

**Special Civil Suit No. 89/2020  
Sushant vs. Nishant etc.**

**ORDER BELOW EX.33**

1. The plaintiff has filed this application not to accept counter-claim of defendants in respect of counter-claim property 3A and 3B.
2. It is contended by the plaintiff that, defendants No. 1 to 3 have filed counter-claim against the plaintiff as on 28.10.2020 and same is not taken on record. The counter-claim property 3A and 3B are public trust properties as per the provisions of Maharashtra Public Trust Act. In respect of the said properties, the Charity Commissioner, Pune Division issued registration certificate as on 15.04.2013. In order to file counter-claim as per the provisions of Maharashtra Public Trust Act, prior permission of Charity Commissioner has not taken. Therefore, counter-claim in respect of counter-claim property 3A and 3B cannot be accepted.
3. Defendants No. 1 to 3 have filed their say vide Ex.43 and admitted that, they have filed counter-claim against plaintiff as on 18.10.2020. They further admitted that, they included the properties 3A and 3B belonging to Trust. They further admitted that, on 04.03.2013 Trust was registered before Assistant Charity Commissioner, Pune.
4. It is contended by the defendants that, the property included in Clause 3A and 3B in counter-claim stand in the name of

Trust, but it is pertinent to note that before the Assistant Charity Commissioner there is only determination of the properties nature not any adjudication. Therefore, this Court has only jurisdiction to adjudicate the matter for its title.

5. It is the case of defendants that, plaintiff filed suit against them and asked for the reply. It is responsibility of them to reply the suit within stipulated period. Further for filing counter-claim also there is a limitation provided under the C.P.C.. Here is not out of place to mention that for filing counter-claim there is not need to take permission from Charity Authority.
6. It is contended by the defendants that, Section 50 of the B. P. T. Act does not contemplate the suit which is to be filed by a person for enforcing his own right. In such a case for enforcing his right is not barred by Sec. 50 of M. P. T. Act and here in this matter as mentioned above the defendants not filed suit, but he has replied the suit of plaintiff by filing counter-claim. Hence, permission is not necessary to file counter-claim in the present suit.
7. It is contended by the defendants that, the provisions of M.P.T. Act has not applicability to suit other than those prescribed thereunder, hence the counter-claim is not barred by Sec. 50 of the Act. Because in its contextual interpretation and read in the light of substantive provision can only barred a suit which is contemplated by the substantive provision.

Hence, the application filed by the plaintiff is not sustained in the eyes of law.

8. It is contended by the defendants that, Sec. 50 of the said Act would be applicable only when the suit is filed by the person interested in the Trust. On the contrary they are the person whose interests are totally adverse to the interest of Trust. They can file a suit without permission of A. C. C. for the enforcement of civil right. The remedy available under the B. P. T. Act is independent of the other remedy available under ordinary law. Therefore, the counter-claim is not barred and lastly prayed to reject the application.
9. Perused the application and say on it. Ld. Counsel Shri. R. S. Waghmode for the plaintiff argued that, suit property 1C is registered as D. Y. Patil Hostel and given on rent. Same is purchased in the name of plaintiff and defendants No. 1 to 5. Loan of Punjab National Bank is obtained. Same is repaid by plaintiff and defendant. Again in the year 2013 loan from Cosmos Bank is taken for expansion of business. In the year 2017 the defendant No. 1 to 5 converted the hostel into D. Y. Patil Boys Hostel and tried to grab the amount.
10. It is further argued by learned counsel of plaintiff that, as per Sec. 92 of Civil Procedure Code, permission is necessary to file suit in respect of Trust property. So also as per Sec. 51 consent of Charity Commissioner is necessary to file the suit. So also Charity Commissioner is necessary party to the

present suit. The sale deed is not in the name of plaintiff and defendant, but the same is in the name of D. Y. Patil Education Federation Public Trust, which is registered as per the provisions of Bombay Public Trust Act, 1950. Plaintiff and defendant No. 1 are trustees, therefore, such property is a public trust property. Trust Registration Certificate is produced on record. Extract of Trust Register is filed in which the Gat number of suit property is mentioned and lastly prayed to allow the application. In support of his argument, he relied on following case laws of Hon'ble Supreme Court and High Courts.

1. 2019 (3) AIR Bom. R. 588 Uttam Vitthalrao Tekale & Ors. vs. Rajabhau Sopan Shelake.
2. 2001 (3) ALL M.R. 104 Mahibubi Abdul Aziz & Ors. vs. Sayed Abdul Majid & Ors.
3. 2003 (2) ALL M.R. 1035 Bashir Kudale & Ors. vs. Shri Mahadeo The Main Deity Intemele & Ors.
4. 2006 (3) ALL M.R. 524 Lakhanlal Brijlal Purohit & Ors. vs. Marwadi Smashan Hanuman Mandit Akot.
5. 2010 (4) All M.R. 79 Gaud Saraswat Brahmin Temple Trust & Ors. vs. Vasudeo P. Shetye @ Kamalesh P. Shetye & Ors.
6. 1983 AIR Bom. 404 Dinanath Ajabrao Ingole & Ors. vs. Shetakari Shikshan Prasarak Mandal, Wardha & Ors.
7. 1985 AIR Gujrat 180 Sherasiya Saji Alavadi Momin & Ors. vs. State of Gujrat & Anr.

11. Per contra, learned Counsel Shri. S. S. Nimbalkar for the defendants argued that, firstly plaintiff came in the court, therefore, it is his responsibility to take permission. Defendants have taken objections regarding non joinder of necessary parties. In Public Trust funds came from the public at large. The Trust of plaintiff and defendants is personal Trust. Defendants are not concerned with the Trust, but they have complaint about the administration of Trust, therefore, provisions of Sec. 80 and 51 are not applicable in the present case. Defendants have mentioned about the source of funds of Trust. The Trust is not charitable. Running Education Institution is a business. Same is not Public Trust and in support of his argument, he relied on following case laws of Hon'ble Supreme Court and High Courts.

1. 2016 (1) B.C.J. 139 Vidarbha Youth Welfare Society vs. Sandeep Ram Meghe.
2. 2005 S.C.C.R. 789 Vinayaka Dev Hindu Idagunji & Ors. vs. Shivram & Ors.
3. 2007 (3) B.C.J. 54 Balaprasad Shivpaltan Angihotri vs. Ramchandra Punjaji More & Ors.
4. 2015 (7) ALL M. R. 349 Pratap Shivaji Chumbale vs. Deepak Vishwanath Pingale.
5. 2015 (7) ALL M. R. 363 Mumbai Cricket Association vs. Ratnakar Shivram Shetti & Ors.
6. 2013 (3) Mh. L. J. 83 Shri Hanuman Mandir Alibaug Public Trust vs. Satishchandra Bhalchandra Gurjar & Ors.

12. It is the contention of the plaintiff that, counter-claim property 3A and 3B are Trust property, therefore, in order to file the suit in respect of those properties, permission of Charity Commissioner for filing the suit is necessary. So also Charity Commissioner is necessary party to the suit. As defendants have filed counter-claim in respect of Trust property without making Charity Commissioner as a party, the said counter-claim cannot be accepted along with the counter-claim property 3A and 3B. Per contra, it is the contention of the defendants that, the counter-claim property is not property of Public Trust, but it is the property of Family Trust. Therefore, it is not necessary to obtain the permission of Charity Commissioner.
  
13. With reference to the averments and arguments of both the parties, I have perused the 7/12 extract of counter-claim property 3A which is filed at Ex.18/3 which shows that the said property is standing in the name of Dr. D. Y. Patil Education Federation through President Sushant Patil and Nishant Patil i.e. plaintiff and defendant No. 1, respectively. On perusal of registration certificate, which is filed at Ex.24 at page No. 224, which shows that, Dr. D. Y. Patil Educational Federation is registered as a Trust on the application of plaintiff. Page No. 225 Index II shows that, such property is purchased in the name of Dr. D. Y. Patil Education Federation through President. The registered extract at page 226 to 229 which shows that, the said suit

property is entered in the trust register in the name of D. Y. Patil Education Federation. The change report, which is filed at Ex.41, shows that the said property is purchased for the beneficial object of Trust. On perusal of trust deed, which is filed at Ex.45/2, shows that plaintiff and defendants have created the said Trust. From the object of Trust it is created for promotion of education and learning in all its Branches. From the object of the Trust it is seen that, the Trust is a Public Trust. Therefore, there is no force in the argument of defendants that the said Trust is a Family Trust.

14. From the above referred document it is clear that, the counter-claim property 3A and 3B are of Trust property. Therefore, as per the provisions of Sec. 50 and 51 of Bombay Public Trust Act, prior to filing suit in respect of Trust property pre-permission of Charity Commissioner is necessary. So also Charity Commissioner is also necessary party to the proceeding. But, while filing the counter-claim, defendants have not obtained consent of Charity Commissioner. On the contrary, defendants argued that plaintiff firstly come in the Court, therefore, it is his duty to obtain the permission of Charity Commissioner. But, plaintiff has not included the Trust property in the present suit. Therefore, no question arises of permission of Charity Commissioner. Counter-claim is also suit. Therefore, whatever the rules applicable to the suit are applicable to the counter-claim also. Therefore, I do not find any substance in

the argument of defendants that it is duty of plaintiff to obtain the permission of Charity Commissioner.

15. I have gone through the case laws which are cited by the plaintiff. The sum and substance of those case laws is prior consent of Charity Commissioner is necessary for filing the suit.
16. I have gone through the case law **2016 (1) B.C.J. 139 Vidarbha Youth Welfare Society vs. Sandeep Ram Meghe**. In this case, the plaintiff-respondent filed suit against his illegal dismembership. I have also gone through the case law **2005 S.C.C.R. 789 Vinayaka Dev Hindu Idagunji & Ors. vs. Shivram & Ors.**, wherein it is observed that, the right of Archakship is claimed on the basis of inheritance. It is hereditary personal right, which they want to establish. As the right of the plaintiff was his individual right. The right is purely of private nature. Therefore, Sec.50 of Bombay Public Trust Act is not attracted. Therefore, Civil Court has jurisdiction to entertain the suit. In the counter-claim of present suit, defendants are seeking relief against one of the Trustee. Therefore, the same is pertaining to the administration of Public Trust. I therefore respectfully submitted that, the benefit of those case laws are not given to the defendants.
17. I have gone through the case law **2007 (3) B.C.J. 54 Balaprasad Shivpaltan Angihotri vs. Ramchandra Punjaji**

**More & Ors.**, wherein it is observed that suit against Trust by tenant. Prior permission from Charity Commissioner before instituting such suit would not be essential. The facts of the said case laws and facts in the case in hand are different. Hence, I respectfully submit that the said case law is not applicable to the case in hand.

18. I have gone through the case law **2015 (7) ALL M. R. 349 Pratap Shivaji Chumbale vs. Deepak Vishwanath Pingale**, wherein it is observed that joint purchase of property by plaintiff and defendant. Sanction of sale u/s. 36 of Bombay Public Trust Act and execution of sale deed only in favour of the defendant. Civil suit by plaintiff seeking cancellation of the said sale deed on the ground of fraud and seeking execution of fresh sale deed in joint name of the parties. Civil Suit not barred. After execution of sale deed, suit property no more remains Trust property. Though sanction u/s. 36 is questioned, relief sought by the plaintiff cannot be granted by Authorities under the Act. Jurisdiction of Civil Court not barred. In the case in hand, defendants themselves admitted in their say to this application that the property is belonging to the Trust. Therefore, I respectfully submitted that the ratio laid down in the cited case law is not applicable to the present case in hand.
19. I have gone through the case law **2013 (3) Mh. L. J. 83 Shri Hanuman Mandir Alibaug Public Trust vs. Satishchandra Bhalchandra Gurjar & Ors.** In the said case

law, plaintiff claimed that suit property is his private property. On the contrary, defendants were claiming that the property is of Trust property. To decide the nature of property, jurisdiction lies with the Competent Authority i.e. Charity Commissioner. But, to decide the title of the property, the jurisdiction lies with the Civil Court. In the case in hand, the defendants themselves have admitted the status of property as a Trust property. I therefore respectfully submitted that, the defendants could not take benefit of the above case law.

20. In view of my above discussion to file suit/counter-claim in respect of Trust property, permission of Charity Commissioner is necessary. Plaintiff is not asking to reject the counter-claim, but not to accept counter-claim of trust property. Therefore, application deserves to be allowed. Hence, the following order.

**ORDER**

1. Application Ex.33 is allowed, as prayed.
2. The counter-claim of defendants, excluding counter-claim property 3A and 3B, is taken on record.

Malshiras.  
Date - 04/02/2021.

(R. S. Kshirsagar)  
Civil Judge S. D., Malshiras.

**C E R T I F I C A T E**

I affirm that the contents of this PDF file Judgment is same word to word as per the original Judgment.

- (a) Name of the Stenographer : **N. N. Konda, Grade-II**
- (b) Court : **Civil Court Senior  
Division, Malshiras.**
- (c) Judgment signed by P.O. on : **05.02.2021.**
- (d) Judgment uploaded on : **05.02.2021.**