

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 451 of 2018

Judgment reserved on : 14.11.2018

Judgment delivered on : 30.11.2018

Sanjay Agrawal, S/o. Ganpat Rai Agrawal, Aged About 48 Years, R/o. Sheorinarayan, Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh

---- Appellant

Versus

1. Shri Bhagwan Sheorinarayan Math Mandir Trust Sheorinarayan, Through Sarvakar & Managing Trustee Rajshri Mahant Ramsundar Das, Guru- Late Rajshri Mahant Vaishav Das, Aged Around 48 Years, R/o. Sheorinarayan Math, Tahsil Navagarh, District Janjgir- Champa, Chhattisgarh.
2. State Of Chhattisgarh, Through Collector, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh.

---- Respondents

Second Appeal No. 453 of 2018

Manmohan, S/o. Dwarika Sultania, Aged About 48 Years, R/o. Sheorinarayan, Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh

---- Appellant

Versus

- 1 Shri Bhagwan Sheorinarayan Math Mandir Trust Sheorinarayan, Through Sarvakar & Managing Trustee Rajshri Mahant Ramsundar Das, Guru- Late Rajshri Mahant Vaishav Das, Aged Around 44 Years, R/o. Sheorinarayan Math, Tahsil Navagarh, District Janjgir- Champa, Chhattisgarh.
2. State Of Chhattisgarh, Through Collector, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh.

---- Respondents

Second Appeal No. 449 of 2018

Sandeep Agrawal, S/o. Shri Chhedilal Agrawal, Aged about 44 years, R/o. Sheorinarayan, Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh

---- Appellant

Versus

- 1 Shri Bhagwan Sheorinarayan Math Mandir Trust Sheorinarayan, Through Sarvakar & Managing Trustee Rajshri Mahant Ramsundar Das, Guru- Late Rajshri Mahant Vaishav Das, Aged Around 44 Years, R/o. Sheorinarayan Math, Tahsil Navagarh, District Janjgir- Champa, Chhattisgarh.
2. State Of Chhattisgarh, Through Collector, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh.

---- Respondents

&

Second Appeal No. 327 of 2018

Dr. P.K. Mitra, S/o. Shri Ashwani Mitra, Aged About 59 Years, R/o. Sheorinarayan, Tahsil Nawagarh, Civil & Revenue District Janjgir-Champa, Chhattisgarh

---- Appellant

Versus

- 1 Shri Bhagwan Sheorinarayan Math Mandir Trust Sheorinarayan, Through Sarvakar & Managing Trustee Rajshri Mahant Ramsundar Das, Guru- Late Rajshri Mahant Vaishav Das, Aged Around 48 Years, R/o. Sheorinarayan Math, Tahsil Navagarh, District Janjgir- Champa, Chhattisgarh.
2. State Of Chhattisgarh, Through Collector, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh.

---- Respondents

For Appellants : Mr. Rajeev Shrivastava, Mr. Sudeep Agrawal, Mr. Hari Agrawal, Mr. Parag Kotecha & Mr. Sunil Sahu, Advocates.

For Respondent No.1 : Mr. H.B.Agrawal, Sr. Advocate with Ms. Preeti Yadav, Advocate

For Respondent No.2 : Mr. D.R.Minj, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. Judgment

30.11.2018

1. Heard on admission
2. It is submitted that all the cases are of like nature, therefore, they are heard and decided by this common order. The submission made by the Advocate Rajeev Shrivastava in one matter is adopted by the other counsels.
3. The present second appeal is arising out of the judgment & decree dated 26.04.2018 whereby the appeal preferred by the appellant was dismissed affirming the judgment & decree dated 30.01.2017.
4. The brief facts of this case are that one Shri Bhagwan Sheorinarayan Math Mandir Trust filed a suit for ejectment against the appellant through its trustee namely Rajeshri Mahant Ramsundar Das who was the disciple of Rajeshri Mahant

Vaishnav Das. It was contended that the plaintiff is a public trust and the suit was brought for ejectment and vacant possession of the part of the trust property wherein superstructure was raised by the defendant/ appellant. The land is bearing Khasra No.298/1. The pleading inter alia contained that the trust is public trust which acts through its Managing Trustee namely Ramsundar Das and he was authorised by the trust by a resolution dated 24.06.2001 to prosecute the suit and accordingly, the suit was filed. It was stated that initially the trustee was Rajeshri Mahant Vaishnav Das, who died on 12.11.1995 and by virtue of the WILL executed in favour of Rajeshri Mahant Ramsundar Das, he became the trustee. It was further stated that the defendant had obtained the license on part of the property belonged to the trust and thereafter he raised the superstructure over the suit property and continued his possession. The pleading further was to the effect that after 1991 the defendant has not deposited the license fees. When the suit was filed in the year 2002, it was only for remaining three years of the recoverable fees and further it was pleaded that the defendant has encroached upon the part of the land of trust, which was described in the schedule of the suit property and was pleaded defendant has encroached on land though it was not a part of the grant. Further pleading was that the trust in order to augment its income want to construct a complex, for which the initial lay down of the stone has also been made and for same the vacant possession of premises was needed. It was stated that the notice was served to the defendant/ appellant whereby his license was canceled and vacant possession was asked for but the possession has not been given, as such, the suit.

5. The appellant /defendant filed their written statement contending that the suit was not brought by the proper person as he was a completely foreigner to the entire trust. In the written statement the averments of the plaint were denied. It was denied that Ramsundar Das had any right to file the suit and his authority to file the suit as Managing Trustee was disowned. It was stated that Ramsundar Das was not appointed as Managing Trustee at any point of time, therefore, the suit itself was not maintainable. Further stated that the defendant had obtained the permanent lease of the suit property through one person named Ram Das, who was attorney holder of Vaishnav Das, the Sarvarakar and he was further permitted by the trust to raise the superstructure over the subject land. It was denied that the defendant was a licensee of the suit property. Further stated that it was agreed that the grant was permanent in nature, therefore, the trust was not entitled to take back the property. It was stated since the defendant was allowed to raise the superstructure over the land and he is entitled to retain the property as owner thereof. All the other averments of the plaint allegations were also denied.
6. Both the Court below had decreed the suit for possession in favour of the plaintiff trust by concurrent finding of fact, therefore, this second appeal before this Court.
7. Learned counsel for the appellant/defendant would submit that the description of the property has not been made specific in the plaint, as such, no decree could have been passed for ejectment for uncertainty of the property description. It is further stated that an application was filed under Order 41 Rule 27 of C.P.C. before the First Appellate Court along-with the documents but the

appellate Court decided the same cursorily without any proper application of mind and dismissed it. It is further stated that the judgment and decree of similarly placed occupier against whom the ejectment proceeding was preferred was dismissed and it was held that Ramsundar Das did not have any right to file a suit. Consequently, the certified copy of such order should have been admitted in the document in appeal to non suit the plaintiff. Further stated that as per Section 60(b) of the Indian Easements Act, 1882, the license which was granted to the appellant was irrevocable in nature as acting upon such license, the licensee has executed the work of permanent character and incurred expenses in execution to raise superstructure. It is stated such construction was made with the permission of the power of attorney holder of Sarvarakar of trust. Reliance was placed in 1993 SCC Online Bom 74. Further stated that inconsistent plea was projected by the plaintiff at some place license is pleaded and at some place lease is pleaded, therefore, it is not clear whether it is a lease or license. It is contended as consequence thereof, no cause of action arose in favour of the plaintiff to continue with the suit and the suit was liable to be dismissed and if all the facts if are cumulative considered it raises question of law for consideration of second appeal.

8. Since the respondent trust was represented by Mr. H.B. Agrawal senior counsel assisted by Ms. Preeti Yadav as the case was at the admission stage, no contention of respondent was made. The admission of appeal is considered only on the argument of the appellant as to whether any substantial question of law arises in this second appeal or not. At this stage, the respondent was not heard.

9. Perused both the orders of the Court below. With respect to the dismissal of the application under Order 41 Rule 27 of C.P.C. the written statement of the appellant was perused. In the written statement no such averments have been made so as to make it a fact in issue as tried to be projected on the basis of document sought to be produced for evidence. The application under Order 41 Rule 27 of C.P.C. itself would reveal that the lis is still pending before the Court and the finding have not reached to any finality. In absence of any fact in issue and specific pleading, the dismissal of the application under Order 41 Rule 27 of C.P.C. by the appellate Court by taking into the provisions of Section 40 to 44 of the Evidence Act, 1872, no error could be pointed to project the substantial question of law which may arises for consideration.
10. With respect to the fact of lease or license, the perusal of plaint shows pleadings are made that of both. At some para the possession of the appellant has been shown as licensee and in certain para the possession has been shown as a lessee. As against those pleading, in the written statement of the respondent, they have made a consistent pleading and projected themselves as lessee. The of DW-1 says that the suit property was obtained on lease and he is in possession thereof in complete control of the premises. Therefore, all of a sudden, in the second appeal the appellant/ defendant cannot be allowed to change his stand to take a summer salt to say that his possession is that of a licensee as against his pleading. Apart from the pleading the evidence would show that by such possession the interest was created in the property and it was not limited to only use of the property and the legal possession continued with that of the appellant/defendant and he was in exclusive possession of the

property, which supported his contention of that of lessee. The finding of fact therefore by both the Courts below that the appellant was a lessee on the basis and nature of possession cannot be said to be perverse and no substantial question of law arises for this purpose too.

11. With respect to the filing of the suit by Ramsudar Das, the plaintiff has filed the order dated 01.10.1986 in MJC No.17/1960 between Registrar of Public Trusts, Bilaspur v. Mahant Vaishnavadas. In such order, the Sarvarakar Mahant & Managing Trustee was appointed as Mahant Rajeshri Vaishnav Das and he was given the power to appoint his successor according to Shri Ramanand Vaishnav Sampradaya, the Mahant and order further engrafts after him, the Sarvarakar shall have the right to nominate and appoint his successor in accordance with the tenets, practice and customs of Ramanandhi Vaishnav Sampradaya. Subsequently, as per order dated 28.01.2003 (Ex.P-4), the Registrar Public Trusts Janjgir held that as per the WILL of Mahant Vaishnav Das, Guru Rajeshri Mahant Ramsundar Das was declared as his successor and was declared as Sarvarakar Mahant and Managing Trustee. Therefore, accepting the WILL name of Rajeshri Mahant Vaishnav Das was recorded as Sarvarakar of trust by the Registrar Public Trust. The order Ex.P-4 reflects Rajeshri Mahant Vaishnav Das died on 12.11.1995 and the WILL was dated 01.03.1993 wherein his disciple Rajeshri Ramsundar Das was appointed as successor as trustee, therefore, Will dated 01.03.1993 would take effect from the date of death of Rajeshri Mahant Vaishnav Das from 12.11.1995. Though the ministerial act was done subsequently and was fortified by order dated 28.01.2003 the power vested on Ramsundar Das as trustee and had the right to act as a Managing

Trustee & Sarvarakar of the trust. The said finding of fact also do not raise any substantial question of law.

12. The entire written statement of the defendant/appellant as against the pleading of the plaintiff when compared would show in plaint, it stated that Bhagwan Sheorinarayan Math Mandir Trust in its resolution dated 26.04.2001 allowed the Managing Trustee Rajeshri Ramsundar Das to file the suit. In response to it, in the written statement only denial was made and stated that Ramsundar Das was never appointed as Managing Trustee and therefore he did not have the right to file the suit. The entire reading of the written statement would show that pleading was made that the WILL was forged and Mahant Ramsundar Das is stranger to the entire trust, as such, he did not have any right to file the suit. For the first time before this Court in Second Appeal, this argument has been raised for the first time that the trust has failed to prove the resolution whereby Mahant Ramsundar Das was allowed to file the suit. No pleading was made before the Court below in written statement. This was never an issue before the Court below instead simple denial was made by the appellant. As per Order 8 Rule 5 of C.P.C. no specific denial was made, only general denial and evasive denial was made. In such background for the first time in the appeal, the appellant cannot be allowed to raise such ground to project a substantial question of law. As such, the proposition laid down in **1973 MPLJ 842** in case of *Laxman Prasad v. Janki Raman* would not be in help to the appellant/defendant for want of pleading and specific denial and no substantial question of law arises for consideration for the same.

13. Furthermore, the appellant have resorted to Section 60(b) of the Indian Easements Act, 1882 and stated that the appellant has raises the superstructure with the permission of the trust over the suit property, therefore, it would be an irrevocable license. Such proposition in the light of the defence raised and the evidence adduced by the appellant/defendant is completely contrary to their own stand before the Court below. It appears that when they have suffered with the decree they have resorted to such ground to shelve their own stand. After an ejectment decree is passed appellant has taken a summer salt to usurp the property of the trust so the grounds so urged would not be in help to the appellant as it would be contrary to their own stand and appellant is virtually estopped to adopt such grounds to project the substantial question of law.
14. With respect to the argument that the property was not specific, Order 7 Rule 3 of C.P.C. provides that when the subject matter of the suit property is immovable, the plaint shall contain a description of the property sufficient to identify it and in case the property can be identified by the boundary, the same to be shown. The plaint map in the case would show that everything has been complied qua Order 7 Rule 3 of C.P.C. Perusal of plaint shows the property can be very well identified. Therefore, the argument that the property has not been specifically shown do not arises at all for consideration as a substantial question of law.
15. In a substance, after going through the facts and the evidence on record, I am of the view that no substantial question of law arises for consideration before this Court so as to admit this appeal for

consideration. Accordingly, the appeal is dismissed at the motion stage itself. No order as to cost.

Sd/-
(Goutam Bhaduri)
Judge

Ashok