

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3474 OF 2009
(Arising out of SLP (Civil) No.16046 of 2004)

Muni Kumar
Razdan

....
Appellant



Versus

Trimurti Charitable Trust,
Gwalior & Ors.

....Respondents

J U D G M E N T

DR. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a Division Bench of the Madhya Pradesh High Court, Gwalior Bench, allowing the Letters Patent Appeal filed by the respondents. The appeal filed by the present respondents was directed against the order of the learned Single Judge in Writ Petition 789 of 2000. Preliminary objection was raised by the present appellant taking the stand that the appeal was not maintainable as no orders have been passed. Learned counsel for the present appellant submitted that the order passed by the learned Single Judge is not a judgment within the meaning of clause 10 of the Letters Patent.
3. The appellants in the Letters Patent Appeal submitted that writ petition was decided without issuing notice to the appellants before the writ court i.e. present respondents. The petition was disposed of on the first day it was listed for admission at motion hearing stage and after recording presence of counsel for the State on advance notice.

4. It was submitted that the respondent-trust was not registered at the Public Trust under Section 5 of the Madhya Public Trust Act, 1951 (in short the 'Act'). It is provided under Section 8 that any person aggrieved by registration of the trust may file civil suit challenging registration. It was submitted that after registration of the trust a writ petition was filed. Without issuing notice, learned Single Judge had issued direction holding therein that the Registrar has power to review the order of registration. It was also submitted that the writ petitioner had filed the civil suit under Section 8 challenging the registration and in that event petition should have been dismissed. The Division Bench was of the view that the basic question was whether after registration of the trust, Registrar, Public Trusts has jurisdiction to revive the order of registration. After referring to various provisions it was held that the Single Judge was not justified in deciding the matter without issuing notice. The High Court, however, held that in view of the fact that civil suit has been filed there is no need to remand the matter to the Single Judge. The question raised can be decided in the civil suit. Accordingly, the appeal was allowed.

5. In the present appeal, the stand was that the Division Bench should not have decided the Letters Patent Appeal. It was pointed out that the

Division Bench should not have interfered with the concurrent finding of the Single Judge particularly, when the Letters Patent Appeal was not maintainable.

6. It was also pointed out that the parameters of sub-section (6) of Section 8 of the Act have not been kept in view. It was submitted further that a person can invoke the writ jurisdiction when he cannot file the suit under sub-section (1) of Section 8. It is submitted that since the writ petitioner was not a party before the Registrar at the time of inquiry, it is not covered by Section 8.

7. It is to be noted that in the writ petition filed by the present respondent no.1, it was respondent no.3. All the grievances related to the order of Registrar of Public Trust and SDO respondent No.2 in the file relating to the present respondent no.1. The basic requirement of natural justice requires that they should have been heard in the matter.

8. The ultimate direction given by the Division Bench reads as follow:

“Having considered the matter, we would hold that the single bench has committed an error in not issuing notice before deciding the writ petition. Normally, in such case the order is to be set aside and the

matter should be remanded back to a single bench for decision of the writ petition on its merit. But considering the fact that against the order of registrar, Public Trusts, a civil suit u/s 8 of the act has been filed by the respondent and the appellants have also been a civil suit for declaration of the title of trust and injunction, it will not be appropriate to remand the matter back to the Single Bench. Questions of title of the respondent or competency of the settler to create trust can be decided in the civil suits filed by the parties, before the Civil Court. Therefore, questions involved in this case and objection to the registration may be raised by the parties before the civil court where the suits are pending. It is expected that the suits shall be decided at the earliest by the trial court say within a period of one year from the date of communication of this order. We further order that both the Civil Suits, viz. Civil suit No. 12-A/2000 u/s 8 of the act, pending in the court of II Additional District Judge, Gwalior and Civil Suit No. 30-A/99 pending in the Court of Eleventh Civil Judge Class II Gwalior be consolidated and decided by a common judgment by same court. Both the civil suits be transferred to the court of II Additional District Judge, Gwalior or to some other court as the District judge-Gwalior may deem fit for their decision on merit.”

9. In the aforesaid background without entering into the issue relating to maintainability of the Letters Patent Appeal, we feel that the directions/observations of the Division Bench allowing the appeal filed by the respondents cannot be faulted. It is needless to say that the dispute in the pending suit(s) shall be adjudicated in the manner directed by the Division Bench. We find no merit in this appeal which is accordingly dismissed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
May 08, 2009