
(2015) 03 MP CK 0004
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1342/15

Jai Prakash Agrawal

APPELLANT

Vs

Anand Agrawal and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 11, 151
Constitution of India, 1950 — Article 227
Madhya Pradesh Civil Courts Act, 1958 — Section 15(2), 15(2)(3), 15(3), 2, 20
Madhya Pradesh Public Trust Act, 1951 — Section 2, 2(1), 25

Citation : (2015) 2 JLJ 162 : (2015) 4 MPLJ 293

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; K.S. Tomar, Senior Advocate and J.S. Kaurav, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sujoy Paul, J.—This petition filed under Article 227 of the Constitution challenges the order dated 13.2.2015 passed by third Additional District Judge, Vidisha in Case No. 26A/13.

2. The respondents No. 1 to 3 filed a suit for declaration and permanent injunction (Annexure P-2). Admittedly, the said suit was filed on the basis of the Special Act, i.e., M.P. Public Trust Act, 1951 (Act of 51). In the course of proceedings, the present petitioner/defendant No. 2 filed an application under Section 151 CPC (Annexure P-4). In the said application, it is contended that the learned District Judge has issued a distribution memo for the year 2013-2014 and 2015. As per memo, cases under the Special Acts needs to be heard only by the District and Sessions Judge, Vidisha. On the basis of aforesaid stand, it is contended by the petitioner that this fact was suppressed by the plaintiff and the suit was directly filed before the Court of Additional District Judge. It is contended that as per the M.P. Public Trust Act, the jurisdiction is vested with the Principal Civil Court. The Court of Additional District Judge cannot be treated as

the Court of Principal Civil Court. Lastly, it is prayed that the suit be returned to plaintiff by reserving liberty to him to present it before the appropriate court. The Court below by impugned order has rejected the said application.

3. Criticizing this order, Shri D.D. Bansal, learned counsel for the petitioner drew the attention of this Court on Section 2 of the MP Public Trust Act which defines the word "Court". He submits that definition of the "Court", means Principal Civil Court of original jurisdiction in the district. By taking this Court to Section 7 of the Civil Courts" Act, 1958 (Act of 58) it is contended that the Court of District Judge shall be the Principal Civil Court of original jurisdiction in the Civil District. To elaborate, he contends that the Additional District Judge can discharge any of the functions of District Judge including functions of Principal Civil Court of original jurisdiction, provided there exists a general or special order of the District Judge assigning this work for the purpose of discharging the said function by the Additional District Judge. He contends that a conjoint reading of Section 2 of M.P. Public Trust Act with Section 7 of the Civil Courts" Act leaves no room for any doubt that the instant suit, in absence of any general or special order of the District Judge, could not have been presented before the Additional District Judge. The attention is also drawn on the distribution memo dated 2.4.2012 (Annexure P-6). It is contended that if the instant suit is examined only on the anvil of pecuniary jurisdiction, no doubt, the Additional District Judge had jurisdiction to entertain the matter. It is contended that the matter need not be examined in the light of pecuniary jurisdiction because it is a matter which is squarely covered under Clause 1(4) of the distribution memo which makes it clear that if it is otherwise described, it is only the District Judge under the special act who can try the suit. In support of his contentions, Shri D.D. Bansal relied on following judgments:-

Vinod Kumar Jajodia and Others Vs. Brij Bhushan Agarwal, , 1988(II) MPWN SN 98 (Gomti Bai (Smt.) Vs. Shivnaraian), Rasheed Khan and Another Vs. Peer Mohammad, , Kamala and Others Vs. K.T. Eshwara Sa and Others, and (v) Kuldeep Singh Vs. The State of Punjab and Another, . 4. Per contra, Shri K.S. Tomar, learned Senior counsel drew the attention of this Court on Section 3, Section 7 and Section 15(2) of the Act of 1958. In addition, he submits that Section 3(1)(2) stood omitted by M.P. Act of 1996 w.e.f. 1/2/1997. Putting it differently, Shri Tomar, learned senior counsel submits that earlier the words "the Court of Additional District Judge" were there in Clause 2 of Section 3(1). This clause was omitted by the Legislature which shows that there exists no distinction between the District Judge and Additional District Judge. By taking this Court to Section 15(2) of the Civil Courts" Act, 1958, the learned senior counsel submits that even if there was some error as per the distribution memo, no interference can be made in view of the language of Sub Section 2. In support of his contention, he relied on following judgments:-

Ravi Prakash Pujari Vs. Hemraj, , Surendra Kumar Lakhera Vs. Malik Singh Chawla and Others, , Dr. Yasmin Khan Vs. Samiullah Khan, and (iv) N.K.

Saxena and Another Vs. State of M.P. and Another, . 5. Lastly, it is contended by Shri Tomar that petitioner earlier raised similar objection by preferring an application under Order 7 Rule 11 read with Section 151 CPC. The said application was rejected by the Court below by order dated 7.5.2014. This order was unsuccessfully put to test before this Court. This Court decided the Civil Revision No. 59/14 on 29.9.2014. The order dated 7.5.2014 to the extent indicated above was not interfered with. In view of the order passed by this Court, it was not open to the petitioner to raise the same point by preferring application under Section 151 CPC (Annexure P/4).

6. Shri D.D. Bansal, learned counsel for the petitioner, in his rejoinder submission submits that Order 7 Rule 10 CPC makes it crystal clear that if the suit is not tenable before a particular Judge, it must be returned to the plaintiff to enable him to present it before an appropriate Court. He submits that in the present application, which has been decided by the impugned order, the prayer was not to dismiss the suit but was to return the suit by applying the principle flowing from Order 7 Rule 10 CPC.

7. No other point is pressed by learned counsel for the parties.

8. I have bestowed my anxious consideration on the rival contentions and perused the record.

9. I deem it proper to deal with the last objection of Shri Tomar, learned Senior Advocate for the respondents, at the earliest. The objection of Shri Tomar is based on the finding given by the Court below in order dated 13.02.2015. In the impugned order, the court below has relied on its earlier order passed on 07.05.2014 and 16.01.2015. The Court below decided certain IAs by the said orders. A plain reading of the said orders show that in the earlier round the Court below dealt with the objection whether the order of Registrar, Public Trust Vidisha dated 15.05.2012 falls within the ambit of Section 25 of M.P. Public Trust, Act 1951. The said orders further show that the question of pecuniary jurisdiction was decided while deciding IA No. 14 by the court below. However, the question of jurisdiction of Additional District Judge on the anvil of present grounds of challenge was not subject matter of earlier orders. In other words, in earlier orders dated 07.05.2014 and 16.01.2015 (Annexure R/1 and R/2) the court below did not deal with the objection whether the present suit which is arising out of special Act can be tried before the ADJ. This was also not dealt with whether as per distribution memo, a matter arising out of Special Act can be dealt with by ADJ. Thus, I am unable to hold that the said orders are of any assistance on this aspect to the respondents. Even if the said orders are upheld by this Court in CR No. 59/2014 (Annexure P/3), the present issues being different, earlier order will not come in the way of petitioner in raising the aforesaid objection.

10. I deem it apposite to reproduce certain relevant provisions before dealing with the other rival contention of the parties. Section 2(1) of Act of 1951 defines

"Court" as under:-

"2.(1) "Court" means the Principal Civil court of original jurisdiction in the district." Section 7 of Act of 1958 reads as under :-

"7. Principal Civil Court of original jurisdiction :-

(1) The Court of the District Judge shall be the Principal Civil Court of original jurisdiction in the civil district.

An Additional District Judge shall discharge any of the functions of a District Judge, including the functions of Principal Civil Court of original jurisdiction which the District Judge may, by general or special order, assign to him and in the discharge of such functions he shall exercise the same powers as the District Judge."

Section 15(2)(3) of Act of 1958 reads as under :-

"15. Power to distribute business-

(1) xxxx xxxx xxxx

(2) Any judicial act in any suit, appeal or proceeding, instituted in a Court of competent jurisdiction, shall not be invalid only by reason of the fact that such institution was not in accordance with the order of distribution of business referred to in sub-section (1).

(3) Whenever it appears to any Court, as is referred to sub-section (2) that institution of any suit, appeal or proceeding, pending before it, was not in conformity with the order of distribution of business made under subsection (1), it shall submit the record of such suit, appeal or proceeding, as the case may be, to the District Judge for appropriate orders, and the District Judge in relation thereto may pass orders either transferring the concerned record to proper court as per order of distribution of business or otherwise to any other Court of competent jurisdiction.

(4) xxxx xxxx xxxx"

(Emphasis supplied)

11. The argument of the petitioner is that as per aforesaid provision, the Principal Civil Court of original jurisdiction is the District Judge. As per distribution memo dated 02.04.2012 (Annexure P/6) the matters arising out of special Act needs to be dealt with by the District Judge only, the relevant entry reads as under :-

It is contended that the Additional District Judge can function as a District Judge based on any general or special order by which the work is assigned to him. Shri Tomar, learned senior counsel relied on Section 3 of Act of 1958, it reads as under :-

"3. Class of Courts:- (1) In addition to the Courts established under any other law for the time being in force, there shall be the following classes of Courts namely :-

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

(2) Every Court of the District Judge shall be presided over by a District Judge to be appointed by the High Court and the High Court may also appoint Additional District Judges from the Cadre of Higher Judicial Service to exercise jurisdiction in the Court of District Judge.

(3) An Additional Judge to the Court of Civil Judge may be appointed from the cadre of Lower Judicial Service.

(4) The court of District Judge shall include the court of Additional District Judge and the Court of Civil Judge Class I and Class II shall include the court of Additional Civil Judge to that court."

12. Shri Tomar has taken pains to submit that once Sub- Section 2 of Section (3) is deleted from the statute book there remains no distinction between the District Judge and Additional District Judge. Thus, Additional District Judge for all practical purposes became equivalent to the District Judge. The District Judge, at best, may have some extra administrative powers. So far judicial function is concerned, there exists only one cadre of District Judge which includes Additional District Judge. It is also submitted that even if there is an error in any judicial act of ADJ as per distribution memo it will not be invalid.

13. In the first blush the argument appears to be attractive. This argument deserve serious consideration. The definition of "Court" in Act of 1951 makes it clear that Principal Civil Court of original jurisdiction in the District has the jurisdiction to deal with the matters arising out of this Act. Section 7(1) of Act of 1958 makes it clear that the District Judge shall be the Principal Civil Court of original jurisdiction. Sub-Section 2 of Section 7 makes it crystal clear that Additional District Judge can discharge any of the functions of the District Judge including the functions of Principal Civil Court of original jurisdiction which the District Judge by general or special order assigns to him. Thus, in my view, the District Judge is the Principal Civil Court of original jurisdiction. The Additional District Judge assumes or derives jurisdiction based on the assignment to him by general or special order of the District Judge.

14. In the present case, apart from distribution memo (Annexure P/6), no other general or special order of District Judge is shown to this Court. Annexure P/6 makes it clear that so far special enactments are concerned, it is the District Judge who alone has jurisdiction to deal with it. The pecuniary jurisdiction which

otherwise may be available to ADJs cannot be made applicable where litigation is arising out of any special enactment. Putting it differently, in the instant suit, as per the pecuniary jurisdiction the ADJ may have jurisdiction, but the real question is regarding his jurisdiction in relation to a special Act.

15. Shri Tomar relied on judgment of Kuldip Singh (Supra) in my view, said judgment deals with provision of Cr.P.C which has no application in the factual matrix of the present case. In the present case, the objection needs to be decided on the basis of statute in hand i.e. M.P. Public Trust Act and Civil Courts Act. He also relied on Gomti Bai (Supra). The said judgment has no application in the facts and circumstances of the present case. Reliance is also placed on the judgment of Vinod Kumar Jajodia (Supra). A careful reading of this judgment shows that the court was basically dealing with the question whether Additional District Judge to the Court of District Judge can exercise same power in absence of any order of the State Government as contemplated by Section 8 of the Act. In para 3 of this judgment, this Court opined that " According to Sub-Section 2 of Section 7 of the Act, they are (ADJs) competent to discharge any of the functions of a District Judge, including the function of Principal Civil Court of original jurisdiction which the District Judge may by general or special order, assign to him and in the discharge of such functions he shall exercise the same powers as the District Judge. Similarly, Judgment of Rashid Khan (Supra) is of no assistance to the respondents in the facts and circumstances of the present case. The judgment of Apex Court in Kamala (Supra) also has no application in the present factual backdrop.

16. In my view, a conjoint reading of Section 7(2) and distribution memo makes it clear that principally the District Judge has the jurisdiction to deal with the cases arising out of Special Act, i.e. Trust Act. If there exists a general or special order assigning the work to ADJ, he assumes jurisdiction and can entertain and decide the matter. Any other interpretation will make Section 7(2) as redundant. Section 15(2) of Act of 1958, at best, provides that if the proceeding is instituted in the "court of competent jurisdiction". An ADJ court can be held to be a court of competent jurisdiction provided there exists a general or special assignment order of District Judge as per Section 7(2) of the Act of 1958. In absence there to, Section 15(2) is of no assistance.

17. So far the argument of Shri Tomar regarding deletion of sub-section 2 of Section 3 from the Act of 1958 is concerned, this will have no impact whatsoever on the requirement as per Section 7(2) of the Act of 1958. A division Bench of this Court in N.K. Saxena (Supra) opined as under :-

"14. A reading of the provisions of the Civil Courts Act, as amended by the Act No. 17 of 1982 extracted above would show that although the Court of District Judge and the court of Additional District Judge have been classified as two separate classes of Court under sub-section (1) of section 3, they belong to one and same cadre, namely, the cadre of Higher Judicial Service, and that the Additional District Judge and the District Judge exercise almost the same judicial

powers. Under sub-section (2) of section 7, Additional District Judge shall discharge any of the functions of a District Judge including the functions of Principal Civil Court of original jurisdiction which the District Judge may by general or special order assign to him and in the discharge of such functions, he can exercise the same powers as the District Judge."

(Emphasis supplied)

18. In Surendra Kumar Lakhera (Supra) and Yasmin Khan (Supra) this Court opined that distribution memo issued by the District Judge has force of law regarding procedure as to in which court the particular suit can be tried. Larger bench of this court in Rajendra Prasad Vs. Mahendra Singh Bargahi, opined as under :-

"We hereby clarify that as far as the first part of Section 20 is concerned, the District Judge has the jurisdiction to entertain the election petition and, therefore, in exercise of statutory powers conferred on him under M.P. Civil Courts Act he can assign the Additional District Judge to entertain and try the election petition." The reliance was also placed by Shri Tomar on Ravi Prakash Pujari (Supra). A plain reading of para 3 of the judgment shows that there existed an order passed by the District Judge conferring jurisdiction on Additional Judge. The said order of District Judge conferring jurisdiction was under challenge. Hence, said judgment has no application in the present matter.

19. To sum up, the argument of Shri Tomar was attractive at first blush, but on deeper analysis it is gathered that although Section 3(2) was deleted from the Act of 58, fact remains that Section 7(2) of said Act is still in existence. A plain reading of Section 7 makes it clear that sub-section 1 of Section 7 declares the District Judge as Principal Civil Court of original jurisdiction. This function of District Judge can be discharged by Additional District Judge if there exists a general or special order by the District Judge assigning him the said work. Thus, on deletion of section 3(2), requirement of Section 7(2) will not be vanished in the thin air. Any other interpretation will make Section 7(2) as non-existent. Same will be against the mandate of existing provision i.e. Section 7(2). In this view of the matter, the impugned order dated 13.02.2015 is liable to be interfered with,

20. Resultantly, the impugned order dated 13.02.2015 is set aside. Learned ADJ is directed to submit the record of instant suit to the District Judge for appropriate orders. District Judge, in turn, shall pass orders either transfer the concerned record to the appropriate Court as per order of distribution of business or to any other court of competent jurisdiction. Learned District Judge will be at liberty to exercise his power flowing from Section 7(2) read with Section 15(3) of the Act of 1958.

21. Petition is allowed to the extent indicated above. No costs.