

Satish Ganpat Sangale	...	Applicant
Vs.		
Bhandarkar Oriental Research Institute through Trustee Arvind Keshav Khardar and another	...	Respondents

Mr. Manoj Nayak for Applicant.
Mr. Ravi Raj Shinde for Respondent.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 27, 2018

P.C. :

Heard Mr. Nayak, learned Counsel for the petitioner and Mr. Shinde, learned Counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant', has challenged the judgment and order dated 13.09.2017 below exhibit-12 in Civil Suit No.144 of 2017 passed by the learned 5th Additional Judge, Small Causes Court, Pune in Civil . By that order, the learned trial Judge framed the preliminary issue on the point of jurisdiction and maintainability of the Suit.

3. In support of this Petition, Mr. Nayak submitted that defendant has filed application under Order VII, Rule 11(a) and (d) of the C.P.C. on two grounds namely, (i) before instituting the Suit, respondent has not obtained permission of the Charity Commissioner under Sections 50 and 51 of the Maharashtra Public Trust Act (for short 'Act') and (ii) there is no relationship of landlord and tenant between the parties and consequently, Small Causes Court has no jurisdiction to entertain and try

the Suit. He submitted that the learned trial Judge has committed serious error in framing the issues inasmuch as while deciding the application under Order VII, Rule 11(a) and (d) of C.P.C., the Court has to consider only the assertions made in the plaint and evidence is not required to be adduced. He, therefore, submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr. Shinde submitted that C.R.A. itself is not maintainable as the order impugned in the present application is interlocutory.

5. It is no doubt true that while deciding application under Order VII, Rule 11 of C.P.C., the Court has to proceed on the basis of the assertions made in the plaint and it is not necessary to adduce the evidence. Nonetheless, defendant has challenged the jurisdiction on two grounds namely, before instituting the Suit, respondent has not obtained permission of the Charity Commissioner under Sections 50 and 51 of the Act. I do not find any merit in this submission. Section 50(ii) of the Act reads thus,

“50. Suit by or against or relating to public trusts or trustees or others

In any case,-

(i) ...

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee,

(iii) and (iv) ...

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of

the following reliefs:-
...”

6. A perusal of Section 50(ii) extracted hereinabove shows that where a direction or decree is sought for the possession of a property belonging to a public trust from a trustee, ex-trustee, alienee, trespasser or any other person, two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), have to obtain consent in writing from the Charity Commissioner. In the present case, perusal of the assertions made in the plaint shows that respondent has come with the case that the defendant is a gratuitous licensee. In view of Section 50(ii), permission will not be necessary for obtaining direction or decree to recover the possession of a property belonging to a public trust from a tenant or licensee. As the defendant, according to the assertions made in the plaint, is a gratuitous licensee, permission of the Charity Commissioner is not necessary. That brings me to the second submission of Mr. Nayak that there is no relationship of landlord and tenant in the plaint. A perusal of plaint in its entirety clearly shows that respondent has positively come with the case that as the petitioner was working as a Librarian with the respondent, he was permitted to occupy the suit premises. In other words, it is a case of gratuitous licensee and therefore, necessary pleadings to that effect is also made in the plaint. In view thereof, Application exhibit-12 made by the defendant before the trial Court, itself, was wholly misconceived and is accordingly liable to be rejected. Resultantly, even this Application fails and the same is dismissed with no order as to costs.

(R. G. KETKAR, J.)