



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 442 OF 2023

Ashok Nagorao Jadhav .. Appellant

Versus

Janta Shikshan Prasarak Mandal
Through its General Secretary
Neelabai Babanrao Jadhav .. Respondent

**WITH
SECOND APPEAL NO. 443 OF 2023**

Ashok Nagorao Jadhav .. Appellant

Versus

Janta Shikshan Prasarak Mandal
Through its General Secretary
Neelabai Babanrao Jadhav .. Respondent

Shri Deelip J. Choudhary, Advocate for the Appellant in both matters.

Shri V. D. Salunke, Advocate for the Respondent – Sole in both matters.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 23RD JULY, 2025.**

FINAL ORDER :

. Heard both sides finally.

2. Defendant in both suits, who suffered judgment and decree of declaration and injunction passed by the lower Appellate

Court reversing the judgment and decree passed by the Trial Court, is the appellant before this Court. Both the suits and appeals arising out of them were conducted simultaneously, albeit, decided by distinct judgments and decrees. Parties, material facts and the material are identical. Hence both appeals are heard together and by common order, I am disposing of them.

3. The issues involved in both appeals and the substantial questions of law pressed into service are identical. What is different in both suits is subject matter and date of purchase. For the sake of convenience I propose to refer Appellant as defendant – Ashok and respondent as plaintiff - trust. The source of appeals is given hereinbelow.

Sr. No.	Second Appeal No. 442 of 2023	Second Appeal No. 443 of 2023
1.	R.C.A. No. 19 of 2017 Judgment dated 03.04.2023	R.C.A. No. 20 of 2017 Judgment dated 03.04.2023
2.	R.C.S. No. 66 of 2008 Judgment dated 03.05.2017	R.C.S. No. 67 of 2008 Judgment dated 03.05.2017
3.	Land Sy. No. 10/1 adm. 84R purchased vide sale deed dated 10.08.1987	Land Sy. No. 7/C/1 adm. 60R purchased vide sale deed dated 27.06.1989
4.	Exhibit No. 91.	Exhibit No. 96.

4. Plaintiff – trust is registered under the provisions of the Maharashtra Public Trust Act (hereinafter referred as to the “Act” for the sake of brevity and convenience). It runs a school in

the name of Nrusinha Vidya Mandir. Late Mr. Nagorao Jadhav was founder President of the trust. He was alive upto 02.08.2000. Defendant – Ashok is his elder son and younger son Shivaji are at loggerheads. During life time of Nagorao Jadhav, suit lands are purchased from one Tejrao Govindrao Jadhav by distinct sale deeds, which are referred above. Ashok and Shivaji have rival claims to the office of the trust. They have resorted to various proceedings. However, for deciding the present controversy, it is not necessary to refer their disputes in detail.

5. In both suits plaintiff trust has claimed declaration and injunction on the premise that suit lands were purchased by registered sale deeds in the name of the trust. It was not exclusive property of founder member Mr. Nagorao Jadhav. The suit lands are being utilized for the school. Taking disadvantage of entries of Nagorao Jadhav in the 7/12 extracts, defendant – Ashok started claiming the suit lands as exclusive properties. In R.C.S. No. 66 of 2008 suit land i. e. 84R of Sy. No. 10/1, is claimed to have been purchased by further sale deed dated 10.09.1999 Exhibit 109, by defendant – Ashok from Nagorao.

6. The suits are contested by defendant – Ashok on the plea that suit lands were purchased by Nagorao Jadhav and it was not trust property. After demise of Nagorao, suit land bearing Sy. No. 7/c/1 admeasuring 60R devolved upon him and his younger brother Shivaji, whereas suit land bearing Sy. No. 10/1 admeasuring 84R was sold by Nagorao during his life time by

registered sale deed to him on 10.09.1999.

7. The Trial Court held that plaintiff – trust was unable to prove that suit lands were trust properties on the premise that those were not recorded in Schedule – I, maintained by the Charity Commissioner, Nanded. The Trial Court in R.C.S. No. 66 of 2008 is further impressed by execution of sale deed by Nagorao Jadhav to defendant – Ashok on 10.09.1999 to hold that suit land is exclusive property of Nagorao. The revenue record was found to be corroborative to the claim of defendant Ashok. As against that while reversing the decree of the Trial Court, lower Appellate Court held that sale deeds at Exhibit 91 and 96 show name of the trust. The non inclusion of the suit lands in Schedule – I with the Charity Commissioner would not vitiate sale deeds and the title.

8. Lower Appellate Court also held that Civil Court had jurisdiction. The defendant – Ashok vehemently contended that Civil Court had no jurisdiction to examine whether the suit lands are trust properties or not. It was further argued that for want of prior sanction U/Sec. 51 of the Act, suit was not tenable.

9. Learned counsel Mr. D. J. Choudhari appearing for the appellant – defendant submits that Civil Court had no jurisdiction in view of Sec. 19(2) read with Sec. 79 and 80 of the Act. He would further submit that remedy for plaintiff – trust was to approach authorities under the Act. It is submitted that

interpretation of the sale deeds at Exhibit 91 and 96 is substantial question of law involved in the matters. It is further submitted that in the absence of prior sanction U/Sec. 51 of the Act, suit was not tenable.

10. It is further contended that lower Appellate Court committed perversity in holding that suit lands are the trust properties, when plaintiff – trust failed to produce on record audit report, any tangible document to show payment of consideration or copy of Schedule I. It is further contended that the sale deeds are not proved. The lower Appellate Court committed error of jurisdiction in view of the law laid down by the Supreme Court in the matter of Santosh Hajari Vs. Purushottam Tiwari (Dead) by L.Rs. reported in *(2001) 3 SCC 179*.

11. Per contra, learned counsel Mr. V. D. Salunke for the respondent – original plaintiff – trust submits that civil Court's jurisdiction U/Sec. 9 of the Code of Civil Procedure (hereinafter referred as to the "C.P.C." for the sake of brevity and convenience) to decide the title can never be excluded. The jurisdiction of the Charity Commissioner U/Sec. 19 read with Sec. 79 of the Act is restricted to the matters pertaining to the administration of the trust, its registration, its composition and the business of the trust. Bar U/Sec. 80 of the Act is not attracted. It is vehemently submitted that Schedule I maintained by the Charity Commissioner is not decisive factor and trust can always go for inclusion of the property in Schedule

I. Non inclusion of the suit lands in Schedule I would not vitiate sale deeds at Exhibit 91 and 96. It is further submitted that sale deed at Exhibit 109 reflects on the conduct of the appellant – Ashok, which exhibits thumb impression of highly educated and reputed founder member late Mr. Nagorao Jadhav. Lastly, it is submitted that no interference is called for in the impugned judgments and decrees passed by the lower Appellate Court.

12. I have heard rival submissions of the parties. There is no dispute that late Mr. Nagorao Jadhav was founder member of the trust and he was office bearer also. He had purchased 84R land of Sy. No. 10/1 vide sale deed dated 10.08.1987 (Exhibit 91) and 60R of land Sy. No. 7/C/1 vide registered sale deed dated 27.06.1989 (Exhibit 96). Both the sale deeds are placed on record. Plaintiff - trust examined witnesses to prove the sale deeds and, thereafter, those were exhibited. It is difficult to accept the submissions of Mr. D. J. Choudhari, learned counsel for the appellant that sale deeds are not proved. The contents of the execution of the sale deeds are proved. They have probative value. Though suits were dismissed by the Trial Court, no finding is recorded that the sale deeds were not proved and they have no probative value.

13. Both the sale deeds Exhibit 91 and 96 show that purchaser is President Janta Shikshan Prasarak Mandal through Mr. Nagorao Madhavrao Jadhav. First page of sale deeds at Exhibit

96 also shows name of President, Nrusinha Vidya Mandir. These sale deeds do not show that suit lands were purchased in personal capacity by Nagorao Jadhav. If the title document discloses purchaser as a plaintiff – trust, then entries in the revenue record would not override the title document. Entries in the revenue record are for the fiscal purposes. Defendant – Ashok failed to prove any title document in the name of Nagorao Jadhav.

14. It is relevant to notice that a sale deed executed on 10.09.1999 is pressed into service to show that Nagorao was exclusive owner and he alienated one of the suit lands to the defendant – Ashok. The sale deed shows that it was executed by Nagorao not by signing it, but by thumb impression. It is nobody's case that at the relevant time late Nagorao Jadhav was not in a position to sign. Admittedly, he passed away on 02.08.2000. Therefore, execution of the sale deed is extremely suspicious. Late Mr. Nagorao Jadhav was educated person and founder member of the trust. The cross examination of the defendant shows that his father was teacher of English subject. It is incomprehensible as to how sale deed was executed by thumb impression. Learned counsel for the appellant is unable to explain this situation. Therefore, the theory based on sale deed Exhibit 109 holds no water. Lower Appellate Court rightly appreciated this aspect of the matter considering.

15. When suit lands were not exclusively owned by late Mr.

Nagorao Jadhav and he was not having sellable title, then further execution of sale deed at Exhibit 109 in favour of defendant – Ashok is inconsequential and does not create any interest in him. One who lacks title cannot transfer any better title.

16. The title of the suit lands is disputed in both suits. The Trial Court did not frame issue regarding jurisdiction of the Civil Court and there is no discussion on the said vital aspect of the matter by the Trial Court. However, lower Appellate Court framed point for consideration and assigned reasons to point No. 5 holding that Civil Court has jurisdiction to entertain present suit.

17. My attention is adverted to Sec. 79 and 80 of the Act. It is stipulated in Sec. 79 and 80 of the Act that any question including a particular property is the property of the trust should be decided by the Deputy or the Assistant Charity Commissioner. The powers of Charity Commissioner are given in Chapter No. VI and VII of the Act. The adjudication of the title is not a power assigned to Deputy Charity Commissioner. The Deputy or the Assistant Charity Commissioner are empowered to conduct inquiries and have certain powers under Chapter IV, but there is no power of deciding title. As per Rule 7 of the Maharashtra Public Trust Rules (for the sake of brevity and convenience hereinafter referred as to the 'Rules') a manner is stipulated for conducting inquiries. It should be as per the Small Causes

Courts Act. As per Sec. 17(1) of the Small Causes Courts Act read with Order XXXVII of the C. P. C., the procedure to be followed, is summary in nature. The authorities under Chapter IV to VII of the Act have summery powers. It is very difficult to countenance a submission that title of a party would be decided by the authority by invoking summary powers.

18. Learned counsel for the appellant relied on Sec. 19 of the Act, which pertains to inquiry for registration. For the purpose of ascertaining the facts stipulated in Clauses I to VII enquiry is contemplated. This inquiry is specifically for the registration of the Trust. Following clause is highlighted by the appellant :

The Maharashtra Public Trust Act, 1950

1. ...
2.

19. Inquiry for registration.— On the receipt of an application under section 18, or upon an application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining— 5

- [(i) whether a trust exists and whether such trust is a public trust,]
- (ii) whether any property is the property of such trust,
- (iii) whether the whole or any substantial portion of the subject-matter of the trust is situate within his jurisdiction,

19. This is not the investigation into title of the property. In a summery manner Deputy or Assistant Charity Commissioner is

empowered to see the property of the trust. In case of any dispute over the title of the property between trust and third person, Sec. 19 of the Act cannot be resorted to. As against that a Civil Court has always jurisdiction U/Sec. 9 of the C.P.C. to deal with subjective rights of the parties pertaining to the title. Therefore, bar engrafted in Sec. 80 of the Act is not attracted.

20. Respondent relied on the judgment of the Division Bench of this Court in the case of Ramnarayan Manilal Sahu through L.Rs. Smt.Kamal Ramnarayan Sahu and others Vs. State of Maharashtra and others reported in **2005(2) Mh. L. J. 95**. In that case subject matter was purchased by the then petitioner from the respondent – trust by registered sale deed of 1984. The land was subjected to acquisition proceedings. The property which was purchased was claimed by erstwhile owner. Through the proceedings of change report U/Sec. 22 of the Bombay Public Trust Act, matter reached High Court. In that context the question of jurisdiction of the authorities under the Act to decide title fell for consideration. Reliance on the judgment of the Full Bench in the matter of Keki Pestonji Jamadar and another Vs. Khondadad Merwan Irani and others reported **AIR 1973 Bombay 130**, following observations are made :

“11. The procedure prescribed by the Act for the conduct of the inquiry Under Section 19 is wholly unsuited to proper and effective adjudication of disputed titles to the trust property. Rule 11 provides that officer holding the inquiry may only make a memorandum of substance of what each witness deposes. It is unthinkable that question of title could be permitted to be decided by Tribunal finally and conclusively without any obligation to record the evidence fully. It is not part of the functioning of the authorities Under Section 19

decide the claims which are adverse to the trust and which are made in assertion of titles which are hostile to the trust. Such titles cannot be held to be concluded in violation of principles of natural justice. If the Civil Court upheld the title of third party to the property which Under Section 19 has been found to be belonging to the Trust, the record of the Charity Commissioner has to be amended so as to accord with that decision. This itself shows the decision of the Joint Charity Commissioner even as appellate authority concerning the title of the property of the trust is not conclusive. The reason being that it was not within the purview or scope of the inquiry contemplated under the Bombay Public Trust Act to be made by the authorities to decide the question of title of the property of the trust. Therefore, it is within the competence of the Civil Court to decide the question of title in respect of the property acquired by the trust and it is in that sense jurisdiction of the Civil Court is not barred Under Section 80 of the Bombay Public Trust Act to decide the question of title.”

21. The Division Bench *inter alia* relied on the observations of the Full Bench in paragraph No. 10 and relying on those observations it is concluded that to decide the title is the domain of the Civil Court. The judgment of the Full Bench in the matter of Keki Pestonji Jamadar and another Vs. Khondadad Merwan Irani and others (supra) is further followed by the learned Single Judge in the matter of Shri Hanuman Mandir, Alibag, Public Trust and others Vs. Satischandra Bhalchandra Gurjar and others reported in *2013(3) Mh. L. J. 83* as well as **judgment dated 06.03.2009 of the Division Bench of this Court in the matter of Shree Shreshta Sevashram Ratnagiri Through Trustee Vs. Abhay Mahendra Jain and others in First Appeal No. 2205 of 2008.**

22. The reliance placed by the learned counsel for the appellant on the judgment of the learned Single Judge of this

Court in Lakhanlal and others Vs. Marwadi Samshan Hanuman Mandir reported in *2006(2) Mh. L. J. 479* cannot help him because in the cited judgment Full Bench judgment in the matter of Keki Pestonji Jamadar and another Vs. Khondadad Merwan Irani and others (supra) is not referred. There is no reference of Sec. 19 of the Act and Rule 7 of the Rules. Similarly in the matter of Mahibubi Abdul Aziz and others Vs. Sayed Abdul Majid and others reported in *2001(2) Mh.L.J. 512*, learned Single Judge of this Court did not refer to judgment above referred Full Bench. I propose to follow full Bench and the Division Bench.

23. Further reliance is placed on the judgment of the learned Single Judge in the matter of Bashir Abbas Kudale and others Vs. Mahadeo and others reported in *2003(2) Mh.L.J. 246*. Though there is reference of Full Bench, the question posed before the Court is as to whether the subject matter is a temple and, a public trust. The issue was as to whether a trust exists. Such is not a situation in the present matter. I cannot concur with the reasons assigned in para No. 8 of the judgment for distinguishing ratio laid down by the Full Bench in the matter of Keki Pestonji Jamadar and another Vs. Khondadad Merwan Irani and others case. I find that lower Appellate Court has rightly dealt with the subject upholding jurisdiction of the Civil Court.

24. The maintainability of the suit is also challenged by quoting Sec. 50 and 51 of the Act. It is a suit filed by the trust against private person. If a private person aspires to file suit

against trust for any relief specified in Sec. 50, then prior written consent of the Charity Commissioner is contemplated. In the present case, trust is filing a suit to safeguard the trust's property. Lower Appellate Court rightly observed that there is no impediment of Sec. 50 or 51 of the Act.

25. Inclusion of the property in Schedule I maintained with the office of the Charity Commissioner is not a decisive factor. The maintenance of the Schedule is for the better administration of the trust and for the control of the authorities under the Act. If the property acquired by the trust is not included in the schedule, recourse can be taken to remove the defect. Such a course is adopted by the plaintiff – trust by filing application dated 03.05.2009 at Exhibit 100. It is rightly submitted by Mr. V. D. Salunke, learned counsel for the plaintiff – trust that non inclusion of the suit land in Schedule I would not vitiate the sale transactions conferring title on the plaintiff trust.

26. For the reasons stated above, I find that substantial questions pressed for consideration sans merit. Both second appeals are dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

bsb/July 25