



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CIVIL REVISION APPLICATION NO. 146 OF 2025**

Shri Balaji Mandir Sansthan  
and others .. Applicants

**Versus**

Sanjay Laxman Pathak and others .. Respondents

Shri Bharat R. Waramaa, Advocate for the Applicants.  
Shri Aditya R. Deshmukh, Advocate h/f Shri Ravindra M.  
Deshmukh, Advocate for the Respondent No. 1.  
Shri D. B. Bhange, A.G.P. for the Respondent No. 3.

**CORAM : SHAILESH P. BRAHME, J.**

**CLOSED FOR ORDER ON : 30.07.2025**  
**ORDER PRONOUNCED ON : 04.08.2025**

**FINAL ORDER :**

. Heard the contesting parties finally at the admission stage with their consent. As the matter pertains to order passed under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the “C.P.C.”), applicants and the respondent No. 1 are the contesting parties, who are original defendant No. 1 and plaintiff respectively in Spl. C. S. No. 16 of 2024.

2. Applicants are aggrieved by rejection of their application Exhibit 95 vide order dated 15.04.2025 passed by the learned

Trial Court refusing to reject the plaint.

3. Respondent No. 1 has filed Spl. C. S. No. 16 of 2024 for the relief of declaration and injunction. It is contended that applicant is a trust having old temple of Balaji at Parola. Remaining applicants are office bearers of the trust. It is contended that plaintiff since his forefathers is working as Archak in the Balaji temple. It is their hereditary right which is being exercised continuously since the year 1900. He is being discontinued by the trustees from 25.08.2024 and he is being replaced by the applicant No. 16. This action is sought to be challenged in the suit on the ground that no proper procedure has been followed and it is in defiance of easementary right.

4. Applicants contested the suit by filing written statement challenging all the contentions of the respondent No. 1/plaintiff. In paragraph Nos. 17 and 18 of the written statement hereditary right of Archakship is challenged relying on Constitution Bench decision of the Supreme Court and the provisions of the Maharashtra Public Trust Act (for the sake of brevity and convenience hereinafter referred as to the "Act"). They further filed application Exhibit 95 U/O VII Rule 11 of the C. P. C. to reject the plaint predominantly on the following grounds :

- (i) Bar under the Constitution,
- (ii) Bar under the provisions of the Contract Act and the Specific Relief Act,

(iii) Bar under the provisions of the Maharashtra Public Trust Act.

5. The respondent No. 1/plaintiff filed say to the application. Applicants also tendered on record written submissions and thereafter a pursis. By order dated 15.04.2025 Exhibit 95 is rejected. Hence they have approached this Court.

6. Mr. B. R. Waramaa, learned counsel for the applicants submits that the respondent No. 1 is asserting his right as Archak being easementary right, which is against the Constitution of India and it's basic structure. The claim of easementary right is against the Easement Act. The relief sought in the plaint is founded on misconceived notion of right to perform puja, which is not absolute and which is against public policy. It is submitted that right claimed by the respondent No. 1 is against the provisions of the Contract Act and the Specific Relief Act.

7. It is vehemently submitted by Mr. Waramaa, learned counsel for the applicants that learned Trial Judge did not bother to consider the Constitution Bench judgments of the Supreme Court in the matter of Sheshammal Vs. State of Tamil Nadu reported in (1972) 2 SCC 11, the judgment of the Karnataka High Court in the matter of Sri Ramchandra and others Vs. Sri Shivram and others reported in 2008 (5) KCCR 664 and the judgment of the learned Single Judge of the Madras High Court dated 05.02.2025 in Writ Petition No.

**3838 of 2025 in the matter of A. Rajendran Vs. The Joint Commissioner, Hindu Religious and Charitable Endowment Department, Coimbatore District.** Those were specifically referred in the written submissions, but still overlooked by the learned Trial Court, which amounts to judicial indiscipline.

8. It is submitted that the Trial Court is bound by the ratio laid down in the above judgments and he was obliged to deal with them. It is submitted that the Trial Court referred to three judgments of the Supreme Court and this Court in the matter of Sahebgouda (Dead) by L.Rs. and others Vs. Ogeppa and others reported in *2003(3) All MR 1193 (S.C.)*, *Vinayaka Dev Idagunji and others Vs. Shivram and others* reported in *(2005) SAR (Civil) 673* and Shri Datta Deosthan Trust Vs. Shri Milind Govind Kshirsagar and others reported in *2011(5) All MR 165* in the impugned order, which are not relevant and which were not cited by either of the parties. No opportunity was given to the applicants to deal with those judgments. It is submitted that by very cryptic order application Exhibit 95 is rejected. Matter needs to be remitted back to the Trial Court for a fresh decision.

9. It is submitted that the plaint is liable to be rejected for want of cause of action in view of the exposition by the Supreme Court in the matter of Sheshammal Vs. State of Tamil Nadu (supra) and **judgment dated 13.11.2006** delivered by the learned Single Judge of this Court in the matter of **Balkrishna Pandharinath**

**Badve and others Vs. The State of Maharashtra and others in Second Appeal No. 46 of 1985** with other connected second appeals. The suit is barred by law and it is against Sections 50 and 51 of the Act.

10. Per contra, learned counsel Mr. Aditya Deshmukh for the respondent No. 1 – plaintiff supports impugned order. He would submit that application Exhibit 95 does not spell out any particular provision of the Constitution of India or the Act debarring the jurisdiction of the Civil Court. It is submitted that in application Exhibit 95 no ground of want of cause of action is raised. It is submitted that Sec. 14 of the Specific Relief Act and Sec. 23 of the Contract Act are not applicable. As claim is founded on an individual right, no previous sanction is contemplated. A reliance is placed on the judgment of the Supreme Court in the matter of *Vinayaka Dev Idagunji and others Vs. Shivram and others* (supra). It is further submitted that the judgments sought to be referred by the applicants cannot be made applicable for an inquiry U/O VII Rule 11 of the C. P. C.

11. Learned counsel Mr. Bharat Waramaa for the applicants has taken me through written submissions and the judgment of the Constitution Bench of the Supreme Court in the matter of Sheshammal Vs. State of Tamil Nadu (supra), judgment of the learned Single Judge of the Madras High Court in the matter of **A. Rajendran Vs. The Joint Commissioner, Hindu Religious and Charitable Endowment Department, Coimbatore**

**District** (supra), the judgment of the learned Single Judge of this Court in the matter of **Balkrishna Pandharinath Badve and others Vs. The State of Maharashtra and others** (supra). He has extensively argued referring to various paragraphs of those judgments to buttress submission that it's judicial indiscipline not to refer to principles laid down in the judgments.

12. None of those judgments are helpful to the applicants because those are not rendered while deciding application U/O VII Rule 11 of the C. P. C. In none of the judgments, it is laid down that if any right of archakship is asserted or it is sought to be exercised in a suit U/Sec. 9 of the C. P. C., plaint is liable to be rejected. None of these judgments refer to any specific provisions of the Constitution of India or any other law excluding the jurisdiction of the Civil Court U/Sec. 9 of the C. P. C. for granting relief of declaration for asserting hereditary right of archakship. These judgments can be pressed into service during the course of trial, but not for the inquiry U/O VII Rule 11 of the C. P. C.

13. The submissions canvassed by the applicants are mainly based upon the pleas raised in the written statement. Even Constitution Bench judgment of the Supreme Court in the matter of Sheshammal Vs. State of Tamil Nadu (supra) is referred in the written statement. These pleas and the submissions made, are out of the purview of Order VII Rule 11 of the C. P. C. The plaint and documents produced with it can be gone into at that stage.

14. A reference of judgment of the Supreme Court in the matter of Sahebgouda (Dead) by L.Rs. and others Vs. Ogeppa and others (supra) is made in the impugned order. In that case issue was pertaining to the jurisdiction of the Civil Court to entertain a suit for the relief of declaration. The plaintiffs in that case were claiming to be ancestral vahivatdar/pujaries. It is apposite to quote paragraph Nos. 8 and 9 of the judgment.

“8. The question whether the suit filed by the appellants is barred by the provisions of Section 80 of the Act has to be examined in the light of the provisions referred to above. Section 9 of Code of Civil Procedure clearly lays down that the Civil Court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is well settled that the Civil Court has jurisdiction to try all suits of civil nature and the exclusion of jurisdiction of the Civil Court is not to be rightly inferred. Such exclusion must be either explicitly expressed or clearly implied. In *Musamia Imam Haider Bax Razvi Vs. Rabri Govindbhai Ratnabhai & Ors.* AIR 1969 SC 439 (para 7) this Court observed that it is necessary to bear in mind the important principle of construction which is that if a statute purports to exclude the ordinary jurisdiction of a civil court it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion. This principle was reiterated in *Dewaji v. Ganpatlal* AIR 1969 SC 560.

9. It is also well settled that a provision of law ousting the jurisdiction of a Civil Court must be strictly construed and onus lies on the party seeking to oust the jurisdiction to establish his right to do so. In *VLNS Temple Vs. I. Pattabhirami Reddi* AIR 1967 SC 781 Subba Rao, J. speaking for the Court held as under in para 13 of the reports:

"Under Section 9 of the Code of Civil Procedure, the courts shall have jurisdiction to try all suits of a civil nature excepting suits of

which their cognizance is either expressly or impliedly barred. It is a well settled principle that a party seeking to oust jurisdiction of an ordinary civil court shall establish the right to do so. Section 93 of the Act does not impose a total bar on the maintainability of a suit in a civil court. It states that a suit of the nature mentioned therein can be instituted only in conformity with the provisions of the Act; that is to say, a suit or other legal proceeding in respect of matters not covered by the section can be instituted in the ordinary way. It therefore imposes certain statutory restrictions on suits or other legal proceedings relating to matters mentioned therein."

It is concluded by the Apex Court that right sought to be exercised by the plaintiff were not within the ambit of Sec. 79 read with Sec.19 of the Act. The judgment is rightly referred by the Trial Court in the wake of sub clause (d) of Rule 11 of Order VII of the C. P. C. The jurisdiction of Civil Court is considered under similar set of circumstances.

15. Further reference to the judgment of the learned Single Judge of this Court in the matter of Shri Datta Deosthan Trust Vs. Shri Milind Govind Kshirsagar and others (supra) is also appropriate to the fact and situation because that was also in respect of inquiry U/O VII Rule 11 of the C. P. C. In that case plaintiff was claiming relief of injunction to assert his right of performance of puja and other religious activities of family idols. The plaint was sought to be rejected by the defendants. Their application was rejected. It was held that the Trial Court in that case did not traverse beyond the jurisdiction.

16. The judgment of the Supreme Court in the matter of



*Vinayaka Dev Idagunji and others Vs. Shivram and others* (supra) is rightly referred by the Trial Court. In that case plaintiffs claiming to be hereditary archak in temple from time immemorable were seeking declaration to establish those rights. A preliminary issue as to the jurisdiction of the Civil Court is considered by the Supreme Court. The Trial Court reproduced para No. 14, but both para Nos. 13 and 14 of the judgment referred above are relevant, which are as follows :

“13. What is to be seen is the relief the plaintiffs are seeking from the court. First of all, they are seeking a declaration about their hereditary right as archaks of the temple. This right is claimed in their personal capacity as a family of archaks who have been performing the functions of archaks since the day the temple was established and the deity was consecrated. It is different matter whether ultimately the plaintiffs’ contention is accepted by the court or not. Surely, the plaintiffs are entitled to have their claim examined by the court. If they fail to establish their claim, they will be out of the court. However, if they succeed in establishing the claim they will be entitled to the declaration sought. They cannot be non suited at the threshold unless the suit is expressly barred by any statute. We have seen the provision of Section 50 of the Bombay Public Trusts Act relied upon by the appellants-defendants. The said section does not cover a suit of the present type. Analogy has been drawn of Section 92 of the Code of Civil Procedure while considering Section 50 of Bombay Public Trusts Act. Both provisions are in the nature of representative suits which pertain to public trusts and protection of public interest in the trusts. In the present case, there is no public interest involved. The only interest is that of the plaintiffs and their families. The right of archakship is claimed on the basis of inheritance. It is a hereditary personal right which they want to establish. The right is purely of a private nature. We are of the view that Section 50 of the Bombay Public Trusts Act is not attracted at all in the facts of the present case.

14. We have seen the object of the Bombay Public Trusts Act.

Appropriately the Act seeks to regulate and make better provision for administration of public religious and charitable trusts. Such trusts cater to things of public interest, i.e. things which concern large sections of public. Unless such trusts are properly administered public interest will suffer. Therefore, matters affecting administration of such trusts are covered under Section 50 of the Bombay Public Trusts Act. This situation is somewhat similar to suits under Section 92 of the Code of Civil Procedure. These suits are suits in representative capacity and pertain to matters of public interest. In contrast the suit which has given rise to the present appeal is a suit to establish an individual right. The plaintiffs claim that they are hereditary archaks of the temple since time immemorial and are entitled to exercise this right which cannot be taken away from them. No public interest is involved. Public is not concerned whether A acts as an archak or B acts. Such a suit, therefore, cannot be covered by Section 50 of the Act. Law is settled on this aspect as per various judgments of this Court.”

It is rightly pointed out by the learned counsel Mr. Deshmukh for the respondent No. 1 that bar U/Sec. 51 of the Act is not attracted.

17. Impugned order cannot be castigated just because judgment of the Hon’ble Supreme Court in the matter of Sheshammal Vs. State of Tamil Nadu (supra), judgment of the Karnataka High Court in the matter of Sri Ramchandra and others Vs. Sri Shivram and others (supra) and judgment of the learned Single Judge of the Madras High Court in the matter of **A. Rajendran Vs. The Joint Commissioner, Hindu Religious and Charitable Endowment Department, Coimbatore District** (supra) are not referred. The judgment of the Hon’ble Apex Court is of binding precedent under Article 141 of the Constitution of India, but that does not mean that the Trial

Court is precluded from examining as to whether the judgment is applicable or not considering facts, the stage of the proceeding and the issue involved in the case.

18. The judgment of the Supreme Court in the matter of Sheshammal Vs. State of Tamil Nadu (supra) is in context of Tamil Nadu Religions and Charitable Endowments Act. The judgment of the learned Single Judge of the Madras High Court in the matter of **A. Rajendran Vs. The Joint Commissioner, Hindu Religious and Charitable Endowment Department, Coimbatore District** (supra) is in respect of framing of a scheme for administration of the trust. The judgment of the learned Single Judge of this Court in the matter of **Balkrishna Pandharinath Badve and others Vs. The State of Maharashtra and others** (supra) is in respect of the Pandhapur Temples Act, 1973. The principles laid down therein in all above judgments are no doubt binding on the Trial Court provided that those are applicable and pertaining to the powers of the Civil Court U/O VII Rule 11 of the C. P. C.

19. The observations in para No. 5 of the impugned order show that after considering the judgments cited, the learned Judge preferred not to rely upon the same. For deciding interlocutory application, if multiple judgments are cited which are extraneous for the issue germane at that stage of the proceeding, the Presiding Officer cannot be blamed for judicial indiscipline. I do not find that the Trial Court is guilty of any intentional overt act

or indiscipline.

20. Mr. Waramaa, learned counsel for the applicants also relied on the judgment of the Supreme Court in the matter of Himalaya Vintrade Private Limited Vs. Md. Zahid and another reported in (2022) 13 SCC 649. In the cited case, the Supreme Court allowed application U/O VII Rule 11 of the C. P. C. The plaintiff in that case was caretaker/servant and claimed to have acquired interest on the basis of longstanding permission. His plea of adverse possession is recorded to be without material particulars. The facts of the case at hand are distinguishable. This judgment is not helpful to the applicants.

21. I have gone through the application Exhibit 95, which does not spell out that plaint is liable to be rejected for want of cause of action. Plain reading of the plaint shall make it clear that the cause of action has been spelt out specifically in paragraph Nos. 8, 9 and 10. Further submissions attacking the cause of action, can be dealt with during the course of trial. Application Exhibit 95 does not disclose any provision excluding the jurisdiction of the Civil Court expressly or impliedly. Whatever the objections are raised in it, are the disputed questions of facts, which would require objective scrutiny during the course of trial. Learned counsel Mr. Aditya Deshmukh has rightly made submissions in this regard.

22. Trial Court is justified in holding that the provisions of Sec.

14 of the Specific Relief Act and Sec. 23 of the Contract Act are not applicable and no provision excluding the jurisdiction of the Civil Court from the Constitution of India is disclosed.

23. In the present matter, pleading in the plaint refers to easementary right. The plaint needs to be read in its entirety. It would be matter of scrutiny after leading evidence as to whether a right of plaintiff can be said to be easementary. The tenor shows that what is being asserted is a hereditary right. I am unable to accept submission that plaint is liable to be rejected for such pleadings.

24. I find that there is no merit in the revision. The civil revision application is rejected.

**[ SHAILESH P. BRAHME J. ]**

*bsb/Aug. 25*