

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.258 of 2007**

Bhagwan Shivrinarayan Math Mandir, Shivrinarayan Trust, Through Managing Trustee, Rajshree Mahant Ram sunder, Guru Late Mahant Vaishnav Dasji, Mahant, Shivrinarayan, Tahsil Shivrinarayan, District Janjgir Champa (Chhattisgarh)

----- Appellant/Plaintiff

Versus

Birendra Kumar, son of Narayan Prasad Kesharwani, aged 38 years, resident of Shivrinarayan, District Janjgir Champa (Chhattisgarh)

----- Respondent/Defendant

For Appellant/Plaintiff : Mr.H.B.Agrawal, Senior Advocate
with Mrs.Preeti Yadav, Advocate
For Respondent/Defendant: Mr.Sunil Sahu, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

10.01.2020

1.The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the plaintiff are as under:-

“(i) Whether both the Courts below has erred in holding that Rajeshri Mahant & Ramsunder Das filed suit for eviction ?

(ii) Whether finding of the Courts below is perverse ?

(iii) Whether both the Courts below were not justified in dismissing the suit for eviction filed under the provisions of Transfer of Property Act ?”

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

2. The plaintiff-trust filed a suit for eviction and arrears of rent against the defendant through its Managing Trustee-Mahant Ramsunder Das that the defendant did not adhere to the terms of rent note, by which the defendant's tenancy was terminated by giving 15 days' notice dated 5.2.1997 (Ex.P-6), despite that the defendant has not vacated the suit premises nor paid rent leading to filing of the suit for eviction and for arrears of rent.
3. The defendant has filed his written statement and denied the averments made in the plaint pleading inter-alia that Mahant Ramsunder Das has no right to file a suit on behalf of trust and tenancy has not been terminated in accordance with law, therefore, the suit deserves to be dismissed.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 19th September, 2006, dismissed the suit holding that Mahant Ramsunder Das has no right to file a suit on behalf of trust, which has been affirmed by the first appellate Court, against the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC

has been filed by the appellant/plaintiff, in which substantial questions of law have been formulated by this Court, which have been set-out in the opening paragraph of this judgment.

5. Mr.H.B.Agrawal, learned Senior Counsel along with Mrs.Preeti Yadav, learned counsel for the appellant/plaintiff, would submit that both the Courts below were absolutely unjustified in holding that Mahant Ramsunder Das has no right to file a suit on behalf of trust. He would further submit that though original trustee-Mahant Vaishnav Das died on 12.11.95 and on the basis of Will dated 1.3.93 Ramsunder Das became managing trustee and survarakar of the said temple, which was duly acknowledged by the order of the Sub-Divisional Officer-cum-Registrar of Public Trusts by order dated 28.1.2003 (Ex.P-2) and Mahant Ramsunder Das was declared as managing trustee & survarakar of the trust. The suit was filed on 7.5.99, but during pendency of the suit, by order dated 28.1.2003 he became managing trustee and survarakar by the order of the Sub-Divisional Officer-cum-Registrar of Public Trusts, therefore, finding of the trial Court and the first appellate Court that he had no right to institute a suit on behalf of trust is clearly unsustainable and bad in law. He would further submit that 15 days' clear notice terminating the

tenancy was served to the defendant vide Ex.P-6 and tenancy has been terminated under the provisions of the Transfer of Property Act, 1882 and the provisions of the Madhya Pradesh Accommodation Control Act, 1961 are not applicable to Shivrinarayan city, therefore, the judgment and decree of both the Courts below deserve to be set aside and decree of eviction be passed in favour of the plaintiff.

6. On the other hand, Mr.Sunil Sahu, learned counsel for the respondent/defendant, would submit that both the Courts below have concurrently and rightly held that Mahant Ramsunder Das had no right to institute a suit on behalf of trust and there is no resolution of trust authorizing the said Mahant Ramsunder Das to institute a suit on behalf of trust, as such, the judgment and decree passed by both the Courts below are strictly in accordance with law and no interference is called for.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. It is correct to say that the suit was filed by Mahant Ramsunder Das on 7.5.99 as original managing trustee Mahant Vaishnav Das had died on 12.11.95, but before death, by Will dated 1.3.93 he had nominated Ramsunder

Das as managing trustee and survarakar in his place of the plaintiff-trust which was ultimately recorded by the order of the Sub Divisional Officer-cum-Registrar of Public Trusts on 28.1.2003 (Ex.P-2). It is also correct to say that on the date of filing of the suit, his name was not recorded in the records of the Registrar of Public Trusts, which was ultimately recorded on 28.1.2003, but fact remains that by Will dated 1.3.93 Mahant Vaishnav Das had nominated and appointed said Ramsunder Das as managing trustee and survarakar, which was ultimately recorded and recognized on 28.1.2003 by the order of the Sub-Divisional officer-cum-Registrar of Public Trusts and during the pendency of the suit, said Mahant Ramsunder Das has become managing trustee and survarakar of trust and eventually the suit was dismissed by the trial Court on 19.9.2006, as such, irregularity, if any, in filing the suit by Mahant Ramsunder Das stood cured by order of the Registrar, Public Trusts dated 28.1.2003 (Ex.P-2) and it cannot be held that he had no right to file a suit on behalf of trust.

9. Submission that no resolution has been filed on behalf of trust for filing the suit deserves to be rejected as the defendant has not raised any such objection in written statement filed before the trial Court. The

party to suit cannot be allowed to improve his case at the time of conclusion of trial or during pendency of first appeal. He has to maintain his stand what he has taken by filing appropriate pleading in accordance with the provisions contained in the Code of Civil Procedure, as such, finding recorded by both the Courts below that Mahant Ramsunder Das had no right to file a suit on behalf of trust deserves to be and is hereby set aside being perverse and contrary to record.

10. The next question for consideration would be, whether both the Courts below were justified in dismissing the suit filed after terminating the tenancy vide Ex.P-6 as the provisions of the Act of 1961 are not applicable to Sivrinarayan city where the suit accommodation is situated ?

11. It is established on record that tenancy was monthly and vide notice dated 5.2.1997 (Ex.P-6) the defendant was served with the notice terminating his tenancy w.e.f. 31.3.1997 and said notice (Ex.P-6) was served to the defendant on 7.2.97, despite that he has not vacated the suit premises, as such, tenancy has validly been terminated after giving 15 days' notice and after terminating the tenancy, the defendant was required to vacate the suit premises which he has not vacated and consequently, he is liable to vacate the

suit premises, as such, finding recorded in his behalf by two Courts below is liable to be set aside.

12. Consequently, the judgment and decree passed by both the Courts below are hereby set aside and the plaintiff suit would stand decreed and it is ordered and directed that the defendant will deliver the vacant possession of the suit accommodation i.e. shop No.3 (12"x18") situated at Mahantpara Shivrinarayan to the plaintiff within 30 days. The substantial questions of law are answered accordingly.
13. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).
14. A decree be drawn-up accordingly.
15. At this stage, Mr.Sunil Sahu, learned counsel for the respondent/defendant would submit that 3 months' time be granted to the respondent/defendant to vacate the suit premises, which Mr.H.B.Agrawal, learned counsel for the appellant/plaintiff has vehemently opposed.
16. Taking into consideration the inconvenience to be suffered by the respondent/defendant, 3 months' time upto 30th April, 2020 is granted to vacate the suit accommodation subject to following conditions:
 - (i) Respondent/defendant shall submit an usual written undertaking in the shape of affidavit

before the trial Court upto 31st January, 2020 that he shall vacate the suit accommodation on or before 30th April, 2020 by delivering peaceful possession to the plaintiff and will not create any right or interest over the suit accommodation and will not deliver possession to any one else in the meanwhile.

(ii) Respondent/defendant shall deposit the arrears of rent and to pay regular rent in the shape of damages with effect from 1st February, 2020 along with arrears of rent till the actual date of delivery of possession of the suit accommodation before the trial Court to the plaintiff towards damages for occupation and use of the suit accommodation by him.

If the aforesaid conditions are not complied with, the decree shall be executable forthwith in accordance with law.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-