

Reg. Vidhichand Dharamshala Trust Vs Shyam Singh and Others

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: May 14, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 41 Rule 27, Order 6 Rule 17, Order 7 Rule 11

Madhya Pradesh Public Trust Act, 1951 – Section 26

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 – Section 12(1), 3(2)

Citation: (2010) ILR (MP) 49 : (2010) 3 MPJR 142 : (2010) 3 MPLJ 428

Hon'ble Judges: Abhay M. Naik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Abhay M. Naik, J.

This appeal has been preferred by the plaintiff/landlord against a remand order dated 15/7/09 passed by the Court of Second Additional District

Judge, Gwalior.

Short facts, relevant for the purposes of this appeal are that the plaintiff/appellant is a registered Public Trust. It instituted a suit for eviction and

recovery of arrears of rent on grounds under Sections 12(1) (a),(b) & (c) of the M.P. Accommodation Control Act, 1961. It is pleaded in the

plaint that the plaintiff is the registered Public Trust whose entire income is utilised for public benefits like education, medicine and financial aid to

old and helpless persons. It is exempted from the provisions of the M.P. Accommodation Control Act, therefore it is not required to prove any of

the grounds under the Act. The tenancy of the defendants has been duly terminated by issuing notice dated 8/5/01. Despite such termination, the

defendants did not vacate the suit premises, hence, the suit.

Suit of the plaintiff was opposed on various grounds. It was denied that the entire income of the plaintiff/trust was being utilised for the purposes

stated in the plaint.

Learned trial judge recorded the evidence. Thereafter, at the time of final arguments, it was specifically and expressly stated on behalf of the

plaintiff/appellant that grounds u/s 12(1) (a)(b) & (c) were not pressed (thus, Issues Nos. 2,3,4 and 5 pertaining to those grounds were not

pressed). Learned trial judge vide his impugned judgment and decree dated 30/9/08, found that the tenancy was duly terminated. It was further

found that the plaintiff was a registered Public Trust and was exempted from the provisions of the M.P. Accommodation Control Act, 1961 in

view of the Notification dated 7/9/89. Accordingly, the decree for eviction was granted in favour of the plaintiff.

Aggrieved by the aforesaid, defendants preferred Civil Appeal No. 1-A/08. During pendency of this appeal, defendants/appellants submitted an

application under Order 6 Rule 17 CPC for incorporating paragraph 9 (a) in the written statement. Proposed amendment was that the SDO vide

his order dated 12/3/07 has found that the trustees of the plaintiff/trust have misutilised the income of the trust for their personal interest. This apart,

the President of the trust, namely, Shri Raghav Garg has admitted in paragraph 12 of his statement that the suit property is not included in the trust

deed. Accordingly, the plaintiff is not entitled to benefit under Sub-section (2) of Section 3 of the M.P. Accommodation Control Act, 1961.

An application under Order 41 Rule 27 CPC was also submitted by the tenants/defendants before the lower appellate court, which was

accompanied by certified copy of order dated 19/12/06 passed by the Registrar Public Trust (SDO) and photocopy of the certified copy of the

order dated 12/3/07 passed by the Registrar Public Trust (SDO). Learned lower appellate court vide impugned judgment set aside the judgment

and decree of the trial court. It allowed the application under Order 6 Rule 17 CPC and granted permission to take documents on record

submitted by the defendants/tenants. Plaintiff was also directed to make consequential amendments and to submit documents in rebuttal. Learned

trial judge was thereafter directed to record necessary evidence and decide the suit afresh. It also directed the learned trial judge to decide Issue

Nos. 2 to 5 on merits despite the fact that they were not pressed, in specific, by the plaintiff, as clearly mentioned in the judgment of the trial court.

Aggrieved by the aforesaid, present appeal has been preferred.

Shri M.B. Mangal, learned Counsel for the appellant and Shri V.K. Bhardwaj, learned Senior Advocate assisted by Shri Raja Sharma, Advocate

for the respondents made their respective submissions which have been considered in the light of the material on record.

It has been contended by Shri Mangal, learned Counsel for the appellant that the learned lower appellate judge has made remand which is not at

all warranted in the facts and circumstances of the case. Learned Additional District Judge has committed an illegality in taking the documents on

record without allowing application under Order 41 Rule 27 CPC. Otherwise also, the documents proposed as additional evidence could not have

been legally taken on record. Similarly, the application for amendment has also been allowed ignoring the proviso to Order 6 Rule 17 CPC. This

apart, learned Additional District Judge, has committed grave illegality in directing the trial court to decide certain Issues which were not pressed

by the plaintiff.

Shri Bhardwaj, learned Sr. Advocate appearing for the respondents supported the impugned remand order.

First of all, I will take up the grievance of the appellant with regard to direction by the learned Additional District Judge to the trial court to decide

un-decided Issues (i.e. Issue Nos. 2 to 5).

On perusal, it is found that the plaintiff in the plaint pleaded that the defendants were in arrears of rent w.e.f., 1/12/2000 @ 200 p.m., which was

not paid or tendered within the statutory period of two months despite service of notice of demand. This constitutes a ground u/s 12(1)(a) of the

M.P. Accommodation Control Act, 1961. Likewise, the plaintiff pleaded that the defendants have parted with possession of the suit property or

part thereof to a third person for consideration or otherwise and have, thus, made themselves liable to be evicted u/s 12(1)(b) of the Act. Similarly,

it has been further pleaded that the defendants have committed an act which is inconsistent with the purpose of tenancy and have, thus, made

themselves liable to be evicted u/s 12(1)(c) of the Act. Factual averments relating to aforesaid three grounds were denied by the defendants in their

written statement. Therefore, learned trial judge had raised Issue Nos. 2 to 5 in respect of aforesaid three grounds. However, it is observed that

the plaintiff in paragraph 8 of the plaint has clearly pleaded that the plaintiff is a registered Public Trust and its entire income is being utilised for the

benefits like education, medicine and financial aid to old and helpless persons. It has been clearly averred in this paragraph that the plaintiff is

exempted from the provisions of M.P. Accommodation Control Act and therefore, it is not required to prove any of the grounds mentioned in

Section 12(1) of the Act. In view of this background, the plaintiff did not press Issue Nos. 2 to 5 which has been so recorded by the trial court in

its judgment itself. Learned Additional District Judge has observed in paragraph 19 that none of the parties to the suit has a right to forgo any

ground at the time of final arguments. This approach of the learned Additional District Judge is virtually shocking. If the plaintiff does not wish to

press any specific ground for eviction there is no law which prevents him from such withdrawal. There is no law in our system which compels a

plaintiff to press a ground for eviction against his own wishes. Learned Additional District Judge has observed that since the pleadings were

contained in the plaint and were not withdrawn, the learned trial court was under an obligation to decide them on merits despite having been not

pressed. Learned Additional District Judge has further observed that the trial court could not have endorsed any remark in the judgment in the

absence of deletion of pleadings from the plaint that the plaintiff did not press Issue Nos. 2 to 5. This reasoning assigned by the learned Additional

District Judge is obviously ridiculous. Learned Additional District Judge has, nowhere, mentioned the provisions of law wherefrom he may be said

to have derived the strength. It is a matter of sheer common sense that if the plaintiff in a suit for eviction does not want to press any ground, he

despite pleadings and proofs, may forgo his claim for eviction on that particular ground. His this right is unfettered and cannot be controlled by the

court contrary to his wishes. Plaintiff has clearly a right to relinquish any ground for eviction at any stage. Learned Additional District Judge has not

mentioned any provision of law in the impugned order which debars the plaintiff from relinquishing any ground for eviction even at the stage of final

arguments or before. It is not a case where the plaintiff has sought liberty to file a fresh suit on the said ground. In such situation, the position could

have been different, but in the instant case, where the plaintiff expressly and specifically pleaded in the plaint that the plaintiff being registered Public

Trust, is exempted from the provisions of M.P. Accommodation Control Act, 1961 and in the background of the same, if the plaintiff declared his

intention not to press the grounds, learned trial judge was fully justified in not deciding those issues after putting a clear remark that the same were

not pressed by the plaintiff.

Moreover, it may be seen that the defendants/appellants before the lower appellate judge were not aggrieved at all by the trial court's action of not

deciding Issue Nos. 2 to 5 on account of having been not pressed by the plaintiff. It would have been a different thing had the trial court granted a

decree for eviction on the basis of findings on any of the issues out of Issue Nos. 2 to 5. Had it been so, the defendants could have brought their

grievance before the lower appellate judge. Since, no decree was granted on Issue Nos. 2 to 5 on account of having been not pressed, there was

no occasion for the learned Additional District Judge to entertain an objection on behalf of the defendants regarding absence of findings on Issue

Nos. 2 to 5. These Issues having been not pressed by the plaintiff, were rightly left over by the learned trial judge as un-decided.

It is again not a case where the plaintiff has expressed his grievance that the issues were pressed and yet not decided. In the instant case, there is

no dispute that the Issue Nos. 2 to 5 were not pressed and rather relinquished expressly during final arguments. This being so, learned trial judge

had rightly chosen not to decide Issue Nos. 2 to 5 on account of having been not pressed by the plaintiff. Accordingly, it is held that the learned

Additional District Judge has illegally acted in directing the trial court to decide on merits Issue Nos. 2 to 5 despite oral relinquishment expressed

during final arguments by the plaintiff.

It has been further contended that applications under Order 6 Rule 17 CPC as well as under Order 41 Rule 27 CPC have been allowed illegally.

Application under Order 41 Rule 27 CPC has been allowed partly only in respect of certified copy of the Reference Petition dated 3/4/07, made

by the Registrar Public Trust, Gwalior to the Court of District Judge, Gwalior.

On perusal of this document it appears that this is an application u/s 26 of the M.P. Public Trust Act, 1951, which provides that the Registrar of

the public trust being 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;

shall submit an application to the court to seek directions.

Although, Section 26 of the Public Trust Act, 1951 postulates the satisfaction of the Registrar of Public Trust in respect of failure of original object

of the public trust, mismanagement and/or maladministration of trust property and necessity of direction for administration of the trust, it does not

contemplate any inquiry in strict sense, about utilisation of the entire income of the trust for itself or misutilisation of the income of the trust for the

purpose other than that of the trust. On receipt of an application u/s 26 of the said Act, the court is required to make an inquiry u/s 27 of the Act

and to pass such orders as it may consider appropriate. The inquiry contemplated in Section 27 of the Act is to be obviously biparte inquiry. It is

not a case of the defendants that an inquiry on the basis of the application has been concluded and any kind of utilisation of the income of the trust

for the purpose other than of the trust has been found by the District Court. Proposed document dated 3/4/07 is merely an application submitted

by the Registrar Public Trust with a prayer to dissolve the Board of trustees and to appoint a new one. This being so, the proposed document itself

does not amount to any kind of evidence that there is non-utilisation of the income of the trust for the trust itself. Thus, it does not advance the

defence of the defendants with regard to non-utilisation of the income of the trust. This apart, it may be seen that the defendants themselves have

mentioned in paragraph 5 of the application under Order 41 Rule 27 CPC that the proposed documents were produced in the trial court with

application under Order 7 Rule 11 CPC which were not taken on record. Thus, the defendants were well aware of the documents since long and

no reason has been assigned for not producing the certified copy at earlier stage. Proposed document was within the knowledge of the defendants

and no explanation has been given that why certified copy of the same was not procured at trial stage. It is not a choice of a litigant to obtain

certified copy at any stage despite having its knowledge from the beginning and to seek leave for being taken on record at appellate stage. Learned

Additional District Judge has, nowhere, mentioned that how merely the application submitted to the court would help the court to resolve the

controversy with regard to utilisation or non-utilisation of the income of the trust in the activities of the trust itself. Proposed document dated 3/4/07

is merely an application submitted to the court which is required to give finding only after an inquiry. Such an application would merely establish

that it has been submitted before the court and nothing more. Findings of the court on application u/s 26 of the M.P. Public Trust Act, 1951 are

not found to have been placed on record which, at the most, could have served the purpose.

In view of the aforesaid discussion, it is held that the certified copy of mere application dated 3/4/07 submitted by Registrar, Public Trust, before

the court will not serve any purpose and will not facilitate the court in deciding the controversy involved. Additionally, it may be seen that the

plaintiff in paragraph 8 of the plaint has already averred that the entire income of the trust is being utilised for achieving benefits of the trust. This

was refuted, in specific, in paragraph 8 of the written statement. Evidence by the parties has already been adduced in the trial court in the light of

the existing pleadings, which is on record. Contents of the application u/s 26 of the M.P. Public Trust Act, 1951 submitted before the court of

District Judge, Gwalior did not amount to evidence by itself and therefore there is no propriety in admitting it as additional evidence. Learned

Additional District Judge has acted illegally even in allowing partly the application under Order 41 Rule 27 CPC in respect of certified copy of the

application u/s 26 of the M.P. Public Trust Act, which was submitted by the Registrar Public Trust to the Court of District Judge, Gwalior for

seeking direction. The same is hereby rejected.

As regards application under Order 6 Rule 17 CPC allowed by the learned Additional District Judge, it may be seen that the defendants sought

leave to incorporate averments to the effect that according to the order dated 12/3/07 passed by the SDO(Registrar Public Trust), the income of

the trust has been utilised by the trustees for their personal use and has been, thus, misappropriated. Apart from this, it is also sought to be added

that the plaintiff in paragraph 12 of the statement has admitted that the suit property is not mentioned in the trust deed (Ex.P/3). Therefore, the

plaintiff is not entitled to the benefit of Section 3(2) of the M.P. Accommodation Control Act, 1961.

It may be seen that the order dated 12/3/07 is passed by the Registrar Public Trust while ensuring his satisfaction about the allegations levelled

before him. Pursuant thereto he has already submitted an application before the District Judge, Gwalior u/s 26 of the M.P. Public Trust Act, 1951.

Thereafter, the court is required to hold an inquiry as prescribed under Sub-section (1) of Section 27 of the Act. Thus, the order dated 12/3/07

cannot be said to have contained the findings about utilisation or mis-utilisation of the income of the trust. Such findings are required to be given by

the court entertaining an application and exercising powers u/s 27 of the Public Trust Act. This being so, the averments pertaining to the order

dated 12/3/07 are not necessary for the adjudication of the controversy involved in the suit. Similarly, what the President of the Trust on behalf of

the plaintiff has stated in paragraph 12 of his statement, may be referred to at the time of arguments because it is a part and parcel of the record. It

is not required to be pleaded at all. Thus, the learned Additional District Judge has obviously committed an illegality in allowing the amendment

application without taking into consideration the substance of the proposed amendment. Application for amendment also stands rejected.

Now, this Court considers the most crucial question involved in the matter.

Learned Additional District Judge has remanded the matter to the learned trial court after setting aside the judgment and decree of the trial court

for deciding Issue Nos. 2 to 5 on merits and for redeciding Issue No. 6 after granting opportunity to both the parties.

Shri Mangal, learned Counsel for the appellant, submitted that since the plaintiff is a registered trust, it is exempted from the provisions of the M.P.

Accommodation Control Act, 1961 by virtue of Notification dated 7/9/1989.

Per contra, Shri V.K. Bhardwaj, learned Sr. Advocate, the plaintiff will not be entitled to benefit u/s 3(2) of the Act merely on account of

registration as Public Trust, unless it is established that whole of the income from the trust is utilised for the trust itself. In view of the rival

contentions made in paragraph 8 of the plaint as well as written statement, it is obvious that the defendants have not admitted that the income of the

plaintiff/trust is utilised for the trust itself. This has been specifically denied in paragraph 8 of the written statement. At this stage, I feel it appropriate

to reproduce Section 3 of the Act as well as the Notification dated 7/9/1989, which runs as under:

Section 3. Act not to apply to certain accommodation.-

(1)

(a)

(b)

(2) The Government may, by notification, exempt from all or any of the provisions of this Act any accommodation which is owned by any

educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilised for that

institution or nursing home or maternity home.

Notification No.F-24-(4)-83-XXXII-I, dated 7th September, 1989-In exercise of the powers conferred by Sub-section (2) of Section 3 of the

Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961), the State Government hereby exempts all the accommodation owned

by

(i) the Wakf, registered under the Wakf Act, 1954 (No. 29 of 1954), or

(ii) the public trust registered under the Madhya Pradesh Public Trusts Act, 1951 (No. XXX of 1951), for an educational religious or charitable

purpose,

from all the provisions of the Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961).

A perusal of the aforesaid makes it clear that blanket exemption has not been granted to registered Public Trust as per the language of the Statute.

By virtue of Sub-section (2) of Section 3 of the Act, the Government is empowered to exempt from all or any of the provisions of the Act any

accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home. The power of the Govt.

to issue notification for exemption may be exercised for the purposes of Section 3 only when whole of the income derived from the institution is

utilised for the institution itself. Provisions of registration of Public Trust are contained in Chapter II of the M.P. Public Trust Act, 1951. On receipt

of an application for registration, the Registrar Public Trust as per Section 5 of the said Act is empowered to make an inquiry in the prescribed

manner for the purpose of ascertaining the following

(i) whether the trust is a public trust;

(ii) whether any property is the property of such trust;

(iii) whether the whole or any substantial portion of the subject matter of the trust is situated within his jurisdiction;

(iv) the names and addresses of the trustee and the manager of such trust;

(v) the mode of succession to the office of the trustee of such trust;

(vi) the origin, nature and object of such trust;

(vii) the amount of gross average annual income and the expenditure of such trusts; and

(viii) the correctness or otherwise of any other particulars furnished under Sub-section (3) of Section 4.

At the stage of registration, the Registrar is not required to make a substantial inquiry about utilisation of entire income of the trust with a view to

determine that entire income is utilised for the trust itself. Moreover, Sub-section (2) of Section 3 is couched in the specific manner so that the trust

may not be able to avail the facility of exemption if entire income of the trust is not utilised for the trust itself. If the trustees or any one of them is

found to be involved in utilisation of the income of the trust for the purposes of other than that of trust, without there being any objection on the part

of the trust or its management, such a trust will stand precluded from obtaining the benefit of exemption u/s 3 of the M.P. Accommodation Control

Act. It is true that the plaintiff is a registered trust but the defendants/tenants have, obviously, a right to dispute the entitlement of the plaintiff to the

said exemption by refuting the utilisation of the plaintiff's entire income for the plaintiff itself.

I may profitably refer to this Court's decision in the case of Laxminarayan v. Nagar Palika, Mandsaur 1982 MPW 172 wherein while dealing with

the scope of exemption it has been observed that:

In order to get benefit of the exemption, all facts essential to entitle him to claim the benefit of the exemption have to be pleaded and proved.

Validity of Section 3(2) of M.P. Accommodation Control Act, 1961 and the Notification dated 1989 exempting the application of the said Act has

been upheld by Hon. Supreme Court of India in the case of Betibai and Ors. v. Nathooram and Ors. 1999(2) JLI 380. In the case of Betibai

(supra) it is observed that a landlord entitled to the benefit of the said exemption can straightway file a suit for eviction after serving a quit notice.

Thus, it is clear that a registered Public Trust would be able to avail the benefit of exemption so long as its income is utilised for the trust itself. In a

suit for eviction, if it is established that the entire income of the trust is not utilised for the trust itself, the plaintiff would no more be entitled to seek

benefit of exemption. This may be proved by the defendants by producing reliable evidence in due manner. It is a trite law that a case is to be

decided on the basis of the evidence recorded in it, as held by the Apex court in the case of Mitthulal and Anr. v. State of M.P. 1975 JLI 432.

It is equally clear that utilisation of income of the trust for any purpose other than that of Trust must be with the express or implied consent of the

trust or atleast within the knowledge of the trust with no objection. In such a situation, the benefit of exemption may be denied to the trust. Thus, it

is clearly observed that if the defendant succeeds in establishing by cogent evidence that the utilisation of the entire income of the trust has not been

made for the trust itself or that the utilisation of the income of the trust has been made for the purpose other than that of the trust, a suit for eviction

by trust under the shelter of exemption of Section 3 of M.P. Accommodation Control Act, 1961 read with the aforesaid notification is liable to be

dismissed in the absence of existence of any of the grounds enumerated under Sub-section (1) of Section 12 of the said Act.

In the instant case, both the parties have already led evidence in support of their respective pleadings which include the objection about non-

utilisation of the entire income of the trust for the trust itself. Learned lower appellate judge after considering the entire evidence on record shall

have to give a specific finding about utilisation of the entire income of the plaintiff's trust for the trust itself. If the plaintiff fails to prove such

utilisation, he, in the absence of proof about any of the grounds contained in Sub-section (1) of Section 12 of the M.P. Accommodation Control

Act, 1961, will be liable to be non-suited. Since other grounds, i.e., u/s 12(1)(a),(b), & (c) have already been relinquished, on account of not

pressing them, learned lower Appellate Judge is now not required to consider evidence pertaining to them. He has to consider and make scrutiny

only of the evidence on record relating to utilisation/non-utilisation of the entire income of the trust with reference to purposes. This could have

been made by the learned lower appellate judge himself. In the facts and circumstances of the case, the remand was not required at all and the

same being unwarranted, appeal is hereby allowed in part. Impugned order is hereby set aside. Learned lower appellate judge is directed to

decide the appeal afresh in the light of the aforesaid discussion within a period of three months from the date of appearance.

Parties to appear before the lower appellate court on 20th May, 2010.

Record of the courts below be sent back immediately.

No order as to costs.