



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRA NO. 140 OF 2018

Wadar Samaj Hanuman Mandir Trust Through It's President
Shivaji Yellappa Bandpatte And Other

VERSUS

Rahul Bhagwanrao Adane

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Advocate for applicants : Mr. G.V. Wani a/w T.M. Venjane

Advocate for Respondents : Mr. S.Y. Patil

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved on : March 26, 2025

Pronounced on : April 29, 2025.

FINAL ORDER :-

1. The applicants/original defendants impugn the order dated 5.6.2018 passed by the District Judge-2, Latur in Regular Civil Appeal no.157 of 2017 as well as the order dated 3.11.2017 passed below Exhibit-68 by Jt. Civil Judge S.D. Latur in Special Civil Suit No.189 of 2017, thereby declining to entertain application filed under Order VII Rule 11 of the Civil Procedure Code.

2. The respondent/plaintiff instituted Special Civil Suit No.189 of 2011 seeking relief of declaration of ownership, recovery of possession and perpetual injunction in respect of the suit plot bearing CTS No.4836 admeasuring 60' x 80'

situated at Savewadi, Latur. It is contention of the plaintiff that one Dinanath Save was the original owner. He sold suit plot to one Bandoba Ganpat Sonar. Bandoba raised Kaccha construction of 374 sq. feet. After death of Bandoba Sonar, property was recorded in the name of his grand son Babu Narayan Sonar through his guardian Anusayabai. Said Anusayabai executed a will dated 5.4.1968 and bequeathed suit plot in favour of her granddaughter Navalbai Tak. Navalbai mutated her name in the City survey record. Lateron, Anusayabai realizing that she had no title or she was not competent to execute will in favour of Navalbai, accepted right of Baburao Sonar and Dattatraya Sonar, who were in actual possession of the property and executed registered gift-deed dated 30.11.1994 in their favour. In the result, Babu Sonar and Dattatraya Sonar became exclusive owners of the suit plot. According to the plaintiff, since Babu and Dattatraya were residing at Barshi, defendants encroached upon eastern side portion of the suit plot admeasuring 20' x 35,' constructed a platform of 3 x 3' and installed Deity of Lord Dattatraya covered with iron grill around the said platform.

3. Plaintiff purchased suit plot vide registered sale-deed dated 31.12.2010 from Babu and Dattatraya and acquired ownership and possession of suit property excluding encroached portion of Dattatraya Temple. Plaintiff claims that he is owner and possessor of suit plot as described in plaint with alphabets A, B, E, D, H, I as per the map annexed to the plaint whereas, defendants are in possession of the portion described as B, C, D, E as encroachers. Therefore, plaintiff instituted suit for relief of declaration of title and recovery of possession from the defendants.

4. Defendants appeared and filed an application below Exhibit-68 under Order VII Rule 11(d) of the Civil Procedure Code seeking rejection of plaint contending that suit is barred by section 50, 79 read with section 80 of the Bombay Public Trusts Act (for short the Act). It is contention of the defendants that the suit property is essentially owned by the Public Trusts. The temple exists where permanent shade has been constructed. The suit is instituted against defendant no.2 personally as well as in the capacity of Secretary of defendant no.1-Trust. The suit property is gifted by Navalbai Tak in the year 1984 to the Trust. As such it is Trust property.

5. Aforesaid application was contested by the plaintiff contending that section 50 and 79 of the Act has no application in the present case as plaintiff is claiming his independent title. In such case, he can establish the same before the Civil Court. Eventually, Trial Court rejected the application vide order dated 3.11.2017. The aforesaid order was erroneously assailed by defendants in appeal before the District Judge, who dismissed the appeal upholding order of the Trial Court.

6. Mr. Wani learned advocate appearing for the applicant submits that as per Maharashtra Public Trusts Act, before institution of the suit against or relating to public trusts or trustees or any others for any declaration or injunction in favour of or against a public trust or trustees or beneficiary thereof, consent in writing of Charity Commissioner as provided under section 51 is necessary. Similarly, section 79 requires that any question whether or not a trust exists or such trust is a public trust or a particular property is of such trust requires to be decided by the Deputy or Assistant Charity Commissioner. Section 80 specifically bars jurisdiction of the civil court from deciding or dealing with any question which

requires to be decided and dealt with by any officer or authority under the Act.

7. In support of his contentions, he relies upon the Judgment of the Supreme Court in case of **Sainath Mandir Trust Vs. Vijaya and others reported in AIR 2011 SC 389** to contend that when recovery of the possession of property is sought from public trusts, civil court would have no jurisdiction and even if civil court is approached prior permission of Charity Commissioner before instituting such suit would be necessary.

8. Per contra, Mr. S.Y Patil, learned advocate appearing for respondent/sole submits that plaintiff is asserting his independent right on the basis of sale deed executed by owner in the year 2010. Till the date of institution of the suit, property was not entered in Schedule-I as trust property. Plaintiff seeks to set up his independent right as owner. He is unconcern with trust or its administration. Therefore, only Civil Court is competent to decide the issue as to title of the plaintiff. In such case, sections 50, 51, 79 or 80 of the Maharashtra Public Trusts Act would have no application.

9. In support of his submissions, he relies upon the judgment of this Court in case of **Maharashtra Shetkari Seva Mandal Vs. Bhaurao Bayaji Garud** reported in 2010(2) Mh.L.J. 612.

10. Having considered submissions advanced by the learned advocates appearing for the respective parties, it can be observed that, plaint in the suit instituted by respondent is sought to be rejected in exercise of powers under Order VII Rule 11 of the Civil Procedure Code on the ground that jurisdiction of Civil Court has been barred in light of section 50, 79 read with Section 80 of the Act. Parameters for exercise of jurisdiction under Order VII Rule 11 of the CPC has been crystallized in catena of decisions rendered by the Supreme Court of India. The First and most important limitation for exercise of such jurisdiction is that, only contents of the plaint and documents annexed thereto are relevant. Defenses raised by way of written statement or in an application seeking rejection of plaint or documents annexed thereto are not germane to such an inquiry. Therefore, it would be apposite to refer to pleadings in the plaint only and not defenses sought to

be raised in written statement or application under Order VII Rule 11 of the Civil Procedure Code.

11. Plaintiff asserts that suit property was originally owned by Bandoba Ganpat Sonar. After death of Bandoba, his wife Anusayabai, sons and daughters inherited the property. However, it was recorded in the name of minor grandson namely Babu Narayan Sonar. Anusayabai was his guardian. She bequeathed suit plot in favour of her grand daughter Navalbai Tak under a will. Lateron, on realizing that she was not the absolute owner, she executed a gift deed in favour of Babu Narayan Sonar and Dattatraya Sonar. Plaintiff claims that Babu and Dattatraya were lawful owner and possessor of the suit property, they executed registered sale-deed dated 31.12.2010 in his favour. As such, he acquired ownership and possession of the suit plot, except encroached portion of 20 x 35' which is in possession of the defendant. With these contentions, plaintiff seeks declaration of his ownership, possession of encroached portion and perpetual injunction from interfering in possession of the portion specified in the plaint.

12. The P.R. card shows that name of the plaintiff is recorded as owner of the suit property. As such, looking to contents of the plaint, apparently, plaintiff is asserting his independent right of ownership and seeks possession of alleged encroached portion with defendants.

13. The defendant seeks rejection of plaint alleging that in the year 1984, Navalbai Tak gifted the property to trust and, therefore, without permission under section 51 read with section 79 and 80 of the Act, suit is barred.

14. In light of the aforesaid contentions, it is apposite to refer certain observations made by the Full Bench of this Court in case of **Keki Pastonji Jamadar Vs. Khodadad Merwan Irani** reported in 1972 Mh.L.J. 427, which states as under :-

“An 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, 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".

15. Similarly, in case of **Ramnarayan S/o Manilal Sahu and others Vs. State of Maharashtra and others reported in 2005 (2) Mh.L.J. 95** relying upon the observations of Full Bench, this Court held 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 Trusts Act is no bar to Civil Court to decide such question.

16. In case of **Vinayak Dev, Idagunji and others Vs. Shivaram and others reported in (2005) 6 SCC 641**, it is observed that main object of the Public Trusts Act is to regulate administration of Public Trust. The right asserted by the plaintiffs 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 and can be dealt with by the civil court. In case of **Abhishek Ravishnakar Agrawal Vs. Assistant Charity Commissioner and another reported in 2009 (2) Mh.L.J. 178** this Court held that question whether author

of the 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 Trusts Act. In case of **J.V. Gokal Charity Trust Vs. Contrex Pvt. Lt., reported in (2017) 4 AIR BomR. 81**, this Court laid down general principles as regards to jurisdictional bar of civil court in view of section 79 and 80 of the Maharashtra Public Trust Act, which 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 MPTA. The determination of whether or not a property is the property of a trust is for the purpose of an inquiry, 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.

(d) Where the plaintiff's claim to being a trustee is questioned and is disputed, prior permission under [Section 50](#) is necessary. The plaintiff in such an action is a person having interest in the trust, but he does not have within himself the inherent powers available to trustees whose position is undisputed.

(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.

17. Yet in another case of **Dipesh Mehta and others Vs. Gerald Shirley and others** reported in **2023 (2) ALL MR 467** this court in paragraph no.56 observed that “*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*”.

18. In case of **Church of North India Vs. Lawajibhai Ratanjibhai and others** reported in **(2005) 10 SCC 730**, it is held that “with a view to determine the question as regards to exclusion of jurisdiction of the Civil Court in terms of provisions of Act, the Court has to consider what, in substance, and not merely in form, is the nature of claim made in the suit and underlying object in seeking the real relief therein. If for the purpose of grant of relief, 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.”

19. The aforesaid legal position makes it clear that when the 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 and jurisdiction of the Civil Court would not be barred. Although, Mr. Wani relied upon the judgment of the Supreme Court in case of **Sainath Mandir Trust Vs. Vijaya and others**, it can be observed that, in that case, decision was rendered by Courts in civil suit after full fledged inquiry and finding was recorded that suit property was registered in the name of Trust and Trust has been in uninterrupted possession of the suit land since 1974 onwards and the same was recorded by the Charity Commissioner as property of the Trust on the basis of change report in terms of section 22 of the Bombay Public Trusts Act.

20. In the present case, aforesaid factual matrix cannot be crystallized on the basis of averments in the plaint and documents annexed. It is not discernible from plaint that suit property had been recorded as trust property on the date of institution of the suit or acquired character of trust property. Plaintiff pleaded that respondent/Trust has encroached upon

property which was in ownership and possession of his vendor. Therefore, contentions advanced on behalf of the defendant raises contentious issues requiring the trial.

21. Meaningful reading of the plaint and documents appended thereto nowhere connotes character of suit property as a trust property. Therefore, prima facie, there is no material to record definite findings as to whether permission under section 51 was required for institution of the suit or the bar contemplated under section 79 would attract in the facts of this case.

22. In that view of the matter, it is better that all contentious issues are kept open for trial and findings to be recorded on the basis of evidence adduced by the parties. Hence, jurisdiction under Order VII Rule 11 cannot be exercised. This Court do not find any reason to reject the plaint in exercise of revisional jurisdiction by upsetting impugned order. Hence, Civil Revision Application stands rejected. Pending civil application, if any, also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

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