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HIGH COURT OF CHHATTISGARH, BILASPUR

S.A No.55 of 2003

Shri Jagannath Swami Mandir Through Sarvarakar Avam Pujari Chintamani Sharma, S/o Shri Ishwar Sharma, Aged About 56 Years, Caste-Bramhan, R/o Village- Chhotegumda, Tahsil Gharghoda, District Raigarh, Chhattisgarh..... Plaintiff

--- Appellant

Versus

1. Narayan Gupta (Dead) Through Lrs
1. (i)(a) Smt. Subhadra Gupta Aged about 50 Years W/o Late Shri Gangaram Gupta (Gangaram Gupta Is Son Of Narayan Gupta Who Has Died), R/o Village- Chhote-Gumda, Police Station And Tahsil- Gharghoda, District- Raigarh, Chhattisgarh
1. (i)(b) Smt. Meena Gupta Aged about 27 Years D/o Late Shri Gangaram Gupta (Gangaram Gupta Is Son Of Narayan Gupta Who Has Died), R/o Village- Chhote-Gumda, Police Station And Tahsil- Gharghoda, District- Raigarh, Chhattisgarh
1. (i)(c) Lakhan Gupta Aged about 25 Years S/o Late Shri Gangaram Gupta (Gangaram Gupta Is Son Of Narayan Gupta Who Has Died), R/o Village- Chhote-Gumda, Police Station And Tahsil- Gharghoda, District- Raigarh, Chhattisgarh
1. (ii)(a) Smt. Bharti Gupta Aged about 60 Years W/o Late Shri Dwarika Prasad Gupta (Dwarika Prasad Gupta Is Son Of Narayan Gupta Who Has Died), R/o Village- Chhote-Gumda, Police Station And Tahsil- Gharghoda, District- Raigarh, Chhattisgarh
1. (ii) (b) Raj Gupta S/o Late Shri Dwarika Prasad Gupta Aged About 15 Years, (Dwarika Prasad Gupta Is Son Of Narayan Gupta Who Has Died), R/o Village- Chhote-Gumda, Police Station And Tahsil Gharghoda, District Raigarh, Chhattisgarh
1. (iii) Govindram Gupta Aged about 45 Years S/o Late Shri Narayan Gupta R/o Village-Chhote-Gumda, Police Station And Tahsil- Gharghoda, District- Raigarh, Chhattisgarh
1. (iv) Smt. Saraswati Kolta Aged about 48 Years D/o Late Shri Narayan Gupta R/o Village- Loing, Police Station- Chakradhar Nagar, Tahsil And District- Raigarh, Chhattisgarh
2. State Of Chhattisgarh, Through- District Collector, Raigarh, Chhattisgarh.....(Res. No. 2)
3. Sarpanch, Gram Panchayat Chhotegmuda, Block Development Gharghoda, Tahsil Gharghoda, District Raigarh (Chhattisgarh) (Res. No. 3)

-----Respondents

For Appellants:

Shri Roop Naik, Advocate.

For LR's of deceased

Respondent No.1:

Shri Vijay K. Deshmukh, Advocate.

For Respondent No.3/State:

Smt Shobha Kashyap, Dy. G.A



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Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

06.11.2017

1. This Second Appeal has been preferred under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 19.09.2002 passed by the 2nd Additional District Judge, Raigarh, in Civil Appeal No.09-A/2002 by which, the lower appellate Court, while reversing the finding of the trial Court dated 16.08.2001 passed by the Civil Judge, Class-II, Gharghoda, Distt. Raigarh in Civil Suit No.8-A/1999, has dismissed the Plaintiff's suit.
2. The undisputed facts of the case are that the Plaintiff-Chintamani Sharma, S/o Ishwar Sharma instituted a suit by submitting *inter alia* that he is the *pujari* of Shri Jagannath Swamy temple of village Chhotegumda. It is pleaded further that the tradition of performing *puja* as *pujari* in the said temple was being done traditionally since the time of his forefathers. It is pleaded further that the said temple was built by the father of Narayan Gupta, Defendant No.3 and after construction of the temple, it was given to the public at large and adjoining land of 21 acres was also donated for meeting out the day to day expenses of temple and *pujari*. It is pleaded further in the Plaint that the Plaintiff had been paying the taxes to the authorities and revenue to the State of Chhattisgarh and there was a tank near the temple built by the State and in order to have the compensation for acquisition of the land by the State, Defendant No.3 challenged the right of the Plaintiff and therefore, the Plaintiff has been constrained to file the suit in the instant nature.
3. The Defendants have contested the aforesaid claim of the Plaintiff. The trial Court, after considering the evidence led by the parties, has

decreed the suit only with regard to the fact that the Plaintiff is a *pujari* of the said temple while declining to grant a decree that the Plaintiff is the *sarvakara* of the said temple.

4. Being aggrieved, Defendant No.3-Narayan Gupta has preferred an Appeal as per the provisions prescribed under Section 96 of the CPC. The lower appellate Court, in turn, after considering the case, set aside the decree on the ground that the suit was since filed in the name of Jagannath Sharma mandir *absentia* of being a registered Trust and therefore, the Plaintiff has no locus to institute a suit. It held further that there is no document by which it would be presumed that the Plaintiff has been appointed as a *pujari* of the said temple. Accordingly, the lower appellate Court has dismissed the Plaintiff's entire claim.

5. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Roop Naik, learned Counsel for the Appellants submits that the judgment and decree as passed by the lower appellate Court by reversing the finding of the trial Court that the Plaintiff is not the *pujari* of the temple is apparently contrary to law. He submits further that the appellate Court ought to have examined the documents particularly Ex.P-3 to P-7 and ought to have come to the conclusion that Plaintiff has been performing his duty as a *pujari* for the last 40-45 years and therefore, the lower appellate Court has committed an illegality in holding that the Plaintiff is not the *pujari* of the said temple.

6. I have heard learned Counsel for the Appellants and perused the entire record carefully.

7. The Plaintiff's suit is mainly based on the ground that he be declared as *pujari* and *sarvarakar* of the said temple. The trial Court, after

considering the evidence led by the parties, has come to the conclusion that the Plaintiff is not entitled to be appointed as *saravarakar* of the said temple though the trial Court has held that he is the *pujari* of the temple. In Appeal, the lower appellate Court has considered all the documents placed on record and came to the conclusion that there is no document by which it could be established that the Plaintiff was appointed as a *pujari* of the temple.

8. Perusal of the record would show that the Plaintiff Chintamani himself has admitted in his evidence that the alleged appointment order was issued in his favour. However, no order as such was placed on record by him, therefore, the lower appellate Court has rightly drawn an adverse inference against the Plaintiff by arriving at a conclusion that the Plaintiff is not *pujari* of the temple. The finding so recorded by the lower appellate Court is based upon due and proper appreciation of the evidence led by the parties, therefore, the same cannot be held to a perverse one. Consequently, the same deserves to be and is hereby affirmed.

9. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
Sanjay Agrawal
Judge

Priya