

(2009) 01 MP CK 0050
In the Madhya Pradesh High Court

Fatimabi and Others

APPELLANT

Vs

Madarsa Talimmul Kuran Trust and Others

RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 80, 92

Citation : (2009) 3 MPHT 353 : (2009) 2 MPJR 160 : (2009) 4 MPLJ 18

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Judgement

K.K. Lahoti, J.

The defendants have filed this revision u/s 115 of the Code of Civil Procedure, 1908 assailing order dated 19-2-2007 in Civil Suit No. 5-A/06 by which the petitioner's application under Order 7 Rule 11, CPC was rejected. By the same order another application filed by the applicants for cancellation of permission granted to the plaintiffs u/s 80(2) and Section 92 of CPC was also rejected.

This order has been assailed by the applicants mainly on the ground that the Court below erred in not rejecting the plant of respondents as the proceedings for the same relief were pending before the Registrar, Public Trust and this suit was premature. The applicants submitted that in view of pendency of application before the Registrar, Public Trust, the present suit ought to have been dismissed by the Trial Court but the Trial Court erred in staying the proceedings of the civil suit awaiting decision of the Registrar, Public Trust. Once the respondents invoked the jurisdiction of the Registrar, Public Trust, present suit filed u/s 92 of the CPC was not maintainable and ought to have been dismissed.

The learned Counsel for the respondents supported the order and submitted that the order was in accordance with law and the Trial Court rightly stayed the suit awaiting decision from the Registrar, Public Trust.

To appreciate the rival contention of the parties, it would be appropriate if the factual position in the present case is stated:

(A) The plaintiffs have filed suit u/s 92 of CPC for following reliefs :- (a) To declare plaintiff Nos. 1 to 5 as Trustee of the Madarsa Talimmul Kuran Trust. (b) To direct defendant No. 7 the Registrar, to declare the Madarsa Talimmul Kuran Trust as a Public Charitable Trust and plaintiff Nos. 1 to 5 as its Trustee and to permit them to manage the trust property in accordance with the provisions of law. (c) To restrain the defendant Nos. 1 to 5 from taking possession or making any construction over the suit property or transferring the property. (d) To declare the plaintiffs to be the owner and in possession of the suit property.

(B) In the result, the defendants cause appearance and filed an application for revocation of leave granted to the plaintiff u/s 80 of the CPC and for revocation of leave granted to the plaintiffs u/s 92 of CPC for the institution of civil suit u/s 92 of CPC and application under Order 7(11), CPC for rejection of the plaint.

So far as this revision is concerned, the arguments were confined to the application under Order 7 Rule 11, CPC by which petitioners made prayer to the Trial Court for rejection of plaint. In the said application, the petitioners submitted that the provisions of M.P. Public Trust Act, 1951 nullify the general powers of Superintendence of Trust which envisaged in Section 92 of CPC. The suit was barred by the principle of res judicata as it was third round of litigation between almost the same litigants for the same subject matter. It was further submitted by the petitioners that by registered sale-deed dated 31-8-1984 the subject-matter of civil suit transferred to the defendant Nos. 1 to 5 by defendant No. 6. It was jointly executed by one Kafir Ahmad, as such Kafir Ahmad was necessary party and no effective decree could be passed in the suit. In Para 7 of the application it was stated that the subject-matter of civil suit was registered as Waqf by M.P. Waqf Board, Bhopal and as per the provisions contained in Section 90 of the Waqf Act, notice to the Waqf Board was mandatory. That the suit was premature as it was filed before recording findings by the Registrar, Public Trust where an application for the registration of the suit property as Public Trust was pending. On the aforesaid ground, it was prayed that the suit be dismissed being without merit with costs.

The plaintiffs filed reply of the application stating that the suit was not barred by principle of res judicata. Earlier suit was for declaration of property as Waqf property, while the present suit was filed in respect of Public Trust. It was further submitted that u/s 92 of CPC the suit was maintainable and the application filed by the defendants was liable to be dismissed.

The Trial Court by the impugned order rejected all the applications of the petitioners but directed that till the completion of the registration proceedings before the Registrar, Public Trust, further proceedings in the civil suit deserves to be stayed and directed so. This order is under challenge in this revision.

In this case, it is not in dispute that an application by the plaintiffs for registration of disputed property as Public Trust is pending before the Registrar, Public Trust u/s 4 of the M.P. Public Trust Act, 1951 (hereinabove referred as "the

Act"). Section 32 of the Act creates a bar to hear and decide the suits. For ready reference Section 32 of the Act is quoted below:

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 proceedings to enforce a right on behalf of such Public Trust.

The aforesaid provision specifically provide that such suit shall not be heard and decided by any Court and the provision of Sub-section (1) shall apply to enforce a right on behalf of such Public Trust. In this case, it was not in dispute that the reliefs as prayed by the plaintiff which are quoted hereinabove, relates to enforcement of right on behalf of Public Trust in respect of which an application u/s 4 of the Act was pending before the Registrar, Public Trust. In view of such factual position if the Civil Court has stayed proceedings of the Civil Court by the impugned order, no fault is found. The impugned order is in accordance with law and needs no interference from this Court. This revision is found without merit and is accordingly dismissed.

While dismissing the revision, it is observed that in case the application filed by the respondents u/s 4 of the Act is rejected by the Registrar, Public Trust, the petitioner shall be entitled to re-agitate the matter before the Trial Court in accordance with law and the impugned order shall not come in their way for pressing their relief before the Trial Court.

Considering the facts of this case, there shall be no order as to costs.