

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.847 of 2013

Lalit Kumar Panda, S/o Late Radheshyam Panda, aged about 70 years, R/o Village Khamharpali, Patwari Circle No.22, Tahsil Saraipali, Civil & Revenue District Mahasamund (C.G.)

(Applicant)
---- Petitioner

Versus

1. Parashuram, S/o Harekrishna

2. Laxman, S/o Harekrishna

Both are R/o Village Khamharpali, Patwari Circle No.22, Tahsil Saraipali, Civil & Revenue District Mahasamund (C.G.)

3. Board of Revenue Chhattisgarh, at Bilaspur through the Secretary, Bilaspur, District Bilaspur (C.G.)

---- Respondents

For Petitioner:	Mr. Rakesh Pandey, Advocate.
For Respondents No.1 and 2: -	Mr. Awadh Tripathi, Advocate.
For State:	Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/08/2018

1. In the instant petition, the dispute relates to managing Jagannadh temple and Shiv temple situated at Village Khamharpali, Tahsil Saraipali. As per the notification dated 29-5-1979 issued by the State of Madhya Pradesh, the Collector was shown to be the Manager of the public temples and the name of the Collector was recorded as Manager of the temples. However, the Sub-Divisional Officer (Revenue), Saraipali, by order dated 8-7-2004, allowed the case of the petitioner herein and one another person recording their names as Sarvarakar and deleting the name of the Collector.

Against the order of the Sub-Divisional Officer (Revenue), an appeal was filed by one Harekrishna, father of respondents No.1 and 2 herein, and the order of the Sub-Divisional Officer dated 8-7-2004 was set aside and the name of the Collector was directed to be recorded. Now, by order dated 15-10-2008, the Nayab Tahsildar, Saraipali dismissed the case of the father of respondents No.1 and 2 – Harekrishna for recording his name which was challenged by respondents No.1 and 2 by filing an appeal before the Sub-Divisional Officer (Revenue), Saraipali, and the Sub-Divisional Officer (Revenue) by order dated 21-7-2009 dismissed the case of respondents No.1 and 2. Second appeal was filed by respondents No.1 and 2 before the Additional Commissioner, Raipur Division, Raipur and the Additional Commissioner allowed the appeal and set aside the orders passed by the Nayab Tahsildar and the Sub-Divisional Officer and directed for deletion of the name of the Collector as Manager of the temples, as such, the temples were held to be privately owned by respondents No.1 and 2. The petitioner preferred an application before the Board of Revenue that he may be granted permission to file revision against the order of the Additional Commissioner, but the Board of Revenue rejected the application on the ground that the petitioner was party neither before the Sub-Divisional Officer nor before the Additional Commissioner therefore, permission cannot be granted against which this writ petition has been preferred.

2. I have heard learned counsel for the parties as well as the learned State counsel.
3. The case of the petitioner is that he is the person aggrieved and the

order is prejudicial to him, therefore, he ought to have been granted permission by the learned Board of Revenue, whereas it is the case of the private respondents No.1 and 2 that the order dated 21-11-2006 passed by the Additional Collector, Mahasamund has become final by which the name of the Collector has been directed to be recorded as Manager of the said temples and the petitioner's right has been closed, therefore, the said order has become final.

4. It is well-settled law; right of appeal is not a natural or inherent right.

It is well-settled that an appeal is a creature of statute and there is no such right to file an appeal unless it is given clearly and in express terms by a legislation.

5. In the matter of M. Ramanarain Pvt. Ltd. v. State Trading Corporation of India Ltd.¹, the Supreme Court held as under:--

"16. The right to prefer an appeal is a right created by statute. No party can file an appeal against any judgment, decree or order as a matter of course in the absence of any suitable provision in some law conferring on the party concerned the right to file an appeal against any judgment, decree or order."

6. In the matter of Dayawati v. Inderjit², speaking for the Supreme Court, Hidayatullah, J. (as His Lordship then was) stated:--

"10.....An appeal has been said to be 'the right of entering a Superior Court, and invoking its aid and interposition to redress the error of the Court below', the only difference between a suit and an appeal is that an appeal 'only reviews and corrects the proceedings in a cause already constituted but does not create the cause'."

7. As a general principle of law, however, before an appeal can be filed, two conditions must be satisfied:--

1 (1983) 3 SCC 75

2 AIR 1966 SC 1423

(i) The subject-matter of appeal must be a 'decree', i.e., a conclusive determination of "the rights of the parties with regard to all or any of the matters in controversy in the suit"; and

(ii) The party appearing must have been adversely affected by such determination.

8. Thus, only a party to a suit/application adversely affected by a decree or any of his representatives-in-interest may file an appeal/revision. But, a person who is not a party to a decree or order may, with the leave of the Court, prefer an appeal / revision from such decree or order if he is either bound by the decree or order or is aggrieved by it or is otherwise prejudicially affected by it.

9. Generally speaking, a decision cannot be said to adversely affect a person unless it will operate as res judicata against him in any future suit. In order to decide whether a decision will operate as res judicata and will thus adversely affect a party, the substance of the judgment and decree, and not the form thereof must be considered. The question whether a party is adversely affected by a decree / order is a question of fact to be determined in each case according to its particular circumstances.

10. In a leading decision in the matter of Adi Pherozshah Gandhi v.

H.M. Seervai³, speaking for the majority, Mitter, J. stated:--

"Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise, or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But, it has been held in a number of cases that a person who is not a party to a suit may prefer an appeal with the leave of the Appellate Court and such leave would not be refused where the

3 (1970) 2 SCC 848

judgment would be binding on him under Explanation VI to Section 11 of the Code of Civil Procedure."

11. The Supreme Court in the matter of Smt. Jatan Kanwar Golcha v.

M/s. Golcha Properties Private Ltd. (In Liquidation)⁴, has held

as under:--

"3. ... In our opinion, apart from Rule 130 to which reference has been made by the High Court, the Official Liquidator as well as the learned Company Judge were bound by the rules of natural justice to issue a notice to the appellant and hear her before making the order appealed against. If there was default on their part not following the correct procedure it is wholly incomprehensible how the appellant could be deprived of her right to get her grievance redressed by filing an appeal against the order, which had been made in her absence and without her knowledge. It would be a travesty of justice if a party is driven to file a suit, which would involve long and cumbersome procedure when an order has been made directly affecting that party and redress can be had by filing an appeal, which is permitted by law. It is well-settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the judgment."

12. Likewise, the Supreme Court in the matter of State of Punjab

(now Haryana) and others v. Amar Singh and another⁵, has

held as under:--

"84. Firstly, there is a catena of authorities, which following the doctrine of Lindley, L.J., In re : Securities Insurance Co., (1894) 2 Ch 410, have laid down the rule that a person, who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person, who might have been made ex nominee, a party--see: Province of Bombay v. W.I. Automobile Association, AIR 1949 Bom. 141; Heera Singh v. Veerka, AIR 1958 Raj 181 and Shivaraya v. Siddamma, AIR 1963 Mys. 127; Executive Officer v. Raghavan Pillai, AIR 1961 Ker 114, In re: B, an Infant, (1958) 1 QB 12; Govinda Menon v. Madhavan Nair, AIR 1964 Ker 235."

4 (1970) 3 SCC 573

5 AIR 1974 SC 994

13. From the above general principles, it can be said that the following persons may prefer an appeal/revision:--

- (i) A party to the suit/application who is aggrieved or adversely affected by the decree/order, or if such party is dead, his legal representatives;
- (ii) A person claiming under a party to the suit or a transferee of the interest of such party, who, so far as such interest is concerned, is bound by the decree/order, provided his name is entered on the record of the suit/application;
- (iii) A guardian ad litem appointed by the Court in a suit by or against a minor or a lunatic;
- (iv) Any other person, with the leave of the Court, if he is adversely affected by the decree/order.

14. In light of the above and reverting to the facts of the present case in hand, the Board of Revenue ought to have considered the case of the petitioner in light of the aforesaid principles of law laid down by the Supreme Court with regard to revisability of the order, merely because the petitioner is not party to the proceeding before the Sub-Divisional Officer (Revenue) / Additional Commissioner, the application could not have been rejected. The Board of Revenue ought to have been considered whether the petitioner is prejudicially affected by the order and whether he is aggrieved person or not so as to maintain the revision before the revisional authority, that has not been done.

15. In view of the aforesaid analysis, the order impugned passed by the Board of Revenue is set aside and the case is remitted back to the Board of Revenue to consider the case of the petitioner for maintaining the revision in accordance with the observations made

and recorded by this Court herein-above and after hearing the parties including the State of Chhattisgarh, it shall take decision within three months from the date of receipt of a copy of this order. The State of Chhattisgarh will also be impleaded as a party in that revision. All the pleas raised by the parties are kept and left open to be decided by the Board of Revenue.

16. It is made clear that this Court has not expressed any opinion on the merits of the matter.
17. The writ petition is allowed to the extent indicated herein-above. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge