

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

CIVIL REVISION APPLICATION NO.13/2023

Mr. Amol s/o Rameshwarlal Jaiswal and another

Vs.

Shri Kanhaiyalal Trust through its Trustee Shri Narayankumar Jawaharlalji Jaiswal

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

Court's or Judge's orders

Shri D.P. Bhondage, Advocate for applicants
Shri A.R. Deshpande, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 10/03/2023

The present application is filed challenging the order passed below Exhibit 23 by learned Joint Civil Judge Senior Division, Akola. The applicant No.1 herein is the defendant No.2 in Special Civil Suit No.115/2022. Defendant No.2 filed application under Order VII, Rule-11 read with Sections 151 of the Civil Procedure Code, contending therein that suit is not maintainable as per Section 50 and 51 of the Maharashtra Public Trust Act because prior permission to file the suit was not obtained.

2. The plaintiff-Trust submitted detail reply and after hearing the parties, the application came to be rejected. According to the plaintiff, serious illegalities are committed by defendant No.2 and in order to seek substantive relief in respect of trust property, the present suit is maintainable. Defendant No.2 has been removed from the trusteeship and the change report to that effect is pending. There was Enquiry

No.04/2020 under Section 41-A of the Maharashtra Public Trust Act, 1950, wherein the order passed by the Assistant Charity Commissioner, Akola by which the trustees were directed to file appropriate proceeding before the Civil Court for declaration in respect of registered sale deed dated 26/06/2020 executed by the present defendant No.2 in favour of his wife defendant No.1. The said order confirmed by this Court in Writ Petition No.2018/2021.

3. The learned Counsel for respondent relied on *Rajgopal Raghunathdas Somani Vs. Ramchandra Hajarimal Jhavar, reported in 1967 Mh.L.J. 799*, wherein it is held that the persons associating with trust being in position of *de facto* trustees can sue for possession without obtaining the consent of the Charity Commissioner. In the present matter, in the order itself, the learned Assistant Charity Commissioner gave direction to plaintiff to take appropriate proceedings for declaration of sale deed. The same was confirmed by this Court.

4. In view thereof, there is no illegality or perversity in the order passed by the learned Joint Civil Judge Senior Division, Akola. Accordingly, the application stands dismissed.

JUDGE