

HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on : 11.09.2019Order delivered on : 14.10.2019Second Appeal No.201 of 2005

1. Nand Kumar, aged 38 years, son of Shri Murit Ram, resident of village Lakhram, tehsil and district Bilaspur (Chhattisgarh)
2. Dukalhin, aged 65 years, wife of late Shri Khursal,
3. Bhagwat, aged 40 years, son of late Shri Khursal,
4. Laxman aged 28 years, son of late Shri Khursal,
5. Devi Prasad, aged 25 years, son of late Shri Khursal,
6. Radhika, wife of late Shri Bisahu,
7. Santosh, son of late Shri Bisahu,
8. Ganesh, son of late Shri Basahu,
9. Bishambhar, aged 35 years, son of late Shri Basahu,
10. Munna, aged 28 years, son of late Shri Basahu,
 - 11-a. Dropati Yadav, aged 60 years, daughter of Bhau Ram Yadav
 - 11-b. Gulaba Yadav aged 58 years, daughter of late Bhau Ram Yadav
 - 11-c. Kamala Yadav, aged 56 years, daughter of late Bhau Ram Yadav
 - 11-d. Raghunath Yadav aged 39 years, son of late Bhau Ram Yadav
 Resident of village Sakri, Shantipara, Tahsil & District-Bilaspur (CG)
- 12-a. Ramsharan Yadav, aged 64 years, son of late Jagdish Prasad Yadav
- 12-b. Harishran Yadav, aged 58 years, son of late Jagdish Prasad Yadav
- 12-c. Ravisharan Yadav, aged 56 years, son of late Jagdish Prasad Yadav
- Resident of village Sakri, Shantipara, Tahsil & District-Bilaspur (CG)
- 13.a. Sonsai Sahu, aged 69 years, son of late Bhagbali @ Ramadhar Sahu, resident of village Sakri, Sahupara, ward No.14, Tahsil & District Bilaspur (CG)
- 13.b. Chowaram Sahu dead through legal representatives:-
 - i. Smt. Urmila Sahu, aged 60 years, wife of Chowaram Sahu
 - ii. Smt. Keshav Prasad Sahu, aged 40 years, son of Chowaram Sahu,
 - iii. Smt. Jamuna Sahu, aged 37 years, daughter of Chowaram Sahu,
 - iv. Smt. Kusuni Sahu, aged 34 years, daughter of Chowaram Sahu,
 - v. Smt. Gayatri Sahu, aged 31 years, daughter of Chowaram Sahu,

All are resident of Village Sakri, Ward No.11,
Bazarpara, Sakri, Bilaspur
(CG)

(Defendants)
---- Appellants

Versus

1(a). Shri Vyanktesh Bhagwan Mandir, Sadar Bazaar, through Mahant Shri Kaushlendra Prapannacharya, Sewamant Gaddinashin Bilaspur City, Tahsil and District Bilaspur (CG)

2. Smt.Gulaba Bai, wife of late Shri Malik Ram,

3. Badri Prasad son of late Shri Malik Ram

4. Banshidhar, son of late Shri Malik Ram

5. Shyam Sunder son of late Shri Malik Ram

6. Surendra son of late Shri Malik Ram,

7. Smt. Usha Bai, wife of Shri Radhe Shyam, resident of village Sirgitti, Tehsil and District Bilaspur (Chhattisgarh)

8. Kaweri Sharma, wife of Shri Gaukaran, resident of village Kathakoni, Tehsil and District Bilaspur (Chhattisgarh)

9. Daulat Ram (died) through LR's

A. Bhagirathi Tiwari, aged about 64 years, son of late Daulat Ram Tiwari,

B. Gaurishankar Tiwari, aged about 62 years, son of late Daulat Ram Tiwari,

C. Manishankar Tiwari, aged about 56 years, son of late Daulat Ram Tiwari

All are resident of village Sakri, Tahsil Takhatpur, District Bilaspur (CG)

10. Mohan Lal, aged 61 years, son of Shri Dukhu Ram,

11. Smt. Rahi Bai, aged 59 years, son of late Shri Mathura

12. Deo Singh, aged 54 years, son of Shri Nand Lal

All respondents 2 to 12 are residents of village Sakri, Tehsil and district Bilaspur (Chhattisgarh)

13. State of Chhattisgarh, through the Collector, Bilaspur

----- Respondents

For Appellants/Defendants : Mr.Somnath Verma, Advocate
For Respondent No.1 : Mr.Yash Mourya, Advocate
For Res.No.9(A), (B) & (C) : Mr.H.S.Patel, Advocate
For Respondent No.13/State : Ms Shivali Dubey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Heard this second appeal on the question of admission and formulation of substantial question of law preferred by the appellants/defendants.
2. Mr.Somnath Verma, learned counsel for the appellants/defendants, would submit that both the Courts below are absolutely unjustified in decreeing the suit of the plaintiff by recording a finding which is perverse to the record and appeal deserves to be admitted on following three substantial questions of law:-

(i) That, names of defendants No.5, 11, 12 and 14 were deleted before the trial Court, but their legal representatives were not brought on record, therefore, the suit had already abated ?

(ii) That, by Ex.P-11 trust deed dated 13.11.70 executed by original holder of the land of the suit property in favour of plaintiff-Shri Venketesh Bhagwan Mandir by which no title has been conferred to the plaintiff ?

(iii) That, the issue decided by the trial Court that Shri Niwasacharyaji Maharaj had right to bring a suit on behalf of temple is perverse and the suit was filed by Shri Venketesh Bhagwan Mandir through Shri Niwasacharyaji Maharaj on 25.4.85 by virtue of trust-deed dated 13.11.70 executed by Smt. Balsunderbai, original holder of the suit land in favour of plaintiff/temple, therefore, sale-deed dated 19.7.71 and Will-deed dated 20.11.70 are illegal.

3. The plaintiff filed a suit for declaration of title on the basis of trust-deed dated 13.11.70 (Ex.P-11), for declaration of Will-deed dated 20.11.70 executed by Smt.Balsunderbai in favour of Shiv Kumar as null and void and for vacant possession of suit land and perpetual injunction. The said suit was opposed by the defendants therein by filing written statement. During the course of trial, defendant No.5-Shivkumar died on 10.4.1996 as per substitution application and his name was deleted as per the Court's order dated 31.8.1996. Similarly, defendant No.11-Rambharos & defendant No.12-Bahoran both have died (date not mentioned in substitution application filed on 10.1.1989) and their names were deleted as per Court's order dated 28.4.1989 and defendant No.14-Radheshyam died on

30.3.1989 as per application dated 27.10.1989 and his name was deleted on 18.9.1996 as mentioned in plaint, but no objection was taken on behalf of the present defendants while deleting their names and the suit was allowed to continue. Even, the suit was dismissed holding that Shri Venketesh Bhagwan Mandir has right to institute a suit on behalf of the plaintiff/temple, but by trust-deed dated 13.11.70, no title has been transferred in favour of the plaintiff. The plaintiff preferred first appeal under Section 96 of the CPC before the first appellate Court, in which defendants No.7 to 15 preferred cross-objection under Order 41 Rule 22 of the CPC questioning a finding of issue No.1 decided against them. The first appellate Court by its impugned judgment and decree dated 16.2.2005 allowed the first appeal and declared the Will-deed dated 20.11.70 as illegal and declared that sale made by defendant No.5-Shivkumar to other defendants, they have not acquired any title and granted permanent injunction. The first appellate Court firstly affirmed finding that Shri Niwasacharyaji Maharaj has right to institute a suit on behalf of private trust holding that vide Ex.P-2 power and authority has already been conferred to Shri Niwasacharyaji Maharaj to manage the property and defendants No.5 to 15 have failed to establish that it is public trust registered under the

Chhattisgarh Public Trusts Act, 1951 (hereinafter called as "the Act of 1951") and held that Shri Niwasacharyaji Maharaj has right and authority to bring a suit on behalf of idol and affirmed that finding recorded by the trial Court.

4. Finding recorded by two Courts below that the suit property is held by private trust and it is not the property of public trust registered under the Act of 1951 and the plaintiff through its Mahant has right/authority to file a suit on behalf of idol is finding of fact based on evidence available on record, which is neither perverse nor contrary to record and gives no substantial question of law for determination.

5. Next substantial question of law proposed is that Ex.P-11 by which Smt.Balsunderbai surrendered the suit property in favour of plaintiff/temple would not create any title in favour of the plaintiff. It is registered document executed by original holder in favour of the plaintiff and even it has not been questioned by the defendants seeking any declaration that it does not confer any title. It is registered instrument transferring/relinquishing her entire interest in the suit property in favour of the plaintiff/temple. It is not in dispute that she was not owner and title-holder of the suit property on the

date of executing the said deed in favour of the plaintiff/temple on 13.11.70. No substantial question of law is involved in this regard. Likewise, defendants No.5, 11, 12 and 14 were deleted with the leave of the Court before the trial Court and in presence of the defendants. In an appeal preferred by the plaintiff, defendants No.7, 8B, 8C, 9, 13 & 15/appellants herein (his LR's) also preferred cross-objection under Order 41 Rule 22 of the CPC before the first appellate Court on 18.11.99, but they did take like objection before that Court, that suit had abated on account of not brining their legal representatives on record, whereas they could have taken such an objection, therefore, they (appellants) cannot be permitted to take such objection with regard to their deletion from cause title before this Court for the first time in this second appeal. I do not find any substantial question of law in this regard also.

6. Accordingly, the second appeal being devoid of any substantial question of law is liable to be and is hereby dismissed in *limine without notice to other side*.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-