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Court : Karnataka Dharwad

Decided On : Apr-04-2017

Judge : The Honourable Dr. Justice Vineet Kothari &Amp; The Honourable Dr. Justice H.B. Prabhakara Sastry

Appeal No. : Miscellaneous First Appeal No.102281 of 2016 (BPT)

Appellant : Shankarbhat and Another

Respondent : Ganesh Krishna Dixit and Another

Judgement :

(Prayer: This MFA filed U/s 72(4) of the Bombay Public Trusts Act, 1950, against the order dated: 29.03.2011 passed in Misc.Appeal.No.12/2007 on the file of the Principal District Judge, Dharwad, dismissing the Misc. Application filed under Sec.70 of the Bombay Public Trust Act, 1950 and confirming the order dated: 09.10.1996 passed by the Asst. Charity Commissioner, Belagavi in Inq.No.403/1957, allowing the Inquiry.)

Dr. Vineet Kothari, J.

Mr. Ravi S. Balikai and Shrikant T.Patil, Advs. for the appellant.

Mr. C.N. Harlapur and Sadashiv S.Patil, Advs. for C/R2.

1. The appellant Krishna claiming to be the adoptive son of Shankarbhat Pujari @ Gosavi has challenged before us in the present appeal, the order passed by the learned Principal District Judge, Dharwad, on 29.03.2011, dismissing his Misc.Appeal.No.12/2007, Shri. Krishna Shankarbhat Pujari @ Gosavi Vs. Shri. Krishna Ganesh Dixit and others.

2. The appellant claiming to be adoptive son of Shankar Bhat Pujar claimed that a temple known as Shri. Vithoba Temple, Hubli is a private temple and the properties shown in the registration application were private properties belonging to his ancestors. The learned Assistant Charity Commissioner, Belgaum in an Enquiry No.403/1957 by the order dated 9.10.1996, while directing for registration of the said Vital Temple, Gavali Galli as Public Trust, held in the impugned order that the properties in question of the said Temple were to be registered as Trust property.

3. The findings of the learned Assistant Charity Commissioner are quoted below for ready reference:

9. Point no.2: The real dispute between the deceased applicant and the Opponents as well as L.R. of the deceased applicant and the Opponents revolve around the subject matter of the Trust i.e., the properties of the Trust. The evidence on record reveal that deceased applicant was staying in Property bearing No.934 and other properties are situated around the said Temple and whereas, the Present Opponents and father of the Opponent No.1 have been tenants since long time of some of the properties presently claimed by them as temple property and claimed as private properties by the Applicant and his L.R. It is also not in dispute that deceased applicant had initiated eviction proceedings against the Opponents and Ganesh Krishna Dixit in respect of the properties occupied by them. It appears these proceedings prompted the deceased Opponent Ganesh Krishna Dixit to move/this Office resulting in initiation of the proceedings in Inquiry No.302/57. Even though he had filed such application to this office to save his own interest in the property as/tenant, it has given rise to this long battle between the parties with regards to the Trust and its properties.

10. As stated earlier the deceased applicant in his application claims that only lands bearing Sy.Nos.934, 966, 904 and 903 are the properties belonging to the Trust, whereas, the lands bearing Sy No.323 of Unakal, CTS Nos.930, 933, 935 to 941 and 946 of ward No. V of Hubli are claimed as his private properties. Even though much oral evidence for and against is produced, in my considered opinion, it does not help the Court to decide the nature of the above said parties. Further, the documentary evidence placed by the parties help in this regard and I, proceed to consider the same, at the first instance. I propose to consider the nature of landed properties before proceeding to consider the immovable properties stated to have been situated in the heart of the City of Hubli around the Temple.

11. The applicant himself has stated in the application that Sy.Nos.34 of Bommasandra and 324 of Unakal are the Temple properties. The relevant record in this regard are produced at Ex.P.2 and P.3. They are the record of rights for the years 1957-58 wherein the name of the Temple is mentioned as owner and the names of the deceased Applicant as Vahiwatdar. The deceased applicant has not produced any document with regard to his claim that Sy.No.323 of Unakal, is a private property. However, the Opponents have produced Ex.D.14 and 15 of Sy.No.323, the record of rights of 1953-54 and 1933-34 to 1939-40. In the record of rights of Sy No.323 from 1933-34 to 1939-40 marked as Ex.D.15, it is mentioned that owner is one Ambabai W/o Bistam Bhat Gosavi, a Poojary of Sri. Pandurang Temple. Similarly, in Ex.D.14 record of rights of 1953-54 name of deceased Applicant Shankar Bhat is mentioned as Poojary of Sri. Pandurang Temple. The learned counsel for the L.R. of the Applicant contended that merely because the name of the owner is mentioned as Poojary of a Temple, it cannot be held that the property belongs to the Temple. He placed reliance on the decision reported in AIR 1971 Supreme Court page 2057, wherein it is held that the burden to prove that the properties of the Temple are held by the Mahant of Trust for public purposes for charitable character is on the Board of religious Trust. The Court cannot draw an adverse inference for failure of Mahant to produce certain documents whereunder, the properties had been gifted to founding Mahant. There cannot be any dispute with regard to the principle enunciated in the said decision. However, it is pertinent to note that there is no evidence on behalf of the Applicant as to how the lands in Sy.No.323 came to be owned by ancestors of the Applicant.

The Applicant Shankar Bhat though was alive, was not examined and whereas his power of attorney P.W.3 Narasingrao Kalaghatgi was examined. He has also not spoken any thing in this regard. Similarly, P.W.2 N.D. Adoor, the power of attorney holder of original applicant as well as the L.R. has not stated anything. On the contrary it is an admitted fact that Sy.No.324 of Unakal and Sy.No.34 of Bommasandra are temple properties. Ex.P.2 and P.3 produced by the Applicant are the record of rights of the said lands wherein also the name of Shankar Bhat is mentioned as Poojary of Vitoba and Pandurang Temples. In that view of the matter, it cannot be held that Sy.No.323 of Unakal covered by Ex.P.14 and 15 having a similar description regarding the owner is a private property and not the property of the Temple. In addition to this undisputedly, the Inquiry No.302/57 was initiated by the Opponents wherein the deceased applicant was the Opponent. The very Narasingrao R. Kalaghatgi examined as P.W.3 in this case was examined in Inquiry No.302/57 in the capacity of power of attorney of deceased Shankar Bhat. The records of Inquiry No.302/57 are available with this case. It is found that said Narasingrao R. Kalaghatgi in Inquiry No.302/57 has stated in answer to a Court question that Sy.No.323 of Unakal stands in the name of deity. His brothers name is shown as Vahiwatdar. Both the Unakal lands were gifted to the deity by private persons. Both the lands referred to by this witness; Narasingrao Kalaghatgi in Inquiry No.302/57 refer to Sy No.324, undisputed and Sy.No.323 of Unakal now being disputed. In the light of this earlier statement of Narasingrao Kalaghatgi in Inquiry No.302/57. I hold that the land in Sy.No.323 of Unakal is also a Temple Property.

12. As regards the remaining properties situated in Gavali Galli, Hubli there is no dispute that CTS Nos.934, 966, and 903 are the Temple properties since, this fact is mentioned in Co.No.7(a) of the application filed by the deceased applicant. The dispute is only with regard to CTS Nos.930, 933, 935 to 941 and 946. The deceased applicant claimed them as his private properties. The Opponents contend that these are also the Temple properties. It has come in the evidence of P.W.2 N.D. Adoor, the power of attorney of deceased applicant as well as of the present LR. and also evidence of P.W.3 Narasingrao Kalaghatgi former power of attorney holder of the deceased applicant, that sanads issued in respect of these properties are produced. In my considered opinion, the documentary evidence

produced by the rival parties throw a better light and in fact they are the only evidence with regard to the nature of said properties Ex.P.4 to P.13 are the original sanads dated 24-4-1925 in respect of CTS Nos.930, 935, 933, 936, 940, 938, 937, 941, 946 and 939, Ex.P.14, 15, 17, 18, 19 and 20 are the sanads of old CTS No.220, 214, 282, 221, 210, and 215, issued on 18-7-1905 by the then Collector of Dharwar. The Ex.P.1 is the Enquiry report of the City Survey Office wherein we can find the corresponding old new CTS Nos. of these properties. Ex.P.1 makes it clear that the old CTS No.220 is given new CTS No.934 with regard to which there is no dispute. Because, this property is admitted to be the Temple property in the application itself. Ex.P.14, the sanad of old CTS No.220 New No.934 is of no relevance at this stage. Further, the Ex.P.17 of old CTS No.282 pertain to New No.966 in respect of which also there is no dispute, since it is also shown as Temple property in the application. No sanad is produced in respect of CTS No.903 and 904, but, however they are admitted to be the Temple properties in the application itself.

13. I refer to consider the documentary evidence with regard to the dispute properties one after another. The New CTS No.930 is claimed to be a private property. The sanad in respect of this is at Ex.P.4 issued in the name of Jeevabai. Similarly CTS No.946 is shown to be of Jeevabai in the sanad Ex.P.12. Both these sanads Ex.P.4 and 12 are issued on 24-4-19285. The question arises as to whether, on the basis of these Ex.P.4 and 12 the said properties can be held to be the private properties. The enquiry report Ex.P.1 makes it abundantly clear that New CTS No.930 and 946 are part and parcel of Old CTS No.210. Ex.P.19 is the old sanads in the name of Gangabai predecessor of Jeevabai Bistham Bhat in respect of old CTS No.210. Thus, Ex.P4 and P12, new sanads of new CTS Nos. and Ex.P19 old sanads of old CTS No.210 make it clear that new CTS Nos.930 and 946 being part and parcel of old CTS No.210 were given originally to Gangabai and then to her successor Jeevabai. There is no other document produced by the Opponents to show that these CTS No.930 and 946 are the Temple properties. Merely because, they are situated in the surroundings of Temple situated in CTS No.934, it cannot be held that they are also Temple properties in the absence of acceptable evidence.

14. The properties bearing No.CTS 933, 935, 940 and 941 are claimed to be the private properties on the basis of the sanads Ex.P.6, P-5, P-8 and P-11 issued in the name of Jeevabai on 24-4-1925. The question arises as to whether, on the basis of those Exbts. Can it be held that they were the private properties of Jeevabai succeeded by the deceased applicant. It is pertinent to note as per Enquiry report Ex.P.1, the New CTS No.933, 935, 940 and 941 were part and parcel of old CTS No.214. The applicant himself has produced the old sanad of Old CTS No.214 as per Ex.P.15 issued on 18-7-1905 with clear description of boundaries. Wherein it is stated that they are the properties of Vitoba Temple and Gangabai Poojary is the vahiwatdar. It is pertinent to note that in the very Ex.P.15 pertaining to Old CTS No.214 the boundaries have been given stating that it is bounded by CTS Nos.213, 215 and 221. Further, it is pertinent to note that CTS NO.215 is stated to be the Vitoba Temple Property which Gangabai is Vahiwatdar and whereas old CTS No.221 is shown to be absolutely belonging to Gangabai herself. It clearly suggest that Old CTS No.214 was held to be of the Temple. In that view of the matter when Old CTS No.214 was held to be that of the Temple on 18-7-1905, no value can be attached to the subsequent sanads Ex.P.6. P-5, P-8 and P-11 showing Jeevabai as the owner of these properties. Even among them New CTS No.935 is shown as Temple property in Ex.P.5. In the light of these facts, I hold that Old sanad Ex.P.15 with regards to old CTS No.214 shall have to be accepted determining the nature of the property held. Hence, I hold that New CTS NO.933, 935, 940 and 941 being part and parcel of Old CTS No.214 are the Temple properties.

15. Now coming to CTS No.936, the applicant has produced sanad Ex.P.7 dated 24-4-1925 wherein it is stated that it is the property of the Temple. The Old sanad of this New CTS No.936 with Old CTS No.215 is at Ex.P.20 wherein also it is shown to be belonging to the Temple. Hence I hold that New CTS No.936 also belongs to Temple.

16. The next CTS is 937. The New sanad dated 24-4-1925 is produced at Ex.P.10 by the applicant. The name of the Temple is shown as owner. Hence, I hold that CTS No.937 is also the Temple property.

17. Now coming to CTS No.938 and 939 the New sanad at Ex.P.9 and P-13 reveal that they are the properties of Jeevabai. The Old Sanad of these two properties is at Ex.P.18 bearing Old CTS Nol.221 wherein it is shown as the property of Gangabai, predecessor of Jeevabai. The Opponents have not produced any cogent material to show that these CTS No.938 and 939 were at any time held by the Temple. Again merely because, they are situated in surrounding of the Temple property, it cannot be held that they are the Temple properties in the absence of acceptable evidence. Because, the oral evidence produced on behalf of the Opponents reveal that there are thousands of houses around the temple property belonging to different persons. Hence, I do not see any force in the submission on behalf of the Opponents to hold that CTS Nos.938 and 939 are the private properties of the deceased applicant. Thus, in the light of the above said documentary evidence, I hold that the properties bearing CTS No.930, 938, 939 and 946 were private properties of the predecessor of the deceased applicant. On the contrary, the properties bearing. CTS No.903, 904, 934 and 966 shown in the application as Temple Properties and also CTS No.933, 935, 936, 937, 940 and 941 are also the Temple properties and thus the Trust properties. In the application the valuation of only admitted properties is shown as Rs.6,855/- and no valuation has furnished in respect of the remaining Trust properties. There is no evidence with regards to the valuation of the said properties. However, having regard to the situation of the Trust property buildings, it can be stated that they may be fetching very high value. However, the valuation of these properties cannot be stated with certainty in the absence of evidence. Thus, the Point No.2 is answered holding that land in Sy.No.34 of Bommasandra measuring 4-acres and Sy.No.324 of Unakal measuring 5-acres 7-guntas and Sy.No.323 of Unakal measuring 5-acres 13-guntas, CTS Nos.934, 903, 904, 933, 936, 937, 940, 941 and 966 are the Trust Properties.

23. As regards the mode of succession, I am of the considered opinion that since Krishna D. Adoor the L.R. of the deceased Applicant in this application is only found to be inter-meddling with the properties, he is treated as a Manager of the Trust. He cannot be appointed as Hereditary Trustee. So, the interested persons in the Trust can very well move the District Court under Section 47 of the BPT Act or Section 50 of the BPT Act for appointment of other Trustees. In this regard it is

stated on behalf of the opponents that they have already filed an application before the Charity Commissioner in Inquiry No.8/96 seeking permission of file a suit for appointment of Trustee to the Trust property. Hence, in view of these special circumstances the Manager Krishna D. Adoor claiming himself to be the adopted son of Shankar Bistam Bhat Poojary @ Gosavi shall hold the office of Manager of the Trust till the new Trustees are appointed in accordance with law. Accordingly, the point Nos.4 and 5 are answered holding that Krishna D.Adoor claiming himself to be the adopted son of Shankar Bhat as Manager of the Trust in question and his term shall be till the appointment of Trustees in accordance with law.

ORDER

The application for registration is allowed. The Trust by name Vital Temple, Gavali Galli shall be registered as a Public Trust. The necessary details of findings on point No.1 to 14 given in the body of the order shall be entered in the PTR.

Sd/-

(R.S.PATIL)

Asst. Charity Commissioner,

Belgaum.

4. Aggrieved by the said order passed by the learned Assistant Charity Commissioner on 9.10.1996, the present appellant Sri. Krishna S/o Shankarbhat Pujari @ Gosavi approached the learned Principal District Judge, Dharwad by filing Misc. Appeal No.12/2007, which too came to be rejected by the learned Principal District Judge, Dharawd, returning the following findings:

28. The Hon ble Supreme Court came to the conclusion that the Assistant Charity Commissioner, is a Court for the purpose of contempt of Court Act. In view of the principles laid down by the Hon ble Apex Court, the Assistant Charity Commissioner deemed to be a Court for the purpose of contempt of Court Act. However, it cannot be said that the Assistant Charity Commissioner, is the civil

court for the purpose of declaring any rights of the parties. However, in this case the issue of adoption is incidental one in the inquiry for the purpose of giving finding on Trust Matters. It is also pertinent to note that the respondents have already filed a civil suit before the Civil Court at Hubli by disputing the adoption in OS No.71/1973 which came to be dismissed for non-prosecution. However, mere dismissal of the civil suit for non-prosecution that does not meant that the contention taken by the respondents was rejected. Once the Appellant himself failed to prove the valid adoption as per Law and when the respondents deny his adoption, though not the genitive parents or the adoptive parents, it is for the Appellant himself to prove the valid adoption as held by the Hon ble Supreme Court and mere production of the registered adoption deed is not enough. Therefore, I hold that the finding given by the Assistant Charity Commissioner, by rejecting the claim of the appellant who claims to be adoptive son of deceased Shankar Bhat, is legal and in accordance with law. Therefore, the said finding does not require to be interfered with by this Court. Hence, I hold that the Appellant has failed to prove that he is the adoptive son of deceased Shankar Bhat. Therefore, I uphold the finding given by the learned Assistant Charity Commissioner that the adoption deed produced by the Appellant is invalid.

29. The next ground urged by the appellant is that the learned Asst. Charity Commissioner, erred in holding that part of the property is belongs to the temple and part of the property belongs to the public trust. It is also contended that the documents were not properly appreciated by the Asst. Charity Commissioner even though the name of one Gangubai was mentioned who is the ancestor of the Appellant.

30. On perusal of the order passed by the Asst. Charity Commissioner, he has referred the Sanads Exs. P.5 to P.8 and P.11 issued in the name of one Jeevubai on 24-4-1925 in respect of C.T.S.No.NOs.933, 935, 940 and 941. The above said properties in C.T.S. Nos were the part and partial of C.T.S.No.214 as per Ex.P-15. Ex.P.15 the Sanad is also produced before the Court along with its typed version. Exs.P.14, P.15, P.17, P.18, P.19 and P.20 are the old Sanads in respect of C.T.S.Nos.214, 215, 216, 220 and 221. The typed copies were produced before the court where the Sanad refers to the Vahivatdar was in the name of one

Gangubai W/o Sukharam Baba and the dated was mentioned as 26-4-1883.

31. The counsel for the Appellant contended that the Vahivatdar means it is the owner of the property, therefore, he contended that the said property shall be considered as the private property of Gangubai. On the other hand the counsel for the Respondent contended that the Vahivatdar means only the manager of the property and not the owner. The extract in respect of the date 26-4-1883 which was translated in Kannada is produced before the court which shows that C.T.S. Nos.214, 215, 216, 220 and 221 belongs to Vithoba temple and the Vahivatdar was Gangubai W/o Sukharam Baba. No document is produced by the Appellant to show that Vahivatdar means the owner of the property but not the manager. In the normal course, Vahivatdar means the person in possession of the property. Admittedly Gangubai was in possession of the property and later he was inherited by her daughter. The Asst. Charity Commissioner also held that as per the first enquiry in Ex.P.1 the corresponding new C.T.S. No. in respect of the above old C.T.S. No. were 934. It also comes under old Sanad Ex.P.14 in Sy.No.220. Therefore, merely the name of Gangubai was mentioned as the Vahivatdar it can not be said that these properties belongs to said Gangubai but Vithoba temple is the owner of the said properties and she is only the manager or the Vahivatdar. Therefore, there is no illegality committed by the Asst. Charity Commissioner holding that C.T.S. No.930, 938, 939 and 946 were the private properties of the predecessor of deceased applicant and Sy.Nos.903, 904, 934, 966 are shown as the temple properties and C.T.S. No.933, 935 to 937, 940 and 941 are held as the temple properties and accordingly they are the trust properties.

32. The counsel for the Respondent contended that C.T.S.No.930, 938, 939 and 946 were also to be declared as the Trust properties. But the enquiry held by the Asst. Charity Commissioner is based upon the documents as well as oral evidence. Therefore, no other document is produced by the Respondent counsel to prove the contrary that these properties were also the trust properties. It is also seen from Exs.P.9 and P.13 that C.T.S.No.938 and 939 which were in the Sanad in respect of old C.T.S.No.221 in Ex.P.18, these two properties were shown in the name as Jeevubai and the predecessor name was shown as Gangubai. The learned Asst. Charity Commissioner, held that merely these two properties were

situated surrounding the temple that can not be said to be belongs to the temple. Therefore, the contention taken by the counsel for the respondent that the said property situate around the temple abutting or adjacent to the other properties of the temple, on that basis it can not be claimed that they are also the temple properties. Apart from that the Respondent has not filed any cross appeal in respect of enquiry held by the Asst. Charity Commissioner holding that the CTS No.930, 938, 939 and 946 were the private properties. Therefore, what is held by the Asst. Charity Commissioner which was not challenged, the same has ended in finality and now he can not claim in the course of the arguments that the order shall be set aside. All the new C.T.S. extracts form part of old C.T.S. No. in respect of C.T.S.No.214, 215, 216, 220 and 221. Therefore, in these documents it is clearly mentioned that Gangubai was the only Vahivatdar. It is also that by the Asst. Charity Commissioner that one of the relatives of the Appellant was working in the Survey Department and without making any enquiry he has changed the C.T.S. by mentioning the name of the predecessor of the appellant. The Charity Commissioner also held that one Narasinga Rao Kalaghatagi, who was P.W.3 he was also examined in enquiry No.302/1957 where Sy.No.323 of Unakal stands in the name of the Deity and the name of his brother was shown as the Vahivatdar. Such being the case Unakal lands were gifted to the Deity by the private persons. The learned Asst. Charity Commissioner held that Sy.No.2/323 of Unakal was also the temple property. The reasons given by the Asst. Charity Commissioner are sound, reasonable and based upon the documentary evidence other than oral evidence. Therefore, the contention taken by the Appellant can not be acceptable that the properties C.T.S.No.933, 935, 936, 937, 940 and 941 should be held as the hereditary properties of the Appellant and he shall be declared as hereditary trustee of the Vithoba temple.

33. The counsel for the appellant during the course of arguments relied upon various rulings of the Hon ble Supreme Court and the Hon ble various High Courts reported in AIR 1997 Allahabad 413 in case of Satyanarayan Mandir Vs. Rajendra Prasad wherein it is held that the applicability of the trust shall be established and the members were allowed to Darshan is no the evidence to indicate creation of endowment either religious or charitable. In another decision reported in AIR 1981 SC 798 in case of Radheshyam Vs. Commissioner of Hindu Religious and

Endowment Orissa it is held that the public are not debarred from entering into the temple and worshiping the deity but their entry into the temple is not as of right and this is one of the cordinal test of endowment. In an unreported ruling of our Hon ble High Court in MFA No.226/1997 (DB) in case of Anant Nagesh Vs. Lakshman Basappa it is held that the people were allowed to have Darshan in the festival would not convert the private property to be the public temple. The Hon ble High Court held that it requires to find out the history of the temple. But in this case, the appellant has not been able to establish the history of the temple. But it is seen from the records that the income of the temple is by way of Kanika and Pooja done by the public. Apart from that Narasing Rao Kalaghatagi, who was examined as PW3 in enquiry No.302/57 gifted the property in the name of deity in respect of the property bearing CTA No.323 of Unakal. Such being the case most of the properties were gifted by the public. Therefore, the contention of the Appellant that merely the publics were allowed to perform the Pooja that itself cannot be said to be the public property, is not acceptable. Therefore, the observation made by the learned Assistant Charity Commissioner, that the appellant who claims to be adoptive son of Shankarbhat Poojari @ Gosavi, he was holding the office of the trust till new trustees are appointed in accordance with law, is legal and reasonable. Therefore, for the reasons stated above, the appeal fails and does not require interference by this Court in the appellant jurisdiction. Hence, I answer Point No.1 in the Negative.

34. Point No.2: For the reasons, I proceed to pass the following:

ORDER

The appeal filed by the Appellant is hereby dismissed.

No order as to costs.

5. Aggrieved by the same, the appellant has preferred the present appeal before this Court.

6. Learned counsel for the appellant, Sri. Shrikant T Patil, has urged before us that the learned Courts below have erred in holding that the certain properties, which

were personal properties of the ancestors of the present appellant will also be included in the said Trust properties of the Public Trust, which was directed to be registered as Public Trust by the learned Assistant Charity Commissioner under his order dated 9.10.1996 impugned before the learned Principal District Judge and similarly, the learned Principal District Judge has erred in upholding the same.

7. On the other hand, the learned counsel, Sri.C.N.Harlapur, appearing for respondent No.2, has opposed the aforesaid submissions of the learned counsel for the appellant and he submitted that in the present long drawn litigation by the present appellant and his father Shankarbhat Pujari, right from 1957, the findings of the Court below are that they are not the owners of the said property and the said Vithoba Temple is a Public Temple and the Trust is managing the affairs of the said Temple and it was directed to be registered as a Public Trust by the order of the learned Assistant Charity Commissioner.

8. He also drew our attention towards the order passed by this Court in an Eviction matter pursued by the present appellant as landlord in HRRP No.35/1996, Sri. Krishna Vs. R. Kapilnath, vide order dated 11.04.1996, the learned Single Judge of this Court held that the present appellant failed to establish that he is the owner of the said property in question and giving him a liberty to establish his title in a properly instituted suit before the Civil Court, however, the Court upheld the order of eviction treating him as a landlord within the meaning of Section 21(1)(p) of the Karnataka Rent Control Act, as being the Rent Collector.

9. The said eviction order was taken to the Hon ble Supreme Court by the tenant R Kapilnath in Civil Appeal No.2474/1999 and while deciding IA No.5 in the said Civil Appeal, the Hon ble Supreme Court in its order dated 25.04.2003, observed as under:

The Court below has held in the judgment dated 13.12.2002 that Shankar Bhat has through a registered deed of adoption, adopted the respondent as his son, who is presently Pujari and Manager of the temple and that finding in the said judgment is not a final finding adjudicating upon the factum, validity or illegality of the adoption and the present proceedings decided only a landlord tenant dispute. The Court has only upheld that the respondent being a Rent Collector was a

landlord within the meaning of the Karnataka Rent Control Act, 1981 and hence, entitled to institute a suit for eviction. The question as to adoption shall be determined in appropriate proceedings by a competent Court, uninfluenced by the above said observation made by this Court.

10. Thus, in the said long litigation drawn by the present appellant and so called adopted father Shankarbhat Pujari, the Courts have consistently held against them and for proving the adoption of Sri Krishna by the said person Shankarbhat Pujari, he had to approach the competent Civil Court for declaring his adoption to be legally valid in the eye of law.

11. As far as the title of the property of the present appellant is also concerned, despite query of the Court, the learned counsel for the appellant has failed to produce any evidence before us or any document already on record for title or showing his institution of any proper civil suit claiming for declaration of the title of the suit property in question or even part thereof or for adoption to be declared as a valid adoption.

12. Thus, we are satisfied that there is no evidence on record before us either proving the adoption of the present appellant by the said Shankarbhat Pujari or his title over the said property of the Public Trust.

13. Thus, we do not find any error in the reasons and findings given by the learned Principal District Judge in the order dated 29.03.2011 or findings of the learned Assistant Charity Commissioner, Belgaum in the order dated 9.10.1996.

14. Hence, the present miscellaneous first appeal is devoid of merit and the same is liable to be dismissed.

15. Accordingly, the present miscellaneous first appeal is dismissed. No costs.

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