

(2016) 4 GLR 3436

GUJARAT HIGH COURT

Case No: Special Civil Application No. 15647 of 2014 with Special Civil Application No. 15648 of 2014 with Civil Application No. 12031 of 2015 in Special Civil Application No. 15647 of 2014 to Civil Application No. 12032 of 2015 in Special Civil Application No. 15

Kirtikumar Jadavji
Varsani

APPELLANT

Vs

Shree
Abjibapanichatedi and
Hanumanji Temple
Trust

RESPONDENT

Date of Decision: March 16, 2016

Acts Referred:

- Bombay Public Trusts Act, 1950 - Section 72
- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(2), Order 1 Rule 8, Order 1 Rule 8A

Citation: (2016) 4 GLR 3436

Hon'ble Judges: Mr. S.G. Shah, J.

Bench: Single Bench

Advocate: Notice Served, for the Respondent Nos. 9 to 11; Notice not Recd. Back, for the Respondent No. 6; Mr. Rasesh H. Parikh and Hemang H. Parikh, Advocates, for the Respondent Nos. 1 and 2; Mr. Prashant Desai, Senior Counsel with Mr. Kaushal D. Pandya, Advocate

Final Decision: Allowed

Judgement

Mr. S.G. Shah, J. - Both these petitions are though arising from different suits, since facts and circumstances and even details in both the petitions are almost common, therefore, they are heard together and being decided by this common judgment.

2. Petitioners herein are applicants before the District Court, Kutch, Bhuj and they have preferred application at Exhs.14 and 16 in Civil Misc. Application No.38 of 2013 to join them as party - litigant in such proceedings which is pending before the District Court,

Bhuj. Such Civil Misc. Application being Trust - application Nos.38 of 2013 and 40 of 2013 are arising from the proceedings under the Bombay Public Trusts Act by the Charity Commissioner.

3. Both such Civil Misc. Applications were preferred by different parties but in both the petitions, challenged before the District Court is an order dated 19.2.2013 by In-charge Joint Charity Commissioner of Saurashtra Kutch Division in Appeal No.1 of 2001 against the order dated 19.2.2013 in the Inquiry No.329 of 1961. The application No.38 of 2013 is preferred by Jadavji Virji Varsani and others being appellant before the Charity Commissioner. Whereas Civil Misc. Application No.40 of 2013 is preferred by Shree Abji Bapa Ni Chhatedi and Hanumanji Temple Trust though such Trust was not a party as such before the Charity Commissioner, but respondent/s in appeal are Trustees of such Trust at the relevant time and the issue is regarding safeguarding the properties and identity of the Trust and to frame the scheme of the Trust regarding management of the Trust, its properties and appointment of Trustees and for all allied purposes relating to the Trust.

4. Thereby, one thing is clear and certain that judgment in appeal No.1 of 2001 is being challenged by both the parties by filing two separate Civil Misc. Applications before the District Court.

5. The basic dispute between the parties is with reference to their activities wherein it is claimed by the present petitioners that they are active participants, followers and believers of Shree Abji Bapa Ni Chhatedi and Hanumanji Temple Trust and that present Trustees and opponents before the Charity Commissioner are neither believers nor followers of such saint and in-fact they are not following the principles of such saint, but they are followers of Mota Paksh Swaminarayan Sect and they have issued a Farman not to offer prayers to such saint.

6. Based upon such basic factual details, the present petitioners have filed an application before the District Court in pending appeal before it to join them as litigants at Exhs.14 and 16. Such application is decided by the impugned judgment and order dated 15.3.2016 by the 6th Additional District Judge, Surendranagar. By such impugned judgment, it was held, while dismissing the application, that parties can be joined only if their presence is necessary to decide the matter effectively and if it is so believed by the Court, but in the present case, the appellate Court has relied upon the R & P of Trust Inquiry Case No.329 of 1961 and observed that all proposed parties were opponents in such inquiry but they did not appear either before the Deputy Charity Commissioner and they have not challenged the order of Trust Inquiry in Appeal No.1 of 2001 and they have not even bothered to appear before the Hon"ble Supreme Court of India till Hon"ble Supreme Court has remanded the matter. Therefore, District Court has believed that the present petitioners have filed this application in collusion with the original applicants so as to delay the proceedings and, thereby, holding that petitioners are trying to have a back door entry in the litigation. The District court further held that there is malafide intention on

part of the petitioners and, therefore, they cannot be joined as party, as prayed for.

7. The history of litigation between the parties is not much material at present, however, to summarise the dispute and the history of litigation, it can be recollected that because of objections taken by appellant in Appeal No.1 of 2001 against the activities by the office bearers of the Trust, initially, Joint Charity Commissioner, Rajkot has initiated a Trust Inquiry No.329 of 1961 and directed to register the trust by its order dated 6.2.1963. Such order was challenged before the Charity Commissioner in Revision Application No.7 of 1965 who has, by his order dated 31.11.1966 remanded the matter back with a direction to initiate a fresh inquiry mainly to decide 4 issues viz;

(a) intentions and objectives of the trust,

(b) qualification of trustees,

(c) procedure for appointment of trustees and their asuccessors and,

(d) to confirm that whether Trust has any properties or not ?

8. Such order of inquiry by Charity Commissioner has been challenged by the present office bearers of the trust upto Hon"ble Supreme Court, but ultimately order of the Charity Commissioner remanding the inquiry was upheld by all the Courts and, thereafter, the Deputy Charity Commissioner has held a fresh inquiry and passed an order on 13.10.2000 deciding aforementioned 4 issues. It seems that till such procedure, because of order by the Charity Commissioner, which will be referred hereinafter, several persons have come forward to join them as party - litigants and, therefore, they were joined as such but since their interest and intention was common, some of them have not appeared before the Authority at relevant time and even Hon"ble Supreme Court has deleted their names. Therefore, at present, respondent has submitted and the District Court has believed that once they have remained absent during the proceedings before different authorities, now, they cannot be joined afresh at a belated stage.

9. In chronology, the fresh order of Deputy Charity Commissioner dated 13.10.2000 in Inquiry Case No.329 of 1961 was again challenged by filing Appeal No.1 of 2001 before the Charity Commissioner who has, in turn, by its order dated 19.2.2013 modified the order dated 13.10.2000 and, therefore, being aggrieved and dissatisfied by such order dated 19.2.2013, both the parties i.e. office bearers of the trust and group of people who have objected the activities of trust and such office bearers and to treat them as trustees i.e. objectors, both have filed trust application under Section 72 of the Bombay Public Trusts Act before the District Court, Kutch, Bhuj.

10. As already recorded herein above, such Civil Application No.38 of 2013 is by objectors, whereas, Civil Application No.40 of 2013 is by present office bearers/trustees. Whereas, petition is by third parties who prayed to join them as litigant.

11. In support of his submission, learned advocate for the petitioners have submitted that in-fact, this is not a simple application only under Order 1 - Rule 10 but it is an application to join such applicants as litigants in Civil Applications because out of original 14 objectors, now 12 objectors have already died and only 2 objectors remain but they are aged and, therefore, when litigation is in the nature of Public Interest Litigation and when legal heirs of such deceased litigants cannot be joined as such, present petitioners have come forward to join them as litigants and to help the Court to decide the Civil Applications judiciously.

12. It is further submitted that practically all aggrieved persons are necessary parties in view of previous decision to issue Public Notice and when there is no scope of joining legal heirs of original litigant/s, in-fact, it is the duty of the Court either to issue Public Notice and to invite interested and concerned persons as it was done in the past by the Charity Commissioner and, therefore, it is submitted that the District Court has committed an illegality and irregularity which touches the root of the issue and hence this Court should interfere with the impugned order by quashing and setting aside such order and, thereby, allowing their application to join them as litigants.

13. As against that, learned advocate Mr. Parikh for respondent Nos.1 and 2 and Mr. Vijay H. Patel, learned advocate appearing for M/s. HL Patel Advocates for and on behalf of respondent Nos.3 to 5 and 7 and 8 have submitted that there is lack of due diligence and when petitioners have not appeared at relevant time in previous proceedings, now, they cannot be joined since they have never challenged the order of their deletion at relevant point of time. When impugned order is in their favour, they are supporting it and, therefore, observations by the District Court is practically submitted as an argument by the respondent/s.

14. I have perused the pleadings, paper-book submitted by both the sides. It becomes clear that this is not a simple application between two litigants, but it is in the nature of objections by people of particular community against the administration of public religious trust, more particularly temple and its trustees with reference to one saint and its followers and there is dispute amongst them regarding their activities as non-supporting the saint in whose name this temple and trust has been created and to overreach the trust by followers of other saint/sect. Therefore, if we peruse the record, it becomes clear that by its order dated 3.11.1966, in Revision Application No.7 of 1965, the Charity Commissioner has directed that the Deputy Charity Commissioner will issue a Public Notice in the local newspaper and a notice may be affixed on the trust premises and also in the office of the Deputy Charity Commissioner, Kutch, Bhuj regarding such inquiry and in addition to petitioners and opponents in such revision, other persons who may appear in the inquiry may be given an opportunity to have their say and to lead oral and written evidence in support of their respective case. Therefore, one thing is clear that it is a decision of the Charity Commissioner itself to call upon maximum people to submit their case and evidence in support of their claim either in favour of the present trust or even against it. Thereafter, when Deputy Charity Commissioner has decided the Inquiry Case

No.329 of 1961, now his order dated 13.10.2000 shows as many as 18 applicants and as many as 886 opponents, many of them were not party to such litigation at initial stage. If we peruse the list of such litigants, it becomes clear that Deputy Charity Commissioner has taken all the opponents of Revision Application No.7 of 1965 as applicants and all the applicants of Revision Application as opponents, who are from different places throughout the world viz; Madhapur, Naranpur, Bharasar, Kera, Kabariya, Mankuva, Dahisara, Sukhpar, Baldiya, Karvad, Khipalo, Gorpur, Harkundi etc. etc. of Kutch District; Naranpura, Maninagar, Bapunagar, Mirzapur of Ahmadabad; Kalal Pavida, Ghoghambha, Kanbhi Palli, Modasardi, Donglipura, Mahedabad, Khamaj, Gandhinwada, Udapada, Kharakuva of Ahmadabad District; Langanj, Kadi, Mokhasan, Dharampur etc. of Mehsana District so also several other villages of different areas of Gujarat State and at-least one opponent is from Nairobi, South Africa. Therefore, it becomes clear that pursuant to Public Notice as referred herein above, people from all different areas and villages have appeared in support of the objectors but it does not mean that all 886 persons have to produce oral and written evidence and, therefore, even if they were not present during the inquiry, their names cannot be deleted by Deputy Charity Commissioner as submitted by the respondent herein and one more thing is quite obvious and clear that Deputy Charity Commissioner considering the long list of opponents, instead of conveying his decision dated 13.10.2000 to all of them when they are shown as litigants, simply observed in last page of the order that since number of opponents is huge and since their addresses are not available and since some of the names are not legible at the relevant time, intimation of such order to all of them is not possible and, therefore, such order is to be published in local newspaper namely "Kutch Mitra" and when some of the opponents are residing outside Kutch District, such order is to be published also in "Gujarat Samachar Daily." Therefore, one thing is clear and certain that if names of the some of the respondent/s are deleted at some stage, it seems that it is not done in accordance with law and, therefore, only because of such ground, now, it cannot be said that they are trying to help the objectors and/or that they are trying to get back door entry into the pending litigation; when they came to know about such proceedings and when they want to join as such.

15. So far as such issue is concerned, such application basically attracts the provision of Order I - Rule 10(2) of the Code of Civil Procedure, 1908, which reads as under:-

Court may strike out or add parties.

(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

15.1. The other clauses of Rule 10 of Order I are not relevant at present but bare perusal of Clause (2) which is reproduced herein above, makes it clear that the Court has wide powers to implead any party either as a plaintiff or as a defendant in any pending suit at any point of time and the only consideration for joining such party would be consideration of his presence before the Court in order to enable the Court to adjudicate upon and settle all the questions involved in the suit effectually and completely. The other requirement is that the Court may decide the terms for such appearance that may be just. Therefore, in addition to the concept of "necessary party," the Court has got inherent and unlimited powers to join any party, at any stage of the proceedings either upon or without the application of either party to join such additional party either as a plaintiff or as a defendant with only condition that the Court must be of the opinion that presence of such party is necessary for effectually and completely adjudicating upon and settling all the questions involved in the suit.

15.2. Whereas, Rule 3 of Order I identifies the persons who may be joined as defendants confirming that all persons may be joined in one suit as defendant where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative and if separate suits were brought against such persons, any common question of law or fact would arise. Therefore, the law permits to join different persons irrespective of different cause of action, if right to relief is arising out of the same act and exist against all of them either jointly or severally and even if there is common question of law or fact.

15.3. Whereas, Rule 4 of Order I of the code empowers the Court to give judgment for or against one or more joint parties even without any amendment and Rule 5 of Order I provides that defendant need not be interested in all the reliefs claimed. Whereas, Rule 3A empowers the Court to order separate trial where joinder of defendants may embarrass or delay the trial. Rule 7 of Order I provides that when plaintiff is in doubt that from whom he is entitled to have redress, he may join two or more defendants in order to resolve the questions that who amongst the defendants is liable. Whereas, Rule 8 and 8A are also relevant to be referred here which deal with the situation when one person may be sued or defended on behalf of all in the same interest and power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.

15.4. As per Rule 8 of Order I when there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued or may be defended in such suit on behalf of, or for the benefit of all persons so interested and Court may direct accordingly. It also provides for notice of all such persons by different mode including public advertisement and any person on whose behalf a suit is instituted or defended, as aforesaid, may apply to the Court to be made a party to such suit. But Sub Rule 4, 5 and 6 with its explanation are again material to be recollected here, which read as under: -

"(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub rule (3), or rule 1 of Order 23, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule(2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation. - For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

15.5. Therefore, it becomes clear that after public notice is issued as per provisions of sub rule (2) of the Rule 8, then, now, remaining litigants cannot settle or compromise the dispute without having notice to all the persons so interested and if any person suing or defending any such suit does not proceed with due diligence, the Court may substitute in his place any other person having same interest in the suit. The provisions of sub rule (6) binds the decree in such suit to all concerned and, therefore, this is the strict rule which binds several persons who are otherwise not party to the proceedings and, therefore, it is to be dealt with, with utmost caution and to see that there may not be injustice to anyone.

15.6. Whereas, rule 8A provides for almost adverse situation when it permits the Court to allow all such persons or body of persons to present, their opinion and to take part in the proceedings of the suit as the Court may specify.

16. Therefore, considering the factual details which is discussed herein above, it becomes clear that the joining of the party in present litigation is not for restricted purpose and that it is to be treated as necessity as provided under Sub Rule (5) and (6) of Rule 8, considering the fact that now, majority of the original petitioners have either died or aged and unable to chase the judicial process before the Court of law and, therefore, in absence of proper parties before the Court, other-side may take disadvantage of the situation and hence, present petitioners even if they have not remained present before the Court, at any stage of the proceedings and even if Hon"ble Supreme Court of India has ordered to delete their names from the proceedings, which is certainly necessary party to be joined as such so as to adjudicate the issue on hand completely and effectually.

17. It cannot be ignored that on the contrary, if petitioners are the persons who were present during the initial proceedings after public notice before the Charity Commissioner,

it confirms that they are concerned, necessary and proper parties and that they are neither outsiders or third parties to the proceedings. In any case, when legal heirs of the original litigants cannot be joined as such, then considering the provisions of entire Order I, which are discussed herein above, when such parties are having same interest on the subject, then also, they are necessary parties and they can be joined in the same litigation so as to avoid multiplicity of litigation since it is permissible as provided under Rule 3 of Order I that if any common question of law or fact arises, then they can be joined in one litigation.

18. Even after such settled legal position which emerges from the provisions of the Code of Civil Procedure itself, the respondents are relying upon following two citations:-

18.1 The case between **V.K. Kanju Kombi Achan v. Ammu, reported in AIR 1932 Madras, 31**, wherein, the learned Single Judge of the Madras High Court was dealing with the similar application but with regard to amendment of the pleadings. However, the reading of entire judgment does not disclose anything in favour of the respondent/s so as to dismiss the petition, as prayed for. On the contrary, it seems that practically, it is a matter where provisions of sub rule (4) of Rule 8 of Order-I is under consideration regarding withdrawal of appeal by some of the litigants, whereas, at present, there is no such situation and, therefore, such judgment is not applicable at all.

18.2 Unreported oral order in Misc. Civil Application No.3154 of 2009 in Letters Patent Appeal No.183 of 1973 dated 17.8.2011 and 9.9.2011 in the case between Laljibhai Bhikhabhai Dhaduk v. Trust of the Temple of Shree Laxminarayandev Temple, wherein, the Division Bench of this High Court has directed to issue public notice in almost similar situated case of trust of Shri Laxminarayan dev Temple at Vadtal and observed that the persons who are interested may appear but the Court may decide whether they should be impleaded as opposite parties and on hearing, they may also decide whether such amendment as sought for in the application before it is required to be made or not. Reference of such order/judgment is made with a submission that thereby, it would be the discretion of the Court whether to implead any such party or not.

18.3 However, such judgment does not confirm that no party should be added even though they fall in the purview of discussions made herein above i.e. when they are interested in the cause of action, when they are concerned with the decree which would ultimately bind them and when original litigants have either expired or aged and unable to chase the judicial proceedings. In that case, present petitioners have absolute right to safeguard their interest and for the purpose, they are certainly necessary parties.

19. As against that, reference to following cases would also be material which confirm the view taken by this Court;

19.1. The case between **Sangram Singh v. Election Tribunal Kotah, reported in AIR 1955 SC 425**, wherein, while interpreting procedural law, the Hon"ble Supreme Court of

India has observed that our law of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard and that decision should not be reached behind their backs and that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in such proceedings.

19.2. In the case between **State of West Bengal v. Sudhangshu Kumar Laha, reported in 1992(1) Cal.L.T. 211 (1991 Law Suit (Cal) 188)**, wherein, Calcutta High Court has observed that though normally a party should not be allowed to be added in appeals and in no circumstances it shall be done if the Court is invited by the petitioners to decide an issue, disposal of which is not necessary for deciding the suit or for effective and complete adjudication of the dispute, but on facts of the case, it should be allowed for the simple reason that the Court will not be required to answer an alien issue when petitioners are having interest in the subject matter of the litigation.

19.3. In the case between **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay, reported in 1992(2) SCC 524** confirming that the Court is empowered to join a person whose presence is necessary for the prescribed purpose viz; in order to enable the Court to adjudicate upon and settle all the questions involved in the suit effectually and completely and, thereby confirmed that if the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions because of the reason which makes it necessary to make a person a party to an action is that they would be bound by the result of the action and the question to be settled.

19.4. In the case between **Somnath Banerjee v. Smt. Arati Rani Chakraborty, reported in AIR 2010 Gauhati, 187**, wherein, the Gauhati High Court has, while dealing with the provisions of Order I - Rule 10 held that there is no requirement of law for such an application must be made at any particular stage of the trial though in a given case delay in moving an application might be one of the considerations for the decision and that "at any stage of the proceedings" means till continuation of the proceedings even up to the appellate stage.

20. Therefore, the above discussion makes it clear that when original litigation is in the nature of Public Interest Litigation and, thereby, when decision of the Court would be binding upon large group of persons, and thereby, even if proceedings can be continued by some of them, all of them are necessary parties and they can appear before the Court and for the purpose, there is no restriction either in terms of stage of the proceedings or otherwise, more particularly, when original objectors have either died or aged and unable to proceed further with full zeal.

21. Whereas, the provisions of law is also clear that there is no ban or bar in joining such persons as litigants. Therefore, only because existing trustees of the trust are claiming

lack of due diligence or delay, it would not be appropriate to throw-away the persons from appearing before the Court, who are otherwise, not only interested with the issue but would also be bound by the decision of the Court to appear and to represent their case.

22. Therefore, the impugned order is certainly bad-in-law since it results into injustice to the present petitioners and hence, is required to be quashed and set aside. Therefore, these petitions are allowed. Thereby, impugned orders are quashed and set aside resulting into allowing the applications at Exhs. 14 and 16 by present petitioners to join them as litigants in pending applications before the concerned District Court. Rule is made absolute.

23. Hence, these petitions are allowed in afore-stated terms. In view of disposal of main matters, Civil Applications do not survive and hence the same stand disposed of accordingly.