

(1998) 02 BOM CK 0060

Bombay High Court (Aurangabad Bench)

Case No: Letters Patent Appeal No. 36 of 1997

Vijaykumar Baburao Shete

APPELLANT

Vs

Mallikarjunappa Sidramappa
Bidwe and others

RESPONDENT

Date of Decision: Feb. 2, 1998

Acts Referred:

- Bombay Public Trusts Act, 1950 - Section 18, 70, 72
- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 1, Order 41 Rule 22

Citation: (1998) 3 ALLMR 368 : (1998) 3 BomCR 341 : (1998) 2 BOMLR 283 : (1998) 2 MhLj 312

Hon'ble Judges: R.D. Deshpande, J; A.D. Mane, J

Bench: Division Bench

Advocate: P.R. Katneshwarkar, for the Appellant; N.H.Patil, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.D. Mane, J.

This appeal is filed against the order made in First Appeal No. 220 of 1996 whereby the appellants were permitted to withdraw the first appeal but at the same time Civil Application No. 406 of 1997 filed by the present appellants by way of cross-objections as Interveners was disposed of as not surviving.

2. Mr. Katneshwarkar learned Counsel for the appellants submits that even though the appeal was withdrawn, the cross-objections has to be decided and therefore, the impugned order is not proper in law.

3. In order to appreciate the contentions of the learned Counsel for the appellants it is necessary to state few facts. On 31-7-1994 a resolution conferring membership on 40 persons by suitable change in the constitution of the trust was passed and in consequence, change report was made to the Assistant Charity Commissioner to

approve the Change Report Bearing No. 238 of 1994. In appeal u/s 70 of the Bombay Public Trusts Act, the Charity Commissioner set-aside the order of the Assistant Charity Commissioner on certain grounds and remanded the matter for fresh inquiry. That order of the Charity Commissioner was also challenged in Misc. Civil Application No. 13 of 1995 u/s 72(2) of the Bombay Public Trusts Act, 1950, before the District Judge. The District Judge dismissed the application and directed the parties to go before the Assistant Charity Commissioner for further inquiry. That order passed by the learned District Judge was questioned in First Appeal No. 220 of 1996 before the learned Single Judge of this Court. After admission of the appeal, the first appeal came up for hearing when withdrawal purshis was filed. It appears that pending the first appeal one of interested persons filed cross-objections in the said appeal. The learned Single Judge allowed withdrawal of the cross-objection appeal and at the same time rejected on the ground that said cross-objections do not survive in view of withdrawal of the first appeal.

4. In this Letters Patent Appeal Mr. Katneshwarkar, learned Counsel for the appellants, questions the legality of the order heard rejecting the cross-objection. We have heard the learned Counsel for the appellants at great length. Mr. Patil, learned Counsel for the respondents Nos. 1 and 2, however, points out that the question of maintainability of the Letters Patent Appeal has already been decided by the Apex Court in the case of [Naranbhai Dayabhai Patel and another Vs. Suleman Isubji Dadabhai](#). It is submitted that in the present case the appellants have not sought and obtained leave to file the Letters Patent Appeal against the order or decision of the learned Single Judge. Secondly, since the provisions of the CPC do not apply entirely to the appeals filed and pending before the learned Single Judge of this Court but they are the proceedings though in the form of first appeal in the nature of proceedings under the supervisory jurisdiction and therefore, the Letters Patent Appeal, does not lie.

5. The case cited supra arises out of the proceedings u/s 18 of the Bombay Public Trusts Act and while interpreting the provisions of Clause 15 of the Letters Patent Act, (Bombay), the Supreme Court reiterating the principle laid down in the case of [Ramchandra Goverdhan Pandit Vs. Charity Commissioner of State of Gujarat](#), held that the proceedings before the District Court u/s 72(1) are in the nature of an appeal and that the District Court exercises appellate jurisdiction while disposing of a matter u/s 72(1). Consequently the Single Judge of the High Court while deciding the appeal deals with the matter in exercise of an appellate jurisdiction by a Court subject to the superintendence of the High Court and Clause 15 of the Letters Patent Appeal is directly attracted. Therefore, an appeal against the judgment of the learned Single Judge of the High Court would not lie unless a certificate for leave to appeal is sought and granted. The ratio of the aforesaid decision applies to the facts of the present case. We therefore, do not find force in the contentions of Mr. Katneshwarkar. The appeal is not competent since leave to appeal is not obtained by the appellants. The letters patent appeal is therefore incompetent and dismissed.

C.A. is disposed of. There shall be no order as to costs.

6. L.P. Appeal dismissed.