

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

WRIT PETITION NO. 1029/2019

Kamalakar Balaji Murlidhar & anr.

..VS..

Narayan Ananda Patude & anr.

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

Court's or Judge's orders

Shri Apurv De, Advocate for the petitioner(s)

CORAM : Z.A.HAQ, J.
DATED : 13/02/2019

Heard.

The original defendants have challenged the order passed by the trial Court by which the application (Exh. 14) filed by them under Section 9A of the Code of Civil Procedure is dismissed. By this application (Exh. 14), the defendants contended that the civil suit as filed by the plaintiffs is not maintainable without permission of the authority under the Maharashtra Public Trusts Act, 1950 (for short "the Act of 1950") as per Section 50 (iv) and Section 51 of the Act of 1950.

The plaintiffs are seeking permanent injunction to restrain the defendants from disturbing possession of the plaintiffs over the suit property. The learned trial Judge has observed that though the suit property belongs to the public trust, looking to the nature of the relief claimed by the plaintiffs, permission of the Charity Commissioner is not required for institution of the civil suit. The conclusions of the

learned trial Judge are in consonance with the law laid down by this Court in the case of Charity Commissioner, Maharashtra State vs. Shaikh Kasam Shaikh Hussain and others reported in 1998 (1) Bom. C.R. at page 400.

The advocate for the petitioners – defendants has pointed out that application filed by the plaintiffs under Order 1 Rule 10 of the Code of Civil Procedure seeking permission to implead the public trust as the defendant is pending and overlooking this, the impugned order is passed. The impleadment of the public trust as the defendant in the civil suit, even if permitted, will not have any effect on maintainability of the civil suit before the Civil Court without permission of the Charity Commissioner, as the plaintiffs are not seeking any relief against the public trust but are seeking enforcement of their personal civil rights.

In view of the above, I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari