

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 672 OF 2024

Uttreshwar Vitthal Mandir Uttreshwar Peth
 And Alandi Through President Shri. Balu
 Shamrao Mane And Ors. ... Appellants

Versus

Kisabai Balu More (decd.thr.lrs)
 Smt. Laxmi Vitthal More And Ors. ... Respondents

WITH
INTERIM APPLICATION NO. 618 OF 2023
IN
SECOND APPEAL NO. 672 OF 2024

Uttreshwar Vitthal Mandir Uttreshwar Peth
 And Alandi Through President Shri. Balu
 Shamrao Mane And Ors. ... Applicants

Versus

Kisabai Balu More (decd.thr.lrs)
 Smt. Laxmi Vitthal More And Ors. ... Respondents

Adv. Abhijit M. Adagule a/w Adv. Ketaki Patil and Vaishnavi
 Inamdar, for Appellants.
 Adv. P. D. Dalvi, for the Respondent No.2.

CORAM : SACHIN S. DESHMUKH, J.
DATE : 06-03-2026

ORDER :-

1. The appellants raise an exception to the judgment and decree dated 07.07.2022 rendered by the learned District Judge – 5, Kolhapur in Regular Civil Appeal No. 381 of 2015, endorsing the

judgment and decree dated 30.09.2015 in Regular Civil Suit No. 875 of 2007.

2. Heard learned counsel for litigating sides.

3. The appellants herein are the original plaintiffs while respondents are the original defendants. The parties hereafter shall be referred by their original status in the suit.

4. The Plaintiffs (a Trust) filed R.C.S. No. 875/2007 seeking possession of an open plot and recovery of rent arrears (Rs. 150/month) from the Defendants. The Plaintiffs claimed the property was rented to the Defendants' predecessor and that the Maharashtra Rent Control Act did not apply as the suit property is open land. They sought eviction based on a need for construction after serving a termination notice dated 13.09.2007. The Defendants contested the suit, challenging the Trust's authority to sue, the validity of the alleged tenancy agreement, including the necessity of the land for construction.

5. The Civil Judge Junior Division, Kolhapur, dismissed the suit vide judgment and decree dated 30.09.2015, holding that the Plaintiffs failed to prove the default in rent or the existence of a valid resolution authorizing the suit. While the court agreed the Rent Control Act was inapplicable, it found no evidence to support

the claim for arrears or the grounds for eviction.

6. Consequently, the plaintiffs preferred an appeal against the aforesaid judgment and decree before the learned District Court, Kolhapur in Regular Civil Appeal No. 381 of 2015.

7. The learned District Judge, Kolhapur dismissed the appeal holding that suit was not maintainable as the plaintiffs failed to establish their authority, confirm all trustees were party to the suit, or obtain the necessary consent from the Charity Commissioner. Furthermore, the court dismissed the claim for rent arrears based on a direct admission from the plaintiff's witness that all rent had been received prior to the suit.

8. As such, the appellants are before this Court by preferring this Second Appeal.

9. The learned counsel for the appellants submits that the appellants / Trustees were authorized in the wake of the resolution passed by the Trust and had accordingly filed the suit. As such, the suit was maintainable and ought not to have been dismissed. It is further submitted that the Appellate Court also has overlooked the said resolution and erroneously dismissed the appeal. The Trustees being 'persons having interest' as per Section 2(10) of the Bombay Public Trusts Act, 1950, were also entitled to

the file the suit. Thus, prayed to allow the appeal.

10. The learned counsel for the respondents have supported the judgment and decree under challenge and prayed to dismiss the appeal.

11. Having heard the learned counsel for litigating sides and perusing the material on record, including the impugned judgment, it indicates that the Appellate Court has rightly dealt with all the aspects contended by the appellants herein.

12. The Appellate Court has categorically recorded that there is no material on record to indicate the total number of trustees were party to the suit. the constitution of the trust, or the compliance with the statutory requirements, including obtaining permission from the Charity Commissioner for institution of the suit. In the face of such findings, the plea of maintainability remains wholly unsubstantiated and cannot be examined in the abstract.

13. It was incumbent upon the Appellants to lay the requisite factual foundation before canvassing the plea that the suit was maintainable at the instance of only some of the trustees. The Appellant cannot seek adjudication on purported question of law without first discharging the burden of establishing the relevant

facts.

14. The question of law must be firmly rooted in established and proven facts on record. In the absence of such factual substratum, any purported question of law remains merely academic and does not warrant adjudication.

15. In view of the aforesaid discussion, no case is made out to cause interference in the concurrent findings rendered by the Courts below.

16. Resultantly, the second appeal stands dismissed.

17. Pending interim application also stands disposed of.

[SACHIN S. DESHMUKH, J]

Omkar Joshi