

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.88 of 2017**

Yagyanand Brahmachari Aged About 67 Years Religious Father Late Mahant
Gautamanand Brahmachari, Aged About 67 Years, R/o Village Killa Mandir,
Tamerpara, Durg, Tehsil & District Durg (C.G.)

---- Applicant**Versus**

1. Shri Laxminarayan Swami Mandir Public Trust Kamasipara Satibazar, Through President Shri J.N. Thakur, S/o Late Nagendranath Thakur, R/o Near Dudhadhari Math, Mathpara Tehsil & District Raipur (C.G.)
2. State of Chhattisgarh Through Registrar Public Trust Raipur, District Raipur (C.G.)
3. SDM (Revenue) & Registrar Public Trust Raipur, District Raipur (C.G.)

---- Non-applicants

For Applicant	:	Mr. Sameer Oraon, Advocate
For State/Non-applicants No.2 & 3	:	Ms. Shobha Kashyap, Dy. G.A.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****19/05/2017**

Heard on admission.

1. This is the revision preferred by defendant No. 3, namely, Yagyanand Brahmachari by questioning the order dated 22/03/2017, by which, the trial Court, while entertaining the application filed by him under Order 7 Rule 11 of the Civil Procedure Code, 1908 (hereinafter referred to as 'CPC'), has rejected the same.
2. The undisputed facts of the case, are that the defendant No. 3 (present applicant herein) had initiated a proceedings as required under Section 9 of the Chhattisgarh Public Trusts Act, 1951 (hereinafter referred to as 'Act of 1951') before the Sub-Divisional Officer (Revenue) and Registrar, Public Trust, Raipur, where the case was registered as Case No. 21-B/113(4) Year 2012-2013. Upon considering the said application, the same was allowed and necessary changes were directed to be made in the trust property by the Sub-Divisional Officer and

Registrar, Public Trust, Raipur in its order dated 10.02.2014 annexed with the petition as Annexure P/2.

3. Being aggrieved with the aforesaid order, the plaintiff/non-applicant No. 1 herein had questioned the same by filing an application under Order 9 Rule 13 of the CPC before the same authority, who in turn, vide its order dated 27/08/2015 had rejected the same in Case No. 12/B-113(4)/2014-15.
4. After passing of the aforesaid orders, the plaintiff/non-applicant No. 1 herein instituted a suit claiming that the aforesaid orders as passed by the Sub-Divisional Officer (Revenue) and Registrar, Public Trust, Raipur on 10/02/2014 and 27/08/2015 be declared as null and void along with other reliefs.
5. Upon receiving the summons of the said suit, the present applicant/defendant No. 3 appeared and has filed an application enumerated under Order 7 Rule 11 of the CPC by submitting, *inter alia*, that the suit as framed and instituted is not maintainable by virtue of Section 8 of the Act of 1951 as the entire proceedings were initiated by the applicant under Section 9 of the said Act of 1951, therefore, suit as framed is apparently barred by law. In view of this contention, the present applicant had prayed for the rejection of the plaint by filing the said application.
6. The plaintiff/non-applicant No.1 has contested the aforesaid application by submitting, *inter alia*, that the suit as filed by him does not come within the purview of the said provision of Section 8 of the Act of 1951, therefore, application as filed by the applicant under Order 7 Rule 11 of the CPC deserves to be rejected.
7. After considering the said application, the trial Court by its order impugned dated 22/03/2017 has observed that the suit is not barred by any of the specific provisions as prescribed under the said Act of 1951 nor it is barred by time, and in consequence, rejected the said application.

8. Being aggrieved with the aforesaid order, the applicant/defendant No. 3 has preferred this revision.
9. Mr. Sameer Oraon, learned counsel for the applicant submits that the suit cannot be instituted before the Civil Court as the Registrar, Public Trust, Raipur, has passed the said order impugned dated 10.02.2014 while exercising the powers enumerated under Section 9 of the said Act of 1951, therefore, present suit cannot be entertained under Section 8 of the Act of 1951. He submits further that the initial order as passed by the Registrar, Public Trust on 10/02/2014 was questioned by the plaintiff before the same authority by filing an application under Order 9 Rule 13 of the CPC and after rejection of the said application on 27/08/2015, the present suit cannot be held to be maintainable. He would submit further that even otherwise suit as filed beyond the prescribed period of six months is apparently barred by time.
10. I have heard the learned counsel for the applicant and perused the entire relevant papers annexed with the memo of revision, *vis-a-vis*, the provisions prescribed under the Chhattisgarh Public Trusts Act, 1951.
11. Undisputedly, the present applicant had initiated the proceedings under Section 9 of the Act of 1951. After considering the said application, the Registrar, Public Trust, Raipur, vide its order dated 10/02/2014 had allowed the said application, which was affirmed further by its subsequent order, dated 27/08/2015 while rejecting the plaintiff's application filed under Order 9 Rule 13 of the CPC. Sub-section (3) of Section 9 of the Act of 1951 provides very specifically that the provisions of Section 8 shall apply to any finding, if passed, under this Section as they apply to a finding passed under Section 6. The provision of Section 9 is relevant for the purpose is reproduced herein as under:

“S. 9. Change.---- (1) Where any change occurs in any of the entries recorded in the register, the working trustee shall, within ninety days from the date of the occurrence of such change or where any change is desired in such entries in the interest of the administration

of the such public trust, report in the prescribed manner such change or proposed change to the Registrar.

(2) If, on receipt of such report and after making such enquiry as the Registrar may consider necessary, the Registrar is satisfied that a change has occurred or is necessary in any of the entries recorded in the register in regard to a particular public trust, he shall record a finding with the reason therefor and subject to the provisions contained in sub-section (3) amend the entries in the said register in accordance with such finding.

(3) The provisions of Section 8 shall apply to any finding under this section as they apply to a finding under Section 6”

12. In view of the aforesaid Sub-section (3) of Section 9 of the Act of 1951, it is clear that the civil suit would lie as per the provisions prescribed under Section 8 of the Act of 1951 and it cannot be held to be a barred by law. Even after considering the entire provision, I do not find that the suit as framed and instituted is barred specifically by any of the provisions prescribed under the Chhattisgarh Public Trusts Act, 1951. As far as the question as raised by the counsel for the applicant that the suit as filed beyond the prescribed period of six months provided under Section 8(1) of the Act of 1951 is barred by time, is noted to be rejected as the same could be decided only after considering the evidence of the parties as it involves the mixed questions of law and fact.
13. In view of the foregoing discussions, the trial Court has rightly rejected the application as filed by the present applicant under Order 7 Rule 11 of the CPC, therefore, the same deserves to be and is hereby affirmed. Consequently, the revision being devoid of merit is hereby dismissed at the admission stage itself.
14. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge