

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**34 WRIT PETITION NO.9342 OF 2021**

Shri Eknath Maharaj Vishwast Mandal,  
Paithan & Others

.. Petitioners

**Versus**

Dnyaneshwar Mahadu Jadhav and Others

.. Respondents

...

Mr. Mayur Salunke, Advocate h/f. Mr. V.D. Salunke, Advocate for petitioners.

Mr. S.R. Yadav – Lonikar, AGP for the Respondent – State

Mr. S.B. Choudhari, Advocate for Respondent Nos.1 to 3, 5 to 13, 15 to 35

...

**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 19<sup>th</sup> JUNE, 2023**

**ORDER :**

1. Petitioners are aggrieved by the order dated 23.03.2021 passed by learned 2<sup>nd</sup> Jt. Civil Judge Junior Division, Paithan below Exh.13 in Regular Civil Suit No.32 of 2020 thereby rejecting the application filed by petitioners / defendants under Order-VII, Rule-11 of the Code of Civil Procedure, 1908 (in short 'C.P.C.') for rejection of the plaint.

2. Respondents - plaintiffs filed suit for declaration and permanent injunction restraining petitioners - defendants trust

for causing obstruction to the peaceful possession of plaintiffs over the suit property. Petitioners - defendants by filing application Exh.13 under Order-VI, Rule-11 of the C.P.C. prayed for rejection of the plaint for non-obtaining permission under Section 51 of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as the 'MPD Act').

3. After hearing the learned advocates for the respective parties, the Trial Court has rejected the application and hence the present petition.

4. Heard learned advocate for petitioners and learned advocate for respondents. Perused the memo of the writ petition, annexures thereto and the impugned order

5. Learned advocate for petitioners vehemently urged that the suit is filed by respondents – plaintiffs in respect of trust property and an injunction is sought against the trust, therefore permission of the Charity Commissioner contemplated under Section 51 of the MPD Act ought to have been taken. In absence of the same, the suit is liable to be rejected. The Trial Court has failed to appreciate this aspect in a proper perspective and has erred in rejecting the application.

6. In support of his submissions, learned Advocate for petitioners relied on the following judgment of the Apex Court:

- (i) ***Narmadabai vs. Trust Shri Panchvati Balaji Mandir*, reported in 1995 (Supp.3) SCC 676**
- (ii) ***Sainath Mandir Trust Vs. Vijaya & Ors.*, reported in 2011 (1) SCC 623.**

7. Per contra, learned advocate for some of respondents supported the impugned order and relied on the following citations:

- (i) ***Amirchand Tulshiram Gupta & Ors vs. Vasant Dhanaji Patil & Ors*, reported in [1992 (1) Mh.L.J. 275]**
- (ii) ***Surayya Afzal Khan vs. Raza Shah Fakir Takiya and Masjid Trust, Pune & Ors*, reported in [2006 (4) Mh.L.J. 544]**
- (iii) ***Shri Samarth Seva Mandal, Sajjangad & Ors vs. Shri Ramdas Swami Sansthan Trust, Satara & Ors*, reported in [2011 (4) Mh.L.J. 254]**
- (iv) ***Shri Datta Deosthan Trust, Ahmednagar vs. Milind Govind Kshirsagar & Ors*, reported in [2011 (4) Mh.L.J. 763]**
- (v) ***Yamunabai Dhankude vs. Raosaheb Mohanlal Chimanlal Maniyar Trust and Ors*, reported in 2012 (2) Mh.L.J. 55.**

8. On perusal of the record, it is clear that there is no proper description of the suit property in the plaint. There is no

gut number / survey number etc. of the suit property mentioned by the respondents – plaintiffs in the plaint. Even petitioners - defendants while opposing the suit has not relied upon any document to *prima facie* prove their possession over the suit property.

9. The Trial Court has rejected the application mainly on the ground that since plaintiffs are enforcing their civil right, permission under Section 51 of the MPD Act was not necessary. For arriving at such conclusion, the Trial Court has relied upon judgment dated 02.07.2015 passed by the learned Assistant Charity Commissioner, Aurangabad in Inquiry no.J-3/03/2014. However, facts in that case were different. In that case, the property bearing Survey No. 1112 was standing in the name of deceased Bhaktraj Bangar and it was undisputed that the property was allotted to the deceased as *gaothan* land. In these facts, learned Assistant Charity Commissioner held that, '*relief claimed in the suit is to enforce their civil rights and as such it was not necessary to obtain permission under Section 51 of the MPD Act.*'

10. In the case in hand, since the pleadings of the parties are vague and neither of the parties are in a position to establish their ownership and title over the suit property, at this stage,

this Court is not inclined to interfere in the order impugned in the present petition.

11. In case, petitioner trust establishes its ownership and title over the suit property, in that event it may file such application and the same be decided by the Trial Court on merits, without being influenced by the order impugned in the present petition.

12. With the aforesaid observations, the writ petition is disposed of.

**(NITIN B. SURYAWANSHI)**  
**JUDGE**