

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 465 of 2007**

1. Heeralal Mishra S/o Ram Krishna Mishra Aged About 47 Years R/o Village Aarkandi, Post Sharda Mata Mandir, Tehsil Maihar, District Satna, Madhya Pradesh
2. Shatrughan Prasad Mishra (Dead) Through LRs., As Per Court Order Dt. 04/07/2019.
2.1 - (A) Ajaya Mishra S/o Late Shri Shatrughan Prasad Mishra Aged About 40 Years R/o Village Dhaniya Tahsil Masturi, District Bilaspur Chhattisgarh

---- Appellants**Versus**

1. Malika Ram Patanwar (dead) through LRs.

1.a - Lalji Patanwar S/o Late Shri Malika Ram Patanwar Aged About 37 Years R/o Village Dhaniya, Tahsil Masturi, District Bilaspur Chhattisgarh

1.b - Smt. Amola Bai W/o Late Shri Malika Ram Patanwar Aged About 70 Years R/o Village Dhaniya, Tahsil Masturi, District Bilaspur Chhattisgarh

1.c - Smt. Rajeshwari Kaushik W/o Mahendra Kaushik Aged About 33 Years R/o Village Semartal District Bilaspur Chhattisgarh

1.d - Smt. Ishwari W/o Santosh Aged About 31 Years R/o Village Sellar, Tahsil Seepat Masturi District Bilaspur Chhattisgarh

1.e - Smt. Parmeshwari W/o Kedarnath Aged About 29 Years R/o Village Karnoi Akaltara District Janjgir-Champa Chhattisgarh

1.f - Smt. Prabha Bai W/o Rajesh Kashyap Aged About 27 Years R/o Village Rasoud, Baloda, District Janjgir Champa Chhattisgarh

2. State of C.G. through the Collector, Bilaspur (CG)

---- Respondents

For Appellant	:	Shri M.D. Sharma, Advocate
For Respondents 1 (a) and 1 (b)	:	Shri Ratnesh Agrawal, Advocate
For State	:	Shri Ravish Verma, Govt. Adv.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****05/08/2020**

This appeal has been filed against judgment and decree dated 06/08/2007 passed by the learned 6th Additional District Judge, Bilaspur in F.A.No.30A/06 by which, the appellant's appeal has been dismissed.

2. This appeal was admitted on 31/11/2015 on following substantial question of law -

“Whether the Courts below, having held that the plaintiff failed to prove that he was 'Sarvarakar' and also failed to prove his possession and there being no decree as prayed for, were justified in law to issue a direction as contained in para-22 of the judgment of the trial Court and affirmed by the appellate Court ?”

3. Respondent – Malikram filed a suit for declaration and permanent injunction that he be declared as the owner and title holder of the land in dispute and 'Sarvarakar' of the temple in dispute by declaring that defendant No.1 – Phulchand (present appellant) is Pujari of the temple. Plaintiff also prayed for injunctive relief that defendant No.1- Phulchand be restrained from interfering with the management of the temple and land in dispute. According to the plaintiff, the temple was constructed by his forefathers and the land in dispute belong to his forefathers. The plaintiff's forefather was 'Sarvarakar' and he used to manage the temple out of the income of the land in dispute. Later on, the name of plaintiff's father was also recorded in the revenue records as 'Sarvarakar' in respect of the temple and appurtenant land. According to plaintiff's pleading, the temple was a private one. After demise of plaintiff's father, when the plaintiff applied for mutation of his name as 'Sarvarakar' in respect of the temple as also the land in dispute, his application was not allowed and the management of the temple is handed over to the Collector. Various disputes were

raised by defendant No.1 – Phulchand with regard to management and control of the temple and appurtenant land and proceedings under Section 145 and 146 CrPC were also initiated wherein adverse orders were passed. This led to filing of the suit for declaration.

4. According to defendant No.1 – Phulchand, the temple was constructed by defendant's father. Lands were given by way of gift by the plaintiff to the defendants' father and since then, the defendants' father and thereafter the defendant was in full control of the management of the temple and the plaintiff is not entitled to any relief as prayed for by him. Learned Trial Court, after framing issues, allowed the parties to lead oral and documentary evidence and held that the plaintiff failed to prove that temple and the appurtenant land belong to his forefathers or were constructed by them and that the plaintiff could not establish any title in respect of the property. Learned Trial Court, however, recorded a finding that defendant – Phulchand was the Pujari of the temple. Defendant – Phulchand had not raised counter claim but in his written statement, he had stated that the land was gifted to his father and temple was constructed by him. Learned Trial Court also recorded a finding that the defendant also could not establish such claim and moreover, no such counter claim was raised by him.

5. Aggrieved by the judgment and decree of the Trial Court, the plaintiff as well as the defendant – Phulchand both preferred appeals and both the appeals were dismissed.

6. Learned counsel for the appellant would argue only on limited aspect, as framed in the substantial question of law that once the Trial Court and lower Appellate Court held that the plaintiff failed to prove his title as 'Sarvarakar' and the Court found that the plaintiff was neither title holder nor in possession of the land nor temple, it

could not have issued further directions of its own with regard to management of temple as the same was not an issue before the Court. He would submit that having dismissed plaintiff's suit, no further directions can be issued.

7. On the other hand, learned counsel appearing for the respondent / plaintiff would submit that against dismissal of First Appeal filed by the plaintiff, Second Appeal No.490/07 was filed which was dismissed on 13/11/2013. He would submit that though this appeal is not maintainable, as far as direction to the Collector is concerned, the plaintiff had not prayed for any such relief, there was no counter claim and therefore, the First Appellate Court could not have issued such directions.

8. Shri Ravish Verma, learned Government Advocate submits that the State has not filed any reply as the dispute is between the private parties and in this case, the State is only a formal party.

9. It is not in dispute that the suit filed by Malikram was confined to seeking declaratory relief and injunction. The plaintiff claimed that he be declared as 'Sarvarakar' and the defendant – Phulchand be restrained from interfering with the management of the temple and appurtenant land. The defendant – Phulchand though came out with the pleadings in the written statements that the temple was constructed by his father and the lands were gifted to his father, both the Courts below have recorded concurrent finding that the defendant - Phulchand could not prove such assertions. Even the defendant – Phulchand did not come out with any counter claim.

10. In the suit, it was not an issue as to whether the temple and property in dispute are public trusts. Once plaintiff's suit was dismissed, it was beyond the jurisdiction of the learned lower Appellate Court to issue various directions with regard to management of the temple. It ought to have left the law to take its own course rather

than issuing various directions with regard to the management of the temple. Therefore, the impugned judgment and decree, to the extent of directions contained in para 15, are wholly unsustainable in law and beyond jurisdiction. All those directions are, therefore, set aside. The impugned judgment and decree is, accordingly, modified to the extent as above. Let appellate decree be accordingly drawn. No order as to costs.

Sd/-

(Manindra Mohan Shrivastava)
Judge