

(2004) 02 MP CK 0077
In the Madhya Pradesh High Court
Case No : EA. No. 120 of 2002

Rambha Pansaran Trust and Others	APPELLANT
Vs	
The Nagar Kesharwani Vaishya Sabha and Others	RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11(d), 2(2), 92, 96
Madhya Pradesh Public Trust Act, 1951 — Section 26

Citation : (2004) 2 MPJR 123

Hon'ble Judges : Saraswati Prasad Khare, J

Bench : Single Bench

Advocate : Atul Awasthy, for the Appellant; Ramesh Kumar Shrivastava, Advocate and Ku. Tanu Tandon, Panel Lawyer for State, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is an appeal u/s 96 C.P.C. by the plaintiffs against the order by which their plaint has been rejected under Order 7 rule 11(d) C.P.C. which amounts to a decree as per Section 2(2) C.P.C.

Plaintiff No. 1 Rambha Pansaran Radhakrishna Mandir Trust is a "Public Trust" registered under the M.P. Public Trust Act, 1951 (hereinafter to be referred to as the Act). There are rival claims between the plaintiffs No.2 to 6 on the one hand and the defendants No.1 to 3 on the other for the management of this Trust. The Registrar of the Public Trust by his order dated 29.12.2000 has recognised the defendants No.2 and 3 as trustees and the management of the trust has been entrusted to them by him. The plaintiffs No.2 to 6 are aggrieved by this order and they filed the civil suit claiming it to be u/s 92 C.P.C. and Section 25(3) of the Act for declaring the said order as illegal and void.

The trial Court by the impugned order has held that the civil suit is barred in view of the provisions in Section 26 and 27 of the Act and it does not come

within the purview of Section 25(3) of the Act. After hearing the learned counsel for both the sides this Court is of the opinion that the view taken by the trial Court is correct. According to Section 26 of the Act if the Registrar is satisfied that "(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 direct the working trustee to apply to the Court for direction and if the trustee so directed fails to make an application as required or if there is no trustee of the public trust or for any other reason, the Registrar considers it expedient to do so, he shall himself make an application to the Court. A Division Bench of this Court has held in Temple Achaleswar Vs. Achaleswar Public Trust 1998 (II) MPJR 335 that Section 26 is very comprehensive. It is wide enough to embrace within its fold nearly all the reliefs which may be sought with respect to a public trust. It covers everything relating to the "management and administration" of the public trust. Section 27 empowers the Court to pass appropriate order and such order is deemed to be a decree. A finality has been given to such order and any suit u/s 92 C.P.C. in such a matter is barred. It has been further held: "no suit can be filed with respect to a public trust u/s 92 C.P.C. on a matter with respect to which an application can be made u/s 26". In view of this legal position the proper remedy for the plaintiffs in the present case was to make an application before the Registrar u/s 26 of the Act and the suit is not maintainable.

The appeal is dismissed. The interim stay order dated 5.12.2002 is vacated.