



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 419 OF 2013
WITH
CIVIL APPLICATION NO.1622 OF 2013

Sayyed Barhanoddin Quadri Nuroddin Pasha
Quadri Prijade (D/H) 1a.Sayyed Parhejpasha B.
Q.Prijade

... Appellant.

Versus

Sayyed Murtiza @ Sajjadpasha Sayyed
Mustafa Quadri Pirjade

... Respondents.

Mr. Surel Shah a/w. Mr. Shubham Shinde for the Appellant.

Coram : Sharmila U. Deshmukh, J.

Date : June 28, 2024

P. C. :

1. The First Appeal is preferred against the judgment dated 29th June, 2012 passed by the District Court at Solapur in Civil Misc. Appeal No.153 of 2007.

2. The facts of the case are that the Appellant had filed Application No.11 of 1990 seeking framing of scheme under Section 50A of the Maharashtra Public Trusts Act, 1950 (for short, "Trusts Act"). The application of the Appellant proceeded on the basis that there was misadministration of the affairs of the trust as the trustee-Respondents were prohibiting the general public from offering prayers at the *Dargah* and prohibiting the use of *Dharmashala* and the

Kabrasthan. It was further alleged that no accounts have been given by the Respondents-trustee in respect of the income of the trust to the Appellant or the Kadri family which was concerned with the trust. In view of the misadministration alleged a request was made for framing of the scheme under Section 50A of the Act. The Deputy Charity Commissioner by order dated 27th June, 1999 rejected the application by giving direction to the Respondents-trust to permit the general public to offer their prayers as well as permit them to use the *Dharmashala* and *Kabrasthan* for the purpose of burial. With these directions, the application for framing of the scheme under Section 50A of the Trust Act came to be disposed of. Being aggrieved by the same, the Appellant preferred the Appeal under Section 71 of the Trusts Act before the District Court.

3. The District Court noted the evidence recorded in the said proceedings and held that the Applicants have not examined any independent witness to substantiate their contention and there is no grievance made by any member of the concerned community in respect of the mismanagement of the trust. The Appellate Court further noted that there is longstanding dispute between the Appellant and the Respondents and in civil proceedings, the Respondent has been declared as the sole-trustee and after his demise, there has been Change Report bringing the legal heirs on record. As there is no evidence in support of the misadministration of the trust, the Appellate Court rejected the application.

4. Heard.

5. Learned counsel for the Appellant has taken this Court in detail through the orders of the Deputy Charity Commissioner as well as the order of the Appellate Court and would submit that the application specifically alleged the acts of misadministration which would warrant the framing of a scheme under Section 50A of the Trusts Act. He submits that the Deputy Charity Commissioner by issuing directions have disposed of the application and in the Appeal, the District Court has on the basis of the Respondent being declared as a sole-trustee rejected the Appeal. He would further point out the contention of the sole-trustee that the income from the trust property is very low i.e. Rs.300/- and therefore, there is no reason to conduct any audit in respect of the said amount.

6. Considered the submissions and perused the records.

7. The provisions of Section 50A of the Trusts Act empowers the Deputy Charity Commissioner to frame a scheme in respect of a public trust where it has reason to believe that in the interest of proper management or administration of the public trust a scheme should be settled for it or where two or more persons having interest in the public trust, make such an application and the Deputy Charity Commissioner is satisfied that it is necessary or expedient so to do frame scheme for the management of the Trust. The primary

requirement for allowing an application under Section 50A of the Trusts Act is that there should a satisfaction arrived at on the basis of the material on record that it is necessary to frame a scheme for management. The burden obviously lies upon the Applicants who seeks framing of a scheme to establish by leading cogent evidence that there is misadministration in the affairs of the trust necessitating the framing of scheme.

8. The Appellate Court has noted the evidence of the Appellant and observed that the deposition is that Respondent no.1 is not allowing the Applicants and other to participate in the religious ceremonies and not maintaining the accounts of the trust. The Appellate Court has thereafter noted that apart from the bald assertion there is no material which has been produced on record to show mismanagement and that apart from the Applicant, no independent witnesses have been examined and therefore relying upon the bare words of the Appellant it cannot not be held that there is an misadministration in the affairs of the trust. As an allegation was made that there is mismanagement in maintaining the accounts of the trust, it was necessary for the Applicant to bring on record necessary material to demonstrate the income of the trust and to demonstrate that the same is not utilised for purpose of trust or is being misappropriated. The Appellate Court has therefore rightly noted that there is no evidence on record and the application stems from longstanding dispute between the Applicants and the Respondents.

9. As regards the allegation that the Respondent no.1 was not permitting the members of the general public belonging to the concerned community from offering their prayers or carrying out the religious ceremonies in order to establish the same, no independent witness has been examined. The scheme is required to be framed only where there is satisfaction recorded by the Deputy Charity Commissioner about the mismanagement of the affairs of the trust. As no such satisfaction has been recorded, in the absence of the same being established by the Applicant, the Appeal has been rightly rejected.

10. In light of the above, the Appeal stands dismissed. In view of the disposal of the Appeal, Civil/Interim Applications, if any, taken out in this Appeal, does not survive and same is disposed of.

[Sharmila U. Deshmukh, J.]