

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 104 of 2010****Judgment reserved on 24-08-2017****Judgment delivered on 08-11-2017**

(Arising out of order dated 27-8-2010 passed by the Additional District Judge, Jashpur, in civil suit No.01-A/2008)

1. Hari Sinha @ Hari Prasad Singh, S/o Late Lalji Singh, aged about 61 years, R/o village Sujabad, Post Kushth Seva Ashram Padav, Varanasi (UP), presently at Gamhariya, Tahsil Jashpur Nagar, Dist. Jashpur (CG).

---- Appellant**Versus**

1. Gurupad Sambhav Ram, Chief Trustee, Baba Bhagwan Ram Avdhut Trust Bramha Nishthalay, Sogda, Tahsil Jashpur Nagar, Dist. Jashpur (CG).
2. Registrar, Public Trust-Cum-Collector, Jashpur, Dist. Jashpur (CG).
3. Collector, Raigarh, Dist. Raigarh (CG).
4. Shri A.K. Agrawal, the then Deputy Collector and presently SubDivisional Officer, Raigarh (CG).
5. Dr. S.K. Raju, Mission Director, Rashtriya Swasthya Mission, Opposite Mantralaya, Raipur (CG).
6. Krishna Kumar, S/o not known to the appellant, aged about 35 years, Trustee, Baba Bhagwan Ram Avdhut Trust Bramha Nishthalay, Sogda, Tahsil Jashpur Nagar, Dist. Jashpur (CG).

---- Respondents

For Appellant	Shri Sachin Singh Rajput, Advocate
For Respondent/State	Shri Sameer Behar, Panel Lawyer
For Respondent No.6	Shri Manoj Paranjape & Shri Vikram Dixit, Advocates

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

C A V Judgment

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

- 1) This is plaintiff's first appeal under Section 96 of the Code of Civil Procedure, 1908 (henceforth 'the CPC') challenging the order dated 27-8-2010 passed by the trial Court rejecting the plaint under Order 7 Rule 11 of the CPC.
- 2) The plaintiff preferred the suit on 17-1-2008 for declaration that the order passed by the Registrar, Public Trust-cum-Collector, Jashpur, in case No.01/B-113/06-07 on 18-7-2007 be declared null and void as also for declaration that Baba Bhagwan Ram Avdhut Trust is not a public trust and further that the land bearing khasra No.449/5 area 0.364 hectare situated at village Gamhariya, Tahsil Jashpur Nagar is not the property of the said public trust.
- 3) The suit was filed on the pleadings, inter alia, that Baba Bhagwan Ram (henceforth 'Baba') was a famous saintly figure who had established an organisation by the name Sarveshvari Samuh at various places in the country. Baba had also purchased several properties in his own name through different sale deeds. In his

name there was one such property being the suit land mentioned above, which was purchased from the erstwhile Ruler of Jashpur State Shri Vijaybhushan Singh Judeo by registered sale deed dated 17-3-1960 and thereafter, name of Baba was recorded as bhoomiswami in the revenue records. Baba used to sale or gift his personal properties to various persons. In course of said transactions, Baba had executed a gift deed of the suit property in plaintiff's favour on 21-6-1991, which was duly registered on 28-6-1991 and subsequently, the name of the plaintiff was recorded in the revenue records by Entry No.21 dated 13-2-1996.

- 4) It was further pleaded that the order of mutating the plaintiff's name was challenged by way of revision petition by Sarveshvari Samuh before the Board of Revenue, which was allowed on 26-3-1996 against which the plaintiff preferred writ petition bearing MP No.1593 of 1996 before the erstwhile High Court of Madhya Pradesh, which was allowed on 10-8-1999 setting aside the order passed by the Board of Revenue and maintaining the order passed by the Tahsildar, Jashpur, in plaintiff's favour. Despite the said order, the Tahsildar Jashpur, did not act upon the plaintiff's application for re-entry of plaintiff's name in the revenue record, which was deleted after the order passed by the Board of Revenue.

- 5) In the meanwhile, the defendant No.1 Gurupad Sambhav Ram, the Chief Trustee of the so called Baba Bhagwan Ram Avdhut Trust Brmha Nishthalay, Sogda, Tahsil Jashpur Nagar, District Jashpur, preferred civil suit No.5-A/1997 (re-numbered as 10-A/2005) challenging the gift deed in plaintiff's favour, however, the suit was withdrawn on 28-3-1996.
- 6) The plaintiff has obtained retail dealership of petroleum product from the Bharat Petroleum Corporation Limited (BPCL) and has established a petrol and diesel pump on the suit land. The suit filed by the defendant No.1 having been withdrawn and the High Court of Madhya Pradesh having decided the issue of mutation in plaintiff's favour, the gift deed is valid and lawful having not been set aside or declared void by any Civil Court.
- 7) It was also pleaded that after the death of Baba the defendant No.1 obtained forcible possession of the other properties belonging to Sarveshvari Samuh, therefore, plaintiff's son Tejpratap preferred civil suit no. 265/1993 before the Civil Court, Varanasi, therefore, the defendant No.1 adopted a revengeful attitude and started taking steps to harass and cause damage to the plaintiff. He colluded with the Sub Divisional Officer (Revenue), Jashpur Nagar to declare the suit property as trust property against which the plaintiff's son Tejpratap and Prashant

Sinha preferred civil suit Nos.17-A/2005 and 18-A/2005 in the Civil Court, Jashpur Nagar wherein issue Nos. 6 & 7 were framed as to whether the suit land is the property of a registered public trust and whether Baba Bhagwan Ram Avdhut Trust or Sarveshvari Samuh is registered under the provisions of the MP/CG Public Trusts Act, 1951 (henceforth 'the Act, 1951').

- 8) While deciding the above preliminary issues the Civil Judge Class-I, Jashpur Nagar concluded that the said Sarveshvari Samuh or Baba Bhagwan Ram Avdhut Trust having not registered under the Act, 1951, it is not proved that the suit property belongs to the registered public trust. No appeal was preferred either by the Registrar, Public Trust or by the defendant No.1 or by the trust, therefore, the decision on the said preliminary issue has attained finality. The defendant No.6 Krishna Kumar thereafter preferred an application before the Registrar Public Trust, Jashpur, the defendant No.2, on 4-9-2006 for declaring the Baba Bhagwan Ram Avdhut Trust as a public trust and allotment of a new registration number. The defendant No.2 made an inquiry in which the plaintiff participated and raised objection, however, ignoring the plaintiff's objection the defendant No.2 did not provide proper opportunity of hearing and passed an order on 18-7-2007 directing registration of public trust by

including the suit property as the property of the trust for its inclusion in the register of public trust.

- 9) It was also stated in the plaint that the Registrar, Public Trust, Jashpur, wrongly observed that the trust is deemed to be in existence from the year 1960-61 whereas no such order of registration was ever passed by the Registrar Public Trust, Raigarh or Jashpur, as no entry in the register of public trust was available throughout the period 1960-61 to 18-7-2007 when the order assailed in the suit was passed by the Registrar, Public Trust, Jashpur.
- 10) It was specifically pleaded in para 16 of the plaint that notice under Section 80 of the CPC was served on defendant No.2, Registrar Public Trust-cum-Collector, Jashpur with further pleading in para 17 that the cause of action for filing the suit arose on 18-7-2007 when the Registrar Public Trust, Jashpur passed the subject order.
- 11) The respondent/defendant No.1 submitted his written statement with preliminary objection as also an application under Order 7 Rule 11 of the CPC for rejecting the plaint on the grounds that :

- the suit having not been preferred within six months from 18-7-2007, the same is apparently barred by limitation;
- the suit against the public trust should have been preferred by atleast two persons as required under Section 92 (1) of the CPC whereas the plaint has been filed by only one person, therefore, it is not maintainable and also that under the said provision suit can be preferred only with the leave of the Court, which has not been done;
- the trust and trustees as well as the State of Chhattisgarh have not been arrayed in the suit, therefore, there is non joinder of necessary parties;
- under Section 8 (1) of the Act, 1951 registration of a public trust can be challenged by the members of the trust or a person having interest in the trust, but the plaintiff not being a trustee or having interest in the trust property, the suit is not maintainable; and

- provision contained under Section 80 of the CPC has not been followed hence, the suit is not maintainable.

The defendant No.2 Registrar, Public Trust, Jashpur and the defendant No.6 Krishna Kumar also moved separate applications under Order 7 Rule 11 of the CPC.

12) The learned trial Court has rejected the plaint on three counts that :

- notice under Section 80 of the CPC has not been served on the defendants No.3 to 5, therefore, the suit is not maintainable;
- suit against the public trust is not maintainable because of non compliance of Section 92 of the CPC; and
- the order dated 18-7-2007 passed by the Registrar Public Trust should have been challenged by filing a suit within six months wherein the suit has been preferred on 17-1-2008, therefore, it is apparently barred by limitation, as the suit has not been filed within

the time prescribed under Section 8 of the Act,
1951.

- 13) We shall deal with the grounds on which the plaint has been rejected in seriatum

In re. Section 80 of the CPC :

- 14) On perusal of the record it is manifest that copy of the notices under Section 80 of the CPC, which were sent to the State of Chhattisgarh through the Collector, Jashpur Nagar and the Registrar, Public Trust-cum-Collector, Jashpur Nagar on 31-8-2007 together with the acknowledgment, which bears the seal of the office of the Collector proving receipt, is available on record.
- 15) There is another notice available on record addressed to the Government of Chhattisgarh through the Collector Raigarh/defendant No.3, Shri A.K. Agrawal, the defendant No.4 and Dr. S.K. Raju, defendant No.5 sent by the plaintiff's counsel on 21-5-2007 together with the postal receipt proving dispatch by Registered Post and the acknowledgment of receipt of notice is also available in the record. Although the word 'notice under Section 80 of the CPC' is not mentioned in these notices, but it contains notice for initiation of legal proceedings.

- 16) Even otherwise, the defendants No.4 & 5 having been arrayed in individual capacity and the notice under Section 80 having already been issued to the defendants No. 2 & 3, it does not appear that there was any default in issuance of notice under Section 80 to the official defendants i.e. 2 & 3. It is also to be seen that the order under challenge in the suit is passed by the defendant No.2, Registrar, Public Trust, Jashpur and not by any other defendant. Even if the defendant No.4 was earlier acting as Registrar, Public Trust, Jashpur, the office possessed by him i.e. Registrar, Public Trust, Jashpur, having already been sent a notice under Section 80 of the CPC, the mandatory requirement stands complied with.
- 17) The issue about requirement of service of notice under Section 80 of the CPC to the Registrar, Public Trust in a suit filed under Section 8 of the Act, 1951 is no longer *res integra*, as the same has been settled by the Supreme Court in **State of Maharashtra and Another v. Shri Chander Kant**¹, however, the question remains as to who can raise the plea of non-service of notice under Section 80 of the CPC and whether plea of non-service of such notice can be waived by the concerned Department.

1 AIR 1977 SC 148

- 18) In **Bishandayal and Sons v. State of Orissa and Others**² and **Dayanand and others v. State and others**³ it is held that the right to notice under Section 80 can be waived for whose benefit it has been provided.
- 19) In the case at hand, separate applications under Order 7 Rule 11 of the CPC have been preferred by the defendant No.1 (the Trust), defendant No.2 (the Registrar, Public Trust-cum-Collector, Jashpur) and defendant No.6 (Krishna Kumar). The remaining defendants i.e. defendant No.3 (the Collector, Raigarh), defendant No.4 (Shri A.K. Agrawal) and the defendant No.5 (Dr. S.K. Raju) have not even entered appearance before the trial Court and, as such, they have not preferred any application under Order 7 Rule 11 of the CPC.
- 20) In the application filed by the defendants No.1 & 6 it is only mentioned that the suit is not maintainable, as it is not in accordance with Sections 80 & 92 of the CPC without pleading that notice under Section 80 has not been served on the official defendants. The Registrar, Public Trust-cum-Collector, Jashpur, has not pleaded non-service of notice under Section 80 of the CPC in its application.

² (2001) 1 SCC 555

³ AIR 2001 Raj 257

- 21) In **Ishtiyag Husain Abbas Husain v. Zafrul Islam Afzal Husain and Ors.**⁴ and **Kanakku Karthiayani Pillai Narayani Pillai and Others v. Neelacanta Pillai Raman Pillai and another**, it is held that the benefit of Section 80 is only to the Government and its officer and not to private parties, therefore, it cannot then be availed of by a private party who is made a defendant along with the State. Since in the suit at hand, the official defendants have not raised the plea of want of notice under Section 80, the law laid down by the High Court of Allahabad and the High Court of Kerala would squarely apply to the facts of the present case.
- 22) We would, thus, hold that the suit is wrongly dismissed on the ground that notice under Section 80 of the CPC has not been served on the defendants No.3 to 5.

In re. Section 92 of the CPC :

- 23) For considering this aspect of the matter, reference to Section 92 of the CPC would be necessary, which is reproduced as under:

92. Public charities.- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons

having an interest in the trust and having obtained the leave of the court, may institute a suit, whether contentious or not, in the principal civil court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction whole or any part of the subject matter of the trust is situate to obtain a decree—

- (a) removing any trustee;
 - (b) appointing a new trustee;
 - (c) vesting any property in a trustee;
 - (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
 - (d) directing accounts and inquiries;
 - (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
 - (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
 - (g) settling a scheme; or
 - (h) granting such further or other relief as the nature of the case may require.
- (2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypress in one or more of the following circumstances, namely:—

(a) where the original; purposes of the trust, in whole or in part,—

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since, they were laid down,—

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

- 24) The trial Court has held that the suit having been preferred against the public trust, therefore, it is barred because leave of the Advocate General has not been sought and two or more persons having interest in the trust have not preferred the suit. The issue need not take more than the desired space in view of the law laid down by the Supreme Court in **Harendra Nath Bhattacharya and Others v. Kaliram Das (Dead) by his Heirs and LRs and Others⁵** and **Swami Paramatmanand Saraswati and Another v. Ramji Tripathi and Another**.
- 25) In **Harendra Nath Bhattacharya** (supra) it is held by the Supreme Court that the suit under Section 92 of the CPC is of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the Court are necessary for the administration of the trust. In the suit, however, there must be a prayer for one or

⁵ (1972) 1 SCC 115

other of the reliefs that are specifically mentioned in the section. Only then the suit has to be filed in conformity with the provisions of Section 92 of the CPC.

- 26) Referring to **Pragdasji Guru Bhagwandasji v. Ishwarlalbhai Narsibhai and Others**⁶ the Supreme Court further observes that since none of the reliefs claimed by the plaintiffs fell within the section. The declarations which were sought could not possibly attract the applicability of sec. 92 of the CPC and the High Court was, therefore, right in holding that non-compliance with that section did not affect the maintainability of the suit.
- 27) Yet again in **Swami Paramatmanand Saraswati** (surpa) the Supreme Court held that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 of the CPC.

6 AIR 1952 SC 143

- 28) In the case at hand also the plaintiff has not claimed any relief for administration of the trust or any other relief envisaged under Section 92 of the CPC, but is claiming for certain property which is gifted to him does not belong to the public trust, therefore, the suit is beyond the purview of Section 92 and, as such, compliance of the precondition for maintaining a suit under Section 92 of the CPC would not apply in the case at hand.

In re. limitation under Section 8 of the Act, 1951

- 29) Section 8 (1) of the Act, 1951 provides that any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar under Section 6 may, **within six months from the date of the publication of the notice under sub-section (1) of Section 7,** institute a suit in a Civil Court to have such finding set aside or modified. Under Sub-section (1) of Section 7 the Registrar has been enjoined to cause entries to be made in the register in accordance with the findings recorded by him under Section 6 and shall publish on the notice board of his office the entries made in the register.

- 30) In the present case, the Registrar passed an order under Section 6 of the Act, 1951 on 18-7-2007. There is no mention of the date on which the findings recorded by the Registrar on 18-7-2007 was published on the notice board of the office of the Registrar as required under sub-section (1) of Section 7, however, the said date as to be the date later than 18-7-2007. The present suit has been preferred on 17-1-2008 i.e. exactly within six months from the date of order passed by the Registrar i.e. on 18-7-2007, therefore, the suit was preferred within six months as required under Section 8 (1) of the Act, 1951 and it is not barred by limitation on this count.
- 31) The respondents moved an application under Order 41 Rule 27 read with Section 151 of the CPC to bring on record the judgment delivered by the Chief Judicial Magistrate, Jashpur on 28-1-2017 convicting the plaintiff herein for offence punishable under Sections 120-B, 420/34, 467/34, 468/34, 471/34, 466/34 and 474 of the IPC.
- 32) Since the judgment is a certified copy of the judicial proceeding the same is taken on record, however, the document has no bearing on the present appeal, in view of the law laid down by the Supreme Court in **Kuldeep Singh Pathania v. Bikram Singh**

Jaryal⁷ that plaint cannot be rejected based on the allegations made by the defendant in his written statement or in his application for rejection of the plaint. The court has to read the entire plaint as a whole to decide whether it discloses cause of action and it does not suffer from any other defect mentioned under Order 7 Rule 11 of the CPC. No other material in form of allegation in written statement or any other document is required to be seen, therefore, even if the document has been taken on record it will not change the merits of the appeal.

- 33) For the foregoing, all the three grounds on which the plaint has been rejected under Order 7 Rule 11 of the CPC do not hold good and therefore the impugned order deserves to be and is hereby set aside. The suit is remitted back to the trial Court for deciding the same on its own merits and in accordance with law. Parties shall appear before the trial Court on 4-12-2017.
- 34) In the result, the appeal is allowed to the extent indicated above. The parties shall bear their respective costs.

Sd/-

Judge
Prashnat Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel

Gowri