

PETITIONER:
MAROTI

Vs.

RESPONDENT:
TULSIRAM & ANR.

DATE OF JUDGMENT 15/11/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 SCC Supl. (3) 746 JT 1995 (2) 371
1994 SCALE (4) 1046

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. Substitution allowed.
2. This appeal by special leave arises from the judgment and decree of the Single Judge- of the High Court of Bombay at Nagpur Bench in S.A.No.329 of 1967 made on September 11, 1979, The respondent Tulsiram Jagannath Sajo, as a Managing Trustee of Hanuman Deosthan, New Shukrawari, Nagpur, laid C.S.No.732 372 of 1961 in the Court of 4th Joint Civil Judge, Junior Division, Nagpur, for possession. The suit was decreed but, on appeal, that decree was set aside and in the second appeal, the decree of the appellate court was reversed and that of the trial court was restored. Thus, this appeal by special leave.
3. The facts found by the High Court were that one Matadin was the Managing Trustee till 1921 and on his demise, his son Kanhaiyalal managed the suit property as the Trustee till 1950. Thereafter, the plaintiff assumed the management of Trust as a Managing Trustee. The defendant entered the suit property as a tenant of the Trust in 1951. The appellant contends that he purchased the property from one Anandrao Bujade, successor on interest of Kanhaiyalal, by a registered sale deed dated January 12, 1961 and, therefore, he being the owner of the property cannot be ejected therefrom. It was also contended that in respect of the trust property, if the character of the trust or the nature of the trust is in dispute, the appropriate proceedings would lie before the Authorities constituted under the Bombay Public Trusts Act, 1950. Though, the trial court had not accepted the case of the appellant, the appellate court had accepted that the suit did not lie as the dispute relates to the property of the trust.
4. The High Court went into the entire controversy and recorded as a fact that the admission made by the appellant

in the cross-examination that he entered into the suit property on rent as a tenant from Anandrao Bujade in the year 1951 and he also, made an admission before the Municipal authorities under Ex.46 that he was the tenant and the trust was the owner of the property. This constitutes the admission made by the appellant. In view of that admission, the appellant is estopped from denying the title of the plaintiff-trust. The High Court also recorded the finding that preceding the appellant's entry into the possession as a tenant, the trust was in possession of it for over 12 years and it was leasing the property to various tenants. The trust was exercising its right as an owner of the property. The High Court had also found that the appellant court had ignored the evidence of PW-1, Ramaji and PW-2-Shionarayan which proved that the suit property was dedicated by Gajjulal to the Trust. In that view, it recorded a finding that the appellant had been in occupation of the suit property as a tenant and decreed the suit.

5.Shri V.A. Bobde, learned senior counsel for the appellant, sought to contend that in view of the controversy, the appropriate steps required to be taken by the respondent were under s. 19 as enjoined under s.50 of the Trust Act and the decision of the authorities under s.79 and 80 are conclusive wherein as it was held by the District Judge that the suit property is not a trust property. The civil court had, therefore, lacked jurisdiction to go into the question whether the properties are trust properties or not. We find no force in the contention.

6.The findings recorded by the High Court and the trial court were that the appellant had entered into the possession as a tenant and he is estopped to deny the title of the trust by operation of s. 116 of the Indian Evidence Act. Therefore, his only character is whether he was in possession as a tenant or in his own right as an owner. His contention that he

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purchased the property from Anandrao Bujade and thereafter he became the owner cannot be gone into in this appeal for the reason that he admitted in the cross objections that he was a tenant. Ex.46 also denies him the right to set up his own independent title, even if at all the deed was validly executed, it does not bind the trust. Be it whether Anandrao Bujade's predecessor, namely, Kanhaiyalal was the managing trustee of the property or mismanaged the property, since this admission is sufficient for disposal of this appeal, we do not go into the controversy raised by the appellant. He then contended that in view of the provisions of the '---P. & Berar (Letting of Houses and Rent Control) Order, 1949, the permission of the competent authority was not taken before filing the suit, under clause (13) of the C.P. & Berar (Letting of Houses & Rent Control) Order, 1949, and the suit is not maintainable. The contention was not raised in the High Court. Therefore, we decline to go into the question. Even otherwise, we find no force in the contention for the reason that the appellant himself set up his own right, title and interest in the property. Necessarily, the civil suit has to be filed and the civil court alone can go into the controversy, In that view, the High Court has not committed any error of law warranting interference. The appeal is accordingly dismissed with costs.

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