

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

SECOND APPEAL NO.625 OF 2015

Shri Shivram Dattu Teli and Anr. ... Appellants

Vs

Shri Laxman Sakharam Khade and
Ors. ... Respondents

...

Mr. Rajesh A. More for the Appellants.
Mr. Sandip Koregave for the Respondent No.7.

CORAM : SANDEEP K. SHINDE J.

DATE : 30 JANUARY, 2019

P.C. :

Heard the learned counsel for parties.

2 *Against decree of perpetual injunction, the defendants had preferred Regular Civil Appeal No.91 of 2010 wherein the decree of trial Court was confirmed by the Ad-hoc District Judge-3, Kolhapur by the judgment and order dated 29th December, 2014. It is against the decree in the Regular Civil Appeal No.91 of 2010, the defendants have preferred this Second Appeal.*

3 *Both the Courts below have rendered finding of fact, that the plaintiff has proved his possession in the suit land as on the date of*

its institution.

4 This finding recorded by the Courts below is consistent with the evidence led by the parties and I see no reason to interfere with this finding.

5 The learned counsel for the appellants submitted that the suit property is owned by the Devasthan Trust and, therefore, consent of the charity commissioner was a condition precedent in terms of Section 50(iv) of the Maharashtra Public Trusts Act for filing suit.

6 The Courts below, concurrently held that nature of the suit and the reliefs claimed therein did not qualify any of the clauses of Section 50(a) to (g). It was held that, since the suit was simplicitor for perpetual injunction, consent of the charity commissioner was not required as it was not coupled with the relief of possession of the suit property. Admittedly, the suit was for injunction and for not any other reliefs.

7 The learned counsel appearing for the respondents has relied on the judgment of this Court in the case of **Mahomed Hassan Samru v. Peer Hazarath Diwanshah Dargah Trust & Ors.** reported

in 2002(6)BCR 253. I have gone through the cited judgment. In paragraph 5 of the said judgment, it is held as under:

“5 The petitioner has placed reliance on Clause (iv) of section 50 to contend that the present suit would be covered by that provision. From the plain language of the above provision it is seen that any suit for declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof would be covered by Clause (iv) of section 50. However, merely because the relief in the suit is for declaration or injunction that per se would not attract the requirement of obtaining prior permission within the meaning of this section. On the other hand, the requirement of section 50 of obtaining prior permission of the Charity Commissioner to institute suit specified by that provision would arise only when the suit is also for any of the reliefs specified in Clauses (a) to (q) thereof. To my mind, this is the twin requirement to attract the mandate of that provision regarding obtaining prior permission of the Charity Commissioner.”

8 *In view of the facts of the case and the ratio laid down in the cited judgment, in my view, suit was maintainable and consent of the charity commissioner was not required for filing such suit.*

9 *Appeal, therefore, does not give rise to substantial question of law. Appeal is dismissed.*

(SANDEEP K. SHINDE, J.)