

Longabai Vs. Prem Chand

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Court : Madhya Pradesh

Decided On : Sep-13-2000

Reported in : 2000(4)MPHT340; 2001(2)MPLJ19

Judge : A.K. Mishra, J.

Acts : Evidence Act - Sections 116; Madhya Pradesh Public Trust Act, 1951 - Sections 32

Appeal No. : Civil Revision No. 635/98

Appellant : Longabai

Respondent : Prem Chand

Advocate for Def. : H.D. Gupta, Adv.

Advocate for Pet/Ap. : K.K. Lahoti, Adv.

Disposition : Revision allowed

Judgement :

ORDER

A.K. Mishra, J.

1. Plaintiff has filed the present revision petition being aggrieved by the Order passed by learned Additional Civil Judge, Class-I, Bhind in Civil Original Suit No.

179-A/97, dated 28-4-98 whereby the plaintiff's suit filed for ejectment of the defendant/tenant has been stayed till the proceedings for registration of trust are not completed.

2. Shri K.K. Lahoti, learned counsel for the petitioner has strenuously submitted that it is a case based on the landlord, tenant relationship. Bar or registration or question of registration is wholly foreign to the question to be tried in the suit between the landlord and the tenant. Thus the Order passed by the Court below is contrary to the law laid down in the case of *Brijmohan v. Dwarkadas*, 1975 J.L.J. SN 4, and on the case of *Kaduram v. Mahila Muthuri Bai*, in S.A. No. 139/79, decided on 1-1-80 decided by Hon'ble Justice H.G. Mishra.

3. Learned counsel appearing for the respondent/defendant submitted that in a different suit the matter has been adjudicated with respect to the property being the trust property. As such the suit is not maintainable at the instance of the present plaintiff in view of the subsequent development. He has supported the reasonings employed by the trial Court while passing the impugned order.

4. After hearing learned counsel appearing for both the parties I am of the opinion that revision deserves to be allowed. In the case the plaintiff has come to the Court with privity of contract that he has inducted the defendant as tenant in the premises, thus question of ownership is not directly involved in the case. In case the plaintiff has inducted the defendant as tenant and tenant has paid the rent suit is maintainable de hors the question of registration of trust. I am fortified in this view by the decision rendered in the case of *Kaduram* (supra) in which it has been held :--

'10. In Order that a person may be regarded as landlord, it is not necessary that he should also be the owner of the property forming subject matter of the lease. Concept of ownership and concept of landlordship are different. Therefore, even if the suit premises belong to the idol, the suit for ejectment at the instance of the plaintiff-respondents alone is competent and the Deity cannot file the suit on the basis of relationship of landlord and tenant because it does not exist between them. This is what flows from the following dictum of *Shri Ram Pasaricha v. Jagannath* (AIR 1976 SC 2335):

'It is only the landlord who can terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant.'"11. The suit, as framed, is not and cannot be regarded to be one brought for enforcement of 'any right on behalf of the public trust' within the meaning of Section 32 of the M.P. Public Trust Act, 1951. What the section enacts is only a Bar to the trial of a suit to enforce a right on behalf of a public trust. The present suit is a suit simpliciter for enforcement of right of the plaintiffs as landlords. It is not within the prohibition enacted by the said section. I am fortified in the view I am taking by the ratio of Brij Mohan v. Dwarkadas (1975 JLJ SN 4), wherein A.P. Sen, J., (as he then was) has expressed himself on the point thus:

'The suit as framed, was not a suit brought by the plaintiff to enforce a right on behalf of public trust within the meaning of Section 32 of the Act. The plaintiffs suit is for enforcement of his right as a landlord. Therefore, the contention that the suit was barred under Section 32 cannot be accepted. Revision is dismissed.'

Thus it can not be said that impugned Order is sustainable and interest of justice would not suffer if it is set aside.

The impugned Order is set aside. Trial Court is directed to proceed with the case on merits. Objections raised by the learned counsel for the defendant/respondent that there are subsequent developments. If there is any material subsequent development, having any bearing that has to be brought to the notice of the Court below which shall take the same into consideration and decide the suit expeditiously.

Revision is accordingly allowed. Parties to bear their own costs.