
(2017) 01 MP CK 0086
In the Madhya Pradesh High Court
Case No : 58 of 2014

Satish Bagdi

APPELLANT

Vs

Registered Sanstha Shri 1008 Neminath Digambar Jaiswal

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

[Madhya Pradesh Accommodation Control Act, 1961](#), [Section 12\(1\)\(d\)](#), [Section 12\(1\)\(f\)](#)

Citation : (2017) 01 MP CK 0086

Hon'ble Judges : Vivek Agarwal

Bench : Single Bench

Advocate : Ankur Mody, Sanjeev Jain

Final Decision : Dismissed

Judgement

1. This Second Appeal has been filed against the judgment and decree dated 11.11.2013 passed by the Court of 11th Additional District Judge, Gwalior, in Civil Appeal No.3A/2013 confirming the judgment and decree dated 03.01.2013 passed in regular Civil Suit No.187-A/2009 [Registered Sanstha Neminath Vs. Satish Bagdi].

2. Facts which are not in dispute are that the plaintiff had filed a suit seeking eviction of the defendant/ appellant on account of creation of sub- tenancy, keeping the suit premises closed for a continuous period of six months and also on account of bonafide requirement of the suit premises and non- payment of arrears of land. Said suit was decreed in favour of the plaintiff against which present appellant

had filed First Appeal before the Court of Additional District Judge.

3. The Additional District Judge, Gwalior, has allowed the appeal in part and set-aside the decree of eviction on the ground available under Section 12(1)(f), but confirmed the findings in regard to the provisions of Section 12(1)(d) of the Accommodation Control Act and dismissed the appeal.

4. It is the contention of learned counsel for the appellant that since the respondent has all the trappings of a trust, therefore, a lone person could not have filed the suit. He has placed reliance on the judgment of Supreme Court in the case of Sheikh

Abdul Kayum Vs. Mulla Alibhai as reported in AIR 1963

SC 309, wherein it has been held that delegation by members of trust without authority is invalid i.e. in terms of the provisions contained in Indian Trusts Act, trustees cannot transfer their duties, functions and powers to some other body unless delegation is clearly permitted by the trust-deed.

5. Learned counsel for the appellant has also placed reliance on the judgment of Bombay High Court in the case of Nagar Wachan Mandir, Pandharpur Vs.

Akbaralli Abdulhusen & Sons as reported in 1994 (2)

BomCR 251, wherein the Bombay High Court has held that unless instrument of trust otherwise provides, all co-trustees must join for filing of a suit to recover the possession of the property from the tenant. It is also held that even a society registered under the provisions of Societies Registration Act, 1860, is also

included in the definition of Public Trust and hence, suit filed only by two trustees will not be maintainable.

6. There is no dispute about the aforesaid legal position that if a body is registered as a trust, then all the trustees are required to sue a tenant unless and until the trust-deed makes an authorization to the contrary, but the fact remains that the plaint averments made by the plaintiff in Para Nos.1 and 2 of the plaint, to the effect that the plaintiff is a religious institution and registered under the provisions of M.P. Societies Registration Act, has been admitted by the present appellant in it's written statement and therefore, now they are estopped from canvassing that the plaintiff is not a society but a registered trust and therefore, the suit at the instance of only one person, was not maintainable.

7. In view of the aforesaid factual position that there is admission of plaintiff being a registered society in the written statement, now, the appellant is estopped from raising the plea that plaintiff is a trust, therefore, suit was not maintainable in it's present form, thus, the findings of the Courts below in this regard does not call for any interference in this Second Appeal giving rise to any substantial question of law, thus, the appeal fails and is dismissed.