(2024) 01 CHH CK 0103

In the Chhattisgarh High Court

Case No : Civil Revision No. 108 Of 2023

Maa Banjari Devi Temple Trust, APPELLANT

Vs

Pandit Ravishankar Tiwari RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 9, 80, 92, 115, Order 7 Rule 11
C.G. Public Trusts Act, 1951 — Section 2(1), 4(3), 4(5), 5(2), 6, 7, 7(1), 8, 8(1), 23, 24, 27, 28

Citation : (2024) 01 CHH CK 0103

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Neeraj Choubey, Ravindra Sharma

Final Decision : Allowed

Judgement

1. This revision has been preferred under Section 115 of the Code of Civil Procedure being aggrieved with the order dated 18.8.2023 passed by the Twelfth Additional Judge to First Civil Judge Class-II, Raipur (CG) in Civil Suit No.16-A/2023, whereby, the application preferred by the petitioner/defendant under Order 7 Rule 11 of the Code of Civil Procedure (in short "the CPC") has been dismissed.

2. Brief facts of the case are that in the premises of Pandit Ravi Shankar Shukla University, a temple is situated. The University, for better management of the temple, took a decision for constitution of the Trust Committee and thus, Regulation No.175 was framed by the University in the name of 'Maa Banjari Devi Temple Trust'. After due proceeding, the Registrar (Public Trusts)-cum-SDO (Revenue), Raipur vide order dated 22.12.2020 (Annexure P/2) passed in Case No.06/B-113(1) Year 2019-20 under Section 6 of the C.G. Public Trusts Act, 1951 (in short "the Act, 1951") gave a direction under Section 7 of the said Act to make the entry of the said Trust in the register in accordance with the finding recorded under Section 6 of the Act, 1951 and further, a Registration Certificate

was also issued on 22.12.2020 in the name of 'Maa Banjari Devi Temple Trust' at Sl. No.419. Thereafter, the respondent/plaintiff filed an appeal before the District Judge, Raipur vide MJC Trust Case No.18/2021. The learned District Judge, Raipur while dismissing the appeal vide judgment dated 24.9.2022 (Annexure P/5), observed that since no order has been passed by the Registrar under Section 23 of the Act, 1951, the appeal filed under Section 24 of the Act is misconceived. It was further observed that the person having interest in a Public Trust, if aggrieved by the finding of the Registrar under Section 6 of the Act, 1951, may institute a suit before the Civil Court within 6 months from the date of publication of the notice under sub-section (1) of Section 7, to set-aside or modify such finding. Against the said order, the respondent/plaintiff filed WPC No.4755/2022 before this Court and the same was withdrawn on 5.12.2022 and a liberty was reserved in favour of the respondent/plaintiff to avail other suitable remedies available under the law. Thereafter, the respondent/plaintiff filed the subject Civil Suit on 10.1.2023 -Annexure P/6 under Section 8 of the Act, 1951 for declaring himself as the trustee of Maa Banjari Devi Temple Trust and further seeking the declaration on the ground that the order dated 22.12.2020 (Annexure P/2) passed by the Registrar Public Trust is not binding on him. The plaintiff further sought permanent injunction against the defendant by allowing the plaintiff to render his services as a Priest in the said temple. In the said suit, the applicant/defendant filed an application under Order 7 Rule11 of the CPC, which was dismissed by the impugned order. Hence, this Revision.

3. Learned counsel for the applicant/defendant would submit that during the registration proceedings under the Act, 1951, three objections were filed including that of the brother of the respondent/plaintiff namely Ishwar Prasad Tiwari, S/o late Kirat Ram Tiwari. After taking into consideration all these aspects, the Registrar vide order dated 22.12.2020, overruled the objections and passed the order to the effect that the Trust is a Public Trust and the names and addresses of the Trustees and its Manager were mentioned in the order for registration of the Trust. The respondent/plaintiff was not an employee of Pandit Ravi Shankar Shukla University and the said temple is situated in the premises of the said University. He would further submit that to avoid any nuisance and for better management of the temple, the University had taken a conscious decision to form a Public Trust. He would also submit that the respondent/plaintiff only to satisfy his personal interest and in adverse to the interest of the Trust, challenged the finding of the Registrar by filing the subject suit under Section 8 of the Act, 1951. He would submit that any person having interest in a Public Trust can only file and challenge the finding of the Registrar and the person, who is having adverse interest to the Trust, is not the aggrieved person and is not entitled to institute a suit. For the above submission, he places reliance on the matter of Dharmendra Ratda Vs. State of M.P., 2014 SCC OnLine MP 7821, in which, the Madhya Pradesh High Court has placed reliance on the matter of Abdul Karim Khan and others Vs. Municipal Committee, Raipur, AIR 1965 SC 1744. He would further submit that even in the judgment rendered by the

Hon’ble Supreme Court in the matter of State of Maharashtra and another Vs. Shri Chander Kant, AIR 1977 SC 148, it has been held that for a suit under Section 8 of the Act to set-aside the order, notice under Section 80 of the Code of Civil Procedure was necessary as the order was passed by a Public Officer in his official capacity. However, in the present case, no such notice has been issued.

4. Learned counsel for the petitioner would submit that the Act, 1951 was enacted with a laudable object to regulate and to make better provision for the administration of public religious and charitable trust in the State. He would further submit that if there is mismanagement of the Public Trust or the object of the trust has failed, any person interested in the Public Trust may file an application before the Registrar to obtain directions of the Court in this regard. Even the Registrar may consider and file such an application before the principal Civil Court of original jurisdiction as defined under Section 2(1) of the Act, 1951 for appropriate directions to ensure better administration of the Public Trust and if such application is filed, a procedure has been stipulated under Section 27 of the Act, 1951 for removing any trustee or appointing a new trustee and issuance of any direction, as the nature of case may require. He lastly submits that even under Section 92 of the CPC with regard to public charities, a detailed procedure has been laid down to safeguard the interest of the trust property. To defeat such objects, such type of suit challenging the finding, which is in adverse to the interest of the Public Trust, cannot be allowed. Hence, he prays to allow the revision and set-aside the impugned order.

5. On the other hand, learned counsel for the respondent/plaintiff would submit that against the finding of the order dated 22.12.2020 (Annexure P/2), on a wrong advise, a miscellaneous appeal has been filed, which was dismissed vide order dated 24.9.2022-Annexure P/5. Again, challenging the said order, WPC bearing No.4755/2022 was filed, however, the same was also dismissed as withdrawn vide order dated 5.12.2022. He fairly submits that at the time of withdrawal of the writ petition, there was no specific direction to condone the delay in filing of the civil suit as under Section 8 of the Act, 1951, the suit was to be filed within 6 months from the date of publication of the notice under sub-section (1) of Section 7 of the said Act. He would further submit that in the subject suit, not only the finding of the Registrar of the Public Trust has been challenged but other relief has also been claimed, therefore, the bar of limitation does not attracts and more so, the said issue is mixed question of law and fact. He would further submit that before coming into existence of Pandit Ravi Shankar Shukla University, the temple was situated at the same place and the family of the respondent/plaintiff and his forefathers have been maintaining the said temple since then and their family members are performing the duties of the Priest in the said temple. He would further submit that the livelihood of the Priest is also dependent on such temple. However, while passing the order, the concerned Registrar, Public Trust, ignored the said issue that the family of the respondent/plaintiff is dependent on the earnings of the temple. He submits that though preliminary objection was raised earlier by the petitioner/defendant vide

Annexure P/7 but the same was dismissed vide order dated 21.6.2023 (Annexure P/8) and thereafter, on 30.6.2023, an application under Order 7 Rule 11 of the CPC was preferred seeking similar prayer, which was also dismissed vide the impugned order dated 18.8.2023. He would further submit that since the petitioner has not challenged the earlier order, this revision is bad in law on that score. Thus, the order passed by the trial Court is well merited which does not call for any interference.

6. Replying to the aforesaid submissions, learned counsel for the petitioner/ defendant would submit that since the earlier observation was made by the concerned Court on the wrong premises, therefore, subsequently, a specific application under Order 7 Rule 11 of the CPC was moved in the subject suit. However, dismissal of the valid objection raised through the said application by the defendant was dismissed on strict technicalities. He would submit that the provision of revision has been stipulated for the purpose of curing the irregularities.

7. Heard learned counsel for the parties and also perused the record with utmost circumspection.

8. In the matter of Abdul Karim Khan (Supra), it has been held that the persons interested in a public trust means the person who does not dispute the existence of the trust and not the persons who challenge the allegation that any property belongs to the said trust. It is only person interested in the public trust such as beneficiaries or others who claim a right to manage the trust, can file objections. It was further observed that the normal judicial concept of a person aggrieved by any order necessarily postulates that the said person must be a party to the proceedings in which the order was passed. The relevant para 10 to 14 read as under :

10. We are not impressed by this argument. In testing the validity of this argument, we must bear in mind the important fact that the Act is concerned with the registration of public, religious and charitable trusts in the State of Madhya Pradesh, and the enquiry which its relevant provisions contemplate is an enquiry into the question as to whether the trust in question is public or private. The enquiry permitted by the said provisions does not take within its sweep questions as to whether the property belongs to a private individual and is not the subject-matter of any trust at all. It cannot be ignored that the Registrar who, no doubt, is given the powers of a civil court under Section 28 of the Act, holds a kind of summary enquiry and the points which can fall within his jurisdiction are indicated by clauses (i) to (x) of Section 4(3). Therefore, prima facie, it appears unreasonable to suggest that contested questions of title, such as those which have arisen in the present case, can be said to fall within the enquiry which the Registrar is authorised to hold under Section 5 of the Act.

11. Besides, it is significant that the only persons who are required to file their objections in response to a notice issued by the Registrar on receiving an

application made under Section 4(1), are persons interested in the public trust — not persons who dispute the existence of the trust or who challenge the allegation that any property belongs to the said trust. It is only persons interested in the public trust, such as beneficiaries or others who claim a right to manage the trust, who can file objections, and it is objections of this character proceeding from persons belonging to this limited class that fall to be considered by the Registrar. It cannot be said that the respondent falls within this class; and so, it would be idle to contend that it was the duty of the respondent to have filed objections under section 5(2).

12. It is true, Section 8(1) permits a suit to be filed by a person having interest in the public trust or any property found to be trust property. The interest to which this section refers must be read in the light of section 5(2) to be the interest of a beneficiary or the interest of a person who claims the right to maintain the trust or any other interest of a similar character. It is not the interest which is adverse to the trust set up by a party who does not claim any relation with the trust at all. That is why we think the finality on which Mr Sinha's argument is based cannot avail him against the respondent inasmuch the respondent was not a party to the proceedings and could not have filed any objections in the said proceedings.

13. Then again, the right to file a suit to which Section 8(1) refers is given to persons who are aggrieved by any finding of the Registrar. Having regard to the fact that the proceedings before the Registrar are in the nature of proceedings before a civil court, it would be illogical to hold that the respondent who was not a party to the proceedings can be said to be aggrieved by the findings of the Registrar. The normal judicial concept of a person aggrieved by any order necessarily postulates that the said person must be a party to the proceedings in which the order was passed and by which he feels aggrieved. It is unnecessary to emphasise that it would be plainly unreasonable to assume that though a person is not a party to the proceedings and cannot participate in them by way of filing objections, he would still be found to file a suit within the period prescribed by Section 8(1) if the property in which he claims an exclusive title is held by the Registrar to belong to a public trust.

14. Similarly, the right to prefer an appeal against the Registrar's order prescribed by Section 4(5) necessarily implies that the person must be a party to the proceedings before the Registrar; otherwise how would he know about the order? Like Section 8(1), Section 4(5) also seems to be confined in its operation to persons who are before the Registrar, or who could have appeared before the Registrar under section 5(2). The whole scheme is clear; the Registrar enquires into the question as to whether a trust is private or public, and deals with the points specifically enumerated by Section 4(3). Therefore, we have no hesitation in holding that the courts below were right in coming to the conclusion that the fact that the property now in suit was added to the list of properties belonging to the wakf, cannot affect the respondent's title to it. On the merits, all the courts

below have rejected the appellants' case and have upheld the pleas raised by the respondent in defence.

9. Further, in the matter of State of Maharashtra and another (Supra), it has been categorically held that notice under Section 80 was necessary for filing of a suit contemplated in Section 8 of the Act, 1951 and the relevant para 14 & 15 read as under :

14. The language of Sec. 80 of the Code of Civil Procedure is that a notice is to be given against not only the Government but also against the Public Officer in respect of any act purporting to be done in the official capacity. The Registrar is a Public Officer. The order is an act purporting to be done in his official capacity.

15. In the present case, the suit is to set aside the order made by a Public Officer in respect of an act done in the discharge of his official duties. Therefore, notice under Section 80 of the Code of Civil Procedure was required.

10. Moreover, in the matter of Bismillasab and others Vs. Habib Miyan, 1962 SCC OnLine MP 164: ILR 1962 MP 719, the following was materially observed :

"…..No amount of dex-terity in drafting the pleadings would alter or in any way enlarge the rights of parties and enable them to override the provisions of Sections 7 & 8 of the Act and Section 9 of the Code of Civil Procedure. Though the plaintiff has avoided to directly seek the relief that the entries made in the register may be set aside or modified it is clear that in essence and substance, he claims that the trust be not held to be a public trust and the properties attached to the trust should not be held to be the properties of a public trust. The purpose of the plaintiff is nothing else but to get rid of the adverse effect of the entries on his rights. The question of declaration and injunction would only arise if it is first found that the Registrar was wrong in holding the trust to be a public trust. It is an accepted principle that pleadings have to be construed by looking to the substance of the plaint and not merely its form. The Registrar on these cardinal points held against the plaintiff. The plaintiff's whole effort in the suit is to have this position dislodged. I may add that if the interpretation desired by Shri Jakatdar is to be given effect to, the provisions contained in the Act with regard to conclusiveness and finality of the entries in Section 7 of the Act subject only to the decision of a suit under Section 8 will have little meaning left in them and the whole provision would be rendered nugatory. I am of the view that the suit is governed by six months limitation as prescribed under Section 8 of the Act and it having been instituted much beyond that period, it must be held to be barred by time."

11. Revering back to the facts of the present case, in view of the aforesaid settled legal propositions and also considering that the respondent/plaintiff has filed and challenged the finding under Section 8 of the Act, 1951 for his personal interest and not in the interest of the Public Trust, this Court is of the opinion that the suit is not maintainable under Section 8 of the Act, 1951.

12. Accordingly, the impugned order dated 18.8.2023 is not sustainable and the same deserves to be and is hereby set-aside.

13. Consequently, the revision is allowed.

14. Before parting with the case, it is observed that the plaintiff, his family members and his forefathers have been performing worship as Priest in the said temple since long and their livelihood also depends to some extent on the earnings of the temple. Therefore, while framing the Scheme of Management of the Trust Property, the appropriate authority may consider this aspect and put a notice on the Notice Board on a conspicuous place in the said temple that if any offerings is made by any devotee in the offering box, the same shall be used for the infrastructure, development and other activities of the temple and the offerings which are being made by the devotees at the time of Aarti or before the idol directly, the same shall be utilised for the livelihood of the Priest and his family members. Further, any norms or schemes may be formulated or some remuneration may be fixed in this regard and if the service of the plaintiff is found satisfactory and there is no complaint from public or any devotee, the concerned authority may consider him for continuation as Priest, which may also be considered by the Trust. However, if the Trust does not consider such prayer, the plaintiff may move before the concerned Registrar for appropriate direction by the concerned Court under Section 26 of the Act, 1951 and if any such application is moved, the principal Civil Court shall deal with it strictly on its own merits in accordance with law without being influenced by any of the observations made herein-above.

15. Let a copy of this order be sent to the concerned Court for necessary compliance.