

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**LETTERS PATENT APPEAL NO. 27 OF 2005
IN WRIT PETITION NO. 1292 OF 1992 (D)**

Amended as
per Court's
order dated
25/6/2021.

1. Janak Aidan Paliwal,
Aged about 58 years, Occ. Agriculturist.
2. Jugalkishore Aidan Paliwal,
Aged about 62 years, Occ. Agriculturist.

Both are R/o Vitthal Rukhmai Ward No. 13,
At Post Sindi Railway, Tahsil Seloo, District Wardha.

APPELLANTS

.....VERSUS.....

1. The Maharashtra Revenue Tribunal,
Nagpur.
2. Kawarlal Hemraj Punandh,
R/o Haladgaon, Post Seldoh,
Tahsil Hingna, District Nagpur.
(Dead).
Through LRs
- 2(i) Bhaniram s/o Kanwarlal Punandh,
Aged about 60 years, Occ. Not known.
- 2(ii) Mohan s/o Kanwarlal Punandh,
Aged about 58 years, Occ. Not known.
- Both 2(i) and 2(ii) are R/o At Haladgaon,
Post Sawangi (Asola), Tahsil Hingna, District Nagpur.
- 2(iii) Balkisan Kanwarlal Punandh,
Aged about 55 years, Occ. Not known.
- 2(iv) Sangeedaan s/o Kanwarlal Punandh,
Aged about 49 years, Occ. Not known.

Both 2(iii) and 2(iv) are R/o At post Chila (Shaitansingh Nagar),
Tahsil Falodi, District Jodhpur (Rajasthan).

3. Gopikisan Shrikishnadasji Paliwal.
4. Aidan Udaramji Paliwal,

Respondent Nos. 3 and 4 are R/o Sindi Railway,
Post Sindi Railway, Tahsil Selu,
District Wardha.

RESPONDENTS

Shri S.S. Joshi, Advocate for the appellants.
Ms. T.H. Khan, Assistant Government Pleader for respondent No.1/ State.
Shri C.S. Dharmadhikari, Advocate for respondent Nos. 2(i) and 2(ii).

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

ARGUMENTS WERE HEARD ON : SEPTEMBER 27, 2022

JUDGMENT IS PRONOUNCED ON : NOVEMBER 10, 2022

JUDGMENT : (PER : A.S. CHANDURKAR, J.)

The judgment of learned Single Judge in Writ Petition No. 1292/1992 dated 24/11/2004 is under challenge in this Letters Patent Appeal filed under Clause 15 of the Letters Patent. By the said judgment, the Writ Petition preferred by the predecessor of the present appellants challenging the order passed by the Maharashtra Revenue Tribunal dated 30/7/1990 came to be dismissed.

2] The facts relevant for considering the challenge as raised are that it was the case of the predecessor of respondent No.2 - Kawarlal that he was inducted as tenant in lands bearing Survey Nos. 72/1 and 72/2 admeasuring 29 acre 58 guntha situated at Mouza – Haladgaon, Taluka and District – Nagpur in the year 1974-75 for a lease amount of Rs.1,050/-. These lands were owned by Shriram Deosthan, Sindi, Taluka and District – Wardha which was a private trust. The induction as tenant

was by the Managing Trustee of the Deosthan namely Shri Aidan Udaramji Paliwal. Kawarlal filed an application under Section 50 read with Sections 46, 48 and 49A of the Maharashtra Tenancy And Agricultural Lands (Vidarbha Region) Act, 1958 (for short “Act of 1958”). In the said application filed on 1/4/1975, a declaration was sought that Kawarlal had acquired ownership rights over the said lands and that he was entitled to purchase the same under the Act of 1958. In the said proceedings, the Deosthan was impleaded through its Managing Trustee. Despite service of notice, the Managing Trustee remained absent and hence the proceedings were decided *ex parte*. The Additional Tahsildar and Member, Agricultural Lands Tribunal, Nagpur passed an order on 30/7/1975 allowing the application as made and declared that Kawarlal had acquired the status of full owner and that the ownership of the suit fields vested in him with effect from 1/4/1975. The purchase price of the said lands was fixed at Rs.2,232/- The well standing thereon was valued at Rs.2,000/- and the total purchase price along with the amount of interest was determined at Rs.4,295/- that was to be paid within a period of one year.

3] One Makhanlal Kanhaiyalal Paliwal who claimed to be a trustee of the Deosthan filed an appeal under Section 107 of the Act of 1958 after a period of almost seven years and sought to challenge the order passed by the Agricultural Lands Tribunal. It was the case of

Makhanlal that the Deosthan which was a private trust was not impleaded through all its trustees. In the said appeal, he impleaded three more trustees as respondents and urged that since there was non-joinder of all trustees in the proceedings under Section 50 of the Act of 1958, the order passed by the Agricultural Lands Tribunal was non est and liable to be set aside. The Sub-Divisional Officer by his order dated 31/7/1985 held that as the trust had been impleaded in the proceedings through its Managing Trustee, it was the responsibility of the trust to take a decision by majority after consulting all trustees. The original tenant – Kwarlal could not be blamed for such state of affairs. On that basis, the appeal came to be dismissed.

Makhanlal then filed a revision application under Section 111 of the Act of 1958. He raised the same grounds of challenge before the Tribunal. The learned Member by his order dated 30/7/1990 held that the burden to indicate as to whether the lands in question were let out to Kwarlal by majority of trustees was a burden to be discharged by the trust. The Managing Trustee had remained absent in the proceedings and even at the appellate stage, the said issue though raised was not proved by adducing evidence or by producing the records of the trust. It was thus inferred that the letting of the suit fields was by majority of trustees and that the proceedings initiated subsequently were by way of an after thought. On that basis, the Revision Application came to be

dismissed.

4] Makhanlal then preferred Writ Petition No. 1292/1992 raising challenge to the order passed by the Tribunal. During pendency of the said Writ Petition, Civil Application No. 819/1993 came to be moved with a prayer for substituting the name of Makhanlal with that of another trustee, Shivendrakumar Paliwal. In the application, it was stated that Makhanlal had resigned from the trusteeship and that a resolution was passed on 7/11/1992 accepting the same. Since Shivendrakumar was authorised to conduct further proceedings in the Writ Petition, it was prayed that his name be substituted in place of Makhanlal. By an order passed on 23/6/1993, that Civil Application came to be allowed and substitution was permitted. The learned Single Judge after hearing both the sides firstly found that the stand taken by Shivendrakumar that Kwarlal was a servant was not liable to be accepted since there was no document on record to substantiate the same. Though Shivendrakumar and respondent No.3 in the Writ Petition were residing at the same village where the trust property was located, they did not bring any relevant material on record to substantiate that stand. After referring to the Trust Deed dated 17/1/1962, it was observed that since the lands of the trust were neither sold, mortgaged or gifted, it was within the authority of the Managing Trustee to lease out the same. It was further

held that the petitioner failed to point out any hostility between the trustees amongst themselves to enable the ground of all trustees not being impleaded being raised. On that basis, the learned Single Judge declined to interfere with the order passed by the Tribunal and thus dismissed the Writ Petition.

Being aggrieved, the aforesaid judgment of learned Single Judge has been challenged by the substituted petitioner – Shivendrakumar.

5] Shri S.S. Joshi, learned Counsel for the appellants urged that in the light of the provisions of Sections 47 and 48 of the Indian Trusts Act, 1882 (for short “Act of 1882”), all trustees ought to have been impleaded in the proceedings that were filed against the private trust. Kwarlal in the proceedings filed before the Agricultural Lands Tribunal did not implead all the trustees as non-applicants and as a result, the proceedings were decided only against the Managing Trustee – Makhanlal. He too remained absent as a result of which the interest of the private trust went unrepresented. Inviting attention to the memorandum of appeal preferred before the Sub-Divisional Officer as well as the revision application preferred before the Tribunal, it was submitted that this ground was raised by the trustees at the first instance. By not

considering the provisions of Sections 47 and 48 of the Act of 1882 in the proper perspective, the said ground was not accepted. It was then submitted that as per Clause (8) of the Trust Deed dated 17/1/1962, it was necessary for the trustees to have resolved by majority before leasing out the fields in question to Kowarlal. In the absence of any such decision by majority, it was not open for Makhanlal as Managing Trustee to have let out the said lands at his own will. The trust by itself was not a legal entity and it was therefore necessary that its interest be represented by all trustees. He further submitted that the learned Single Judge concluded that since two trustees were residents of the same village where the lands were located, they ought to have taken immediate steps in the matter. There was no basis whatsoever to conclude that the said trustees resided in the same village. Placing reliance on the decisions in i) *Lala Man Mohan Das Vs. Janki Prasad And Others* [AIR 1945 PC 23]; ii) *L. Janakirama Iyer and others Vs. P.M. Nilakanta Iyer and others* [AIR 1962 SC 633]; iii) *Sheikh Abdul Kayum and others Vs. Mulla Alibhai and others* [AIR 1963 SC 309]; iv) *M/s. Shanti Vijay & Co. Vs. Princess Fatima Fouzia and others* [AIR 1980 SC 17]; v) *Atmaram Ranchhodhai Vs. Gulamhusein Gulam Mohiyaddin and another* [AIR 1973 GUJARAT 113]; vi) *Kansara Abdulrehman Sadruddin Vs. Trustees of the Maniar Jamat Ahmedabad, Musaji Abdulkarim and others* [AIR 1968 GUJARAT 184; and vii) *Ashok Shikshan Sanstha & Ors. Vs. Mr. S.N. Dutonde & Ors.*

[2015(3) ALL MR 796] it was submitted that for non-joinder of proper parties in the form of all trustees, the proceedings initiated by Kwarlal were not liable to be entertained on merits. It was thus submitted that the orders passed by the tenancy authorities as well as by the learned Single Judge ought to be set aside.

6] Shri C.S. Dharmadhikari, learned Counsel appearing for the legal heirs of respondent No.2 opposed the aforesaid submissions. At the outset, he invited attention to the orders dated 23/11/2020 and 25/6/2021 passed in the Letters Patent Appeal whereby the objection raised to the legal heirs of Shivendrakumar being brought on record had been kept open. According to him, the present appellants had no locus to challenge the order passed by the learned Single Judge. Without prejudice to the aforesaid, it was submitted that on plain reading of the Trust Deed and especially Clauses (7) and (8) thereof, it was clear that in absence of there being any alienation of the lands of the trust and mere execution of a lease deed, it was not necessary that such act ought to be preceded by a resolution passed by majority of the trustees. Inviting attention to the various orders passed by the tenancy authorities, it was submitted that there were no documents placed on record to indicate absence of consent of majority of the trustees to the letting out of the suit fields. While the appellants sought to raise a ground with regard to the

non-compliance of the provisions of Sections 47 and 48 of the Act of 1882, the original petitioner as well as the present appellants also did not comply with the requirements of the said Sections. Makhanlal did not implead all trustees in the proceedings before the revenue authorities and hence it was not permissible for the appellants to raise such objection to the proceedings. It was further submitted that assuming that there was no written resolution to indicate a decision by majority of the trustees, it was also permissible to have such majority of trustees even orally. The learned Single Judge having considered all the relevant aspects, it could not be said that there was any jurisdictional error in the impugned judgment. In support of his submissions, the learned Counsel placed reliance on the decisions in i) *J.P. Srivastava & Sons (P) Ltd. And Others VS. Gwalior Sugar Co. Ltd. And Others* [(2005) 1 SCC 172; and ii) *Sulochana Daulatrao Thakare Vs. Sangam Shikshan Sanstha & Others* [2004 Lab IC 1194] and submitted that there was no ground made out to interfere with the impugned judgment.

7] We have heard the learned Counsel for the parties at length and with their assistance, we have also perused the documentary material placed on record.

8] At the outset, we may consider the objection raised to the impleadment of the present appellants as legal heirs of Shivendrakumar

to prosecute the Letters Patent Appeal. During pendency of the present appeal, Shivendrakumar expired on 25/10/2014. His legal heirs were sought to be brought on record by raising a plea that they were trustees and hence they could be brought on record in place of deceased Shivendrakumar. While permitting such impleadment, the aforesaid objection regarding their locus was kept open. The order dated 25/6/2021 passed in Civil Application (Z) No. 13/2019 reads as under :

“CAZ NO. 13/2019.

8] *This is an application for substitution of the names of the applicants as appellants in the appeal in place of deceased Shivendrakumar Udaramji Paliwal, who is reported to have expired on 25/10/2014.*

9] *It is stated that the subject land in the present proceedings is owned by a private trust constituted by one Smt. Tulsabai Kisanji Paliwal in the year 1962. The original appellant Shivendrakumar was the trustee of the said trust, and was prosecuting this appeal as a trustee and on behalf of the said trust. On account of death of Shivendrakumar and other trustees, the said office of the trustees were filled in by the election/ nomination of the present applicants as trustees of the said trust, and therefore, the applicants, being the current trustees of the said trust, need to be brought on record in place of the original trustee Shivendrakumar.*

10] *Shri Dharmadhikari, learned counsel for the legal representatives of respondent No.2, raised strong objection on the ground that the original appellant Shivendrakumar had filed the present appeal in his personal capacity, and therefore, the present applicants cannot be substituted in his place.*

11] *Without going into the merits of the aforesaid submissions made on behalf of both the parties, for the present, we permit the present applicants to represent the cause of the original appellant by keeping open the contentions about the entitlement and legality of the applicants to represent the appellant in this appeal.*

12] *Necessary amendment/s be carried out within a period of one week from today.*

13] *The Civil Application stands disposed of.”*

Reference is also required to be made to an earlier order dated 23/11/2020 wherein the aspect of maintainability of the appeal preferred by Makhanlal before the Sub-Divisional Officer was urged for consideration. That order dated 23/11/2020 reads as under :

“1] *During the course of hearing, it came to our notice that in the proceedings before the Tahsildar and Agricultural Lands Tribunal, Shriram Deosthan, Sindhi through Managing Trustee Shri Aidan Udaram Paliwal was impleaded as non- pplicant. The order passed by the Tahsildar and Agricultural Lands Tribunal, Nagpur on 30/07/1975 was challenged in appeal before the Sub-Divisional Officer by Makhanlal Kanhaiyalalji Paliwal impleading Kawarlal Hemraj Punand, Gopikisan Shrikisandasji Paliwal, Shivendrakumar Udaramji Paliwal and Aidan Udaramji Paliwal as the respondents. Shriram Deosthan was not impleaded as party in the appeal before the Sub- Divisional Officer. Makhanlal Kanhaiyalalji Paliwal had filed revision application before the Maharashtra Revenue Tribunal impleading Kawarlal Hemraj Punandh, Gopikisan Shrikisandasji Paliwal, Shivendrakumar Udaramji Paliwal and Aidan Udaramji Paliwal as the non-*

applicants. Shriram Deosthan was not impleaded as party in the revision before the Maharashtra Revenue Tribunal. The order passed by the Maharashtra Revenue Tribunal was challenged before this Court in W.P. No. 1292/1992 by Shivendrakumar Udaramji Paliwal impleading Maharashtra Revenue Tribunal, Kawarlal Hemraj Punandh, Gopikisan Shrikisandasji Paliwal, Shivendrakumar Daramji Paliwal and Aidan Udaramji Paliwal as respondents. Shriram Deosthan was not impleaded as party in that writ petition also. Same is the position in this letters patent appeal.

2] On query as to whether the appeal which was filed by Makhanlal Kanhaiyalalji Paliwal before the Sub- Divisional Officer was maintainable and whether consequential proceedings could have been maintained by Makhanlal Kanhaiyalalji Paliwal, Shri S.S. Joshi, learned advocate for the appellant requested for time to examine the position. He submitted that he has personal difficulty on 26/11/2020 which is the next date of our sitting.

3] List the letters patent appeal for further hearing on the first working day of the Bench taking up the letters patent appeals, in the week commencing from 01/12/2020.”

9] As stated above, Shivendrakumar who had initially filed the Letters Patent Appeal expired on 25/10/2014. Civil Application No. 13/2019 was moved by two applicants by pleading that they were successors in office/ interest of late Shivendrakumar Paliwal. It was further stated in the application that substantial rights of the applicants were involved and hence they be permitted to be brought on record as legal heirs for prosecuting the proceedings. It can be seen from the said Civil Application that there is no resolution passed by trustees of the

private trust by which the trustees had authorised the said applicants to be substituted in place of deceased Shivendrakumar. There is also no averment in the application that on being so authorised by the other trustees, the said applicants were seeking their substitution in place of Shivendrakumar. It is thus found that there is no documentary material to substantiate the claim of the applicants that they were duly authorised by the trustees to represent the interest of the trust in the present proceedings. Though such substitution was permitted by the order dated 25/6/2021, it was specifically observed in para 11 that the objection with regard to the entitlement and legality of the said applicants to represent the trust was kept open. It is thus found that the present appellants who came to be substituted in place of deceased Shivendrakumar have not indicated the source of the authority conferred on them by the remaining trustees to represent the interest of the trust. The said objection raised by the legal heirs of Kwarlal is thus liable to be upheld.

10] Coming to the objection raised on the competence of Makhanlal to challenge the order passed by the Tribunal by preferring an appeal before the Sub-Divisional Officer, it is found that Makhanlal was entitled to prosecute the proceedings till the time he resigned as trustee and his resignation was accepted on 7/11/1992. Thereafter, Shivendrakumar was permitted to conduct further proceedings on behalf

of the trust. Though Makhanlal initiated the said proceedings and his name was permitted to be substituted by that of Shivendrakumar pursuant to the order passed in Civil Application No. 819/1993, subsequent thereto, there is no documentary material on record to indicate that after 1992 Shivendrakumar was re-elected as Sarpanch since the tenure of the post of Sarpanch is for a period of five years as per Clause (7) of the Trust Deed or that the present appellants were authorised to represent the trust by passing a suitable resolution. It is therefore found that the present appellants have not been able to demonstrate their legal competence to further continue the proceedings on behalf of the private trust after being substituted in place of Shivendrakumar.

11] Though we have found that continuation of the proceedings by the present appellants has not been shown to be authorised by the private trust, we have also examined merits of the challenge as raised. In that regard, we find that the learned Single Judge has given cogent reasons for not accepting the ground raised on behalf of the private trust as to non-joinder of all trustees. Clause (8) of the Trust Deed has been referred to by the learned Single Judge to observe that resolution by majority was necessary only when sale, mortgage or gift of its property was being undertaken. In the present case, the lands were leased out to

Kawarlal and it has been found that Clause (7) did not necessitate passing of such resolution by majority. Further, the observation that the stand raised that letting of lands was not by majority was raised by way of an after thought is also a possible view of the matter. It was found that Shivendrakumar and another trustee – Gopikisan were residents of the same village where the lands were located. Despite that, it was not indicated as to who else other than Kawarlal was cultivating the said lands. The aspect that Aidan Paliwal was the Managing Trustee was accepted in view of the averments made in paragraph 2 of the Writ Petition which indicate that at the relevant time, he was the Managing Trustee. We therefore find that Shivendrakumar was not in a position to substantiate his stand either by indicating some hostility or adverse interest of other trustees to support the case that all trustees ought to have been impleaded as parties. In absence of any jurisdictional error being pointed out, we do not find any reason to interfere in the Letters Patent Appeal.

12] The legal proposition in the light of the provisions of Sections 47 and 48 of the Act of 1882 does not admit of any doubt whatsoever. However, before applying that position, it was necessary for Shivendrakumar to have substantiated that stand with documentary material in the form of a resolution passed by majority of trustees in that

regard. We also find substance in the submission made on behalf of the legal heirs of Kwarlal that in the appeal preferred by Makhanlal, the trust was not at all impleaded as a party. On the contrary, Kwarlal in the proceedings filed under Section 50 of the Act of 1958 had impleaded the private trust through its Managing Trustee. It was rightly observed that Kwarlal was not concerned with the internal management of the affairs of the private trust and having impleaded its Managing Trustee, it was for the other trustees to have raised appropriate defence. In absence thereof, the aspect of non-joinder of necessary parties could not have been urged.

13] For all these reasons, we find that there is no merit whatsoever in the Letters Patent Appeal. It is accordingly dismissed leaving the parties to bear their own cost.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit