

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Civil Revision Application No.89 of 2017
(Kamaldas Manikrao Zape .vs. Sau. Shindu Wamanrao Thakare)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions Court's or Judge's orders.
 and Registrar's orders

Mr. V.B. Bhise, Advocate for Applicant.
 Mr. D.S. Patil, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATED : May 2, 2018.

By this revision application, the applicant (original defendant) has challenged order dated 21.06.2017 passed by the Court of Joint Civil Judge, Junior Division, Akot (trial Court), whereby application pertaining to preliminary issue about whether the Court had jurisdiction to entertain the suit, has been rejected. The preliminary issue has been framed under Section 9-A of the Code of Civil Procedure, 1908.

2. It was the contention of the applicant that since the property in question in respect of which the respondent (original plaintiff) was seeking injunction, was trust property, the suit was barred without permission or consent of the Charity Commissioner under the provisions of the Maharashtra Public Trusts Act, 1950. A perusal of the plaint in the present case shows that even according to the respondent, the suit property is trust property of a trust called Dharmal Sansthan, Ruikhed and that there are certain proceedings already pending before the authorities

under the provisions of the aforesaid Act. The respondent by way of said suit, has prayed for an injunction to permanently restrain the applicant herein from disturbing peaceful and continuous cultivation of the suit property by the respondent.

3. In the impugned order while rejecting the application of the applicant herein, the trial Court has referred to only Section 80 of the aforesaid Act and it has held that since there is no dispute in the present case that the suit property is indeed trust property, there could be no bar to the jurisdiction of the Civil Court under Section 80 of the said Act. On this basis, the application filed by the applicant herein has been rejected. But, the trial Court has failed to take into consideration Sections 50 and 51 of the aforesaid Act. Section 50 (iv) clearly states that suit by or against public trusts or trustees for any declaration or injunction in favour of or against a public trust or trustee, can be filed only upon written consent of the Charity Commissioner under Section 51 of the aforesaid Act. Admittedly in the present case, no such consent was obtained by the respondent before filing the aforesaid suit. Therefore, on a proper reading of Sections 50 and 51 of the aforesaid Act, the suit filed by the respondent in the present case could not have been entertained by the trial Court. Hence it is evident that the trial Court has erred in passing the impugned order and rejecting the objection of jurisdiction raised on behalf of the applicant.

4. Even otherwise, additional documents placed on record show that there are proceedings pending before the authorities under the aforesaid Act wherein the applicant as well as the respondent are parties and that the respondent has been actively participating in the same.

5. In the light of the above, it is found that the impugned order passed by the trial Court is not sustainable and accordingly it is quashed and set aside. It is held that the trial Court does not have jurisdiction to entertain the suit filed by the respondent and accordingly the suit is dismissed. The present civil revision application is allowed with no order as to costs.

6. Since the dispute between the parties concern trust property, it would be in the interest of justice that the concerned authorities under the aforesaid Act before whom the proceedings initiated by the parties herein are pending, dispose of the same as expeditiously as possible.

JUDGE