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HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.51 of 2008

Devi Prasad Jaiswal (Dead) Through LRs

(Defendant)

1. Satyandra Jaiswal, S/o late Devi Prasad Jaiswal, aged about 42 years,
2. Kishore Jaiswal, S/o late Devi Prasad Jaiswal, aged about 38 years,
3. Smt. Shanti Bai Jaiswal, W/o late Devi Prasad Jaiswal, aged about 69 years,
4. Shail Jaiswal, W/o Jagdish Jaiswal, aged about 48 years,
5. Rajeshwari Jaiswal, W/o U. Jaiswal, aged about 38 years,
6. Binnu Jaiswal, W/o Rajendra Jaiswal, aged about 44 years,

Address of all are Sarafa Line, Takhatpur, District Bilaspur (C.G.)

---- Appellants

Versus

Sriram Janki Bade Mandir Trust Samiti, Sarafa Line, Takhatpur, Tahsil Takhatpur, District Bilaspur (C.G.), Through Shyamji Dewangan, President, Trust Samiti

(Plaintiff)

---- Respondent

For Appellants: Mr. Goutam Khetrapal, Advocate.
For Respondent: Mr. Malay Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

28/01/2020

1. This second appeal preferred by the original defendant / appellants herein (LRs of the original defendant) was admitted on the following substantial question of law: -

> "Whether the plaintiff being a unregistered public trust was competent to institute the suit in view of the prohibition under Section 32 of the M.P. Public Trust Act?"

[For sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.]

2. The plaintiff Trust filed suit for eviction and arrears of rent against the defendant stating inter alia that the defendant is tenant of the suit accommodation situated at Sarafa Line, Takhatpur, on monthly rent of ₹ 50/- which was enhanced to ₹ 250/- per month, but he has stopped paying rent, therefore, the Trust has resolved to get the suit accommodation vacated and consequently, notice dated 11-8-2001 was served upon him, yet he has not vacated the suit accommodation and as such, the plaintiff Trust is entitled for eviction and arrears of rent which the defendant opposed stating that the plaintiff Trust is an unregistered trust and its President is not entitled to file suit and the suit accommodation is not required bona fidely.

3. The trial Court after appreciation of oral and documentary evidence on record held that it has not been proved that the plaintiff is a registered Trust, but Shyamji Dewangan as President of the plaintiff Trust has right to file suit on behalf of the plaintiff Trust; relationship of landlord and tenant between the plaintiff and the defendant is established; and the suit accommodation is required bona fidely and thereby decreed the suit which the

defendant questioned in appeal before the lower appellate Court in which he remained unsuccessful against which this second appeal has been preferred by the defendant and in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.

4. Mr. Goutam Khetrapal, learned counsel appearing for the LRs of the original defendant / appellants herein, would submit that since the plaintiff Public Trust was an unregistered trust, therefore there was bar for hearing and deciding the suit on merits in view of the bar created under Section 32 of the Chhattisgarh Public Trusts Act, 1951 (for short, 'the Act of 1951') and relied upon the decision of the Supreme Court in the matter of **Public Trust Shri Geeta Satsang Bhawan v. Nand Lal and others**[1] and therefore the appeal deserves to be allowed and judgments & decrees of both the Courts below deserve to be set-aside.

5. Mr. Malay Shrivastava, learned counsel appearing for the plaintiff / respondent herein, would submit that the defendant did not raise any specific plea of bar under Section 32 of the Act of 1951, rather he waived such an objection by participating in the hearing of the suit and therefore squeezed the said objection and that would amount to waiver of the objection of Section 32, if any, and virtually, the plaintiff is a registered trust registered way back on 20-6-1956. He would further submit that the plaintiff has filed

1 (2018) 12 SCC 222

the certificate of registration of the Trust which could not be filed earlier.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

7. In order to resolve the instant dispute, it would be appropriate to notice Section 32 of the Act of 1951 which states as under: -

> "**32. Bar to hear or decide suits.**— (1) No suit to enforce a right on behalf of a public trust which has not been registered under this Act shall be heard or decided in any court.
>
> (2) The provisions of sub-section (1) shall apply to claim or set off or other proceeding to enforce a right on behalf of such public trust."

8. A careful perusal of the aforesaid provision would show that it creates a bar against the public trust which is required to be registered under the Act. The bar is with regard to hearing and deciding of any suit, claim or set off or any other proceeding to enforce a right on behalf of such a public trust. The intention of creating such a bar appears to be that such trusts are discouraged in working without registration under the Act.

9. The Madhya Pradesh High Court in the matter of **Kesa alias Keshuram and others v. Kalu Devaji and others**[2] while highlighting the object behind enacting Section 32 of the Act of 1951 held that it does not bar any suit being filed against the unregistered public trust and observed as under:-

2 1973 JLJ 918

> "2. Section 32 of the Madhya Pradesh Public Trusts Act provides that no suit to enforce a right on behalf of a public Trust which has not been registered under the Act shall be heard or decided by any Court. This section does not prohibit any suit being filed against the public Trust. If this is so, it must be held that if any decree is passed against the public Trust, it will have a right to challenge the same in appeal and that would not be treated as any attempt to enforce a right on behalf of the public Trust. There is, therefore, no question of the appeal being stayed till the public Trust is registered under the Madhya Pradesh Public Trusts Act. If the right to appeal is denied to the public Trust, which is made the defendant, it would create a very anomalous situation. All sorts of unwarranted decrees would be obtained against the public Trust and it would be denied the right to challenge the validity of the decrees only for the reason that the Trust was not registered. Apart from this I do not find any justification for vacating the stay order already named by the lower appellate Court. If the hearing of the appeal was to be stayed, it was also necessary that the execution of the decree should be stayed. ..."

10. In the matter of **Jawaharlal Chunnilal v. Ramkrishna Malik @ Jafarmal**[3] the High Court of Madhya Pradesh has clearly held that the bar provided by Section 32 of the M.P. Public Trusts Act, 1951 is against the hearing or deciding of suits or appeals and not against their institution. Therefore, where an objection to the tenability of a suit filed on behalf of the trust on the ground of its non-registration as a public trust is successfully raised, the procedure to be adopted should be to stay the decision on merits to enable the party to obtain its registration.

11. The Supreme Court also in **Public Trust Shri Geeta Satsang Bhawan** (supra) while dealing with identical provision contained in Section 29 of the Rajasthan Public Trusts Act, 1959 and considering the

3 1962 MPLJ 461

scope and ambit of Section 29 of the said Act, held that bar is only for hearing and deciding the suit on merits and once the trust is registered, bar stands lifted and ceases to apply to the proceedings in the suit and the bar is only with regard to hearing and deciding the suit on merits. It has been observed by their Lordships as under: -

> "21. A fortiori, the moment the trust is registered under the Act, the trial court would assume the jurisdiction to hear and decide the suit on merits. The bar created under Section 29 of the Act for "hearing and deciding" the suit is then lifted and ceases to apply to the proceedings in the suit.
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> 22. As mentioned supra, since the appellant (plaintiff) Trust was registered under the Act on 7-2-2013, they acquired a right to prosecute the suit on merits against the respondents. The bar created under Section 29 then would no longer operate to the proceedings in the suit. In our opinion, the trial court was, therefore, wholly unjustified in proceeding to hear and decide the suit on merits by passing a judgment/decree. It failed to see the rigour of Section 29 which had taken away the jurisdiction of the trial court in hearing and deciding the suit.
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> 26. *First*, the decree passed by the trial court was on the face of it without jurisdiction having been passed in contravention of Section 29 of the Act; *second*, the Civil Court had no power to hear and decide the suit by virtue of the bar created under Section 29 of the Act; and *third*, admittedly the Trust was not registered on the date of filing of the suit and remained unregistered till the judgment was delivered by the trial court. It is for these reasons, the decree passed by the trial court is without jurisdiction and has to be set aside."

12. Reverting to the facts of the present case in light of the provision contained in Section 32 of the Act of 1951 as interpreted by the Madhya Pradesh High Court and and the Supreme Court in the aforesaid cases (supra), it is quite vivid that firstly, the original

defendant did not in specific terms raised any objection in the written statement that the suit is barred by Section 32 of the Act of 1951 and therefore hearing of suit cannot proceed and the court should stay its hand in light of the provision contained in Section 32 of the Act, rather it would be apparent from the face of the record that the defendant without any objection or demur allowed the proceeding to continue and participated in the trial of the suit and invited judgment by taking a calculated chance and ultimately, though the trial Court has held that the Trust is not registered, yet held that the suit was filed by competent person i.e. its President and decreed the suit. Not only this, when first appeal was preferred by the defendant before the first appellate Court, he also did not raise any specific objection in this behalf that the suit was not maintainable in light of Section 32 of the Act of 1951 and challenged the appeal on merits, and when the appeal was dismissed, for the first time, plea based on Section 32 of the Act of 1951 has been taken.

13. The fact remains that such a plea of hearing and decision of suit is barred was not taken at the first available opportunity before the trial Court and secondly, the defendant has participated in that suit before the trial Court without demur and objection and thereby waived such an objection and when the suit was decreed and it was affirmed in first appeal, in second appeal the said point has been taken which cannot be entertained at the second appellate stage,

particularly in view of the fact that no such plea was taken before the two Courts below and further in view of the fact that the said Trust is already a registered Trust registered as back as on 20-6-1956 vide Revenue Case No.22-XXXIII/53-54. It is a public document and copy of the registration of public trust has been brought to record and as such, no exception can be taken to the judgment & decree of the trial Court duly upheld by the first appellate Court. The substantial question of law is answered accordingly.

14. For the reasons mentioned herein-above, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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