

(2019) 08 CHH CK 0209
In the Chhattisgarh High Court
Case No : FAM No. 93 Of 2015

Vimal Kesharwani And Ors

APPELLANT

Vs

Dr. Vinay Gupta And Ors

RESPONDENT

Date of Decision : 30-08-2019

Acts Referred:

Chhattisgarh Public Trust Act, 1951 — Section 23, 25(2), 27(3)

Citation : (2019) 08 CHH CK 0209

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Manoj Paranjpe, ShubhankTiwari, Anup Majumdar, Shreyankar Nandy, Shubha Shrivastava

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 27(3) of the C.G. Public Trust Act, 1951 against the order dated 16-7-2015 passed by the First Additional

District Judge, Bilaspur (CG) in Miscellaneous Civil Appeal No. 66 of 2014 wherein the said court dismissed the appeal filed by the appellants against

the order dated 17-10-2014 passed by the Registrar, Public Trust, Mungeli in case No. 01-B/113(4)/2012-2013 whereby the Registrar ordered that the

Managing Trustee shall be appointed as per Clause 18 of the Trust deed.

2. The facts, in brief, are that Bhawani Sao Ramlal Sao Dharmada Trust, Mungeli is a registered trust constituted on 11- 01-1961 by its

settler/managing trustee namely Ramlal Sao. The said trust has been constituted for the charitable purpose in public interest as stipulated in the trust

deed (Annexure A/2) made in this regard. After death of settler/managing trustee of the trust i.e., Ramlal Sao, a meeting was convened on 17-9- 1983

for the appointment of managing trustee of the trust in place of said settler Ramlal Sao. In the said meeting a resolution was passed for appointment of one Ram Gupta as the managing trustee of the said trust in place of Shri Ramlal Sao as his wife Smt. Rambhabai had predeceased him at that time.

After death of Ram Gupta on 11-8-2005 his wife namely Nand Bai was appointed as a Managing Trustee in the meeting held on 7-10-2005. The said

appointment was questioned by one of the trustees namely Nirmal Prasad Kesharwani before the Registrar, Public Trust, Mungeli. However, the

Registrar Public Trust vide its order dated 29-11-2005 held that appointment of said Nand Bai was duly made on majority basis. The appointment of

Nand Bai was reversed by the District Judge, Bilaspur vide order dated 29-4-2006 against which a writ petition was filed before this court. However,

during pendency of the petition Nand Bai submitted her resignation on 4-5-2006 which was accepted in a meeting held on 22-6-2006 and one trustee

namely Vimal Kesharwani, appellant No.1 herein has been appointed as Managing Trustee of the said trust on 6-10-2013 by the Committee of the

Trust. On 27-9-2013 respondent Dr. Vinay Gupta being a trustee of the said Trust had instituted a writ petition registered as W.P.(227) No.724 of

2013 by questioning the propriety of the order dated 29-4-2006 passed by the District Judge. The Registrar, Public Trust, Mungeli ordered on 17-10-

2014 that managing trustee of the said trust could be made on the basis of senior member of the family of Shiv Dayal and Ambika Sao and in their

absence the other members could be appointed on the basis of 3/4th majority and directed the parties to produce their relevant documents pertaining to

their birth certificates etc., in this regard. The order of the Registrar, Public Trust was challenged before the court of First Additional District Judge,

Bilaspur who affirmed the impugned order of the Registrar. The arrangement which was made under Clause 18 of the Trust deed was in fact made

only for one time when the post of managing trustee would be vacant on account of death of the settler i.e., Shri Ramlal Sao and his wife namely

Rambhabai, but that aspect of the matter is overlooked by the Registrar, Public Trust.

3. Learned counsel for the appellants would submit that the Registrar, Public Trust and the First Additional District Judge have not interpreted the

Clauses 18 & 24 of the trust deed in its true perspective because the provision has been enacted only for one time procedure. He would further submit

that the impugned order is apparently contrary to law and in excess of jurisdiction vested in it, therefore, same is liable to be set aside.

4. On the other hand, learned counsel for the respondents would submit that the Clause 18 of the Trust deed has been rightly interpreted by the

Registrar, Public Trust and the court below, therefore same is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below.

6. From the order of the Registrar, Public Trust dated 17- 10-2004 it is clear that Registrar has ordered on the basis of Clause 18 of the trust deed.

Clause 18 of the trust deed may be mentioned as under:

The settler Shri Ramlal Sao shall be the Chairman and Managing Trustee of the Trust for his life time and he shall continue to act as such till his

death unless he resigns. On the death or resignation of the settler as stated above Smt. Rambha Bai in case she does not predeceased shall become

by virtue of terms of the deed managing trustee for her life time unless she too resigns. After death or resignation of the settler and his wife, the

surviving adult male or female member of the families of the settler's brothers viz Shri Sheodayal Sao and Shri Ambika Sao who becomes the trustee

by virtue of clause 28 of this instrument shall become the chairman and managing trustee. In case more than one such person fill such vacancy, the

elder one shall become the chairman or managing trustee subject to his prior consent to act as chairman and managing trustee"".

7. It is clear from Clause 18 of the trust deed that surviving adult male or female member of the families of the settler's brothers namely Shri

Sheodayal Sao and Ambika Sao shall become Chairman and Managing Trustee because they became trustee by virtue of Clause 28 of the instrument.

Clause 28 of the trust deed may be read as under;

Vacancies, if any, caused due to the death or resignation of any of the trustees or due to any disqualification like bankruptcy or insanity incurred by

them, shall be filled by the majority verdict of the remaining trustees, provided that first preference for such appointments shall at all time be given to

surviving adult male or female members of the families of the settler's brothers Shree Sheodayal and Shree Ambika Prasad and only in their absence

or on their refusal any outsider shall be appointed to such vacancies"".

8. A plain reading of Clause 28 of the trust deed goes to show that it is regarding vacancy of trustee and as per this clause surviving adult male or

female members of the families of the settler's brothers Shree Sheodayal and Shree Ambika Prasad shall be appointed as trustee and only in their

absence or on their refusal any outsider shall be appointed to such vacancies"".

9. Looking to effect of both Clauses 18 & 28, it is clear that working trustee/ Chairman shall be from family of Shri Sheodayal and Ambika Prasad. It

is not a case that it is one time settlement, therefore, argument on behalf of the appellant on this count is not acceptable.

10. A bare reading of clause 24 of the trust deed goes to show that same is not related to appointment of trustee or working trustee/chairman. Clause

24 of the trust deed is related to any resolution in writing circulated amongst all the trustees. This clause is related to working of trust and same is not

related to appointment of trustee or working trustee.

11. In the present case, there was vacancy of working trustee after resignation of Nand Bai. From the order of the Registrar, Public Trust, it is clear

that the order is passed by this court in writ petition (227) No. 724 of 2013 that interpretation of trust deed is required in accordance with law. The

Registrar interpreted Clause 18 and recorded a finding that surviving adult male or female members of the families of the settler's brothers Shree

Sheodayal and Shree Ambika Prasad shall be appointed for Managing Trustee. The order passed by the Registrar is well within its jurisdiction as per

Section 25(2) of the M.P. Public Trust Act, 1951 and same has no bearing with Section 23 of the said Act as argued on behalf of the appellant. The

Court of Additional District Judge is right in holding that interpretation of Registrar is proper looking to the provisions of Clause 18 of the Trust Deed.

12. After going through the entire record and argument advanced on behalf of both sides, it is clear that the Registrar, Public Trust and the court

below have rightly interpreted clause 18 of the trust deed which does not require any interference by this court.

13. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.