

AGK

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

CIVIL REVISION APPLICATION NO.420 OF 2016

Rangrajan Gokul & Anr.	... Applicants
V/s.	
Swami Samarth Adhyatmik Nyay Prabhodhan Peth, Akkalkot & Ors.	... Respondents

Mr. Surel S. Shah for the applicants.

Mr. Sachinkumar Rajepandhare for respondent Nos.1
to 12.

Mr. A.S. Kalekar for respondent No.15.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 12, 2023

P.C.:

1. By this civil revision application under section 115 of the Code of Civil Procedure, 1908, the applicants/original defendant Nos. 8 and 9 are challenging order passed by the Trial Court rejecting application under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 to reject the plaint on the ground that the suit filed by Trustees along with Trust is not maintainable for want of permission under Section 50 of the Maharashtra Public Trusts Act, 1950.

2. According to the plaintiffs, defendant Nos.1 and 2 executed sale deed in favour of plaintiff No.1. However, despite execution of

sale deed, possession of suit property was not delivered. The prayer in the suit was for possession of the suit property from defendant Nos.1 to 8. Further relief of injunction was sought not to create third party rights over the suit property.

3. Defendant Nos.8 and 9 who are purchasers of the suit property filed an application under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 contending that prior permission of the Charity Commissioner is necessary under Section 50 of the Maharashtra Public Trusts Act, 1950 and in absence of such permission, suit is not maintainable and is barred by law.

4. The Trial Court rejected the application by the impugned order. The Trial Court held that the suit is filed for enforcement of civil rights of possession and, therefore, permission of the Charity Commissioner is not necessary.

5. From the averments in the plaint, it appears that the claim made by the plaintiffs in substance is that after the execution of the sale deed, status of defendant Nos.1 and 2 is that of trespasser. Therefore, the suit filed by the Trustees seeking recovery of possession of the property of the Trust is not maintainable in absence of permission under Section 50 of the Maharashtra Public Trusts Act, 1950. The said observation gets strength from the judgment of a learned Single Judge of this Court in **Gafoor Ali Hussain & Ors. v. Ram Mahadik & Ors.** reported in 2000 (1) Mh.L.J. 436. The learned Single Judge of this Court has held that the suit filed by the Public Charitable Trust for eviction of trespasser from its property and for recovery of possession,

permission of the Charity Commissioner is not necessary.

6. In that view of the matter, there is no error of jurisdiction committed by the Trial Court while rejecting the application filed under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

7. The civil revision application, therefore, stands rejected. No costs.

(AMIT BORKAR, J.)