

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

CIVIL REVISION APPLICATION NO. 639 OF 2023

Pratap Balasaheb Jadhav & Anr.	... Applicants
Versus	
Prince Shivaji Maratha Boarding House	
Thr. Chairman & Ors.	... Respondents

...

Mr. S. R. Ganbavale, a/w. Mr. Kush Lahaukar i/b. Mr. Shantanu Patil for Applicants.

...

CORAM : SANDEEP V. MARNE, J.
DATE : 04 NOVEMBER 2023.

P. C.:

The challenge in the present Application is to the Order dated 12 September 2023 passed by the Civil Judge, Senior Division, Kolhapur rejecting Application of Applicants / Original Defendant Nos.1 and 2 for rejection of plaint under provisions of Order 7 Rule 11 of the Code of Civil Procedure (**Code**).

2. I have heard Mr. Ganbavale, the learned counsel appearing for Applicants. He would submit that the Applicants are not trespassers in the suit property and they are in fact owners thereof. He would submit that the Plaintiff himself confirms in the plaint that Respondent Nos.1 and 2 have obtained possession of the suit property from tenants. That

their names figured on the revenue record as owners.

3. He would therefore submit that the Defendant Nos.1 and 2 would be covered by the expression 'any other person' within the meaning of Clause-(ii) of the Section 50 of the Maharashtra Public Trusts Act, 1950 (**Trust Act**) and therefore in absence of permission from Charity Commissioner, the Trust cannot file suit against Defendant Nos.1 and 2. That such suit would be barred under provisions of Section 80 of the Trust Act.

4. I have gone through the plaint. In the plaint, Plaintiff-Trust has come up with a specific case that it is owner of the suit property. It has denied any right, title or interest of the Defendant Nos.1 to 5 in the suit property. Plaintiff-Trust has averred that the Defendant Nos.1 and 2 have illegally obtained possession of the suit property fraudulently from Respondent No.6. In the entire plaint, there is no admission that Defendant Nos.1 and 2 are owners of the suit property. In such circumstances, Defendant Nos.1 and 2 would be covered by the expression 'but not a person holding adversely to the public trust'. Under Section 50 of the Trust Act, Trust is entitled to file suit against a person for recovery of possession of property against a person holding adversely to the public trust. Section 50 of the Trust Act reads thus :-

**Section 50 : SUIT BY OR AGAINST OR RELATING TO
PUBLIC TRUSTS OR TRUSTEES OR OTHERS :-**

In any case,—

(i) where it is alleged that there is a breach of a public trust, negligence, mis-application or misconduct on the part of a trustee or trustees,

[(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee or tenant,]

(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or

(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof,

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject- matter of the trust is situate, to obtain a decree for any of the following reliefs.

(a) an order for the recovery of the possession of such property or proceeds thereof;

(b) the removal of any trustee or manager;

(c) the appointment of a new trustee or manager;

(d) vesting any property in a trustee,

(e) a direction for taking accounts and making certain enquiries;

(f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence,

misapplication, misconduct or wilful default;

(g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(h) a direction to apply the trust property or its income cy pres on the lines of section 56 if this relief is claimed along with any other relief mentioned in this section;

(i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem necessary;

(j) the settlement of a scheme, or variations or alterations in a scheme already settled;

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same;

(l) an order for winding up of any trust and applying the funds for other charitable purposes;

(m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust;

(n) an order exonerating the trustees from technical breaches, etc.;

(o) an order varying, altering, amending or superseding any instrument of trust;

(p) declaring or denying any right in favour of or against, a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or -

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid reliefs or is necessary in the interest of the trust:

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in

conformity with the provisions thereof;

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled:

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under sub-section (4) of section 1.]

5. There is specific assertion in the plaint Defendant Nos.1 and 2 are possessing the suit property without having any right, title or interest in the same. Though Plaintiff has admitted in the suit that Defendant Nos.1 to 5 mutated their names to the revenue records, such mutation does not raise a presumption of ownership. In fact, the Defendant Nos.1 and 2 desired that the Trial Court ought to have drawn an inference while deciding the Application under Order 7 Rule 11 of the Code that Defendant Nos.1 and 2 have become owners of the suit property on account of mutation of their names to the revenue records. Apart from the fact that the Trial Court is not supposed to draw any such presumption while deciding Application under Order 7 Rule 11 of the Code, there is specific assertion of the Plaintiff that Defendant Nos.1 to 5 have not right, title or interest in the suit property.

6. In my view therefore, the Trial Court has rightly rejected the Application filed by the Applicants under Order 7 Rule 11 of the Code. Upon reading of the plaint as a whole, it clearly appears that Defendant Nos.1 and 2 would be covered by the expression 'a person holding

adversely to the public Trust'. It therefore appears that permission of the Charity Commissioner is not necessary for maintaining suit filed by the Plaintiff-Trust. No infirmity is found in the Order passed by the Trial Court. The Revision Application is rejected. Needless to say that the Trial Court shall not be influenced by this Order while deciding the suit finally.

SANDEEP V. MARNE, J.

KISHOR
VISHNU
KAMBLE

Digitally signed
by KISHOR
VISHNU
KAMBLE
Date:
2023.11.07
23:02:52
+0530