

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 12-07-2019

Passed on 02-8-2019

MA No. 78 of 2010

- Gurupad Sambhav Ram, Shishya, s/o. Late Bhagwan Ram, aged about 45 years, President, Baba Bhagwan Ram Avdhut Trust and President, Shri Sarveshwari Samuh, village Sogda, Tahsil and District Jashpur (CG). Through Power of Attorney Holder Krishna Kumar s/o. Balkrishna Singh, aged about 35 years, r/o. Sogda, Tahsil and District Jashpur (CG).

---- Appellant/defendant No.1

Versus

1. Prashant Sinha s/o. Shri Harisingh @ Hari Sinha, aged about 36 years, r/o. Village Sujabad, District Varanasi. At present r/o. Gamhariya, Jashpurnagar, District Jashpur (CG). - Respondent/plaintiff.
2. Dilip Singh Judev S/o Late Shri Vijay Bhushan Singh Dev, aged about 53 years, r/o, village Jashpurnagar (Vijay Vihar), Tahsil Jashpurnagar, Distt.-Jashpur CG - Respondent/defendant No.2 - deleted.
3. State of Chhattisgarh Through Collector, Jashpurnagar, Distt.-Jashpur CG. Respondent/defendant No.3.
4. Sub-Divisional Officer (Revenue) and Registrar Public Trust, Jashpurnagar, Distt.-Jashpur CG. - Respondent/defendant No.4

---- Respondents

&

MA No. 79 of 2010

- Gurupad Sambhav Ram, Shishya, s/o. Late Bhagwan Ram, aged about 45 years, President, Baba Bhagwan Ram Avdhut Trust and President, Shri Sarveshwari Samuh, village Sogda, Tahsil and District Jashpur (CG). Through Power of Attorney Holder Krishna Kumar s/o. Balkrishna Singh, aged about 35 years, r/o. Sogda, Tahsil and District Jashpur (CG).

---- Appellant/defendant No.1

Versus

1. Tejpratap (Dead) Through Lrs Nil
 1 (i) Hari Prasad Singh S/o Lalji Singh aged about 64 Years
 R/o Bunglow No.9, Varanasi Cantt, Kariyappa Marg,
 Keronment (Cantonment), Area Varanasi, District Varanasi
 (Uttar Pradesh).
 1(ii) Heeramani Devi W/o Hari Singh Aged About 61 Years
 R/o Bunglow No.9, Varanasi Cantt, Kariyappa Marg,
 Keronment (Cantonment), Area Varanasi, District Varanasi
 (Uttar Pradesh)/
 1(iii) Archana Singh W/o Late Tej Pratap Singh Aged About
 45 Years R/o Bunglow No.9, Varanasi Cantt, Kariyappa
 Marg, Keronment (Cantonment), Area Varanasi, District
 Varanasi (Uttar Pradesh). Respondent/plaintiff.
2. Dilip Singh Judev S/o Late Vijay Bhushan Singh Dev, aged
 about 53 R/o Village Jashpurnagar (Vijay Vihar), Tahsil
 Jashpurnagar, Distt.-Jashpur CG – Respondent/defendant
 No.2 – deleted.
3. State of Chhattisgarh Through Collector, Jashpurnagar,
 Distt.-Jashpur CG – Respondent/defendant No.3.
4. Sub-Divisional Officer (Revenue) and Registrar Public Trust,
 Jashpurnagar, Distt.-Jashpur CG – respondent/decfendant
 No.4.

– Respondents

 For appellants : Mr. Manoj Paranjpe, Advocate.

For respondent No.1 : Mr. Sachin Singh Rajput, Advocate
 in MA No.78 of 2010
 & respondents No.
 1(i) to 1(iii) in M.A.
 No. 79 of 2010

For respondents No. : Mr. Raghavendra Verma, G.A.
 3 & 4/State

SB: Hon'ble Shri Justice Ram Prasanna Sharma
CAV ORDER

- 1) As question of fact and law in both the appeals is identical, they are heard analogously and are being disposed of by this common order.
- 2) Both the appeals are preferred under Order 43 Rule 1 (a) of the Code of Civil Procedure 1908 against the order dated 13-08-2010 passed by Additional District Judge, District Jashpur in Civil Appeal No. 8-A/2006 (Prashant Sinha vs. Gurupad Sambhav Ram and three others) and in Civil Appeal No. 7-A/2006 (Tej Pratap vs. Gurupad Sambhav Ram and three others) wherein the said court reversed the order passed by the Second Civil Judge, Class-1, Jashpur dated 13-3-2006 in Civil Suit No. 17-A/2005 & Civil Suit No.18-A/2005 and directed that the said court shall first decide the application under Order 47 Rule 1 read with Section 151 of the CPC and thereafter proceed with the case, in accordance with law.
- 3) In MA No. 79 of 2010 original respondent No.1/plaintiff namely Tej Pratap filed a civil suit for declaration of title and possession regarding land bearing survey No. 128/3 area 5.666 hectares situated at village Narayanpur and for possession of the said land. As per the said respondent he had purchased the land from Sarveshwari Samuh, Jashpurnagar vide registered sale deed dated 26-10-1976 and he came in possession of land in question and got recorded his name in the revenue record.

4) In MA No. 78 of 2010 original respondent No.1/plaintiff namely Prashant Sinha filed a civil suit for declaration of title and possession regarding land bearing survey No. 126 area 15.54 acres situated at village Narayanpur and for possession of the said land. As per the said respondent he had purchased the land from Sarveshwari Samuh, Jashpurnagar vide registered sale deed dated 21-8-1984 and he came in possession of land in question and got recorded his name in the revenue record. In both the appeals, original respondent No.2/defendant No.2 made a false complaint to the effect that the land in question was belonging to his father and his father had gifted the same to the Baba Bhagwan Ram Avdhut Trust and same cannot be sold without obtaining permission from the Registrar, Public Trust Jashpur, therefore, the sale deed executed in favour of respondent No.1/respondents No. 1(i) to 1(iii) is void *ab initio*. On the basis of the complaint, respondent No.4 registered the case under Public Trust Act and declared the said transaction invalid in the revenue case No. 136/B-121/1999-2000 vide order dated 23-4-2001. Against the said order, suit was filed before the trial Court but same court has not decided the real issues in controversy and rejected the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 while the First Appellate Court remanded the matter not for deciding the entire issues but for deciding the interlocutory matter.

5) Learned counsel for the appellants in both the appeals would submit as under:

- i) The trial Court has passed the order on the ground of valuation, payment of court fees, limitation and on the ground that permission from the competent court was not obtained before alienating the property but the lower appellate court failed to appreciate all these aspects of the matter.
- ii) The First Appellate Court has not decided the issues in respect of payment of court fees, service of notice under Section 80 of CPC and valuation of the suit and set aside the order of the trial Court which is not in the fitness of the procedure, therefore, finding of the first appellate court is liable to be set aside.

6) On the other hand, learned counsel appearing for respondent No.1/respondents No. 1(i) to 1(iii) in both the appeals would submit as under.

- I) Concerned respondents are claiming over the property on the basis of sale deed

executed on 21-8-1984 for cash consideration of Rs.80,000/-.

- ii) The claim is based on the sale deed but the trial court without touching the issue decided the matter on technical ground which is not permissible under the law.
- iii) The property in question is not property of Public Trust, therefore, title of the respondent No.1 and respondents No. 1 (i) to 1 (iii) ought to have been decided by the trial Court but without deciding the title the trial Court has shut the door for respondent which is illegal.

7) I have heard learned counsel for the parties and perused the record of court below in which order has been passed.

8) From the order of the trial Court it appears that the trial Court rejected the plaint on the ground that the suit was filed after six months from passing of the order by respondent No.4, therefore, the suit is time barred. The trial court further opined that the State has not been made party and valuation of the suit is also not proper. From the order of the trial Court (para 22) it is clear that

the case was fixed for evidence of both sides and on the basis of rival pleadings of the parties, issues were framed but the trial Court has not decided the matter after recording the evidence and rejected the plaint on the ground as mentioned above. The First Appellate Court also remanded the case for deciding some interlocutory application.

9) Now the question for consideration of this court is whether adjudication of the case by both the courts below is proper. There is rival pleading to the effect that the property in question is not the property of Trust and respondent No.1/respondents No.1(i) to 1(iii)/plaintiffs have obtained right in accordance with Section 54 of the Transfer of Property Act, 1882 through registered sale deed. On the basis of rival pleadings, issues were framed but it appears that the question of title is not decided by the trial Court and it is also not decided whether the property is trust property or whether it is property of an individual which can be transferred under the provisions of the Indian Registration Act, 1908 and the Transfer of Property Act, 1882.

10) Any civil suit can be decided on preliminary issue when there is no factual dispute and it can be decided only on legal issue which requires no evidence. In the present case, when the suit is filed on the basis of title through sale deed, the trial Court ought to have decided the first whether title acquired by the respondent

No.1/respondents No. 1(i) to 1(iii) through registered sale deed or whether the property in question is property of public trust and cannot be alienated without crossing legal barriers but that is not done in the present case by both the courts below, therefore, the order passed by both the courts below is not sustainable. The case should be decided on merits by the trial Court.

11) Accordingly, both the cases are remanded back to the trial Court and the trial Court i.e., the Court of Second Civil Judge, Class-1, Jashpur/substituting court shall decide all the issues between the parties after recording evidence and after hearing both sides. Both parties shall remain present before the trial Court for further proceeding on 3-9-2019.

12) In view of the above, both appeals are allowed.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju