

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 1-8-2018

Judgment delivered on 9-8-2018

FA No. 59 of 2005

- Pragya Shikshan Samiti Gayatri Dham through Ramkrishna Son, s/o. Late Munuram Son, aged about 62 years, Secretary, Pragya Shikshan Samiti, Gayatrri Dhham, Boirdadar, Raigarh (CG).

---- Appellant.

Versus

1. Narmada Prasad Kaushik (District Education Officer) Raigarh and Manager of Shan Samiti Gayatri Dhaam, Boirdadar, Dist. Raigarh (CG), (presently syuspended, hence through District Education Officer, Raigarh (CG).
2. Bhagwati Prasad Tiwari, Baydeerdadar, Raigarh.
3. Rohit Kumar Saw, Retired Block Education Officer, Boyeerdadar, Raigarh.
4. Gautam Prasad Patel, Malidpia, Raigarh (CG).
5. Ravindra Choubey, s/o. Kaaldin Choubey, Malidipa Raigarh (CG).
6. Prabha Tiwari, wife of Shri Kripa Shankar Tiwari, Boyeerdadar, Dist. Raigarh (CG).
7. Kripa Shankar Tiwari, Boyeerdadar, Dist. Raigarh (CG).
8. Santosh Mishra, Boyeerdadar, Malidipa, District. Raigarh (CG).
9. Dilip Patel, Boyeerdadar, Malidipa, Dist. Raipur (CG).
10. Krishna Kanhaiya Pandey, Dynamic Security Agency, Madhubanpara, Raigarh (CG).

---- Respondents

For appellant	:	Mr. A.K. Bhakta, Advocate.
For respondents	:	Mr. B.D. Guru, Advocate.
No.4 to 7 & 9.		
Other respondents	:	None though served.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Section 96 of Code of Civil Procedure 1908 against the judgment and decree dated 18-1-2005 passed by the 2nd Additional District Judge, Raigarh, (CG) in Civil Suit No. 2-A/2003 whereby the suit filed by the appellant is dismissed on the ground that the appellant has no right to file the suit.
2. As per case of the appellant, Educational Institute namely Pragyam Shikshan Samiti, Gayatri Dhaam, Boirdadar is registered under Indian Registration Act, 1877 bearing registration No. 182, dated 29-4-1992 and the Executive Committee was constituted under the Firms and Societies Registration Act which was duly reconstituted by the competent authorities. Respondent No.2 was appointed as Manager of the Institution on 26-11-2001 and he appointed some new teachers in the school illegally and some unauthorised persons also appointed for the said school who obstructed the work of teachers already working in the school, therefore, the appellant filed a suit before the trial Court for declaring the said activities illegal and for restraining unauthorised persons to obstruct the work of old teachers, but the same was dismissed by the trial Court on the ground that the appellant has no *locus standi* for

filing the suit and further opined that case is barred by principle of *res judicata*.

3. Learned counsel for the appellants submits as under:

- I) The trial Court committed error of of law holding that in the present case principle of *res judicata* is applicable in the light of judgment and decree passed in Civil Suit No. 73-A/2002 on 23-3-2004.
- ii) Factual matrix and dispute in question were entirely different in earlier suit, therefore, the finding of the trial Court is bad-in-law.
- iii) The subject matter of Civil Suit No. 73-A/2002 is already under challenge before this Court, therefore, finding of the trial Court is liable to be reversed.

4. On the other hand, learned counsel for the respondents No. 4 to 7 and 9 would submit that the finding of the trial Court is based on material on record and same is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree passed by the court below.

6. The earlier suit was filed before the trial Court on 22-7-2002 . Earlier suit filed by the appellant was registered as Civil Suit No. 73-A/2002. In earlier suit it is decided on the ground that the appellant is only member of the Executive Committee and in that case he admitted that he handed over the charge to Assistant Registrar, Firms and Institution, Bilaspur. In the previous suit, it is decided that the appellant has no locus standi to file the suit on behalf of Pragya Shikshan Samiti and the appeal filed against the said decree was also dismissed in Civil Appeal No. 18-A/2004 passed by the District Judge, Raigarh.
7. It is not a case of the appellant that he has acquired any status after dismissal of his previous suit and once it is decided that the appellant has no locus standi to file suit on behalf of Pragya Shikshan Samiti, second suit is barred for same cause of action, one has to assert his right and prove the same. Unless the right is asserted and proved, no declaration can be passed in favour of the appellant and no injunction can be granted in his favour. When the matter has already been decided in previous suit, the trial Court is right in holding that the second suit filed by the appellant is barred by principle of *res judicata*. If any irregularity is committed by the office bearers of the institution, it is open to the appellant to take steps before the authorities controlling the institution, but that must be substantiated with certain actionable

cause. In the present suit, the pleading of the appellant is vague as to who were the teachers already working in the said institution and who are the teachers appointed without following the procedure and who are the persons interfering with the activities of the institution without authority, therefore, such vague pleadings are not actionable.

8. Considering all the facts and the material available on record, this court is of the view that the finding arrived at by the trial Court is based on proper marshalling of evidence and the same is not liable to be interfered while invoking jurisdiction of this appeal.
9. Accordingly, the decree is passed against the appellant/plaintiff and in favour of respondents/defendants on the following terms and conditions.
 - I) The appeal is dismissed with cost.
 - ii) The appellant shall bear the cost of the respondents.
 - iii) Counsel fee, if certified be calculated as per certificate or as per Schedule whichever is less.
 - iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE