

Reserved On : 28/07/2026
Pronounced On : 04/08/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2292 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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MADANLAL RADHELAL BANSAL & ORS.

Versus

AGRAWAL SAMAJ TRUST DAHOD & ORS.

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Appearance:

ABATED for the Appellant(s) No. 3

CHINTAN K GANDHI(8600) for the Appellant(s) No. 1,2,4,5

MR N P PANDYA(11241) for the Appellant(s) No. 1,2,4,5

DELETED for the Defendant(s) No. 5,6

FRESH RULE NOT RCVD BACK for the Defendant(s) No. 1

MR SHAILESH DESAI, AGP for the Defendant(s) No. 4

MANAN K PANERI(7959) for the Defendant(s) No. 2,3

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. By way of this First Appeal filed u/s 72(4) of the Bombay Public Trust Act, 1950 (in short "the Act"), the appellants call in question legality and validity of impugned judgment and order dated 9.5.2018 passed by the learned 3rd Addl. District Judge, Dahod in Trust Application No.1 of 2004 whereby the learned appellate Court dismissed said application.

2. For the sake of convenience and brevity, parties are referred to as per their original status before the learned trial Court.

3. Brief facts of the case are as under:-

3.1 The Appellants had filed a petition under Section 56 of the Act, claiming that plot numbers 13, 14, 15, 28, 32 and 33 (in short "suit properties") had been purchased by Respondent No. 2 out of the trust fund.

3.2 The Appellants sought a direction from the Court to treat the suit properties as immovable properties of the trust, and to initiate proceedings under Section 22 of the Act. The Appellants further sought a direction restraining the Respondents from selling the said immovable properties without obtaining permission under Section 36 of the Act.

3.3 Respondent No. 1, Shri Agarwal Samaj Trust, is stated to be a registered public trust bearing trust registration No.A-452. The respondent trust is registered under the Act on 7.10.1980.

3.4 The Appellants are stated to be the trustees of Respondent trust, elected pursuant to a general body meeting dated 4th June 1989. Proceedings to register their names in the trust record are stated to be pending vide Change Report

No. 471 of 1989.

3.5 Respondent No. 2 and 3 were the erstwhile President and Secretary of Respondent No. 1 Trust. It is alleged that they were in breach of public trust by mismanaging and misusing the trust funds, purchased immovable property in their personal names/capacity.

3.6 In general body meeting dated 4th June 1989, it was decided to restrain Respondent No. 2 and 3 from carrying on any activity injurious to the trust. It is further alleged that although it was the duty of Respondent No. 2 and 3 to place the trust's account of transactions before the general body meeting, they refused to do so.

3.7 It is alleged that under Clause 13(5) of the Constitution of the Trust, any movable or immovable property purchased out of trust funds becomes trust property, but that Respondent No. 2 and 3, in disregard of this clause, purchased the aforesaid immovable property in their personal name and attempted to dispose of the same. On the basis of the pleadings, the Appellants had preferred a petition under Section 56(A) of the Act claiming following relief:-

"1 It is prayed to issue suggestions, instructions as well as directions to the present opponents to carryout procedure under Section 22 to register all the immovable properties mentioned in Annexure-A, the copies of the registered sale deeds of the

same are enclosed herewith, as the property of the public trust of Opponent No. 1 in the office of the Assistant Charity Commissioner, Nadiad.

- 2 It is prayed to issue suggestions, instructions as well as directions to the present Opponents No. 2 and 3 that they shall not transfer or get transferred the properties mentioned in Annexure-A in any manner to any person or persons, except with the permission under Section 36 of the Joint Charity Commissioner, Vadodara Division, Vadodara, and they shall not accept any amount or consideration of any kind for the same.*
- 3. It is prayed to issue suggestions, instructions and directions to the present Opponents No. 2 and 3 that they shall hand over the complete details of any financial transactions of the public trust of Opponent No. 1 carried out by them during the period of their tenure as a member/trustee of the managing committee, along with all the records, to Applicant No. 1 and obtain a written receipt for the same.*
- 4. It is prayed to issue permanent directions to the present Opponents No. 2 and 3 that they shall not carryout or make someone to carryout any procedure regarding the properties mentioned in Annexure-A, except the resolution of the trustees recorded at the relevant time in the Public Trust Register Schedule-1 which is kept at the Public Trust Registration Office. Moreover, it is also prayed to caution them that they shall not carry out or get carried out any transaction in any manner without obtaining the necessary prior permission as per the provisions of law.*
- 5. It is prayed to issue suggestions, instructions and directions that whatever original documents are in the possession of Opponents No. 2 and 3 pertaining to the properties mentioned in Annexure-A, they shall hand them over to Applicant No. 1 and obtain a receipt for the same.*

6. *In the above-mentioned circumstances stated in the application by us the applicants, it is prayed to issue any suggestions, instructions and directions deemed fit for the protection of the interest of the trust and the beneficiaries.*
7. *It is prayed to get cost of this application from the opponents."*

3.8 The trust application was registered and treated as a suit under Section 50 of the Act, and by the impugned judgment and order, it was dismissed.

3.9 Being aggrieved, the Appellants preferred this appeal having nomenclature of Second Appeal.

4. Heard learned advocate Mr. Chintan Gandhi for the appellants, learned AGP Ms. Dhvani Tripathi for the respondent Charity Commissioner and learned advocate Mr. Manan K. Paneri for the private respondents.

5. Assailing the impugned judgment and order, learned advocate Mr. Chintan Gandhi would submit that the learned District Court committed serious error in converting the application filed under Section 56(A) of the Act into a suit under Section 50 of the Act, and thereafter dismissing the said suit on the ground that it had been instituted without permission of the Charity Commissioner. He would further

submit that the Charity Commissioner was in fact a party to the suit proceeding, and that this was sufficient to satisfy the requirement of notice and prior permission. He would further submit that the learned District Court therefore, erred in dismissing the suit on the ground that no previous permission under Section 51 of the Act had been obtained prior to institution of the suit.

5.1 Secondly, learned advocate Mr. Chintan Gandhi would submit that allegation had been levelled against Respondent No. 2 and 3 that they had purchased immovable property out of trust funds, and that the burden lies on the Respondents to prove that the properties were purchased from their own funds. He would further submit that the Respondents failed to discharge this burden, and yet, the learned District Court erred in dismissing the matter.

5.2 Lastly, learned advocate Mr. Chintan Gandhi would submit that the primary ground on which the suit dismissed was the application of the principle of *res judicata*. The learned District Court held that in Trust Application No. 3 of 2004 (Exhibit 162), the competent District Court had decided that the property in dispute was the personal property of the Respondents, and that the same issue could not be re-litigated in Trust Application No. 1 of 2004. He would further submit that Trust Application No. 3 of 2004 had been moved by Mr. Shah Govindram Pyarechand, one of the trustees of the trust. Being aggrieved by the judgment and order passed in Trust

Application No. 3 of 2004, he had preferred First Appeal No. 2120 of 2009. It was submitted that during the pendency of the said appeal, he expired, and the Coordinate Bench of this Court disposed of First Appeal No. 2120 of 2009 as abated, makes it clear that the issue had not attained finality. He would further submit that the learned District Court therefore, wrongly applied the principle of *res judicata*, and that in any event, the parties in Trust Application No. 3 of 2004 and Trust Application No. 1 of 2004 were different and distinct, such that the principle of *res judicata* would not apply.

5.3 Upon above submissions, learned advocate Mr. Chintan Gandhi prays to allow this first appeal by quashing and setting aside the impugned order.

6. On the other hand, learned AGP, in the facts and circumstances of the case, prays to pass necessary orders.

7. Learned advocate Mr. Manan Paneri appearing for the private respondents relied on the order in First Appeal No. 2120 of 2009 and submitted that the finding of the District Court in Trust Application No. 3 of 2004 that the immovable property belonged to the Respondents as their private property remained undisturbed, as the first appeal had been disposed of as abated. He would further submit that in view thereof, the issue raised in the present appeal (arising from Trust Application No. 1 of 2004) was barred by the principle

of *res judicata*, and that the appeal be dismissed.

7.1 Upon above submissions, learned advocate Mr. Manan Paneri prays to dismiss the first appeal.

8. Having heard learned counsel for both sides and considering the rival submissions along with the impugned judgment and order as well as record and proceedings, at the outset, following questions arise for determination:-

(1) Whether the learned District Court was right in applying principle of *res judicata* to discuss trust application No.1 of 2004?

(2) Whether the judgment and order in trust application No.3 of 2004 would operate as *res judicata* in the decision of trust application No.1 of 2004 despite petitioner in both the applications are different persons?

(3) Whether on abating First Appeal No.2120 of 2009, decision / judgment in trust application No.3 of 2004 has attained finality?

(4) What order?

9. The judgment in Trust Application No. 3 of 2004 is on record as Exhibit 162. In a detailed judgment, the District Court had held that the immovable property in question was purchased by the Respondents from their own funds. In doing so, the learned District Court reversed the finding of the Joint

Charity Commissioner in Appeal No. 2 of 1996 (delivered under Section 70 of the Act), by which the Joint Charity Commissioner had reversed the order of the Assistant Charity Commissioner in Change Report No. 239 of 1987 and had directed that the immovable property be recorded as trust property. This finding was, however, reversed by the District Court.

9.1 Apt to note that, immovable property being subject matter in trust application No.1 of 2004 & trust application No.3 of 2004, is one and the same.

10. What further could be noticed that the proceeding in Trust Application No. 3 of 2004 was initiated by one of the trustees, Mr. Shah Govindram Pyarechand. He filed First Appeal No. 2120 of 2009 before this Court, but died during the pendency of the appeal. None of the other trustees of the trust chose to exercise the option of joining the appeal proceedings, and consequently the appeal stood disposed of as abated.

11. At this juncture, let refer Order 22 Rule 10 of the Code of Civil Procedure, 1908 as under:-

“10. Procedure in case of assignment before final order in suit.

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

12. In terms of Order 22 Rule 10 of the Code of Civil Procedure, where a trustee of a trust has died, another trustee to whom the interest of the trust has been devolved may continue the proceedings. In the present case, however, the surviving trustees did not choose to continue the proceedings in First Appeal No. 2120 of 2009 filed by one of the trustess Mr. Govindram Shah and such First Appeal was abated. Thus, the finding in Trust Application No. 3 of 2004 attained finality.

13. This Court notes that learned counsel Mr. Gandhi for the Appellants could not distinguish the fact that the relief claimed in Trust Application No. 3 of 2004 and Trust Application No. 1 of 2004 were not the same, namely, that the immovable property in question be treated as trust property, purchased from trust funds.

14. Apt to note that the principle of *res judicata* prevents a court from trying any suit or issue in which the matter directly and substantially in issue has already been directly and substantially in issue in a former suit between the same parties, under the same title. The phrase in section 11 of the Code attracts is "between parties under whom they or any of them litigating under the same title". The Court found that in the present case, Mr. Shah Govindram Pyarechand had

litigated as a trustee of the trust. Likewise, the Appellants are also litigating as trustees of the trust, i.e., under the same title. The Court found that the relief claimed and the respondents are the same in both proceedings, and that the issue in Trust Application No. 3 of 2004 (as decided by the competent court) was directly and substantially the same as the issue in Trust Application No. 1 of 2004. On this basis, the District Court held that Trust Application No. 1 of 2004 was barred by the principle of *res judicata*. According to this Court, the finding to that effect did not suffer from any infirmity. The issue in dispute since has been judged by the competent Court in previous decision, it prevents/stops Court from trying new suit or issue that has already been directly & substantially decided in former suit between same party or between the party under whom they or any one of them litigating under same title.

15. At this juncture, let refer the judgment of the Hon'ble Apex Court in case of ***Sri Gangai Vinayagar Temple Versus Meenakshi Ammal, 2015 (3) SCC 624***. Para 31 and 32 are relevant, which read as under:-

"31. Viewed in this manner, we think it is an inescapable conclusion that an appeal ought to have been filed by the Tenant even in respect of O.S. 5/78, for fear of inviting the rigours of res judicata as also for correcting the "dismissal" order. In our opinion, the Tenant had been completely non-suited once it was held that no cause of action had arisen in its favour and the suit was 'dismissed'. Ignoring that finding and allowing it to become final makes that conclusion impervious to change. In Sheoparsen

Singh V/s. Ramnandan Prasad Singh, (1915-16) 43 I.A.91, the Privy Council opined - "Res judicata is an ancient doctrine of universal application and permeates every civilized system of jurisprudence. This doctrine encapsulates the basic principle in all judicial systems which provide that an earlier adjudication is conclusive on the same subject matter between the same parties." The raison d'etre and public policy on which Res judicata is predicated is that the party who has raised any aspect in a litigation and has had an Issue cast thereon, has lead evidence in that regard, and has argued on the point, remains bound by the curial conclusions once they attain finality. No party must be vexed twice for the same cause; it is in the interest of the State that there should be an end to litigation; a judicial decision must be accepted as correct in the absence of a challenge. The aspect of law which now remains to be considered is whether filing of an Appeal against a common Judgment in one case, tantamount to filing an appeal in all the matters.

32. The application of res judicata, so very often, conjures up controversies, as is evident from the fact that even in this Court divergent opinions were expressed by the two Judge Bench, leading to the necessity of referring the appeal to a Larger Bench. It was for this reason that we thought it appropriate to deal with the dispute in detail. It seems to us that had the decisions of the three Judge Bench in Lonankutty and Prabhu been brought to the attention of our Learned and Esteemed Brothers on the earlier occasion when this appeal was heard by two Judge Bench, the dichotomy in opinion would not have arisen. The outcome of the appeal before the High Court would have also shared a similar fate."

15. Applying the aforesaid legal dictum to the facts of the case, the Court found that the learned District Court had not committed any error, much less an error of law. Hence,

present First Appeal requires fate of dismissal.

16. Resultantly, present First Appeal fails and stands dismissed.

17. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

(J. C. DOSHI,J)

FURTHER ORDER

After pronouncement of the judgment, learned advocate Mr. Chintan Gandhi requests to suspend the execution, implementation and operation of this judgment for a period of four weeks so as to enable the appellants to approach the higher forum. For the reasons stated herein above, the request is refused.

(J. C. DOSHI,J)

SHEKHAR P. BARVE