

(1978) 08 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous (First) Appeal No. 69 of 1973

Narayandas

APPELLANT

Vs

Registrar, Public Trusts, Bilaspur and Others

RESPONDENT

Date of Decision : 29-08-1978

Acts Referred:

Madhya Pradesh Public Trust Act, 1951 — Section 26, 26(1), 27(2)

Citation : AIR 1979 MP 99 : (1981) ILR (MP) 755 : (1979) 24 MPLJ 227 : (1979) MPLJ 227

Hon'ble Judges : Raj Krishna Tankha, J;C.P. Sen, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; Ram Kumar Verma, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.

This is an appeal u/s 27 (3) of the M. P. Public Trusts Act, 1951 (hereinafter referred to as the Act) read with Section 96 of the Civil P. C. against the order passed by the Additional District Judge u/s 27 of the Act holding that the appellant has no claim to the office of Mahant of Shri Jagannathji Public Trust, Champa, and he be divested of the scheduled proper- ties of the said trust in his possession and he is further restrained from interfering with the affairs of the trust.

The facts which are not in dispute are that sometime in the year 1889 (Sam-vat 1945) Premsingh, the then Zamindar of Champa, had created a trust on 3-12-1954 now called Temple Shri Jagannathji Public Trust. In the premises of the said trust there is also an idol of Shri Ramchandraji and other idols. On 30-10-1953 Mahant Ramcharandas, who called himself Pujari and Sarbarakar (Manager) of the temple, applied for registration of the public trust u/s 4 of the Act In his application, he disclosed that the office of the trustee (which he called

working trustee) devolved by inheritance from the founder and the manager was appointed by the trustee. In due course, an enquiry was made and ultimately the trust was registered and relevant entries were made in register prescribed by the Act showing that the office of the trustee was to go by inheritance from the founder. The said Mahant Ramcharandas died on 28-7-1959. Thereupon, in September 1959 the trustee Rani Upman Kumari Devi appointed respondent No. 3 Salharoo Prasad as Pujari and Sarbara-kar of the trust. She also made an application u/s 9 for correction of the entry in the register by substituting the name of Salharoo Prasad in place of Mahant Ramcharandas. The application was contested by the appellant. By order dated 23-2-1961 the Registrar upheld the right of the trustee to appoint Pujari and Sarbarakar for the trust, directed the relevant entry be corrected and ordered that the property belonging to the trust be placed in possession of Salharoo Prasad. Aggrieved by this order, the appellant filed Civil Suit No. 1-A of 1961 in the Court of IIIrd Additional District Judge, Bilaspur. However, he withdrew the suit on 4-9-1961. The appellant then filed Misc. Petition No. 279/61 calling in question the order of the Registrar dated 23-2-1961. By order dated 8-1-1962 the petition was partly allowed on the short ground that the provisions of the Act did not empower the Registrar to interfere with possession of trust property by a person like Mahant Narayandas who himself claimed to be entitled to manage it. On 18-1-1962 the Registrar made an application u/s 26 (2) of the Act praying that the appellant be removed from his office as a trustee de son tort which office he has usurped and he be ejected from the properties of the public trust and Rani Upman Kumari Devi be placed in possession. The application was opposed by the appellant who also filed an application u/s 26 of the Act with a request that the matters raised therein be also forwarded to the Civil Court for order. It appears that thereafter proceedings u/s 145 of the Cr. P. C. were started between the parties and ultimately Rani Upman Kumari Devi was placed in possession of the trust property and the order was maintained in revision by this Court. The Additional District Judge by his order dated 7-8-1967 rejected the application of the Registrar while allowing the application of the appellant holding that there existed another public trust, that is a Math at Champa, and the temple of Jagan-nathji with the property dedicated to it was the part of this Math. The appellant was entitled to succeed Ramcharandas as Mahant of the Math, being Chela of Ramcharandas and further in view of the will made by Ramcharandas. As such, the appellant was entitled to continue in possession of the trust property. In appeal, this Court by its order dated 8-10-1968 reversed most of the findings of Addl. District Judge and remanded the case back to the trial Court with a direction for a fresh decision in accordance with law with advertence to the observations made in the remand order. This Court was of the opinion that the remand was necessary because no finding was given by the trial Court as to whether there were circumstances which entitled the Registrar to invoke its jurisdiction u/s 26 of the Act (wrongly mentioned as Section 27). Thereafter, the learned Addl. District Judge after hearing the parties has given a fresh decision holding that Kumar Rud-rasharan Singh as successor of Rani Upman Kumari Devi is the trustee of the said public trust and he has

right to manage the trust property. It was further held that the appellant has no claim to the office of Mahant of the said public trust and he be divested of the trust properties in Ms possession which he delivered to the nominee of the trustee.

The Registrar in his application u/s 26 (2) of the Act had submitted that the temple of Shri Jagannathji was registered as a public trust under Sections 5, 6 and 7 of the Act by the Registrar, Public Trusts, Bilaspur, and the public trust, the temple of Jagganathji, includes 2 Maths and temple of Shri Ramchandrajji and other idols. The temple premises were popularly known as Math though they were not so in the accepted legal sense. He further submitted that appellant Mahant Narayandas is an imposter and a trespasser on the properties of the public trust. He has been mismanaging the properties of the public trust and misusing its funds. He has also been threatening to take forcible possession of the Matha and the temples and to interfere with their management. As such the direction of the Court is necessary for the administration of the public trust. Narayandas has usurped the management of some of the trust properties and is unauthorisedly managing them resulting in the failure of the trust. He is mismanaging and misappropriating the trust property. He is indulging in these acts under claim of trusteeship. He is, thus, a trustee de son tort. The Registrar, therefore, prayed that the appellant be removed from his office as a trustee de son tort which office he has usurped and he be ejected from the properties of the public trust and Rani Upman Kumari Devi or her nominee be placed in possession thereof. A further declaration be given that the trust shall be administered only by the working trustee or by her nominee. He also prayed that a permanent injunction be issued restraining the appellant from interfering with the affairs of the trust.

The appellant made a separate application u/s 26 of the Act requesting the Registrar to forward the same to the Civil Court for deciding the same along with the application made by the Registrar. The appellant also filed a separate written statement before the trial Court. The appellant contested the application of the Registrar and submitted that there existed at Champa an ascient Math founded by Digambari Nihangas during the Maratha regime and in the Math premises there are temples of Shri Jaganathji and Shri Ramchandrajji. These two temples were accretion to the said Math. The management of the Math including the two temples were always remained with the Mahant of the Math who was the Sar-barakar, Pujari and the sole administrator. The office of the Mahant devolved from Guru to Chela according to the usage and customs of the Nihangas. The appellant being the Chela of late Mahant Ramcharandas, he succeeded as Mahant. Besides, Mahant Ramcharan- das had by his will dated 16-7-1959 nominated the appellant to succeed as Mahant on his death.

As mentioned earlier, the trial Judge by his order dated 7-8-1967 rejected the application of the Registrar but allowed the application of the appellant and directed that the appellant being the Mahant of Champa Math to which the

temples of Jagannathji and Ramchandraji are affiliated, he alone is entitled to manage the trust properties. This order was set aside by this Court on 8-10-1968 in Misc. F. A. No. 161 of 1967 and the case was remanded back for fresh decision with advertence to the observations made in the remand order. In the remand order this Court disagreed with the views expressed by the trial Judge on most of the issues and, therefore, the order of the trial Judge was set aside. (1969 MPLJ 74). Here both the parties agree that the conclusions reached on several issues by this Court in the said remand order are binding on both the parties and also on this Court. Such findings can only be challenged in appeal to the Supreme Court and not here in this Court. This also seems to be the correct legal position. The Supreme Court in *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, has held that the principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial Court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again at a subsequent stage of the same proceeding. But an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken can be challenged in an appeal from the final decree or order. Further elaborating this question a Division Bench of this Court in *Shyamacharan Raghubar Prasad Vs. Sheojee Bhai Jairam Chattri and Another*, has held that an interlocutory order is final as regards the Court making that order. Section 105 only postpones the challenge to an interlocutory order till an appeal is preferred from the final decree. But the challenge must be in an appeal from the final decree filed not in the Court making the interlocutory order attacked, but in the appeal ultimately taken to the higher court from the final decree.

This being the position, it is necessary to note at length the findings reached by this Court in the said remand order (1969 MPLJ 74). This Court reiterated the position that Registrar cannot exercise its powers u/s 26 unless and until the trust is first declared to be registered as a public trust under Chapter 2 of the Act. Since the appellant in his application u/s 26 had raised several contentions which essentially relate to another trust, a Math, which is not registered as a public trust and, therefore, the application was not maintainable u/s 36 of the Act. It was further held that it was not open to claim relief praying for a declaration that the properties in suit belong to a trust which is not registered. An application u/s 26 can only be entertained if it is shown that the circumstances mentioned in any of the Clauses (a), (b) and (c) of Section 26 (1) of the Act exist. It has further been held that the appellant is also debarred from raising contention in his application u/s 26 that there is a separate public trust because the appellant claims through Mahant Ram-charandas on whose application the temple of Shri Jagannathji was registered as a public trust. The properties claimed to be belonging to the said Math are already shown in the register as belonging to Shri Jagannathji temple trust and those entries are final and cannot be questioned by the appellant. The appellant had also admitted the

installation of deity of Shri Jagannathji by the founder who made a separate endowment for the worship of the deity and upkeep of the temple. In the order of the Registrar dated 23-2-1961 the mode of devolution of the office of Pujari and Sarbarakar has been shown, that is, he could be appointed by the managing trustee. Against that order, the appellant had filed Civil Suit No. 1-A/61 but he withdrew the suit on 29-9-1961. Therefore, the order has become final and it is not open to challenge in this proceeding by virtue of the provision of Order 23 Rule 1 (3) C. P. C. The trial Judge has misapprehended the scope of Sections 26 and 27 of the Act and, therefore, he failed to consider whether the application made by the Registrar was within the ambit of Section 26 and whether any relief could be given u/s 27. The appellant being in possession of the trust property under a claim of right to manage it for the purpose of the trust and is, therefore, a trustee de son tort. A person who without title chooses to take upon himself the character of a trustee becomes a trustee de son tort and is liable to account for what he has done or what he has received while so acting in the same way as if he were a de jure trustee. As such, in a proceeding under Sections 26 and 27 of the Act it is open to the Court to direct a trustee de son tort to deliver possession of the trust property to the working trustee under Clause (f) of Section 27 (2) of the Act. The case was, therefore, remanded back to the trial Court because it did not consider whether there were circumstances which entitled the Registrar to invoke his jurisdiction u/s 26 of the Act (wrongly mentioned as Section 27). The appeal was allowed and the order of the trial Judge was set aside and the case was remanded to the trial Court for fresh decision in accordance with law with advertence to the observations made in the foregoing paragraphs.

In pursuance of this remand order, the learned Additional District Judge has decided the matter afresh by his order dated 26-3-1973 after hearing the parties. It has been held that the appellant is a trustee de son tort and had taken possession of the trust properties which implies mismanagement thereof. As such, the circumstances warranted invoking of the Court's jurisdiction u/s 26 (b) and (c) of the Act by the Registrar. In such a case it is permissible to order delivery of possession of the trust properties by the trustee de son tort to the nominee of the working trustee. When the Registrar himself had made an application u/s 26 (2) of the Act no notice of hearing to the working trustee was required. Therefore, the application made by the Registrar is maintainable. Further, since the appellant has sold corrugated iron sheets to meet his personal expenses it must lead to the inference of mismanagement thereof by him. Whether a trustee de son tort is managing well the trust properties or is mismanaging the same, he is liable to be ousted. Under the circumstances, it has been ordered that the appellant has no claim to the office of Mahant and he be divested of the properties of the said trust in his possession which be delivered to the nominee of the working trustee. He is also permanently restrained from interfering with the affairs of the said trust and its properties. It has also been ordered that the said trust can only be administered by the working trustee or by

his nominee.

It is contended by the appellant in this appeal that no ground has been made out for invoking the jurisdiction of the Registrar to make an application u/s 26 of the Act. The other contention is that there could be no direction regarding the properties of the other trust not registered in any proceeding under Sections 26 and 27 of the Act in respect of a trust registered. It is further contended that this Court should also take into consideration the subsequent events and conduct the working trustee who has been mismanaging and wasting the trust properties. The trial Court has not complied with the remand order. The respondent on the other hand has submitted that a ground u/s 26 has clearly been made out and the trial Judge was justified in passing the impugned order u/s 27 of the Act, In fact, it is the appellant who has been misappropriating and squandering away the trust properties as may be evident from the documents filed in this Court by the respondents and the transaction as such is not disputed by the appellant. Whatever properties have been sold by the working trustee, the same were after obtaining permission of the Registrar as required u/s 14 of the Act and on condition that the sale proceeds would be reinvested to the advantage of the trust.

First of all, it is necessary to consider the scope of Sections 26 and 27 (1) and (2) of the Act which are as under:--

Section 26 (1) If the Registrar on the application of any person interested in the public trust or otherwise is satisfied that--

- (a) the original object of the public trust has failed;
- (b) the trust property is not being properly managed or administered; or
- (c) the direction of the Court is necessary for the administration of the public trust;

he may, after giving the working trustee an opportunity to be heard, direct such trustee to apply to Court for directions within the time specified by the Registrar,

(2) If the trustee so directed fails to make an application as required, or if there is no trustee of the public trust or if for any other reason, the Registrar considers it expedient to do so, he shall himself make an application to the Court.

Section 27. (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 (i) 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 the interest therein shall be allocated to any particular object of the trust;
- (d) providing a scheme of management of the trust property;
- (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.

The learned counsel for the appellant contended that between Clauses (b) and (c) of Section 26 there is the word "or" while between Clauses (a) and (b) there is no such word, which means that the Registrar before acting under this section has to be satisfied about existence of two conditions. First that the original object of the trust has failed and secondly that (i) the trust property is not being properly managed or administered or (ii) the direction of the Court is necessary for administration of the public trust. Which means the word "and" has to be read after Clause (a). The rules of construction are only aids to ascertain the true intention of the Legislature as expressed in the statute. As a general principle of interpretation, where the words of statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself. Shri G. P. Singh on Principles of Statutory Interpretation, 2nd Edition at Page 45 has quoted as under:--

It is not allowable to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is premissible to supply the words" (Craies on Statute Law). Even a departure from the rule of literal construction may be legitimate so as to avoid any part of the statute becoming meaningless Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, . The Supreme Court in State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another, has held as under (at p. 1859):

"Section 239 of Cr. P. C., 1898, does not read as if its various Clauses can be applied only alternatively. On the other hand, at the end of Clause (f) there is a conjunction "and". If the intention of the Legislature was that the provisions of these clauses should be available only alternatively, it would have used the word "or" and not "and" which has the opposite effect. Grammatically, therefore, it would appear that the provisions of the various clauses are capable of being applied cumulatively. The opening words of the provision show that it is an enabling provision, and, therefore the Court has a discretion to avail itself cumulatively of two or more clauses,

Of course, a Court has the power to depart from grammatical construction if it finds that strict adherence to the grammatical construction will defeat the object Legislature had in view."

We are unable to construe the clauses of Section 26 in a manner as being urged by the learned counsel. It is true that after Clause (a) the word "or" is not mentioned but we are inclined to hold that either it is a misprint or the word "or" has been omitted by mistake and "or" has to be read after Clause (a). If the intention was that the satisfaction of Clause (a) is a must, while the satisfaction of either of the Clauses (b) and (c) has also to be made out, in that event these 3 clauses would not have been numbered (a), (b) and (c) but they would have been numbered as (a), (b1) and (b2) or Clause (i) and clause (ii.a) and (ii.b). The construction put by the appellant would also result in absurdities. If the original object of the trust has failed, it is difficult to understand why the Legislature would require further satisfaction that (i) the trust property is not being properly managed or administered or (ii) the direction of the Court is necessary for administration. The Registrar would be helpless when only Clause (a) is satisfied because in addition ground under Clause (b) or (c) is not proved. The construction we are putting also finds support from the remand order of this Court which is binding on this Court and also on the parties. It has been clearly mentioned in the remand order that it appears from a plain reading of subsection (1) of Section 26 of the Act that the Registrar is competent to apply only when the original object of the trust has failed or the trust property is not being properly managed or administered or direction of the Court is necessary for the administration of the trust. The word "or" has been read after Clause (a).

We have now to see whether the Registrar was justified in filing an application u/s 26 of the Act and whether any of the conditions mentioned in Clauses (a), (b) and (c) was satisfied. The learned trial Judge has held that the application is covered under Clauses (b) and (c) of Section 26 (1). In view of the finding it is incorrect to say that there is no compliance with the remand order by the trial Judge. In the remand order the trial Court was directed to give a finding whether there were circumstances which entitled the Registrar to invoke its jurisdiction u/s 26 (wrongly mentioned as Section 27) of the Act. In the said order there was no direction for recording of further evidence before giving the finding. The record also does not show that there was any such request made by the parties to lead further evidence. Since the evidence was already on record, the trial Judge committed no error in recording the finding. Here, of course, a grievance is being made by the parties that they were not given opportunity to lead further evidence, but in the absence of any such direction in the remand order or any request by the parties the trial Judge was not bound to record further evidence. The reasonings given by the trial Judge for arriving at the conclusion may not be good but that is no ground for saying that there is no compliance with the remand order. The remand order has been properly complied with.

The Registrar in his application had mentioned that the unauthorised management of the trust properties by the appellant was resulting in failure of the trust. This allegation was made to cover the ground under Clause (a) of Section 26 (1), but there is no further averment that the same has resulted in failure of the original object of the trust as required under Clause (a). The main

object of the trust seems to be worship of the idols and the upkeep of the temples. It has not been shown as to how the unauthorised management has resulted in failure of the original object of the trust, so Clause (a) is not attracted here. However, the allegations in the application of the Registrar and the evidence on record fully make out grounds for taking action under Clauses (b) and (c). It has been proved that the trust property is not properly managed and administered and the direction of the Court is necessary for management of the trust. Instances of mismanagement may be many. If there is gross negligence in the worship and maintenance of the trust property, there is mismanagement. If there is no proper maintenance and submission of account, there is mismanagement. A breach of the trust by the trustee of the trust property is also mismanagement. There may be mismanagement if the trustee claims title hostile to himself. If the trust property is in possession of a trustee de son tort, that will occasion a cause for seeking direction of the Court regarding management of the trust property.

It has been held in the remand order that the temple of Shri Jagan-nathji is a registered public trust under the Act and the office of the working trustee is to be by inheritance from the founder and the Pujari and Sarvarakar is to be appointed by the working trustee. The trust properties are also enumerated in the order registering the trust and also in the register of public trust, Ex. P. 7. Therefore, the appellant has no right or claim to manage trust properties or to usurp the duties of Pujari and Sarvarakar. He is trustee de son tort. This by itself makes out a ground under Clause (c) for seeking direction of the Court for administration of the public trust. Besides, from the pleadings of the parties it is evident that the appellant has set up hostile title to himself of the pro- parties of the trust and he also disposed of movable and immovable properties of the trust illegally and misappropriated the amounts. In paras 2-A and 14 of the application of the appellant u/s 26 of the Act he has claimed that the lands at Champa and Kusumanda were personal properties of Mahant Ramcharandas and he as his Chela had inherited those properties, but these properties have been shown to be belonging to the public trust as per entries in Ex. P. 7. These entries have become final and binding on the parties and this is also the finding given in the remand order. Therefore, this amounts to mismanagement. Besides, in the application for temporary injunction under Order 39 Rule 1 C. P. C., Rani Upman Kumari Devi had alleged that the appellant had disposed of some lands at village Kusu-manda and a house belonging to the trust and misappropriated the sale proceeds. This has not been specifically denied in the reply to that application. There is further allegation in that injunction application that the appellant has gradually sold all the corrugated iron sheets from the roofs of the buildings in the temple premises and misappropriated the amounts. In his reply, the appellant has admitted that he has disposed of the corrugated iron sheets to meet the expenses of the temple. In his deposition appellant Narayandas (D. W. 4) has admitted that he has sold away the tins of the temple and he has also admitted that he has also disposed of the Tijori of the temple to meet the expenses. The

appellant has not submitted any account about the income and expenditure with regard to the trust properties. At one time the trust possessed about 150 acres of agricultural lands. The appellant also failed to hand over trust properties to the working trustee in accordance with the direction of the Registrar. The appellant has also admitted in his deposition that he has sold one house but claimed that the house belonged to his Guru. He has also admitted that he had kept a woman by name Wamanbai in the premises of the temple and on that account there used to be quarrel with the villagers. This is also the statement of Feeguram (D. W. 2). This witness also admits that the tins of the building of the temple and also the Tijori have disappeared. Therefore, the ground under Clause (b) has also been made out and the Registrar was justified in filing the application u/s 26 of the Act for seeking direction from the Court.

In the remand order it has been held that it is open to the Civil Court to pass order for removal of trustee de son tort. A person who without title chooses to take upon himself the character of a trustee becomes a trustee de son tort and is liable to account for what he has done or what he has received while so acting in the same way as if he were a de jure trustee. In the remand order it has been held that previously there was a controversy as to whether direction can be given about delivery of possession of the trust properties against trustee de son tort, but this position has changed by insertion of Clause (cc) in Section 92(1) C.P.C.. but before amendment also the view of the Nagpur High Court was that possession can be delivered under Clause (h) of Sec. 92 (1) because it would be of no avail to pass a decree for removing the old trustee and appointing a new trustee if the old trustee is allowed to remain in the possession of trust properties AIR 1934 48 (Nagpur) . In the remand order it has further been held that in the present Act such an order removing trustee de son tort and directing him to deliver trust properties to the working trustee can be passed under Clause (f) of Section 27(2) of the Act. The order is binding on this Court and to us also this seems to be the correct position. Under the circumstances, the trial Judge was justified in directing removal of appellant as trustee de son tort and ordering him to deliver trust properties to the working trustee or his nominee. Since the respondent No. 3 Salharoo Prasad, Pujari and Sarvarakar, is incapacitated the properties have to be delivered to the working trustee or his any other nominee.

The next contention is that in this proceeding under Sections 2-6 and 27 of the Act in respect of a registered trust of the temple of Shri Jagannathji public trust, Champa, there cannot be any direction regarding the properties belonging to the other trust which is not registered. Again this contention is without any force. From the evidence of Manmohansingh (P. W. 1), it is clear that in the temple premises of this trust there are idols of Ramchandrajji and other idols. The main idol is that of Jagannathji and, therefore, it is known by the temple of Shri Jagannathji, Champa. This is also the statement of Feeguram (D. W. 2) that all the idols are in the same premises. It may be that this temple is sometime loosely called as a Math but as has been found there is no Math as such, The main temple is that of Shri Jagannathji and the other temples inside the

premises are mere accretions to it. As per documents Exs. D. 3, D. 4 and the Khasra entries Exs, D, 12, D. 14 and D. 17, some properties were dedicated to the idol of Shri Ramchandraji but the temple of Shri Ramchandraji being accretion to the temple of Shri Jagannathji, the properties in fact, belong to the public trust. This is also as per the entries in the register of the public trust Ex. P. 7. All these properties have been shown to be belonging to the public trust. The entries being final and binding, the same cannot be challenged by the appellant, more so because the entries were made on the application of Mahant Ramcharandas and the appellant claims to be his successor, If the appellant so wanted, he could have filed a civil suit for declaration that there existed another public trust which is a Math in the trust premises and the Math possesses its own properties. This matter concerning an unregistered trust cannot be agitated in a proceeding under Sections 26 and 27 of the Act in respect of a registered trust. This contention also, therefore, fails.

The last contention of the appellant is that Kumar Rudrasharan Singh as successor of the founder of the trust cannot be entrusted with the management of the trust properties as he has been mismanaging the same. On the other hand, the respondents have submitted that after the first order of the trial Judge dated 7-8-67 which was in favour of the appellant, he had by registered agreement dated 6-4-71 agreed to sell to one Dr. Isaprakash 24.30 acres of land in Champa and 8.30 acres of land in Seoni belonging to the public trust for Rs. 45,000/-, the appellant has received the consideration as per the certified copy of the agreement. The appellant had also mortgaged 11.45 acres of land in Champa which belong to the public trust with the Land Mortgage Bank, Bilaspur, which were sold in auction to Dr. Isaprakash for Rupees 9800/-. The appellant in his reply has not disputed these facts though he claimed that there was no agreement of sale to Dr. Isaprakash but it was only agreement of lease and the appellant had received Rs. 10,000/- as consideration which he has since refunded. The document belies his assertion. Similarly, he has admitted that 11.45 acres of land was sold because of non-payment of the dues of the Land Mortgage Bank and the same was purchased by Dr. Isaprakash for Rs. 9800/-, It may be mentioned here that no property of a public trust can be sold or alienated by any one without previous sanction of the Registrar u/s 14 of the Act, No such permission has been produced nor any account submitted by the appellant, The appellant on the other hand has alleged that one Mahant Lal-das, who was appointed Pujari and Sarvarakar by Kumar Rudrasharansingh, in league with him has been disposing of the porperties of the trust. He has produced certified copies of the 3 sale deeds dated 12-4-74 under which 8.33 acres of land in Seoni have been sold to 3 different persons for Rs, 21,000. It has further been alleged that in a collusive decree between Laldas and Kumar Rudrasharansingh 15.65 acres of land in village Borsara belonging to the trust have been sold for Rs. 18,000. It is also alleged that the said Laldas has also sold 9.5 acres in village Champa to Durga Devi for Rs. 20,000 on 9-4-74 and 12.69 acres of land to one Giniya Devi for Rs. 25,000 on 7-9-74, The copies of these 2 sale deeds

have not been produced nor any details given about the second sale. The affidavit filed in support is on the basis of the information received but the source of information has also not been disclosed. Therefore, we have to ignore these allegations. The appellant himself has produced certified copy of the order dated 9-4-74 of the Registrar permitting Mahant Laldas to sell 8.38 acres of land at Seoni, 3.79 acres at Borsara and 19.62 acres at Champa. The permission to sell these lands was granted in order to enable him to carry out essential repairs in the trust properties and to purchase 15 acres of land in village Balpur for Rs. 30,000. It was ordered that the sale proceeds be kept in a Bank and the amount can be withdrawn with the permission of the Registrar, Regarding the alleged collusive decree, the same is concerning some lands at village Borsara which admittedly do not belong to the public trust because in Borsara the trust owned only 3.79 acres and not 15 acres. The respondents have also produced certified copy of the statement of Kumar Rudrasharansingh dated 24-3-74 recorded by the Registrar whereby he had given his consent for the said sales. Therefore, the sales made by Mahant Laldas were in accordance with the provisions of the Act. However, the appellant has produced 2 affidavits of Kumar Rudrasharansingh dated 23-11-74 and 24-10-77 wherein Rudrasharansingh has alleged that sometime after appointment of Mahant Laldas as Pujari and Sarvara-kar, he has started disposing of the trust properties in collusion with the Registrar in utter disregard to the interest of the public trust. He has, therefore, taken steps for his removal. It is rather intriguing as to how the appellant came in possession of these affidavits. Whatever that be, these affidavits only show that Rudrasharansingh is not at all responsible nor he is the party to the subsequent unauthorised alienations of Mahant Laldas. The subsequent events further go to show that the appellant has mismanaged the trust properties and he is not a fit person to be entrusted with the trust properties.

The appeal, therefore, fails and it is dismissed with costs throughout. Counsel's fee Rs. 250 if certified.