AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 432 of 2003

1. State Of Chhattisgarh through Collector, Ambikapur, Surguja
2. Divisional Forest Officer, North Sarguja Forest Division, Ambikapur (CG)

---- Appellants

Versus

- M.H.Trading Company under G.A. Family Trust through Manager and Trustee Shri Abdul Qayum S/o Mohd. Habib R/o Sadar Ward, Ambikapur, Teh. - Ambikapur, Distt.-Surguja (CG)

---- Respondent

For Appellant / State	:	Shri Sanjay Kumar Agrawal, Govt. Adv. with Shri Anmol Sharma, Panel Lawyer
For Respondent	:	Shri A.K.Prasad, Advocate

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment on Board

25/07/2019

This appeal is directed against impugned judgment and decree dated 16/04/2003 passed by the 2nd Additional District Judge, Ambikapur in Civil Appeal No.113-A/2002 whereby the learned lower Appellate Court reversed the judgment and decree dated 04/09/1998 passed by the 5th Civil Judge, Class-II in Civil Suit No.242-A/97 and decreed the suit of the plaintiff.

2. On 09/09/2014, this appeal was admitted on following substantial question of law -

> "Whether the lower Appellate Court was justified in holding that Abdul Qayum was competent to file suit on behalf of unregistered trust i.e. G.A. Family Trust?"

3. The respondent / plaintiff filed a suit for damages for declaration and permanent injunction against the State on the pleadings *inter alia* that the plaintiff was awarded contract for collection of Mahul leaves which is a minor forest produce, during the year 1980-81 in Ramanujganj forest range area. In execution of contract, the plaintiff was engaged in collection of leaves and storing the collection of leaves and forest produce from the area under the agreement and also stored in the go-downs at different places but on 30/10/1980, in the absence of plaintiff, the officers of the Forest Department raided store house at Dhuchapara and seized 171.80 quintals of Mahul leaves on the allegations that the same was unauthorisedly collected and stored by the plaintiff. On such pleadings, the plaintiff prayed for reliefs that it be declared that collection of leaf and storage in store house at Dhuchapara was within the territory of contract awarded to the plaintiff and decree for recovery of seized forest produce or in lieu thereof monitory compensation be awarded.

4. In the written statement, the appellant / defendants came out with the case that the plucking, collection and storage of forest produce by the plaintiff was in excess of its contractual right of plucking forest produce as it was collected from an area where the plaintiff was not authorized to enter and collect authorized forest produce.

5. Learned Trial Court framed as many as 10 issues including two additional issues.

6. Learned Trial Court recorded a finding on these issues that as the plaintiff trust was an unregistered private trust not registered as a firm or a company and that plaintiff failed to prove that Abdul Qayum was authorized under the law to file suit in the name of unregistered private trust, held that suit was not maintainable and it was dismissed.

7. On appeal being preferred, learned Lower Appellate Court reversed the aforesaid findings holding that the suit filed by Abdul Qayum in the name of unregistered private trust was maintainable. On such finding, the judgment and decree of learned Trial Court was reversed and decree in favour of plaintiff as prayed for was granted giving rise to this appeal.

8. Learned counsel for the State / appellant would argue that the finding recorded by the learned Trial Court is based on correct legal position that in the absence of there being proof that Abdul Qayum was duly authorized under the law to represent a private unregistered trust, the suit itself was not maintainable. He would argue that in the pleadings as well as in the evidence, the plaintiff failed to prove that in what manner, under which clause of the trust deed and by whom, Abdul Qayum was authorized to file suit on behalf of unregistered private trust. In support of his submission, he placed reliance on the decision of the Supreme Court in the case of **J.P. Shrivastava & Sons (P) Ltd. and ors. v. Gwalior Sugar Co. Ltd. and ors., (2005) 1 SCC 172.**

9. On the other hand, learned counsel for the respondent / plaintiff would submit that in the plaint, it has not been specifically pleaded but in the evidence led by the plaintiff, it has been clearly stated that Abdul Qayum was the person who was in-charge of the business of the unregistered private trust which was in the nature of family trust. He would further submit that the finding of fact recorded by the learned lower Appellate Court is supported from the evidence on record that from the beginning, each and every business transactions on behalf of the trust were being performed and executed by Abdul Qayum, right from entering into the agreement with the State authorities and thereafter, in engagement as contractor for the purpose of collection and storage of forest produce. Therefore, this has

been rightly considered by learned Lower Appellate Court to be sufficient evidence of due authorization given by the private trust in favour of Abdul Qayum to file suit. In para 1 of the plaint, it has been pleaded that G.A. Family Trust is a family trust of which, Abdul Qayum and Gulam Ahmed are trustees and the firm has been established for doing business. Under this trust, all business transactions are done in the trade name “M.H.Trading Company” and of which Abdul Qayum is the Managing Trustee and he has been authorized by the family trust to execute all such work.

10. Abdul Qayum (PW6) has stated in his evidence that the family trust has been constituted by him along with his brother - Gulam Ahmed in the name of G.M. Family Trust, which has been constituted for carrying out business transactions under which, they used to execute work in District - Sarguja. He has further deposed that the creation of trust was duly documented and they are working as trustee of the family trust (Ex.P/10). In cross-examination, he states that the deed has not been registered as it is not required to be registered. He has denied a suggestion that he has not been given any letter of authorization to file suit on behalf of the trust. Later on, he admits that he has not filed any letter of authorization authorizing him to file a suit on behalf of the family trust.

11. Learned Trial Court in its judgment in paragraphs 7 to 10, has dealt with issues with regard to tenability of the suit and authority of Abdul Qayum on behalf of unregistered family trust and learned Trial Court has recorded a finding that it is an unregistered trust and it is not even a registered firm. Further finding is that Ex.P/10 does not contain any recital as to when and how Abdul Qayum was appointed as Managing Trustee and said document does not contain any recital of express authorisation in favour of Abdul Qayum to file suit. Holding that in the absence of there being any express authorization or any documentary evidence in

support of the said case of the plaintiff that Abdul Qayum was expressly authorised by the trustee to file suit, learned Trial Court held that the suit filed on behalf of the unregistered private trust by Abdul Qayum was incompetent for want of authority.

12. The approach of the learned lower Appellate Court is completely misconceived. What learned lower Appellate Court has considered is that since Abdul Qayum is directly involved in carrying out business activities in the name and behalf of unregistered private trust, that by itself is sufficient of he being the Managing Trustee and authorised to file suit.

13. In the considered opinion of this Court, the approach of the learned lower Appellate Court is clearly perverse and patently illegal. The plaintiff apparently is an unregistered private trust and is not a charitable public trust. It is not even a registered firm. It is not shown as any company under the Companies Act. The suit has been filed by Abdul Qayum as its Managing Trustee. Though in para 1 of the plaint, it has been stated that Abdul Qayum is the Managing Trustee and has been duly authorised to file suit, he has failed to produce any documentary evidence in this regard. Ex.P/10 hardly consists of an evidence of either Abdul Qayum being Managing Trustee or there being express authorisation in his favour by other trustee much less any evidence of the manner in which, suits have to be filed on behalf of the trust.

14. The legal position in this regard has been considered by the Supreme Court in the case of **J.P. Shrivastava** (supra) as below -

> "24. The issue then is - was it represented before the CLB by Nini Srivastava? The answer to this would depend on whether the trustees of the Trust could authorize one of them to initiate proceedings for and on behalf of the Trust. A Full Bench of the Gujarat High Court in Atmaram Ranchhodbhai v. Gulamhusein Gulam Mohiyaddin AIR 1973 Gujarat 113 said:-

" Whether the trust is a private trust governed by the Indian Trusts Act or is a public charitable or religious trust, a trustee cannot delegate any of his duties, functions and powers to a co-trustee or to any other person unless the instrument of trust so provides or the delegation is necessary or the beneficiaries competent to contract consent to the delegation or the delegation is in the regular course of business. These are the only four exceptional cases in which delegation is permissible and save in these exceptional cases, the trustees cannot, even by a unanimous resolution, authorize one of themselves to act as managing trustee for executing the duties, functions and powers relating to the trust and every one of them must join in the execution of such duties, functions and powers ".

The Supreme Court in the aforesaid decision also quoted with approval, its earlier decision in the case of **Shanti Vijay & Co. v. Princess Fatima Fouzia (1979) 4 SCC 602** as below -

“27. This Court in **Shanti Vijay & Co. v. Princess Fatima Fouzia** held that:-

" …..the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved."

28. It was also held that a trustee could act on behalf of others, if there is a clause in the trust deed authorizing the execution of the trust to be carried out by "one or more or by majority of the trustees".

15. The legal position was enumerated and propounded as below -

“29. Therefore although as a rule, trustees must execute the duties of their office jointly, this general principle is subject to the following exceptions when one trustee may act for all (1) where the trust deed allows the trusts to be executed by one or more or by majority of trustees; (2) where there is express sanction or approval of the act by the co-trustees; (3) where the delegation of power is necessary; (4)

> where the beneficiaries competent to contract consent to the delegation; (5) where the delegation to a co-trustee is in the regular course of the business; (6) where the co-trustee merely gives effect to a decision taken by the trustees jointly."

16. In the absence of any evidence that Abdul Qayum was either Managing Trustee or by expressly authorised by other trustees, the suit of the plaintiff was clearly untenable in law and the finding recorded by the learned Trial Court is in accordance with the aforesaid legal position.

17. In the result, the question of law is answered in the manner that the lower Appellate Court was not justified in law in holding that Abdul Qayum was appointed to file suit on behalf of unregistered trust i.e. G.A.Family Trust, suit was not maintainable at his instance.

18. Accordingly, the appeal is allowed. The impugned judgment and decree of the lower Appellate Court is set aside and the plaintiff's suit is dismissed. Parties to bear their respective costs. Let appellate decree be drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti