


MHAH050008442022	<b><u>ORDER BELOW EXH.40 IN R.C.S. NO.280 /2022.</u></b>
	<b><u>Premuni Pantbaba Mahanubhav</u></b>
	<b><u>Vs.</u></b>
	<b><u>Pantbaba Mahanubhav @Mohit Pantababa</u></b>

The defendants have filed this application under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint.

2. In support of the application, the defendants have submitted that the present suit is filed for declaration and perpetual injunction in respect of the suit property which has been declared as trust property by the Charity Commissioner as per the provisions of Bombay Public Trust Act, 1950. The suit property is added to the schedule of the trust by name Mahanubhav Ashram and Shikshan Sanstha Shrirampur, as per the change report no. 998/11 dated 21.06.2021 which was accepted by the Asst. Charity Commissioner, Ahmednagar. Therefore, the disputed property is covered by the provisions of The Bombay Public Trust Act and accordingly, the jurisdiction of civil Court to try and entertain the present suit is barred in view of the provisions of said Act. Therefore, they prayed for allowing the application.

3. The plaintiff vide his say at Exh.47 to the application contended that the suit property has been purchased by him on 03.11.2020 by way of registered sale deed. Its mutation entry is also sanctioned. The defendants, themselves have filed a Spl.C.S.No. 37/2020 in respect of the suit property before this Court and therefore, the application of the defendants is not maintainable. The challenge of

the defendants to the mutation entry in the name of plaintiffs has already been negated by the revenue authorities at the instance of defendants therefore, the application deserves dismissal. It is submitted by the plaintiff that the reliefs claimed by him are well within the jurisdiction of this Court and therefore also the application is liable to be rejected.

4. Considering rival contentions of Both the parties and documents produced in support thereof, following points arise for my determination to which I record my findings thereon for reasons to follow :-

Sr.No.	Points	Findings
1.	Whether the plaint of the suit is liable to be rejected under Order VII Rule 11 of Code of Civil Procedure, in the facts and circumstances of the case ?	In the negative.
2.	What order ?	As per final order.

#### REASONS

5. Heard learned counsel for both the parties.

**As to point no.1 :-**

6. Order VII Rule 11 (a) to (d) of the Code of Civil Procedure stipulates the eventualities under which the Court may resort to exercise of the powers of rejection of plaint. These eventualities are want of cause of action, under valuation of the relief and its non correction in-spite of the directions of the Court, the insufficiently stamped plaint, and the specific bar of the law to the statement in the plaint.

7. It is also settled position of law that while determining the question of tenability of the plaint, the Court is required to take into consideration the contents of the plaint and not the defence raised by the defendants against the same. In other words, the maintainability of the plaint has to be decided only on the basis of averments of the plaint.

8. A perusal of pleadings goes to show that the plaintiff has claimed declaration to the effect that the entries of name of the trust i.e. Mahanubhav Ashrav and Shikshan Sanstha Shrirampur recorded with T.I.L.R. Shrirampur is not binding on the right of the plaintiff as well as the perpetual injunction to the effect that the defendants shall not interfere in the possession of the plaintiff over the suit property.

9. These prayers are raised in background of the averments in the plaint that the suit property is purchased by the plaintiff by way of registered sale deed dated 13.11.2020. Its mutation entry is also effected in the revenue record. The defendant no.1 who has illegally succeeded to the seat of Mahant Anilbaba of Mahanubhav sect has entered the name of the trust in the record of the suit property in an illegal manner and trying to claim the suit property as the trust property.

10. In raising the bar of the suit, the defendants have relied upon the provisions of Section 41A, 41E, 50, 51 read with Section 80 of the Bombay Public Trust Act. Section 41A empowers the Charity Commissioner to issue directions for proper administration of the trust. Section 41E empowers the Charity Commissioner to act for protection of charities. Section 50 delineates the provisions for suit by or against

or relating to public trust for trustees or others. Similarly, Section 51 of the Bombay Public Trust Act, 1950 mandates office of Charity Commissioner for institution of the suit contemplated under Section 50 of the said Act. Section 80 expressly bars the Civil Court from entertaining any lis covered by the said provisions. These provisions, necessarily connotes that the dispute between trustees in respect of the trust property or the incidence thereto are to be raised before Charity Commissioner or the authorities contemplated under the said Act of 1950 (now the Maharashtra Public Trust Act, 2012). The relief claimed by the plaintiff is not based on any trusteeship or membership of any trust. The suit is based on sale deed simplicitor. The relief of declaration and perpetual injunction is well within the jurisdiction of this Court. Simply said, the suit is in between a stranger and the trust or at the most between private person and trust members in respect of alleged trust property. That cannot be a ground to contend that the suit is not maintainable. As it is based on the sale deed, the relief claimed by the plaintiff is well within the ambit of jurisdiction of this Court. Hence, I answer point no. 1 in negative and proceed to pass following order:-

**ORDER**

1. Application Exh.40 stands rejected.
2. Cost in cause.

Date: 23/08/2023

(R.B.Giri)  
Civil Judge Sr. Division,  
Shrirampur.