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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 941 OF 2022
WITH
INTERIM APPLICATION NO. 30758 OF 2022
IN
SECOND APPEAL NO. 941 OF 2022**

Babasaheb Bhausaheb Ladage
(Since Deceased) through LR

.....Appellant

Vs.

Zilla Parviksha and Anurakshan Sanghatana
Kolhapur Thr. Sec. Padmaja Rajaram
Tiwale and anr

.....Respondents

Mr. Chetan Patil a/w Mr. Vishwesh Gadage Advocate for the Appellant

CORAM : GAURI GODSE, J.

DATE : 11th OCTOBER 2024

ORDER:

1. Heard learned counsel for the appellant. This second appeal is filed by defendant no. 1 (defendant) challenging the concurrent judgments and decrees for possession passed in favour of the plaintiff Trust. In an appeal preferred by the defendant, the first Appellate Court has modified the decree only about the defendant's entitlement to get a set off for an amount already paid by him pursuant to the lease deed

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executed in his favour.

2. Learned counsel for the appellant submits that the suit was filed only through one trustee without joining all the trustees as parties. He thus submits that the suit was not maintainable in law. Learned counsel further submitted that the suit was instituted without taking permission under section 50 of the Maharashtra Public Trust Act, 1950 ('Trust Act'). He thus submits that the suit was also not maintainable for want of permission under section 50 of the Trust Act, and thus, the plaintiff-Trust was not entitled to seek possession of the suit property. Learned counsel further submits that the first Appellate Court erred in not deciding the issue of non-maintainability of the suit for want of permission under section 50 of the Trust Act.

3. Learned counsel for the appellant referred to the findings recorded by both the Courts and submitted that vital aspect with regard to the requirement of permission under section 50 of the Trust Act for the institution of the suit and non-joinder of all the trustees to the suit was not correctly dealt with by both the Courts. He further submits that defendant was put in possession of the suit property pursuant to the registered lease deed, which created substantive rights in favour of

the defendant. He submits that the suit filed for possession on the ground that permission under section 36 of the Trust Act was refused was not maintainable as it was obligatory on the part of the Trust to obtain permission for execution of the lease deed. He thus submits that once there was a registered lease deed in favour of the defendant, refusal of de-facto permission under section 36 of the Trust Act cannot be a ground to dispossess the defendant. Learned counsel for the appellant submits that all the aforesaid grounds raise substantial questions of law which are required to be considered by this Court.

4. I have perused the reasons recorded by both the Courts. There is no dispute that the defendant was put in possession of the suit property pursuant to a registered lease deed executed in his favour. It is also not in dispute that the application filed by the Trust for de facto permission under section 36 of the Trust Act was refused. Thus, for want of permission under section 36 of the Trust Act, the lease deed, though registered, cannot be held to be a valid document of title in favour of the defendant. For want of permission under section 36 of the Trust Act, the lease document would be an invalid document. Except for the execution of the lease deed, the defendant has no right to retain possession of the suit property.

5. I do not find any substance in the arguments raised on behalf of the appellant that all the trustees were necessary parties to the suit. Both the Courts have concurrently held that a copy of the resolution was produced on record, passed by all the trustees permitting the trustee to file suit on behalf of the Trust for recovery of possession. There is no dispute on the resolution passed by the Trustees authorising one of the trustees to initiate proceedings. To support his submissions on non-joinder of all the trustees as necessary parties, learned counsel for the appellant relied upon the decision of this Court in the case of ***Kamaruddin Masjit Trust by its Mutawalli Trustee Shaikh Bashir Ismail Vs. Abdul Rahiman Fakiruddin***¹. He submitted that this Court held that all the trustees would be necessary parties for recovering possession from the defendant. In view of the facts of this case, the decision relied upon by the learned counsel for the appellant is of no assistance to the arguments regarding the non-joinder of all the trustees as necessary parties. This Court, in the said decision in paragraph 4, has clarified the situation regarding the joinder of all the trustees as necessary parties. Paragraph 4 of the said decision reads as under:

¹ (1986 Mh.L.J. 543)

“4. Firstly, the plaintiff suing for possession of trust property was admittedly only one of the trustees, while in law all the trustees must join in such action. All co-trustees must, in general, act in concurrence and jointly. It is a joint office that they hold. They constitute in the eyes of law but one collective trustee. One or some only of the trustees cannot sue for possession unless and except where the instrument of trust expressly so authorises and provides, which is not so here. Alone and by himself, therefore, the plaintiff was not entitled to sue the defendant for possession.”

6. Thus, in view of the resolution placed on record, which was passed by all the trustees, I do not find any substance in the arguments raised regarding the non-joinder of all the trustees as necessary parties.

7. The issue with regard to permission under Section 50 of the Trust Act for filing the suit is concerned; the same would not apply to the present case as the suit is filed against the defendant who was inducted as lessee without taking permission under Section 36 of the Trust Act. The suit was filed on the ground that permission under section 36 of the Trust Act was refused. Hence, the defendant would not be entitled to retain possession. Therefore, in view of clause (ii) of

section 50 of the Trust Act, no such permission was necessary to institute a suit against the defendant, who was at the most holding the premises as a licensee pursuant to a registered agreement executed in his favour. There is no specific bar created under Section 50 to file such a suit for recovery of possession, without obtaining permission from the Charity Commissioner. The first Appellate Court correctly dealt with the objection and held that no such permission was necessary.

8. The trial court examined all the aforesaid points and correctly held that neither permission under section 50 of the Trust Act was necessary, nor were all the trustees required to be joined as necessary parties in view of the resolution passed by all the trustees, which was placed on record.

9. Admittedly, the permission under section 36 of the Trust Act was refused. Hence, the findings recorded by both courts that the lease agreement was not legal and valid cannot be faulted.

10. Thus, in view of the admitted facts of the case and the reasons recorded by both the Courts, the aforesaid grounds raised on behalf of the appellant would not require any consideration by this Court.

11. The reasons recorded by both Courts are not illegal or perverse. There is no substantial question of law involved in the second appeal that would require consideration by this Court.

12. The second appeal is therefore dismissed.

13. In view of the dismissal of the second appeal, Interim Application No. 30758 of 2022 stands disposed of as infructuous.

[GAURI GODSE, J.]