

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO. 850 OF 2022

WITH

INTERIM APPLICATION NO. 17715 OF 2022

Pramod Vasudeo Baria

.. Appellant

Versus

Salim Abdul Shaikh and Ors.

.. Respondents

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Mr. Vishal Kanade a/w Ms. Tanaya Patankar, Mr. Kartik Tiwari, Mr. Devang Shah, Mr. Aditya Kandha i/b M/s. Lakshyavedhi Legal, Advocate for the Appellant.

Pramod Vasudeo Baria, Appellant present in person.

Mr. Mayur Khandeparkar i/b Mr. Sanjeev Singh a/w Mr. Ritesh Singh and Mr. Siddhant Mishra, Advocate for the Respondents.

CORAM: FIRDOSH P. POONIWALLA, J.

RESERVED ON: DECEMBER 19, 2025

PRONOUNCED ON : JUNE 9, 2026

P. C.

1. This Appeal from Order is filed by original Defendant No.4 challenging the Order dated 15th June, 2018 passed by the Bombay City Civil Court at Dindoshi, Goregaon, Mumbai, allowing Notice of Motion No. 2165 of 2016 in terms of prayers (a) to (e) which read as under :

“a. Pending the hearing and final disposal of the present suit this Hon'ble court be pleased to stay the implementation and the operation of the consent term filed on 17.01.2015 in suit no. 3015 of 2014 and further the consent decree drawn in respect thereto being Exh-E colly hereto.

b. Pending the hearing and final disposal of the present suit this Hon'ble court be restrain the defendants, their servants and/or agents and/or representatives and/or any persons claiming through or under them from interfering, causing any disturbance and/or obstruction and/or restraining with the plaintiffs and other followers of Dargah either belonging to the Muslim community or otherwise from attending the said Dargah, offering prayer, carrying out any religious functions, and/or performing their religious functions throughout the day as per their religious requirement and belief and on all days and further be directed to keep open the gate for ingress and egress to the said Dargah abutting to the chincholi bunder road.

*c. Pending the hearing and final disposal of the present suit the defendants be restrained by order and injunction of this Hon'ble court from representing themselves as the owner of the suit property and the Defendant No 4 be restrain from representing themselves as the lessee of the suit property viz. ALL that piece and parcel of land bearing CTS No. 16A & 16A/1 adms. 151.34 sq. mtrs., of Village: Chincholi, Taluka: Borivali in the registration district and sub-district of Mumbai City and Mumbai suburban, situate, lying and being at Chincholi Bunder Road, Nr. Kingston Apartment, Malad (W), Mumbai-400 06 more particularly shown in ___ colour boundary line in the Plan being Exh-A hereto pursuant to the Deed of Lease dated 20.10.2012 being **Exh-G** hereto and further be restrained from using and/or acting upon the said Deed of Lease dated 20.10.2012 being **Exh-G** in any manner whatsoever.*

*d. Pending the hearing and final disposal of the present suit, the defendants be restrained by an order and injunction of this Hon'ble Court from representing themselves as an owner of the suit property as mentioned in prayer clause (c) above to any third person/s pursuant to the Deed of Lease dated 20.10.2012 being **Exh-G** hereto and further be permanently restrained from using and/or acting upon the said Deed of Lease dated 20.10.2012 being **Exh-G** hereto, in any manner whatsoever.*

e. Pending the hearing and final disposal of the present suit, the defendants, their servants and/or agents and/or representatives and/or any persons claiming through or under them be restrained by an order and injunction of this Hon'ble Court from dealing with, selling, transferring, alienating, encumbrances, disposing of, and creating any third party in respect of the suit property as mentioned in prayer clause (c) above in any manner whatsoever.”

2. In this Judgement, the parties will be referred to as per their nomenclature in the Suit.
3. The facts of the case are not separately set out as they are referred to in the submissions of the Counsel for the parties, which are set out herein below.

**SUBMISSIONS OF THE APPELLANT (ORIGINAL DEFENDANT
NO.4)**

4. Mr. Vishal Kanade, the learned counsel appearing on behalf of the Appellant (original Defendant No.4), submitted as follows :
 - a) One Jivanji Pestonji Goregamwala was in exclusive use, occupation, possession and ownership of a plot of land bearing Survey no. 5A, Hissa No.1, corresponding to CTS No.16A admeasuring 527.6 sq.meters, 16A/1 admeasuring 191.6 sq. meters and 16B admeasuring 543.5 sq. meters situated at village Chincholi, Taluka Borivali.

b) During the lifetime of the said Mr. Goregamwala, he constructed Dargah of "Sayed Khwaja Moinudin Chisty" on a portion of the said property admeasuring 24' x 20'. He used to keep the Dargah open for the public every Thursday between 4 p.m. and 7 p.m.

c) The said Mr. Goregamwala executed a Will dated 11th February, 1956 which contained a specific reference to a Dargah in paragraph 8 which reads as under :

"8 I am absolutely seized and possessed of the immovable properties in Malad in Greater Bombay as under and nobody has any claim of any kind over the same. They have been purchased or acquired out of my own money :-

a) _ _ _

f) *A Dargah built by me in Chincholi along with the lands adjoining thereto and which is my own private property and nobody has any claim over the same for worship or otherwise. It has not been dedicated by me for public use".*

d) On 26th April, 1959, Mr. Goregamwala passed away and after his death, a Private Trust was created in respect of the said entire plot of land by the name of Late Jivanji Pestonwala Goregamwala Family Private Trust.

e) On 20th June, 1961, the Executors of the Will of Mr. Goregamwala obtained a probate in respect of his Will dated 11th February, 1956.

f) By an Order dated 21st January, 1953, the Deputy Charity Commissioner had declared the Dargah as a Public Trust. In 1991, Mrs. Banoobai Elavia, Mr. Homi Elavia and Mr. Hoshang Desai filed a Revision Application under Section 70A of the Bombay Public Trusts Act, 1950, challenging the said Order dated 21st January 1953, passed by the Deputy Charity Commissioner declaring the Dargah as a Public Trust, and, in the alternative, sought for a correction of the clerical mistake in the P.T Register, Schedule 1 wherein the entire area land of 1066 sq. yards, including the area of Dargah of 24' x 20', was shown as Public Trust Property.

g) By an Order dated 26th August, 1991, the Charity Commissioner recorded the statement of the Applicants that they would not mind if the Dargah continued as a Public Trust as registered by then the Deputy Charity Commissioner as per his Order dated 21st January, 1953. However, the Charity Commissioner was pleased to hold that, in the original record, the structure of the Dargah was shown as 24' x 20', and therefore only an area of 24' x 20' would be considered as a Public Trust, and not the total property of 1066 sq. yards.

h) on 18th February 1999, the Trustees of the Late Jivanji Pestonwala Goregamwala Family Trust, i.e. Defendant Nos. 1 to 3, executed a tenancy agreement with Defendant No.4 in respect of a plot

of land admeasuring 150 sq. meters out of the total plot of land bearing CTS No. 16A and 16A/1 .

i) The Trustees of the said Trust, i.e. Defendant Nos. 1 to 3, executed a Deed of Lease dated 16th November, 2021, in favour of Defendant No.4 in respect of a plot of land admeasuring 150 sq. meters out of the total plot of land bearing CTS No. 16A and 16A/1, for a period of 999 years, effective from the 1st day of November, 2011, for the purpose of development of the said premises and/or for conducting commercial activities thereon.

j) Further, Defendant Nos. 1 to 3 also executed a Deed of Lease dated 20th October, 2012 in favour of Defendant No.4 in respect of a plot of land, admeasuring 151.34 sq. meters. As per clause 3(f) of the said Deed dated 20th October, 2012, it was agreed that Defendant No.4, i.e. the lessee, would keep the main gate of the demised premises open for any person on every Thursday between 4 p.m and 7 p.m. in order to facilitate the concerned persons to enter into the Dargah. It was further agreed that the entry of the concerned persons shall be limited only to entering the Dargah and the lessee could prevent such persons from loitering around the premises.

k) On 18th December, 2014 Defendant Nos. 1 to 3 filed a Suit No. 3015 of 2014 against Defendant No.4 *inter alia* seeking a declaration

that the lease deed dated 20th October, 2012 is valid, subsisting and binding and that Defendant No.4 had no right to commit any breach of Clause 3(f) of the said lease deed.

l) On 17th January, 2015, Suit No. 3015 of 2014 came to be withdrawn as disposed of in terms of Consent Terms entered into between the parties. By the said Consent Terms, Defendant No.4 agreed to keep the main gate open for entry of concerned persons to reach the Dargah on every Thursday between 4 p.m. and 7 p.m. It was further agreed that Defendant No.4 shall keep a 4 feet wide approach road from the main gate to the Dargah, demarcating the dividing line between the property let out to him and access to the Dargah, and, if necessary, erect a compound wall to avoid any inconvenience to visitors of the Dargah on Thursday between 4 p.m. to 7 p.m.

m) In 2015, the present Suit No. 2298 of 2015 came to be filed by the Plaintiffs claiming that the cause of action arose on 4th February, 2015 when the devotees were restrained from offering prayers at the Dargah.

n) On these facts, Mr. Kanade submitted that the Plaintiffs have admitted that they are not the owners of the Suit Property nor do they have any interest in the Suit Property i.e. the piece and parcel of land bearing CTS No. 16A and 16A/1 admeasuring 151.34 sq. meters at

Chincholi, Taluka Borivali. Further, Mr. Kanade submitted that the Plaintiffs are admittedly only worshippers and devotees who cannot claim any right or interest in the Suit Property. Further, Mr. Kanade submitted that the public trust property is only the Dargah admeasuring 24'x20' and not the Suit Property as held by Order dated 26th August, 1991 passed by the Charity Commissioner, which had not been challenged and had attained finality.

o) Further, Mr. Kanade submitted that Consent Terms dated 17th January, 2015 are executed between the lessor and the lessee and the Plaintiffs have no locus in the property. Mr. Kanade submitted that the Plaintiffs are admittedly not even parties to the interse Suit between Defendant Nos. 1 to 4.

p) As far as setting aside the lease deed dated 20th October, 2012 is concerned, Mr. Kanade submitted that it is an admitted fact that the Plaintiffs are not the owners or occupiers or possessors or tenants of the Suit Property. They do not have any right, title or interest in the Suit Property.

q) Mr. Kanade also referred to the Judgement of the Hon'ble Supreme Court in *Ajanta LLP Vs. Casio Keisanki Kabushiki Kaisha D/B/A Casio Computer Ltd & Anr. (2022) 5SCC 449*.

r) Mr. Kanade submitted that the Appellant (original Defendant No.4) is willing to make a statement that access will be given to the worshippers and devotees to the Dargah on all days, throughout the day, and that the Defendant No.4 will build a compound wall around the Dargah. Mr. Kanade submitted that this statement of the Appellant (original Defendant No.4) can be recorded and the impugned order set aside.

SUBMISSIONS OF RESPONDENT NOS. 1 TO 11 (ORIGINAL PLAINTIFFS)

5. Mr. Mayur Khandeparkar, the learned counsel appearing on behalf of Respondent Nos. 1 to 11 (original Plaintiffs), submitted as under :

a) On 28th March, 1931, one Jivanji Pestonji Goregaonwala purchased land baring Survey no. 5A, Hissa No.1 (now corresponding to CTS Nos. 16A, 16A/1 and 16B) admeasuring 1066 sq. yards at village Chinchavali, Malad (West), Mumbai.

b) By an Order dated 21st January, 1953, passed by the Deputy Charity Commissioner in Application No. BT. 19.14 filed by Jivanji

Pestonji Goregaonwala raising objections to the existence of the Public Trust (Dargah), it was held and confirmed that the Public Trust (Dargah) does exist, and directions were issued to register the said Public Trust and to issue a certificate accordingly. Pursuant thereto, the Public Trust came to be registered as 'Sayyed Khwaja Mohinuddin ChisteDurgah, Chinchavli'. The said property was brought on record in the Public Trust Register, Schedule-1, indicating that the property is public property. In the said Order it was specifically observed that Muslims come and offer Fatia at the Dargah, and therefore the Muslim public have a right to visit the Dargah . It was further held that it is not proved by any independent evidence that the Applicant kept the Dargah close for a day as alleged and that the Dargah had been made use of by the Muslim community.

c) A Revision Application was filed by Mrs. Banoobai Cawasji Elavia, Mr. Homi Cawasji Elavia and Hoshang Dinshwaji Desai before the Charity Commissioner, Bombay, seeking a declaration that the Dargah in question is not a Public Trust and that its registration as a Public Trust pursuant to the Order dated 21st January, 1953 passed by the Deputy Charity Commissioner be set aside, and further, that the Dargah be declared as a Private Trust. By an Order dated 16th August, 1991, the

Chairty Commissioner confirmed that the Dargah is a Public Trust, however he corrected the extent of the trust property by reducing the area from 1066 sq. yards to 24' x 20', holding that only the structure of the Dargah admeasuring 24' x 20' forms part of the trust property.

d) In 1992 the entire CTS No. 16/B was acquired for road widening. Consequently, the balance area of CTS No. 16/A now remained as admeasuring 527.6 sq. mtrs, and CTS No.16/A/1 remained as admeasuring 191.6 sq. mtrs., including the Dargah land.

e) By a Lease Deed dated 16th April, 1992, Defendant Nos. 1 to 3 leased the land bearing CTS No. 16A admeasuring 377.81 sq. mtrs and CTS Nos. 16A/1 admeasuring 64.69 sq. mtrs to one Noshir Maneckji Elavia, who thereafter constructed a building thereupon named "Elavia Manor".

f) Consequently, the balance area, including the trust property, remained as follows : CTS No.16A admeasuring 149.79 sq. mtrs and CTS No.16A/1 admeasuring 127.11 sq. mtrs, aggregating to a total of 276.90 sq. mtrs.

g) By a Lease Deed dated 16 November, 2011, Defendant Nos. 1 to 3 leased land bearing CTS No.16A and 16A/1 admeasuring in aggregate 150 sq. mtrs, i.e., CTS No. 16A admeasuring 83.50 sq. mtrs and CTS

No.16A/1 admeasuring 66.50 sq. mtrs. to Defendant No.4 for a period of 999 years on the ground rent of Rs.1 per year. Consequently, the balance area, including the Trust property, now remained as CTS No.16A admeasuring 66.29 sq. mtrs and CTS No.16A/1 admeasuring 60.61 sq. mtrs.

h) By a Lease Deed dated 20th October, 2012, Defendant Nos. 1 to 3 leased land bearing CTS No. 16A and 16A/1 admeasuring 151.34 sq. mtrs. i.e. CTS No.16A admeasuring 95.96 sq. mtrs and CTS No. 16A/1 admeasuring 55.38 sq. mtrs, which included the Dargah structure, for a period of 999 years, at the yearly rent of Rs.1, to Defendant No.4.

i) Mr. Khandeparkar submitted that Ready Reckoner value of the said land was Rs. 71,83,000/-. Further, he submitted that if, after execution of the Lease Deed dated 16th November, 2011, the remaining area available was only 126.19 sq. mtrs (including the Dargah land), it was inexplicable how the lease deed dated 20th October, 2012 came to be executed for an area of 151.34 sq. mtrs, which admittedly included the Dargah land. Mr. Khandeparkar submitted that the sketch plan at page 328 of the memo of Appeal, forming an integral part of the said Lease Deed, specifically acknowledges and admits that the area 151.34 sq. mtrs includes the structure of the Dargah. Mr. Khandeparkar further

submitted that, in the said Lease Deed, the Defendants, with the deliberate intent to restrict the rights of the Plaintiffs and other followers of the Dargah, incorporated a clause to Suit their own convenience, whereby the entry through the main gate of the demised premises was permitted to any person only on Thursday between 4 p.m. to 7 p.m., despite the fact that the Dargah had, at all times, remained open to the public and its followers throughout the week. Mr. Khandeparkar further submitted that a condition was also incorporated to the effect that, under certain circumstances, the lessee would be at liberty to restrict persons from entering the demised premises.

j) Mr. Khandeparkar also submitted that it had been suppressed by the Plaintiff in Suit No. 3015 of 2014 that the Defendants procured the appointment of the Appellant (original Defendant No.4) as Trustee of Sayyed Khwaja Mohinuddin Chiste Durgah, and that Defendant Nos. 1 and 2 subsequently resigned from the said Trust.

k) On 16th October, 2014, Defendant No.4 attempted to encroach upon the Dargah land by making an attempt to put up a new structure abutting the Dargah. The Plaintiffs and other devotees objected to the said act, and upon intervention by the police, Defendant No.4 was warned and restrained from constructing any unauthorised structure.

l) On 16th December, 2014, Short cause Suit No. 3015 of 2014 came to be filed by Defenant Nos. 1 to 3, as Plaintiffs therein, against the present Defendant No.4, on the basis of the Lease Deed dated 20th October, 2012 purportedly seeking to enforce the illegal terms of the said Lease Deed. Mr. Khandeparkar submitted that the said Lease Deed had been prepared with the sole intention of restricting the Plaintiff and other followers of the Dargah from attending and offering prayers therein on all days and at all times, as was their customary right.

m) On 20th December, 2014, Defendant No.4's Advocates appeared before the City Civil Court in the said Suit and admitted the case of the Defendant Nos. 1 to 3 (who were the Plaintiffs therein). On the basis of such admission, the City Civil Court granted ad-interim relief in the terms of prayers clause (b), restricitng the entry of the Muslim community into the Dargah and prohibiting them from offering prayers on any date other than on Thursday, between 4 p.m. and 7 p.m.

n) On 17th January, 2015, within 30 days of the institution fo the Suit, Defendant Nos. 1 to 4, acting in collusion, filed Consent Terms incorporating clauses to the effect that the said Dargah would remain open on Thursdays between 4.p.m to 7 p.m., that the entry of the persons into the demised premises would be restricted, that the

Appellant would provide only a 4 feet wide approach road from the main gate to the Dargah for access and that the Appellant would construct a compound wall around the premises.

o) Until 3rd February 2015, the routine devotees, including the Plaintiffs, were attending the said Dargah on a daily basis and offering prayers regularly. However, on 4th February, 2015, in the morning, the Appellant (original Defendant No.4) forcefully put a lock on the gate of the Dargah and unlawfully prevented the Plaintiffs and other devotees from entering the premises to offer prayers and perform rituals, that they and their ancestors were performing for generations.

p) On 12th August 2015, the Respondents, being the original Plaintiffs, instituted the present Suit against the Appellant (original Defendant No.4) and others.

q) On 5th May, 2016, an ad-interim order came to be granted in favour of the Plaintiffs in terms of prayer clauses (a), (b) and (e).

r) On 29th June, 2016, the Appellant preferred an Appeal from Order No. 487 of 2016 before this Court challenging the ad-interim Order. However, the said Appeal came to be disposed of without interfering with the ad-interim order.

- s) On 15th June, 2018 Notice of Motion No. 2156 of 2016 came to be allowed in terms of prayers (a) to (e).
- t) Mr. Khandeparkar submitted that the impugned Order passed by the learned Judge is legally valid and in accordance with law. The same clearly establishes that Defendant No.4 has acted in a fraudulent and collusive manner to usurp the property belonging to a Public Trust and to deprive the Plaintiffs and other devotees of their fundamental and civil right to worship at the said Dargah.
- u) Mr. Khandeparkar submitted that the property in question forms part of a registered Public Trust governed by the provisions of Bombay Public Trusts Act, 1950 wherein there is a complete embargo under Section 36A against any sale, transfer or lease of trust property without the sanction of the Charity Commissioner. Admittedly, no such sanction has been obtained by Defendant No.4, rendering the alleged Lease dated 20th October, 2012 void ab initio.
- v) Mr. Khandeparkar submitted that the Consent Decree obtained by the Defendants is the product of fraud, misrepresentation and collusion, having been executed behind the back of the Respondents and without impleading necessary parties. He submitted that as per Order XXIII Rule 3-A of the CPC any decree obtained by fraud is non

est in law, void, and not binding upon third parties prejudicially affected thereby.

w) Further, Mr. Khandeparkar submitted that the Consent Decree is been used by the Defendants to illegally restrict the entry of devotees into the Dargah and to obstruct the Plaintiff's right to worship, which is a civil right recognised under the law.

x) Mr. Khandeparkar submitted that the Plaintiffs, being devoted worshippers and followers of the said Dargah, possessed an independent civil right to institute a Suit when their right to worship and religious access is curtailed or infringed. Mr. Khandeparkar submitted that the Hon'ble Supreme Court in *Nar Hari Shastri Vs. Shri Badrinath Temple Committee (AIR 1952 SC 245)* and *Deoki Nandan Vs. Murlidhar (AIR 1957 SC 133)* has categorically held that the right to worship is a civil right, and a worshipper has locus standi to institute a civil suit to protect such right, even if he is not a trustee or owner of the property.

y) Mr. Khandeparkar further submitted that the Plaintiffs, being life long worshippers and devotees of the Dargah, were directly aggrieved by the illegal acts of the Defendants who have restricted access to the Dargah and attempted unauthorised construction abutting the Dargah.

z) Further, Mr. Khandeparkar submitted that the Defendants have acted in collusion and fraudulently obtained the Consent Decree by suppressing the material facts, and therefore the impugned Consent Decree cannot be permitted to stand. He submitted that the finding of the Learned Judge is well reasoned and supported by documentary evidence, including the records of the Charity Commissioner.

aa) Finally, Mr. Khandeparkar submitted that present Appeal is devoid of merits, filed only to perpetuate illegal possession and to deprive the devotees of their right to worship. Mr. Khandeparkar submitted that the impugned Order calls for no interference under appellate jurisdiction

ANALYSIS AND FINDINGS

6. In the light of the submissions of the learned Advocates for the parties, I will consider whether the Learned Judge was correct in granting prayers (a) to (e) of Notice of Motion No. 2165 of 2016.

7. Prayer (a) of Notice of Motion No. 2165 of 2016 seeks a stay of the Consent Terms filed on 17th January, 2015, in Suit No. 3015 of 2015, and further of the Consent Decree drawn in respect thereof.

8. Suit No. 3015 of 2014 sought the following final reliefs :

“(a) It be declared by the honorable court that the deed of lease dated 20.10.2012 is valid, subsisting and binding upon the defendant and the Defendant has no right to commit breach of terms thereof particularly clause 3(f) of the said Lease Deed

(b) For permanent order and injunction restraining the defendant, his servants, agents etc. from committing breach of terms of Lease deed dated 20.10.2012 particularly clause 3(f) thereof.

(c) The defendant, his servants, agents etc. be restrained from preventing the access of Muslim Community to Dargah of Sayed Khwaja Moinudin Chisty from offering prayers on every Thursday between 4 p.m. to 8 p.m. in any manner whatsoever.”

9. From the prayers in the said Suit No. 3015 of 2014, it can be seen that the Suit was filed in respect of the Lease Deed dated 20th October, 2012, which was in respect of land bearing CTS No. 16A and 16A/1 admeasuring 151.34 sq. mtrs and not only in respect of the structure of the Dargah. The Consent Terms were filed in respect of that Suit. It is the case of the Plaintiffs that the Consent Terms are collusive and fraudulent. The Plaintiffs also claim that the area demised by the said Lease Deed is incorrect. In my view, these are issues which will have to be decided at the trial of the Suit. At this stage, what I am concerned with is that the rights of the Plaintiffs in respect of the Dargah are protected. The Plaintiffs claim to be worshippers and devotees of the Dargah. By an Order dated 26th August, 1991, the Charity

Commissioner, Maharashtra State, Bombay, held that the Dargah is a Public Trust and admeasures 24' x 20'. This Order is final and has not been challenged by anyone. Therefore, in my view, as long as the Plaintiffs' rights in respect of the Dargah are protected (which I have done by granting other reliefs), the Plaintiffs are not entitled to stay of the Consent Terms dated 17th January, 2015 and the Consent Decree which also deal with land, apart from the structure of the Dargah, with which these Plaintiffs have no connection. In these circumstances, the Plaintiffs are not entitled to prayer (a) of the Notice of Motion.

10. Prayer (b) of the Notice of Motion seeks to restrain the Defendants from interfering, causing any disturbance and/or obstruction and/or restraining the Plaintiffs and other followers of the Dargah from attending the said Dargah, offering prayers, carrying out or performing their religious functions throughout the day as per their religious requirements and beliefs and further also seeks a direction to keep open the gate for ingress and egress to the said Dargah abutting to the Chincholi Bunder Road.

11. It is not disputed that the Plaintiffs are worshippers and devotees of the Dargah. Mr. Kanade, the learned counsel appearing on behalf of the Appellant (original Defendant No.4), has in fact made a statement

that access will be given to all the worshippers and devotees of the Dargah throughout the days on all the days.

12. Further, the Dargah has been declared a Public Trust by an Order dated 21st January, 1953 passed by the learned Deputy Charity Commissioner, who observed that Muslims come and offer fatia at the Dargah and, therefore, the Muslim public has a right to visit the Dargah. He further observed that it has not been proved by any independent evidence that the Applicant kept the Dargah closed for even a single day, as alleged, to the knowledge of the Muslim community concerned. He also observed that the Dargah has, in fact, been made use of by the Muslim community.

13. In my view, in the light of the said Dargah being declared as a Public Trust and there being no dispute that the Plaintiffs are worshippers and devotees of the Dargah and that the Dargah also has other worshippers and devotees, Defendant No.4 has no right to block access of the worshippers and devotees to the Dargah. In these circumstances, the Learned Judge has rightly granted prayer (b) of Notice of Motion No. 2165 of 2016.

14. Prayers (c) and (d) seek to restrain the Defendants from representing themselves as owners of the Suit Property, seeks to

restrain Defendant No.4 from representing himself as the lessee of the Suit property i.e. 151.34 sq. mtrs at village Chincholi, Taluka Borivali, and further seeks to restrain Defendant No.4 from acting upon the Lease Deed dated 20th October, 2012.

15. In my view, Defendant No.4 cannot be restrained from representing himself as the lessee of the entire Suit property. There is a valid lease in favour of Defendant No.4 and, therefore, the wide prayers sought in prayers (c) and (d) cannot be granted. The relief will have to be restricted to the structure of the Dargah. As held by me hereinabove, the Plaintiffs, as worshippers and devotees of the Dargah, have rights only in respect of the Dargah. Therefore, prayers (c) and (d) will have to be restricted to restraining Defendant No.4 from representing himself as the lessee of the structure of the Dargah.

16. Prayer (e) seeks to restrain Defendant No.4 from dealing with selling, transferring, alienating, encumbrancing, disposing of, and creating any third party rights in respect of Suit property as mentioned in prayer clause (c).

17. For the reasons given hereinabove, prayer (e) will also have to be restricted to the Dargah. The Dargah is a Public Trust and Defendant No.4 cannot in any case sell or transfer the same without the consent of

the Charity Commissioner. The Plaintiffs have no right or connection with the leased land other than the Dargah. Accordingly, prayer (e) will have to be granted only in respect of the Dargah.

18. In light of my aforesaid findings, I have not considered the Judgements referred to by the parties.

ORDER

- a) Order dated 15th June, 2018 passed by the Bombay City Civil court at Dindoshi, Mumbai is hereby modified.
- b) The Plaintiffs will be entitled to the following reliefs :
 - i) that pending the final hearing and disposal of the present Suit, Defendant No.4, his servants, agents, representatives and/or any persons claiming through or under him, are restrained from interfering, causing any disturbance and/or obstruction and/or restraining the Plaintiffs and other followers of the Dargah, either belonging to the Muslim community or otherwise, from attending the said Dargah, offering prayers, carrying out or performing any religious functions throughout the day, as per their religious requirements and beliefs, and on all days, and Defendant No.4 is

further directed to keep open the gate for ingress and egress to the said Dargah abutting to the Chincholi Bunder Road.

ii) pending the final hearing and disposal of the present Suit Defendant No.4 is restrained from representing himself as the lessee of the Dargah admeasuring 24' x 20'.

iii) pending the final hearing and disposal of the present Suit, Defendant No.4, his servants, agents, representatives and any persons claiming through or under him are restrained by an order and injunction of this Court from dealing with, selling, alienating, encumbrancing, disposing of, and creating any third party rights in respect of the Dargah admeasuring 24' x 20'.

c) Appeal from Order is disposed of in the aforesaid terms.

d) There will be no order as to costs.

[FIRDOSH P. POONIWALLA, J.]