


MHKO050010852023 	Rjaesh Prakash Ghorpade Vs. Nilesh Chandrashekar Dangara (Sharma) & Ors. R.C.S. No. 97/2023
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ORDER BELOW EXH.23

The present application under O.VII R.11, (b), (d) made by the defendant nos. 1 to 4 praying that the suit is barred by law of Maharashtra Public Trust Act, the plaint is insufficiently stamped and be rejected. The plaintiff filed his say at Exh.27 and strongly opposed the application.

2. Perused the application and the say. Heard Ld. Advocate for the defendant. Despite giving several opportunities the plaintiff did not argue. Hence, the application be decided without his arguments.

3. Ld. Advocate for the defendant submitted that the plaintiff instituted the present suit in a capacity of legal representatives for Shri. Vitthal and Datt Mandir Trust, Hupari. The said trust is a registered trust under Maharashtra Public Trust Act. He submitted that the suit is instituted for recovery of possession and mesne profits earned by the defendants. Ld. Advocate for the defendant submitted that the plaintiff claimed relief of recovery of possession in disguise of mandatory injunction against the defendants that the defendants are directed to handover the possession of suit property to plaintiff. He submitted that the plaint

is insufficiently stamped and therefore liable to be rejected under O.VII R.11(b) of CPC.

4. Ld. Adv. for the plaintiff stated in his say that the original trustees made a will and bequeathed their interest in Trust property to present plaintiffs. Therefore, the plaintiffs have every right to claim relief against the defendants. It is further stated that consent of Charity Commissioner before institution of civil suit is not necessary as per Sec.50 of the Maharashtra Public Trust Act. Hence prayed that the application be rejected with cost.

5. Perused the plaint at Exh.1. The present suit is instituted for mandatory injunction and recovery of mesne profit from the defendants. It is pleaded that the defendants are tenants in the suit property and the plaintiffs are legal representatives/heirs of original trustees of the suit property. The plaintiff prayed as below;

“अ) वादीचा दावा मंजूर करणेत यावा

ब) प्रतिवादी नं. १ ते ५ यांनी दावा मिळकती वादी यांचे कब्जात देणेबाबत प्रतिवादी नं. १ ते ५ यांना आज्ञार्थी हुकूम व्हावा व तसा ठराव करणेत यावा.

क) दावा मिळकतीचा प्रत्यक्ष कब्जा वादी यांना मिळेपर्यंत सन २००५ पासून ते कब्जा मिळेपर्यंत सी.पी.सी. ऑ. २० रूल १२ प्रमाणे दरम्यानचे उत्पन्नाबाबत चौकशी होणेकरीता स्वतंत्र आदेश व्हावा.”

6. Ld. Advocate for the defendants referred Sec. 50, 51 of Maharashtra Public Trust Act and submitted that as per these provisions the plaintiff is required to obtain necessary permission before institution of the present suit. Sec. 50 of the Maharashtra Public Trust Act reads as under;

“50. Suit by or against or relating to public trust or trustees or others

In any case,

- i) Where it is alleged that there is a breach of a public trust, negligence, misapplication 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.....”*

7. Sec.51 of the Maharashtra Public Trust Act reads as under;

“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 Sec.50, they shall apply to the Charity Commissioner in writing for his consent.....”*

8. From conjoint reading of Sec.50 and 51 of the Trust Act, it clears that 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.’ Therefore, written consent of the Charity Commissioner is not necessary for instituting the present

suit. The present suit is not barred by Sec.50, 51 of the Maharashtra Public Trust Act as admittedly the defendants are holding capacity of tenant/licensee of the plaintiffs trust. The scope and applicability of these provisions has been discussed at length by Hon' Bombay High Court in **Hari Aashram, (through it's trustee) Vs. Vijay Jayantilal Patel and Anr. [2025 SCC OnLine Bom 3627]**.

9. Ld. Advocate for the defendant submitted that the suit property not valued at all and plaint is insufficiently stamped. It is admitted fact that the defendants are in long possession of the suit property. On perusal of the prayer made by the plaintiff in plaint, it appears that the plaintiff claimed relief of recovery of possession indirectly. Moreover, in a say filed to the present application at Exh.27, the plaintiff did not reply to this objection raised by the defendant. From the contents of plaint and the relief claimed, it clears that recovery of possession is the main relief and not the incidental claim. In the plaint, plaintiff prayed for mandatory injunction to enforce his substantive right to suit property, which is based on his claim as legal heirs of original trustees. Therefore, in my view, objections raised by the defendant that plaint being insufficiently stamped, suit property is not valued are valid. The plaintiff needs to pay property stamped on the relief of recovery of possession as per the provision under Sec. 6 (v) of Maharashtra Court Fees Act, 1959.

10. In the light of submission made by Ld. Advocate for the defendants and the guiding precedent, I am inclined to pass the following order;

ORDER

- 1) The application is partly allowed.
- 2) The plaintiff is directed to supply the requisite stamp within one month from the date of this order, failing which the plaint shall stand rejected.

Date: 09/01/2026.
Place: Ichalkaranji.

Sd/-
(M.S. Gawade)
5th Jt. Civil Judge Junior Division,
Ichalkaranji.