

(2000) 02 MP CK 0028

In the Madhya Pradesh High Court

Case No : M.A. No. 369 and 463 of 1992

Ghanashyam Prasad Kurmi Patel

APPELLANT

Vs

Yashwant Singh and Others

RESPONDENT

Date of Decision : 16-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 13, Order 1 Rule 9
Madhya Pradesh Public Trust Act, 1951 — Section 25, 27(2)

Citation : AIR 2001 MP 68 : (2001) 5 MPHT 63 : (2001) 1 MPLJ 189

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : V.P. Verma and Jaideep Singh, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Mishra, J.

These two appeals arise out of common matter. The appellants in both the appeals have filed an application to set aside the order passed ex parte by First Addl. District Judge Jabalpur in Civil Misc. Case No. 27/98 on 22-12-1989.

The order dated 22-12-1989 was passed on an application filed before the Court under the provisions of Section 25 of the M.P. Public Trusts Act, 1951. Bhagwan Shri Ram Janki. Trust was registered in the year 1954 under the provisions of M.P. Public Trusts Act. Its Sarwarakar was Ghanshyam Prasad Patel. The application u/s 25(3) was filed by Yashwant Singh, Madan Bihari Chadhar and Halku Prasad challenging the order passed by Registrar. Public Trusts, Paten district Jabalpur in case No. 2B/113/85-86 (Kashiram v. Ghanshyam Prasad). In the said case an order dated 8-6-1987 was passed by the Registrar, Public Trusts. Paten district Jabalpur, by which five trustees were appointed namely, Gajendra Singh Yadav. Sunderlal Patel. Laxmiprasad Patel, Gulab Chadhar and Durga Prasad Pawar. In the same order it was directed that Ghanshyam Prasad shall manage the trust and shall inform the activities of the trust to the other trustee

Durga Prasad Pawar who was not resident of the same village. In the proceedings filed u/s 25 of the M.P. Public Trusts Act 1951 there were several allegations made against Ghanshyam Prasad Patel who was the Managing Trustee and prayer was also made that Ghanshyam Prasad Patel was not managing the trust actively and some one else be appointed, in ground No. 5 of the petition filed u/s 25. It may be seen that in the said proceedings the trust was not impleaded as a party. Though the allegations were made against Ghanshyam Prasad Patel but, he was also not arrayed as a party. Later on by amendment effected on 8-8-1988, four of the trustees who were named by Registrar, Public Trusts, were added as parties, still Durga Prasad one of the trustees who was named in the order dated 8-6-1987 passed by the Registrar was not arrayed as a party. An application was filed by Ghansham Prasad Patel to implead him as a party. The said application was not decided by the Court. Reply was filed by the Registrar. Public Trust. It was mentioned in the reply that out of the five trustees appointed, Shri Gulab Chandra and Shri Durga Prasad hail from the caste/family of the author of the trust. An objection was raised that Durga Prasad and others have not been arrayed as party on 2-7-1988. Thereafter only four persons were added, not Durga Prasad. He was still left out. Reply was filed on behalf of non-applicants No. 2, 3 and 4. It was mentioned in the reply dated 23-8-1989 that Durga Prasad had filed a writ petition -- M.P. No. 1267/87 before the High Court of Madhya Pradesh at Jabalpur. The order was passed in the present case by the Registrar on 8-6-1987 and the petition was filed on 5-8-1987. Obviously, it was not presented within 30 days. It may further be seen that the case in which the order was passed was Kashiram v. Ghanshyam Prasad. Neither Kashiram nor Ghanshyam Prasad were arrayed as a party. Trust was also not impleaded only Registrar of Public Trust was arrayed as a respondent in the said petition.

It does not appear that any enquiry was conducted by the Court before setting aside the order. Even copy of the document under which the trust was created in the year 1989 is not on record. After filing of the reply the case was not posted for holding any enquiry and outright the arguments were heard. The application filed by Ghanshyam Prasad Patel to Implead him as party was left undecided and the order was passed, setting aside the order of the Registrar. Public Trust, on 22-12-1989.

Two separate proceedings were moved before the learned Court below for setting aside the order passed by learned District Judge. Ghanshyam Prasad Patel filed an application which was registered vide MJC No. 7/90 for setting aside the order dated 22-12-1989 which was passed without impleading him and without deciding his application to implead. It was contended that he was a necessary party in the main proceedings and without hearing him no order could be passed since he happened to be Managing Trustee, still he was not impleaded as a party and it is apparent from the record that even the trust was not impleaded as party to the proceedings.

Another application was filed for setting aside the order dated 22-12-1987 by

Gajendra Singh Yadav, Sunderlal Patel, Laxmi Prasad Patel and Gulab Chadhar.

The application filed by Ghanshyam Prasad Patel was dismissed by the Court below vide order dated 3-3-1992 on the ground that since he had filed only application to be impleaded as a party, even though he may be a necessary party, since the Court had passed final order, hence, application under Order 9, Rule 13, C.P.C. was not maintainable and it was open for him to file a civil suit challenging the order. That order has been impugned in M.A. No. 369/92.

The application which was filed by 4 trustees, who were removed, for setting aside the order dated 22-12-1989 passed by the First Addl. District Judge. Jabalpur was registered as MJC No. 8/90. That has been dismissed on the ground that though the applicants were served, counsel absented himself. Court has decided the matter on merits. It was held that since the order passed was not amounting to a decree, hence, the Order 9, Rule 13 petition was not maintainable. The Court at the same time has held that it was not necessary to hear them again, even if there was sufficient cause for their absence when the order was passed.

In my opinion, both the orders which have been passed by the Court below deserve to be set aside, so also the order dated 22-12-1989 which has been passed in the main case by the learned court below. In the absence of, trust having been impleaded as party it was not open for the court-below to have proceeded in the matter. It ought to have dismissed the application for want of joinder of the trust as it was a vital defect in the petition. Secondly, the proceedings in which the order was passed by the Registrar, Public Trust in the case of Kashiram v. Chanshyam Prasad, (the Managing Trustee), was impugned before the Court, Chanshyam Prasad was a party, though allegations, were made against him and several grounds were raised against him and even prayer was made for removal of Ghanshyam Prasad Patel from Managing Trustee-ship in ground No. 5 in the petition filed before the District Court, still he was not impleaded as a party. He was obviously necessary party in view of the allegations which were made in the main petition u/s 25(3) of the M.P. Public Trusts Act.

It may further be seen that u/s 27 the Court has to conduct an enquiry into the case it deems fit and pass such orders thereon as it may consider appropriate, and the Court is empowered to pass the orders as mentioned in sub-section (2) of Section 27, for removing any trustee or appointing a new trustee etc. Sub-section (3) of Section 27 further provides that any order passed by the Court under Sub-section (2) shall be deemed to be a decree of such Court and an appeal shall lie therefrom to the High Court. Section 30 of the M.P. Public Trusts Act, 1951 provides that the provisions of CPC in so far as they are not consistent with the provisions of the Act, shall apply to all proceedings before the Court under the said Act. Section 25(3) of the Act runs thus :

"25(3) -- If the working trustee fails to give any such information or to fill the vacancy within the time specified by him or to comply with any direction issued

by the Registrar, the Registrar may, by order passed in writing, fill the vacancy and any person having interest in the public trust who may be aggrieved by the order of the Registrar, may apply to the Court for setting aside the order of the Registrar within thirty days from the date of such order."

Section 27 of the Act runs thus :

"27. Court's power to hear application. -

(1) On receipt of such application the Court shall make or cause to be made such inquiry into the case as it deems fit and pass such orders thereon as it may consider appropriate.

(2) While exercising the power under Sub-section (1) the Court shall, among other powers , have power to make an order for :--

(a) removing any trustee;

(b) appointing a new trustee;

(c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(d) providing a scheme of management of the trust properly;

(e) directing how the funds of a public trust whose original object has failed, shall be spent, having due regard to the original intention of the author of the trust or the object for which the trust was created;

(f) issuing any directions as the nature of the case may require.

(3) Any order passed by the Court under Sub-section (2) shall be deemed to be a decree of such Court and an appeal shall lie therefrom to the High Court.

(4) No suit relating to a public trust u/s 92 of the Code of Civil Procedure, 1908 (V of 1908), shall be entertained by any Court on any matter in respect of which an application can be made u/s 26."

Section 30 of the Act runs thus :

"30. CPC to apply to proceedings under this Act. -- Save in so far as they may be inconsistent with any thing contained in this Act, the provisions of the Code of Civil Procedure, 1908 (V of 1908). shall apply to all proceedings before the Court in this Act."

Moreover, the District Court has not held any enquiry though the definite mode of enquiry is not prescribed, but. the Court is bound to conduct an enquiry. Case was not posted for recording evidence at any stage after reply was filed. Outrightly arguments of one side were heard and order was passed.

It may further be seen that an order was passed by this Court in M.P. No. 1267/87 on 2-11-1998, though this was not available at the time when the matter was

heard. The order which was passed by Registrar of Public Trust dated 2-3-1987 was Annexure E in the said petition was set aside. The order dated 2-3-1987 was also referred in petition u/s 25(3) of the Act, which was relied upon by applicants Yashwant Singh. Madan Bihari and others, in Misc. Civil Case No. 59/87 filed before the Addl. District Judge , Jabalpur in paragraph No. 4 of the narration of the fact and ground No. 2. Since that order has been set aside the effect of the same has also to be taken in to account.

Learned court-below has erred in holding that proceedings under Order 9, Rule 13. C.P.C. were not maintainable as the order was not amounting to a decree vide order dated 22-12-1989 learned District Court has removed trustees appointed by the Registrar of Public Trust. When an application is made u/s 25 or 26, the procedure prescribed u/s 27 has to be adopted. u/s 27 sub-section (3), if any order has been passed under sub-section (2) removing any trustee or appointing any trustee, it is deemed to be a decree of such Court and an appeal has been provided to High Court. Thus, an order passed with respect to removal of the trustee who was appointed is within the purview of Section 27(2) of the M.P. Public Trusts Act 1951, Proceedings under Order 9, Rule 13. C.P.C. were thus clearly maintainable. Section 30 of the M.P. Public Trusts Act, 1951 has made applicable, the provision of C.P.C. to the extent not inconstant with the provision of the Act. There is no inconsistency in the Act with respect to provision of Order 9, Rule 13, C.P.C.

As the necessary parties were not impleaded, and no enquiry was conducted the orders passed in both the MJCs out of which the present appeals arise, which were filed to set aside the order dated 22-12-1989 are liable to be quashed. The impugned orders dated 3-3-1992 passed in MJC No. 7/90 and MJC No. 8/90 which are subject matter of M.A. No. 369/92 and M.A. No. 463/92 are quashed. Both the appeals are allowed. The order dated 22-12-1989 is also set aside. Learned Court below is directed to proceed further in the matter after ensuring impleadment of all the necessary parties, trust and Ghanshyam Prasad Patel. Durga Prasad and to decide the matter afresh. Parties are directed to bear their own costs as incurred in the present appeals.