perused the records and considered the submissions advanced by learned Counsel for the respective parties.

6. The dispute in the present case is in respect of the property which was earlier surveyed under Survey Nos.172 and 173 and presently surveyed under Survey No.403/1 and 403/2 of Village Girnare, Taluka Nashik. It is not in dispute that the suit property was purchased by Respondent No.1 Trust by sale deed dated 6.01.1922. The Respondent No.1 Trust was registered in the year 1960 and since the date of registration the property is shown as a Trust property.

7. The Appellant no.1 Trust was also registered in the year 1960. The witness examined by the Appellants has admitted that he was the trustee since the year 1970. He was also aware that the said property was not shown in the records as the property of Appellant No.1 Trust. He has admitted that from 1970 to 2016 he had not taken any steps to get the property transferred in the name of the Appellant No.1 Trust.

8. It is also to be noted that the property was purchased by Respondent No.1 Trust by Deed of Sale dated 6.1.1922, which is prior to the gift deed executed in favour of Appellant Trust . The Appellants have not challenged the sale deed dated 6.1.1922. The challenge is only to the subsequent sale deeds executed by the Respondent No.1 Trust in favour of third parties. As rightly held by the learned Assistant Charity Commissioner, the Appellants have failed to show that Appellant No.1 Trust has any right title or interest in the property. The Appellants failed to make out prima facie case to sue the Respondent No.1 Trust.
9. Under the circumstances, and in view of discussion supra, the appeal is dismissed.

(ANUJA PRABHUDESSAI, J.)