
(1989) 11 MP CK 0042
In the Madhya Pradesh High Court
Case No : C.R. No. 269 of 1989

Ravi Prakash Pujari

APPELLANT

Vs

Hemraj

RESPONDENT

Date of Decision : 02-11-1989

Acts Referred:

Madhya Pradesh Civil Courts Act, 1958 — Section 5, 6, 7(1)
Madhya Pradesh Public Trust Act, 1951 — Section 2(1), 26

Citation : (1990) JLI 152

Hon'ble Judges : S. Awasthy, J

Bench : Single Bench

Advocate : Ravindra Shrivastava, for the Appellant; A. Usmani, for the Respondent

Final Decision : Dismissed

Judgement

S. Awasthy, J.—This revision is directed against the order dated 15-6-89 passed by the District Judge, Raipur, in Misc. Judicial Case No. 16 of 1989, transferring the case to the Court of 5th Additional Judge to the Court of District Judge.

2. The non-applicant (herein) made a reference u/s 26 of the M.P. Public Trust Act, 1951 (hereinafter called the "Trust Act") to the Court of the District Judge, Raipur, for removal of the petitioner from the office of the working trustee and appointing a new trustee in his place. A prayer for appointment of receiver to manage the trust property was also made; in the alternative suitable direction was prayed for. The reference is being contested by the petitioner.

3. The contention of the learned counsel for the applicant (herein) is that the reference u/s 26 of the Trust Act should be adjudicated by the principal civil Court of original jurisdiction in the district (District Judge) and not by any additional Judge to that Court. His submission is that the order passed by the learned District Judge conferring jurisdiction on the additional Judge to his Court is without jurisdiction. The Court of the District Judge only is the principal civil Court of original jurisdiction in the civil district u/s 7(1) of the M.P. Civil Courts

Act, 1958 (hereinafter called the "Courts Act"). His further submission is that the Additional Judge to the Court of the District Judge is not the principal Court of original civil jurisdiction hence has no power to act as "Court" u/s 2(1) of the Trust Act, 1951. He further submitted that sections 5 and 6 of the Courts Act have not been amended, but sections 7 (2) and section 8 of the Act have been amended which make it clear that the Court of the District Judge and the Court of the Additional Judge to that Court are two different Courts. It is only the Court of the District Judge which is the principal Court of original jurisdiction. He relied on the case of Badriprasad v. Umashankar 1961 J.L.J. 329=1961 M.P.L.J. 394, for his submission.

4. The learned counsel for the non-applicant argued that Court of the additional Judge to the Court of the District Judge is included in the Court of the District Judge who has power to transfer business to the additional Judges. After transfer of the case, the Additional Judge exercises the same jurisdiction. He relied on the cases of Dharam Sheela Bai v. Ram Dayal Bhatnagar 1961 J.L.J. 466=1961 M.P.L.J. 979, Gangagir Chela v. Rasal Singh AIR 1965 Pun. 472, and Laxman Singh Chandra Singh Vs. Kesharbai Laxman Singh, .

5. Sub-section (4) of section 3 of the Courts Act reads as under:?

(4). The Court of District Judge shall include the Court of Additional Judge.....

Under section 13 of the Courts Act the Explanation reads as under:?

Explanation: The Court of the Civil Judge or the Court of the District Judge shall include an Additional Judge to that Court.

Section 6 (c) of the Courts Act gives jurisdiction to the Court of the District Judge to hear and determine any suit or original proceeding without restriction as regards value. Section 7 of the Courts Act lays down that the Court of the District Judge shall be the Principal civil Court of original jurisdiction in the civil district. Section 7 (2) of the Madhya Pradesh Civil Courts (Amendment and Validation) Act, 1980 reads as under:?

(2) An Additional Judge to the Court of a District Judge, an Additional District Judge or an Additional Judge to the Court of 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.

6. Section 15 (1) of the Courts Act lays down:?

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), or the law relating to Courts of Small Causes, for the time being in force in any area, or in any other provisions contained in this Act the District Judge may by order in writing, direct that any civil business cognizable by his Court or by other civil Courts established u/s 5, in his civil district, shall be

distributed amongst himself and Additional Judges, if any, of his Court as also amongst other Courts under his control and amongst Additional Judges of such other Courts "interse" in such manner, as he deems fit;

Provided that, except in so far as it may affect the exclusive jurisdiction of a Court of small causes or of a Court invested with the jurisdiction of a Court of Small Causes, a direction given under this section shall not empower any Court to exercise powers or deal with business beyond the limits of its pecuniary and notified territorial jurisdiction.

[The emphasis supplied]

The work shall be assigned to the Additional Judges by the District Judge and thus the jurisdiction is conferred.

7. In case, the argument of the learned counsel for the applicant is accepted, the provisions of M.P. Civil Courts Act, 1958 shall be rendered ineffective. Provisions under both the Acts are to be interpreted by applying the rule of harmonious construction. The very purpose of the provisions of the Courts Act shall be defeated if such a narrow meaning to the word "Court" under the Trust Act is given. I am supported in my view, by the views, taken by this High Court in the case of Laxman Singh Chandra Singh Vs. Kesharbai Laxman Singh, .

8. Hon"ble Shri Justice G.P. Singh (former Chief Justice of Madhya Pradesh High Court) in "Principles of Statutory Interpretation" 4th edition, page 85 observed as under:?

As stated by VENKATARAMA AIYAR, J. :-The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that if possible, effect should be given to both. This is what is known as the rule of harmonious construction. Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, . That, effect should be given to both, is the very essence of the rule. Thus, a construction that reduces one of the provisions to a "useless lumber" The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, , or "dead letter" The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, , is not harmonious construction. To harmonise is not to destroy. J.K. Cotton Spinning & Weaving Mills v. State of U. P. (supra). A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific. The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, . The principle is expressed in the maxims *Generalia speciali bus non derogant*. General things do not derogate from special things. OSBORN'S Law Dictionary and *Generalibus specialia derogant*. Special things derogate from general things. OSBORN'S Law Dictionary.

9. For the reasons aforesaid, this revision-petition is dismissed with costs.

Hearing fee Rs. 100/-, if certified. The parties are directed to appear before the 5th Additional Judge to the Court of the District Judge, Raipur on 4-12-1989. No notice to the parties shall be given for their appearance before that Court.