
(1961) 01 MP CK 0015
In the Madhya Pradesh High Court
Case No : C.R. No. 318 of 1960

Badriprasad Gaurishankar Shukla and Others	APPELLANT
Vs	
Umashankar Munnulal and Others	RESPONDENT

Date of Decision : 10-01-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Madhya Pradesh Public Trust Act, 1951 — Section 12, 2(1), 24, 25, 25

Citation : (1961) ILR (MP) 1039 : (1961) JLJ 329 : (1961) MPLJ 394

Hon'ble Judges : P.K. Tare, J

Bench : Single Bench

Advocate : R.R. Padhye, for the Appellant; P.C. Pathak for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tare, J.

This revision u/s 115 of the CPC is by some of the defendants against the order, dated 12-7-1960, passed by Shri S.N. John, Second Civil Judge, Class I, Bilaspur, in Civil Suit No. 108-A of 1957, holding that the Court had jurisdiction to try the suit.

The first non-applicant filed the present suit for setting aside the summary order of the Registrar of Public Trust u/s 6 of the M.P. Public Trusts Act, 1951 alleging that one Bhola Mali was the owner of the suit property. After his death, his son, Jagannath inherited the property, who, by a registered will, bequeathed the same to the plaintiff. It was further alleged that the defendants, by making incorrect representations, got themselves declared as trustees. The defendants had no right to be the trustees, nor any title to the suit property. Therefore, the plaintiff claimed a decree for setting aside the summary order of the Registrar.

During the trial of the suit, the plaintiff filed an application for amendment of the plaint, which was marked as interlocutory application No. 3 by the trial Court.

That application was allowed by the trial Court and the amendments were directed to be incorporated in the pleadings. This was done by an order, dated 4-7-1960. By the same order, the trial Judge framed a preliminary issue relating to jurisdiction of the trial Court. The preliminary issue was obviously framed with reference to the amendment application filed by the defendants on 4-7-1960, which raised the question of jurisdiction of the trial Court on the contention that the principal Court of civil jurisdiction alone would have the jurisdiction to entertain a suit filed u/s 8(1) of the M.P. Public Trusts Act, 1951.

The learned Judge of the trial Court did not pass any specific order rejecting the amendment application, but, by an order, dated 12-7-1960, the learned Judge held that he had jurisdiction to try the suit, as the words used in section 8 of the Act are "a civil Court", which phrase is not defined by the Act. But, the word "Court", which phrase has been defined by section 2(1) of the Act is as follows:-

"Court" means the principal civil Court of original jurisdiction in the district.

The learned counsel for the applicants pointed out that the trial Judge committed a procedural error in deciding the question of jurisdiction on merits without first passing an order on the amendment application. Therefore, it was urged that the order impugned could not be sustained in law. It is true that the learned Judge of the trial Court adopted an incorrect procedure. On 4-7-1960, the defendants filed an amendment application, whereby they raised the question of jurisdiction. That application was marked as interlocutory application No. 4. No sooner the application was filed, the learned Judge framed a preliminary issue regarding the objection to jurisdiction in the following terms:-

Whether this Court has jurisdiction to try the suit?

In fact, the trial Judge ought to have passed an order on the amendment application. If he rejected the amendment application, the question of jurisdiction would not at all arise. It would arise only if he allowed the amendment application. Thus there can be no doubt that the learned Judge has committed a procedural irregularity in the matter of framing a preliminary issue without there being any proper pleadings on that question.

However, the question relating to amendment of the plaint raising the question of jurisdiction would itself depend upon the interpretation of the provisions of the M.P. Public Trusts Act, 1951. Therefore, I propose to decide that aspect of the case; and if it is found that the trial Court had no jurisdiction, then alone I would consider the question of amendment of the written statement.

The definition of Court has already been reproduced earlier. It is significant to note that the word "Court" is used in sections 24, 25, 26, 27 and 28 of the Act. As the word "Court" has been defined by the Act, it would necessarily imply the principal civil Court of original jurisdiction in the district. Therefore, there can be no doubt that wherever the word "Court" is used in the Act, it would undoubtedly mean the principal civil Court of original jurisdiction in the district, which means

the Court of District Judge alone and no other Court. But, a different phraseology is used in sections 8 and 12 of the Act, where the words used are "a civil Court". Therefore, the question arises whether this phrase "a civil Court" has to be construed in the same manner as the phrase "the Court" used in sections 24 to 28 of the Act. At this stage, it may be noted that the phrase, "a civil Court" has not been defined by the Act. It appears to have been used in its ordinary grammatical sense conveying the meaning of a Court of civil jurisdiction as opposed to a Court of revenue jurisdiction. The Deputy Commissioner u/s 3 of the Act is invested with powers of the Registrar of Public Trusts. The procedure to be followed by the Registrar in proceedings under sections 4 and 6 of the Act is prescribed to be a summary procedure for the registration of a public trust and for holding an enquiry into the question of disputed registration. The Registrar is expected to record his findings with reasons. But, all the same, the procedure is not elaborate such as is prescribed for civil Courts. It is essentially summary in nature. Any person aggrieved by an order or the findings of the Registrar is given liberty to institute a suit in a civil Court to have such findings set aside or modified. It is from this perspective in order to distinguish the civil Court from the Court of the Deputy Commissioner that the phrase "a civil Court" appears to have been used by the Legislature. Under these circumstances, it is not possible to accept the suggestion of the learned counsel for the applicants that the word "Court" in this phrase "a civil Court" ought to be interpreted in the light of the definition of Court provided by section 2(1) of the Act. I am of opinion that the phrase "a civil Court" ought to be construed in the light of the ordinary grammatical sense in which a civil Court is understood. For this purpose, it would not be out of place to refer to the description of a civil Court as given in the M.P. Civil Courts Act, 1958. Section 3 of the said Act describes the various civil Courts as follows:-

Classes of civil Courts.-In addition to the Courts established under any other law for the time being in force, there shall be the following classes of civil Courts, namely:-

- (1) The Court of the District Judge;
- (2) The Court of the Additional District Judge;
- (3) The Court of the Civil Judge (Class I); and
- (4) The Court of the Civil Judge (Class II).

Section 7 of the Act defines a principal civil Court of original jurisdiction as follows:-

- (i) The Court of the District Judge shall be the principal civil Court of original jurisdiction in the civil district.....

It is this description or definition of a civil Court, which, in my opinion, would be applicable to the phrase, "a civil Court" occurring in sections 8 and 12 of the M.P. Public Trusts Act, 1951.

It is true that in Chapter 5 of the M.P. Public Trusts Act, 1951, the phrase used is "the Court", which would necessarily imply the Court of District Judge as defined by section 2(1) of the Act. But, the same phrase not having been used in Chapter 2, which contains sections 8 and 12 of the Act, it cannot be stated that the intention of the legislature was that a civil suit u/s 8(1) of the Act should be filed in the Court of the District Judge. Therefore, the ordinary grammatical meaning of the phrase would mean that the suit can be filed in a civil Court of a competent jurisdiction, whether it be the Court of Civil Judge Class II or the Court of Civil Judge Class I or the Court of Additional District Judge or the Court of the District Judge. That will depend upon the territorial jurisdiction, as also the pecuniary valuation of the suit.

In view of the fact that I have come to the conclusion that the trial Court has jurisdiction to try the present suit, I am of opinion that it is unnecessary to consider the question of amendment of the written statement. I do not agree with the view of the learned Judge of the trial Court when he states that the amendment ought to be disallowed, as it was belated. Ordinarily, amendments, which are belated, should certainly be disallowed; but no amendments of this type which raise question relating to the initial jurisdiction of the Court to entertain a suit. As laid down by their Lordships of the Supreme Court in *Kiransingh and others v. Chaman Paswan and others* AIR 1954 SC 340, where the question of jurisdiction goes to the root of the matter, it can be raised even at the stage of execution or even in collateral proceedings. As laid down by their Lordships, any decision without jurisdiction would render it a nullity. From this point of view even though a question of the initial jurisdiction of the Court is raised at a late Stage, the Court should ordinarily decide it and should not avoid to decide it on the ground of undue delay. Therefore, although I may not agree with the view of the learned trial Judge on certain aspects, I do not think it necessary to interfere with the order in view of the fact that the trial Judge has the jurisdiction to entertain the present suit.

As a result of the discussion aforesaid, this revision fails and is dismissed with costs in favour of the first non-applicant. Counsel's fee Rs. 30 if certified.