

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

**CIVIL REVISION APPLICATION NO. 110 OF 2005
WITH
CIVIL APPLICATION NO. 260 OF 2017**

Smt.Ramadevi Haribux Garodia & Ors. ...Applicants

Versus

International Society For Krishna
Consciousness (ISKCON) ...Respondent

Mr.S.M.Gorwadkar, Senior Advocate a/w. Mr. Pavan S. Patil and
Mr.Shivam Nagalia i/b. Triyama Legal for the Applicants.

Mr.Vaibhav Sugdare a/w. Mr. Sumit Raghani i/b. M/s. P.D.S. Legal for the
Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.
RESERVED ON : 3rd August, 2017
PRONOUNCED ON : 13th October, 2017

JUDGMENT :

1. This Civil Revision Application is directed against the order dated 05.02.2005 passed by the learned Joint Civil Judge, Junior Division, Thane in Regular Civil Suit No.712 of 1996.

2. The applicants are the original defendants against whom the respondent/plaintiff had filed a Regular Civil Suit No.712 of 1996 under Section 6 of the Specific Relief Act. The plaintiff was forcibly ousted from the suit premises i.e. Flat Nos. 102, 103 and 104 admeasuring 1800

sq.ft. in A Wing of Walchand Shopping Centre, Near Shivaji Chowk, Bhayander (W), Thane.

3. It is the case of the respondent/plaintiff that the plaintiff is a Charitable Trust namely International Society For Krishna Consciousness (ISKCON) and the plaintiff-Trust was put in possession of the suit premises on the basis of Tenancy Agreement dated 25.07.1986, which was executed between the plaintiff-Trust and one Ajay Garodia Charitable Trust. The plaintiff-Trust was carrying on religious charitable activities as of worshiping Lord Radha and Krishna in Flat Nos. 102 and 103 in B Wing and the disputes arose between the plaintiff and the defendants on account of nuisance and for using water and premises. They lodged criminal cases against each other before the Judicial Magistrate, Thane. The applicants i.e. defendants have asked the plaintiff to vacate the premises and they started harassing the members as well as the priest of the plaintiff-Trust. On 09.06.1996, defendant no.2 had demolished the dividing wall between the suit premises and their residential premises. Thereafter, the plaintiff filed a complaint against the defendants on 09.06.1996 with the Bhayandar Police Station. On 26.06.1996, defendant no.2 arrived at the premises alongwith 20-25 gundas and

forcibly thrown out the devotees, priest and the employees of the plaintiff-Trust. Therefore, the plaintiff filed a complaint against the defendants with the Bhayandar Police Station, however, no offence was registered against them as police were hand-in-glove with the defendants. The plaintiff-trust thereafter filed the Suit under Section 6 of the Specific Relief Act on 06.08.1996. The defendants opposed the Suit and filed their Written Statement denying all averments and allegations made in the plaint. In the Written Statement, the defendants challenged the maintainability of the Suit on the ground that the plaintiff-trust has not taken permission of the Charity Commissioner. The defendants have denied that the plaintiff was even in possession of the suit premises and also denied the allegations made by the plaintiff-Trust regarding forcible dispossession and stealing the idols of deity of Radha and Girdhari from the premises. It is contended that the plaintiff was allowed to perform pooja in the suit temple owned by the defendants and, therefore, the question of dispossession of the plaintiff by the defendants did not arise. After considering the pleadings in the plaint and contentions in the written statement, the trial Court decreed the Suit. Hence, this Civil Revision Application.

4. Learned senior counsel for the appellant has submitted that frame of the Suit is improper and defective. The Suit suffers from mis-joinder and non-joinder of the proper parties. The respondent/plaintiff is a trust and the Suit should have been filed by all the trustees. The Suit is filed by a Trust and permission under Section 50 of the Bombay Trust Act is required, however, it is not taken, hence it is not maintainable. He has further submitted that impugned judgment and order passed by the trial Court is illegal and erroneous. The learned Judge has not appreciated the oral as well as documentary evidence before it. From the evidence of the plaintiff-Trust, it is not known who was in actual possession of the suit premises and who was dispossessed at the relevant time. He relied on the evidence of AW-1 Ramadevi Garodia and stated that agreement dated 25.07.1988 is false. The trust property belongs to Ajay Garodia Trust. Ajay Garodia is a son of the defendants and they have created the trust in his name. Thus, the trust is not a party to the Suit. The Suit is not filed against Ajay Garodia Trust and, therefore, the Suit suffers from non-joinder. He has further submitted that when Suit under Section 6 of the Specific Relief Act is filed, it is necessary to produce documentary evidence to show that the plaintiff was in possession of the suit property. He argued that Exhibits 40, 47 and 48 i.e. gas connection, ration card

and Dena Bank pass book respectively do not disclose the address of the suit premises, but one shop owner i.e. PW 1 has no locus as a trustee. He had no authority to file the Suit. He has further submitted that the said tenancy agreement was terminated by notice sent to ISKCON, Juhu on 19.03.1988. Learned senior counsel on the point of joinder of the trustees has relied on the judgment of Division Bench of this Court at Nagpur Bench dated 28.04.2014 in Writ Petition No 62 of 2013 in the case of ***Ashok Shikshan Sanstha & Ors. vs. S.N. Dutonde, the Administrator Ashok Shikshan Sanstha & Ors.*** The learned senior counsel has further relied on the following cases:

- (i) Shri Gollaleshwar Dev And Ors. vs Gangawwa Kom Shantayya Math & Ors.¹
- (ii) Church of North India vs Lavajibhai Ratanjibhai & Ors.²
- (iii) Shyamabai wd/o. Surajkaran Joshi and Others vs. Madan Mohan Mandir Sanstha³
- (iv) Sheikh Abdul Kayum & Ors. vs. Mulla Alibhai⁴
- (v) Shrikrishna Annaji Sonatake v. Ramnarayan Pannalal Lathi and others⁵

1 (1985) 4 SCC 393

2 (2005) 10 SCC 760

3 2010(2) Mh. L.J. 476

4 AIR 1963 SC 309

5 1983 Mh. L.J. 248

(vi) Shri Cutchi Visa Oswal Derawasi Jain Pathshala vs. Shri Cutchi Visha Oswal Derawasi Jain Mahajan⁶

He submitted that considering the facts and legal position, the judgment and order of the trial Court is to be set aside

5. The learned counsel for the respondent heavily relied on the evidence of the plaintiff and other witnesses and has submitted that the evidence of these witnesses on the point of possession and forcible dispossession from the suit premises has remained unshaken. He submitted that plaintiff/PW-1 was performing rituals of the idols of Radha Girdhari on behalf of the trust ISKCON and the plaintiff trust was put in possession of the suit premises by way of agreement. Therefore, they were lawfully occupying the suit premises. He further submitted that the suit under section 6 is summary in nature and the learned Judge has given a correct finding and has rightly decreed the suit. He submitted that a suit under section 6 against which the Appeal does not lie. Hence, Revision is filed under section 115 of Code of Civil Procedure wherein the High Court has restrictive authority. In support of his submissions, the learned counsel relied on the judgment of Hon'ble Supreme Court in the case of **Major**

⁶ 2005(3) LJSOFT 96

S.S. Khanna vs. Brig. F.J. Dillon, reported in AIR 1964 SC 497. While meeting the ratio of the cases cited by the learned counsel for the applicants on the point of maintainability of the suit, the learned counsel has argued that though the trust is a juristic person and it is an artificial creation of law, that trust is functioning through its members so as to protect its rights.

6. The learned counsel for the respondent has further relied on the following judgments:

- (i) Judgment of the Supreme Court in Shri Gollaleshwar Dev & Ors. vs. Gangawwa Kom Shantayya Math & Ors.⁷.
- (ii) Judgment of Single Judge of this Court in the case of Tajul Islam & Anr. vs. Shariyatullah Mansoorali Sheikh⁸
- (iii) Judgment of Division Bench of this Court in the case of Amirchand Tulsiram Gupta & Ors. vs. Vasant Dhanaji Patil & Ors.⁹

7. The suit under section 6 is to be filed within six months from the date of dispossession and it is a summary enquiry. No appeal lies

7 (1985) 4 SCC 393

8 1994 Mh. L.J. 1191

9 1992 Mh. L.J. 275

against the judgment and decree passed under section 6 of the Specific Relief Act and in Revision, the High Court is not supposed to interfere with the judgment and order passed by the High Court unless the case for interference is made out within the well settled parameters of the exercise of the revisional jurisdiction under section 115 of the Code of Civil Procedure. In the case of **Major S.S. Khanna vs. Brig. F.J. Dillon, reported in AIR 1964 SC 497**, wherein the Hon'ble Supreme Court while explaining the power of the Revisional Court under section 115 of the Code of Civil Procedure has held that the exercise of the power under section 115 of the Code is limited.

8. Under section 6(4) of the Specific Relief Act, other remedy is open to the parties to institute a regular suit for declaration of title and for possession. Thus, only in the case where grave injustice is done and all the rules of the trial are not followed or the decision is perverse or error of law is apparent on the face of record, then the High Court is justified in invoking the revisional powers. In Revision, the High Court has mainly to consider the issue of jurisdiction of subordinate Court - (i) whether the Subordinate Court has acted within the jurisdiction; (ii) whether the subordinate Court had jurisdiction or not; or (iii) whether it failed to exercise

its jurisdiction. The scope of the High Court under section 115 of the Code of Civil Procedure is not as wide as in the First Appeal under Order 41 of the Code of Civil Procedure. However, under section 6 of the Specific Relief Act, the suit is finally decided, hence the submissions of the learned counsel for the applicants on law and fact can be taken into account.

9. In the case of **Tajul Islam & Anr. (supra)**, it was rightly held that to avail of relief under section 6 of the Specific Relief Act, the plaintiff must prove his “previous possession” and “wrongful dispossession”. Thus, to prove these two facts, the burden is on the respondent/plaintiff.

10. The respondent/plaintiff examined four witnesses, i.e., PW-1 Jagjivandas Gopal Goswami, President of International Society for Krishna Consciousness (ISKCON), PW-2 Kumbhadas Strutidhar Patra, pujari/priest of ISKCON, PW-3 Arvind Ramchandra Shivram, proprietor of Sachin Security and PW-4 Abhijit Sahebrao Mohite from Bhayander Police Station. The applicant no. 1/defendant examined herself. The evidence of Jagjivandas Gopal Goswami PW-1 was President of ISKCON from 1986 till 1996 when the incident of forcible dispossession took place.

He has stated that the suit premises admeasuring about 1800 sq.ft. at Walchand Shopping Centre was taken on tenancy basis from one Ajay Garodia Charitable Trust by ISKCON. He produced the Tenancy Agreement (Exhibit 40) executed between Ajay Garodia Charitable Trust and ISKCON on 25th July, 1986 and it is not disputed. The suit premises consisting of three flats bearing nos. 102, 103 and 104 in A Wing. Flat No. 102 is used as office, flat No. 103 is used as kitchen and flat No. 104 is used as temple. In flat No. 104 two sets of idols of Radha and Krishna were installed. The witness has deposed that defendant No. 1 filed criminal case bearing No. 594 of 1987 against plaintiff No. 1 and trustees of ISKCON on the ground of nuisance. He has deposed that there was continuous threats of disconnection of water and electricity supply, hence, the plaintiff/trust filed Regular Civil Suit No. 415 of 1990 against defendant no. 2 and Mira Bhayander Municipal Council. The said suit was pending. He deposed that the plaintiff used to perform rituals and offer prayers to Lord Krishna and Radha. He also stated that he has produced the ration card (Exhibit 47), domestic gas card (Exhibit 46), passbook possessing bank account in Dena bank, Vasai Janata Bank Ltd. and The Thane Zilla Madhyavarti Sahakari Bank Ltd. and the bank account are in the name of respondent (Exhibits 48, 49 & 50). Thus, all

the documents Exhibits 46 to 50 are produced to show that the address of the suit premises, i.e., of ISKCON.

11. On the point of actual dispossession, PW-1 Jagjivandas Gopal Goswami has stated that on 26th June, 1996 at 10.30 a.m., defendant no. 2 came along with 25 to 30 gundas and forcibly dispossessed the plaintiff from the premises. They also threw two watchmen out of the premises. Thereafter, the plaintiff went to the police station and lodged complaint. The police drew panchnama. The police handed over the articles like gas, utensils on the next day. The witness nos. 2 and 3, i.e., priest and security man have stated about the actual dispossession from the suit premises by the defendants. Similarly, PW-4 Abhijit Mohite, police officer from Bhayander Police Station has produced the FIR dated 26th June, 1996 which corroborates the fact of forcible dispossession of the plaintiff by the defendants.

12. As per the case of the applicants/defendants, DW-1 has deposed that the Tenancy Agreement was terminated and the plaintiff was allowed to perform only puja of idols of Radha Girdhari. Assuming that the Tenancy Agreement was terminated on 19th March, 1988. He denied that

the plaintiff was ever in exclusive possession of the suit property. He deposed that the defendants were never in actual and physical possession of the suit property and therefore, there is no question of forcible dispossession of the plaintiff.

13. On these points, PW-1 Jagjivandas Gopal Goswami has deposed that defendant no. 1 had filed Criminal case no. 594 of 1987 against him and the trustees of ISKCON for creating nuisance in the suit premises and thereafter the witness on behalf of the trust has filed Regular civil Suit No. 415 of 1990 against the defendant no. 2 and Mira Bhayander Municipal Council for obtaining injunction for not disconnecting the water pipeline. The documents filed by him and his oral evidence disclose that this witness was occupying the suit premises as a member and being a part and parcel of ISKCON. He has produced bank account of Thane Zilla Madhyavarti Sahakar Bank which stands in the name of ISKCON trust and it shows that address on it is of suit premises. The ration card produced by him discloses the suit address. He has stated that on 26th June, 1996 two watchmen were thrown out of the premises in the morning at around 10.30 a.m. So, he went and lodged the complaint. Thus, this witness on behalf of the trust was actually in possession of the suit premises on that day. The learned trial Judge has properly weighed

the evidence of all the witnesses on these two points and thus, I am of the view that the plaintiff-trust has proved the case of previous possession and forcible dispossession.

14. The submissions of learned senior counsel Mr. Gorwadkar that ISKCON has entered into an Agreement with Ajay Garodia Charitable Trust and therefore, the trust ought to have been made party, are not convincing. Though the Agreement was executed between these two trusts in respect of the suit premises and Ajay Garodia Charitable Trust has put the plaintiff in possession of the suit premises, applicants /defendants have actually dispossessed the respondent/plaintiff. The trust though is a jurist person, it acts through its members and trustees. The applicants/defendants are the trustees of the said private trust, however, they have forcibly dispossessed the plaintiff-trust from the suit premises. While dispossessing, the applicants/defendants have acted in their personal capacity. Considering the nature of the suit filed under section 6 of the Specific Relief Act, the defendants are prosecuted in the personal capacity for this act. Thus, the relief of restoration is rightly sought against them.

15. On the point of non-joinder of trustees as a party-plaintiffs and for not obtaining permission under section 50 of the Bombay Public Trust Act, the Hon'ble Supreme Court in the case of ***Church of North of India*** (*supra*) has discussed the scope of Sections 50 and 51 of the Bombay Public Trust where prior consent of the Charity Commissioner was not obtained under Sections 50 and 51 of the Bombay Public Trust Act. In the said Suit, it was held that the Suit is filed for recovery of possession of the property is to be covered under Section 50 of the Bombay Public Trust Act.

16. In the case of ***Sheikh Abdul Kayum*** (*supra*), the Supreme Court has held that the trustees cannot transfer their duties, functions and powers to some other body of men and create them trustees in their own place unless this is clearly permitted by the trust deed, or agreed to by the entire body of beneficiaries.

17. In the case of ***Shrikrishna Annaji Sonatake*** (*supra*), there was a dispute of liability of the trust properties. The issue before the Single Judge was regarding the liability of the properties on the trustee and, therefore, it was held that no suit in regard to trust properties would be maintainable by one or some of the trustees only, if the remaining

trustees are not before the court either as plaintiffs or even as defendants.

18. In this case of ***Shri Cutchi Visa Oswal Derawasi Jain Pathshala*** (*supra*), the Single Judge of this Court has held that the Suit is filed in the name of the Trust and co-trustees must be joined in filing suit unless the instrument of the trust otherwise provides. There was dispute between Pathshala and Jain Mandir about the property which pertains to Jain community and there was also dispute in respect of one Mahajan on the ground that who are the proper trustees to look after the property of the trust and hence, it was held that “No one single co-trustee even if he be a managing trustee, unanimously chosen by the co-trustees, can maintain such a suit without other trustees being parties to it. If any one or more are willing to be joined the suit as plaintiff or for some reason or the other, it is not possible to join them as plaintiff, they must be impleaded as defendants so that all the co-trustees could be before the Court.”

19. In the case of **J.P. Srivastava & Sons (P) Ltd. & Ors. vs. Gwalior Sugar Co. Ltd. & Ors.**, reported in (2005) 1 SCC 172, relied by the learned senior counsel Mr.Gorwadkar, the Hon'ble Supreme Court was

dealing with operation or mismanagement in the company under the companies Act and thereby also dealt with Trust Act of 1882 whether the delegation of power to one co-trustee by the trustees is permissible or not? The Hon'ble Supreme Court held that generally trustees cannot delegate any of their duties, functions and powers to a co-trustee and they are expected to discharge their functions jointly. Four exceptions are carved out by the Supreme Court in respect of delegation of powers where it is held that - (i) if the instrument of the trust provides delegation; (ii) the delegation is necessary; (iii) the beneficiaries competent to contract consent to the delegation; and (iv) delegation is in regular course of the business.

20. The Full Bench of this Court in the case of **Shyamabai wd/o. Surajkaran Joshi & Ors. vs. Madan Mohan Mandir Sanstha**, reported in **2010(2) Mh. L.J. 476** has referred and relied on the ratio laid down in the case of **J.P. Srivastava & Sons (P.) Ltd. (supra)** on the point of delegation of functions.

21. In the case of **Shree Gollaleshwar Dev & Ors. (supra)**, the Hon'ble Supreme Court held that in which two or more persons interested in the

trust can file a suit to recover the possession of trust property in the usual way as contemplated under section 50(ii)(a) of the Act.

22. In the case of **Ashok Shikshan Sanstha & Ors. vs. S.N. Dutonde** (*supra*), the trustees sought direction to the administrator on a Public Trust to hand back the charge of Trust to them. In the said trust, there was a dispute between the trustees. The Division Bench held that “a public trust cannot be viewed strictly as a juristic person like any local authority or company with common seal, right to hold property and capable of suing or being sued in its own artificial name and it will not have an independent personality or existence apart from members forming it. Law therefore requires normally that all trustees must come together either to file legal proceedings or to defend the same. This is of course subject to a stipulation to the contrary in the Constitution of such trust. There may be disputes between the general body on one hand and governing/managing body/trustees on the other hand.” Thus, in the said matter, all together a different issue was before the Division Bench and the finding given by the Division Bench in respect of prosecuting the matters jointly by all the trustees cannot be applicable in the present set of facts considering the documentary evidence Exhibit 51 the authority

letter was given by the trust in favour of PW-1.

23. On this backdrop of legal position, let me advert to the facts of the present case. Admittedly, no permission of the Charity Commissioner is taken. If a trust wants to file a suit, then the permission of the Charity Commissioner is necessary under section 50 of the Bombay Public Trust Act. However, it is necessary to understand the nature of the suit and the relief sought therein. This suit is filed for specific performance for the restoration of the suit premises which was given on on rental basis by one Ajay Garodia Charitable Trust. That Tenancy Agreement dated 25th July, 1986 was signed by Gopal Krishna Goswami, who was the trustee of ISKCON and it was identified by the witnesses and marked Exhibit 40. The scope of section 6 is very limited, as it pertains to only restoration against the forcible dispossession of the persons aggrieved.

24. On the point of locus, PW-1 Jagjivandas has stated that he produced a letter dated 2nd August, 1996 issued to him by members of the ISKCON authorizing him to conduct the suit filed in the Court. That letter is taken on record and marked as Exhibit 51. It was rightly pointed out by the learned counsel for the respondent/plaintiff that no cross-examination

was conducted on this letter. Thus, that letter authorizing him to file suit is without any challenge and hence establishes that the plaintiff was a competent person to prosecute the case of the trust under section 6 of the Specific Relief Act.

25. Though the trust is a legal entity, it functions through its members, trustees and officials. In suit under section 6 of the Specific Relief Act, the trust seeks restoration of its civil rights, therefore, the permission of the Charity Commissioner is not required. The Charity Commissioner has all supervisory powers and is a controlling authority of all the public Charitable Trusts. He has to take care that the object of the trust is not defeated due to mismanagement, malpractices including the abuse of the power by the trustees especially when it pertains to the property and funds of the trust. This is not the suit for acquisition, disposition or alienation of the property of the trust but it is a suit for restoration of the civil right of the trust in the property, under section 6 of the Specific Relief Act, therefore, permission of the Charity Commissioner is not required under section 50 of the Act once the locus is proved by the plaintiff. I rely on the case of **Amirchand Tulsiram Gupta & Ors.** (*supra*).

26. In the case of **Amirchand Tulsiram Gupta & Ors.** (*supra*) wherein the Division Bench of Bombay High Court has held that when the trustees want to enforce their civil rights, they are not covered by the definition of the expression “person having interest” and are entitled to file suits without obtaining prior permission. The same will be applicable to the persons having interest in the trust and thus, whenever there is suit for possession against the trespasser, the permission under section 51 of the Charity Commissioner is not required.

27. Under such circumstances, I am of the view that the order passed by the learned Judge of the trial Court is well reasoned and legal and no interference is required. The order of the trial Court is to be maintained. Hence, Civil Revision Application is dismissed.

28. In view of dismissal of Civil Revision Application, Civil Application does not survive and the same is also accordingly disposed of.

29. The learned counsel for the applicants orally prays to stay this order, as the applicants want to challenge this order before the Hon'ble Supreme Court.

30. As the applicants want to challenge this order before the Hon'ble Supreme Court, the operation of this order is stayed for a period of 6 weeks from today.

(MRS.MRIDULA BHATKAR, J.)