

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 476 OF 2025

Vinayak Subhash Wadekar

...Appellant

Versus

Vanabai Mankoji Dhone Trust through its
Trustees

...Respondents

WITH

INTERIM APPLICATION NO. 10821 OF 2025

Mr. Laxmikant Shrimangale, a/w Ambadas Shrimangale, for
the Appellant.

Mr. Drupad Patil, a/w Srushti Chalke, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 24th SEPTEMBER, 2025

Order:-

1. Heard the learned Counsel for the parties.
2. This Second Appeal is directed against a judgment and decree dated 7th May, 2025 passed by the learned District Judge, Khed-Rajgurunagar in Appeal No.35 of 2019, whereby the appeal, preferred by the appellant – original defendant, against a judgment and decree passed by the learned Civil Judge in Regular Civil Suit No.386 of 2011, came to be dismissed by affirming the decree for eviction passed against the defendant.
3. Vanabai Mankoji Dhone Trust, a Public Trust, registered under the Maharashtra Public Trust Act, 1950 (“the Trust Act,

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1950”) is the owner and landlord of the premises bearing House No.75 situated at Alandi (“the suit premises”). The Trust had let the suit premises to the defendant on a monthly rent of Rs.653/-. The defendant committed default in payment of rent. The Trust decided to terminate the tenancy and, thus, a notice was issued to the defendant on 5th December, 2009. As the defendant failed to comply with the demand therein, the trust instituted RCS No.386 of 2011, seeking possession of the suit premises and the arrears of rent.

4. The defendant resisted the suit, *inter alia*, on the ground that the suit was not tenable as the Trust had not obtained prior permission of the Charity Commissioner, as warranted under Section 51 of the Trust Act, 1950. The suit, at the instance of few of the trustees only, was not maintainable. In fact, the termination notice also suffered from the said vice of all the trustees having not joined in seeking the termination of the tenancy and recovery of possession of the suit premises.

5. By a judgment and order dated 1st March 2019, the learned Civil Judge decreed the suit holding *inter alia* that the suit was governed by the provisions of Section 106 of the Transfer of Property Act, 1882; the jural relationship between the parties was not in dispute; the landlord had validity

terminated the tenancy by notice dated 5th December 2009, and the defendant failed to establish that he had paid the rent. The learned Civil Judge negatived the challenge to the tenability of the suit on the ground that the Trust was required to obtain the prior permission of the Charity Commissioner for the institution of the suit.

6. Being agreed, the defendant preferred an appeal before the District Court. By the impugned judgment and order dated 7th May, 2025, the learned District Judge dismissed the appeal concurring with the view of the learned Civil Judge. It was, *inter alia*, held that all the requisite conditions for the valid termination of the tenancy as envisaged by Section 106 of the Transfer of Property Act, 1882 were fulfilled.

7. Being further aggrieved, the defendant has filed this Second Appeal.

8. Mr. Shrimangale, the learned Counsel for the appellant, would urge that both the courts below have committed manifest error in law in passing the decree of eviction in utter disregard to the settled legal position that the notice of termination at the instance of few of the trustees is not legal and valid and the suit at the instance of few of the trustees only is incompetent. Amplifying the submission, Mr. Shrimangale would urge that,

there were in all five trustees. All the trustees did not join in issuing the notice of termination nor filed the suit. It was urged that the permission of the Charity Commissioner was also required for the institution of the suit.

9. In the appeal-memo, two substantial questions of law were sought to be raised, namely, whether the termination of tenancy by notice which was issued contrary to the provisions of Sections 47 and 48 of the Indian Trust Act was legal and valid, and, whether the suit instituted by the President, Secretary and one of the trustees only, out of the five trustees, was maintainable?

10. To buttress the aforesaid submission, Mr. Shrimangale placed reliance on a judgment of the learned Single Judge of this Court in the case of *Nagar Wachan Mandir, Pandharpur, through its Chairman, President and another vs. M/s. Akbarali Abdulhusen and Sons and others*¹, wherein it was enunciated that a conjoint reading of Sections 47 and 48 of the Indian Trust Act would lead to an inference that a suit for eviction, filed by two trustees only, was not maintainable. Granting of a lease is the matter which cannot be delegated by trustees and, therefore, it must follow as a necessary corollary that determination of a

1 1994(2) Bom. C.R. 251.

lease also cannot be regarded as a matter which can be delegated by one trustee to another co-trustee or to anyone else.

11. In opposition to this, Mr. Dhrupad Patil, the learned Counsel for the respondent – plaintiff, would urge that the controversy sought to be raised is no longer *res intergra* and is covered by a Full Bench judgment in the case of ***Shyamabai Surajkaran Joshi & ors. vs. Madan Mohan Mandir Sanstha***². It was submitted that in the case at hand the decision to terminate the tenancy was taken by the Trust as is evidenced by the resolution passed in the meeting of the Trust dated 20th July, 2009 and that constitutes sufficient authorization.

12. At the outset, it is necessary to note that the challenge to the tenability of the suit for want of permission of the Charity Commissioner under Section 51 of the Trust Act, 1950 need not detain the Court as the suit for eviction does not fall within the ambit of the provisions contained in Section 50 of the Trust Act, 1950.

13. The main plank of the submission of Mr. Shrimangale that in view of the provisions contained in Sections 47 and 48 of the Indian Trust Act, the notice of termination was required to be issued by all the trustees of the Trust and the suit was also

2 2010(1) Bom. C.R. 204.

required to be instituted by all the trustees of the Trust also seems to be covered by the Full bench judgment of this Court in the case of *Shyamabai Surajkaran Joshi* (supra).

14. The Full Bench has, in terms, held that the provisions contained in Sections 47 and 48 of the Indian Trust Act cannot be imported to public trust. As regards, the discharge of duties of their office by their trustees, the Full Bench adverted to the decision of the Supreme Court in the case of *J. P. Srivastava and Sons Private Limited and others vs. Gwalior Sugar Company Limited*³. wherein the following position in law was enunciated:

“29. Therefore although as a rule, trustees must execute the duties of their office jointly, this general principle is subject to the following exceptions when one trustee may act for all (1) where the trust deed allows the trusts to be executed by one or more or by a majority of trustees; (2) where there is express sanction or approval of the act by the co-trustees; (3) where the delegation of power is necessary; (4) where the beneficiaries competent to contract consent to the delegation; (5) where the delegation to a co-trustee is in the regular course of the business; (6) where the co-trustee merely gives effect to a decision taken by the trustees jointly.

15. The Full Bench, thereafter, expounded the law as under:

“20. The above observations of the Apex Court clearly demonstrate that as a general rule, the trustees must execute duties of their office jointly. However, this general rule is not without exceptions and those exceptions as mentioned by the Apex Court are: where one of the trustees can act upon the decision taken by the majority of the trustees, or by express sanction or approval by the co-trustees, or where the beneficiaries competent to contract consent to the delegation, or where the delegation to a co-trustee is in regular course of

3 (2005)1 SCC 172.

business or where the co-trustee merely gives effect to the decision taken by the trustees jointly. It is in the light of the law laid down by the Apex Court, the question No.2 referred to us by Justice C. L. Pangarkar will have to be decided by the learned Single Judge on the facts and circumstances of the case.”

16. In the light of the aforesaid Full Bench judgment and the judgment of the Supreme Court in the case of *Thayarammal (Dead) By LR vs Kanakammal & Ors*⁴, wherein it was enunciated that the Indian Trusts Act as clear by its Preamble and contents is applicable only to private trusts and not to public trusts, reliance placed by Mr. Shrimangale on the judgment in the case of *Nagar Wachan Mandir* (supra) appears to be inapposite.

17. Reverting to the facts of the case, this Court is of the considered view that the resolution passed by the Trust on 20th July, 2009 to terminate the tenancy of the defendant and initiate action for the recovery of the possession constitutes sufficient authorization and falls within the ambit of “the express sanction or approval of the act by the co-trustees”; Clause (2) of paragraph 29 of the judgment in the case of *J. P. Srivastava* (supra)) and the said action of issue of notice, termination of tenancy and institution of suit would also fall within the ambit of clause (6) of paragraph 29 namely, “where the co-trustee merely gives effect to a decision taken by the

4 (2005) 1 SCC 457.

trustees jointly”. Indubitably, the resolution was passed by all the trustees of the Trust.

18. In the aforesaid view of the matter, this Court is unable to accede to the submission of Mr. Shrimangale that a substantial question of law arises for the determination in this appeal. Resultantly the appeal fails.

19. The Second Appeal stands dismissed.

[N. J. JAMADAR, J.]