

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.4436 OF 2025
IN
SUIT NO.13 OF 2025**

Vijay Jayantilal Patel	Applicant
IN THE MATTER BETWEEN	
Shri Hari Ashram	
(through its Trustees)	Plaintiff
V/S	
Vijay Jayantilal Patel & Anr.	Defendants

Mr. Chetan Kapadia, Senior Advocate with *Mr. Rohaan Cama, Mr. Nagendra Dube and Mr. Yash Oza i/b M/s. Lexi Conveniences* for Defendant No.1 and for Applicant in IA 4436 of 2025.

Mr. Sharan Jagtiani, Senior Advocate with *Mr. Karl Tamboly, Mr. Aaman Kecharia, Mr. Aadil Parsurampur, Mr. Gaurav Srivastav, Ms. Manorama Mohanty and Mr. Hitanshu Jain i/b M/s. S.K. Srivastav & Co.* for the Plaintiff.

**CORAM : SANDEEP V. MARNE, J.
DATE : 3 OCTOBER 2025.**

J U D G M E N T :

1. This Interim Application is filed by Defendant No.1 seeking rejection of Plaint under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 (**the Code**).

2. Shri Hari Ashram is a Public Charitable Trust registered under the provisions of Bombay Public Trusts Act, 1950, (**BPT Act**) as it applies to the State of Gujarat. The Suit is filed by the Trustees on behalf of the Trust. By Indenture of Lease dated 10 September 1962, Jai Hind

Co-operative Housing Society Ltd. (**Society**) granted lease of plot No.6 admeasuring 669.80 square meters bearing City Survey No.580 and being part of land bearing Survey No.70 of Juhu in Juhu Vile Parle Development Scheme, Mumbai Sub-urban District (**the plot**) for a term of 999 years with effect from 14 March 1962 in favour of Mr. Lalbhai Purushottamdas Shah and others. By Indenture of Assignment dated 6 September 1969, the lease in respect of the plot was assigned and transferred to Mr. Bhailal Chotalal Patel with the consent of the Society. Said Mr. Bhailal Chhotalal Patel constructed building comprising of ground plus three floors on the plot named 'Usha Villa'. After Mr. Bhailal Chhotalal Patel passed away, his heirs Dr. Peter and Jayantilal inherited the said plot. Under the arrangement between them, Jayantilal was entitled to ground floor, first floor, garage and storage on the ground floor, whereas Dr. Peter was entitled to second and third floors of the building Usha Villa. It is Plaintiff's case that the Plaintiff-Trust decided to acquire 50% share of Dr. Peter in the plot alongwith construction thereon being second and third floor of the building for consideration of Rs.5 crores. Plaintiff claims that it was informed that the Society did not permit transfer of plot in the name of the Trust and accordingly it was decided to acquire 50% share in the plot and construction thereon in the name of the two trustees of the Trust Sadhu Shree Purushottama Charandasji and Mr. Vithalbhai Somabhai Patel. Accordingly, by registered Deed of Assignment dated 30 July 2012 Dr. Peter assigned 50% of his undivided right, title and interest in the plot alongwith construction being second and third floor of building Usha Villa in favour of the said two Trustees. Shri Jayantilal, the other 50% owner, is confirming party to the said Deed of Assignment.

3. Plaintiff claims exclusive possession of second and third floor of building Usha Villa in pursuance of deed of assignment dated 30 July

2012 in addition to joint possession of the plot alongwith Jayantilal. The 50% undivided share in the plot and second and third floor of the Building Usha Villa is referred to as the '**suit premises**' in the plaint.

4. According to Plaintiff, the religious Head of the Trust used to reside in the suit premises upto Covid-19 pandemic. After relaxation of lock-down restrictions, the said religious Head once again started residing in suit premises but left for heavenly abode on 26 July 2021, after which the suit premises remained vacant. According to Plaintiff, Defendant Nos.1 and 2, who are sons of Jayantilal, illegally took over possession of the suit premises in November 2021. The Plaintiff has accordingly filed present Suit seeking recovery of possession of the suit premises, for recovery of damages of Rs.10,00,000/- and for recovery of mesne profits of Rs.10,00,000/- from Defendant Nos.1 and 2.

5. Defendant No.1 has appeared in the Suit and has filed present Application seeking rejection of Plaint under Order VII, Rule 11(d) of the Code. Plaintiffs have filed Affidavit-in-Reply opposing the Interim Application.

6. Mr. Kapadia, the learned Senior Advocate appearing for Defendant No.1 would submit that the Suit has been filed by the Trust/Trustees for recovery of possession of alleged trust property without seeking consent of Charity Commissioner under provisions of Sections 50 and 51 of the BPT Act. That the Suit filed by Trust for recovery of possession of trust property without seeking consent of Charity Commissioner is not maintainable in law and that therefore the Plaint in the Suit deserves to be rejected by having recourse to the provisions of Order VII, Rule 11 of the Code. He would submit that even

Section 50 of the BPT Act does not permit institution of Suit by the Trust unilaterally without approaching the Charity Commissioner for recovery of possession of Trust property from a person holding adversely to the Trust. That there is distinction between the language used under provisions of Section 50 of Maharashtra Public Trusts Act (**MPT**) and Section 50 of BPT Act. That Section 50 of BPT Act is applicable even when recovery of possession of Trust property is sought from a person holding adversely to the Public Trust. That the provisions of the BPT Act create a complete mechanism for dealing with property of the Trust and that therefore it is impermissible to file a Civil Suit relating to property of the Trust without consent of the Charity Commissioner. In support of his contention, he would rely upon judgment of the Apex Court in ***Church of North India vs. Lavajibhai Ratanjibhai and others***¹. He would also rely upon judgment of Gujarat High Court in ***Patel Nanji Devji and others. vs. Patel Jivraj Manji and others.***,² in support of his contention that suit for removal of encroachment on Trust property cannot be filed without consent of Charity Commissioner. He would submit that provisions of Sections 50 and 51 of the BPT Act are aimed at preventing frivolous litigations by and against the Trust and Trustees and provide for intervention by Charity Commissioner when the Trust or Trustees decide to initiate proceedings relating to property of the Trust. He would also rely upon judgment of the Apex Court in ***Virupakshayya Shankarayya vs. Neelakanta Shivacharya Pattadadevaru***,³.

7. Mr. Kapadia would further submit that Plaintiff's suit is also barred under provisions of Section 80 of the BPT Act under which no Civil Court has jurisdiction to decide or deal with any question which can be decided or dealt with by an Authority under the Act. He would take me

1 (2005) (10) SCC 760

2 1988 SCC OnLine Guj. 12

3 1995 Supp(2) SCC 531

through pleadings in the plaint to demonstrate that though there is no prayer for a declaration that suit premises is Trust property, an issue will have to be framed and decided as to whether Suit premises are indeed Trust property or not. That such a declaration cannot be made by Civil Court on account of bar under Section 80 of the BPT Act since Charity Commissioner alone can rule on Trust property.

8. Mr. Kapadia would further submit that the Suit is also bad for non-joinder of necessary parties. That the Society is a necessary party to the Suit as there are several pleadings in the Plaint relating to misplacement of original share certificate as well as Society contesting the claim of Plaintiff. That Society being the lessor, no relief can be sought in respect of suit premises which are subject matter of lease without impleading the Society. That the Society disputes Plaintiff's membership, and that the *lis* in the Suit cannot be adjudicated in absence of the society. That therefore the Plaint deserves to be rejected for non-joinder of necessary parties under Order VII, Rule 11 (d) of the Code.

9. Lastly, Mr. Kapadia would submit that the Suit is hopelessly barred by limitation. He would however not press the ground of limitation at this juncture while seeking rejection of the Plaint. He would submit that Plaintiff reserves the liberty to press the issue of limitation at an appropriate stage.

10. Mr. Jagtiani, the learned Senior Advocate appearing for the Plaintiff would oppose the Interim Application submitting that the Charity Commissioner's permission under Section 50 of the BPT Act is not necessary. That Plaintiff is exercising common law and civil right against third parties for recovery of possession of its property which can neither be adjudicated nor dealt with by the Charity Commissioner in any

manner. That clause (ii) of Section 50 of the MPT Act does not have application in relation to filing of proceeding against person holding adversely to the Public Trust or a trespasser. That Defendants have trespassed the Trust property and are holding adversely to the Public Trust. That therefore permission of Charity Commissioner is not necessary for filing Suit against recovery of Trust property from the Defendants. He would submit that the issue is squarely covered by judgment of this Court in the case of Plaintiff-Trust itself where similar objection raised by another encroacher in relation to a different property of the Trust has been repelled by this Court holding that permission of Charity Commissioner under Sections 50/51 of the Act is not necessary. He would rely upon judgment in *Shri Hari Ashram & Ors. vs. Khushalbhai Bhawan Kawa & Ors.*⁴ That Appeal filed against order passed by the Single Judge in *Shri Hari Ashram & Ors.* (supra) has been withdrawn. He would also rely upon judgment of Division Bench in *Amirchand Tulsiram Gupta and others vs. Vasant Dhanaji Patil & others*⁵ He would also rely upon judgment of Single Judge of Gujarat High Court in *Nadiad Nagarpalika, Nadiad vs. Vithalbhai Zaverbhai Patel & others*,⁶ in support of his contention that Section 50 of the then BPT Act as applicable to State of Gujarat has been interpreted to mean that consent of the Charity Commissioner is not necessary for filing Civil Suit for recovery of possession of trust property. So far as reliance on Section 80 of the MPT Act is concerned, he submits that Civil Court's jurisdiction is barred only in respect of a question which can be decided or dealt with by an officer or authority under the MPT Act. That Charity Commissioner does not have jurisdiction to direct removal of trespass from trust property. That therefore bar under Section 80 of the MPT Act cannot apply to present Suit filed for recovery of possession of trust

4 Interim Application (L) No.38071 of 2022, decided on 22 December 2022

5 1992 Mh.L.J. 275

6 1980 SCC OnLine Guj 93

property from strangers. He would submit that non-joinder of necessary party cannot be a ground for rejection of Plaint under Order VII, Rule 11 of the Code. That Society is otherwise not a necessary party for deciding suit for recovery of possession from a trespasser. He would accordingly pray for dismissal of the Application.

11. Rival contentions of parties now fall for my consideration.

12. Plaintiff claims co-ownership in respect of the plot and structure standing thereon. It has purchased 50% undivided right in the plot as well as second and third floors of the Building Usha Villa vide registered Deed of Assignment dated 30 July 2012. The other portion of the building comprising ground floor, first floor, garage and storage on the ground remained in possession with Jayantilal, the other co-owner. Plaintiff claims that in November 2021 sons of Jayantilal (Defendants) have taken over possession of the suit premises. Plaintiff has accordingly filed the present Suit for recovery of possession of the suit premises from the Defendants.

13. Plaintiff is a Public Charitable Trust registered under the provisions of Bombay Public Trust Act, 1950, as is applicable to the State of Gujarat. The Deed of Assignment dated 30 July 2012 has been executed in the name of the two trustees and it is Plaintiff's case that the same was required to be executed in the name of the two trustees on account of restriction by the Society on assignment of lease in favour of a Trust.

14. Defendant No.1 has filed the instant Application seeking rejection of Plaint under Order VII, Rule 11(d) of the Code on three grounds of non-maintainability of suit in absence of written consent of Charity

Commissioner under Sections 50 and 51 of the BPT Act, bar under Section 80 of the Act and failure to join Society as a necessary party. Though the objection of limitation is also raised in the Application, Mr. Kapadia has fairly not pressed the said objection for seeking rejection of Plaint at this moment and reserving the liberty to raise the said objection at an appropriate stage.

15. So far as first objection of failure to obtain written consent of Charity Commissioner is concerned, Section 50 of the BPT Act requires such written consent of Charity Commissioner for the purpose of institution of proceedings for recovery of possession of the Trust property. There is somewhat similar, but not identical, provision under Section 50 of the BPT Act.

16. Since Plaintiff-Trust is registered under the provisions of BPT Act, as applicable to State of Gujarat, it would be necessary to take into consideration the provisions of Section 50 of BPT Act, which provides thus:

“S. 50. Suits relating to Public Trusts:

In any case,

- (i) where it is alleged that there is a breach of a public trust;
- (ii) where a direction is required to recover possession of a property belonging to a public trust for the proceeds thereof or for an account of such property or proceeds) from any person including a person holding adversely to the public trust; or
- (iii) where the direction of the Court is deemed necessary for the administration of any public trust,

the Charity Commissioner after making such enquiry as he thinks necessary or two or more persons having an interest in the trust and 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;
- (cc) vesting any property in a trustee;
- (d) a direction for taking accounts and making certain inquiries;
- (e) 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;
- (f) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) the settlement of a scheme or variations or alterations in a scheme already settled; or
- (h) granting such further or other relief as the nature of the case may require:

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.”

17. For State of Maharashtra, provisions of Maharashtra Public Trusts Act, 1950 (**MPT Act**) apply and provisions of which are more or less similar to the BPT Act. Section 50 of the MPT Act provides thus:

“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 or any other person but not a person holding adversely to the public trust, trespasser, 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 contentions 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) * *
- (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 relief 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.

Explanation.— In this section, “Court” means, in the Greater Mumbai, the City Civil Court and elsewhere, the District Court.”

18. Section 51 of the MPT Act provides for the manner in which consent of the Charity Commissioner for institution of Suit can be procured and Section 51 of the MPT Act provides thus:

“51. Consent of Charity Commissioner for institution of suit.— (1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks fit is satisfied that there is a prima facie case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1), the persons applying for such consent may file an appeal to the Court, as if such order was an order passed by the District Court from which an appeal lies, within sixty days from the date of the said order, which shall otherwise be final.

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.

(4) * * * “

19. Thus, though Section 50 of the MPT Act and Section 50 of the BPT Act are more or less similar, there is a marked difference between the two provisions. Under Section 50 of the MPT Act, written consent of the Charity Commissioner is necessary for a Suit for recovery of possession of Trust property from a trustee, ex-trustee, alienee or any other person. However, such written consent is not necessary for seeking recovery of Trust property from a ‘person holding adversely to the public trust, trespasser, licensee or tenant’. As against this, Section 50 of the BPT Act provides for written consent of Charity Commissioner for recovery of

possession of Trust property from any person including a 'person holding adversely to the public trust'.

20. Thus, clause (ii) of Section 50 of the BPT Act and MPT Act uses following expressions:

MPT Act	BPT Act
(ii) where a direction or decree is required to recover the possession of a property 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 or any other person but not a person holding adversely to the public trust, trespasser, licensee or tenant,	(ii) where a direction is required to recover possession of a property belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from any person including a person holding adversely to the public trust; or

21. So far as provisions of Section 50 of MPT Act are concerned, there appears to be no difficulty as written consent of Charity Commissioner is not necessary for filing proceedings for recovery of possession of Trust property from a trespasser or a person holding adversely to the Public Trust. However, Defendant No.1 relies on provisions of Section 50 of the BPT Act (which applies in the State of Gujarat) for contending that such permission is necessary even for recovery of possession of Trust property from a person holding adversely to the Public Trust.

22. The objection if first Defendant about failure to secure consent of Charity Commissioner for filing the present Suit is countered by the Plaintiff by relying on judgment of this Court in its own case in ***Shri Hari Ashram*** (supra). Plaintiff has instituted Suit (L) No.38069 of 2022 seeking possession of the Trust property at Goregaon from Defendants therein. Maintainability of the Suit was questioned by Defendants therein on account of absence of permission of Charity Commissioner under

Sections 50 and 51 of the BPT Act. The learned Single Judge relied upon judgment of Division Bench of this Court in ***Amirchand Tulsiram Gupta and others*** (supra) and held in paragraphs 12 and 13 of the judgment as under:

12. In these undisputed facts, I shall now examine the arguments canvassed by Mr. Narichania. The first argument canvassed by Mr. Narichania is that the suit is not maintainable because no permission of the Charity Commissioner is taken as contemplated under Sections 50 and 51 of the Gujarat Public Trusts Act, 1950. I do not think that this argument should detain me for very long as this issue is squarely covered by a decision of the Division Bench of this Court in the case of ***Amirchand Tulsiram Gupta & Ors. Vs. Vasant Dhanaji Patil & Ors.*** (1992 SCC OnLine Bom 4: 1992 (1) Mh.L.J. 275). In this decision a Division Bench of this Court has categorically held that Section 50 of the Bombay Public Trusts Act, 1950 [and which is pari materia to section 50 of the Gujarat Public Trusts Act, 1950], is not a bar for Trustees to institute the suit in exercising their common law rights and are entitled to file suits without obtaining the prior permission of the Charity Commissioner. The relevant portion (from the SCC OnLine Report) reads thus:-

“12.The plaintiffs feeling aggrieved by the impugned judgment, have preferred the present appeal, while defendants Nos. 5, 6 and 7 have filed cross-objections to challenge certain findings recorded by the trial Judge against the defendants in regard to the technical objections. Before advertng to the submissions advanced in support of the appeal, it is necessary to state that the Court Receiver, High Court, Bombay was appointed to take possession of the suit lands and several proceedings were adopted by the plaintiffs pending the suit complaining that in spite of appointment of the Court Receiver, who had permitted defendants Nos. 5 to 1 to remain in occupation as the agent of the Court Receiver, defendant Nos. 5 to 7 indulged in erecting further illegal structures and inducting various trespassers on the property. It is also required to be stated that in respect of certain interim orders passed by this Court in the present appeal, defendant No. 5 had moved the Supreme Court and Supreme Court after taking suo moto proceedings punished defendant No. 5 under the Contempt of Courts Act for making wild and unsubstantial allegations against the former Chief Justice of this Court. These developments do not affect the merits of the case, but are set out only to high light the grievance of the plaintiffs that defendant No. 5 has acted highhandedly throughout. The principal contention which requires determination in the appeal is whether the plaintiffs established title to the suit lands and whether the defendant No. 5 has succeeded in proving that Dhanaji Patil has perfected his title to the suit lands by adverse possession and therefore decree of recovery of possession cannot be passed against defendant Nos. 5 to 7 who are claiming as lessors of Dhanaji Patil. Dhanaji Patil having died in the year 1971, that is prior to the institution of the suit and legal representatives of Dhanaji Patil having failed to resist the suit, the entire burden and which is quite heavy to establish that Dhanaji Patil has perfected title by adverse possession, is on the shoulders of defendants Nos. 5 to 7. Before examining that claim, it is necessary to examine the finding of the trial Court that the suit was not maintainable in absence

of permission of the Charity Commissioner under sections 50 and 51 of the Bombay Public Trusts Act.

13. The Bombay Public Trusts Act, 1950 was enacted to regulate and to make better provision for administration of public religious and charitable trusts in the State of Bombay. The plaintiffs are the trustees of a charitable trust registered under this Act. Section 50 of the Act deals with the topic “suits by or against or relating to public trusts or trustees or others”, and inter alia provides that where a direction or decree is required to recover the possession of a property belonging to a public trust from a trustee, ex-trustee, alienee, trespasser or any other person, including a person holding adversely to the public trust, the Charity Commissioner may institute a suit in the Court within the local limits of whose jurisdiction the subject matter of the Trust is situated. The section provides that apart from the Charity Commissioner two or more persons having the interest and having obtained consent in writing of the Charity Commissioner can institute the suit and seek reliefs which are set out in the section. Section 51 of the Act provides that if person having an interest in any public trust intends to file a suit of the nature specified in section 50, then such person shall apply to the Charity Commissioner in writing for his consent. The Charity Commissioner may grant or refuse consent depending upon the satisfaction of the existency of a prima facie case. The contesting defendants urged before the trial Judge that consent under sections 50 and 51 of the Public Trusts Act is a condition precedent for institution of the suit by the trustees for recovery of possession against the trespassers or a person claiming adversely to the interest of the trust and failure to obtain consent must result in dismissal of the suit. The contention was met by the plaintiffs by relying upon two decisions of this Court reported in 1961 N.L.J. 326 : 63 Bom. L.R. 312, *Gurusiddappa Tipanna Mugeru v. Miraj Education Society, Miraj* and 1967 Mah LJ 799 : 69 Bom. L. R. 472, *Rajgopal Raghunathdas Somani v. Ramchandra Hajarimal Jhavar*. The later decision is of a Division Bench and follows the earlier decision recorded by the single Judge. The Division Bench held that the trustee is the legal owner of the trust property and enjoys all the rights inherent in a natural owner of a property and can sue to recover trust property, and section 50 cannot apply as a bar to the substantive right of the trustee to institute suit. The Division Bench further held that the provisions of section 92 of the Code of Civil Procedure are analogous to the provisions of section 50 and the separate right of a trustee dehors the provisions of section 50 to file a suit for protection of trust properties cannot be disputed. The Division Bench there upon held that provisions of section 50 are not restrictive but cumulative and it only entitles a person having an interest to sue and does not prohibit any suit being filed by trustees of a public trust. The Division Bench then observed:

“The trustee who is in the position of a legal owner of property can sue to recover the property from persons who are in occupation without any right, title or interest without obtaining any previous sanction from the Charity Commissioner.”

14. The view consistently taken by this Court is also followed by the decision of the Gujarat High Court reported in AIR 1980 Guj 161, *Nadiad Nagar Palika v. Vithalbhai Zaverbhai Patel* and the Full Bench of the Mysore High Court in the case reported in AIR 1972 Mysore 1, *Gollaleshwar Dev of Golgeri v. Gangawa Kom Shantayya Math*.

15. The learned trial Judge was bound by the decision of the Division Bench and should not have dismissed the suit on the ground that in absence of permission of the Charity Commissioner the suit was not maintainable. The learned Judge accepted the claim of defendants Nos. 5 to 7 that the decision of the Division Bench of this Court is no longer a good law in view of the amendment to section 50 as also to section 2(10) by Maharashtra Act No. 20 of 1971. Section 2(10) Clause (e) provides that “person having interest” in the case of any public trust includes trustees or beneficiaries. Initially the word “trustees” did not find place but was inserted by Amendment Act of 1971. Section 50 initially provided that permission is necessary where the possession of the property of the public trust is sought to be recovered from any person, including a person holding adversely to the public trust. After amendment the section provides that where the property is to be recovered 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 a licensee, consent is necessary. The learned single Judge felt that the decisions recorded by the single Judge and Division Bench of this Court as well as by the Gujarat High Court considered the provisions of section 50 prior to the amendment and therefore are not good law. It was concluded that the amendment demands that when a suit is instituted against a trespasser for recovery of the property belonging to the trust, consent of the Charity Commissioner in writing is obligatory.

16. Mr. Munshi, learned counsel appearing for the appellants, complains that the view taken by the single Judge is entirely unsustainable and we find considerable merit in the submission of the learned counsel. We are unable to appreciate how the amendment will take away effect of the decision recorded by this Court and which has held field for several years. The inclusion of the word “trustee” in section 2(10)(e) makes no difference whatsoever, because the expression “person having interest” cannot leave out trustees even though the word “trustee” was not specifically included prior to the amendment. Shri Sathe, learned counsel appearing for the contesting respondents, very fairly stated that it cannot even be suggested that the trustees could not have been treated as ‘person having interest’ prior to the amendment. **We are also unable to appreciate how the amendment to provisions of section 50 would make it obligatory for the trustees to obtain permission of the Charity Commissioner to institute suit for recovery of possession against the trespasser.** The amended section makes no departure from the earlier section. The unamended section clearly provided for obtaining of consent to recover possession from a person including a person holding adversely to a public trust, and surely a trespasser holds the possession adversely to the public trust. The mere fact that expression “trespasser” was specifically used in the amended section makes no difference whatsoever to the ratio laid down by this Court and by Gujarat High Court and the Mysore High Court that **section 50 is not a bar for the trustees to institute a suit in exercise of their common law rights.** In our judgment, the finding of the learned single Judge that the suit was not maintainable in the absence of the consent is entirely erroneous. The amendment carried out in 1971 does not alter the ratio laid down by the Division Bench of this Court.

17. It is necessary in this connection to refer to the decision reported in (1985) 4 SCC 393 : AIR 1986 SC 231, ***Shree Gollaleshwar Dev v. Gangawa Kom Shantayya Math***. The Supreme Court held that section 50 created and regulated a right to institute a suit by the Charity Commissioner or by

two or more persons interested in the trust, in the form of supplementary statutory provisions without defeasance of the right of the manager or a trustee or a shebait of an idol to bring a suit in the name of idol to recover the property of the trust in the usual way. **In other words the Supreme Court accepted the view taken by the Division Bench of this Court that the right of a trustee to bring a suit in the usual way, that is in exercise of rights under the common Law is not affected by provisions of section 50 of the Public Trusts Act.** The ratio laid down by the Supreme Court in the decision reported in 1986 Mah LJ 773, Vidarbha Kshatriya Mali Shikshan Sanstha v. Mahatma Fuley Shikshan Samiti, Amravati holding that trustees who want to enforce their civil rights are not covered by definition of the expression “person having interest” and are entitled to file suits without obtaining prior permission. The same view was taken by another single Judge in the decision reported in 1988 (2) BCR 429, Leelavati w/o Vasantrao Pingle v. Dattatraya D. Kavishar. The same view was taken by another single Judge in an unreported decision dated September 13, 1990 delivered in Original side Suit No. 958 of 1975 and the decision of the single Judge was confirmed in Appeal No. 1315 of 1990 by the Division Bench by judgment dated March 14, 1991. The Division Bench specifically disapproved the view taken by the trial Court in the present case holding that the decision reported in 1967 Mah LJ 799 : 69 Bom. L.R. 472, Rajgopal Raghunathdas Somani v. Ramchandra Hajarimal Jhavar still holds field and section 50 does not prohibit a suit being filed by trustees to recover possession from trespasser without obtaining prior permission. We are in respectful agreement with the view taken by the Division Bench and the learned single Judge, and we entirely disagree with the finding of the trial Judge that the suit was not maintainable in absence of permission. The learned trial Judge was clearly in error in holding that after amendment of section 50 and section 2(10)(e) it is incumbent upon the trustees to obtain prior approval of the Charity Commissioner to institute suit against a trespasser for recovery of possession. As the finding of the trial Judge on this count is set aside, consequently the finding that the High Court had no jurisdiction to entertain the suit and the suit could be filed only in the City Civil Court after obtaining prior approval cannot stand.

13. In view of this authoritative pronouncement, the first argument canvassed by Mr. Narichania would therefore have to be rejected.

(emphasis added)

23. Thus, in case of the present Plaintiff, similar objection for maintainability of the Suit has been rejected in ***Shri Hari Ashram*** (supra) by relying on Division Bench judgment in ***Amirchand Tulsiram Gupta & Ors.*** (supra). In paragraph 12 of the judgment, this Court has taken note of provisions of Sections 50 and 51 of the BPT Act. In ***Amirchand Tulsiram Gupta*** the Division Bench has held that Section 50 of the Act does not defeat or restrict common law right of the trustees to file suit against a trespasser for recovery of trust property.

24. Since similar objection about requirement to procure permission of Charity Commissioner under Sections 50 and 51 of the BPT Act has been already decided in ***Shri Hari Ashram*** (supra), the objection raised by Defendant No.1 in the present Application would also have been rejected out-rightly. However, Mr. Kapadia has contended that attention of this Court was not brought to fine distinction between provisions of Sections 50 in BPT Act and MPT Act while deciding ***Shri Hari Ashram*** (supra) and that the learned Single Judge has noted in paragraph 12 of the judgment that provisions of Section 50 of BPT Act are *pari materia* to Section 50 of MPT Act which is factually not the case. While Mr. Kapadia is not entirely wrong in contending that the fine distinction between Sections 50 of both enactments was possibly not brought to the notice of the Court deciding ***Shri Hari Ashram*** (supra), there are atleast two reasons why I am not inclined to take a contrary view. *Firstly*, the issue whether trustees can file a suit for recovery of possession from a trespasser without consent of Charity Commissioner has nothing to do with the issue about the person against whom such suit is to be filed. It may be that under the amended Section 50 of MPT Act, consent of Charity Commissioner may not be necessary when suit is to be filed by persons interested in the trust against a trespasser or a person holding adverse to the trust. However, whether such consent is necessary when the suit is filed by the trustees is the issue in the present case and the same would not depend on the person who is to be sued. *Secondly*, while deciding ***Shri Hari Ashram*** (supra) the learned Single Judge has relied squarely on judgment of Division Bench of this Court in ***Amirchand Tulsiram Gupta & Ors.*** (supra). Though the judgment in ***Amirchand Tulsiram Gupta & Ors.*** is rendered in relation to a Trust registered under MPT Act and by taking into consideration provisions of Sections 50 and 51 of the MPT Act, the Division Bench has taken note of judgment of the learned Single Judge of Gujarat High Court in ***Nadiad Nagarpalika,***

Nadiad (supra). Gujarat High Court in *Nadiad Nagarpalika, Nadiad* has considered provisions of Section 50 of the then Bombay Public Trusts Act as applicable to the State of Gujarat and has held in paragraphs 5 and 6 as under:

“5. Mr. Shah's next submission is that the case is the one where a direction is required to recover possession of a property belonging to a public trust from the defendant, who according to the plaintiff, is holding adversely to the public trust. So, according to Mr. Shah, clause (ii) of Section 50 is also attracted to the present case. Mr. Shah's further submission is that the suit in the present case is "for the recovery of the possession of the trust property" and therefore, it is the suit of the type mentioned in clause (a) of Section 50 of the Act. The sum and substance of the argument of Mr. Shah, therefore, is that this is a suit clearly falling within the strait-jacket of Section 50 of the Act and therefore, by virtue of the first proviso of that section, no suit could be instituted in respect of the public trust except in conformity with the provisions of this section. Mr. Shah's submission in final analysis, therefore, is that by virtue of the proviso, the present suit claiming reliefs set out in clause (a) of the Sec. 50, could be instituted only in conformity with the provisions of this Act and not otherwise.

6. I frankly say that Mr. Shah has put forward his submissions in a very ingenious manner. However, on the close scrutiny of the provisions of Section 50 of the Act, in the light of the general property law, his submissions cannot be accepted. The first and foremost reason for the same is that Section 50 is an enabling provision. Ordinarily, trustees as legal owners alone are able to file suits for the recovery of possession of trust properties. As for example, a trespasser, if sued by a third party, would be able to successfully resist the suit by banking on his de facto possession of the property. To put it in legal parlance, possession is a good point, except against the true owner. That is the established dictum of law. Ordinarily, the Charity Commissioner or the persons claiming to be interested as beneficiaries, but having no legal title in them, would fail in their suits, if they file the same for the recovery of possession of the trust property, even if they allege that the defendant is in adverse possession and the interest of such beneficiaries are likely to be jeopardised in the ultimate analysis. Such a suit, according to general property law and general procedural law, is bound to fail. In the general interest of public trust properties, which are close to the heart of the Legislature, a special provision has, therefore, been made in Section 50 of the Act clothing the Charity Commissioner or the beneficiaries of the public trust to institute suits for various reliefs set out in clauses (a) to (h) of Section 50' of the Act. But for this enabling provision, the Charity Commissioner or the beneficiaries would not be in a position to institute such suits. The Charity Commissioner, however, is given power to file

such suits on his own. The beneficiaries at times might be tempted to raise the disputes under the alleged guise of their interest in the trust properties and may at times work counter to the powers of the trustees. That is why, a condition has been imposed on their right to file such suits and the condition is that they must procure the permission of the Charity Commissioner before they embark on such litigation under the assumed colour of safeguarding the interests of the public trust. The substantial portion of Section 50, therefore, is to be confined to the power of Charity Commissioner and the power of the beneficiaries of the trust to institute those suits enumerated in clauses (a) to (h) of Section 50 of the Act, where the background is one depicted in clauses (i) or (ii) or (iii) of the initial part of Section 50.”

25. In *Nadiad Nagarpalika, Nadiad* the Defendants therein had raised a similar objection that permission or written consent of Charity Commissioner was necessary for recovery of possession of property belonging to Public Trust from the Defendants who was holding adversely to Public Trust. The Gujarat High Court however, held that Section 50 of the GPT Act is merely an enabling provision and ordinarily trustees as legal owners alone are able to file Suits for recovery of possession of Trust properties. The Court held that Charity Commissioner can himself file a Suit for recovery of possession of Trust property from trespasser. Additionally, the beneficiaries who are interested in securing possession of Trust property under the guise of their interest in Trust property can also file such a suit subject to grant of permission by Charity Commissioner to institute such suit. Thus, Gujarat High Court in *Nadiad Nagarpalika, Nadiad* has held that trustees as legal owners can file a suit for recovery of Trust property without securing permission of Charity Commissioner. As observed above the judgment in *Nadiad Nagarpalika, Nadiad* after taking into consideration of Section 50 of the BPT Act, as applicable to the State of Gujarat and has been relied upon by Division Bench of this Court in *Amirchand Tulsiram Gupta & Ors.* (supra) which in turn has been relied upon that learned Single Judge of this Court in Plaintiff’s own case in *Shri Hari*

Ashram (supra). In my view therefore the judgment rendered by this Court in Plaintiff's own case is reason enough for rejecting the objection raised by Defendant No.1

26. Additionally, in **Amirchand Tulshiram Gupta & Ors.** the Division Bench of this Court has made a detailed discussion on the scheme of Section 50 of the MPT Act. The Division Bench relied upon previous decision of Division Bench in **Gurusiddappa Tipanna Mugerī vs. Miraj Education Society, Miraj**,⁷ in which it is held that trustee is a legal owner of Trust property and enjoying all the rights inherent in a natural owner of the property and can sue to recover Trust property and Section 50 of MPT Act cannot apply as a bar to substantive right of Trustee to institute Suit. The Division Bench further held that the provisions of Section 92 of the Code are analogous to the provisions of Section 50 of MPT Act and that separate right of a Trustee dehors provisions of Section 50 of the MPT Act to file a suit for protection of Trust properties cannot be disputed. The Division Bench also held that provisions of Section 50 of the MPT Act are not restrictive but cumulative and it only entitles a person having an interest to sue and does not prohibit any suit being filed by the Trustee of the Public Trust. In **Amirchand Tulsiram Gupta & Ors.** (supra) the Division Bench thus held that Section 50 of the MPT Act is not a bar for Trustees to institute a suit in exercise of their common law rights.

27. Independent of the above judgments, if provisions of Section 50 of the BPT Act are analyzed, it is seen that the provision creates right to sue in favour of two additional classes of persons in addition to Trustees. Normally, only a legal owner can sue for recovery of possession of property from a trespasser. In case of a Trust property, the trustees in

⁷ 1961 N.L.J. 326 : 63 Bom. L.R. 312

their capacity as natural legal owners, are obviously entitled to file a Suit for recovery of possession of Trust property from a trespasser. Section 50 of the BPT Act also permits Charity Commissioner to institute such a Suit in the event the Charity Commissioner finds that Trustees have failed to perform their duties in recovering possession of Trust properties. In addition to the trustees and Charity Commissioner, a third category of persons are also given right to sue for recovering possession of Trust property from a trespasser. Such third category persons are “*two or more persons having an interest in the Trust*”. It is only for this third category of persons that the requirement of securing written consent of Charity Commissioner in the manner provided under Section 51 of the Act is necessary. There is a reason for this requirement of obtaining written consent of Charity Commissioner when a Suit is to be filed by ‘two or more persons having interest in the Trust’. The provision ensures that a random person does not sue a trespasser on behalf of the Trust. The Charity Commissioner conducts an enquiry under Section 51 of the Act and only after he is satisfied that the two or more persons claiming interest in Trust can be granted permission to sue for recovery of Trust property, the Charity Commissioner can grant such permission. Therefore Section 50 of even BPT Act as applicable to the State of Gujarat cannot be read to mean a restriction on common law right of trustees to sue trespasser for recovery of trust property.

28. One must also bear in mind the principle of charities. The Charity Commissioner ultimately is overall incharge of the public charitable trusts. In respect of trust properties, things are not left entirely at the hands of the trustees even though they may be natural owners thereof. A trust property cannot be alienated without prior permission of the Charity Commissioner even by the trustees, who are owners. This is the reason why a provision is made where persons other than natural owners

(trustees) are empowered under Section 50 of the BPT Act to sue for recovering possession of trust property from trespassers. Conferment of such right on non-trustees ensures that the trust property is protected where the trustees are either not available or are unable to or refuse to take effective steps for protecting trust property. The condition of seeking prior consent of Charity Commissioner is imposed to ensure that the non-trustees proposing to sue a trespasser is really interested in the trust and are not total strangers to the trust. However mere enabling provision permitting non-trustees to sue a trespasser with written consent of Charity Commissioner would not mean that the trustees would also need consent of Charity Commissioner for suing a trespasser.

29. The conspectus of above discussion is that trustees in their capacity as natural legal owners of Trust property do not require permission of Charity Commissioner for institution of proceedings for recovery of possession of Trust property from a trespasser.

30. Mr. Kapadia has relied upon judgment of *Church of North India* (supra) in which it is held in paragraphs 74 to 76 as under:

“74. Prayer (a) in the plaint is for a declaration. Such declaration cannot be granted by a civil court as regards succession of the District Church of the Brethren as the same was a religious trust registered under the BPT Act.

75. Prayer (b) of the plaint also could not have been granted, as the question as to whether the applicant is the legal continuation and successor of the First District Church of the Brethren is a matter which would fall for exclusive determination of the Charity Commissioner keeping in view the provisions of the deed of trust as regards its succession. **It would necessarily follow that a declaration whether the first appellant became a legal successor of the properties held by the First District Church of the Brethren could not also have been granted.** The decision and resolution purported to have been adopted by the Synod and the Gujarat Diocesan Council are binding on all churches or not would again be a question which could have been gone into by the Charity Commissioner as the same had direct bearing not only on the

administration and management of the Church registered with it but also related to the properties held by it. Such a decision of the Charity Commissioner is again final and conclusive subject to the decision of the Appellate Authority viz. the Bombay Revenue Tribunal.

76. Grant of prayer (c) for perpetual injunction would also give rise to adjudication on the question as to whether the appellant herein had the legal right to own the properties of the First District Church of the Brethren and administer or manage the same although at the relevant time it was not a registered trust and although no amendment had been effected in the registers and books maintained by the Charity Commissioner in terms of Section 17 read with Sections 21 and 22 of the Act. The plaintiffs with a view to obtain an order of injunction furthermore were required to establish that they could file a suit for enforcement of right of the appellant as a religious trust and such a legal right vests either in the plaintiff or in the appellant herein indirectly. Such a prayer, related to the possession of the property, comes squarely within the purview of the BPT Act. If the question as regards recovery of possession of the property belonging to a public trust squarely falls within the purview of Section 50 of the Act, had such application been filed before the Charity Commissioner he was required to go into the question as to whether the plaintiffs are persons having interest in the trust and whether a consent should be given to them to maintain a suit. Only when, inter alia, such consent is granted, could a suit have been filed in terms of Section 51 of the Act. In the event of refusal to give consent, the persons interested could have preferred an appeal.”

(emphasis added)

31. In ***Church of North India*** (supra), the dispute was with regard to succession to the Trust property. The issue before the Apex Court was not about recovery of possession of Trust property from strangers or trespassers. The observations relating to requirement of securing written consent of Charity Commissioner for securing possession of trust property are made in the context of issue of succession to trust property involved before the Apex Court. Therefore, the judgment in ***Church of North India*** (supra) does not provide any assistance for deciding the issue at hand.

32. Mr. Kapadia has also relied on judgment of the Apex Court in ***Virupakshayya Shankarayya*** (supra) in which the issue was whether the

expression “two or more persons having an interest” used in Section 50 of the BPT Act would include even trustees. The case before the Apex Court involved an issue about valid installation of parties as Padadayya and the issue of recovery of property was related to the question of valid installation as Padadayya. The judgment therefore provides little assistance to decide the issue at hand.

33. Reliance by Defendant No.1 on judgment of learned Single Judge of Gujarat High Court in *Patel Nanji Devji and Ors.* (supra), far from assisting the case of Defendant No.1, actually militates against him. The Gujarat High Court held in paragraph Nos.4 and 5 of the judgment as under:

“4. Learned counsel for the appellants relied upon a decision of this court in the case of *Nadiad Nagarpalika v. Vithalbhai Patel*, reported in 21 Guj LR 792 : (AIR 1980 Guj 161). That was a suit for removal of encroachment over the trust property and it was filed by the trustees against the trespassers. The defendant raised a contention that necessary consent of the Charity Commissioner was not obtained by the trustees before filing the suit and therefore the suit was not maintainable. In the context of the aforesaid factual position, this court held that first proviso to S. 50 which reads as follows would not come in the way of the plaintiff.

“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;”

5. In that case, this court held that when the trustees filed suit for removal of encroachment alleged to have been made by the trespassers in the trust property, the consent of the Charity Commissioner as contemplated under S. 51 read with S. 50 of the Act was not required to be obtained. The aforesaid decision has no application to the facts and circumstances of this case. In this case it is an admitted position that the suit filed by the trustees falls within the scope of the S. 50 of the Act. In the suit it is inter alia prayed that the respondents be removed as trustees. Therefore undoubtedly the suit is of the nature specified in S. 50 of the Act. In the case of *Nadiad Nagarpalika* (AIR 1980 Guj 161) (supra) the suit was not of the nature specified in S. 50 of the Act. Therefore, the principles laid down by this court in the case of *Nadiad Nagarpalika*

(supra) would not be applicable to this case. In para 5 of the judgment it is inter alia observed as follows:—

“S. 50, therefore, could not have been intended to impose an embargo on the general powers of the trustees to file suits for the recovery of the possession of the trust property either from tenants or licensees or from trespassers.”

From what is stated hereinabove, it should be clear that the observations made and principles laid down in the case of *Nadiad Nagarpalika* (supra) would not apply to the suit of the nature specified in S. 50 of the Act and to which the provisions of S. 50 of the Act are undoubtedly and undisputedly applicable.”

(emphasis added)

34. Thus, in *Patel Nanji Devji and Ors.* (supra) Gujarat High Court after referring to the judgment in *Nadiad Nagarpalika, Nadiad* (supra) has held that when Trustees file Suit for removal of encroachment, consent of Charity Commissioner under Sections 50 and 51 of the BPT Act is not required to be obtained.

35. I am therefore of the view that for filing the present Suit by trustees of the Trust, for recovery of possession of Trust property from Defendants, written consent of Charity Commissioner under Sections 50 and 51 of the BPT Act or MPT Act is not necessary. The Plaint in the Suit therefore cannot be rejected on account of failure to seek such written consent.

36. The Defendant No.1 has relied on provisions of Section 80 of the BPT Act for contending that there is bar on filing of Civil Suit under Section 80 of the BPT Act, which provides thus:

“80. Bar of Jurisdiction.— Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, or in respect of which the decision or order of such officer or authority has been made final and conclusive.”

37. Thus, under Section 80 of the BPT Act a Civil Court does not have jurisdiction to decide or deal with any question which can be decided only by an Officer or Authority under the BPT Act. However, Section 50 of the Act merely enables the Charity Commissioner to institute a Suit for recovery of possession of Trust property from a trespasser, and the Charity Commissioner himself cannot decide the issue of trespass. There is no provision under the BPT Act which empowers the Charity Commissioner to himself decide the issue of recovery of possession from a trespasser. In MPT Act however, a special provision is made under Section 41E, where the Charity Commissioner is conferred power to act for protection of charities. Under Section 41E of the MPT Act, the Charity Commissioner can make an order of temporary injunction when he notices that the trust property is in the danger of being wasted, damaged or improperly alienated. Section 41E of the MPT Act provides thus:

“41E. Power to act for protection of Charities.—

(1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit,—

(a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or

(b) that the trustee or such person threatens, or intends to remove or dispose of that property,

the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit.

(2) The Charity Commissioner shall in all such cases, except where it appears that the object of granting injunction would be defeated by delay, before granting an injunction, give notice of the facts brought to his notice to the trustee, or the person concerned.

(3) After hearing the trustee or person concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any other appropriate order.

* *

(5) A trustee or a person against whom the order of injunction or any other order under this section is passed may, within ninety days of the date of communication of such order, appeal to the Court against such order.”

38. However, there appears to be no corresponding provision under the BPT Act. Even the power under Section 41E of the MPT Act is restricted to make merely an order of temporary injunction not final adjudication of rights of third parties. Therefore, even Section 41E of the MPT Act cannot be read to mean that the Charity Commissioner has power to evict a trespasser from trust property. However, it is not necessary to delve deeper into this aspect as BPT Act, under which the Plaintiff Trust is registered, does not contain a similar provision.

39. Therefore, since Charity Commissioner does not have jurisdiction to pass an order against a trespasser to handover possession of the Trust property to the Trust or to the trustees, bar under Section 80 of the BPT Act would not apply to the present Suit. Therefore, the Plaint in the Suit cannot be rejected on account of provisions of Section 80 of the BPT Act.

40. The last objection of Defendant No.1 is about non-joinder of Society as a necessary party to the Suit. The Suit has been instituted by Plaintiff for recovery of possession of suit premises from Defendants. The Suit does not seek any declaration about ownership of the suit premises. The Society need not be concerned with possession of the property belonging to its member and cannot be a necessary party when a member decides to sue a trespasser. The present case involves issue of alleged trespass committed by a co-owner. In such a case, Society is not a

necessary party for deciding the issue of possession. Even otherwise, Plaintiff in a Suit cannot be rejected on the ground of non-joinder of necessary party under Order VII, Rule 11 of the Code, especially when it discloses cause of action against the impleaded Defendants.

41. The fourth ground of limitation is not pressed at this stage and the same is left open to be raised by Defendants at appropriate stage.

42. Considering the overall conspectus of the case, I am of the view that no case is made out by Defendant No.1 for rejection of Plaintiff by having recourse to provisions of Order VII, Rule 11 of the Code. The Application filed by Defendant No.1 is misconceived and the same is liable to be rejected. The Interim Application is accordingly rejected.

(SANDEEP V. MARNE, J.)