

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

WRIT PETITION NO.5419 OF 2014

IN

ORDER BELOW EXH.3

IN

B.C.C.C. SHORT CAUSE SUIT NO.3844 OF 2013

Sudhakar Baburao Lagad and another

.. Petitioners

Versus

Vithoba Kanuji Lagad Charitable Trust

and another

.. Respondents

Mr. Devendra Sharma, Advocate for the Petitioners.

Mr. Himanshu Kode, Advocate for the Respondents No.1 & 2.

CORAM : R.M. SAVANT, J.

DATE : 08th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 20th December, 2013 passed by the learned Judge of the City Civil Court, Mumbai by which order the application Exh.3 filed by the Defendants No.1 and 2 for framing of a preliminary issue under Section 9A of the Civil Procedure Code came to be rejected.

2. The Respondents No.1 to 3 herein are the original Plaintiffs in Short

Cause Suit No.3844 of 2013. In the said suit, the substantive relief claimed is that the Defendants be restrained by an order of permanent injunction from forcibly dispossessing the Plaintiffs from the suit premises and taking forcible possession of the suit premises known as Lagad Dharmashala being City Survey No.215 situated at Pastonjee Street, Colaba, Mumbai-400 005 without following due process of law. Hence, the said suit is filed principally for the relief of injunction. In the said suit, the Defendants No.1 and 2 i.e. Petitioners herein filed the instant application Exh.3. The instant application Exh.3 was founded on three fold grounds namely that the suit is not maintainable as it involves issue pertaining to the Trust, that the Charity Commissioner is a necessary party and that the permission of the Charity Commissioner under Section 50 and 51 of the BPT Act has not been obtained. It is on the said basis that the Defendant sought framing of the preliminary issue.

3. The Trial Court having regard to the relief sought in the suit which as indicated above is principally a suit for injunction held that there is no merit in the aforesaid three grounds on the basis of which the preliminary issue was sought to be framed. The Trial Court accordingly rejected the said application. It is the contention of the learned counsel for the Petitioner that the Trial Court could not have rejected the said application and ought to have framed the preliminary issue and decided the same. It is

trite that prior to the framing of a preliminary issue a bare minimum inquiry as regards whether there is a necessity to frame a preliminary issue is required to be conducted by the concerned Court. It is upon such inquiry that the Trial court in the instant case has concluded that having regard to the relief sought in the suit, the permission of the Charity Commissioner under Section 50 and 51 of the BPT Act is not required as also the Charity Commissioner is not necessary party to be joined as a party. In so far as whether the suit involves issue of Trust is concerned, it is ex-facie clear that the suit has been filed for injunction and public trust is entitled to file a suit for injunction to protect its property. There seems to be dispute inter-se between two sets of trustees the dispute if any therefore cannot be resolved in a civil suit and has to be resolved by way of appropriate proceedings before the authorities under the BPT Act. However, as indicated above, the instant suit is only one for simplicitor injunction against the Defendants. The Trial Court was therefore right in rejecting the said application and not framing the preliminary issue as the grounds on which the said preliminary issue was sought did not warrant framing of such a preliminary issue. Hence, no case for interference in the writ jurisdiction of this Court is made out. The Writ petition is dismissed.

[R.M. SAVANT, J]