

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4295 OF 2024

President,
Bar. Shrimant Balasaheb Khardekar-Nimbalkar
Foundation .. Petitioner
Versus
Dnyaneshshar Sukumar Miraje & Ors. .. Respondents

- Mr. Chetan Patil for Petitioner

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 01, 2024

P. C.:

1. Heard Mr. Patil, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the order dated 04.01.2023 passed by learned Trial Court in Application below Exh. 68 in RCS No. 59/2018 disposing of amendment application dated 05.03.2021 filed by Plaintiff No. 3. The facts in the present case are peculiar and hence delineated hereunder.
3. Suit No. 59/2018 is filed originally in the year 2018 by Respondent Nos. 1 and 2 i.e. two Plaintiffs claiming to be the beneficiaries of Defendant No. 2 Trust. The Suit is for injunction against Trustees from further alienating the properties belonging to the Trust and seeking declaration against not changing the reservation of playground which is held by Defendant No. 2 Trust. After the Suit

is filed, rival Trust who is Plaintiff No. 3 now comes to be impleaded in the Suit proceedings before the learned Trial Court. The impleadment of Plaintiff No. 3 is though opposed stands rejected by the learned Trial Court. This Plaintiff No. 3 is the Petitioner before me. It takes out the amendment application dated 05.03.2021 seeking to impleaded several other properties belonging to Defendant No. 2 Trust which according to Plaintiff No. 3 have been transferred on to the names of trustees of Defendant No. 2 Trust. That Application stands rejected by the impugned order on the ground that severe prejudice would be caused to the Defendant No. 2 Trust.

4. On the basis of the above facts, *prima facie* I have impressed my mind to Mr. Patil. In the first instance, it is seen that the original Plaintiff Nos. 1 and 2 are aggrieved with the transfer of the suit property from the name of Defendant No. 2 Trust on to the names of the trustees in their individual capacity. This transfer, according to Plaintiffs, is done through a mutation entry dated 26.09.2005. It is contended by original Plaintiff Nos. 1 and 2 that the suit property was gifted to the Trust by virtue of the registered Gift Deed dated 07.01.1956 and it is to be held in the name of the Trust only and any transfer of the Trust property on to the names of individual trustees in their individual capacity is prohibited in law.

5. From the above facts, all that is gathered in case if there is any complaint required to be maintained or filed, the same will have to be maintained before the appropriate Authority i.e. the Deputy Charity Commissioner in the present case. I have impressed upon Mr. Patil to convince the Court that filing of the Suit is jurisdictionally correct and the only remedy available to the Plaintiffs in the first instance. Mr. Patil seeks time to make appropriate research. At his request, stand over to **15th April, 2024.**

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[MILIND N. JADHAV, J.]

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