



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.274 OF 2002
WITH
CIVIL APPLICATION NO.4448 OF 2022
AND
CIVIL APPLICATION NO.7230 OF 2023**

1. Nana S/o Laxman Tapkire,
Age: 45 years, Occ.: Service,
R/o Village Burhanagar, Tq. Nagar,
Dist. Ahmednagar.
 2. Ramnath S/o Rakhamaji Jadhav,
Age: 35 years, Occ.: Agri,
R/o Village Burhanagar, Tq. Nagar,
Dist. Ahmednagar.
- ..Appellants
(Orig. Defendant Nos.3 and 4)

Versus

1. Vijay S/o Arjun Bhagat,
Age: 40 years, Occu.: Agri,
R/o Village Burhanagar, Tq. Nagar,
Dist. Ahmednagar.
 2. Raju S/o Arjun Bhagat,
Age: 36 years, Occu.: Agri,
R/o Village Burhanagar, Tq. Nagar,
Dist. Ahmednagar.
 3. Kiran S/o Arjun Bhagat,
Age: 31 years, Occu.: Agri,
R/o Village Burhanagar, Tq. Nagar,
Dist. Ahmednagar.
 4. Balaji @ Subhas S/o Arjun Bhagat,
Age: 28 years, Occu.: Agri,
R/o Village Burhanagar, Tq. Nagar,
Dist. Ahmednagar.
 5. Arjun S/o Kisan Bhagat
Since dead through legal heirs
other legal heirs already on record as
Respondent Nos.1 and 4.
 - 5a. Ambika Balasaheb Salunke,
Age: 60 years, Occu.: Household,
R/o. Belapur, Tq. Shrirampur,
Dist. Ahmednagar.
- (Orig. Plaintiffs)

5b. Manisha Vasant Kedari,
Age: 54 years, Occ.: Household,
R/o Shukrawar Peth, Pune. (Orig. Defendant No.2)

6. The Charity Commissioner,
Bombay, 31, Dr. Annie Beasant Road,
Worli, Mumbai-18. (Orig. Defendant No.1)

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Mr. R. N. Dhorde, Senior Advocate a/w Mr. P. S. Dighe, Advocate
for the Appellants.

Mr. V. D. Sapkal, Senior Advocate i/by Mr. N. C. Garud, Advocate
for Respondent Nos.1 to 4, 5a and 5b.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 11th JULY, 2023.

PRONOUNCED ON : 28th NOVEMBER, 2023.

JUDGMENT:-

1. The present second appeal is placed for fresh hearing before this court after remand by Supreme Court. Initially Regular Civil Suit No.600/1982, instituted by respondent Nos 1 to 4 seeking declaration of ownership and perpetual injunction in relation to suit properties was dismissed by trial court, however, in Regular Civil Appeal. No.21/2000, first appellate court (District court) decreed the suit. In second appeal filed by original defendants 3 and 4, decree passed by first appellate had been set aside by this court and judgment and decree of Trial Court was restored, eventually decision of this court was subjected to challenge before supreme court in appeal in earlier round.

The factual matrix giving rise to the present second appeal can be summarized as under:

2. The respondent nos.1 to 4 (hereinafter refereed as original plaintiffs) have instituted a suit for declaration and injunction in respect of properties as described in paragraph 1 of the plaint. The property referred in paragraph no.1(A) admeasures 53 feet (East-West) and 100 feet (North-South), which

consist of a temple of Goddess Jagdamba, Tuljapur, situated at Gaothan, Burhanagar of mouje Kapurwadi, Tq. and Dist. Ahmednagar. The properties described in Paragraph No.1(B)(C)(D) of plaint are adjacent to the property described in paragraph no.1(A). The plaintiffs have claimed that the property described in paragraph no.1(A) is their ancestral property and unconcerned with the Public Trust. As such they seek permanent injunction against defendants i.e. Joint Charity Commissioner and Trustees appointed as per Scheme framed under Bombay Public Trust Act. So far as the properties described in paragraph no.1(B)(C)(D) are concerned, the plaintiffs are seeking relief of declaration that those are their ancestral and private properties.

3. It is the contention of the plaintiffs that the suit properties continuously owned and possessed by them since their forefathers. In the year 1913 some part of the property was mortgaged for raising funds to purchase idols of Tuljapurchi Devi, Lord Ganpati and Gaynuka. The Deities were installed in a part of the house possessed by the forefathers of the plaintiffs. The construction over the property was made from funds generated out of family business i.e. Oil extraction. The surrounding properties are owned and possessed by the plaintiffs and defendant no.2, which are specifically described in paragraph no.1(B)(C)(D) of the plaint. In support of the aforesaid contentions the plaintiffs rely upon the decree in Regular Civil Suit No.246/1935 instituted by one Chandrabhan Savaleram Teli against great grandfather of the plaintiffs. Plaintiffs claims, in that suit, declaration was made that property belongs to the Bhagat family. On 04.09.1942 there was partition and temple property was given in exclusive possession of the Kisan Lahanu Bhagat i.e. grandfather of the plaintiffs, who looked after the properties as owner. The maintenance of the property was

undertaken out of his own funds. The Pooja-Archa of the Deities installed in the house property of the plaintiffs was exclusively done by the forefathers of the plaintiffs. The property was never dedicated to public or to the Deity by way of Sankalp, Samarpana or Utsav. It is only at the pleasure of the plaintiffs' family, occasionally, the access to the public was permitted for Darshan or Pooja. The private interest and use of the property was never dedicated or divested to the public.

4. It is the contention of the plaintiffs that in the year 1952 on enactment of the Bombay Public Trust Act, the grandfather of the plaintiffs under erroneous belief that every Deity needs compulsory registration, submitted an application with Charity Commissioner, Pune seeking registration of the Deity as Public Trust. The application specifically describes the property (as referred in paragraph no.1(A) of the plaint) to be private property. The plaintiffs contend that even otherwise the grandfather of the plaintiffs neither intended nor had exclusive right to part that property. However, the Charity Commissioner under mistake of facts or misrepresentation, registered suit property as Public Trust. The plaintiffs contends that defendant no.2 is their father, who discharged his obligation as Pujari since his childhood, so also managed the property as full owner. However, he has been appointed as Trustee alongwith defendant nos.3 and 4. As such, he is acting against the interest of the plaintiffs and joint family property therefore he is added as defendant in this suit. The plaintiff no.1 recently attained majority and received information that suit property [described in paragraph no.1(A)] is being treated as Trust property and defendant nos.2 to 4 have been appointed as Trustees. Although, Trustees have not taken charge of the Trust or suit property, in November-1981 Court Commissioner appointed by Charity

Commissioner, collected money and other articles offered in the boxes kept before the Deities. The aforesaid activity had been initiated in pursuance of the illegal orders passed by Charity Commissioner registering Public Trust with suit property. Hence, cause of action arose for filing of the suit.

5. The defendant no.1/Charity Commissioner refuted contentions of the plaintiffs stating that Shri. Jagdamba Taljapurachi Devi Temple is registered under Bombay Public Trust Act vide PTR No.A-327 along with temple property admeasures 53 feet X 100 feet, Sapta Sringi Devi Mandir admeasures 6 feet X 6 feet and Ota (Platform) admeasures 10 feet X 10 feet. The Scheme is framed by the order of the Joint Charity Commissioner. The defendant no.2-Arjun Bhagat has been brought on record as Trustee after Kisan Lahanu Bhagat.

6. The defendant no.4, who is one of the Trustee appointed under order of the Charity Commissioner filed his written statement contending that the temple is constructed out of public contribution and donation on the Gaothan land. The idols are installed out of public funds. The grandfather of the plaintiffs Kisan Lahanu Bhagat was managing the temple. On promulgation of the Bombay Public Trust Act, he registered Trust alongwith property in the year 1952, as mandated under the provisions of the Bombay Public Trust Act. Initially, the management of the Trust was governed by hereditary succession. The grandfather of the plaintiffs Kisan Lahanu Bhagat managed the Trust during his lifetime he introduced defendant no.2 i.e. father of the plaintiffs as trustee accordingly he was managing the affairs of the Trust. The change report to that effect was submitted and approved. The defendant no.2 submitted the accounts of income and expenditures of trust. However, because

of his mismanagement in affairs of the Trust, a proceeding for framing of the Scheme was instituted before charity commissioner vide M.A. No.302/1980. It has been allowed on 14.07.1981 and Scheme is framed. The defendant no.2 i.e. father of the plaintiffs is appointed as Chairman of the Trust. The defendant nos.3 and 4 are appointed as Trustees and all of them were to appoint two additional Trustees.

7. It is the contention of defendant no.4 that the grandfather of the plaintiffs i.e. Kisan Lahanu Bhagat registered Public Trust during his lifetime, including the suit property in the Schedule of Trust. The plaintiffs were not even borne at that time. The defendant no.2 never objected culmination of the property, as Trust property. The plaintiffs have no cause of action to file present suit. The suit is collusive between the plaintiffs and defendant no.2. It is further contentions of the defendants that the suit is barred in view of the provisions of Sections 79 and 80 of the Bombay Public Trust Act. The suit is not tenable for want of requisite consent under Section 51 of the Bombay Public Trust Act. The Civil Court has no jurisdiction to try and entertain the suit. The suit is barred by limitation.

8. The Trial Court had framed as many as 13 issues below Exhibit-27, which includes the issues as regards to the jurisdiction of Civil Court, so also limitation. The Trial Court concluded that since the claim of individual title to the property is raised by plaintiffs, the civil suit is maintainable. Even, issue of limitation is decided in favour of the plaintiffs. However, trial court dismissed the suit holding that the plaintiffs failed to establish claim regarding ancestral ownership over suit properties. The plaintiffs approached the Appellate Court i.e. District Judge, Ahmednagar in Regular Civil Appeal No.21/2000 impugning the dismissal of the suit. The Appellate Court

accepted claim of plaintiffs observing that the suit properties are ancestral properties of the plaintiffs and exclusively in possession and enjoyment since their forefathers. Consequently, first appellate court decreed suit of the plaintiffs as claimed. Aggrieved defendant nos.3 and 4 filed present second appeal impugning the judgment and decree passed by the Appellate Court.

9. This Court on 30.11.2002 admitted the second appeal on following substantial questions of law:

“(A) Whether the first appellate court has misread the document of partition deed (Exh.81) and therefore the finding in this behalf suffers from perversity.

(B) Whether the first appellate court has failed to consider the appropriate provisions of Order VII Rule 2 of the C.P.C.

(C) Whether the first appellate court has erroneously relied upon Xerox copies of the mortgage deed which is not registered.

(D) Whether the first appellate court has erroneously held that the suit properties are the private properties of original plaintiffs.

(E) Whether the Civil Court has jurisdiction to decide the nature of the property which issue required to be dealt with by the Charity Commissioner.

(F) Whether the suit is barred by limitation.”

10. After hearing second appeal at earlier round, this Court, had reformulated substantial questions of law while delivering judgment as under:

“(i) Whether the Civil Court has jurisdiction to decide the question whether a particular property is that of a Public Trust or that it is not a property of the Public Trust and belongs to individual claimant?

(ii) Whether the suit for declaration that the properties were not of the Public Trust was barred by limitation and,

therefore, the impugned judgment of the first appellate Court deserves interference?”

11. Accordingly recorded negative finding as regards to the jurisdiction of the Civil Court to decide the nature of the property and affirmative findings holding that the suit is barred by the limitation. Accordingly, judgment of the First Appellate Court in R.C.A. No.21/2000 was set aside. Consequently, suit was dismissed restoring Trial Courts judgment and decree in R.C.S. No.600/1982.

12. The aggrieved plaintiffs had preferred Civil Appeal No.6272/2010 before the Supreme Court of India. The Supreme Court by order dated 11.05.2018 pleased to set aside the judgment and decree passed by this Court, finding procedural error in framing two additional substantial questions of law in the judgment itself and consequential prejudice caused to the rights of the parties, particularly appellants who suffered adverse order without knowledge about framing of two additional questions inasmuch as they were deprived of opportunity to address the Court on the two additional questions laying foundation for the impugned judgment. Accordingly, the matter is remanded to this Court to decide the appeal afresh on merits in accordance with law.

13. The learned Advocates appearing for the respective parties unanimously submitted that this Court has already framed six substantial questions of law while admitting appeal vide order dated 30.11.2002. The controversy in this appeal is covered in the questions of law already formulated and accordingly advanced respective submissions before this Court.

14. Mr. R. N.Dhorde, learned senior counsel appearing for the appellants would submit that the suit properties are owned by

Public Trust. In the year 1952, the grandfather of the plaintiffs namely Kisan Lahanu Bhagat had applied for registration of the Public Trust under the provisions of Bombay Public Trust Act. The copy of application is placed on record of the Trial Court at Exhibit-82. The application was tendered in terms of the Section 18 of the Bombay Public Trust Act, which specifically depicts immovable property admeasuring 53 feet X 100 feet to be the property of Temple/Public Trust. He would submit that the temple was constructed out of public funds, so also Deities were installed from the public contribution. The ancestors of the plaintiffs were Pujari. They had never acquired title over the property of the temple. He would further submit that the First Appellate Court relied upon the documents, which depicts that the dispute regarding distribution of respective shares in offerings received at the temple have been settled among forefathers of the plaintiffs through Court's decree. It has nothing to do with the partition of the immovable property. He would submit that the plaintiffs have failed to produce on record any document of title in support of the their claim of exclusive ownership. Mr. Dhorde would invite attention of this Court to the findings of this Court in the judgment and order dated 19.04.2023 passed in Writ Petition No.305/2023 with other connected Writ Petitions to contend that the registration of the Public Trust is already held to be valid alongwith property described in paragraph no.1(A) of the plaint. He would point out that the temple is in existence since the time immemorial. The grants were received from the Government for management of the Ustav at Temple. The large number of devotees visits the temple. Every year the Deity is taken from Burhanagar by way of Palkhi (Palanquin) procession to the Tuljapur with participation of large number of devotees. Huge offerings are made to deity during such procession. He would

further submit that the evidence on record clearly depicts that the suit property described in paragraph no.1(A) belongs to the Public Trust. Mr. Dhorde would also submit that the grandfather of the plaintiffs during his lifetime declared status of the property as Trust property. The defendant no.2 i.e. father of the plaintiffs has also accepted the status of the property being Trust property. The grandfather of the plaintiffs never objected the status of the property being Trust property during his life time. Conversely he submitted the accounts of the income and expenditures of Trust to the Charity Commissioner. He being trustee submitted the change reports. The defendant no.2 i.e. father of the plaintiffs after his appointment as Trustee furnished the income and expenditure accounts with the Charity Commissioner. However, when the learned Charity Commissioner framed Scheme, the present suit is instituted by plaintiffs in collusion with defendant no.2, who is Trustee. He would, therefore, submit that the findings recorded by the First Appellate Court are contrary to the material on record so also in ignorance of law governing the issues involved in the present matter.

15. Mr. Dhorde would further submit that once property is registered as Trust property, the Civil Court has no jurisdiction to declare it otherwise. The suit claiming such relief would be barred by Section 79 of the Bombay Public Trust Act. He would further submit that the suit property is scheduled as Trust property since 1952. The suit instituted after 28 years seeking declaration contrary to its registration as Trust property is hopelessly barred by limitation. He would further submit that the plaintiffs have no *locus standi* to seek declaration of the ownership in respect of the suit property, since their grandfather has already declared it as a Trust property at the time of registration of Trust. Mr. Dhorde would further submit that the

description of the property mentioned in plaint is vague. The house numbers, village panchayat numbers are not depicted in the description of the property, as mandated under Order VII Rule 3 of the Code of Civil Procedure. He would, therefore, submit that the impugned order passed by the District Judge is liable to be quashed and set aside.

16. Per contra, Mr. Sapkal, learned senior counsel appearing for respondent nos.1 to 4 (original plaintiffs) supports the judgment and order passed by the First Appellate Court. He would submit that there is voluminous evidence indicating that the property is owned by the forefathers of the plaintiffs. He would submit that there is no dispute on the point that the plaintiffs alongwith defendant no.2 are in possession of the suit property. The ancestors of the plaintiffs and defendant no.2 are enjoying the ownership and possession of the property since time immemorial. He would point out that the document at Exhibit-78 is certified copy of the order passed in Civil Suit No.1216/1893 between Bhiku Dhondi Teli Vs. Savalyaram Dhondi Teli, wherein right to manage the Palkhi was exclusively claimed by then plaintiffs. The said suit was dismissed. The Palkhi referable in the aforesaid suit relates to the Deity in question. He would further point out that in the year 1935 the suit was instituted by Chandrabhan Savaleram Teli against Kisan Lahanu Bhagat claiming rights in earning. Thereafter, there was resettlement of the terms regarding rights vide Enquiry Application No.249/1942. Thereafter, Dhondi Bhiku and others have surrendered Palkhi rights in favour of Kisan Lahanu Bhagat against receipt of Rs.900/-. There is partition dated 04.09.1942 (Exhibit-81), wherein the distribution of the income out of donation/offerings to the Goddess and Palkhi was settled. Mr. Sapkal would further invite attention of this Court to the decree pertaining to the

redemption of mortgage in the Suit No.501/1859 between Balkrushna Shivram Vs. Sakharam Bhagwant. Further there is mortgage deed at Exhibit-90 dated 25.12.1913 in favour of the Shankar Damodar Kate. Mr. Sapkal would, therefore, submit that there is consistent evidence right from 1859 onward depicting forefathers of the plaintiffs to be owners and possessors of suit propertied from immemorial times. He would submit that there is nothing on record to show that the temple or the suit properties were purchased or raised out of public contributions. He would, therefore, support the findings recorded by the First Appellate Court that the suit properties are ancestral properties of the plaintiffs and unconcerned with the Public Trust.

17. Mr. Sapkal would further submit that, although the grandfather of the plaintiffs submitted an application for registration of Trust with Charity Commissioner, there is nothing to indicate that the enquiry regarding the nature of the properties was conducted in accordance with law. The order regarding registration of the Trust is not available in the record. Except the entry regarding the Trust in the register, no record leading to the registration of Trust from the stage of filing of the application could be traced. He would, therefore, submit that there is no reason to believe that the properties were intended to be made part of Public Trust. By referring to the contents of the application at Exhibit-82 submitted by the Kisan Lahanu Bhagat under Section 18 of the Bombay Public Trust Act, he would submit that even in application seeking registration of Trust suit property described as a private property. The registration of the Trust was not for any other object than to carry on day to day Services/Pooja-archa of the Deities. There is no reason to discard the case of the plaintiffs that the Public endowment was never in existence and private Deity has been wrongly registered as a

Public Trust alongwith ancestral property of the plaintiffs. The forefathers of the plaintiffs were uneducated persons and under misconception of the legal provisions, the application has been made for registration of the Trust. Mr. Sapkal would submit that the Charity Commissioner cannot rule upon title of the property. The plaintiffs are claiming their individual right and title over the properties, wrongly shown to be property of the Trust. Such dispute is beyond scope of inquiry or jurisdiction of the Charity Commissioner under Section 79 of the Bombay Public Trust Act.

18. Mr. Sapkal would submit that plaintiff no.1 after attaining the majority got the knowledge of registration of the Trust, when Charity Commissioner attempted to take over charge of the property. Therefore, suit is instituted seeking declaration that the suit properties are ancestral properties of the plaintiffs and unconcerned with the Trust. He would submit that even otherwise Kisan Lahanu Bhagat i.e. grandfather of the plaintiffs was not exclusive owner of the suit properties. He had no right to dedicate suit property as Public Trust property. His erroneous act would not bind rights of the plaintiffs. Therefore, the suit has been instituted immediately after getting knowledge of erroneous registration of the property with the Public Trust. He would submit that the First Appellate Court has rightly considered all the aspects of the matter in its proper perspective. The findings of facts recorded by the First Appellate Court are based on evidence on record, hence, do not call for any interference. He would submit that the questions of law framed in this appeal are duly dealt with by the First Appellate Court and answers to those questions are elaborately discussed. No substantial question requires further adjudication. Hence, he urges to dismissed the appeal.

19. Having considered submissions advanced, I deem it appropriate to first deal with the substantial questions of law (E) and (F) respectively as framed by this Court at the time of admission of the Second Appeal, since those relates to jurisdiction of the Civil Court to entertain suit and period of limitation for claims setup in the suit.

20. As regards to the jurisdiction of the Civil Court Or Charity Commissioner to decide the nature of the suit properties, first of all it would be necessary to look into the relief that has been claimed in the present suit. The plaintiffs are seeking declaration of the ownership and perpetual injunction, as regards to the suit properties contending that those are ancestral properties and unconcerned with the Trust registered under Bombay Public Trust Act. The plaintiff no.1 stepped into the witness box and reiterated the contentions that the suit properties are ancestral properties and continuously owned and possessed by his forefathers. Apparently, the plaintiffs are attempting to assert individual title over the suit properties, converse to its incorporation in schedule of Trust property. Therefore, question that emerged for consideration before this Court is whether in view of the provision of Sections 79 or 80 of the Bombay Public Trust Act, the jurisdiction of the Civil Court is expressly or impliedly barred to entertain the suit, particularly in respect of the property described in paragraph no.1(A) of the plaint, which is depicted as Trust property as per schedule (I) maintained with the Charity Commissioner. The Sections 79 and 80 of the Bombay Public Trust Act reads as under:

“79. Decision of property as public trust property:

(1) Any question, whether or not a trust exists and such trust is a public trust or particular property is the property of

such trust, shall be decided by the Deputy or Assistant Charity Commissioner as provided by this Act.

(2) An appeal shall lie against such decision of the Assistant or Deputy Charity Commissioner to the Charity Commissioner under Section 70.

80. Bar of jurisdiction :

Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive."

21. Pertinently Full bench of this Court had occasion to deal with question of Civil Courts jurisdiction to entertain individual claim of title in property acquired by the Trust in the matter of ***Keki Pestonji Jamadar Vs. Rodabai Khodadad Merwan Irani***¹. This court after considering the scheme of Bombay Public Trust Act particularly the scope of inquiry under Section 19 concluded in para no.27 as under:

"Neither the Act nor the Rules contemplate that persons who claim adversely to the trust or who dispute the right or title of the author of the trust to the trust property must be heard in the inquiry under Section 19. In fact, Section 19 and R. 7-A (1) only reckon applications under S. 18 which are to be made by trustees and applications by "any person having interest in a public trust". Surely, persons in the position of Rodhabai and Baimai are not persons "having interest in a public trust". They are interested in the assertion of their own private title to the property and disputing the right of Jamshedji to convey that property to the trust."

Further in para no.29 it is observed that:

"And speaking of remedies, what is truly important is that the Act provides no remedy to a person whose title is deemed to have been concluded by the order of the Deputy or Assistant Charity Commissioner, without affording to him an opportunity of being heard. The argument is that the decision that a particular property belongs to the trust involves the determination that it belongs to no one else and therefore,

¹ 1972 Mh.L.J. 427.

after the Deputy or Assistant Charity Commissioner records a decision in the inquiry, the Civil Court has no jurisdiction, in view of Section 80, to decide any question regarding title to the particular property. It is legitimate to inquire: if Section 80 bars the suit, does the Act provide a remedy to the aggrieved person, as a self-contained Code should provide?"

While concluding in para no.31 it is observed thus:

"If the Act and the Rules thus contemplate in terms that the inquiry must be limited to the contentions of persons interested in the trust, there is no place in that inquiry for a person who wants to set up a title which is hostile to the trust. Such a claim is not a "particular relating to" the public trust, nor can it be said that it "has remained to be inquired into".

22. In the matter of ***Ramnarayan s/o Manilal Sahu and Others Vs. State of Maharashtra and Others***², this Court after giving due consideration to the observations of the Full Bench of this Court in the matter of ***Keki Pestonji Jamadar*** (supra) concluded that the question of title in respect of the property acquired by the Trust has to be decided by the Civil Court in independent suit filed. Hence, Section 80 of the Bombay Public Trust Act is no bar to the Civil Court to decide such question.

23. The Supreme Court in the matter of ***Vinayaka Dev, Idagunji and Others Vs. Shivaram and Others***³ observed that the main object of the Public Trust Act is to regulate administration of the Public Trust. The right asserted by the plaintiffs in the plaint is claimed as their families' personal/private right. Whether they are entitled to continue as Archaks on hereditary basis is a private claim of the plaintiffs. Further, this Court in the matter of ***Abhishek Ravishankar Agrawal Vs. Assistant Charity Commissioner Bhandara and Another***⁴, observed that the question whether author of the

² 2005 (2) Mh.L.J. 95.

³ (2005) 6 SCC 641.

⁴ 2009 (2) Mh.L.J. 178.

Trust had title and competence to deal with the properties alleged to be of Joint Hindu Family properties, is clearly beyond the scope of scrutiny and inquiry under the provisions of Bombay Public Trust Act. In yet another judgment, this Court in the matter of ***Shree Hanuman Mandir, Alibag, Public Trust through its Trustees & ors. Vs. Satishchandra Bhalchandra Gurjar & ors.***⁵ observed in paragraph no.31 that, the plaintiffs have not raised any dispute as regards administration or management of the Trust, deities and temple. In other words, since the questions raised in the Suit are unconnected with the administration or possession of the trust property, the Civil Court will have the jurisdiction to entertain and try the Suit. The Division Bench of this Court in the matter of ***Samastha Lad Vanjari Samaj & Another Vs. Waman Kisan Sanap & others***⁶ observed that “In our opinion, the conclusion is inescapable that what the full Bench has decided is that questions of title to the trust property are outside the scope of an inquiry under section 19 of the Act so that disputed questions of title are not to be dealt with by the Deputy or the Assistant Charity Commissioner and this authority had to confine itself to determination of those questions and those questions only which it is required to decide under the provisions of the statute.” It is further held that a person who sets up a claim hostile to the Trust cannot by any stretch of imagination be said to be a person having interest in the Trust.

24. In case of ***J.V. Gokal Charity Trust Vs. Contrex Pvt. Ltd*** this court laid general principles as regards jurisdictional bar of civil court in view of section 79 and 80 of the MPTA, relevant part reads as under

(b) A substantive suit for an adjudication of title is not hit by the jurisdictional bar of Sections 79 and 80 of the

⁵ 2014 (2) Bom. C.R. 221.

⁶ 1976 Mh. L.J. 806.

MPTA. The determination of whether or not a property is the property of a trust is for the purpose of an enquiry, findings and making an entry in the register. It is not an adjudication of title of the kind a Civil Court can do.

(c) The correctness of any entry in the register is liable to challenge, including under Section 72 in a suit; and, following Section 26, an order of a court on that must result in the necessary changes being effected in the register.

(e) Where the persons in question are not persons having interest in the trust, as for example rank outsiders claiming a hostile title independently in themselves, then, too, no permission can ever be obtained from the Charity Commissioner under Sections 50(i) to (iii) of the MPTA.

(f) The jurisdictional bar under Sections 79 and 80 only applies to those acts that the Charity Commissioner and other authorities are required by the statute to do.

It does not extend to matters beyond the purview or powers of those authorities.

25. In another judgment recently delivered by Division Bench of this Court in the matter of ***Dipesh Mehta and others Vs. Gerald Shirley and others***⁷, this Court after taking survey of the scheme under Bombay Public Trust Act and various pronouncement observed in para no.56 :

“Once we accept that what is being canvassed by the plaintiffs is an enforcement of their civil rights then there is no question of jurisdictional ouster.”

26. Mr. R. N. Dhorde, learned Senior Counsel for appellants while contending that jurisdiction of civil court is barred in facts of present case placed his reliance on judgments of this court as well as Supreme Court in case of ***Mahibubi Abdul Aziz Vs. Sayyed Abdul Majid and others***⁸, ***Lakhanlal Brijlal Purohit and Others Vs. Marwadi Samshan Hanuman***

⁷ 2023 (2) ALL MR 467.

⁸ 2001 (2) Mh.L.J 512

Mandit Akot⁹, The Church of North India Vs. Lawajibhai Ratanjibhai and others¹⁰, Rajesh Chunnilal Meghani Vs. Andheri Recreation Club and others¹¹, Ms. Jankibai Prahladraj Seksari Vs. Kashinath Kelkar and others¹², Ganpat Surwase-Walke Vs. Government of Maharashtra¹³, to contend that civil courts jurisdiction to entertain claim in respect of Trust property is barred as per scheme and provisions contained u/s 79 and 80 of BPT Act,

27. In case of ***Church of North India (Supra)*** Supreme Court in para 82 and 83 observed thus:

The provisions of the Act and the Scheme thereof leave no manner of doubt that the Act is a complete code in itself. It provides for a complete machinery for a person interested in the trust to put forward his claim before the Charity Commissioner who is competent to go into the question and to prefer appeal if he feels aggrieved by any decision. The bar of jurisdiction created under Section 80 of the Act clearly points out that a third party cannot maintain a suit so as to avoid the rigours of the provisions of the Act. The matter, however, would be different if the property is not a trust property in the eye of law. The civil court's jurisdiction may not be barred as it gives rise to a jurisdictional question. If a property did not validly vest in a trust or if a trust itself is not valid in law, the authorities under the Act will have no jurisdiction to determine the said question.

9 2006 (3) ALL MR 524

10 (2005) 10 SCC 730

11 2017 (5) Mh. L.J 167

12 AIR 1972 SC 199

13 2010 (5) ALL MR 72

With a view to determine the question as regard exclusion of jurisdiction of civil court in terms of the provisions of the Act, the court has to consider what, in substance, and not merely in form, is the nature of the claim made in the suit and the underlying object in seeking the real relief therein. If for the purpose of grant of an appeal, the court comes to the conclusion that the question is required to be determined or dealt with by an authority under the Act, the jurisdiction of the civil court must be held to have been ousted. The questions which are required to be determined are within the sole and exclusive jurisdiction of the authorities whether simple or complicated. Section 26 of the Act must be read in that context as it specifically refers to those questions wherewith a court of competent jurisdiction can deal with and if the same is not expressly or impliedly barred. Once a decision is arrived at, having regard to the nature of the claim as also the reliefs sought for, that civil court has no jurisdiction, Section 26 per force will have no application whatsoever.

28. In cases of ***Mahibubi and Lakhanlal (Supra)*** full bench judgment of this court in case of ***Keki Pestonji Jamadar (supra)*** is not referred. However this court after referring to the scheme of the act, specially scope of inquiry u/s 19 of the act concluded that question of title can be gone into by the authorities under the act and ascertain that property is trust property or not. The civil court cannot be permitted to usurp jurisdiction of competent authority in view of express bar u/s 80 of the Act. In case of ***Keshav Bharti (Supra)*** challenge was made to the order passed by Assistant Charity Commissioner regarding registration of Trust with suit property and declaration was sought that order

of charity commissioner is null and void, not binding to right of plaintiffs and also suit property is not trust property, which is held to be incompetent before civil court.

29. In view of legal position espoused from various pronouncements of the Supreme Court of India as well as this Court it can be irresistibly concluded that the when claim of title is raised by an individual / stranger relating suit property thereby asserting his independent right or title adverse and hostile to the Trust, it would be beyond the scope of inquiry under the provisions of Bombay Public Trust Act. Thus, the jurisdiction of the Civil Court is not barred to entertain and decide such claim.

30. Keeping in mind aforesaid principles of law lets examine facts of present case, apparently the plaintiffs are claiming their title in respect of the suit properties in exclusion of the Trust stating it to be their ancestral property. They are further coming with the case that their grandfather neither intended nor had authority to transfer or dedicate the suit property upon the Trust excluding rights of others. The registration of property in schedule of trust is under misconception of facts. If sum and substance of relief claimed by plaintiffs is extracted in true spirit, it can be gathered that they are raising challenge to registration of Trust so also inclusion of suit property in schedule of Trust under section 21 of the Act in pursuance of order of competent authority passed in year 1952 on inquiry u/s 19 of the act. Pertinently the property is registered as trust property on the basis of application tendered by grandfather of plaintiffs u/s 18 of the Act for registration of Trust. It can not be disputed that in the year 1952 grandfather of plaintiffs was exclusively in control of temple and suit property. He was competent to file such application so also he had every authority

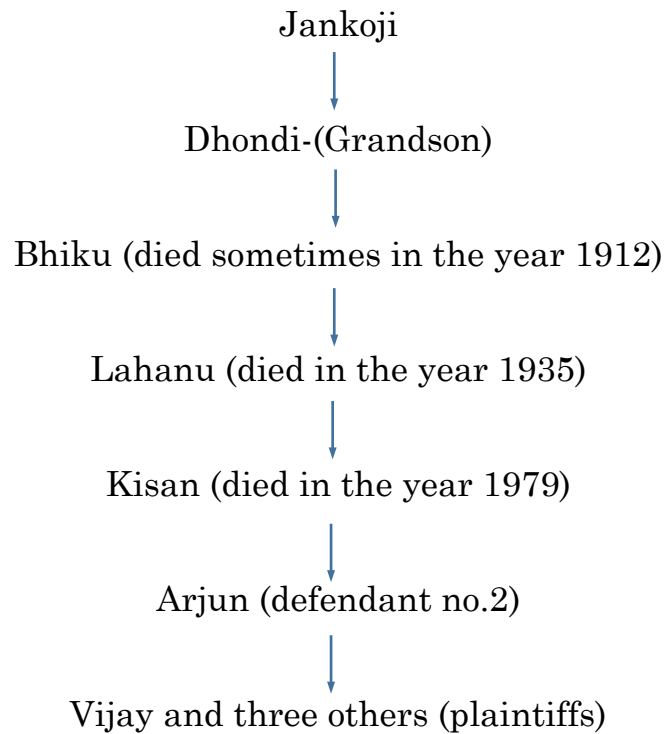
to include property of Temple as Trust property. The plaintiffs were not even born at that time. The father of plaintiffs never raised challenge to inclusion of property as Trust property till the date of filing this suit. The plaintiffs who are claiming their right through father or grandfather cannot have right, independent of their grandfather who on his volition included property as Trust property before their birth. Therefore plaintiffs cannot assert independent title in suit property or raise challenge to its registration being trust property without assailing order of charity commissioner thereby entering it in schedule of Trust. The plaintiffs cannot be treated as strangers to the trust when they rest claim through their father or grandfather. If they wish to challenge registration of property as trust property such questions would definitely fall within the scope of jurisdiction of the Charity Commissioner or his subordinate officer under the scheme of Bombay Public Trust Act. Pertinently at the time of institution of suit the title of suit property had been absolutely vested with trust. Even before their birth vesting of suit property with trust was completed as per law. At the time of institution of suit neither plaintiffs joint family property was existence nor had independent claim over trust property. Even assuming suit property was originally ancestral property held by grandfather of plaintiff, it culminated in Trust on his voluntary dedication. The material on record i.e. various Court proceedings clearly depicts that grandfather of plaintiffs was a prudent man, conversant of legal proceedings and its consequences. In that view of the matter it is difficult to accede with contentions of plaintiffs that under misconception suit property was registered by him as trust property.

31. As held by Supreme court in case of Church of North India vs Lavajibhai (Supra). the courts are required to look in to nature of claim, underlying object in seeking relief in substance and not in form while deciding issue as to exclusion of jurisdiction of civil court. Pertinently, the Trial Court as well as the Appellate Court have failed to observe that in all probabilities, present suit is instituted to avoid rigours of provisions of the Act by father of plaintiffs i.e. defendant No.2 in the name of plaintiffs. Both courts committed patent illegality while holding that the suit is maintainable. I conclude that the Civil Court has no jurisdiction to try and entertain present suit in view of section 79 and 80 of the Act.

32. The next substantial question of law is whether suit filed by the plaintiffs is within the limitation? The plaintiffs seeks declaration that suit property 1-A in ancestral property and unconcerned with public Trust and perpetual injunction in respect of the suit properties. The cause of action for filing the suit is stated to be the action taken by the authorities under Bombay Public Trust Act, thereby collecting money and other articles offered in the boxes kept before the Deities in the month of November 1981. According to the plaintiffs, they have recently got knowledge of the registration of the Trust including the suit properties. The plaintiff no.1 was aged about 20 years at the time of institution of the suit. As such, he asserts his right in the properties claiming it to be ancestral properties. The Trial Court had framed the issue as regards to the limitation and recorded affirmative finding in favour of the plaintiffs. It is observed that suit has been instituted within a period of three years in terms of Article 113 of the Limitation Act. Since the plaintiffs have pleaded that they got the knowledge regarding registration of the Trust

with suit properties in the year 1980, the suit is well within the limitation. The First Appellate Court also framed points for consideration and affirmed findings of the Trial Court holding that the suit is within limitation. Taking into account provisions of Article 58 and 113 of Limitation Act and date of cause of action as pleaded in the plaint suit is instituted within prescribed limitation period of three years. There is no reason to interfere in the findings of the Courts below. Although, the appellants have raised objections regarding limitation, the written statement nowhere specifies pleadings in support of such objections. Hence, I find that suit is filed well within limitation from date of cause of action. The substantial question of law framed is answered accordingly.

33. Now turning to the first four questions of law i.e. (A), (B), (C) and (D). All of them require joint consideration. The question no.(D) goes to the root of the litigation since it deals with the nature of the properties, whether private or ancestral properties. The plaintiffs in support of their claims that suit properties are ancestral properties and unconcerned with the Trust, relied upon oral evidence of plaintiff no.1 himself and documentary evidence. The oldest document relied upon by the plaintiffs is placed at Exhibit-83, which is decree in Suit No.501/1859 between Balkrushna Shivaram Vs. Dhondi Balaji & Ors. They have also relied upon subsequent orders passed in various proceedings instituted by or against the family members of the plaintiffs. For the purpose of better understanding of the documentary evidence tendered into service, it would be appropriate to refer to the undisputed genealogy/pedigree (As refereed in WP No. 305/2023), which is as under:



34. On perusal of the certified copy of the decree in Civil Suit No.501/1859 placed at Exhibit-83, it can be gathered that suit was instituted by Balkrushna Shivaram and another against Dhondi for recovery of amount on the basis of mortgage. Dhondi had mortgaged his mansion consisting of 74 khan and it was subsequently redeemed. Another document relied upon by the plaintiffs is at Exhibit-78, which pertains to the Civil Suit No.1216/1893 between Bhiku and Savalyaram. The subject matter of the suit is right to manage Palkhi (palanquin) procession from Rahuri to Tuljapur. In that suit, the sons of Dhondi namely Bhiku and Savalyaram were declared to have a joint right. However said suit nowhere deals with the partition or distribution of the rights in the immovable properties of the temple. The subsequent document pertains to the decree in Civil Suit No.246/1935 decided on 28.06.1938 between Chandrabhan Savaleram Teli Vs. Kisan Lahanu Devkar and further Application No.249/1942 seeking modification of the decree regarding rights in earnings of the temple. Another document placed at Exhibit-90, is certified copy of mortgage deed dated 25.12.1913 by Lahanu

Bhiku Bhagat in favour of the Rajeshree Shankar Damodhar Kate. It pertains to the mortgage of the house property executed by Lahanu Bhagat in favour of Rajeshree Shankar Damodhar Kate. However, on the basis of the aforesaid documents, it is difficult to draw any inference that ancestors of the plaintiffs were absolute owners of the properties. The partition deed dated 04.09.1942 at Exhibit-81 pertains to distribution of the offerings received towards services like pooja and archa performed in the temple of the Goddess amongst the heirs of the Kisan Lahanu Devkar and others. Therefore, aforesaid documents are bereft to support the claim of the plaintiffs that the suit properties were their ancestral properties. The learned District Judge appears to have drawn inference on the basis of the order passed in the Civil Suit No.501/1859 and 1216/1893 that the suit properties must be ownership properties of the ancestors of the plaintiffs.

35. Although the plaintiffs have filed document Exhibit 83 relating to suit for redemption of mortgage of the year 1859, the description of the property mentioned therein is not comparable to suit property. There is nothing on record by which property described in that suit can be identified as present suit property. Further there is no material on record to indicate partition of the immovable property amongst the ancestors or forefathers of the plaintiffs, which could be normal feature of ancestral property. What is being distributed in partition is the receipts or offerings made before the Deities. Apparently, plaintiffs' forefathers were performing their duties as Pujari and living on offerings received from the devotees. The existence of temple as could be gathered from pleadings in old suits and documents, appears since immemorial time. It clearly denotes the public character of the Deities and temple, converse to the claim of the plaintiffs that the Deities were installed in the year 1912 by their forefathers at a

private place of worship. Pertinently grants were made available from the Government for palanquin/Palkhi procession or the management of Yatra. The public character of the temple cannot be superseded only because the plaintiffs' forefathers were enjoying the right to perform daily rituals of the Deities. Therefore, even considering the documents at Exhibit-81 i.e. partition deed dated 04.09.1942 as referred in first substantial question of law or the mortgage deed referred in third question of law, the claim of the plaintiffs regarding its character as ancestral properties cannot be established.

36. The document at Exhibit-82 is an application submitted by Kisan Lahanu Bhagat i.e. grandfather of the plaintiffs under Section 18 of the Bombay Public Trust Act, wherein at the time of registration of the Trust, the property as described in paragraph no.1(A) is shown as Trust property. Thereafter, the purpose of Trust is mentioned as maintaining the temple of the Deities and continue daily services of the pooja-archa and offerings. The grandfather of the plaintiffs was sole Trustee and the Trust had earning from the offerings made to the Deities and grant of Rs.21/- from the Government at the time of the registration of the Trust. Upon registration of the Trust, the public character of the temple was maintained by the grandfather of the plaintiffs till his death. He had submitted accounts of income and expenditures to the Charity Commissioner. Thereafter, defendant no.2 i.e. father of the plaintiffs has been added as Trustee and he was in the control and management of the Trust. Pertinently, the grandfather of the plaintiffs, so also father of the plaintiffs at no point of time till the institution of present suit challenged the registration of the Trust alongwith suit property described in paragraph no.1(A) of the plaint.

37. Pertinently father of the plaintiffs i.e. defendant no.2 while managing the affairs of the Trust, instituted Regular Civil Suit No.671/1980 before the Civil Judge, Junior Division at Ahmednagar seeking relief of declaration and perpetual injunction against Grampanchayat Burhanagar pertaining to the open spaces surrounding Temple. He claimed himself to be sole Trustee of the temple of “Jagdamba Tuljapurchi Devi” having rights of prayer with the family of the plaintiffs. It also refers to the registration of the Trust and right to manage the property of the Trust including open spaces surrounding the temple. In the plaint specific reference is made that on 16.08.1952 in the enquiry conducted by the Tahasildar, it is held that the properties belong to the temple and the plaintiffs. The issue no.4 was specifically framed in that suit, which reads thus:

“Is the suit in the name of Pujari in respect of this trust property tenable?”.

38. It has been answered in affirmative and right of the plaintiff in suit properties was confirmed being the Pujari of the temple on behalf of the Trust. The said decree attained finality on confirmation by this court in Second Appeal No.16/2001 vide judgment and order dated 22.06.2004. Apparently, the father of the plaintiffs had also accepted the status of the suit properties to be the Trust properties accordingly established his claim in the Regular Civil Suit No.671/1980. The copy of the judgment dated 16.08.1996 is placed at Exhibit-92 on the record of present suit. The observation and findings in that proceeding clearly demolish plaintiffs claim that suit properties described in para 1 (B) (C) and (D) are their ancestral or ownership properties.

39. One more significant facet of the matter is that although plaintiffs are seeking declaration of suit properties being ancestral and unconcerned with the Trust, so far registration of the Trust is concerned, it was never challenged by their grandfather during his lifetime nor it has been assailed by defendant no.2 i.e. (father of the plaintiffs) till institution of the present suit. It is only when the scheme had been framed and offerings received at temple were accounted for the public Trust, present suit has been instituted. Thereafter, defendant no.2 appears to have initiated separate proceeding before Charity Commissioner challenging the registration of the Trust as well the order framing of the scheme under Bombay Public Trust Act. However, the aforesaid challenge failed affirming its validity upto this court in Writ Petition No.305/2023 with other connected Writ Petitions. This Court has recorded elaborate reasons in support of conclusions.

40. Pertinently plaintiffs who were not even born at the time of registration of the Trust with suit property are seeking declaration that the suit properties are their ancestral properties and unconcerned with the Trust. Apparently, the grandfather of the plaintiffs on his own volition made an application for registration of the Trust in the year 1952 including the property described in paragraph no.1(A) of the plaint to be the property of the Trust with an object to continue sanctity of the Deities and performance of daily rituals. He continued to discharge his duties as Trustee. During his lifetime father of the plaintiffs (Defendant No. 2) was introduced as trustee by way of change report and he continued as Trustee without challenging the public character of the Trust and its properties. At this stage reference can be made to the observations of the privy counsel in case of ***Maharani***

Hemanta Kumari Debi Vs. Gauri Shankar Tewari¹⁴, wherein it is observed that:

“from the stand point of Hindu law it is not essential to a valid dedication that legal title should pass from the owner nor is it inconsistent with an effectual dedication that the owner should continue to make any and all uses of the land which do not interfere with uses for which it is dedicated.”

41. In that view of the matter, even assuming that initially suit properties were ancestral ownership, however once dedicated would completely vest with the public trust, owing to voluntary act on the part of the grandfather of the plaintiffs in the year 1952 itself, when plaintiffs were even not born. The grandfather of the plaintiffs or at the most defendant no.2 i.e. father of the plaintiffs could have asserted their private right in respect of the properties, if those were assumed to be ancestral properties. However, the plaintiffs could have no locus to set up any claim in respect of the property, which had been completely vested into the public Trust in the year 1952. Consequently, plaintiffs never had cause of action to set up claim in respect of such properties. Pertinently, the plaintiffs are claiming their rights through their father or grandfather. In absence of any claim by father or grandfather of the plaintiffs after registration of public trust with properties, the plaintiffs cannot have independent right to set up claim of ownership. In that view of the matter, I have no hesitation to hold that First Appellate Courts conclusion that the suit properties are private ancestral properties of the plaintiffs is patently illegal.

¹⁴ 58 Mad 994.

42. Now turning to next substantial question of law (B) regarding Order VII Rule 3 of the Code of Civil Procedure. The Trial Court had framed issue 1(A) on the basis of the objection raised by defendant nos.3 and 4 in paragraph no.10 of the written statement and held that in absence of survey numbers, gut numbers or grampanchayat property numbers, the suit properties cannot be identified and the description of the properties given in the plaint sans requirement of Order VII Rule 3 of the Code of Civil Procedure. Pertinently, it is not the case of the defendants that the properties were marked with gut numbers, survey numbers or grampanchayat property numbers at the time of filing of the suit. The plaintiffs are coming with the case that the properties are situated in gaothan area, therefore, they have described properties by giving four boundaries with measurements. As such, there is no serious dispute as regards to the identification of the properties. In that view of the matter, it will have to be held that there is no error in findings recorded by the Appellate Court that plaint is compliant with provisions of Order VII Rule 3 of the Code of Civil Procedure. No fault can be found in the view taken by First Appellate Court on this aspect. Hence I answer substantial question of law (B) accordingly.

43. So far as first and third question of law (A & C) is concerned it relates to interpretation of document Exhibit 81 i.e. partition deed dated 26.08.1942. As observed in forgoing paragraphs, partition deed relates to distribution of income received towards offering before deity. It has no significance in deciding ownership of suit property. Even first appellate court has not based its finding on this document although drawn some support from it. So far as mortgage deed Exhibit 91 is concerned, record shows that Xerox copy of certified copy issued by this court

in F.A. 2578/1983 is filed on record. Trial court in paragraph 16 of judgment observed that Exhibit 91 is xerox copy of unregistered mortgage deed. Original is not produced. Even it is not the case of plaintiffs that original is lost. Hence document exhibit 91 cannot be considered in evidence. Even first appellate court has not referred or relied on said document. Accordingly Substantial question of law so framed does not survive

44. In result, second appeal succeeds. Hence following order:

ORDER

- a. The Second Appeal is allowed.
- b. The judgment and decree dated 16.01.2002 passed by the learned District Judge, Ahmednagar in Regular Civil Appeal No.21/2000 is hereby quashed and set aside and judgment and decree dated 10.12.1999 passed by the Joint Civil Judge, Junior Division, Ahmednagar thereby dismissing Regular Civil Suit No.600/1982 is restored.
- c. In view of disposal of the Second Appeal, pending Civil Applications are also disposed of.

(S. G. CHAPALGAONKAR)
JUDGE