SAINATH MANDIR TRUST

v.

VIJAYA & ORS.

(Civil Appeal No. 3030 of 2004)

DECEMBER 13, 2010

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Trust and Charities:

Bombay Public Trusts Act, 1950 – ss. 50, 51, 19, 20, 79 and 80 – Disputes relating to property of trusts – Permission of Charity Commissioner to institute the suit – Original owner dedicating plot in favour of idol by virtue of gift deed – Trustee of temple taking possession of the property – After eight years, original owner executing sale deed for consideration of Rs. 17,500/- in respect of the same property, in favour of purchaser – Suit for possession of property and claim of Rs. 17,500/- as damages by purchaser – Suit for possession dismissed, however, decreed to the extent of damages to be paid by original owner to purchaser, with future interest – Order passed by trial court set aside by first appellate court as also High Court – On appeal, held: Purchaser of the property was not in possession of the property – They published notice inviting objections before purchasing property – Possession of the property was delivered to the trust, thus, it is obligatory for the purchaser to seek permission from the Charity Commissioner u/ss. 50 and 51 before instituting a civil suit – Also it was incumbent upon the original owner to seek permission from Charity Commissioner before executing a sale deed – Gift being a dedication of idol, transfer in favour of trust was valid transfer and did not require registration – Thus, suit for possession barred in terms of ss. 19, 20, 79 and 80 – Order of High Court is set aside and that of trial court is restored with modification to the extent that trust would pay the

A *purchaser Rs. 17,500/- without interest – Transfer of Property Act, 1882 – s. 123 – Registration – Deeds and documents.*

In the year 1974, respondent No. 8 dedicated certain property to the idol of Saibaba by way of a gift deed. The possession was handed over to the appellant-temple B trust, registered under the Bombay Public Trusts Act 1950, for building a residential accommodation for devotees of the temple run by the appellant-temple trust. In the year 1982, the predecessor of respondent Nos. 1 to 7 intended to purchase the said property and C published notice in the newspaper, inviting objections before the purchase of the property. Thereafter, they purchased the property from respondent No. 8 by a registered sale deed for a consideration of Rs. 17,000/- and took possession of the property; and subsequently D sent a notice to the appellant-trust to vacate the property but the appellant-trust refused to vacate stating that they were the owners of the property.

The predecessor of respondent Nos. 1 to 7 then filed E a suit for possession and claimed Rs. 17,500/- as damages against the appellant-temple trust. The trial court dismissed the suit as regards the recovery of the possession of the property. However, the suit was decreed to the extent of damages of Rs. 17,500/- to be F paid to the respondent Nos. 1 to 7 by respondent No. 8 with future interest. The first appellate court set aside the order passed by the trial court. The High Court upheld the order passed by the first appellate court. Therefore, the appellant-temple trust filed the instant appeal.

G Allowing the appeal, the Court

HELD: 1.1. It is evident from the record that it was the case of the plaintiff/respondent that they were not in possession of the plot in question. The finding recorded H by the trial court which was not interfered either by the

first appellate court or the High Court was that the plaintiff/ respondent was not in possession of the suit property in spite of the sale deed dated 14.10.1982 and the possession of the suit property was never delivered to the plaintiff or their legal heirs, respondent Nos. 1 to 7. It can logically be inferred that for this very reason the plaintiff/respondent published a notice in a daily newspaper inviting objections before purchasing the property as in the normal circumstance, if a sale deed is executed by a private party holding title to the suit property in favour of another private party, the question of publishing a notice in the newspaper does not arise since the transaction of sale between two private parties do not normally require issuance of a notice in the newspaper inviting objections. [Para 12] [289-C-G]

1.2. When the disputed plot had already been dedicated in favour of the idol by virtue of a deed of gift, of which the appellant is a trustee, and the same was acted upon, as possession also was delivered to the appellant trust, it was surely necessary for respondent Nos. 1 to 7-purchaser of the suit land and also incumbent upon respondent No. 8-vendor of the sale deed to seek permission from the Charity Commissioner under Sections 50 and 51 of the Bombay Public Trusts Act, 1950 before a sale deed could be executed in regard to the disputed plot and more so before a civil suit could be instituted. Therefore, the dedication of the plot for charitable purpose in the nature of gift having been acted upon as a result of which the possession was also delivered to the appellant-trust, the civil suit filed by the predecessor of contesting respondent Nos. 1-7 for possession was expressly barred in terms of Sections 19, 20, 79 and 80 of the Act. [Para 13] [290-A-D]

1.3. The gift deed was an unregistered instrument and no title could pass on the basis of the same under

A **Section 123 of the Transfer of Property Act, 1882. However, when the document is in the nature of a dedication of immovable property to God, the same does not require registration as it constitutes a religious trust and is exempted from registration. [Para 14] [290-E-F]**

B

Narasimhaswami vs. Venkatalingam and Ors. **AIR 1927 Mad. 636;***Bhupati Nath vs. Basantakumari* **AIR 1936 Cal. 556;** *Chief Controlling Revenue Authority vs. Sarjubai* **AIR 1944 Nag. 33;** *Pallayya vs. Ramavadhanulu* **13 M.L.J. 364**

C **– referred to.**

1.4. Even if no final opinion is expressed that the deed of gift executed in favour of the appellant-trust having not been registered, did not confer any title on the appellant-trust, it is not possible to brush aside the

D **contention that the respondent Nos.1 to 7-purchaser of the plot were legally bound by Section 51 of the Act to obtain consent of Charity Commissioner before institution of the suit against the appellant which was admittedly in possession of the property after the gift**

E **deed was executed in its favour by the respondent No.8. Section 51 further envisages the right of appeal by the affected party if the Charity Commissioner refuses his consent to the institution of the suit. Prior to this, Section 50 (ii) already envisages that** *where a direction or decree is*

F *required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust, a suit by or against or relating to public trust or trustees or other although may be filed, consent under Section 51 of the Charity Commissioner is clearly required under Section 51*

G *of the Act.* **[Paras 15 and 16] [292-E-F; 293-B-D]**

1.5. The respondent-purchaser of plot went to the extent of publishing a notice in a local daily inviting objections indicating that he intended to purchase a suit land, but he conveniently ignored the provisions of

H

Section 51 of the Act and refused to apply to the Charity Commissioner before instituting a suit against the appellant-trust even though the possession of the plot was delivered to the appellant-trust way back in the year 1974 and after more than eight years, the respondent No.8-vendor executed a sale deed in favour of the predecessor of respondent Nos.1 to 7. Although the relevance of Section 51 of the Act is clearly apparent and the appellant also raised it before the High Court, the Single Judge of the High Court did not even address the important issue having a legal bearing on the right of the appellant to retain the plot, which, although in the form of a deed of gift, was practically in the nature of dedication to the appellant-trust for the charitable purpose of constructing a 'Bhakt Niwas' for the devotees of Saibaba. In view of the possession of the property by the appellant-trust, it was obligatory on the part of the purchasers of the plot to seek permission from the Charity Commissioner under Section 51 of the Act, to recover the property by filing a suit or initiating a proceeding. [Paras 17 and 18] [293-D-H; 294-A-E]

K. Shamrao and Ors. vs. Assistant Charity Commissioner (2003) 3SCC 563 – referred to.

1.6 Section 79 (1) of the Act lays down that any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, is required to be decided under its statutory force by the Deputy or Assistant Charity Commissioner as provided under the Act and Section 80 bars jurisdiction of the civil court to decide or deal with any question which is by or under the Act to be decided or dealt with by any officer or authority under the Act. Thus, when the appellant-trust was in occupation and possession of the property, then the respondent-plaintiff clearly could not have approached the civil court ignoring the specific

A provision under the Bombay Public Trusts Act, 1950 which laid down the provisions to deal with disputes relating to the property of the trusts. It was the statutory requirement of the Act to approach the Charity Commissioner before a suit could be instituted. [Paras 18
B and 19] [294-F-H; 295-A-C]

1.7 The judgment and order of the High Court as also the first appellate court is set aside and the judgment and order of the trial court dismissing the suit filed by the plaintiff-respondents No.1 to 7 is restored. The trial court,
C however, had decreed the suit for return of the money of Rs.17,500/- to the predecessor of respondents No.1 to 7 and had also directed the respondent No.8 to pay interest on the said amount. The respondent No.8 had already been divested of his title to execute a sale deed in favour
D of respondent Nos.1 to 7 as he had already executed a deed of gift in favour of the appellant-trust for charitable purpose. In the interest of equity, respondent No.8 should not be saddled with the financial liability to return the amount of Rs.17,500/- with interest to the respondent
E Nos.1-7. The amount, in the interest of equity and fair play, should be paid by the appellant-trust to the respondent Nos.1-7 on behalf of respondent No.8, since the said part of the decree which was passed by the trial court in favour of respondent Nos. 1-7 was not
F challenged by way of an appeal by respondent No.8. But since the appellant-trust is the rightful owner of the disputed plot and the respondent No.8 as a consequence was divested of the property, the amount paid by the predecessor of respondent Nos.1-7, should be refunded
G to respondent Nos.1-7 without interest and, thus, the decree of the trial court is modified to the said extent. [Para 20] [295-D-H; 296-A-B]

Case Law Reference:

H AIR 1927 Mad. 636 Referred to. Para 14

			A
AIR 1936 Cal. 556	**Referred to.**	**Para 14**	
AIR 1944 Nag. 33	**Referred to.**	**Para 14**	
13 M.L.J. 364	**Referred to.**	**Para 14**	
(2003) 3 SCC 563	**Referred to.**	**Para 18**	B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3030 of 2004.

From the Judgment & Order dated 27.3.2003 of the High Court of Judicature at Bombay, bench at Nagpur in Second Appeal No. 246 of 1990. C

U.U. Lalit, Anil Kadu, Satyajit A. Desai, Anangha S. Desai, Venkateswara Rao Anumolu for the Appellant.

Shivaji M. Jadhav for the Respondent. D

The Judgment of the Court was delivered by

GYAN SUDHA MISRA, J. 1. This appeal by special leave has been filed against the Judgment and Order dated 27.03.2003 passed by the High Court of Judicature at Bombay, Bench at Nagpur, in Second Appeal No. 246 of 1990 whereby the appeal was dismissed on merit. Consequently, the judgment of reversal passed by the Additional District Judge, Amaravati allowing the appeal and setting aside the judgment and order of the Trial Court which had dismissed the suit of the plaintiff/ respondent, was upheld. E F

2. The origin of this appeal at the instance of the defendant/ appellant herein emanates from a Regular Civil Suit No. 166 of 1983 which had been filed by the deceased plaintiff-Shri Vitthal Motiramji Mandale who is now represented by his legal heirs Respondent Nos. 1-7, for possession and damages valued at Rs. 17,500/- in the Court of Civil Judge Senior Division, Amaravati, against the appellant - Sainath Mandir Trust which is a registered public trust within the provisions of G H

A Bombay Public Trusts Act 1950. The suit land comprises of a plot bearing No. 57, arising out of original fields bearing Survey No. 33, situated at Saturana in the outskirts of Amravati Township. As per the case of the defendant/appellant herein, which admittedly is a public trust, the suit property was B dedicated to the idol of Saibaba by the respondent No. 8 / original defendant No.2 by way of a gift deed executed way back on 31.1.1974 which according to the appellant's version, was immediately acted upon as possession was also handed over to the appellant-trust which is in occupation of the suit property C till date. It is the specific case of the defendant/appellant that the suit plot was donated by way of a gift deed executed by the original defendant No.2 /respondent No. 8 herein Shri Vasant Mahadeo Fartode on 31.1.1974 essentially for building a residential accommodation for devotees of the Saibaba D Mandir run by the appellant-trust. Thus, by virtue of the gift deed, the admitted owner respondent No. 8 / original defendant No. 2 Shri Vasant Mahadeo Fartode was divested of the title over the suit property after he executed the gift deed and also delivered possession of the plot to the appellant-trust. Hence, E as per the case of the appellant Sainath Mandir Trust, the gift deed dated 31.1.1974 was duly acted upon since the appellant immediately came in possession of the suit property and continues to remain in possession of the same till date ever since 1974.

F 3. As against the aforesaid case of the appellant, the predecessor of the contesting respondent Nos. 1-7, late Shri Vitthal Motiramji Mandale who is now legally represented by the respondent Nos. 1-7, intended to purchase the suit property and therefore issued a notice in daily "Matrbhumi" dated 2.10.1982 G thereby inviting objections in respect of the said plot. Further, case of the respondent Nos. 1 to 7 is that no objections were received in response to the notice as a result of which the predecessor of respondent Nos. 1 to 7 i.e. late Shri Vitthal Motiramji Mandale purchased the plot from the respondent No.

H

8-Shri Vasant Mahadeo Fartode by a registered sale deed dated 14.10.1982 for a consideration of Rs. 17,000/-. As per the plaintiff/respondent's case, they also claimed to have immediately taken possession of the said property after execution of the sale deed and it is further averred that when the contesting respondents wanted to put fence around the said plot, then on 4.12.1982 they noticed a board on the disputed plot which was put up by the appellant-trust on which it was mentioned that the respondent No. 8/defendant No.2 had given the said plot to the appellant-trust for construction of a residential accommodation for the devotees of Saibaba Mandir. In view of this notice, the respondents sent a notice on 7.12.1982 to the appellant-trust to remove the board and further do not obstruct to the fencing of the suit plot which was responded by the appellant-trust stating that they are in possession of the suit plots since 31.1.1974 and are owners of the plot in question and cannot be directed to vacate.

4. The respondent felt seriously aggrieved with this response and hence a Regular Civil Suit No. 166 of 1983 was filed by the predecessor of the contesting respondent Nos. 1 to 7 - Shri Vitthal Motiramji Mandale for possession and damages valued at Rs. 17,500/- in the Court of Civil Judge, Senior Division, Amaravati. The appellant-trust contested the suit by filing a written statement on 19.12.1983 asserting their ownership and possession over the suit property since 31.1.1974. It was stated therein that the suit land had already been gifted to the appellant-trust by gift deed dated 31.1.1974 which was properly executed and validly attested and had also been acted upon by the parties concerned. It was, therefore, submitted therein that by virtue of the gift deed respondent No. 8/defendant No. 2 had no subsisting title or ownership as regards the suit property and as such he was not entitled to subsequently execute any sale deed in respect of the suit property.

5. The learned IInd Joint Civil Judge, Junior Division,

A Amravati who tried the suit was finally pleased to dismiss the suit and denied the relief regarding the recovery of possession of the said plot. However, the suit was decreed to the extent of damages of Rs. 17,500/- to be paid to the respondent/original plaintiff by the respondent No. 8/original defendant No.2 within
B 30 days alongwith the costs of the suit. It was further directed that the respondent No. 8/original defendant No.2 shall pay future interest on the principal amount of Rs. 17,000/- from the date of filing of the suit till its full realization at the rate of Rs. 10/- per cent per annum to the predecessor of respondent Nos.
C 1 to 7 herein as it was held that respondent No. 8 could not execute the sale deed in favour of a third party i.e. the predecessor of respondent Nos. 1 to 7 herein as he had already executed a gift deed in favour of the appellant way back on 31.1.1974 which was acted upon as a result of which the
D appellant-trust was already in possession of the suit land. Thus, the Trial Court was pleased to dismiss the respondent/ original plaintiff's claim in so far as the recovery of possession of the suit plot is concerned.

6. The predecessor of the plaintiff/respondent Nos. 1 to 7
E assailed the judgment and order of the Trial Court before the Court of learned District Judge, Amaravati and the appellant-trust also filed cross-objections challenging the findings of the trial court in so far as the validity of the gift deed executed in favour of the appellant was concerned. It had been submitted
F therein that the gift dated 31.1.1974 was for a price below Rs. 100 and it was in favour of the deity and as such was admissible; hence the Trial Court committed an error in holding that the gift deed was not valid. The appellant therein had also contended that the gift deed conferred a legal and valid title
G coupled with possession in favour of the appellant-trust and hence the subsequent documents of sale deed claimed to have been executed in favour of the plaintiff/contesting respondents ought not to have been ignored as the vendor Shri Vitthal Motiramji Mandale was not left with any title concerning the suit
H property. It was further pointed out from various circumstances

and evidence brought on record, that a fraudulent collusion exited between the original plaintiff and the defendant Nos.1 and 2 i.e. vendor and the vendee and the alleged sale deed did not confer any title to the vendee since the vendor had already executed a gift deed in favour of the appellant-trust almost 8 years prior to execution of the gift deed which was acted upon and possession was delivered to the appellant-trust. However, the First Appellate Court being the Court of Additional District Judge, Amaravati was pleased to allow the appeal of the plaintiff/respondents and rejected the cross-objections filed by the appellant-trust.

7. Being aggrieved by the Judgment and Order dated 4.5.1990 passed by the Additional District Judge, Amaravati, the appellant-trust was constrained to prefer a Second Appeal No. 246 of 1990 before the High Court of Judicature at Bombay, Nagpur Bench, Nagpur wherein the substantial questions of law, inter alia, was raised that the civil suit filed by the plaintiff/respondent was expressly barred in terms of the provisions of Sections 19, 20, 79 and 80 of the Bombay Public Trusts Act 1950. The substantial question of law was further raised whether the gift deed dated 31.1.1974 being an Act of "Dedication" of the suit property by the respondent No. 8 to the deity which is not a "living person" would not be "Dedication" of property in terms of Section 123 of the Transfer of Property Act and hence whether the provisions of the same are not applicable to the deed of gift which had been executed in favour of the deity. Substantial question was also raised whether the suit could be entertained without permission of the Charity Commissioner under Sections 50 and 51 of the Bombay Public Trusts Act 1950 which had not been obtained by the original plaintiff prior to filing of the suit. The gift deed dated 31.1.1974 having been acted upon in pursuance of which the appellant-trust came in possession of the said property since 31.1.1974 and continues to be in possession till date, could not have been ordered to be restored in favour of the plaintiff/respondent predecessor as the sale deed dated

A 14.10.1982 which was subsequently executed by the vendor, could not confer any right and title to the respondent / purchaser as the plot in question had already been dedicated to the idol of which the appellant is the trust.

B 8. The learned single Judge of the High Court of Bombay at Nagpur Bench, Nagpur, however, was pleased to dismiss the appeal as it was held that Section 123 of the Transfer of Property Act lays down the procedure in which the property can be transferred by way of a gift and it is necessary that the said document should have been registered and it should have been C signed by the donor attested by two witnesses. It was held that none of the requirements have been complied and, therefore, the appeal against the judgment and order of the Additional District Judge, Amaravati was not fit to be entertained. Consequently the appeal stood dismissed against which this D appeal by special leave has been filed by the appellant -Sainath Mandir Trust and the special leave having been granted in favour of the appellant, this appeal has come up before us for hearing and its adjudication.

E 9. In so far as the contention of the plaintiff/respondent in support of the Judgment and Order of the High Court as also First Appellate Court is concerned, the arguments advanced before the Courts below have been reiterated which was accepted by the High Court which held that the gift deed F executed in favour of the deity of which the appellant is a trustee, conferred no right and title in favour of the deity and therefore the donor had every right to execute subsequently a sale deed in favour of the predecessor of the contesting respondents in view of which the suit filed by the predecessor of contesting respondent Nos. 1 to 7 was rightly decreed in their favour by G the First Appellate Court being the Court of Additional District Judge which was upheld by the High Court.

10. Learned counsel for the contesting defendant/the appellant-trust on its part submitted at the threshold that the gift H deed which was executed in favour of the deity clearly reveals

that the same is a "Dedication" to an idol and not a "living person" by the respondent No. 8/original defendant No. 2 and thus the same can be said to be a valid transfer in terms of Section 123 of the Transfer of Property Act. Elaborating on this aspect, it was submitted that the idea, intention and the feelings of the donor behind the gift deed has not been taken into consideration and going by the nomenclature of the document, if the intention of the donor is appropriately construed from the words of the gift deed, the same will clearly and unambiguously suggest that the defendant No.2-Vasant Fartode who was a devotee of Saibaba had dedicated the said property to the idol for the construction of 'Bhakta Niwas'. This issue was specifically raised in the cross-appeal filed before the District Judge and was reiterated in the Second Appeal. The gift in question was a 'dedication to the idol' and hence the same was a valid transfer in favour of the appellant-trust and, therefore, there was no question of any registration of the same, since the gift deed was executed on 31.1.1974 and was clearly acted upon as possession was also handed over to the appellant-trust. The finding of the Trial Court would clearly demonstrate that the appellant was in possession of the said property in question and the same is an undisputed position. The very fact that the suit for possession was required to be filed by the respondent/original plaintiff further substantiates the fact that the gift deed was acted upon and possession was delivered to the appellant-trust.

11. Supplementing the aforesaid arguments, it was still further contended that in view of the "dedication" of the property to the idol of which the appellant is a trustee, any suit for possession against such property could not have been filed without the requisite permission of the Charity Commissioner under Sections 50 and 51 of the Bombay Public Trusts Act 1950. A mere perusal of Section 50 Sub-Section (2) of the Bombay Public Trusts Act specifically indicates that "where a direction or decree is required to recover the possession or to follow property belonging 'or alleged' to be belonging to a public

A trust" and a dispute arises in regard to the same, permission of the Charity Commissioner was clearly a necessary legal requirement. Hence, it was submitted that as the appellant-trust is in possession of the plot in question and the relief of possession was sought by plaintiff/respondent, the requisite B permission under Sections 50 and 51 became mandatory before filing such a suit, failing which the suit ought to have been rendered as not maintainable. The requirement or necessity of such a permission is the basic requirement at the very threshold and it is impermissible for the Court to enter into the merits of C the matter vis-à-vis the validity of the transfer etc. in such a suit which does not comply with the basic requirement of obtaining such a permission. Hence, it was contended that First Appellate Court as also the High Court have clearly erred in going into the issues of title and validity of the transfer which are only D subsequent issues which would arise only if the suit qualified the test of Sections 50 and 51 of the Act. The Courts below also failed to take into consideration that the suit was bad for non-joinder of necessary parties in terms of Order XXXI Rule 2 of C.P.C. as all the trustees of the Trust were not joined as E parties and hence the Trial Court was clearly justified in dismissing the suit as not maintainable for want of necessary permission of the Charity Commissioner under Sections 50 and 51 of the Act as well as non-joinder of all the trustees in terms of Order XXXI Rule 2 of the C.P.C. It was also submitted that the appellant-trust has been in uninterrupted possession of the F suit land since 31.1.1974 and the suit property in question had already been included and recorded by the Charity Commissioner as a property of the trust *and the Change Report to that effect was required in terms of* Section 22 of the Bombay Public Trusts Act. It was finally submitted that the G property in question was gifted for a pious purpose of construction of 'Bhakta Niwas' and, therefore, considering the aforesaid factors and the comparative hardships to the parties, the suit for possession is not only fit to be dismissed on the ground of its maintainability but even on the merits of the matter.

H

12. Having heard the counsel for the parties and considering the merits of the arguments advanced by learned counsel for the contesting parties, it is evident from the record that the plaintiff/respondent first of all intended to purchase the suit property in the year 1982 and, therefore, published a notice in the daily "Matrbhumi" dated 2.10.1982 whereby objections were invited in respect of the said plot. It is the case of the contesting respondent Nos. 1 to 7 that since no objections were received, the original plaintiff - Shri Vitthal Motiramji Mandale purchased it from the respondent No. 8/original defendant No.2 by registered sale deed dated 14.10.1982 for a consideration of Rs. 17,000/- but even as per the case of the contesting respondent No. 7, the appellant-trust resisted their action in taking physical possession of the suit land as they were restrained from putting up fence on the land in question which prompted them to immediately take action and they were compelled to file a suit for possession. Thus, even as per their own case, the plaintiff/respondent was not in possession of the plot in question. In addition to this, the finding recorded by the Trial Court which has not been interfered either by the First Appellate Court or the High Court, the plaintiff/respondent was not in possession of the suit property in spite of the sale deed dated 14.10.1982 and the possession of the suit property was never delivered to the plaintiff predecessor or their legal heirs i.e. respondent Nos. 1 to 7. It can logically be inferred that it is for this very reason that the plaintiff/respondent had published a notice in a daily newspaper "Matrbhumi" inviting objections before purchasing the property as in the normal circumstance, if a sale deed is executed by a private party holding title to the suit property in favour of another private party, the question of publishing a notice in the newspaper does not arise since the transaction of sale between two private parties do not normally require issuance of a notice in the newspaper inviting objections.

13. Under the aforesaid background, the contention of learned counsel for the appellant that permission should have

A been obtained from the Charity Commissioner under Sections 50 and 51 of the Bombay Public Trusts Act assumes significance and its legal implication cannot be overlooked. When the disputed plot had already been dedicated in favour of the idol by virtue of a deed of gift, of which the appellant is a B trustee and the same was acted upon as possession also was delivered to the appellant trust, it was surely necessary for the plaintiff/respondent Nos. 1 to 7/purchaser of the suit land and also incumbent upon respondent No. 8 /vendor of the sale deed to seek permission from the Charity Commissioner before a C sale deed could be executed in regard to the disputed plot and more so before a civil suit could be instituted. We, therefore, find substance in the contention of learned counsel for the appellant, that the dedication dated 31.1.1974 of the plot for charitable purpose in the nature of gift having been acted upon as a result of which the possession also was delivered to the D appellant-trust, the civil suit filed by the predecessor of contesting respondent Nos. 1-7 for possession was expressly barred in terms of Sections 19, 20, 79 and 80 of the Bombay Public Trusts Act 1950.

E 14. It is no doubt true that the gift deed was an unregistered instrument and no title could pass on the basis of the same under Section 123 of the Transfer of Property Act. However, when the document is in the nature of a dedication of immovable property to God, the same does not require F registration as it constitutes a religious trust and is exempt from registration. We have taken note of a Full Bench decision of the Madras High Court reported in AIR 1927 Mad. 636 in the case of *Narasimhaswami vs. Venkatalingam and others,* wherein it was held that Section 123 of the Transfer of Property G Act does not apply to such a case for "God" is not a "living person" and so the transaction is not a "transfer" as defined by Sec.5 of the Transfer of Property Act. Thus, a gift to an idol may be oral and it may be effected also by an unregistered instrument. But a different view has been taken in the case of H *Bhupati Nath vs. Basantakumari,* AIR 1936 Cal. 556; *Chief*

Controlling Revenue Authority vs. Sarjubai, AIR 1944 Nag. 33. In the Full Bench decision of the Madras High Court in the matter of *Narasimhaswami* (supra), it had been argued that a gift to idol of lands worth over Rs.100 requires registration and that a mere recital in the deed of gift which had been made, would not pass property. But it had been held by the Full Bench that dedication of property to God by a Hindu does not require any document and that property can be validly dedicated without any registered instrument. In the aforesaid case, the deed of gift was not to a specified idol but to the Almighty Sri Kodanda Ramachandra Moorti. Dealing with this matter, the Full Bench took note of the observation in the matter of *Pallayya vs. Ramavadhanulu*, reported in 13 M.L.J. 364 wherein it was held by Benson and Bhashyam Aiyangar, JJ. that a declaration of trust in relation to immovable property for a public religious purpose is not governed by the Indian Trusts Act which by S. 1 declares it inapplicable to religious trusts. It was also held that S. 123 of the Transfer of Property Act has no application to dedication of land to the public as the section only applied to cases when the donee is an ascertained or ascertainable person by whom or on whose behalf a gift can be accepted or refused. Taking notice of several authorities, it was held that no document was necessary for the dedication of property to charity. The Full Bench recorded as follows: "We have not been referred to any case where it has been held that an oral gift for a religious purpose requires registration. In this connection, I may point out that S. 123 of the Transfer of Property Act only applies to transfer by one living person to another". S. 5 of the Act runs as follows: "In the following sections, 'transfer of property' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons and 'to transfer property' is to perform such act. The learned Judges noted that a gift to God which in the said case was Sri Kodanda Ramachandra Moorti cannot be held to be a gift to a living person. It had been argued in the said matter that an idol in law is recognised to be a juristic person capable

A of holding property and it must be held that a gift to an idol is a gift to a living person. But it was held therein that the Almighty by no stretch of imagination, legal or otherwise, can be said that the Almighty is a living person within the meaning of the Transfer of Property Act. The learned Judges of the Full Bench
B saw no reason to differ from the Madras case cited in that matter where the law had been settled for several years as it was observed that the principle of '*stare decisis*' should be applied unless there are strong reasons to the contrary as otherwise it would unsettle many titles. Concurring with this view, Chief
C Justice Reilly held that if the gift is not intended to a living person within the meaning of S. 5 of the Transfer of Property Act, the document would not require registration. This judgment surely has a persuasive value to the issue with which we are confronted in the instant matter and tilts the scale of justice in
D favour of the appellant-trust as the plot was essentially dedicated to Sai Baba for a charitable purpose, although the same was in the form of an unregistered deed of gift.

15. But even if we were to accept the contentious issue or leave it open and express no final opinion that the deed of
E gift executed in favour of the appellant-trust having not been registered, did not confer any title on the appellant-trust, it is not possible to brush aside the contention that the respondent Nos.1 to 7-purchaser of the plot in question were legally bound by Section 51 of the Bombay Public Trusts Act 1950 to obtain
F consent of Charity Commissioner before institution of the suit against the appellant which was admittedly in possession of the property after the gift deed was executed in its favour by the respondent No.8. It would be relevant to quote Section 51 at this stage which lays down as follows:

G

> 51 (1) : "If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks

H

fit is specified that there is a *prima facie* case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal." A B

16. Section 51 further envisages right of appeal by the affected party if the Charity Commissioner refuses his consent to the institution of the suit. Prior to this Section 50 (ii) already envisages that *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, a suit by or against or relating to public trust or trustees or other although may be filed, consent under Section 51 of the Charity Commissioner is clearly required under Section 51 of the Act of 1950 which is quoted hereinbefore.* C D

17. It is difficult to overlook that the decree holder/ respondent herein although had gone to the extent of publishing a notice in a local daily "Matrbhumi" inviting objections indicating that he intended to purchase a suit land, he conveniently ignored the provisions of Section 51 of the Bombay Public Trusts Act, 1950 and refused to apply to the Charity Commissioner before instituting a suit against the appellant-trust especially when the possession of the plot was delivered to the appellant-trust way back in the year 1974 but after more than eight years, the vendor/respondent No.8 executed a sale deed in favour of the predecessor of respondent Nos.1 to 7. The relevance of Section 51 of the Bombay Trusts Act, 1950 although is clearly apparent and the appellant had also raised it before the High Court, the learned Single Judge of the High Court has not even addressed this important issue having a legal bearing on the right of the appellant to retain the plot, which although had been in the form of a deed of gift, in fact it was practically in the nature of dedication to the appellant-trust for charitable purpose which was to construct a 'Bhakt Niwas' for the devotees of Saibaba. E F G H

A 18. Hence, even if it were to be held that the deed of gift in favour of the appellant-trust did not confer any title to the appellant-trust as the same was not registered and were also to be held that the same cannot be treated to be a dedication to any idol, as this point was neither pressed hard nor was B argued threadbare and the Courts below have also not gone into this question, we do not wish to enter into this question further. However, the fact remains that in view of the possession of the property in question of the appellant-trust, it was obligatory on the part of the purchasers of the plot in question/ C respondent Nos.1 to 7 to seek permission from the Charity Commissioner under Section 51 of the Bombay Trusts Act, 1950 to recover the property by filing a suit or initiating a proceeding. In fact, in the matter of *K. Shamrao and others vs. Assistant Charity Commissioner* reported in (2003) 3 SCC D 563, a two Judge Bench of this Court had been pleased to hold that the Assistant Charity Commissioner under the scheme of the Act of 1950 i.e. Bombay Public Trusts Act, 1950 possesses all the attributes of a Court and has almost all the powers which an ordinary civil court has including the power of summoning witnesses, compelling production of documents, examining E witnesses on oath and coming to a definite conclusion on the evidence induced and arguments submitted.

Section 79 (1) of the same Act also lays down that any question, whether or not a trust exists and such trust is a public F trust or particular property is the property of such trust, is required to be decided under its statutory force by the Deputy or Assistant Charity Commissioner as provided under the Act and Section 80 bars jurisdiction of the civil court to decide or deal with any question which is by or under this Act to be G decided or dealt with by any officer or authority under this Act.

19. Thus, when the appellant-trust was in occupation and possession of the property in question then the respondent-plaintiff clearly could not have approached the civil court ignoring the specific provision under the Bombay Public Trusts H

Act, 1950 which has laid down provisions to deal with disputes relating to the property of the trusts. It also cannot be overlooked that in the instant case, it is the original owner of the property i.e. respondent No.8 who had executed a deed of gift in favour of the appellant-trust and subsequently after ten years, executed a sale deed in favour of the predecessor of respondent Nos.1 to 7, who approached the Court for recovery of his property in which case it could perhaps have been available for the owner of the property to approach the civil court. But in the case at hand, it is the purchaser of the property predecessor of Respondent Nos. 1-7 who filed the suit for possession which clearly can be construed as the suit for recovery of possession from the appellant-trust which was in possession of the property. In that view of the matter, it was the statutory requirement of the Bombay Public Trusts Act, 1950 to approach the Charity Commissioner before a suit could be instituted.

20. In view of the aforesaid discussion and in the light of the reasons assigned hereinbefore, we set aside the judgment and order of the High Court as also the First Appellate Court and restore the judgment and order of the Trial Court which had been pleased to dismiss the suit filed by the plaintiff-respondents No.1 to 7. The Trial Court, however, had decreed the suit for return of the money of Rs.17,500/- to the predecessor of respondents No.1 to 7 and also interest was ordered to be paid on this amount by the vendor-respondent No.8. Since the respondent No.8 had already been divested of his title to execute a sale deed in favour of respondent Nos.1 to 7 as he had already executed a deed of gift in favour of the appellant-trust for charitable purpose, we are of the view that in the interest of equity, he should not be saddled with the financial liability to return the amount of Rs.17,500/- with interest to the respondent Nos.1-7. This amount, in our view, in the interest of equity and fair play should be paid by the appellant-trust to the respondent Nos.1-7 on behalf of Respondent No.8, as this part of the decree which had been passed by the Trial Court in favour of respondent Nos. 1-7 had not been challenged

A by way of an appeal by the respondent No.8. But as we have held that the appellant-trust is the rightful owner of the disputed plot and the Respondent No.8 as a consequence has been held to have been divested of the property, the amount paid by the predecessor of Respondent Nos.1-7, should be refunded to
B Respondent Nos.1-7 without interest and thus the decree of the Trial Court shall be treated as modified to this extent. This appeal accordingly is allowed, without any order as to costs.

N.J. Appeal allowed.