

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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ASHOKRAO

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FIRST APPEAL NO. 1119 OF 2014.

Vidya Vikas Mandal Karmala Through Its Secretary ...Appellant.
Mr. Vilasrao Ghumare

Versus

Sarojini Namdeorao Jagtap And Anr ...Respondents.

WITH
CIVIL APPLICATION NO. 1015 OF 2015.
IN
FIRST APPEAL NO. 1119 OF 2014.

Sarojini Namdeorao Jagtap And Anr ... Applicant(Org
Respondent No. 1)

Vidya Vikas Mandal Karmala Through Its ...Appellant.
Secretary Mr. Vilasrao Ghumare

Versus

Sarojini Namdeorao Jagtap And Anr ...Respondents.

*Mr. Sarang Satish Aradhye a/w Adv. Gauri Velankar, Shantanu Guraw, for the
Appellant.*

Mr. Ashutosh Kulkarni for the Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : January 27, 2025.

P. C. :

1. Civil Application has been preferred seeking recall of the
order dated 29th August, 2012 permitting the Original Respondent No.

2 i.e. Vidya Vikas Mandal, Karmala to be transposed as Appellant in the First Appeal as the Appellant had expired on 20th May, 2012.

2. Learned Counsel appearing for the Applicant would submit that in Regular Civil Suit No. 1 of 1986 filed by the Respondent No. 1- Sarojini Namdeorao Jagtap against the Defendant Nos. 2 to 11 therein which included the Vidya Vikas Mandal, Karmala as Defendant No. 11, decree was passed declaring that the Respondent No. 1 herein had become the president of the Vidya Vikas Mandal, Karmala from 7th May, 1985 and restraining the Defendant No. 1 from acting as president of the Vidya Vikas Mandal, Karmala. He submits that the suit seeking to challenge the said decree and order was dismissed by the District Court by answering the issue as regards the locus of the Original Appellant against the Appellant. He submits that once the suit came to be dismissed on the ground of locus, Vidya Vikas Mandal, Karmala could not have been permitted to be transposed as the Appellant in the present case.

3. Learned Counsel Appearing for the Respondent No. 2 would submit that the Mandal came to be transposed as Appellant as the interest of the Vidya Vikas Mandal, Karmala and the Original Appellant were common and the Mandal was aggrieved by the decree of 22nd November, 1989 passed in RCS No. 1 of 1986.

4. Upon perusal of the impugned Judgment of the District

Court it is evident that the suit came to be filed by one Machindra Ramchandra Pawar challenging the *ex parte* Judgment and decree dated 22nd November, 1989 declaring the Respondent No. 1 herein as a president of the Vidya Vikas Mandal, Karmala and restraining the Defendant No. 1 therein i.e. Jaywant Namdeorao Jagtap from acting as president of the Vidya Vikas Mandal, Karmala. Against the Judgment and decree the Defendant No. 1 i.e. Jaywant Namdeorao Jagtap did not prefer any appeal and neither did Vidya Vikas Mandal, Karmala. Instead one Machindra Ramchandra Pawar filed Regular Civil Suit No. 13 of 2005 seeking a declaration that the decree dated 22nd November, 1989 passed in RCS No. 1 of 1986 is null and void.

5. The Trial Court framed the necessary issue including an issue as to whether the Plaintiff proves that he is the benefactor Member of the Vidya Vikas Mandal Trust. After considering the evidence on record the District Court held that there is no documentary evidence to substantiate that the Plaintiff is benefactor Member of the Trust and answered the issue against the Plaintiff by holding that he is legally not entitled to institute the suit in capacity as benefactor of the trust.

6. The Trial Court further decided the issues as regards the entitlement of the Plaintiff to the relief of the declaration as sought in the negative and pertinently had observed that the tenure of the

elected body of the trust is of three years and even after passing of the decree in RCS No. 1 of 1986 elections were held and different persons were elected as president of the Trust. The Trial Court declined to grant the relief of declaration as the Plaintiff had failed to prove that he was member of the Trust and on the ground of locus suit came to be dismissed.

7. That being this position the Respondent No. 2-Vidya Vikas Mandal, Karmala could not have been permitted to be transposed as Appellant as the same would result in eroding the foundation of the impugned Judgment and decree dated 4th January, 2012 which had dismissed on the ground of locus. Neither the trust nor the Defendant No. 1 who were agreed had preferred any appeal and had accepted the Judgment of 22nd November, 1989. The issue of locus of the Original Appellant could not have been agitated by the Vidya Vikas Mandal upon his death upon being transposed as Appellant. The right to sue would not survive to the Vidya Vikas Mandal. Further the order of 29th August, 2012 does not disclose that the Respondent No. 1 was heard during the hearing of the Civil Application No. 2301 of 2012. As already held by the Trial Court, subsequently the elections were held and different persons were elected as president of the trust. It also needs to be noted that there is no injunction as far as holding of election against the Appellant-Original Respondent No. 2-Trust is concerned.

8. In light of the above, the order of 29th August, 2012 stands recalled. As the order is recalled, the First Appeal stands dismissed as abated.

9. Needless to clarify that, in event any right accrues to the Vidya Vikas Mandal, Karmala to challenge the Judgment of 22nd November, 1989, it is open for the Appellant to institute necessary proceedings in accordance with law. The said observation will not preclude the rights and contentions against such filing being raised by the Respondents.

[Sharmila U. Deshmukh, J.]