

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**

**BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE**

**First Appeal No.141/1999**

Ramkrishna & Others . . . Appellants

Versus

Narendra & Others . . . Respondent

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**CORAM**

Hon'ble Shri Justice Alok Verma

Whether approved for reporting ?

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Shri T.N. Singh, learned senior counsel with Ms. Hemlata Gupta, learned counsel for the appellants.

Shri Rishi Shrivastava, learned counsel for respondents.

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**Judgment**

**( Passed on this 18<sup>th</sup> day of August, 2017 )**

This is first appeal arising out of order passed by learned 3<sup>rd</sup> Additional District Judge, Khargone, West Nimar in Civil Suit No.15A/1998, wherein the learned Additional District Judge decided issue Nos.6, 8, 9 and 10 as preliminary issues and returned a finding that the suit is not maintainable and aggrieved by this order, present appeal is filed.

2. The plaintiffs/appellants filed a suit before the civil Court for removing the defendants, who were appointed as trustees of a Public Trust, for appointment of new trustees and also for account of income and expenditure of trust, being checked by a competent person.

3. The facts giving rise to this appeal were that late Dhanibai widow of Kanhaiyalalsa created a trust by a registered deed dated 16.09.1961. By the deed, she transferred her property to the trust, which was created for the members of Dashora community and the members of Hindu community at large. It was alleged by the plaintiffs that the trust was not properly managed. The defendant No.1 misused his position as trustees and had given various benefits to his relatives, and therefore, it was prayed that original trustees should be removed, and in their place, new trustees should be appointed. And also it was requested that income and expenditure account of the trust should be checked by the competent person.

4. The defendants filed a written statement and denied all the allegations and also raised an objection that the suit is not maintainable in view of the provisions of Section 26 and 27 of M.P. Public Trust Act, 1951

5. The learned Additional District Judge framed following preliminary issues, which were decided by the impugned order.

Issue No.6 – Whether the plaintiffs had no

right to file a civil suit under Section 92 of CPC.

Issue No.8 – Whether this Court has no jurisdiction to try the suit without the trust being a registered trust, an application is filed before the Registrar of Public Trust.

Issue No.9 – Whether the suit suffers from non-joinder of parties.

Issue No.10 – Whether this Court had jurisdiction to hear this case.

5. The learned Additional District Judge after hearing both the parties, gave a finding that civil Court had no jurisdiction and the plaintiff should have first filed an application before the Registrar under Section 26 of Public Trust Act, 1951 and dispute should have been referred to the civil Court by the Registrar as provided by Section 26 of the Act. The learned Additional District Judge also found that under the provisions of Section 27(4), it was provided that where remedy was available under the provisions of Section 26 of the Public Trust Act, no civil suit would lie without first approaching the Registrar of Public Trust. Apart from this, he also referred to provisions Section 32 of Public Trust Act and opined that the civil suit by the trust were barred when the trust is not registered.

6. It is undisputed that the trust in question is an unregistered

trust, however, the defendants dispute that it was a public trust.

7. Section 92 of CPC makes special provisions in respect of suits filed in case of public charity. This provisions is a general law on the subject while the provisions of Public Trust Act, 1951 are special enactment, and therefore, provisions of Public Trust Act would have precedence over provisions of CPC. Section 92 of the CPC provides as under:-

**“92. Public charities.-** (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the court, may institute a suit, whether contentious or not, in the principal civil court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction whole or any part of the subject matter of the trust is situate to obtain a decree—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any responding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypress in one or more of the following circumstances, namely:—

(a) where the original purposes of the trust, in whole or in part,-

(i) have been as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the

trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have since they were laid down-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of

the trust”.

8. Apart from this, the learned Additional District Judge also referred to provisions of Sections 26, 27(4) and 32 of M.P. Public Trust Act, 1951 provides as under:-

**“26. Application to Court for directions. -**

(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.

27(4) No suit relating to a public trust under Section 92 of the Code of Civil Procedure, 1908 (V of 1908), shall be entertained by any Court on any matter in respect of which an application can be made under Section 26.

**32. Bar to hear or decide suits. -** (1) No suit to enforce a right on behalf of a public trust which has not been registered under this Act shall be heard or decided in any Court.

(2) The provisions of sub-section (1) shall apply to claim or set off or other proceeding to enforce a right on behalf of such public trust”.

9. Learned counsel for the appellants placed reliance on judgment of Division Bench of this Court in case of *Kailashanand Vs. Rewaram Girdharilal and others 1965 M.P.L.J. 694*. The facts of that case was almost similar to the present case. A trust was created in the year 1952. The working trustees filed an application for registration of the trust, however, no inquiry was made by the Registrar in view of the mandatory provisions of Section 4, 5 and 6 of the Act. Subsequently, in the year 1959, non-appellant Nos.1 to 5 filed an application before the Registrar of Public Trust under Section 26 of the Act. The Registrar sent an application for brief inquiry to Sub Divisional Officer, who reported back that no entry was made regarding the trust, and therefore, the trust was not registered trust. He also reported that though it was not registered it had been functioning as a public trust.

10. The Registrar opined that registration of the trust was a mere formality. When the trust was already functioning as public trust, provisions of M.P. Public Trust Act, 1951 would apply, and therefore, he gave a finding that an application under Section 26 of the Act for removal of trustees on allegation of mismanagement was maintainable.

11. In para-4 of the judgment, the Division Bench of this Court



observed as under:-

**“3. -----**

**4. If the temple has not been declared as a public trust, and registered as a public trust under the Act, then clearly the Registrar had no jurisdiction to entertain any application under section 26 of the Act. The scheme of the Act is to regulate and make better provisions of the administration of public religious and charitable trusts in the State of Madhya Pradesh. The Registrar cannot exercise the powers under the provisions contained in Chapters III, IV and V of the Act in regard to any trust unless and until the trust is first declared to be and registered as a public trust under Chapter II of the Act. It has been held by this Court in *Laxmanrao v. Narayanrao (5)* that section 26 of the Act gives jurisdiction to the Registrar only if there is a public trust. The enquiry as to whether the trust is a public trust is covered by Section 5 and unless this inquiry is completed and the trust is found to be a public trust, the Registrar's jurisdiction under section 26 cannot be invoked. Here, as the temple in question had not been found to be and declared and registered as a public trust under the Act, the Registrar had no jurisdiction to entertain and deal with the application under section 26 filed by the respondents Nos.1 to 5. The order dated 18<sup>th</sup> July 1963 of the Registrar cannot, therefore, be sustained.**

**5. -----”**

12. Learned counsel for the appellants submits that when application in case of unregistered trust is not maintainable under Section 2 of Public Trust Act, as in such cases, there was no other remedy available to a person who holds an interest in the public

trust.

13. Learned counsel appearing for the respondents, however, support the impugned order and submits that in view of the provisions of Public Trust Act, the plaintiff should have first approached the Registrar and when the matter was referred to the civil Court under the provisions of Section 26 of the Act, the civil Court can hear the case.

14. In this case, a leave was granted under Section 92 of CPC. The civil suit was filed before the the District Judge, which was transferred to the Additional District Judge for disposal. At the time of ordering registration of the civil suit, no leave was granted, however, after a notice to the respondents, the learned Additional District Judge heard both the parties and by passing a detailed order, leave under Section 92 of CPC was granted. However, it was clearly mentioned in the order that whether the suit is maintainable under the provisions of Public Trust Act, shall be decided subsequently.

15. After grant of leave, the written statement was filed and issues were framed including the preliminary issue, which were cited above after hearing both the parties. The learned Additional District Judge of the opinion that looking to the provisions of Section 32 of Public Trust Act and also the provisions of Section 26 and 27(4) of the Act, the suit is maintainable.

16. However, in view of the principles laid down by Division Bench of this Court in Case of Kailashanand (supra), it is apparent

that when the trust was unregistered, no application could be filed before the Registrar of Public Trust, and therefore, no remedy was available to the plaintiff under Section 26 of the Act. In view of this position, the provisions of Section 27(4) do not apply because when no remedy was available, the plaintiff could not in any case, file an application before the Registrar. The apart, the provisions of Section 32 of the Act bar the civil suit filed on behalf of public trust, which was unregistered. It does not bar the civil suit filed by a person, who holds interest in the trust against the trustees for their removal on ground of mismanagement.

17. In this view of the matter, it is apparent that a civil suit was maintainable under Section 92 of CPC. In this particular case, leave had already been granted, and therefore, the learned Additional District Judge erred in holding that the civil suit is not maintainable.

Accordingly, this appeal is allowed. Impugned order is set aside. The preliminary issues framed by the learned trial Court are answered accordingly.

The trial Court is directed to proceed further in accordance with law for deciding the remaining issues.

Respondents to bear cost of appeal.

Counsel's fee as per schedule if certified.

**(Alok Verma)**  
**Judge**

**Ravi**