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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4768-71 OF 2011

IN THE MATTER OF:

BHAGWAN SRI RAMA VIRAJMAN
AND ORS. ...APPELLANTS

VERSUS

SRI RAJENDRA SINGH & ORS ...RESPONDENTS

COMPILATION OF JUDGMENTS BY SH. C. S. VAIDYANATHAN SR. ADV.

VOLUME-I

FILED BY
P. V. YOGESWARAN
ADVOCATE FOR APPELLANTS

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had applied through proper channel with the permission of the administration/authority concerned. There is no dispute that the respondent after proceeding to Yemen had resigned from Benaras Hindu University. There is a long gap between the time he left Benaras Hindu University and when he joined Aligarh Muslim University. It is not at all a case of transfer of an employee. There is no question of consent of the organisation (Benaras Hindu University). Therefore, the provisions of Statute 61(6)(*iv*) can have no application and the respondent is not entitled for counting of service rendered by him in Benaras Hindu University for the purpose of grant of pensionary benefits in Aligarh Muslim University.

17. For the reasons discussed above, the appeal is allowed. The judgment and order of the High Court dated 10-2-2006 is set aside and the writ petition filed by the respondent is dismissed. No order as to costs.

(2007) 8 Supreme Court Cases 600

(BEFORE S.B. SINHA AND H.S. BEDI, JJ.)

SHIV KUMAR SHARMA .. Appellant;

Versus

SANTOSH KUMARI .. Respondent.

Civil Appeal No. 4341 of 2007†, decided on September 18, 2007

A. Civil Procedure Code, 1908 — Or. 20 R. 12 and Or. 7 Rr. 7 & 8 — Suit for possession and injunction to restrain interference with possession — No claim made for damages/mesne profits in suit — In appeal filed by defendant, High Court in addition to upholding decree for possession and injunction, passing directions for payment of compensation to plaintiff and granting liberty to plaintiff to file separate suit for damages/mesne profits — Impermissibility — Specific Relief Act, 1963 — S. 5

B. Civil Procedure Code, 1908 — Or. 2 Rr. 2 & 4 and Or. 20 R. 12 — Separate suit for mesne profits/damages — Maintainability of, when the same not claimed in a suit for possession and injunction to restrain interference with possession — Held, there may be independent causes of action for either suit — In terms of Or. 2 R. 4 such causes of action can be joined and therefor no leave of the court is required — If no leave has been taken, a separate suit may or may not be maintainable but the same has to be filed within limitation — Specific Relief Act, 1963 — S. 5

C. Civil Procedure Code, 1908 — Or. 20 R. 12 — Suit for damages/mesne profits — Preconditions for filing of — Proper mode for disposal of — Necessity of paying requisite court fees — Necessity of passing of preliminary decree and inquiry into actual damages suffered — Specific Relief Act, 1963 — S. 5

† Arising out of SLP (C) No. 8275 of 2007. From the Judgment and Order dated 28-8-2006 of the High Court of Delhi at New Delhi in RFA No. 229 of 2004

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D. **Civil Procedure Code, 1908 — Or. 7 R. 1 — Suit for damages — Necessity of paying requisite court fees — Tort Law — Compensation/ Damages — Court Fees Act, 1870 — S. 7 — Contract Act, 1872, S. 73**

E. **Civil Procedure Code, 1908 — Or. 7 R. 1 and Or. 20 R. 6 — Balance court fees on actual damages determined by court — When payable — Held, the same is to be paid when a final decree is to be prepared — Court Fees Act, 1870, S. 11**

F. **Civil Procedure Code, 1908 — Or. 41 Rr. 31 to 33, Or. 20 R. 5 and Or. 7 Rr. 7 & 8 — Relief that may be granted — Power of appellate court — Proper mode of disposal of appeal — Grant of relief not prayed for in suit, by appellate court — Impermissibility — Practice and Procedure — Relief**

G. **Practice and Procedure — Jurisdiction — Equitable jurisdiction of Indian courts compared with that of English courts — Primacy of law over equity in India — Constitution of India — Arts. 226, 32 and 136 — Equity — Civil Procedure Code, 1908 — Ss. 9, 96, 100, 114 & 115 and 151**

H. **Civil Procedure Code, 1908 — Ss. 96, 9 and Or. 7 Rr. 7 & 8 — Relative scope of jurisdiction of High Court under S. 96 vis-à-vis under Arts. 226 and 227 of the Constitution — Power to mould relief — Scope — Constitution of India — Arts. 226 and 227**

I. **Civil Procedure Code, 1908 — S. 9 and Or. 2 Rr. 2 to 4 — Leave to file another suit — When unnecessary — Held, a civil court does not grant leave to file another suit — If the law permits, plaintiff may file another suit but not on the basis of observations made by a superior court — Practice and Procedure — Original proceedings**

J. **Constitution of India — Arts. 142 and 136 — Costs — Award of costs to do complete justice between parties — When warranted — Conduct of party — Civil Procedure Code, 1908 — Ss. 35 and 35-A**

The parties had entered into an agreement to sell their respective shops to each other. The said agreement was acted upon partially in terms whereof both the parties gave vacant possession of the property in their possession to the other. However, no registered deed of sale was executed. The respondent-plaintiff later filed a suit praying inter alia for a decree for possession of the appellant-defendant's shop and permanent injunction restraining the defendant from selling, alienating, interfering with the possession of the plaintiff, etc. The suit was decreed. The appellant preferred an appeal before the High Court. During pendency of the appeal, the said decree was acted upon by the parties. The plaintiff got back possession of the defendant's shop.

In appeal thereagainst, a Division Bench of the High Court while maintaining the decree as affirmed by the Single Judge, noticed that the defendant was required to pay a sum of Rs 1,50,000 to the plaintiff over and above the price specified in the agreement in respect of transferring the title and possession of the plaintiff's shop to the defendant, but the defendant had not paid the said amount. The High Court, therefore, thought it fit to direct payment of a suitable amount of compensation to the plaintiff by the impugned order. The High Court further directed that liberty was given to the plaintiff to claim relief by way of damages/mesne profits in a separate suit filed before the competent

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court. The appellant-defendant was before the Supreme Court thereagainst by special leave.

Disposing of the appeal with costs of Rs 50,000 in the terms below, the Supreme Court

Held :

A suit is ordinarily tried on the issues raised by the parties. The plaintiff-respondent did not ask for payment of any damages. No prayer for payment of damages by way of mesne profit or otherwise was also made by the plaintiff. If the plaintiff was to ask for a decree for damages, he was required to pay requisite court fees on the amount claimed. Damages cannot be granted without payment of court fee. In a case where damages are required to be calculated, a fixed court fee is to be paid but on the quantum determined by the court and the balance court fee is to be paid when a final decree is to be prepared. In such a situation, having regard to Order 20 Rule 12 CPC, a preliminary decree was required to be passed. A proceeding for determination of the actual damages was required to be gone into. (Paras 18 and 20)

A suit for recovery of possession on declaration of one's title and/or injunction and a suit for mesne profits or damages may involve different causes of action. For a suit for possession, there may be one cause of action; and for claiming a decree for mesne profits, there may be another. In terms of Order 2 Rule 4 CPC, however, such causes of action can be joined and therefor no leave of the court is required to be taken. If no leave has been taken, a separate suit may or may not be maintainable but even a suit wherefor a prayer for grant of damages by way of mesne profits or otherwise is claimed, must be instituted within the prescribed period of limitation. (Para 20)

If the respondent-plaintiff intended to claim damages and/or mesne profits, in view of Order 2 Rule 2 CPC itself, he could have done so, but he chose not to do so. For one reason or the other, he, therefore, had full knowledge about his right. Having omitted to make any claim for damages, the plaintiff cannot be permitted to get the same indirectly. Law in this behalf is absolutely clear. What cannot be done directly cannot be done indirectly. (Paras 21 and 22)

Scope and ambit of jurisdiction of the High Court in determining an issue in an appeal filed in terms of Section 96 CPC (which would be in continuation of the original suit) and exercising the power of judicial review under Articles 226 and 227 of the Constitution of India would be different. In the former, the High Court, subject to the procedural flexibility, as laid down under the statute, is bound to act within the four corners thereof. On the other hand, in adjudicating a lis in exercise of its power of judicial review, the High Court exercises a wider jurisdiction. No doubt, the Court in an appropriate case, even in a civil suit may mould a relief but its jurisdiction in this behalf would be confined to Order 7 Rule 7 CPC. (Para 23)

Bay Berry Apartments (P) Ltd. v. *Shobha*, (2006) 13 SCC 737 : (2006) 10 Scale 596; *U.P. State Brassware Corpn. Ltd.* v. *Uday Narain Pandey*, (2006) 1 SCC 479 : 2006 SCC (L&S) 250, *relied on*

Hence, the High Court was not correct in framing the additional issues of its own which did not arise for consideration in the suit or in the appeal. Even otherwise, the High Court should have formulated the points for its consideration in terms of Order 41 Rule 31 CPC. On the pleadings of the parties and in view of the submissions made, no such question arose for its consideration. In any event, if a second suit was maintainable in terms of Order 2 Rule 4 CPC no leave was

required to be granted therefor. A civil court does not grant leave to file another suit. If the law permits, the plaintiff may file another suit but not on the basis of observations made by a superior court. (Para 29)

Shamsu Suhara Beevi v. *G. Alex*, (2004) 8 SCC 569, *followed*

Fibrosa Spolka Akcyjna v. *Fairbairn Lawson Combe Barbour Ltd.*, 1943 AC 32 : (1942) 2 All ER 122 (HL); *Nelson* v. *Larholt*, (1948) 1 KB 339 : (1947) 2 All ER 751; *Cumberland Consolidated Holdings Ltd.* v. *Ireland*, 1946 KB 264 : (1946) 1 All ER 284 (CA), *distinguished*

In view of the above findings it is not necessary to determine the question as to whether in a situation of this nature, the plaintiff was entitled to damages. He might have been entitled thereto but no prayer having been made, that part of the judgment of the High Court which is impugned cannot be sustained. (Para 30)

However, in exercise of the discretionary jurisdiction under Article 142 of the Constitution of India and having regard to the conduct of the defendant, it is directed that costs shall be payable by the appellant in favour of the respondent in terms of Section 35-A CPC, besides the costs already directed to be paid by the trial Judge as also by the High Court. The appellant-defendant is directed to pay a sum of Rs 50,000 by way of costs to the respondent-plaintiff. (Para 31)

D-M/36722/C

Advocates who appeared in this case :

Ashok Bhasin, Senior Advocate (Shantanu Rastogi and R.S. Lambat, Advocates, with him) for the Appellant;

Ms Geeta Luthra, D.N. Goburdhun, Ms Pinky Anand, Piyush Singhal and Ms Riva Gujral, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2006) 13 SCC 737 : (2006) 10 Scale 596, *Bay Berry Apartments (P) Ltd.* v. *Shobha* 607*g*
2. (2006) 1 SCC 479 : 2006 SCC (L&S) 250, *U.P. State Brassware Corpn. Ltd.* v. *Uday Narain Pandey* 607*g*
3. (2004) 8 SCC 569, *Shamsu Suhara Beevi* v. *G. Alex* 608*c*
4. (1948) 1 KB 339 : (1947) 2 All ER 751, *Nelson* v. *Larholt* 608*a*
5. 1946 KB 264 : (1946) 1 All ER 284 (CA), *Cumberland Consolidated Holdings Ltd.* v. *Ireland* 608*a*
6. 1943 AC 32 : (1942) 2 All ER 122 (HL), *Fibrosa Spolka Akcyjna* v. *Fairbairn Lawson Combe Barbour Ltd.* 608*a*

The Judgment of the Court was delivered by

S.B. SINHA, J.— Leave granted.

2. Propriety or otherwise of certain directions issued by a Division Bench of the Delhi High Court is in question in this appeal which arises out of a judgment and order dated 28-8-2006 passed by the said Court in RFA No. 229 of 2004.

3. The basic fact of the matter is not in dispute.

4. The parties had entered into an agreement to sell their respective properties situate at 598/1, Gali Kaitwali, Sangtrashan, Paharganj, Delhi and 1241, Sangtrashan, Paharganj, Delhi for a price which was subsequently determined at Rs 4,75,000 and Rs 3,25,000 respectively. The appellant's title over the property which was owned and possessed by him appeared to be defective; although the said agreement was acted upon partially in terms

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whereof both the parties gave vacant possession of the property in their possession to the other.

5. However, no registered deed of sale could be executed. The respondent issued a notice on or about 21-3-1996 asking the appellant to hand over possession. The respondent thereafter filed a suit praying inter alia for the following reliefs:

"(*a*) A decree for possession in favour of the plaintiff and against the defendant in respect of shop bearing No. 1241, situated on the ground floor duly shown in red colour in Annexure 'A' forming part of building bearing No. 1241, Bazar Sangtrashan, Paharganj, New Delhi.

(*b*) By means of a decree for permanent injunction in favour of the plaintiff against the defendant that the defendant be restrained from selling, alienating, letting or otherwise parting with possession of the shop situated on ground floor or any part thereof shown in red colour in the plan, Annexure 'A' forming part of Building No. 1241, Bazar Sangtrashan, Paharganj, New Delhi.

(*c*) Costs of the suit be awarded."

6. The defence raised by the appellant in his written statement was that he had all along been ready and willing to perform his part of the contract but the plaintiff became dishonest when the value of the property in the area increased and he started demanding more money from him on the plea that his business on the ground floor of the property had flourished in no time and the value of the property was more than the agreed sale consideration.

7. On the pleadings of the parties, the learned trial Judge framed the following issues:

"(*i*) Whether the suit is not maintainable in view of the provisions of Sections 38 and 41 of the Specific Relief Act?

(*ii*) Whether the suit has not been properly valued for the purposes of court fee and jurisdiction?

(*iii*) Whether the agreement dated 30-5-1995 as alleged is executed between the parties?

(*iv*) Whether the agreement dated 30-5-1995 is forged and fabricated? If so, to what effect?

(*v*) Whether the defendant is the owner of Property No. 598/1, Gali Kaitwali, Sangtrashan, Paharganj, New Delhi?

(*vi*) Whether the plaintiff is entitled to the possession and injunction prayed for?

(*vii*) Relief."

8. The suit was decreed. The learned trial Judge passed the decree for possession in respect of the shop premises bearing No. 1241, Bazar Sangtrashan, Paharganj, New Delhi. A decree for permanent injunction was also passed restraining the defendant from selling, alienating, letting or otherwise parting with the possession of the shop situated on ground floor or any part thereof.

9. Aggrieved thereby and dissatisfied therewith, the appellant preferred an appeal before the High Court. During pendency of the appeal, the said decree was acted upon by the parties. The plaintiff got back possession of the premises in question.

10. A Division Bench of the High Court, however, sought to explore the possibility of an amicable settlement between the parties. It referred the parties to the High Court Mediation Centre but it did not succeed.

11. The short question which was posed and answered by the High Court was as to whether the defendant had any subsisting legal right to stay in occupation of the shop owned by the plaintiff and if he did not have any such right, as to whether restoration of possession could be demanded back by him as a condition precedent for surrender of possession of Shop No. 1241. The said question was answered in favour of the plaintiff and against the defendant.

12. The High Court, however, did not stop there. It raised a question as to whether transfer of possession of the shop in possession of the plaintiff to the defendant would suffice and provide for an equitable solution without any further direction to the defendant to compensate the plaintiff for non-payment of the amount which he had to pay to the plaintiff under the agreement executed between them.

13. The High Court noticed that the defendant was required to pay a sum of Rs 1,50,000 to the plaintiff over and above the price specified in the agreement in respect of transferring the title and possession of Shop No. 598/1 but he did not pay. The High Court, therefore, thought it fit to direct payment of suitable amount of compensation to the plaintiff. It was opined that grant of 6% interest per annum calculated from 30-5-1995 till the date of actual payment would serve the purpose. It was further directed:

> "Subject to all just exceptions including limitations, liberty is given to the plaintiff to claim relief by way of damages/mesne profits in a separate suit filed before the competent court."

14. The appellant is, thus, before us.

15. Mr Ashok Bhasin, learned Senior Counsel appearing on behalf of the appellant would submit that the impugned directions are not legally sustainable as the parties hereto had been in possession of the shop premises belonging to other and in that view of the matter the question of payment of any damages or compensation by way of mesne profit or otherwise did not and could not arise.

16. Ms Geeta Luthra, learned counsel appearing on behalf of the respondent, on the other hand, would submit that damages could have been granted in the facts and circumstances of this case, particularly when the appellant himself accepted that his business had flourished at the premises belonging to the plaintiff.

17. The learned counsel would furthermore contend that although Order 2 Rule 2 of the Code of Civil Procedure ("the Code") bars a second suit; Rule 4 of the said Order being an exception thereto, the High Court

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cannot be said to have committed any error in passing the impugned judgment.

18. A suit is ordinarily tried on the issues raised by the parties. The plaintiff-respondent did not ask for payment of any damages. No prayer for payment of damages by way of mesne profit or otherwise was also made by the plaintiff. If the plaintiff was to ask for a decree, he was required to pay requisite court fees on the amount claimed. In such a situation, having regard to Order 20 Rule 12 of the Code, a preliminary decree was required to be passed. A proceeding for determination of the actual damages was required to be gone into.

19. Order 2 Rules 2, 3 and 4 of the Code read as under:

"2. *Suit to include the whole claim.*—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

(2) *Relinquishment of part of claim.*—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) *Omission to sue for one of several reliefs.*—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

3. *Joinder of causes of action.*—(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

4. *Only certain claims to be joined for recovery of immovable property.*—No cause of action shall, unless with the leave of the court, be joined with a suit for the recovery of immovable property, except—

(*a*) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(*b*) claims for damages for breach of any contract under which the property or any part thereof is held; and

(*c*) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property."

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20. In terms of Order 2 Rule 2 of the Code, all the reliefs which could be claimed in the suit should be prayed for. Order 2 Rule 3 provides for joinder of causes of action. Order 2 Rule 4 is an exception thereto. For joining causes of action in respect of matters covered by Clauses (*a*), (*b*) and (*c*) of Order 2 Rule 4, no leave of the court is required to be taken. Even without taking leave of the court, a prayer in that behalf can be made. A suit for recovery of possession on declaration of one's title and/or injunction and a suit for mesne profit or damages may involve different cause of action. For a suit for possession, there may be one cause of action; and for claiming a decree for mesne profit, there may be another. In terms of Order 2 Rule 4 of the Code, however, such causes of action can be joined and therefor no leave of the court is required to be taken. If no leave has been taken, a separate suit may or may not be maintainable but even a suit wherefor a prayer for grant of damages by way of mesne profit or otherwise is claimed, must be instituted within the prescribed period of limitation. Damages cannot be granted without payment of court fee. In a case where damages are required to be calculated, a fixed court fee is to be paid but on the quantum determined by the court and the balance court fee is to be paid when a final decree is to be prepared.

21. If the respondent intended to claim damages and/or mesne profit, in view of Order 2 Rule 2 of the Code itself, he could have done so, but he chose not to do so. For one reason or the other, he, therefore, had full knowledge about his right. Having omitted to make any claim for damages, in our opinion, the plaintiff cannot be permitted to get the same indirectly.

22. Law in this behalf is absolutely clear. What cannot be done directly cannot be done indirectly.

23. Scope and ambit of jurisdiction of the High Court in determining an issue in an appeal filed in terms of Section 96 of the Code of Civil Procedure (which would be in continuation of the original suit) and exercising the power of judicial review under Articles 226 and 227 of the Constitution of India would be different. While in the former, the Court, subject to the procedural flexibility, as laid down under the statute, is bound to act within the four corners thereof, in adjudicating a lis in exercise of its power of judicial review, the High Court exercises a wider jurisdiction. No doubt, the Court in an appropriate case, even in a civil suit may mould a relief but its jurisdiction in this behalf would be confined to Order 7 Rule 7 of the Code of Civil Procedure. [See *Bay Berry Apartments (P) Ltd.* v. *Shobha*[1] and *U.P. State Brassware Corpn. Ltd.* v. *Uday Narain Pandey*[2].]

24. Submission of Ms Luthra that the High Court had the requisite jurisdiction in equity to pass the impugned decree, in a situation of this nature, therefore, in our opinion, is not correct.

1 (2006) 13 SCC 737 : (2006) 10 Scale 596
2 (2006) 1 SCC 479 : 2006 SCC (L&S) 250

25. The learned trial Judge has relied upon *Fibrosa Spolka Akcyjna* v. *Fairbairn Lawson Combe Barbour Ltd.*[3] and *Nelson* v. *Larholt*[4]. In support of its findings, reliance has also been placed by Ms Luthra on *Cumberland Consolidated Holdings Ltd.* v. *Ireland*[5]. These decisions have no application to the facts and circumstances of the instant case.

26. In England, the court of equity exercises jurisdiction in equity. The courts of India do not possess any such exclusive jurisdiction. The courts in India exercise jurisdiction both in equity as well as law but exercise of equity jurisdiction is always subject to the provisions of law. If exercise of equity jurisdiction would violate the express provisions contained in law, the same cannot be done. Equity jurisdiction can be exercised only when no law operates in the field.

27. A court of law cannot exercise its discretionary jurisdiction dehors the statutory law. Its discretion must be exercised in terms of the existing statute.

28. In *Shamsu Suhara Beevi* v. *G. Alex*[6] this Court, while dealing with a matter relating to grant of compensation by the High Court under Section 21 of the Specific Relief Act in addition to the relief of specific performance in the absence of prayer made to that effect, either in the plaint or amending the same at any later stage of the proceedings to include the relief of compensation in addition to the relief of specific performance, observed: (SCC p. 576, para 11)

> "*11.* … Grant of such a relief in the teeth of express provisions of the statute to the contrary is not permissible. On equitable considerations court cannot ignore or overlook the provisions of the statute. Equity must yield to law."

29. We, therefore, are of the opinion that the High Court was not correct in framing the additional issues of its own which did not arise for consideration in the suit or in the appeal. Even otherwise, the High Court should have formulated the points for its consideration in terms of Order 41 Rule 31 of the Code. On the pleadings of the parties and in view of the submissions made, no such question arose for its consideration. In any event, if a second suit was maintainable in terms of Order 2 Rule 4 of the Code, as was submitted by Ms Luthra, no leave was required to be granted therefor. A civil court does not grant leave to file another suit. If the law permits, the plaintiff may file another suit but not on the basis of observations made by a superior court.

30. In view of our findings aforementioned, it is not necessary for us to determine the question as to whether in a situation of this nature, the plaintiff was entitled to damages. He might have been entitled thereto but no prayer having been made, that part of the judgment of the High Court which is impugned before us cannot be sustained.

3 1943 AC 32 : (1942) 2 All ER 122 (HL)
4 (1948) 1 KB 339 : (1947) 2 All ER 751
5 1946 KB 264 : (1946) 1 All ER 284 (CA)
6 (2004) 8 SCC 569

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31. However, in exercise of our discretionary jurisdiction under Article 142 of the Constitution of India and having regard to the conduct of the defendant, we direct that the costs shall be payable by the appellant in favour of the respondent in terms of Section 35-A of the Code, besides the costs already directed to be paid by the learned trial Judge as also by the High Court. We direct the appellant to pay a sum of Rs 50,000 by way of costs to the respondent.

32. The appeal is disposed of with the aforementioned directions.

(2007) 8 Supreme Court Cases 609

(BEFORE S.B. SINHA AND H.S. BEDI, JJ.)

MUNDRI LAL .. Appellant;

Versus

SUSHILA RANI (SMT) AND ANOTHER .. Respondents.

Civil Appeal No. 4348 of 2007†, decided on September 18, 2007

A. **Rent Control and Eviction — Exemption from Operation of Rent Act — Exemption in case of construction of new premises — "Construction" — What amounts to, and determination of — Substantial addition to existing building, when enough — Part only of a building if can be considered a new construction — Applicability of S. 2(2) Expln. I, 1972 U.P. Rent Act — Held, provisions of S. 2(2) contain a deeming provision and must be given their full effect — Words and Phrases — U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972) — S. 2(2) Expln. I**

B. **Rent Control and Eviction — Costs — When warranted — Conduct of party — Protraction of litigation — Civil Procedure Code, 1908 — Ss. 35 and 35-B**

The appellant was inducted as a tenant in a shop premises. The shop in question was newly constructed. The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ("the Act") contained an exemption provision in Section 2(2) broadly to the effect that nothing in the Act would apply to a building during a period of ten years from the date on which its construction was completed.

A notice under Section 106 of the Transfer of Property Act was served on the appellant asking him to quit and vacate the said tenanted premises. As the appellant did not comply with the said demand, the respondent filed a suit for eviction of the appellant on the premise that Section 2(2) of the Act was applicable. The eviction of the appellant tenant was upheld in a long course of litigation and ultimately by the impugned judgment of the High Court, against which the appellant was before the Supreme Court.

Dismissing the appeal with costs of Rs 10,000, the Supreme Court

† Arising out of SLP (C) No. 84 of 2007. From the Judgment and Order dated 19-10-2006 of the High Court of Judicature at Allahabad in CR No. 850 of 1987

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Registrar, Meerut[10] and *Chief Commr.* v. *Delhi Cloth and General Mills Co. Ltd.*[11] (which is a decision by a Bench of two learned Judges in appeal preferred against the judgment in *Delhi Cloth and General Mills Co. Ltd.* v. *Chief Commr.*[9]) in support of his contention that the notification issued by the State Government prescribing the registration fee in tabulated form is illegal. It is not necessary to examine these cases in detail as in all these cases reliance has been placed upon *Shirur Mutt case*[1] for holding that there must be an element of quid pro quo and that the fee realised must be correlated and must be spent for the purposes of imposition. As discussed above, the view taken in *Shirur Mutt case*[1] has undergone a considerable change by subsequent decisions of this Court. Moreover, having regard to the express language used in Article 266 of the Constitution, it is not possible for the State Government to keep the fee realised in a separate fund other than the Consolidated Fund of the State. In view of the subsequent decisions of this Court, the views taken in the decisions relied upon by learned counsel for the plaintiff-respondents cannot be considered to be good law and they are hereby overruled.

20. For the reasons discussed above, the appeal is allowed with costs. The judgment and decree passed by the High Court and also by the District Judge and Senior Sub-Judge, Solan, are set aside and the suit filed by the plaintiff-respondents is dismissed.

(2004) 8 Supreme Court Cases 569

(BEFORE ASHOK BHAN AND S.H. KAPADIA, JJ.)

SHAMSU SUHARA BEEVI .. Appellant;

Versus

G. ALEX AND ANOTHER .. Respondents.

Civil Appeal No. 3729 of 2000†, decided on August 20, 2004

A. Specific Relief Act, 1963 — S. 21(5) — Award of damages in addition to specific performance — Discretion of court — Cardinality of pleadings in respect of — Pleading of insufficiency of specific performance necessary — On facts, since no such pleading was evident, nor was any amendment of the plaint sought therefor, the High Court clearly erred in granting such damages, that too in the teeth of express statutory provisions to the contrary — Further held, on equitable considerations court cannot ignore or overlook the provisions of the statute — Equity must yield to law — Contract Act, 1872 — S. 73 — Damages — Pleading in respect of — Cardinality of — Civil Procedure Code, 1908 — Or. 7 R. 7 and Or. 6 R. 1 — Specific statement of relief — Cardinality — Equity

Allowing the appeal, the Supreme Court

Held :

While it is proper that the court should have full discretion to award damages in any case it thinks fit, one cannot, on the other hand, overlook the question of

10 AIR 1971 All 390 : 1971 All LJ 342

11 (1978) 2 SCC 367 : 1978 SCC (Tax) 108 : AIR 1978 SC 1181

† From the Judgment and Order dated 24-1-2000 of the Kerala High Court in CRP No. 2267 of 1999

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unfairness and hardship to the defendant, if a decree is passed against him, without a proper pleading. Therefore the court cannot award compensation in addition to specific performance in the absence of a specific claim for damages and a proper pleading stating why the relief of specific performance would be insufficient to satisfy the justice of the case and the plaintiff would not be entitled to compensation. Section 21(5) emphatically provides that no compensation shall be awarded under Section 21(5) unless the relief for compensation has been claimed either in the plaint or included later on by amending the plaint at any stage of the proceedings. (Paras 10 and 11)

Somasundaram Chettiar v. *Chidambaram Chettiar*, AIR 1951 Mad 282 : (1950) 2 MLJ 509, *impliedly approved*

Arya Pradeshak Pritinidhi Sabha v. *Lahori Mal*, ILR (1924) 5 Lah 509 : AIR 1924 Lah 713, *impliedly disapproved*

Purushothaman v. *Thulasi*, (1995) 1 KLT 40, *clarified*

Ninth Law Commission Report dated 19-7-1958 (pp. 18 and 19), *referred to*

In the original plaint the respondents did not claim compensation for the breach of agreement of sale either in addition to or in substitution of the performance of the agreement. Further, the respondents did not amend their plaint and ask for compensation either in addition to or in substitution of the performance of the agreement of sale. The application filed by the respondents is a simple application filed under Section 28(3) of the Act seeking permission to ascertain the extent of plaint schedule property. In addition, the respondents prayed that they be permitted to recover interest @ 12% towards loss of income on the sale amount from 23-10-1997 i.e. the date of deposit till delivery of the possession of the property. Permission seeking to amend the plaint to include the relief of compensation for breach of the contract in addition to the specific performance has not been made. The relief was claimed under Section 28 and not under Section 21 of the Act. The High Court came to the conclusion that Section 28 would not be applicable to the facts of the case but granted the relief under Section 21 of the Act. The High Court has clearly erred in granting the compensation under Section 21 in addition to the relief of specific performance in the absence of prayer made to that effect either in the plaint or amending the same at any later stage of the proceedings to include the relief of compensation in addition to the relief of specific performance. Grant of such a relief in the teeth of express provisions of the statute to the contrary is not permissible. On equitable considerations court cannot ignore or overlook the provisions of the statute. Equity must yield to law. (Para 11)

B. **Civil Procedure Code, 1908 — S. 34 — Award of costs as compensation — Impermissibility — Compensation — Contract Act, 1872 — S. 73 — Torts — Damages/Compensation**

The Single Judge has also erred in including the amount of costs which have been awarded in the main suit towards the amount of compensation. Of course, the plaintiff-respondents are entitled to recover the amount of costs which has been decreed in the main suit but the same cannot form part of compensation by way of additional relief to the specific performance of the agreement of sale. (Para 13)

D-M/30404/C

Advocates who appeared in this case :
E.M.S. Anam, Advocate, for the Appellant;
V.J. Francis, Advocate, for the Respondents.

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Chronological list of cases cited ***on page(s)***

1. (1995) 1 KLT 40, *Purushothaman* v. *Thulasi* 573*a*, 573*d-e*, 576*c*, 576*d-e*
2. AIR 1951 Mad 282 : (1950) 2 MLJ 509, *Somasundaram Chettiar* v. *Chidambaram Chettiar* 575*a-b*
3. ILR (1924) 5 Lah 509 : AIR 1924 Lah 713, *Arya Pradeshak Pritinidhi Sabha* v. *Lahori Mal* 575*a*

The Judgment of the Court was delivered by

ASHOK BHAN, J.— The defendant-appellant (hereinafter referred to as "the appellant") entered into an agreement of sale with the plaintiff-respondents (hereinafter referred to as "the respondents") on 20-10-1994 for the sale of land measuring 15.125 cents owned by her at the rate of Rs 3,15,000 per cent for a total consideration of Rs 44,66,385. The agreement was to be executed within a period of 3 months from the date of the execution of the agreement of sale. A sum of Rs 10 lakhs was paid by the respondents as advance/earnest money towards the sale consideration. As the appellant failed to execute the sale deed the respondents on 26-4-1995 filed a suit being OS No. 458 of 1995 in the Court of the IIIrd Additional Sub-Judge, Ernakulam for specific performance of the agreement dated 20-10-1994. The appellant filed the written statement. The suit was decreed on 24-7-1997 in the following terms:

> "*1.* That the defendant shall cause the plaint schedule property to be sold in terms of Ext. A-4 sale agreement dated 20-10-1994 within three months from the plaintiffs depositing the balance sale consideration with the court after causing the property to be measured and satisfying the plaintiff about the measurements and complying with the requirements under the Indian Income Tax Rules and Act obtaining necessary sanction and permission and certificate from the authorities under the Income Tax Act. It is made clear that it shall not be the duty of the plaintiff to inform the defendant about the deposit of the balance sale consideration with the court and it is for the defendant to make enquiries with the office and ascertain as to whether the balance sale consideration was deposited by the plaintiffs with the court.
>
> 2. The plaintiff shall deposit the balance sale consideration with the court within three months from the date of this decree. The balance sale consideration shall be paid for the entire area shown in the plaint and if in any case it is found by measuring the property that the actual extent is short of the area shown in the plaint, the plaintiffs shall get back the amount paid in excess by them by taking into consideration the difference, if any, found in the measurements.
>
> *3.* If the defendant fails to cause the registration of the sale deed as aforesaid within the time mentioned above, the plaintiffs are at their liberty to move the court in execution for causing the sale deed executed and then it shall be the duty of the defendant to obtain necessary permission and sanction and certificate from the Income Tax Authorities for the purpose of the sale in compliance with the requirements of the Indian Income Tax Act and Rules and shall take steps to get the property measured and the actual extent ascertained.

(14)

4. The defendant shall pay the cost of the plaintiffs in the suit."

This judgment became final as the appellant did not contest the case by filing further appeal.

2. The respondents in terms of the decree deposited the sum of Rs 34,66,385 in the court as balance of the sale consideration on 23-10-1997 within the period of 3 months. The court directed that the amount deposited be kept in a nationalised bank and accordingly, the amount was deposited in Indian Bank, Mattancherry Branch. The respondents moved IA No. 5187 of 1997 for permission to measure the suit property to ascertain the exact extent of land and a direction to the appellant to obtain a "no-objection certificate" from the Department of Income Tax so that sale deed could be executed. On 17-2-1998 the respondents moved another application, IA No. 851 of 1998, under Section 28(3) of the Specific Relief Act, 1963 (hereinafter referred to as "the Act") claiming interest @ 12% on Rs 44,66,385 (sale consideration) from the date of deposit of the amount till the registration of the sale deed and delivery of possession of the suit property. The sale deed was executed and registered by the appellant on 17-8-1999. It was found that clearance from the Department of Income Tax was not required. Soon after the registration of the sale deed the respondents took possession of the property.

3. The trial court disposed of IAs Nos. 5187 of 1997 and 851 of 1998 by a common order dated 15-10-1999. Both the IAs were allowed. The actual extent of land held by the appellant worked out to be 14.179 cents instead of 15.125 cents mentioned in the agreement of sale. It was held that the respondents were entitled to recover the sum of Rs 12,77,870 by way of compensation which included the costs awarded in the suit, excess amount deposited and interest by way of compensation on the sale consideration. The respondents were permitted to recover the amount of Rs 12,77,780 from the amount lying deposited in the bank. The break-up of the sum of Rs 12,77,780 under various heads for payment to the respondents was worked out as under:

1.	Costs decreed to the plaintiffs	Rs	3,09,093.00
2.	Survey expenses	Rs	2650.00
3.	Excess amount deposited by the plaintiff	Rs	16,065.00
4.	Interest on excess amount of Rs 16,065 from 23-10-1997 to 17-8-1999 at 15%	Rs	4371.00
5.	Interest on Rs 44,50,320 from 23-10-1997, date of deposit till 1-8-1999 at 12% towards compensation	Rs	9,45,691.00
		Rs	12,77,870.00

4. The appellant being aggrieved with the order passed by the trial court preferred CRP No. 2267 of 1999 in the High Court.

5. The learned Single Judge before whom revision petition came up for hearing agreed with the contention raised by the appellant that Section 28 of the Act invoked by the respondents would not be applicable to the facts of the case as Section 28 applies to cases where rescission of the contract takes place with regard to contract for sale or lease of immovable property. Before us as well it was not argued that Section 28 of the Act would be applicable in the facts of the present case. However, learned Single Judge invoking Section

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21 of the Act held that the respondents would be entitled to get compensation. Learned Single Judge placed reliance upon the judgment of the Single Judge of that High Court in *Purushothaman* v. *Thulasi*[1]. It was observed that in *Purushothaman case*[1] as well the plaintiff had not amended his plaint. Order of the trial court was modified as to the rate of interest payable. The interest of 15% granted on the excess amount of Rs 16,065 from 23-10-1997 to 17-8-1999 by the trial court was reduced to 12% and the interest of 12% on Rs 44,50,320 from 23-10-1997 till 1-8-1999 as compensation was reduced to 6%. The court below was directed to disburse the sum lying deposited with Indian Bank to the parties in accordance with the judgment rendered by the High Court. Aggrieved against the judgment of the High Court the present appeal has been filed by the appellant.

6. Counsel for the appellant strenuously contended that the High Court has misunderstood the scope of Section 21 of the Act. According to him, compensation for breach of agreement of sale either in addition to or in substitution of the performance of the agreement cannot be granted unless the plaintiff claims such compensation in his plaint. Since the respondents had failed to claim the compensation either in the original plaint or by amending the plaint at a subsequent stage during the pendency of the said proceedings as provided under Section 21(5), the respondents were not entitled to any compensation for breach of agreement of sale even if there was such a breach. It was further contended that the learned Single Judge committed a factual error in observing that in *Purushothaman*[1] the plaint had not been amended in terms of Section 21(5) of the Act. According to him, in *Purushothaman*[1] the plaint had been amended to claim the relief of compensation. That the sum of Rs 3,09,093 towards the cost in the suit could not be included while working the amount of compensation under sub-section (5) of Section 21. Such costs could be recovered by the respondents by filing an execution application for recovery of the cost and the same could not be recovered as a part of compensation payable in addition to or in substitution of the relief of specific performance. Counsel appearing for the respondents controverted the submission made by the counsel for the appellant and supported the findings recorded by the High Court.

7. Section 21 of the Act reads:

> "21. *Power to award compensation in certain cases.*—(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.
>
> (2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.
>
> (3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

1 (1995) 1 KLT 40

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(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section."

8. This section corresponds to Section 19 of the Specific Relief Act, 1877. Sub-section (1) re-enacts the law as contained in clause (1) of the repealed Section 19 with suitable variations. The words "any person suing" have been substituted by the words "in a suit". The word "claim" has been substituted for the words "ask for" and the word "plaintiff" has been inserted before the words "performance of a contract". Sub-section (2) reproduces verbatim the language of clause (2) of the repealed Section 19 with the alteration that the word "such" has been prefixed before the word "compensation". Sub-section (3) corresponds to clause (3) of Section 19 of the repealed Act. There is no modification in this sub-section. Clause (4) of Section 19 of the repealed Act has been substituted by the new sub-section (4) of Section 21. It provides the mode and manner of determining the amount of compensation under this section. It lays down the principle which would govern the determination of the award of compensation and provides that the court shall be guided by the principles specified in Section 73 of the Contract Act, 1872 while determining the amount of compensation. Sub-section (5) of this section is new. It provides that the compensation under this section shall not be awarded unless the plaintiff has claimed it in the plaint. An important rider has been attached to this sub-section which is to the effect that the court shall, at any stage of the proceedings, permit the amendment of the plaint to enable the plaintiff to include his claim for compensation on such terms, as the court may deem fit. Explanation to this sub-section re-enacts the language of the old explanation without any change. Illustrations under Section 19 have been deleted.

9. Reasons for recommending the changes have been given by the Law Commission of India in its Ninth Report on the Specific Relief Act, 1877. Since in the present case, we are considering whether the compensation could be awarded in a suit for specific performance without making a claim of compensation either in the original plaint or by amending the plaint during the course of the proceedings, we would refer to the suggestions made by the Law Commission for the enactment of such clause (5) only.

10. Sub-sections (4) and (5) of Section 21 seem to resolve certain divergence of opinion in the High Courts on some aspects of jurisdiction to the award of compensation. The Law Commission in its Ninth Law Commission Report dated 19-7-1958 (pp. 18 and 19) observed that there had been a difference of judicial opinion as to whether the court has the power to

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award compensation in a suit for specific performance, where the plaintiff has not specifically prayed for it in the plaint. The Lahore High Court has taken the view in *Arya Pradeshak Pritinidhi Sabha* v. *Lahori Mal*[2] that the Court has the power to award damages whether in substitution for or in addition to specific performance even though the plaintiff has not specifically claimed it in the plaint. The Madras High Court took a contrary view in *Somasundaram Chettiar* v. *Chidambaram Chettiar*[3] and held that the court cannot award damages in addition to specific performance in the absence of a specific claim for damages and a proper pleading stating why the relief of specific performance would be insufficient to satisfy the justice of the case and the amount which should be awarded. The Law Commission recommended that the view expressed by the High Court of Madras appeared to be based on the principle that there should be a proper pleading in every case. While it is proper that the court should have full discretion to award damages in any case it thinks fit, one cannot, on the other hand, overlook the question of unfairness and hardship to the defendant, if a decree is passed against him, without a proper pleading. The Commission accordingly recommended that in no case should compensation be decreed unless it is claimed by a proper pleading. However, it should be open to the plaintiff to have an amendment, at any stage of the proceeding, in order to introduce a prayer for compensation, whether in lieu of or in addition to specific performance. The legislature accepted the suggestions made by the Law Commission of India and accepted the view expressed by the High Court of Madras to the effect that the court cannot award compensation in addition to specific performance in the absence of a specific claim for damages and a proper pleading stating why the relief of specific performance would be insufficient to satisfy the justice of the case and the plaintiff would not be entitled to compensation.

11. It is admitted position before us that in the original plaint the respondents did not claim compensation for the breach of agreement of sale either in addition to or in substitution of the performance of the agreement. Further, the respondents did not amend their plaint and ask for compensation either in addition to or in substitution of the performance of the agreement of sale. Sub-section (5) of Section 21 emphatically provides that no compensation shall be awarded under Section 21(5) unless the relief for compensation has been claimed either in the plaint or included later on by amending the plaint at any stage of the proceedings. The need to file an execution petition did not arise as the appellant executed the sale deed on 17-8-1999. We have perused the application filed by the respondents. It is a simple application filed under Section 28(3) of the Act seeking permission to ascertain the extent of plaint schedule property by measuring the same with the help of village officer or by deputing an Advocate Commissioner and directing the defendant-appellant to obtain a "no-objection certificate" from the Department of Income Tax. In addition, the respondents prayed that they be permitted to recover interest @ 12% towards loss of income on the sale

2 ILR (1924) 5 Lah 509 : AIR 1924 Lah 713
3 AIR 1951 Mad 282 : (1950) 2 MLJ 509

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amount of Rs 45,66,385 from 23-10-1997 i.e. the date of deposit till delivery of the possession of the property. Permission seeking to amend the plaint to include the relief of compensation for breach of the contract in addition to the specific performance has not been made. The relief was claimed under Section 28 and not under Section 21 of the Act. The High Court came to the conclusion that Section 28 would not be applicable to the facts of the case but granted the relief under Section 21 of the Act. In our view, the High Court has clearly erred in granting the compensation under Section 21 in addition to the relief of specific performance in the absence of prayer made to that effect either in the plaint or amending the same at any later stage of the proceedings to include the relief of compensation in addition to the relief of specific performance. Grant of such a relief in the teeth of express provisions of the statute to the contrary is not permissible. On equitable considerations court cannot ignore or overlook the provisions of the statute. Equity must yield to law.

12. We have perused the judgment in *Purushothaman*[1] carefully. The High Court in the impugned judgment has committed a factual error in observing that in that case the plaint had not been amended. The plaint had in fact been amended and the relief of mesne profits claimed from the date of deposit of the balance consideration in addition to the relief of specific performance of the agreement. A factual error has crept in the impugned judgment of the High Court. The learned Single Judge has thus erred in placing reliance upon the judgment in *Purushothaman*[1].

13. The learned Single Judge has also erred in including the amount of costs which have been awarded in the main suit towards the amount of compensation. Of course, the plaintiff-respondents are entitled to recover the amount of costs which has been decreed in the main suit but the same cannot form part of compensation by way of additional relief to the specific performance of the agreement of sale.

14. For the reasons stated above, the judgments of the High Court as well as the trial court are set aside. Application filed by the respondents under Section 28(3) is dismissed. The appellants would be entitled to withdraw the amount deposited except the excess amount of Rs 16,065 deposited by the plaintiff-respondents towards the sale consideration of suit land from Indian Bank along with accrued interest, if not already withdrawn. In case the respondents have withdrawn the deposited amount from Indian Bank in pursuance of the direction issued by the trial court then they are directed to redeposit the amount or pay the same to the appellant along with interest @ 6% after deducting a sum of Rs 16,065 within a period of 3 months from the date of withdrawal till its redeposit. Failure to deposit the amount within a period of 3 months as directed above, would attract interest @ 12% from the date of withdrawal till its redeposit/repayment. This, however, would not debar the respondents from recovering the costs awarded in the suit in accordance with law.

15. Appeal is allowed and disposed of in terms of the above directions.

India cannot be executed against defendant 2, the appellant herein, for he cannot be adversely affected by a decree for specific performance when no valid and enforceable contract has been proved between the parties to the suit in respect of the house of which the appellant is the owner in possession.

9. In the circumstances, without prejudice to the plaintiff's right to execute the decree against the Union of India in respect of the damages and costs awarded, the decree in every other respect is set aside. The appeal is allowed as indicated above. The appellant is entitled to his costs throughout.

(1991) 1 Supreme Court Cases 441

(BEFORE S. RATNAVEL PANDIAN, M. FATHIMA BEEVI AND K. JAYACHANDRA REDDY, JJ.)

OM PRAKASH AND OTHERS .. Appellants;

Versus

RAM KUMAR AND OTHERS .. Respondents.

Civil Appeal No. 4345 of 1984†, decided on November 30, 1990

Rent Control and Eviction — Arrears of rent — Default — Application for eviction on ground of — Must be against the person in actual possession of the premises as tenant — Landlord in spite of knowing the person in actual possession, filing eviction application against another person who was neither tenant nor in possession — Person in possession claiming to be the direct tenant allowed to be impleaded as a party in the proceeding — But even so, he was not obliged to pay or tender rent in absence of any definite allegation of non-payment against him — Application thus being not against the real tenant, held, not maintainable — Haryana Urban (Control of Rent and Eviction) Act, 1973, Section 13(2)(i) — CPC, 1908, Or. 7, Rr. 1(c) and 5 — Pleadings

Civil Procedure Code, 1908 — Or. 7, Rr. 7 and 5 — Relief not claimed cannot be granted especially if it affects rights of an interested party

Civil Procedure Code, 1908 — Or. 7, Rr. 7 and 5 — Plaintiff cannot base new cause of action on plea of defendant unless he amends the plaint or files separate proceedings

Held:

The application under Section 13(2)(*i*) of the Haryana Urban (Control of Rent and Eviction) Act is one for a direction to the tenant to put the landlord in possession. The application has to be sustained on any one of the grounds specified in sub-section (2) of Section 13 of the Act. When a specific allegation is made that the tenant is in arrears, the tenant is given an opportunity to pay or tender the rent within the stipulated time and avoid an order of ejectment. In a case where the real tenant is not proceeded against in the manner required

† From the Judgment and Order dated June 3, 1982 of the Punjab and Haryana High Court in C.R. No. 808 of 1982

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under Section 13 and proceedings are instituted against another person suppressing the real facts, the landlord cannot succeed simply because the real tenant in possession is brought on record as a necessary party by the order of the court. The tenant so impleaded in the absence of a definite allegation of non-payment of rent by him is not under obligation to pay or tender the rent stated to be in arrears in terms of the proviso to clause (*i*), so long as the landlord does not accept him as the tenant or seek even alternatively direction against him. It is more so in a case where the landlord had in earlier proceedings admitted the possession of the tenant and was well aware that an effective order without the tenant being on the party array would not be given. It is only when the landlord seeks an order directing the tenant to put him in possession on the ground of non-payment of rent and the tenant is called upon to answer the claim, the occasion for the tenant to pay the arrears of rent arises. When the tenant is not proceeded against in that manner, and an application is made against one who is neither the tenant nor the person in possession, the Controller is justified in rejecting the application. (Para 4)

A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute. In an action by the landlord the tenant is expected to defend only the claim made against him and if a cause of action arises to the landlord on the basis of the plea set up by the tenant, in such action, it is necessary that the landlord seeks to enforce that cause of action in the same proceedings by suit at the amendment or by separate proceedings to entitle the landlord to relief on the basis of such cause of action. The principle that the court is to mould the relief taking into consideration subsequent events is not applicable in such cases. (Para 4)

Sukhdev Raj v. *Rukmani Devi*, (1988) 1 Punj LR 679 (P&H), *approved*
Buta Singh v. *Banwari Lal*, (1984) 86 Punj LR 556 (P&H), *held overruled*

R-M/AT/10378/C

Advocates who appeared in this case :
Rajinder Sachar, Senior Advocate (Laxmi Kant Pandey and R.S. Jena, Advocates, with him) for the Appellants;
Harbans Lal and Ujjagar Singh, Senior Advocates (Prem Malhotra, Advocate, with them) for the Respondents.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J.— The appeal by special leave arises from the proceedings for eviction under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'the Act'). Section 13(2) of the Act enables the landlord of a building in possession of a tenant to seek eviction on an application for direction in that behalf on any one of the grounds provided thereunder. If the Controller is satisfied that the tenant has not paid or tendered the rent due from the tenant in respect of the building within 15 days after expiry of the time fixed in the agreement of the tenancy with in the landlord, the Controller may make an order directing the tenant to put the landlord in possession as provided in clause (*i*) of sub-section (2) of Section 13 of the Act. Section 13 of the Act so far as it is material reads as under:

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"13. *Eviction of tenants.*— (1) A tenant in possession of a building or a rented land shall not be evicted except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller, for direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied,—

(*i*) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at 8 per cent per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of the Act;

(*ii*) to (*v*) .....

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

* * *"

2. Puran Chand, respondent 2 herein is the tenant in possession of a shop building owned by Smt Parmeshwari Devi. An application was filed by Smt Parmeshwari Devi against her son-in-law, Ram Kumar, under Section 13(2) of the Act for ejectment on the ground of non-payment of rent alleging that Ram Kumar was in possession of the shop in question as tenant. While Ram Kumar conceded the claim, Puran Chand got himself impleaded in the proceedings and contested the matter asserting that he was the direct tenant in possession of the building and there had been no arrears of rent. The Controller dismissed the application finding that

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Ram Kumar was not the tenant and respondent 2 is in possession as tenant and holding the view that the landlord could not be allowed to seek an ejectment order through dubious means by arraying only the person with whom there existed no relationship as landlord and tenant. The appellate authority confirmed the order. The revision preferred by the landlord was dismissed by the High Court. The appellants are the legal representatives of Smt Parmeshwari Devi.

3. Shri Rajinder Sachar, learned counsel for the appellants, contended that the courts below have not correctly appreciated the scope of the relevant provisions in the Act in rejecting the application and in a case where the tenant has failed to pay or tender the rent as required under the proviso to clause (*i*) of sub-section (2) of Section 13 of the Act, the ground of non-payment of rent entitling the landlord to an order of ejectment is clearly provided. It is, therefore, submitted that when respondent 2 has not paid the rent for the period in question even during the pendency of the proceedings, the appellants are entitled to an order in their favour. According to the learned counsel, it is not necessary for the appellants to specifically allege that respondent 2 was the tenant or that he defaulted the payment of rent and seek an order of ejectment against him by an amendment of the application for granting such relief and the view held by the High Court to the contrary is erroneous.

4. We are not impressed by this argument. We have referred to the relevant provision in the statute which requires the landlord who seeks eviction of the tenant in possession to make an application in this behalf. The application contemplated under the section is one for a direction to the tenant to put the landlord in possession. The application has to be sustained on any one of the grounds specified in sub-section (2) of Section 13 of the Act. When a specific allegation is made that the tenant is in arrears, the tenant is given an opportunity to pay or tender the rent within the stipulated time and avoid an order of ejectment. In a case where the real tenant is not proceeded against in the manner required under Section 13 and proceedings are instituted against another person suppressing the real facts, the landlord cannot succeed simply because the real tenant in possession is brought on record as a necessary party by the order of the court. The tenant so impleaded in the absence of a definite allegation of non-payment of rent by him is not under obligation to pay or tender the rent stated to be in arrears in terms of the proviso to clause (*i*), so long as the landlord does not accept him as the tenant or seek even alternatively direction against him. It is more so in a case where the landlord had in earlier proceedings admitted the possession of the tenant and was well aware that an effective order without the tenant being on the party array would not be given. It is only when the landlord seeks an order directing the tenant to put him in possession on the

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ground of non-payment of rent and the tenant is called upon to answer the claim, the occasion for the tenant to pay the arrears of rent arises. When the tenant is not proceeded against in that manner, and an application is made against one who is neither the tenant nor the person in possession, the Controller is justified in rejecting the application. A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute. In an action by the landlord the tenant is expected to defend only the claim made against him and if a cause of action arises to the landlord on the basis of the plea set up by the tenant, in such action, it is necessary that the landlord seeks to enforce that cause of action in the same proceedings by suit at the amendment or by separate proceedings to entitle the landlord to relief on the basis of such cause of action. The principle that the court is to mould the relief taking into consideration subsequent events is not applicable in such cases.

5. The appellants herein have even when respondent 2 applied for getting himself impleaded as a party in the proceedings directed against respondent 1, Ram Kumar, refuted the claim respondent 2 is the tenant. They did not amend the petition or seek eviction of respondent 2, though the court ordered respondent 2 to be brought on record as a necessary party. In the earlier proceedings, the landlord had conceded the possession of respondent 2 and had alleged that he is a sub-tenant under Ram Kumar. The question of sub-tenancy was not decided in that suit. Having known that respondent 2 is in actual possession of the building, the appellants in the present proceedings only sought eviction of Ram Kumar from the premises. Respondent 2 by getting himself impleaded in the proceedings cannot be considered to have agreed to suffer ejectment. The appellants could get an order against respondent 2 only on a proper application in that behalf as provided under the statute and not in the present action. The decision in *Buta Singh* v. *Banwari Lal*[1], relied on by Mr Sachar has no bearing on the facts of the present case. We find the case has been overruled by the Division Bench of the Punjab and Haryana High Court in *Sukhdev Raj* v. *Rukmani Devi*[2]. In the latter case, the question whether the sub-tenant can be ordered to be ejected for non-payment of arrears of rent when he claims to be direct tenant under the landlord even when the landlord has not sought his ejectment on that ground was answered by the High Court thus: (from headnote)

> "The question of his ejectment on the ground of non-payment of rent, however, stands on a different footing. As the landlord never accepted the alleged sub-tenant as his tenant nor sought his

1 (1984) 86 Punj LR 556 (P&H)
2 (1988) 1 Punj LR 679 (P&H)

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ejectment on the ground of non-payment of rent, his ejectment, if ordered on the ground of non-payment of rent, would certainly prejudice the rights of the sub-tenant who never got a chance to avail the opportunity granted under the statute to tender the rent on appearance in the court. Moreover, even if he had offered to tender the rent. So, the rule appears to be well established that the plaintiff cannot be given any relief contrary to his case on the admission of the defendant if it is going to cause prejudice and injustice to the latter."

6. We find no merit in the appeal which is accordingly dismissed. In the circumstances of the case, we make no order as to costs.

(1991) 1 Supreme Court Cases 446

(BEFORE L.M. SHARMA AND J.S. VERMA, JJ.)

STATE OF ORISSA AND ANOTHER .. Appellants;

Versus

UCHHABA PRADHAN .. Respondent.

Civil Appeal No. 1790 of 1987†, decided on November 27, 1990

Arbitration Act, 1940 — Sections 14 and 29 — Award of interest — Non-speaking award — Inclusion of question of interest in the reference to the arbitration not disputed — Held, court cannot presume that arbitrator had illegally allowed interest on equitable considerations

Held :

Though it was permissible to the arbitrator to have awarded interest only if there was an agreement to pay interest or there was usage of trade having the force of law or some other provision of substantive law which entitled the respondent to interest, but as the award in this case was not a speaking one and it was nowhere suggested that the question of interest was not included in the reference, it cannot be presumed that the arbitrator included the claim of interest in his award illegally or on considerations which are not relevant for his decision. (Para 3)

Arbitration Act, 1940 — Sections 14 and 29 — Award of interest — Where reference made before coming into force of Interest Act, 1978 arbitrator had no jurisdiction to award interest for subsequent period (Para 4)

Executive Engineer (Irrigation), Balimela v. *Abhaduta Jena*, (1988) 1 SCC 418, *referred to*

Appeal dismissed R-M/T/10375/C

Advocates who appeared in this case :

A.K. Panda, Advocate, for the Appellants;

P.N. Misra, Ajay K. Jha and P.K. Jena, Advocates, for the Respondent.

The Judgment of the Court was delivered by

SHARMA, J.— This appeal by the State of Orissa against the judgment of the High Court arises out of a proceeding for making an award

† From the Judgment and Order dated January 14, 1987 of the Orissa High Court in M.A. No. 376 of 1983

(1999) 5 Supreme Court Cases 50

(BEFORE M. JAGANNADHA RAO AND UMESH C. BANERJEE, JJ.)

RAM JANKIJEE DEITIES AND OTHERS .. Appellants;

Versus

STATE OF BIHAR AND OTHERS .. Respondents.

Civil Appeal No. 107 of 1992†, decided on May 11, 1999

A. Hindu Law — Religious and Charitable Endowments — Idol or deity — Concept of — Test is not whether the deity is recognised by any particular school of Agma Shastras but whether people believe in the deity's religious efficacy — God is formless and shapeless and it is only the human concept and consecration which gives it form — Consecration of the image — How to be performed — Kinds of images — Swayambhu and Pratisthita

B. Hindu Law — Religious and Charitable Endowments — Idol or deity — Is a juridical person capable of holding property — Two deities Ram Jankijee and Thakur Raja consecrated and landed property separately dedicated and possession thereof given to them through shebaits — The deities located in two separate temples situated within the area of the land — Held, they must be treated as separate juridical persons and therefore were entitled to two units of land for the purposes of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (12 of 1962) — Tenancy and Land Laws — Ceiling on land — Idol or deity — Entitlement of

C. Practice and Procedure — Precedents — Single Judge of High Court — While deciding an issue, he should look into the records and refer to earlier order of Division Bench of the same High Court on the same issue, if any — This is a matter of judicial propriety, not mandatory requirement

A Mahant executed two registered deeds dedicating landed property to the extent of 81.14 acres to deities Ram Jankijee and Thakur Raja. Both the deities were separately given possession on the property through shebaits. The deities are located in two separate temples situated within the area of the land. After the death of the Mahant, Petitioner 3 became the shebait of both the deities. The properties of the deities were also duly registered and enlisted with the Religious Trust Board and the same are under the control and guidance of the Board. On the basis of an enquiry report, the Deputy Collector in the matter of fixation of ceiling area by his order dated 18-11-1976 allowed two units to the deities on the ground that there are two temples to whom lands were gifted by means of separate registered deeds of samarpannamas and declared only 5 acres as excess land to be vested on to the State. But the Collector of the District passed an order recording therein that the entitlement of the trust would be one unit only. The revision petition subsequent thereto was rejected though on the ground of being hopelessly barred by the laws of limitation. Against the order of the Member Board of Revenue, wherein the rights and contentions of the petitioners to hold two units for two separate deities were rejected, the petitioner moved writ petition in the High Court for quashing of the orders passed by the Collector and the Member Board of Revenue. The High Court on 19-11-1984 allowed the writ

† From the Judgment and Order dated 23-5-1991 of the Patna High Court in C.W. No. 5020 of 1984

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petition and granted the relief of two units as claimed by the petitioner. The judgment of the High Court became final and binding between the parties, there being no appeal therefrom. The High Court by its order dated 19-11-1984 observed: "Under the Hindu law images of the deities are juristic entities with the capacity of receiving gift and holding property. As such, when the gift is directly to an idol, each idol or deity holds it in its own right to be managed either by separate managers or by a common manager...."

Subsequently however after about two years a writ petition was filed before the Supreme Court under Article 32 wherein one Badra Mahato prayed for issuance of a mandatory order as regards the allotment order in his favour. The Supreme Court, however, remitted the matter to the High Court with a direction that the petition before the Supreme Court be treated as a review petition before the High Court and be disposed of accordingly. In terms of the direction of the Supreme Court the Division Bench of the High Court directed that the matter should be placed before the Division Bench on 23-11-1987 subject to any part-heard matter and on 25-11-1987 the review petition was allowed and the order dated 19-11-1984 was recalled. The matter was however directed to be listed before the appropriate Bench on 4-12-1987. The matter was not however placed in the list or heard for over two years and finally the matter came up for hearing before a Single Judge who in turn rejected the contention of the petitioner. The Single Judge observed:

> "... The image of the deity is to be found in Shastras. 'Raja Rani' is not known to Shastras. It is unknown in the Hindu pantheon. It is a particular image which is a juristic person. Idol is again an image of the deity. There cannot be a dedication to any name or image not recognised by the Shastras. Here, in the present case, the petitioners assert that the dedication is to both the deities 'Raja Rani' but none of these have been recognised by the Shastras."

On behalf of the appellant it was contended that there was a Division Bench judgment recording therein the entitlement of the appellants to exemption and judicial propriety required the Single Judge to follow binding precedent of an earlier Division Bench judgment from the same High Court and more so, in the same matter. The issue as a matter of fact according to the appellant was no longer res integra and open for further discussion but the Single Judge went on to decide the issue once again notwithstanding the earlier finding as regards the idols' entitlement. Apart from the judicial propriety, the judgment of the Single Judge was also criticised on the ground of being not sustainable as per provisions of the Hindu law. Question was whether "Ram Jankijee" and "Raja Rani" can be termed to be Hindu deities and separate juristic entities. The general question which arose was whether a deity being consecrated by performance of appropriate ceremonies having a visible image and residing in its abode is to be treated as a juridical person for the purpose of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961? Allowing the appeal

Held :

Images according to Hindu authorities are of two kinds: the first is known as swayambhu or self-existent or self-revealed, while the other is pratisthita or established. A swayambhu or self-revealed image is a product of nature and it is anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or pratistha but a man-made image requires consecration. This man-made image may be painted on a wall or canvas. While usually an idol is consecrated in a temple, it does not

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appear to be an essential condition. If the people believe in the temples' religious efficacy no other requirement exists as regards other areas. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrates the image. (Paras 14 to 16)

Padma Purana, B.K. Mukherjea — *Hindu Law of Religious and Charitable Trusts*, 5th Edn., *relied on*

Addangi Nageswara Rao v. *Sri Ankamma Devatha Temple*, (1973) 1 AWR 379 (AP); *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra*, ILR (1909) 37 Cal 128 : 14 CWN 18, *approved*

Board of Commrs. for H.R.E. v. *Pidugu Narasimham*, (1939) 1 MLJ 134 : AIR 1939 Mad 134; *T.R.K. Ramaswami Servai* v. *Board of Commrs. for the H.R.E.*, ILR 1950 Mad 799; *Venkataramana Murthi* v. *Sri Rama Mandhiram*, (1964) 2 An WR 457 (DB); *Poohari Fakir Sadavarthy* v. *Commr., H.R. & C.E.*, AIR 1963 SC 510 : 1962 Supp (2) SCR 276, *cited*

God is omnipotent and omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent. It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in the images of the supreme being. It is the human concept of the Lord of the Lords — it is the human vision of the Lord of the Lords. How one sees the deity, how one feels the deity and recognises the deity and then establishes the same in the temple depends upon however performance of the consecration ceremony. The Shastras do provide as to how to consecrate and the usual ceremonies of sankalpa and utsarga shall have to be performed for proper and effective dedication of the property to a deity and in order to be termed as a juristic person. It is customary that the image is first carried to the snan mandap and thereafter the founder utters the sankalpa mantra and upon completion thereof the image is given a bath with holy water, ghee, dahi, honey and rose water and thereafter the oblation to the sacred fire by which the pran pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. In the conception of Debutter, two essential ideas are required to be performed: in the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with the natural personality of the shebait, being the manager or being the Dharamkarta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. (Para 19)

Hindu law recognises a Hindu idol as a juridical subject being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person. (Para 11)

Pramatha Nath Mullick v. *Pradyumna Kumar Mullick*, (1925) 52 IA 245, *relied on*

Rambrahma Chatterjee v. *Kedar Nath Banerjee*, (1922) 36 CLJ 478, 483, *cited*

On the factual score there are temples — in one there is "Jankijee" and in the second there is "Raja Rani" but the deity cannot be termed to be in a fake form and this concept of introduction of a fake form, it appears, is a misreading of the provisions of Hindu law texts. What is required is human consecration and in the event of fulfilment of the rituals of consecration, divinity is presumed. Even though admittedly there are two idols, but the Single Judge thought it fit to ascribe one of them as fake, which is wholly unwarranted an observation and the finding devoid of any merit whatsoever. The factum of two idols cannot be

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denied and as such question of deprivation of another unit to the second idol does not and cannot arise. Under the provisions of the Bihar Land Ceiling Act in the event there are two idols capable of being ascribed juridical personality, two units ought to be granted rather than one as has been effected by the Single Judge. (Para 20)

Lakshmi Narain v. *State of Bihar*, 1978 BBCJ 489 : AIR 1978 Pat 330 : 1978 BLJR 671, *approved*

Petitioners 1 and 2, the two deities, are entitled to individual grant and thus entitlement for two units to be noted in the records of the Government and exemption of 75 acres total land only would be made available to the petitioners and the balance 5 acres of land be made available to the Government and the State Government would be at liberty to deal with the abovenoted five acres of land in accordance with the law. (Para 24)

Suggested Case Finder Search Text (*inter alia*) :

hindu (idol or deity)

R-M/21107/C

Advocates who appeared in this case :
D. Goburdhun, Advocate, for the Appellants;
B.B. Singh, Advocate, for the Respondent.
Jitendra Sharma, Senior Advocate (Ms J. Ahmed and P. Gaur, Advocates, with him) for Respondents 6 to 27.

Chronological list of cases cited ***on page(s)***

1. 1978 BBCJ 489 : AIR 1978 Pat 330 : 1978 BLJR 671, *Lakshmi Narain* v. *State of Bihar* — 55*d*, 61*b*
2. (1973) 1 AWR 379 (AP), *Addangi Nageswara Rao* v. *Sri Ankamma Devatha Temple* — 58*b-c*
3. (1964) 2 An WR 457 (DB), *Venkataramana Murthi* v. *Sri Rama Mandhiram* — 58*g*
4. AIR 1963 SC 510 : 1962 Supp (2) SCR 276, *Poohari Fakir Sadavarthy* v. *Commr., H.R. & C.E.* — 59*a*
5. ILR 1950 Mad 799, *T.R.K. Ramaswami Servai* v. *Board of Commrs. for the H.R.E.* — 58*e-f*
6. (1939) 1 MLJ 134 : AIR 1939 Mad 134, *Board of Commrs. for H.R.E.* v. *Pidugu Narasimham* — 58*d*
7. (1925) 52 IA 245, *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick* — 56*c-d*
8. 1922) 36 CLJ 478, 483, *Rambrahma Chatterjee* v. *Kedar Nath Banerjee* — 56*e-f*
9. ILR (1909) 37 Cal 128 : 14 CWN 18, *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra* — 59*g*

The Judgment of the Court was delivered by

BANERJEE, J.— The core question that falls for consideration in this appeal, by the grant of special leave, is whether a deity being consecrated by performance of appropriate ceremonies having a visible image and residing in its abode is to be treated as a juridical person for the purpose of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12 of 1962).

2. On a reference to the factual backdrop, the records depict that one Mahanth Sukhram Das did execute two separate deeds of dedication in

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December 1950, and duly registered under the Indian Registration Act, dedicating therein the landed properties to the deities "Ram Jankijee" (Appellant 1) and Thakur Raja (wrongly described in the records of the High Court as "Raja Rani") (Appellant 2). Both the deities were separately given the landed property to the extent of 81.14 acres of land and in fact were put in possession through the shebaits. After however the death of the aforesaid Mahanth Sukhram Das, Petitioner 3 became the shebait of both the deities. The properties of the deities were also duly registered and enlisted with the Religious Trust Board and the same are under the control and guidance of the Board.

3. Be it noted that both "Ram Jankijee" and "Raja Rani" (for convenience sake since the High Court referred to the deity as such in place and stead of Thakur Raja) are located in two separate temples situated within the area of the land.

4. On the basis of an enquiry report, the Deputy Collector in the matter of fixation of ceiling area by his order dated 18-11-1976 in Ceiling Case No. 222/76-77 allowed two units to the deities on the ground that there are two temples to whom lands were gifted by means of separate registered deeds of samarpannamas and declared only 5 acres as excess land to be vested on to the State. The Collector of the District however came to a different conclusion to the effect that mere existence of two temples by itself cannot be said to be a ground for entitlement of two separate units under the Act, since the entire property donated to the two units is being managed by a committee formed under the direction of the Religious Trust Board and prior conferment of the managerial right on only one person and there being no evidence on record to show that the property donated to the deities are to be managed separately having separate account, question of recommendation for exemption under Section 5 and entitlement of two units would not arise. As a matter of fact the Collector passed an order recording therein that the entitlement of the trust would be one unit only. The revision petition subsequent thereto however was rejected though on the ground of being hopelessly barred by the laws of limitation.

5. The records depict that against the order of the Member Board of Revenue, wherein the rights and contentions of the petitioners to hold two units for two separate deities were rejected, the petitioner moved the Patna High Court in Writ Petition No. 5020 of 1984 for quashing of the orders passed by the Collector and the Member Board of Revenue. The record further depicts that the High Court on 19-11-1984 allowed the writ petition and granted the relief of two units as claimed by the petitioner. The judgment of the High Court became final and binding between the parties by reason of the factum of there being no appeal therefrom.

6. Subsequently however after about two years a writ petition was filed before this Court under Article 32 of the Constitution being Civil Writ No. 52563 of 1985 (*Badra Mahato* v. *State of Bihar*) wherein one Badra Mahato prayed for issuance of a mandatory order as regards the allotment order in

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favour of the petitioner (the aforesaid Badra Mahato). This Court, however, remitted the matter to the High Court with a direction that the petition before this Court be treated as a review petition before the High Court and be disposed of accordingly.

7. On 21-10-1987 in terms of the direction of this Court the Division Bench of the High Court directed that the matter should be placed before the Division Bench on 23-11-1987 subject to any part-heard matter and on 25-11-1987 as the chronology depicts the review petition was allowed and the order dated 19-11-1984, was recalled. The matter was however directed to be listed before the appropriate Bench on 4-12-1987. The matter was not however placed in the list or heard for over two years and finally the matter came up for hearing before the learned Single Judge who in turn has rejected the contention of the petitioner and hence the appeal before this Court.

8. Before proceeding with the matter any further, it would be convenient to note that while on a review of the order, the Division Bench of the High Court has been pleased to recall its earlier order dated 19-11-1984, but the observations pertaining to the entitlement of two idols seems to be apposite. The High Court in its order dated 19-11-1984 observed:

> "... This aspect of the matter has been considered by a Bench of this Court in the case of *Lakshmi Narain* v. *State of Bihar*[1] where it has been pointed out that once endowment is separate in the names of separate deities the legal ownership under the endowment vests in the idols; the matter would have been different if the endowment was to any math in which there were two deities. From the order of the learned Collector itself it appears that the two endowments were made in the name of the two deities on whose behalf claims have been made. It is settled by several pronouncements of the Judicial Committee that under the Hindu law images of the deities are juristic entities with the capacity of receiving gift and holding property. As such, when the gift is directly to an idol, each idol or deity holds it in its own right to be managed either by separate managers or by a common manager...."

9. It is on this score that Mr Goburdhun, the learned advocate appearing in support of the appeal very strongly criticised the judgment of the learned Single Judge both on the count of not being sustainable as per the provisions of Hindu law as also on the question of propriety.

10. Mr Goburdhun contended that there is a Division Bench judgment recording therein the entitlement of the appellants to exemption and judicial propriety requires one learned Single Judge to follow a binding precedent of an earlier Division Bench judgment from the same High Court and more so, in the same matter. The issue as a matter of fact according to Mr Goburdhun was no longer res integra and open for further discussion but the learned Single Judge went on to decide the issue once again notwithstanding the earlier finding as regards idols' entitlement. We are constrained to record that we find some justification for such a criticism. It is true that the earlier

1 1978 BBCJ 489 : AIR 1978 Pat 330 : 1978 BLJR 671

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Division Bench's order stands recalled and strictly speaking there may not be any necessity to refer to the same, but when there was an existing order of the Division Bench, judicial propriety demands that the learned Single Judge dealing with the matter ought to have referred to the same, more so when a contra view is being expressed by the learned Judge. It is a matter of judicial efficacy and propriety though not a mandatory requirement of law. The court while deciding the issue ought to look into the records as to the purpose for which the matter has been placed before the court. We are rather at pains to record here that judicial discipline ought to have persuaded the learned Single Judge not to dispose of the matter in the manner as has been done, there being no reference even of the earlier order.

11. Before proceeding with the matter any further apropos the judgment under appeal, it would be convenient to note however that Hindu law recognises a Hindu idol as a juridical subject being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person. The Privy Council in the case of *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick*[2] observed:

> "One of the questions emerging at this point, is as to the nature of such an idol, and the services due thereto. A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity'. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.
>
> A useful narrative of the concrete realities of the position is to be found in the judgment of Mukerji, J. in *Rambrahma Chatterjee* v. *Kedar Nath Banerjee*[3]: 'We need not describe here in detail the normal type of continued worship of a consecrated image — the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest.'
>
> The person founding a deity and becoming responsible for these duties is de facto and in common parlance called shebait. This responsibility is, of course, maintained by a pious Hindu, either by the

2 (1925) 52 IA 245
3 (1922) 36 CLJ 478, 483

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personal performance of the religious rites or — as in the case of Sudras, to which caste the parties belonged — by the employment of a Brahmin priest to do so on his behalf. Or the founder, any time before his death, or his successor likewise, may confer the office of shebait on another."

12. The only question that falls for consideration is whether "Ram Jankijee" and "Raja Rani" can be termed to be Hindu deities and separate juristic entities and it is on this score the learned Judge in the judgment under appeal observed:

> "... The image of the deity is to be found in Shastras. 'Raja Rani' is not known to Shastras. It is unknown in the Hindu pantheon. It is a particular image which is a juristic person. Idol is again an image of the deity. There cannot be a dedication to any name or image not recognised by the Shastras. Here, in the present case, the petitioners assert that the dedication is to both the deities 'Raja Rani' but none of these have been recognised by the Shastras.
>
> * * *
>
> *11.* The petitioners contended that Raja Rani are the deities under the Hindu pantheon. The *Upanishads* are the highest sacred books of the Hindus. It was admitted that in *Kaushitaki-Brahamana-Upanishad*, IInd Chapter, 'sloka 1' as translated in Hindi by Pt. Sriram Sharma Acharya, in the book styled as *108 Upanishads*, the following has been said:
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> > 'It is the statement of Rishi Kaushitaki that soul is God and the soul God is imagined as a king and the sound is his queen.'
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> *12.* The above translation has been seriously challenged by the respondents parcha-holders.
>
> It may be noticed that Pt. Sriram Sharma Acharya is not an authority on the subject...."

We are afraid the entire approach of the learned Single Judge was on a total misappreciation of the principles of Hindu law.

13. Divergent are the views on the theme of images or idols in Hindu law. One school propagates God having swayambhu images or consecrated images; the other school lays down God as omnipotent and omniscient and the people only worship the eternal spirit of the deity and it is only the manifestation or the presence of the deity by reason of the charm of the mantras.

14. Images according to Hindu authorities are of two kinds: the first is known as swayambhu or self-existent or self-revealed, while the other is pratisthita or established. The *Padma Purana* says: "The image of Hari (God) prepared of stone, earth, wood, metal or the like and established according to the rites laid down in the *Vedas*, *Smritis* and *Tantras* is called the established images ... where the self-possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed." (B.K. Mukherjea — *Hindu Law of Religious and Charitable Trusts*, 5th Edn.) A swayambhu or self-revealed image is a

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product of nature and it is anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or pratistha but a man-made image requires consecration. This man-made image may be painted on a wall or canvas. The Salgram Shila depicts Narayana being the Lord of the Lords and represents Vishnu Bhagwan. It is a shila — the shalagram form partaking the form of Lord of the Lords, Narayana and Vishnu.

15. It is further to be noticed that while usually an idol is consecrated in a temple, it does not appear to be an essential condition. In this context reference may also be made to a decision of the Andhra Pradesh High Court in the case of *Addangi Nageswara Rao* v. *Sri Ankamma Devatha Temple*[4]. The High Court in para 6 of the Report observed:

> "6. The next question to be considered is whether there is a temple in existence. 'Temple' as defined means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of or used as of right by the Hindu community or any section thereof as a place of public religious worship. That is the definition by the legislature to the expression 'temple' in Act 2 of 1927, Act 19 of 1951 and Act 17 of 1966. Varadachariar, J., sitting with Pandrang Row, J., in *Board of Commrs. for H.R.E.* v. *Pidugu Narasimham*[5] construing the expression 'a place of public religious worship' observed:
>
> > '[T]he test is not whether it conforms to any particular school of Agama Shastras. The question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some superhuman power, it must be regarded as "religious worship".'
>
> To the same effect was the view expressed by Viswanatha Sastry, J., in *T.R.K. Ramaswami Servai* v. *Board of Commrs. for the H.R.E.*[6]:
>
> > 'The presence of an idol, though it is an invariable feature of Hindu temples, is not a legal requisite under the definition of a temple in Section 9(12) of the Act. If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and that by offering worship there they are likely to be the recipients of the blessings of God, then we have the essential features of a temple as defined in the Act.'
>
> A Division Bench of this Court consisting of Justice Satyanarayana Raju (as he then was) and Venkatesam, J., in *Venkataramana Murthi* v. *Sri Rama Mandhiram*[7] observed that the existence of an idol and a dhwajasthambham are not absolutely essential for making an institution

4 (1973) 1 AWR 379 (AP)
5 (1939) 1 MLJ 134 : AIR 1939 Mad 134
6 ILR 1950 Mad 799
7 (1964) 2 An WR 457 (DB)

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a temple and so long as the test of public religious worship at that place is satisfied, it answers the definition of a temple.

Their Lordships of the Supreme Court in *Poohari Fakir Sadavarthy* v. *Commr., H.R. & C.E.*[8] held:

> 'A religious institution will be a temple if two conditions are satisfied. One is that it is a place of public religious worship and the other is that it is dedicated to, or is for the benefit of, or is used as of right by the Hindu community, or any section thereof, as a place of religious worship.'
>
> To constitute a temple it is enough if it is a place of public religious worship and if the people believe in its religious efficacy irrespective of the fact whether there is an idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is some superhuman power which they should worship and invoke its blessings."

16. The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the people believe in the temples' religious efficacy no other requirement exists as regards other areas and the learned Judge it seems has completely overlooked this aspect of the Hindu Shastras — in any event, Hindus have in the Shastras "Agni" Devta, "Vayu" Devta — these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The ahuti to the deity is the ultimate — the learned Single Judge however was pleased not to put any reliance thereon. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrates the image.

17. One cardinal principle underlying idol worship ought to be borne in mind

> "that whichever God the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different Gods. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator, preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else".
>
> (B.K. Mukherjea — *Hindu Law of Religious and Charitable Trusts*, 5th Edn.)

18. In this context reference may also be made to an earlier decision of the Calcutta High Court in the case of *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra*[9] wherein Chatterjee, J. (at p. 167) observed:

> "A Hindu does not worship the 'idol' or the material body made of clay or gold or other substance, as a mere glance at the mantras and

8 AIR 1963 SC 310 : 1962 Supp (2) SCR 276
9 ILR (1909) 37 Cal 128 : 14 CWN 18

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prayers will show. They worship the eternal spirit of the deity or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or, according to some, the gratification of the deity."

19. God is omnipotent and omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent. It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in the images of the supreme being. "The supreme being has no attribute, which consists of purespirit and which is without a second being i.e. God is the only being existing in reality, there is no other being in real existence excepting Him" — (*see* in this context Golap Chandra Sarkar, *Sastri's Hindu Law*, 8th Edn.). It is the human concept of the Lord of the Lords — it is the human vision of the Lord of the Lords. How one sees the deity, how one feels the deity and recognises the deity and then establishes the same in the temple (*sic* depends) upon however performance of the consecration ceremony. The Shastras do provide as to how to consecrate and the usual ceremonies of sankalpa and utsarga shall have to be performed for proper and effective dedication of the property to a deity and in order to be termed as a juristic person. In the conception of Debutter, two essential ideas are required to be performed: in the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with the natural personality of the shebait, being the manager or being the Dharamkarta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. The *Deva Pratistha Tatwa* of Raghunandan and *Matsya* and *Devi Puranas* though may not be uniform in their description as to how pratistha or consecration of image does take place but it is customary that the image is first carried to the snan mandap and thereafter the founder utters the sankalpa mantra and upon completion thereof the image is given a bath with holy water, ghee, dahi, honey and rose water and thereafter the oblation to the sacred fire by which the pran pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which gives it the shape, the size and the colour. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however lend any assistance to the matter in issue and the principles of Hindu law seem to have been totally misread by the learned Single Judge.

20. On the factual score there are temples — in one there is "Jankijee" and in the second there is "Raja Rani" but by no stretch of imagination, the

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deity can be termed to be in a fake form and this concept of introduction of a fake form it appears is a misreading of the provisions of Hindu law texts. What is required is human consecration and in the event of fulfilment of the rituals of consecration, divinity is presumed. There cannot be any fake deity: the whole concept of Hindu law seems to have been misplaced by the High Court.

21. In more or less a similar situation the Patna High Court in the case of *Lakshmi Narain* v. *State of Bihar*[1] observed:

> "5. In this Court Mr Balbhadra Pd. Singh, learned counsel appearing in support of the application, strongly contended that the Revenue Authorities have entirely misdirected themselves in allowing only one unit to the petitioners under an erroneous impression that they being installed in only one temple and there being only one document of endowment in their favour, they could not get more than one unit. Learned counsel contended that as a matter of fact, all the four deities were entitled to separate units in their own rights, notwithstanding the fact that no specified properties were endowed to them separately and that the endowment was made in their favour jointly.
>
> * * *
>
> 9. On consideration of the facts of this case and the relevant position in point of law, I come to the conclusion that all the four petitioners are separate juristic entities, properties being endowed to them just like any other human being. Learned counsel appearing for the respondents rightly conceded that had it been a gift to four individuals, they were entitled to four units separately, each of them being a 'landholder' within the meaning of clause (*g*) of Section 2 of the Act and entitled to a separate unit. If that be so, I do not see any reason for taking a view that the position should be different as the beneficiaries in this case are idols. It could not be contended that all the four petitioners would constitute one 'family' within the meaning of Section 2(*ee*) of the Act. The definition of 'family' in Section 2(*ee*) is as follows:
>
> > '"Family" means and includes a person, his or her spouse and minor children.'
>
> Even applying the above rigid test laid down in the Act, the first two petitioners, namely, Shri Lakshmi Narayan and Shri Mahabirji must be treated as separate units. And even assuming that the fourth petitioner, namely, Shri Parbatiji is considered to be a spouse of the third petitioner namely, Shri Shivajee, even then both these petitioners were entitled to one unit. In that view of the matter, the petitioners were entitled to at least three units, being in the same position of Hindu coparceners and, therefore, separate 'landholder' or 'families' in the eye of the law. The petitioners had, however, claimed only two units before the Revenue Authorities. It is, therefore, not possible to grant them any larger relief of more than two units. Their purpose also will be served if only two

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units are allowed to them as the surplus land declared in this case is a little over 20 acres only."

22. It is needless to point out that even though admittedly there are two idols, but the learned Single Judge thought it fit to ascribe one of them as fake, which in our view is wholly unwarranted an observation and the finding devoid of any merit whatsoever. Quotations from English authors unfortunately are totally misplaced and the meaning misappreciated. The quotes are not appropriate and not apposite, as such we refrain ourselves from dilating thereon.

23. In the view as above, the factum of two idols cannot be denied and as such question of deprivation of another unit to the second idol does not and cannot arise. As regards the provisions of the statute, be it noted that there is no amount of controversy involved that in the event there are two idols capable of being ascribed juridical personality, two units ought to be granted rather than one as has been effected by the learned Single Judge.

24. We thus feel it expedient to record that Petitioners 1 and 2 (or Thakur Raja as the case may be) are entitled to individual grant and thus entitlement for two units to be noted in the records of the Government and exemption of 75 acres taal land only would be made available to the petitioners and the balance 5 acres of land be made available to the Government and the State Government would be at liberty to deal with the abovenoted five acres of land in accordance with the law.

25. Since no other issue was raised before us, the appeal is allowed. The order of the High Court stands set aside and quashed. No order however as to costs.

(1999) 5 Supreme Court Cases 62

(BEFORE A.P. MISRA AND N. SANTOSH HEGDE, JJ.)

RAMESH CHAND BANSAL AND OTHERS .. Appellants;

Versus

DISTRICT MAGISTRATE/COLLECTOR GHAZIABAD AND OTHERS .. Respondents.

Civil Appeal No. 229 of 1997†, decided on May 11, 1999

A. Stamp Act, 1899 — S. 75 and S. 47-A (as introduced in U.P. in 1969) — U.P. Stamp Rules, 1942 — R. 340-A(a) — Power of Collector under, to fix circle rates — Requirement of supplying biennial statement of circle rates and average price of land etc., held, does not bar the Collector to give such rates differently for two years — Moreover, in presence of material indicating a regular pattern of increasing percentage of prices of land every year, the Collector can validly refer in his biennial statement to such increase in the following year — Hence, provision in impugned circular stating that costs shown therein would automatically be deemed increased

† From the Judgment and Order dated 7-7-1995 of the Allahabad High Court in W.P. No. 781 of 1994

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(5)

Appeal No. 276 of 1933.

Varadachariar and Pandrang Row, JJ.

15th February, 1938.

The BOARD OF COMMISSIONERS FOR THE HINDU RELIGIOUS ENDOWMENTS, MADRAS ... ... *Appellant.*

v.

Pidugu NARASIMHAM and others ... ... *Respondents.*

Madras Hindu Religious Endowments Act, S. 9 (12)—Temple—Worship of ancient heroes in a mantapam—Test of religious worship—Belief of the worshippers in the religious efficacy of their worship and not conformance to agama sastras.

The test to find out whether public worship offered at a particular place is "religious worship" so as to make the place fall within the definition of a temple in the Madras Hindu Religious Endowments Act is not whether the worship conforms to any particular school of Agama sastras but whether the class of people who take part in the worship believe in its religious efficacy in the sense of their making themselves the object of the bounty of some superhuman power even though the objects of worship are certain heroes who are said to have been killed in a war waged in by-gone times. Though it may be difficult to mark the dividing line between a mere commemoration of the event and a celebration of worship, in the case of heroes who are said to have lived several centuries ago but have continued all along to be the subject of public homage, the performance of *nitya naivedhya deeparadhana*, the offering of animal sacrifices and the distribution of the offerings amongst the assembled audience carry the celebration beyond the limits of a mere commemoration. The fact that *nitya naivedhya deeparadhana* is not performed all through the year but only for a few days in the year would not alter the character of the institution especially where the worship has become sufficiently important to attract public endowments to the institution.

Appeal against the decree of the District Court of Guntur in O. S. No. 43 of 1928.

Mr. *P. V. Rajamannar* for the Appellant.

Mr. *S. Venugopala Rao* for the Respondents.

JUDGMENT.

(Delivered by **Varadachariar, J**).

This is an appeal by the Madras Hindu Religious Endowments Board against a decree setting aside a scheme framed by the Board for the administration of an institution known as "Sri Virlu Alaya" in Karampudi village, within the jurisdiction of the Guruzala District Munsif's Court. The Board framed a scheme on the footing that the institution was a "temple" within the meaning of the Madras Hindu Religious Endowments Act. The plaintiff, who sometimes called himself the Dharmakartha of the institution, instituted the suit for a declaration that the institution was not a temple within the meaning of the Act and that therefore the Board had no jurisdiction to frame a scheme in respect of its administration. The learned District Judge held that the worship carried on in the place was merely hero-worship and not religious worship and that the institution was not

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therefore a "temple" within the meaning of the Act. Hence this appeal.

Though the parties have differed as to the significance of certain events described in the course of the evidence and as to the description of certain parts of the structure of the building wherein the objects of the worship are located, there is very little dispute as to the nature of the structure or the kind of celebration in the institution. A Commissioner was appointed to prepare a plan of the place and submit a report and the oral evidence gives a fairly detailed account of the kind of worship and of the festivals that take place there. It appears that there are substantial structures similar to "Mantapams" and that in one of these, there are 66 stones placed along the three walls and these are called Viranayakulu or Virlu Vigrahalu. As regards the building, the learned District Judge himself was of opinion that the structures were generally consistent with the institution being a temple; but he thought that they were equally consistent with its being a kind of memorial. The latter alternative arises out of the history of the institution.

It is obvious that the institution has been in existence for several centuries and has been the recipient of Inam grants even during the Moghul period. It is in some way connected with an historical event of the 13th century relating to a war between two neighbouring kingdoms of the locality in which the 66 heroes are said to have been killed. But whatever the origin of the institution may be, it is clear that in course of time, at least before the Inam grants came to be made to them, it had developed into a place of worship because we find from the Inam papers that Inams have been granted for the performance of Nitya Naivedya Diparadhana in the institution and for Poojaries and for Bajantris who are expected to do service in connection therewith. In the course of the oral evidence, it has been suggested that Nitya Naivedya Deeparadhana is not performed all through the year but only either on twenty days in the year or on five days in the year. We do not think that this limitation of the number of occasions, even if true, alters the character of the institution. On the other hand, it is of considerable significance that the worship should have become sufficiently important to attract public endowments thereto.

The description given in the oral evidence of five days' celebration in connection with this institution is no doubt to a great extent reminiscent of the war in which the heroes are said to have taken part. But we are unable to agree with the conclusion of the learned District Judge and with the arguments of the learned Counsel for the respondent before us here, that the celebration is nothing more than a commemoration of that historical event. It may be difficult to mark the dividing line between a mere commemoration of the event and a celebration of worship, in the case of heroes who are said to

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have lived several centuries ago but have continued all along to be the subject of public homage. The performance of Nitya Naivedya Diparadhana, the offering of animal sacrifices and the distribution of those offerings amongst the assembled audience certainly carry the celebration beyond the limits of a mere commemoration. The evidence adduced on the plaintiff's side shows that the rice which is distributed at the end of the ceremony amongst the people present is carried home by them and scattered in their fields; obviously in the belief that it will make the fields more productive. One of the witnesses also says that the shrubs and thorns into which those who for the time being act the part of the heroes throw themselves are taken in pieces by the audience to their houses and fields as being auspicious.

The Hindu Religious Endowments Act, no doubt, speaks of a temple as a place of "public religious worship". That what the evidence in this case describes as taking place in connection with the institution is public worship can admit of no doubt. We think it is also religious. The test is not whether it conforms to any particular school of Agama Sastras; we think that the question must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship, they are making themselves the object of the bounty of some super-human power, it must be regarded as "religious worship."

In this view, the learned District Judge was not justified in holding that the appellant-Board had no power under the Act to frame the scheme. The appeal must be allowed with costs here and in the Court below—costs to be paid by the 1st respondent.

N. R. R. *Appeal allowed.*

Appeal No. 150 of 1934.

Madhavan Nair, Offg. C.J., and Krishnaswami Ayyangar, J.

25th July, 1938.

Dharmakartha GARUDACHAR ... *Appellant*

v.

THE MADRAS HINDU RELIGIOUS ENDOWMENT BOARD ... *Respondent.*

Madras Hindu Religious Endowments Act, S. 63—Framing a scheme under—Proper procedure—Failure to follow, due to the assumption of the Board that the temple is a non-excepted one—Scheme to be set aside as not having been validly made.

In proceedings taken under Ss. 18 and 57 of the Madras Hindu Religious Endowments Act, the appellant claimed that the temple was an excepted one and that he was its hereditary trustee. The Board held that there was no proof that the temple was an excepted one and, on the view that in the interests of the

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1938 SCC OnLine Mad 411 : AIR 1940 Mad 208

Madras High Court
(BEFORE VENKATARAMANA RAO, J.)

Kasi Mangalath Illath Vishnu Nambudiri and others ... Appellants;
Versus
Pattath Ramunni Marar and others ... Respondents.

Second Appeal No. 70 of 1934
Decided on November 25, 1938

JUDGMENT

1. This second appeal arises out of a suit to recover possession of the plaint Siva temple called, Vatakketath by plaintiffs who constitute the board of trustees of the Tirnvangad devaswom appointed by the decree in O.S. No. 8 of 1925 on the file of the District Court of North Malabar. The basis of the claim is that this Siva temple is a shrine subordinate to the Sri Rama temple of the devaswom and situate in the same compound but the defendants who are the archakas of the Siva temple have set up a hostile title thereto alleging that they own it. The main defence is that the plaint temple does not belong to the Tiruvangad devaswom and it is not a subordinate shrine as alleged in the plaint. The defendants further pleaded that the plaint temple belongs to their illom in jenm right and their illom has been in exclusive possession of the plaint temple to the knowledge of and against the trustees of the Tiruvangad devaswom. They also pleaded that the suit was barred by limitation and adverse possession. Two main questions to which both the lower Courts addressed themselves were the following: (1) whether the plaint temple belongs to the Tiruvangad devaswom or whether it belongs to the defendant's illom; and (2) whether the suit is barred by limitation and adverse possession. Both the Courts have concurrently found that the plaint temple belongs to the Tiruvangad devaswom and is not the private property of the defendants' illom, but in regard to the question of adverse possession the lower Courts differed. The learned Subordinate Judge was of the opinion that the right of the Tiruvangad devaswom to the plaint temple was barred by adverse possession while the learned District Judge held it was not and he therefore gave a decree for possession in favour of the plaintiffs.

2. Mr. Kuttikrishna Menon on behalf of the defendants-appellants contends that the view taken by the learned District Judge in regard to the adverse possession was wrong, that even assuming the right of the Tiruvangad devaswom was not barred by adverse possession, the plaintiffs can have no right to oust the defendants from their possession of the suit temple on the ground that they have acquired a right to the exclusive management of the suit temple by prescription and that the suit is liable to be dismissed even on the findings of both the Courts. The concurrent finding of both the Courts is that the plaint temple is a subordinate temple of the Tiruvangad devaswom. Tiruvangad temple is admittedly a public temple and there can be no doubt that the plaint temple in also a public temple. In deciding the question of adverse possession it seems to me that both the Courts have not kept in view this fact. Being a public temple and therefore res *extra commercium* it is not open to a private individual to acquire by prescription any private ownership in regard thereto. The character of the temple as a public temple cannot be taken away by any assertion of private right and there is no

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evidence that the public have ever been excluded therefrom. Mr. Kuttikrishna Menon rightly concedes before me that he would not dispute the fact of the temple being a public temple. The plaint temple must therefore be deemed to be a public temple and a subordinate shrine to the main Tiruvangad temple. But the question still remains, are the plaintiffs entitled to oust the defendants from their possession of the suit temple? The concurrent finding of both the Courts in regard to the posses. Sion is that an ancestor of the defendants was introduced into this temple as an archaka and that after his death, his descendants continued to be in possession doing archaka service. Both the Courts have also found that the defendants have set up an exclusive right to the possession and management of the temple at any rate from 1903. None of the trustees of the temple ever sought to interfere with the management or possession of the defendants' family. The learned District Judge observes thus:

> It does not also appear that the trustees of the devasthanam attempted at any time to exercise any acts of control in the plaint temple....

3. It is in evidence that the defendants' family have been always performing puja and appropriating all perquisites and offerings received at the temple and were generally attending to the management of the temple and at no time the trustees ever interfered with such management or claimed to receive any portion of the perquisites or offerings, even after the open assertion by the defendants of their absolute rights. It is also in evidence that such repairs as were needed have been done by the defendants in assertion of their absolute rights. It may be that the omission of the trustees of the Tiruvangad devaswom to interfere with such control may have been due to long continued mismanagement of the trustees of the main temple which necessitated the framing of a scheme by the Court. But if the defendants have been openly setting up exclusive right to the possession and management of the temple adverse to the right of the management which, may inhere in the trustees of the main temple by virtue of the fact that the suit temple was a subordinate shrine, the right of the trustees of the temple would certainly be lost by adverse possession. Probably the absence of such control is due to the fact that the usage is that the archaka should be in such possession and management subject to general supervision the trustees of the main temple may have over them. The terms under which the defendants' ancestor was introduced into the temple are not known. On the findings of both the Courts, there can be no doubt that the defendants' family at any rate for a period of 30 years has been setting up a right of exclusive possession and management to the knowledge of the trustees. Therefore, the facts of this case warrant the inference that the defendants have acquired the right of being hereditary archakas of the suit temple and as such to be in possession and management of it. They are therefore entitled to be in possession of the said temple, to perform the puja and appropriate the perquisites and offerings offered at the temple for their own use subject of course to the obligation of performing the puja. The plaintiffs-trustees have no right to interfere with the said management except to exercise a general supervision over them as trustees of the main temple. The plaintiffs would not therefore be entitled to a decree for possession. In my opinion the defendants are the hereditary archakas of the suit temple subject to the supervision of the trustees of the main temple as mentioned by me aforesaid.

4. In the view I have taken that the defendants are the hereditary archakas of the suit temple subject to the supervision of the trustees of the main temple as mentioned by me as aforesaid, the decree of the lower Appellate Court negativing their right must be reversed and the decree of the subordinate Judge dismissing the suit must be upheld on the basis that the defendants are entitled to be in possession as hereditary

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archakas. The result is that the plaintiffs' suit will be dismissed, but I direct each party to bear their own costs throughout. Leave to appeal is refused.

5. Some doubt was raised by the office with regard to the refund of court-fee in this case. I issued notice to the Government Pleader. Mr. Krishna Rao on behalf of the Government Pleader frankly stated to me that refund should be ordered and I think he is right. Apart from Sections 13, 14 and 15 of the Court-fees Act, the Court has got inherent power to refund court-fee: *vide* 55 Mad 641.[1] As the temple in this case is incapable of valuation I think the appellants are entitled to a refund of the excess court-fee

paid by them. The proper court-fee in this case is Rs. 100.

6. The appellants are therefore entitled to a certificate for the refund of the balance. Mr. Govinda Menon asks me to make an order also in his client's favour. I cannot do so in this appeal. If so advised, he is entitled to make an application to the lower Court.

C.R.K./D.S.

7. *Order accordingly.*

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[1] *Thammayya Naidu* v. *Venkataramanamma*, (1932) 19 AIR Mad 438 : 139 IC 131 : 55 Mad 641 : 62 MLJ 541.

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(2004) 10 Supreme Court Cases 65

(BEFORE R.C. LAHOTI AND ASHOK BHAN, JJ.)

AMRENDRA PRATAP SINGH .. Appellant;

Versus

TEJ BAHADUR PRAJAPATI AND OTHERS .. Respondents.

Civil Appeal No. 11483 of 1996†, decided on November 21, 2003

A. Scheduled Tribes — Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 — Regns. 3, 2(f), 3-A and 7-D — Prohibition against transfer of immovable property by a member of Scheduled Tribe to a non-tribal without permission of competent authority — "Transfer" in the context — Meaning and scope — Includes any "dealing" with immovable property having effect of extinguishing the title, possession or right to possess such property in the tribal and vesting the same in a non-tribal — Adverse possession can be regarded as such a dealing and thus amount to "transfer of immovable property" — Hence acquisition of title in favour of a non-tribal by invoking doctrine of adverse possession over the immovable property belonging to a tribal in a tribal area prohibited — A tribal is considered to be incapable of protecting his own immovable property — Constitution of India, Art. 244 & Sch. V para 5 — Orissa Merged States (Laws) Act, 1950 (4 of 1950), S. 7(b) — Words and phrases — "Transfer"

B. Limitation Act, 1963 — Art. 65 & S. 27 — Adverse possession — Meaning and applicability — Acquisition of title by adverse possession, when can be claimed — Factors to be considered — Adverse possession includes "dealing" with one's property which results in extinguishing one's title in the property and vesting the same in the person in possession thereof and thus amounts to "transfer of immovable property" in a wider sense — Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 — Regn. 7-D (as inserted by Orissa Regulation 1 of 1975) — Words and phrases — "Adverse possession", "dealing"

C. Supreme Court Rules, 1966 — Or. 41 — Costs — While allowing the appeal, costs incurred in High Court and in Supreme Court directed to be borne by respondent while costs incurred in trial court left to the discretion of the trial court

D. Constitution of India — Art. 136 — Discretionary jurisdiction of Supreme Court — Case remanded to trial court with the direction to dispose of it consistently with the judgment of the Supreme Court, expeditiously and in any case within six months — Civil Procedure Code, 1908, Or. 41 R. 23-A

E. Interpretation of Statutes — Subsidiary rules — Generalia specialibus non derogant — Acquisition of title by adverse possession — Whereas it is permissible for a tribal to acquire title over another tribal's land by adverse possession, in view of the specific prohibition in the special law, the general law cannot prevail and adverse possession by a non-tribal is not permissible

† From the Judgment and Order dated 12-9-1994 of the Orissa High Court in AHO No. 26 of 1987

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The land in question was situated in a tribal area in Orissa. The property originally was owned by two persons belonging to Oraon tribe which is a Scheduled Tribe. In 1962 they transferred the property to another person also belonging to a Scheduled Tribe, who in turn on 7-4-1964 sold the property in two parts to two persons *R* and *H*, not belonging to a Scheduled Tribe, after obtaining permission from the Sub-Divisional Officer. *R* then sold a portion of the land purchased by him to the appellant. The respondent had purchased some land on 25-4-1967 from the original holders and had also encroached upon some portion of land belonging to the appellant. In 1970 the appellant filed a suit for declaration of title, recovery of possession and issuance of permanent preventive injunction against the defendants. The defendants denied the title of the plaintiff and pleaded their title by way of adverse possession over the suit land. The trial court decreed the suit and directed possession over the suit property to be restored to the plaintiff. The High Court found the title of the plaintiff to have been proved but at the same time held the defendant-respondent to have been in adverse possession over the property for the prescribed statutory period of 12 years and therefore, held the plaintiff not entitled to a decree in the suit.

The original landholders, belonging to an aboriginal tribe, could not have transferred their holding to a member of a non-aboriginal tribe though the transfer of holding by a member of one aboriginal tribe to a member of the same or another aboriginal tribe, was permitted. This restriction continued to remain in force by virtue of Section 7-D of the Orissa Merged States (Laws) Act, 1950, from the year 1950 up to the year 1956. That restriction came to be deleted by para 9 read with Entry 2 of the Schedule to the 1956 Regulations. But then the same restriction came to be imposed independently by para 3 of the Regulations. While the 1950 Act imposed a restriction on *the transfer of a holding* by a member of an aboriginal tribe to a non-member except with the previous permission of the Sub-Divisional Officer concerned, the 1956 Regulations enlarged the scope of the restriction by including within the purview of prohibition, *any transfer of any immovable property* except with the previous consent in writing of the competent authority. The immovable property, referred to in para 3 of the Regulations, would obviously include a holding as well. The definition of "transfer of immovable property" under para 2(*f*) of the Regulations is very wide. Apart from the well-known modes of transfer such as mortgage, lease, sale, gift and exchange, what has been included therein is "any dealing with such property" which is non-testamentary. Para 7-D of the Regulations has amended the provisions of the third column of the Schedule to the Limitation Act, 1963. The effect of this amendment is that the period of limitation prescribed for suit for possession of immovable property or any interest therein in a suit based on title, instead of being twelve years, stands substituted by a period of thirty years in the Limitation Act, which period would begin to run from a point of time when the possession of the defendant becomes adverse to the plaintiff in its applicability to immovable property belonging to a member of a Scheduled Tribe such as "Oraon".

The period for which the defendant claims to be in possession has to be divided into two parts: (*i*) the pre-7-4-1964 period, when the ownership of the land vested in the person or persons who belonged to an aboriginal tribe; and (*ii*) post-7-4-1964, when the ownership had come to vest in a person belonging to a non-aboriginal tribe consequent upon a transfer made by the previous permission of the competent authority. Two questions arose for consideration: firstly, what is

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the meaning to be assigned to the expression "transfer of immovable property" in relation to property owned by a member of a Scheduled Tribe to whom the Regulations apply; and secondly, whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of an aboriginal tribe.

Allowing the appeal with costs, the Supreme Court

Held :

The object sought to be achieved by the 1950 Act and the 1956 Regulations is to see that a member of an aboriginal tribe indefeatably continues to own the property which he acquires and every process known to law by which title in immovable property is extinguished in one person to vest in another person, should remain so confined in its operation in relation to tribals that the immovable property of one tribal may come to vest in another tribal but the title in immovable property vesting in any tribal must not come to vest in a non-tribal. This is to see and ensure that non-tribals do not succeed in making inroads amongst the tribals by acquiring property and developing roots in the habitat of tribals. (Para 15)

The expression "transfer of immovable property" as defined in clause (*f*) of para 2 of the 1956 Regulations has to be assigned a very wide and extended meaning depending on the context and the setting in which it has been used so as to include therein such transactions as would not otherwise and ordinarily be included in its meaning. The expression thus would within its meaning include not only such methods of testamentary disposition as are known to result in transferring an interest in immovable property but also any "dealing" with such property as would have the effect of causing or resulting in the transfer of interest in immovable property. Any transaction or dealing with immovable property which would have the effect of extinguishing the title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of "transfer of immovable property". (Paras 20, 16 and 14)

Sanjay Dinkar Asarkar v. *State of Maharashtra*, (1986) 1 SCC 83; *Pandey Oraon* v. *Ram Chander Sahu*, 1992 Supp (2) SCC 77; *State of M.P.* v. *Babu Lal*, (1977) 2 SCC 435, *relied on*

Manchegowda v. *State of Karnataka*, (1984) 3 SCC 301 : (1984) 3 SCR 502; *Lingappa Pochanna Appelwar* v. *State of Maharashtra*, (1985) 1 SCC 479 : (1985) 2 SCR 224; *Gamini Krishnayya* v. *Guraza Seshachalam*, AIR 1965 SC 639 : (1965) 1 SCR 195; *D (a minor)* v. *Berkshire County Council*, (1987) 1 All ER 20 : 1987 AC 317 : (1986) 3 WLR 1080 (HL), *referred to*

Jagdish v. *State of M.P.*, AIR 1993 MP 132 : 1993 MPLJ 425; *Wajeram* v. *Kaniram*, 1992 Revenue Nirnaya 270; *Dinesh Kumar* v. *State of M.P.*, 1995 Revenue Nirnaya 358, *approved*

The definition of "transfer of immovable property" makes a reference to all known modes of transferring right, title and interest in immovable property and to make the definition exhaustive, conspicuously employs the expression "any other dealing with such property", which would embrace within its sweep any other mode having an impact on right, title or interest of the holder, causing it to cease in one and vest or accrue in another. The use of the word "dealing" is suggestive of the legislative intent that not only a transfer as such but any dealing with such property (though such dealing may not, in law, amount to transfer), is sought to be included within the meaning of the expression. Such "dealing" may

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be a voluntary act on the part of the tribal or may amount to a "dealing" because of the default or inaction of the tribal as a result of his ignorance, poverty or backwardness, which shall be presumed to have existed when the property of the tribal is taken possession of or otherwise appropriated or sought to be appropriated by a non-tribal. In other words, a default or inaction on the part of a tribal which results in deprivation or deterioration of his rights over immovable property would amount to "dealing" by him with such property, and hence a transfer of immovable property. It is so because a tribal is considered by the legislature not to be capable of protecting his own immovable property. A provision has been made by para 3-A of the 1956 Regulations for evicting any unauthorised occupant, by way of trespass or otherwise, of any immovable property of a member of a Scheduled Tribe, the steps in regard to which may be taken by the tribal or by any person interested therein or even suo motu by the competent authority. The concept of *locus standi* loses its significance. The State is the custodian and trustee of the immovable property of tribals and is enjoined to see that the tribal remains in possession of such property. No period of limitation is prescribed by para 3-A. The prescription of the period of twelve years in Article 65 of the Limitation Act becomes irrelevant so far as the immovable property of a tribal is concerned. The tribal need not file a civil suit which will be governed by the law of limitation; it is enough if he or anyone on his behalf moves the State or the State itself moves into action to protect him and restores his property to him. To such an action neither Article 65 of the Limitation Act nor Section 27 thereof would be attracted. The abovesaid shall be the position of law under the 1956 Regulations where "transfer of immovable property" has been defined and also under the 1950 Act where "transfer of holding" has not been defined. Acquisition of title in favour of a non-tribal by invoking the doctrine of adverse possession over the immovable property belonging to a tribal, is prohibited by law and cannot be countenanced by the court. (Paras 25 and 26)

Every possession is not, in law, adverse possession. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title on to himself and such prescription having continued for a period of twelve years, he acquires title not on his own but on account of the default or inaction on the part of the real owner, which stretched over a period of twelve years, results in extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrongdoing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrongdoer and re-enter into possession, has defaulted and remained inactive for a period of twelve years, which the law considers reasonable for attracting the said penalty. Inaction for a period of twelve years is treated by the doctrine of adverse possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession. (Para 22)

The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the doctrine

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of adverse possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by the doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of "dealing" with one's property which results in extinguishing one's title in property and vesting the same in the wrongdoer in possession of property and thus amounts to "transfer of immovable property" in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section. (Para 23)

Madhavrao Waman Saundalgekar v. *Raghunath Venkatesh Deshpande*, AIR 1923 PC 205 : 50 IA 255 : ILR 47 Bom 798; *Karimullakhan* v. *Bhanupratapsingh*, AIR 1949 Nag 265 : ILR 1948 Nag 978, *relied on*

A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State Legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India. A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogeneous reading. (Para 28)

Laxmi Gouda v. *Dandasi Goura*, AIR 1992 Ori 5; *Madhia Nayak* v. *Arjuna Pradhan*, (1988) 65 Cut LT 360, *distinguished*

The period up to 6-4-1964, during which the land belonged to the tribals, has to be excluded from calculating the period of limitation. Undoubtedly, on 7-4-1964, the land having been sold by a tribal to a non-tribal with the previous permission of the Sub-Divisional Officer, the possession of defendant-Respondent 1 over the land on and from that date shall be treated as hostile. In the suit filed by the plaintiff-appellant in the year 1970 the period of limitation shall have to be calculated by reference to Article 65 of the Limitation Act. By that time only a period of six years i.e. between 1964 and 1970 had elapsed. The suit was not barred by limitation. (Para 27)

There was a controversy before the trial court as to the exact extent of land and of encroachment on the property belonging to the plaintiff-appellant by the defendant-respondent, as the two properties are adjoining. The other question which arises is as to the construction made by defendant-Respondent 1 over the property of the plaintiff-appellant encroached upon by defendant-Respondent 1. On these two aspects the case needs to be remanded to the trial court for the ends of justice and determination of appropriate relief. Therefore, the case is remanded to the trial court for decision in accordance with the directions herein given [in para 32]. (Paras 29 to 32)

The trial court shall dispose of the suit, consistently with the terms of the present judgment, expeditiously and in any case within a period of six months from the date of the communication of this judgment. (Para 33)

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The costs incurred in the High Court and the Supreme Court shall be borne by the defendant-Respondent 1. The costs incurred in the trial court shall be in the discretion of the trial court. (Para 34)

F. Interpretation of Statutes — External aids — Dictionary meaning — Held, can be considered as a guide — Meaning can be assigned in wider or restricted sense than that given in the dictionary having regard to the context, setting and scheme and legislative intent

Chambers Twentieth Century Dictionary (New Edn., 1983); *Black's Law Dictionary* (6th Edn.); Justice G.P. Singh: *Principles of Statutory Interpretation*, (8th Edn., 2001), pp. 279-80, *relied on*

G. Precedents — Judicial decision is an authority for what it actually decides — It is not an authority for any implication, assumption or inference derived from the judgment — Constitution of India — Art. 141

A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement. (Para 28)

R-M/TZ/29328/S

Advocates who appeared in this case :

V.K.S. Chaudhary, Senior Advocate (Vivek Raj Singh, Prakash Kr. Singh and A.S. Pundir, Advocates, with him) for the Appellant;

Anoop G. Chaudhari, Senior Advocate (Suresh C. Gupta, Anil Hooda, Guneshwar, Kaushal Yadav and Ranbir Singh Yadav, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

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13. AIR 1949 Nag 265 : ILR 1948 Nag 978, *Karimullakhan* v. *Bhanupratapsingh* 80*h*
14. AIR 1923 PC 205 : 50 IA 255 : ILR 47 Bom 798, *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande* 80*g*

The Judgment of the Court was delivered by

R.C. LAHOTI, J.— The suit property consists of a piece of agricultural land situated in Sundergarh area of Mouza Durgapur, Rourkela. Prior to the year 1962, the property belonged to Chand Oram and Pera Oram. Both of them belong to Oraon tribe, which is a Scheduled Tribe in the State of Orissa

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as notified vide the Constitution (Scheduled Tribes) Order, 1950 issued in exercise of the power conferred by clause (1) of Article 342 of the Constitution of India. On 21-12-1962 Chand and Pera transferred their right and interest in 0.75 decimals of land in favour of one Mangal Singh Manki. The said Mangal Singh Manki was also a person belonging to a Scheduled Tribe. Mangal Singh Manki, after obtaining the permission of the Sub-Divisional Officer, Pamposh, sold 0.40 decimals of land by a registered deed of sale dated 7-4-1964 executed in favour of one Ratnamani Mohapatra, and on the same day by another registered deed of sale transferred the remaining 0.35 decimals of land to one Harihar Pradhan. On 6-9-1965 Dr Amrendra Pratap Singh, the plaintiff-appellant purchased 0.195 decimals of land out of 0.40 decimals from Ratnamani Mohapatra. It is this land purchased by the plaintiff-appellant which forms the subject-matter of dispute. This land belonging to the plaintiff has come to be numbered as Plot No. 1147/1.

2. According to the plaintiff he raised construction in the year 1965 over 0.05 decimal area out of the land purchased by him. When he proposed to raise construction over the remaining area, he was obstructed in doing so by Harihar Pradhan, the owner of the adjoining land, whereupon the plaintiff got in touch with his predecessor-in-title Smt Ratnamani Mohapatra. It was detected that in the map attached with the sale deed dated 6-9-1965 there was some error in description of the land forming the subject-matter of sale. Smt Ratnamani Mohapatra executed a deed of rectification dated 31-8-1968 in favour of the plaintiff-appellant, after having the land demarcated by *Amin*.

3. During the course of demarcation proceedings it was found that the defendant-Respondent 1 had also purchased some land under a registered deed of sale dated 25-4-1967 from Chand and Pera and constructed two buildings thereon. However, the defendant-Respondent 1 who had purchased land Plot No. 1119 (new Plot No. 957), had also encroached upon some portion of land of Plot No. 1147 (new Plot No. 956) belonging to the plaintiff-appellant.

4. The dispute between the parties led to the initiation of proceedings under Section 145 of the Code of Criminal Procedure. In the year 1970 the plaintiff-appellant filed a suit for declaration of title, recovery of possession and issuance of permanent preventive injunction against the defendants. Defendants 1 to 3, who are the principal contesting defendants, denied the title of the plaintiff and pleaded their title by way of adverse possession over the suit land. The trial court decreed the suit and directed possession over the suit property to be restored to the plaintiff after demolition of the construction of Defendant 1 standing on the suit land. Defendant 1 preferred an appeal to the High Court. The High Court found the title of the plaintiff-appellant to be proved but at the same time held Defendant 1 to have been in adverse possession over the property for the prescribed statutory period of twelve years, and therefore, held the plaintiff-appellant not entitled to a decree in the suit. The High Court reversed the judgment and decree of the trial court and directed the suit to be dismissed. Feeling aggrieved, the plaintiff has filed this appeal by special leave.

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5. On behalf of the plaintiff-appellant, the correctness of the finding as to defendant-Respondent 1 being in adverse possession of the property and having perfected his title by being in continuous and uninterrupted possession of the property for a period exceeding twelve years' time was seriously disputed, however, we are not inclined to enter into any revaluation of evidence and dislodge the finding of fact arrived at by the High Court. We would therefore proceed on an assumption that the defendant-Respondent 1 has remained in possession of the property for a period of more than twelve years before the date of the institution of the suit. The real question is whether he can be said to have perfected his title by way of adverse possession. This question assumes significance because of the fact that the original owners of the land, namely, Chand and Pera, were persons belonging to a Scheduled Tribe and their successor-in-title Mangal Singh Manki was also a person belonging to a Scheduled Tribe.

6. The Orissa Merged States (Laws) Act, 1950 was enacted by the Legislative Assembly of Orissa for the purpose of extending certain Acts and regulations to certain areas administered as part of the State of Orissa. It received the assent of the Governor on 26-2-1950, which was published in the Orissa Gazette on 3-3-1950 and on that date the Act came into force. Section 7 of the Act, insofar as is relevant for our purpose, provided as under:

> "7. *Modification of tenancy laws in force in the merged States.*— Notwithstanding anything contained in the tenancy laws of the merged States as continued in force by virtue of Article 4 of the States Merger (Governor's Provinces) Order, 1949—
>
> * * *
>
> (*b*) an occupancy tenant shall be entitled—
>
> (*i*) to freely transfer his holding subject to the restriction that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with the previous permission of the Sub-Divisional Officer concerned;
>
> (*ii*) to have full right over all kinds of trees standing on his holding;
>
> (*iii*) to use the land comprised in the holding in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy;
>
> (*iv*) to the benefit of the presumption by any court that the rent for the time being payable by him is fair and equitable until the contrary is proved;
>
> *Explanation.*—(*i*) An 'occupancy tenant' means tenant or a raiyat having occupancy right in his holding under the tenancy laws continued in force in the merged States;
>
> (*ii*) an 'aboriginal tribe' means any tribe that may from time to time be notified as such by the State Government;
>
> * * *"

7. Article 244 of the Constitution provides for the provisions of the Fifth Schedule being applicable to the administration and control of the scheduled

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areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. Para 5 of the Fifth Schedule provides inter alia for the Governor to make regulations which may prohibit or restrict the transfer of land by or among the members of the Scheduled Tribes in such areas and/or to regulate the allotment of land to members of the Scheduled Tribes in such areas.

8. In exercise of the powers conferred by sub-para (2) of paragraph 5 of the Fifth Schedule to the Constitution, the Governor of Orissa promulgated regulations known as the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 (hereinafter referred to as "the Regulations" for short). The assent of the President was received on 21-9-1956 and published in the Orissa Gazette (Extraordinary) on 4-10-1956, on which date the Regulations came into force. The preamble to the Regulations speaks that the same were promulgated as it was considered expedient to control and check transfer of immovable property by the Scheduled Tribes in the scheduled areas of the State of Orissa. Clause (*f*) of para 2 of the Regulations defines "transfer of immovable property" to mean "mortgage with or without possession, lease, sale, gift, exchange or *any other dealing with such property* not being a testamentary disposition and includes a charge or contract relating to such property". (emphasis supplied) Regulation 3 provides as under:

> "3. *Transfer of immovable property by a member of Scheduled Tribe.*— (1) Notwithstanding anything contained in any law for the time being in force *any transfer of immovable property* situated within a scheduled area by a member of a Scheduled Tribe *shall be absolutely null and void and of no force or effect whatsoever* unless made in favour of another member of a Scheduled Tribe or with the previous consent in writing of the competent authority:
>
> Provided that nothing in this sub-section shall apply to any transfer by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any agricultural purpose:
>
> Provided further that in execution of any decree for realisation of the mortgage money no property mortgaged as aforesaid shall be sold in favour of any person not being a member of the Scheduled Tribes without the previous consent in writing of the competent authority.
>
> * * *
>
> *Explanation.*—For the purposes of this sub-section, a transfer of immovable property in favour of a female member of a Scheduled Tribe, who is married to a person who does not belong to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe.
>
> (2) *Where a transfer of immovable property is made in contravention of sub-section (1)* the competent authority may, either on application by anyone interested therein or on his own motion and after giving the parties an opportunity of being heard *order ejectment against any person in possession of the property claiming under the transfer* and shall cause restoration of possession of such property to the transferor or his heirs. In causing such restoration of possession the competent authority may take such steps as

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may be necessary for securing compliance with the said order or preventing any breach of peace:

Provided that if the competent authority is of the opinion that the restoration of possession of immovable property to the transferor, or his heirs is not reasonably practicable, he shall record his reasons thereof and shall subject to the control of the State Government *settle the said property with another member of Scheduled Tribe* or in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act, 33 of 1962.

Explanation.—Restoration of possession means actual delivery, of possession by the competent authority to the transferor or his heirs.

(3) Subject to such conditions as may be prescribed an appeal, if preferred within thirty days of the order under sub-section (2) shall, if made by the Collector lie to the Board of Revenue and if made by any other competent authority to the Collector or any other officer specially empowered by the State Government in this behalf.

* * *

(4) Subject to the provisions of sub-section (3) the decision of the competent authority under sub-section (2) shall be final and shall not be challenged in court of law." (underlining* by us)

9. Under Regulation 3-A where a person is found to be in unauthorised occupation of any immovable property of a member of the Scheduled Tribe by way of a trespass or otherwise, the competent authority may either on application by the owner or any person interested therein, or on his own motion, and after giving the parties concerned an opportunity of being heard, order ejectment of the person so found to be in unauthorised occupation and shall cause restoration of possession of such property to the said member of the Scheduled Tribe or to his heirs.

10. In the year 1975 by Orissa Regulation 1 of 1975 para 7-D was inserted by way of amendment along with a few other amendments. Para 7-D reads as under:

"7-D. *Amendment of the Limitation Act, 1963 in its application to the scheduled areas.*—In the Limitation Act, 1963 in its application to the scheduled areas in the Schedule, after the words 'twelve years' occurring in the second column against Article 65, the words 'twelve years' and figure 'but 30' years in relation to immovable property belonging to a member of a Scheduled Tribe specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950 as modified from time to time, shall be added."

11. This amendment was given retrospective operation with effect from 2-10-1973.

12. Para 9 of the Regulations partially repealed the Orissa Merged States (Laws) Act, 1950. The relevant extracts are as under:

"9. *Repeal.*—(1) On and from the date of commencement of this regulation shall stand repealed, namely;

* Ed.: Herein italicized

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(*a*) * * *

(*b*) The enactments mentioned in column 2 of the Schedule to the extent specified in column 3 thereof insofar as they are in force in the scheduled areas.

(2)(*a*)-(*d*) * * *

SCHEDULE

LIST OF ENACTMENTS REPEALED

(See Section 9)

Number and year (1)	*Short title* (2)	*Extent of repeal* (3)
1. *	*	*
2. Orissa Act 4 of 1950	Orissa Merged States (Laws) Act, 1950	The words 'subject to the restrictions that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with the previous permission of the Sub-Divisional Magistrate concerned' in Item 1 of clause (*d*) of the section shall be omitted.
3. *	*	*"

13. The position emerging from the facts of the case, found proved or undisputed and the relevant position of law, as emerging from the Act and the Regulations referred to hereinabove, may be summed up. The original holders of the land, namely, Chand and Pera, were persons belonging to an aboriginal tribe, i.e. Oraon. Sundergarh, the area where the land is situated, is a tribal area. Chand and Pera Oram held the land as occupancy tenants. They could not have transferred their holding to a member of a non-aboriginal tribe though the transfer of holding by a member of one aboriginal tribe to a member of the same or another aboriginal tribe, was permitted. This restriction continued to remain in force by virtue of Section 7-D of the Orissa Merged States (Laws) Act, 1950, from the year 1950 up to the year 1956. That restriction came to be deleted by para 9 read with Entry 2 of the Schedule to the 1956 Regulations. But then the same restriction came to be imposed independently by para 3 of the Regulations. While the 1950 Act imposed a restriction on *the transfer of a holding* by a member of an aboriginal tribe to a non-member except with the previous permission of the Sub-Divisional Officer concerned, the 1956 Regulations enlarged the scope of the restriction by including within the purview of prohibition, *any transfer of any immovable property* except with the previous consent in writing of the competent authority. The immovable property, referred to in para 3 of the Regulations, would obviously include a holding as well. The Regulations define "transfer of immovable property". The definition is very wide. Apart from the well-known modes of transfer such as mortgage, lease, sale, gift and exchange, what has been included therein is "any dealing with such property" which is non-testamentary. Regulation 7-D has amended the provisions of the

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third column of the Schedule to the Limitation Act, 1963. The effect of this amendment is that the period of limitation prescribed for suit for possession of immovable property or any interest therein in a suit based on title, instead of being twelve years, stands substituted by a period of thirty years, in the Limitation Act, which period would begin to run from a point of time when the possession of the defendant becomes adverse to the plaintiff in its applicability to immovable property belonging to a member of a Scheduled Tribe such as "Oraon". What is the scope of Regulation 7-D and to what immovable properties it would apply, shall be examined a little later.

14. It cannot be disputed that until 7-4-1964 the land was owned by Chand and Pera and then by Mangal Singh, all the three being members of an aboriginal tribe and a Scheduled Tribe. On 7-4-1964 the land came to be transferred to a person not belonging to any aboriginal tribe. Proceeding on the premise that in the year 1970, on the date of the filing of the suit (the exact date not being ascertainable) Defendant 1 had been in possession of the property for a period of more than twelve years. Can it be said that he had perfected his title by adverse possession or that the suit filed by the plaintiff had become barred by time on account of having been filed twelve years after the date when the possession of the defendant became adverse to the plaintiff or his predecessors-in-title? The period for which the defendant claims to be in possession has to be divided into two parts: (*i*) the pre-7-4-1964 period, when the ownership of the land vested in the person or persons who belonged to an aboriginal tribe; and (*ii*) post-7-4-1964, when the ownership had come to vest in a person belonging to a non-aboriginal tribe consequent upon a transfer made by the previous permission of the competent authority. Two questions arise for consideration: firstly, what is the meaning to be assigned to the expression "transfer of immovable property" in relation to property owned by a member of a Scheduled Tribe to whom the Regulations apply; and secondly, whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of an aboriginal tribe. The 1956 Regulations have chosen to assign an extended meaning to the expression "transfer of immovable property" so as to include within its meaning not only such methods of testamentary disposition as are known to result in transferring an interest in immovable property but also any "dealing" with such property as would have the effect of causing or resulting in the transfer of interest in immovable property, is included therein. According to the *Chambers Twentieth Century Dictionary* (New Edn., 1983) "deal" as a verb means to divide, to distribute; to throw about; to deliver and "deal with" means to have to do with, to treat of, to take action in regard to. One of the meanings to the word "deal" assigned in *Black's Law Dictionary* (6th Edn.) is "to traffic". Dictionaries can be taken as safe guides for finding out meanings of such words as are not defined in the statute. However, dictionaries are not the final words on interpretation. The words take colour from the context and the setting in which they have been used. It is permissible to assign a meaning or a sense, restricted or wider than the one given in dictionaries, depending on the scheme of the legislation wherein the

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word has been used. The court would place such construction on the meaning of the words as would enable the legislative intent being effectuated. Where the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society, the court would not hesitate in placing an extended meaning, even a stretched one, on the word, if in doing so the statute would succeed in attaining the object sought to be achieved. We may refer to *Principles of Statutory Interpretation* by Justice G.P. Singh (8th Edn., 2001) wherein at pp. 279-80 the learned author states—

> "... in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that 'the meanings of words and expressions used in an Act must take their colour from the context in which they appear'. Therefore, 'when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers'. ... Judge Learned Hand cautioned 'not to make a fortress out of the dictionary' but to pay more attention to 'the sympathetic and imaginative discovery' of the purpose or object of the statute as a guide to its meaning."

15. Tribal areas have their own problems. Tribals are historically weaker sections of the society. They need the protection of the laws as they are gullible and fall prey to the tactics of unscrupulous people, and are susceptible to exploitation on account of their innocence, poverty and backwardness extending over centuries. The Constitution of India and the laws made thereunder treat tribals and tribal areas separately wherever needed. The tribals need to be settled, need to be taken care of by the protective arm of the law, and be saved from falling prey to unscrupulous device so that they may prosper and by an evolutionary process join the mainstream of the society. The process would be slow, yet it has to be initiated and kept moving. The object sought to be achieved by the 1950 Act and the 1956 Regulations is to see that a member of an aboriginal tribe indefeatably continues to own the property which he acquires and every process known to law by which title in immovable property is extinguished in one person to vest in another person, should remain so confined in its operation in relation to tribals that the immovable property of one tribal may come to vest in another tribal but the title in immovable property vesting in any tribal must not come to vest in a non-tribal. This is to see and ensure that non-tribals do not succeed in making inroads amongst the tribals by acquiring property and developing roots in the habitat of tribals.

16. In support of the proposition that the expression "transfer of immovable property" is capable of being assigned an extended meaning depending on the context and the setting in which it has been used so as to include therein such transactions as would not otherwise and ordinarily be included in its meaning, we may refer to a few decided cases.

17. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 imposed a ceiling on holding land and to effectuate the purpose sought to be

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achieved by the legislation, imposed restrictions on the transfer or partition of any land on or after the appointed date. Transfer was defined to mean transfer by act of parties whether by sale, gift, mortgage with possession, exchange, lease or *any other disposition* (underlining by us) made *inter vivos*. This Court in *Sanjay Dinkar Asarkar* v. *State of Maharashtra*[1] placed an object-oriented interpretation on the term "disposition" and held: (SCC p. 88, para 6)

> Though ordinarily the word "disposition" in relation to property would mean disposition made by a deed or Will, but in the Act it has to be given an extended meaning so as to include therein any disposition made by or under a decree or order of the court.

18. In *Pandey Oraon* v. *Ram Chander Sahu*[2] the term "transfer" as used in Section 71-A of the Chota Nagpur Tenancy Act, 1908, came up for the consideration of the Court. "Transfer" was not defined in the Act. It was held that considering the situation in which the exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of "transfer" to transfer under the Transfer of Property Act or a situation where "transfer" has a statutory definition. What exactly is contemplated by "transfer" in Section 71-A is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession has lost it and a non-member has come into possession, would be covered by "transfer". Their Lordships observed: (SCC p. 80, para 7)

> "7. The provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection. Therefore when the legislature is extending special protection to the named category, the court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by (sic) the scope."

Their Lordships referred to three earlier decisions of this Court, namely, *Manchegowda* v. *State of Karnataka*[3], *Lingappa Pochanna Appelwar* v. *State of Maharashtra*[4], *Gamini Krishnayya* v. *Guraza Seshachalam*[5] and a decision of the House of Lords in *D (a minor)* v. *Berkshire County Council*[6] laying down the proposition that a broad and liberal construction should be given to give full effect to the legislative purpose.

19. *State of M.P.* v. *Babu Lal*[7] is an interesting case showing how this Court dealt with an artistic device employed by a non-tribal to deprive a tribal of his land. The M.P. Land Revenue Code, 1959 imposed restrictions

1 (1986) 1 SCC 83
2 1992 Supp (2) SCC 77
3 (1984) 3 SCC 301 : (1984) 3 SCR 502
4 (1985) 1 SCC 479 : (1985) 2 SCR 224
5 AIR 1965 SC 639 : (1965) 1 SCR 195
6 (1987) 1 All ER 20 : 1987 AC 317 ; (1986) 3 WLR 1080 (HL)
7 (1977) 2 SCC 435

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on the transfer of land by members of a Scheduled Tribe. Babu Lal, a non-tribal, filed a suit for declaration against Baddiya, a Bheel, notified Scheduled Tribe, for declaration that his name be recorded in the revenue record as *bhumiswami* over the land of Baddiya. Baddiya did not contest the suit and the parties filed a compromise conceding to the claim of Babu Lal. The State Government intervened and filed a petition in the High Court seeking a writ of certiorari, submitting that the entire proceedings in the suit were in contravention of sub-section (6) of Section 165 of the M.P. Land Revenue Code, 1959. The judgment of the civil court based on compromise was sought to be quashed. The High Court dismissed the petition holding that the State could pursue the alternative remedy of filing a suit for declaration that the decree was null and void. In appeal by special leave, this Court set aside the judgment of the High Court and issued a writ of certiorari to quash the judgment and decree passed in the civil suit. It was held: (SCC p. 436, para 5)

> "5. *One of the principles on which certiorari is issued is where the Court acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari.*" (underlining* by us)

20. The law laid down by this Court is an authority for the proposition that the court shall step in and annul any such transaction as would have the effect of violating a provision of law, more so when it is a beneficial piece of social legislation. A simple declaratory decree passed by a civil court which had the effect of extinguishing the title of a member of a Scheduled Tribe and vesting the same in a non-member, was construed as "transfer" within the meaning of Section 165(6) of the M.P. Land Revenue Code, 1959. Thus, we are very clear in our minds that the expression "transfer of immovable property" as defined in clause (*f*) of para 2 of the 1956 Regulations has to be assigned a very wide meaning. Any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of "transfer of immovable property".

21. In a series of decisions, the High Court of Madhya Pradesh has been consistently taking this view. To wit, see *Jagdish* v. *State of M.P.*[8], *Wajeram* v. *Kaniram*[9] and *Dinesh Kumar* v. *State of M.P.*[10]

What is adverse possession?

22. Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act, 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of twelve years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, on the

8 AIR 1993 MP 132 : 1993 MPLJ 425
9 1992 Revenue Nirnaya 270
10 1995 Revenue Nirnaya 358

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determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title on to himself and such prescription having continued for a period of twelve years, he acquires title not on his own but on account of the default or inaction on the part of the real owner, which stretched over a period of twelve years, results in extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrongdoing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrongdoer and re-enter into possession, has defaulted and remained inactive for a period of twelve years, which the law considers reasonable for attracting the said penalty. Inaction for a period of twelve years is treated by the doctrine of adverse possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession.

23. The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the doctrine of adverse possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by the doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of "dealing" with one's property which results in extinguishing one's title in property and vesting the same in the wrongdoer in possession of property and thus amounts to "transfer of immovable property" in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section.

24. In *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande*[11] Their Lordships of the Privy Council dealt with a case of *watan* lands and observed that it is somewhat difficult to see how a stranger to a *watan* can acquire a title by adverse possession for twelve years of lands, the alienation of which is, in the interests of the State, prohibited. The Privy Council's decision was noticed in *Karimullakhan* v. *Bhanupratapsingh*[12] and

11 AIR 1923 PC 205 : 50 IA 255 : ILR 47 Bom 798
12 AIR 1949 Nag 265 : ILR 1948 Nag 978

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the High Court noted non-availability of any direct decision on the point and resorted to borrowing from analogy. It was held that title by adverse possession on *inam* lands, *watan* lands and *debutter*, was incapable of acquisition.

25. Reverting back to the facts of the case at hand, we find that in the land, the ultimate ownership vests in the State on the principle of eminent domain. Tribals are conferred with a right to hold land, which right is inalienable in favour of non-tribals. It is clear that the law does not permit a right in immovable property vesting in a tribal to be transferred in favour of or acquired by a non-tribal, unless permitted by the previous sanction of a competent authority. The definition of "transfer of immovable property" has been coined in the widest-possible terms. The definition makes a reference to all known modes of transferring right, title and interest in immovable property and to make the definition exhaustive, conspicuously employs the expression "any other dealing with such property", which would embrace within its sweep any other mode having an impact on right, title or interest of the holder, causing it to cease in one and vest or accrue in another. The use of the word "dealing" is suggestive of the legislative intent that not only a transfer as such but any dealing with such property (though such dealing may not, in law, amount to transfer), is sought to be included within the meaning of the expression. Such "dealing" may be a voluntary act on the part of the tribal or may amount to a "dealing" because of the default or inaction of the tribal as a result of his ignorance, poverty or backwardness, which shall be presumed to have existed when the property of the tribal is taken possession of or otherwise appropriated or sought to be appropriated by a non-tribal. In other words, a default or inaction on the part of a tribal which results in deprivation or deterioration of his rights over immovable property would amount to "dealing" by him with such property, and hence a transfer of immovable property. It is so because a tribal is considered by the legislature not to be capable of protecting his own immovable property. A provision has been made by para 3-A of the 1956 Regulations for evicting any unauthorised occupant, by way of trespass or otherwise, of any immovable property of a member of a Scheduled Tribe, the steps in regard to which may be taken by the tribal or by any person interested therein or even suo motu by the competent authority. The concept of *locus standi* loses its significance. The State is the custodian and trustee of the immovable property of tribals and is enjoined to see that the tribal remains in possession of such property. No period of limitation is prescribed by para 3-A. The prescription of the period of twelve years in Article 65 of the Limitation Act becomes irrelevant so far as the immovable property of a tribal is concerned. The tribal need not file a civil suit which will be governed by the law of limitation; it is enough if he or anyone on his behalf moves the State or the State itself moves into action to protect him and restores his property to him. To such an action neither Article 65 of the Limitation Act nor Section 27 thereof would be attracted.

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26. In our opinion, the abovesaid shall be the position of law under the 1956 Regulations where "transfer of immovable property" has been defined and also under the 1950 Act where "transfer of holding" has not been defined. Acquisition of title in favour of a non-tribal by invoking the doctrine of adverse possession over the immovable property belonging to a tribal, is prohibited by law and cannot be countenanced by the court.

27. The period up to 6-4-1964, during which the land belonged to the tribals, has to be excluded from calculating the period of limitation. Undoubtedly, on 7-4-1964, the land having been sold by a tribal to a non-tribal with the previous permission of the Sub-Divisional Officer, the possession of defendant-Respondent 1 over the land on and from that date shall be treated as hostile. In the suit filed by the plaintiff-appellant in the year 1970 the period of limitation shall have to be calculated by reference to Article 65 of the Limitation Act. By that time only a period of six years i.e. between 1964 and 1970 had elapsed. The suit was not barred by limitation.

28. The learned counsel for the respondents relied heavily on para 7-D of the 1956 Regulations and upon two decisions of the Orissa High Court rendered by reference thereto, namely, *Laxmi Gouda* v. *Dandasi Goura*[13] and *Madhia Nayak* v. *Arjuna Pradhan*[14]. We have carefully perused both the decisions. The question which arose for decision therein was the effect of amendment made in para 7-D of the Regulations and given a retrospective operation with effect from a back date. The High Court has held that if adverse possession extending over a period of twelve years had already stood perfected into acquisition of title before the date of the amendment, then the amended provision could not be read so as to extend the period of twelve years of acquisition of title by adverse possession substituted as thirty years even if such date fell after 2-10-1973, the date with which the amendment commenced operating. The question which is arising for decision before us, namely, whether a non-tribal can at all commence prescribing acquisition of title of adverse possession over the land belonging to a tribal and situated in a tribal area was neither raised before the High Court nor decided by it. A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement. Still we make it clear that the provisions of para 7-D of the Regulations are to be read in the light of the principle which we have laid down hereinabove. A tribal may acquire title by adverse possession over the immovable property of another tribal by reference to para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State Legislature or the Governor in exercise of the power conferred in that regard

13 AIR 1992 Ori 5
14 (1988) 65 Cut LT 360

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by the Constitution of India. A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made at reconciling the two provisions by homogeneous reading.

29. Having held that the wrongful possession of the defendant-Respondent 1 over the land purchased by the plaintiff-appellant has not ripened into acquisition of title by adverse possession, the next question which arises for decision is in relation to the appropriate relief which should be allowed to the plaintiff-appellant. There was a controversy before the trial court as to the exact extent of land and of encroachment on the property belonging to the plaintiff-appellant by the defendant-respondent, as the two properties are adjoining. The plaintiff-appellant relied on the report of *Amin* while the trial court had also got a survey conducted by a local Commissioner who had filed his report. The High Court has not recorded any specific finding thereon because of the view taken by it on the plea of adverse possession, resulting in dismissal of the suit.

30. The other question which arises is as to the construction made by defendant-Respondent 1 over the property of the plaintiff-appellant encroached upon by defendant-Respondent 1. During the course of hearing, it was submitted by the learned counsel for defendant-Respondent 1 that huge construction has come up over the property in suit, while according to the plaintiff-appellant some construction, rather a major portion thereof, has taken place during the pendency of the appeal in this Court as no interim relief was granted by the Court though it was prayed for by the plaintiff-appellant.

31. On these two aspects the case needs to be remanded to the trial court for the ends of justice and determination of appropriate relief. We propose to make suitable directions in this regard in the operative part of the judgment.

32. The appeal is allowed. The judgment of the High Court is set aside. The case is remanded to the trial court for decision in accordance with the following directions:

(*1*) The trial court shall find if an undisputed or proved map of the land belonging to the plaintiff-appellant demarcating the area encroached upon by defendant-Respondent 1 is available on record, and if so, the same shall be accepted and made a part of the decree; if not, the trial court shall appoint an Advocate Commissioner assisted by a person proficient in survey to draw up a map of the plaintiff-appellant's land and demarcate specifically therein the area encroached upon by the defendant-Respondent 1.

(*2*) The trial court shall determine, after hearing the learned counsel for the parties and if necessary, by recording additional evidence, whether a decree for demolition of the construction, made by the defendant-Respondent 1, and specific restoration of possession to the plaintiff-appellant, is called for. In the alternative, the trial court shall determine if, in spite of the encroachment having been proved, a decree for the award of suitable compensation in lieu of demolition and restoration of possession would be a more appropriate relief.

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(3) In the event of the trial court forming an opinion in favour of awarding compensation, the same shall be assessed by reference to the date of this judgment. The payment of compensation, as quantified by the trial court, shall be a condition precedent for condoning the encroachment and unauthorised construction of the defendant-Respondent 1.

33. The trial court shall dispose of the suit, consistently with the terms of this judgment, expeditiously and in any case within a period of six months from the date of the communication of this judgment.

34. The costs incurred in the High Court and this Court shall be borne by the defendant-Respondent 1. The costs incurred in the trial court shall be in the discretion of the trial court.

(2004) 10 Supreme Court Cases 84

(BEFORE G.B. PATTANAIK AND BRIJESH KUMAR, JJ.)

RAJASTHAN SOCIAL WELFARE ADVISORY BOARD AND ANOTHER .. Appellants;

Versus

RAM KISHORE MEENA AND OTHERS .. Respondents.

Civil Appeal No. ... of 2002†, decided on February 18, 2002

Constitution of India — Art. 226 — Interference under, without going into merits — Writ petition against order of dismissal of respondent from service of appellant Board — Single Judge dismissing the writ petition as not maintainable — Division Bench setting aside the order of the Single Judge dismissing the writ, as well as the order of dismissal itself — It also directing reinstatement of the respondent in service — Held, Division Bench erred in law in setting aside the order of dismissal without even examining the legality of the same — Ultimate conclusion of High Court interfering with the order of dismissal not being based on any reasons, liable to be set aside — Matter remanded to Single Judge to be heard on merits — Service Law — Administrative Tribunals Act, 1985 — S. 14

Appeal disposed of R-M/S/25965/SL

ORDER

1. Leave granted.

2. The order of dismissal of Respondent 1 dated 27-4-1995 was the subject-matter of challenge in the writ petition filed in the Rajasthan High Court. Respondent 1 was an employee of the Central Social Welfare Board and he was working as Welfare Officer. He had been sent on deputation as Secretary on 2-11-1988 and he was finally absorbed by order dated 24-1-1991. Thus, he became an employee of the State Board. While he was continuing as an employee of the State Board, the appropriate authority found several derelictions on his part, including the dereliction of release of Rs 8 lakhs in favour of his own brother for non-existent projects. He was

† Arising out of SLP (C) No. 19459 of 2001

(2015) 7 Supreme Court Cases 601

(BEFORE H.L. DATTU, C.J. AND DR A.K. SIKRI AND ARUN MISHRA, JJ.)

RAJASTHAN HOUSING BOARD .. Appellant;

Versus

NEW PINK CITY NIRMAN SAHKARI SAMITI LIMITED AND ANOTHER .. Respondents.

Civil Appeals Nos. 1527-36 of 2013† with Nos. 1537-634 of 2013 and 4183-92 of 2015‡, decided on May 1, 2015

A. Land Acquisition and Requisition — Rajasthan Land Acquisition Act, 1953 (24 of 1953) — Ss. 12 and 18(2) — Limitation period of six months from date of award for making reference to court — Commences from date of actual or constructive knowledge of award — Filing of objections against acquisition by person interested and rejection thereof, on facts, indicative of his knowledge as a reasonable person, of acquisition process and determination of compensation — Hence constructive knowledge of award attributable from date of passing thereof and limitation period for reference would commence from that date — Subsequent issuance of notice under S. 12(2), if any, would not provide starting point of limitation — Land Acquisition Act, 1894, Ss. 12 and 18(2)

B. Administrative Law — Natural Justice — Audi Alteram Partem — Right to Hearing — Notice/Show-Cause — Constructive notice — Concept — Test of knowledge as a reasonable person — Words and Phrases — "Constructive notice", "notice"

C. Tenancy and Land Laws — Rajasthan Tenancy Act, 1955 (3 of 1955) — S. 42(b) — Void transaction — Sale by Scheduled Caste khatedars to "person who is not a member of Scheduled Caste" — "Person" includes juristic person such as housing society — Hence agreement of sale of land by SC khatedars to respondent Housing Society void ab initio — Decree for specific performance of the agreement obtained by Society being prohibited under S. 42 and opposed to public policy, hence, is also a nullity and unenforceable — Specific Relief Act, 1963 — Ss. 9, 10 and 20 — Constitution of India — Arts. 46, 341 and 342 — Transfer of Property Act, 1882 — S. 6 — Transfers prohibited by law — Contract Act, 1872 — S. 23 — Civil Procedure Code, 1908 — Ss. 2(2), 33 and Or. 23 R. 3 — Compromise decree purportedly affirming void transaction, held, is also void ab initio

† From the Judgment and Order dated 29-10-2009 of the High Court of Judicature of Rajasthan at Jaipur Bench, Jaipur in DB Special Appeals (Civil) Nos. 13 of 2001, 55 of 1999 and 101-07 of 2000

‡ Arising out of SLPs (C) Nos. 21344-53 of 2013

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D. **Transfer of Property Act, 1882 — Ss. 53-A and 6 — Void transaction — Transfers prohibited by law — Benefit of S. 53-A in respect of agreement between Scheduled Caste khatedars and non-Scheduled Caste person for sale of land, not available to vendee when transaction itself is void under S. 42 of Rajasthan Tenancy Act — Rajasthan Tenancy Act, 1955 (3 of 1955), S. 42**

E. **Land Acquisition and Requisition — Rajasthan Land Acquisition Act, 1953 (24 of 1953) — Ss. 12 and 4 — Entitlement to compensation — Valid interest in the land, acquired prior to acquisition of the land by State — Need for — Claim of compensation by purchaser of land under a void agreement of sale entered prior to its acquisition by State — Transaction of sale by Scheduled Caste khatedars in favour of a juristic person i.e. Housing Society (respondent herein) void ab initio under S. 42 of Rajasthan Tenancy Act not only against khatedars but also against State after issuance of notification under S. 4 of 1953 Act — Compensation cannot be claimed by respondent Society as a vendee under such void transaction as that would defeat very object of statute and constitutional protection to SCs/STs provided under Arts. 341 and 342 of Constitution — Right to claim compensation is based on right, title or interest in land which cannot be transferred by SC khatedars to juristic person like housing Society in view of prohibition under S. 42 of Tenancy Act — Transaction being void and land being inalienable to non-SC person no right of apportionment to compensation can also be claimed by respondent Society — Society having not acquired any right in the land so as to claim compensation on that basis, in view of void transaction, its contention that such right cannot be taken away except in accordance with law, cannot be accepted — Benefit of compensation to reach directly to SC khatedars and not to intermediary like Society — Rajasthan Tenancy Act, 1955 (3 of 1955) — S. 42 — Constitution of India — Arts. 300-A, 341 and 342 — Land Acquisition Act, 1894 — S. 9 — Transfer of Property Act, 1882 — S. 6 — Transfers prohibited by law**

F. **Tenancy and Land Laws — Rajasthan Tenancy Act, 1955 (3 of 1955) — Ss. 175 and 42 — Void transaction entered into by Scheduled Caste khatedars with respondent Housing Society in violation of S. 42 of 1955 Act — Society put in possession — Failure of khatedars to take recourse to S. 175 of 1955 Act to evict such illegal transferees — Void transfer also purportedly perfected vide a compromise decree — Basic transaction being void, remaining abovesaid events, held, irrelevant and cannot confer title upon purported transferee**

— Agreement of sale of land by Scheduled Caste khatedars entered into in favour of respondent Housing Society void ab initio under S. 42 of Rajasthan Tenancy Act — Before Society had obtained decree for specific performance of agreement, land acquired by State by issuing notification under S. 4 of 1953 Act — In such circumstances, there was no question of filing application under S. 175 of Rajasthan Tenancy Act by khatedars for ejectment for illegal transfer — Hence respondent Society's contention that in view of khatedars' failure to resort to S. 175 they lost their remedy against

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acquisition of title by Society for claiming compensation by virtue of compromise decree for specific performance of agreement obtained by it, cannot be accepted — Respondent Society's claim for compensation on ground of absence of application under S. 175 cannot be allowed so as to deprive Scheduled Caste khatedars when sale transaction was itself void — Rajasthan Land Acquisition Act, 1953 (24 of 1953) — Ss. 12 and 4 — Property Law — Transfer of Property Act, 1882 — Ss. 6 to 8 — Contract Act, 1872, S. 23

G. Land Acquisition and Requisition — Rajasthan Land Acquisition Act, 1953 (24 of 1953) — S. 12 — Right to receive piece of developed land in addition to compensation — Claimed under Government Circular which entitled such benefit to khatedars, only when they surrendered their land — Circular made applicable in case of future acquisition and not where award had already been passed — Where land of khatedars acquired by issuing notification under S. 4 and award already passed under S. 12, in absence of any surrender, khatedars or transferee (in present case respondent Housing Society) with which they had entered into agreement of sale of land, cannot claim benefit under Circular, that too at appellate stage before Division Bench of High Court — Land Acquisition Act, 1894, Ss. 12 and 23

H. Land Acquisition and Requisition — Rajasthan Land Acquisition Act, 1953 (24 of 1953) — S. 12 — Compensation — Quantum — Evidence for determining — Documentary and oral evidence — Though oral evidence is also to be considered, but when documentary evidence evincing price of land is available, same would be preferable to oral evidence, especially if the latter is based on ipse dixit and without any sound basis — When proper scrutiny of documentary and oral evidence is made by court, determination of compensation by it deserves acceptance — Land Acquisition Act, 1894, Ss. 23 and 12

I. Land Acquisition and Requisition — Rajasthan Land Acquisition Act, 1953 (24 of 1953) — Ss. 12 and 30 — Compensation — Claim of downtrodden (Scheduled Caste/Tribe) class should not be prolonged — Exercise of power by Supreme Court in appeal — Question arose whether Scheduled Caste khatedars or respondent Housing Society which entered into agreement with former for sale of land in Society's favour entitled to compensation — Although khatedars were required to be heard and further, they having sought reference under S. 30 against Society, question could be decided in those proceedings, but considering protection provided to SCs/STs by the statute and the Constitution, power of Supreme Court deserves to be exercised to set at rest the controversy by holding on facts that only the Scheduled Caste khatedars are entitled to compensation in view of agreement being void — Tenancy and Land Laws — Rajasthan Tenancy Act, 1955 (3 of 1955) — S. 42 — Constitution of India — Arts. 341, 342, 46 and 142 — Land Acquisition Act, 1894, Ss. 9 and 23

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The respondent Housing Society claimed that it had entered into an agreement of sale of the land in question with the khatedars (who belonged to Scheduled Caste) in 1974 and 1976. The Society also claimed that it had applied to the Rajasthan Housing Finance Society Ltd. for financial assistance for construction of houses and an NOC dated 7-6-1982 was issued to it by the Urban Improvement Trust, Jaipur. In the meanwhile, the State Government issued a Notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 (provisions of which are in pari materia with those of the Land Acquisition Act, 1894) on 12-1-1982. The land had been acquired for the purpose of housing scheme of the Rajasthan Housing Board. On 22-5-1982 the possession had been handed over to the Rajasthan Housing Board under Section 9 of the 1953 Act. The Society submitted its objections before LAO on 20-7-1982. While rejecting the objections on 4-9-1982, the Special Officer, Urban Development Authority, LAO, unilaterally observed that the acquisition could not be said to be in violation of Article 300-A of the Constitution of India; the Society had no ownership of and interest in the land. Thus, it had no right to raise the objection. The said order had attained finality and the award was passed on 30-11-1982. In the award, it had also been mentioned that an advocate had appeared on behalf of the khatedars and wanted to file objections regarding compensation. The said advocate appeared on behalf of some of the khatedars and stated that they had sold the land to the Society. However, no claim petition was filed on their behalf. There was also a reference in the award dated 30-11-1982 as to the objection filed by the Society had been rejected on 4-9-1982. Thus the award was passed after rejecting the objections raised by the Society in favour of the khatedars. However, the notice of the award was issued under Section 12(2) of the Act to the Society by the Collector on 31-12-1988. The Society applied for reference under Section 18 of the 1953 Act. On 17-4-1989, the reference was made to the civil court. Later on the Society filed a civil suit for specific performance of the agreement to sell in the year 1986 against the khatedars and compromise decrees are said to have been passed in 1986 and 1988 thereby decreeing the suit in favour of the Society.

The civil court answered the reference on 23-1-1994 determining the compensation at Rs 260 per square yard. The objection raised by the Housing Board with respect to the entitlement of the Society under Section 42 of the Rajasthan Tenancy Act, 1955 was brushed aside. On appeal to the High Court, the Single Bench reduced the compensation to Rs 100 per square yard. The Division Bench not only affirmed the aforesaid award but additionally directed to consider allotment of 25% of developed land in view of the Circular dated 27-10-2005. Paras 1 and 4 of the Circular are as follows:

> "1. In the matters of land acquisition on making a surrender of the land by the khatedar, he will be entitled for maximum 20% residential and 5% commercial land to the said person from whom the land has been acquired. But for the khatedar no other person shall be allotted the land, even if nominated by him.
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> * * *
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> 4. These provisions shall only be applicable, in case of future acquisitions. These provisions shall not specifically be applicable, wherein the Land Acquisition Officer has already declared the award and the compensation amount has been paid/deposited in the court or 15% land has been allowed to be allotted in the award."

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The present appeals before the Supreme Court arose out of the judgment and order of the Division Bench of the High Court. The following questions arose for determination in the present appeals:

(*i*) Whether the reference, with respect to the four cases in which award was passed on 30-11-1982, was within the period of limitation, In the instant case, it was urged on behalf of the Society that the limitation to seek the reference would commence from the date of receipt of the notices issued and received on 31-12-1988 and as such the reference sought was within the period of limitation.

(*ii*) Whether in view of Section 42 of the Rajasthan Tenancy Act, the transaction entered into by the Society with the original khatedars was void and whether on that basis, it had a right to maintain the reference and to claim compensation?

(*iii*) Whether as a result of failure of the khatedars to take recourse to Section 175 of the Rajasthan Tenancy Act, they had lost their remedy for ignoring the title acquired by the Society which had been purportedly perfected by the compromise decrees passed by the civil court.

(*iv*) Whether the determination of quantum of compensation and direction of the Division Bench of the High Court to consider allotment of developed land to the Society was justified?

Allowing the appeals preferred by the Rajasthan Housing Board and the khatedars, the Supreme Court

Held :

(1) The party must have either actual or constructive communication of the order which is an essential requirement of fair play and natural justice. Constructive notice in legal fiction signifies that the individual person should know as a reasonable person would have. Even if they have no actual knowledge of it. Constructive notice means a man ought to have known a fact. A person is said to have notice of a fact when he actually knows a fact but for wilful abstention from inquiry or search which he ought to have made, or gross negligence he would have known it. Constructive notice is a notice inferred by law, as distinguished from actual or formal notice; that which is held by law to amount to notice. (Paras 13 and 16)

Madan v. *State of Maharashtra*, (2014) 2 SCC 720 : (2014) 2 SCC (Civ) 187, *relied on*

Harish Chandra Raj Singh v. *Land Acquisition Officer*, AIR 1961 SC 1500, *affirmed*

O.A.O.A.M. Muthiah Chettiar v. *CIT*, 1950 SCC OnLine Mad 320 : AIR 1951 Mad 204 : ILR 1951 Mad 815, *held, approved*

Jehangir Bomanji Wadia v. *C.D. Gaikwad*, 1954 SCC OnLine Bom 7 : AIR 1954 Bom 419, *cited*

In the instant case, the Housing Society was aware of the land acquisition process and determination of compensation and had filed objections which stood rejected on 4-9-1982. The Society had also actively participated in the other pending cases with respect to determination of compensation in which award had been passed on 2-1-1989. Thus, the constructive knowledge of the award is fairly attributable to it when it was so passed. The reference sought on the strength of the notice under Section 12(2) issued and received on 31-12-1988 would not provide limitation to the Society for seeking reference with respect to the cases

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in which the award was passed on 30-11-1982 as notice to it was wholly unnecessary in view of rejection of its objection on the ground that it was not having right, title or interest in the land. Thus it could not be said to be "person interested" in view of the order dated 4-9-1982. The notice was issued for reasons best known to the Special Officer. It is surprising how and for what reasons notice was issued after six years. However, in the facts and circumstances, the Society had a constructive notice of the award dated 30-11-1982. Thus, in view of the conjoint reading of Sections 12(2) and 18(2) of the Rajasthan Land Acquisition Act, it was not open to LAO to refer the case to the civil court on the basis of the time-barred application. (Paras 16 and 17)

(2) The original khatedars are "Bairwa" by caste which is a Scheduled Caste and they are entitled to the protection of Section 42 of the Rajasthan Tenancy Act which declares the transaction entered into by a Scheduled Caste with any person other than a person of a Scheduled Caste or by a Scheduled Tribe with any other tribe to be void. The so-called agreements of 1974 and 1976 which were purportedly entered into by the Society with the khatedars were thus clearly void as per the mandate of Section 42 of the Rajasthan Tenancy Act. The Notification in the instant case under Section 4 was issued on 12-1-1982. The plea of part-performance under Section 53-A of the Transfer of Property Act was also not available to the Society as transaction is void. (Paras 19 to 21)

Equally futile is the submission that since the Society is a juristic person, sale cannot be said to be in contravention of Section 42 as the expression "person" in Section 42(*b*) refers to a natural person and the Society cannot be a person of Scheduled Caste. In view of the dictum in *Aanjaney Organic Herbal (P) Ltd.*, (2012) 10 SCC 283, it is clear that the sale of land by Scheduled Caste/Tribe person to the Society which is a juristic person is ab initio void and not recognisable in the eye of the law. Thus in the instant case, the transaction is ab initio void, that is, right from its inception and is not voidable at volition by virtue of the specific language used in Section 42. There is a declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of the Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of Section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under Section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India. (Paras 22, 23 and 26)

Amar Singh v. *Custodian*, AIR 1957 SC 599 : 1957 SCR 801; *Manchegowda* v. *State of Karnataka*, (1984) 3 SCC 301; *State of M.P.* v. *Babu Lal*, (1977) 2 SCC 435, *relied on*

State of Rajasthan v. *Aanjaney Organic Herbal (P) Ltd.*, (2012) 10 SCC 283 : (2012) 4 SCC (Civ) 1168 : (2012) 2 SCC (L&S) 983; *Lincai Gamango* v. *Dayanidhi Jena*, (2004) 7 SCC 437; *Amrendra Pratap Singh* v. *Tej Bahadur Prajapati*, (2004) 10 SCC 65, *affirmed*

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Madhavrao Waman Saundalgekar v. *Raghunath Venkatesh Deshpande*, (1922-23) 50 IA 255 : AIR 1923 PC 205; *Karimullakhan* v. *Bhanupratapsingh*, AIR 1949 Nag 265; *Madhia Nayak* v. *Arjuna Pradhan*, (1988) 65 Cut LT 360, *cited*

The further submission on behalf of the Society that though a purchaser after issuance of notification under Section 4(1) of the Land Acquisition Act cannot question the legality of the notification, but, can lay a claim for payment of compensation has also no force as in the instant case it was a transaction which was not only void against the State but also void inter se vendor and vendee. (Para 31)

U.P. Jal Nigam v. *Kalra Properties (P) Ltd.*, (1996) 3 SCC 124, *distinguished*

The right to claim compensation cannot be enforced by the Society on the basis of such transaction as that would defeat the very object of the Act and the constitutional provisions including such castes and tribes under the protective umbrella of the Schedules to Articles 341 and 342. They cannot be deprived of the right to obtain the compensation of the land legally held by them and they cannot be made to fall prey to unscrupulous devices of land grabbers. The right to claim compensation is based on right, title or interest in the land which cannot be transferred by virtue of the mandate of Section 42 to a juristic person like the Society. It is the duty of the State to ensure that the benefit reaches to such persons directly and not usurped by intermeddlers as what is intended by the protection of the right to hold property of SC/ST, cannot be taken away by disbursing the compensation to the Society. The persons of SC/ST, as the case may be, are the only rightful claimants to disbursal of compensation and such right cannot be tinkered with by void transaction as the purpose of compensation is the resettlement of the Scheduled Castes or Tribes. The instant transaction being void as per Section 42 of the Rajasthan Tenancy Act and the property was inalienable to non-Scheduled Caste, obviously, the logical corollary has to be taken that no right in apportionment to compensation can be claimed by the Society. (Paras 32 and 34)

V. Chandrasekaran v. *Administrative Officer*, (2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416; *Dossibai Nanabhoy Jeejeebhoy* v. *P.M. Bharucha*, (1958) 60 Bom LR 1208, *Himalayan Tiles and Marble (P) Ltd.* v. *Francis Victor Colainho*, (1980) 3 SCC 223, *distinguished*

Lila Ram v. *Union of India*, (1975) 2 SCC 547; *Sneh Prabha* v. *State of U.P.*, (1996) 7 SCC 426; *Union of India* v. *Shivkumar Bhargava*, (1995) 2 SCC 427; *Star Wire (India) Ltd.* v. *State of Haryana*, (1996) 11 SCC 698; *Ajay Krishan Shinghal* v. *Union of India*, (1996) 10 SCC 721; *Mahavir* v. *Rural Institute*, (1995) 5 SCC 335; *Gian Chand* v. *Gopala*, (1995) 2 SCC 528; *Meera Sahni* v. *Lt. Governor of Delhi*, (2008) 9 SCC 177; *Tika Ram* v. *State of U.P.*, (2009) 10 SCC 689 : (2009) 4 SCC (Civ) 328; *U.P. Jal Nigam* v. *Kalra Properties (P) Ltd.*, (1996) 3 SCC 124, *cited*

(3) Section 175 of the Rajasthan Tenancy Act provides for ejectment for illegal transfer or sub-letting in contravention of the provisions of the said Act. However, initiation of ejectment proceedings in the instant case under the aforesaid provision would have been an exercise in futility as admittedly the possession had already been taken by the State on 22-5-1982. Apart from that, voidness of the transaction can be looked into in these proceedings also when right to claim compensation is asserted by the Society and from factual conspectus of the instant case it is apparent that the khatedars belong to the Scheduled Castes and they cannot be deprived of their right to claim compensation, intendment of Section 42 can be effectuated in these proceedings.

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In the instant case, there is no question of initiating the process under Section 175 of the Rajasthan Tenancy Act as much before passing of the decrees by the civil court in the year 1986, possession had been taken by the State in May 1982 much before limitation lapsed. Thus, institution of proceedings for ejectment was not warranted. (Paras 38 and 39)

Nathu Ram v. *State of Rajasthan*, (2004) 13 SCC 585; *Ram Karan* v. *State of Rajasthan*, (2014) 8 SCC 282 : (2014) 4 SCC (Civ) 306, *distinguished*

There is no substance in the contention that the Society has acquired a right and such right to hold property cannot be taken away except in accordance with the provisions of a statute and that if a superior right to hold the property is claimed, the due procedure must be complied with. Although the right to hold property cannot be taken away except in accordance with the provisions of the statute but in the instant case, the right to hold property albeit had not been acquired by the Society, as the transaction was ab initio void and a nullity. On the other hand, the land has been acquired by the State Government and even the right to claim compensation was denied to the Society in the award passed on 30-11-1982 by rejecting their objections. The recourse to Section 175 was not required. The question of entitlement of the Society is involved in the cases in view of award dated 30-11-1982 rejecting the right of the Society to claim compensation. Thus, it cannot be said that there is violation of the principles with respect to right to hold property, which cannot be taken away except as provided in the provisions of the statute. (Paras 41 and 43)

Lachhman Dass v. *Jagat Ram*, (2007) 10 SCC 448; *Tukaram Kana Joshi* v. *Maharashtra Industrial Development Corpn.*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491; *Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd.* v. *State of Rajasthan*, (2013) 11 SCC 1; *Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254, *distinguished*

Jilubhai Nanbhai Khachar v. *State of Gujarat*, 1995 Supp (1) SCC 596, *cited*

(4)(*a*) In the instant case, even the prevalent instructions which have been modified did not confer any right on the Society or the khatedars to claim the developed land. It was not a case of surrender of land; thus there was no question of the provisions of the Circular being applied as the Circular was in the form of guidelines for future acquisitions where the khatedars surrendered their lands and award has not been passed. For the aforesaid reasons, the Circular could not have been pressed into service by the Society and that too at the appellate stage before the Division Bench. Apart from inapplicability, it is also apparent that the very purpose of issuing such circulars is not to benefit the purchaser who has acquired the right after issuance of notification under Section 4 of the Rajasthan Land Acquisition Act, and in violation of mandate of Section 42 of the Rajasthan Tenancy Act. Consequently, the High Court had no jurisdiction to direct allotment of land. Even the khatedars were not entitled to such direction/benefit as the circulars are not applicable in such cases. The Division Bench has gravely erred in law while issuing the aforesaid directions which were wholly unwarranted and uncalled for. (Paras 47 and 53)

Jaipur Development Authority v. *Vijay Kumar Data*, (2011) 12 SCC 94 : (2012) 2 SCC (Civ) 245, *affirmed*

Jaipur Development Authority v. *Radhey Shyam*, (1994) 4 SCC 370; *Jaipur Development Authority* v. *Daulat Mal Jain*, (1997) 1 SCC 35, *considered*

Ratni Devi v. *State of Rajasthan*, Special Appeal No. 697 of 1995, decided on 12-4-2007 (Raj), *distinguished*

State of Bihar v. *Kripalu Shankar*, (1987) 3 SCC 34 : 1987 SCC (Cri) 442, *cited*

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In *Ratni Devi*, Special Appeal No. 697 of 1995, decided on 12-4-2007 (Raj) the applicability of the Circular was not considered by the Division Bench. The matter was decided on the basis of concession and the agreement between the parties. Therefore, it was clearly a misadventure on the part of the Division Bench in the instant case to rely upon the decision in *Ratni Devi*. No negative equality could be claimed. In *Hari Ram*, (2010) 3 SCC 621, the Supreme Court considered passing of different orders, in respect of persons similarly situated, relating to same acquisition proceedings. The action was held to be violative of Article 14 of the Constitution, being discriminatory. There is no doubt about it that different standards cannot be applied for withdrawal from acquisition. The present is not such a case. The Circular is not applicable. The Court cannot direct the State to act upon the circulars which are not applicable. All actions of the State are to be fair and legitimate. The Court cannot create negative equality and confer a benefit that too on the strength of a concessional statement which is not provided by circular. Concession made by the counsel in *Ratni Devi case* cannot widen the scope of the Circular. (Paras 48 and 54)

Ratni Devi v. *State of Rajasthan*, Special Appeal No. 697 of 1995, decided on 12-4-2007 (Raj); *Hari Ram* v. *State of Haryana*, (2010) 3 SCC 621 : (2010) 1 SCC (Civ) 787; *Usha Stud and Agricultural Farms (P) Ltd.* v. *State of Haryana*, (2013) 4 SCC 210 : (2013) 2 SCC (Civ) 556, *distinguished*

Accordingly, the direction issued by the High Court to grant 25% of the developed land is hereby set aside. (Para 63)

(4)(*b*) There is no substance in the contention that adequate compensation had not been determined as the compensation determined by the High Court was on the lower side and that oral evidence which was relied upon by the Reference Court ought to have been acted upon by the High Court but the same has been ignored. The price of the land per square yard was determined by the Reference Court. It also considered oral evidence in detail and has not relied upon the same and has arrived at the average price to be Rs 135 per square yard making certain deduction as large area has been acquired. In case area in question had been developed, certain area was bound to go in the development. Thus, deduction which has been made to arrive at the figure of Rs 100 per square yard is proper. In the facts and circumstances of the case, the finding arrived at by the Single Bench of the High Court was appropriate. Oral evidence can also be taken into consideration but in the facts of this case, the best evidence is documentary evidence which has to prevail. In the face of the documentary evidence evincing the price of the land per square yard the oral evidence which was based upon ipse dixit and without any sound basis, could not have been accepted by the Reference Court. Thus, the grave error which was committed had been rightly set at naught by the Single Judge of the High Court, which determination of compensation has also not been interfered with by the Division Bench. In this case, there is proper scrutiny and evaluation of oral and documentary evidence by the High Court. The decision of the High Court with respect to determination of compensation deserves to be upheld. (Paras 56 to 58 and 60)

State of Gujarat v. *Rama Rana*, (1997) 2 SCC 693; *Satyanarayana* v. *Bhu Arjan Adhikari*, (2011) 15 SCC 133 : (2014) 2 SCC (Civ) 350; *Ramanlal Deochand Shah* v. *State of Maharashtra*, (2013) 14 SCC 50 : (2014) 2 SCC (Civ) 397, *explained* and *distinguished on facts*

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The High Court has rejected the application under Order 1 Rule 10 CPC filed by the khatedars. In the facts of this case, particularly when the issue of violation of Section 42 of the Rajasthan Tenancy Act was raised by the State Government and reference was also as to the award passed in 1982 in favour of the khatedars in which the Society was denied the right to receive compensation. Obviously, the khatedars were required to be heard as the adjudication of their right was involved in the matter to decide to whom the compensation is payable, and whether the Society was entitled to claim compensation on the basis of void transaction. It was also submitted that the khatedars have sought reference under Section 30 against the Society, that question can be decided in those proceedings. However, the factual matrix and its determination of the question as to entitlement of the Society is necessary in the instant case, as such it has been decided here. More so, the plight of downtrodden class of the Scheduled Caste khatedars cannot be prolonged and considering the provisions which have been enacted for their protection, and the constitutional mandate, the Supreme Court would exercise its power to set at rest the dispute between the parties and hold that only khatedars, in case some of them have died, their legal representatives would be entitled to receive the compensation which has been determined in the instant case. (Para 61)

In order to protect the interest of the Scheduled Caste persons, it is further directed that the Society or other intermeddler, or power-of-attorney holder shall not be paid compensation on their behalf and the Collector/Land Acquisition Officer to ensure that the compensation is disbursed directly to the khatedars or their legal representatives, as the case may be, and that they are not deprived of the same by any unscrupulous devices of land grabbers, etc. Let the compensation be disbursed within a period of three months along with other permissible statutory benefits. (Para 62)

State of Rajasthan v. *Rajasthan Housing Board*, Special Appeal Civil No. 13 of 2001, decided on 29-10-2009 (Raj), *partly affirmed* and *partly reversed*

R-D/54986/C

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36. (1977) 2 SCC 435, *State of M.P.* v. *Babu Lal* 623*a*
37. (1975) 2 SCC 547, *Lila Ram* v. *Union of India* 626*a*
38. AIR 1961 SC 1500, *Harish Chandra Raj Singh* v. *Land Acquisition Officer* 615*f*, 616*a*, 616*e*, 617*f-g*
39. (1958) 60 Bom LR 1208, *Dossibai Nanabhoy Jeejeebhoy* v. *P.M. Bharucha* 627*a*
40. AIR 1957 SC 599 : 1957 SCR 801, *Amar Singh* v. *Custodian* 622*b*
41. 1954 SCC OnLine Bom 7 : AIR 1954 Bom 419, *Jehangir Bomanji Wadia* v. *C.D. Gaikwad* 617*b*
42. 1950 SCC OnLine Mad 320 : AIR 1951 Mad 204, *O.A.O.A.M. Muthiah Chettiar* v. *CIT* 616*e*, 617*b-c*
43. AIR 1949 Nag 265, *Karimullakhan* v. *Bhanupratapsingh* 624*a*
44. (1922-23) 50 IA 255 : AIR 1923 PC 205, *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande* 624*a*

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The Judgment of the Court was delivered by

ARUN MISHRA, J.— Leave granted in SLPs (C) Nos. 21344-53 of 2015. The appeals arise out of a common judgment and order dated 29-10-2009 passed by a Division Bench of the High Court of Rajasthan in *State of Rajasthan* v. *Rajasthan Housing Board*[1] and other connected matters. The Rajasthan Housing Board, original khatedars and the New Pink City Housing Construction Cooperative Society Ltd. (the transferee) (hereinafter referred to as "the Society") have assailed the impugned judgment and order on different grounds. The Rajasthan Housing Board has prayed for setting aside the direction to consider 25% of developed land and compensation, whereas the original khatedars have prayed for payment of compensation to them. Similarly, the Rajasthan Housing Board has also questioned the entitlement of the Society to claim compensation. The Society has also claimed for more value of land.

2. The State Government issued a Notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 (for short "the 1953 Act") on 12-1-1982. The land had been acquired for the purpose of housing scheme of the Rajasthan Housing Board. On 22-5-1982 the possession had been handed over to the Rajasthan Housing Board under Section 9 of the 1953 Act. The Society preferred objections before the Land Acquisition Officer (LAO). The objections preferred by the Society were rejected vide order dated 4-9-1982. Thereafter, award was passed with respect to four cases by LAO on 30-11-1982 in favour of khatedars. With respect to the remaining cases the award was passed on 2-1-1989 by LAO. The notice under Section 12(2) of the 1953 Act was issued to the Society with respect to the award of 30-11-1982 on 31-12-1988.

3. The Society applied for reference under Section 18 of the 1953 Act. On 17-4-1989, the reference was made to the civil court. One of the khatedars, namely, Prabhu also sought reference registered as Case No. 43 of 1989. The civil court answered the reference on 23-1-1994 determining the compensation at Rs 260 per square yard. The objection raised by the Housing Board with respect to the entitlement of the Society under Section 42 of the Rajasthan Tenancy Act, 1955 was brushed aside. On appeal to the High Court, the Single Bench vide the impugned judgment and order dated 22-3-1999 reduced the compensation to Rs 100 per square yard. The Division Bench has not only affirmed the aforesaid award but has additionally directed to consider allotment of 25% of developed land in view of the Circular dated 27-10-2005 in terms of the order passed by a Division Bench in *Ratni Devi* v. *State of Rajasthan*[2].

4. The khatedars have claimed that they are "Bairwa" by caste which is a Scheduled Caste notified under the Constitution (Scheduled Castes) Order, 1950.

1 Special Appeal Civil No. 13 of 2001, decided on 29-10-2009 (Raj)
2 Special Appeal No. 697 of 1995, decided on 12-4-2007 (Raj)

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5. The Society has claimed that it had entered into an agreement to sell with khatedars of the land on 15-2-1974, 17-2-1974, 21-2-1974 and 22-1-1976. The Society has also claimed that it had applied to the Rajasthan Housing Finance Society Ltd. for financial assistance for construction of houses and an NOC dated 7-6-1982 was issued to it by the Urban Improvement Trust, Jaipur. The Society objected to the acquisition but objections were rejected on 3-9-1982 in four cases out of which Reference Cases Nos. 1989, 3089, 3089 and 4089 arose. The award was passed on 30-11-1982. Later on, the Society appears to have filed a civil suit for specific performance of agreement to sell in the year 1986 against the khatedars and compromise decrees are said to have been passed on 2-10-1986, 3-10-1986 and 24-1-1988, thereby decreeing the suit in favour of the Society.

6. It was submitted on behalf of the State Government, Rajasthan Housing Board and also by the khatedars that the transactions between the Society and khatedars, if any, were ab initio void in view of the provisions contained in Section 42 of the Rajasthan Tenancy Act. Thus, decree obtained on the basis of void transaction is a nullity and no right had accrued to the Society to claim compensation.

7. It was urged before us on behalf of the Society that the compensation determined is inadequate. Oral evidence has been ignored by the High Court while reducing the quantum of compensation determined by the Reference Court. The Society has a right to claim compensation on the basis of the agreement which has been culminated into a decree passed by the civil court. No action has been taken by the khatedars to take back the possession under Section 175 of the Rajasthan Tenancy Act within the period of limitation of 30 years which is prescribed therein. The High Court has rightly ordered allotment of 25% of the developed land to the Society. The Society is a person interested to receive the compensation on the strength of the judgment and decree of the civil court. It has developed the land and has spent certain amount on development and the right to hold the property cannot be taken away except in accordance with the provisions of a statute. In order to claim superior right to hold the property the procedure prescribed in a statute must be complied with as provided in Article 300-A of the Constitution of India. The State is bound to treat various incumbents similarly as others have been allotted the land. It is bound to act upon its decision and allot the 25% of the developed land to the Society. The plea based upon the bar created by Section 42 of the Rajasthan Tenancy Act has not been substantiated by adducing the evidence.

8. It was contended on behalf of the khatedars that though the civil court's decrees are fraudulent and bogus even otherwise the decrees are a nullity and opposed to public policy on the strength of provisions contained in Section 42 of the Rajasthan Tenancy Act; transaction being void, the Society has no locus standi, right, title or interest to claim the enhanced

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compensation; more so, in view of the rejection of its objection vide order dated 4-9-1982. The award in 1982 was passed by the Land Acquisition Officer in favour of the khatedars. They are entitled to enhanced compensation and not the Society. The land was recorded in the names of khatedars in the revenue records. The agreements of 1974 and 1976 have not been produced and once the transaction is void, it can be questioned in the instant proceedings. They are entitled to compensation and also to obtain developed land, as and when allotted.

9. It was contended on behalf of the State Government as well as the Rajasthan Housing Board that the Society is not entitled to any compensation as such transactions are declared void by Section 42 of the Rajasthan Tenancy Act. The reference sought in the year 1989 with respect to the lands covered by the award dated 30-11-1982 was clearly barred by limitation. The objection had been raised before the Reference Court based upon Section 42 of the Rajasthan Tenancy Act and it has not been disputed at any stage that khatedars belong to "Bairwa" caste which is a Scheduled Caste. Thus, the bar enacted under Section 42 on transfer of such land is clearly attracted. The judgments passed by the High Court and the Reference Court deserve to be set aside. On merits, no case for enhancement of compensation was made out. The Society has no right, title or interest in the land. The Division Bench of the High Court had gravely erred in law in directing allotment of 25% of the developed land. The prayer made by the Society for allotment of the developed land was rejected by the Rajasthan Housing Board on 14-5-2009 and 16-9-2009. The said orders were not questioned. Even otherwise the Circulars dated 13-11-2001 and that of 27-10-2005 are not applicable and not enforceable as held by this Court. The direction to allot the developed land deserves to be set aside.

10. First, we advert to the question whether reference, with respect to the four cases in which award was passed on 30-11-1982, was within the period of limitation. Admittedly, possession from the Society had been taken on 22-5-1982. The Society submitted the objections before LAO on 20-7-1982. While rejecting the objections on 4-9-1982, the Special Officer, Urban Development Authority, LAO, had unilaterally observed that the acquisition cannot be said to be in violation of the provisions contained in Article 300-A of the Constitution of India, the Society has no ownership of the land, it has no interest in the land. Thus, it has no right to raise the objection. The said order had attained finality and the award was passed on 30-11-1982. In the award so passed, it has also been mentioned that an advocate had appeared on behalf of the khatedars and wanted to file objections regarding compensation. The said advocate appeared on behalf of some of the khatedars and stated that they had sold the land to the Society. However, no claim petition was filed on their behalf. There is also a reference in the award dated 30-11-1982 as to the objection filed by the Society which had been rejected on 4-9-1982. It is apparent from the award that it was passed after rejecting the objections raised by the Society in favour of the khatedars.

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11. The provisions of the Rajasthan Land Acquisition Act are in pari materia with the provisions of the Land Acquisition Act, 1894 and Section 12 of the 1953 Act is extracted hereinbelow:

> "**12.** ***Award of Collector when to be final.***—(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.
>
> (2) The Collector shall give immediate notice of his award or the amendment thereof to such of the persons interested as are not present personally or by their representatives when the award or the amendment thereof is made."

Section 12(2) requires immediate notice to be given of the award to such of the persons interested as are not present personally or by their representative(s) when the award is made. Section 18(2) of the 1953 Act requires to file the objections within six weeks from the date of the award if the person or the representative was present when the award was made. In other cases, within six weeks of the receipt of notice from the Collector under Section 12(2) or within six months from the date of the award whichever period shall first expire.

12. In the instant case, notice under Section 12(2) was issued to the Society by the Special Officer on 31-12-1988, treating the Society as "person interested" and informing that an award had been passed on 30-11-1982 in accordance with Section 11 of the Land Acquisition Act. On the strength of the aforesaid notices it was urged on behalf of the Society that the limitation to seek the reference would commence from the date of receipt of the notices issued and received on 31-12-1988. The reference sought was within the period of limitation.

13. Reliance has been placed on the decision of this Court in *Madan* v. *State of Maharashtra*[3] and in *Harish Chandra Raj Singh* v. *Land Acquisition Officer*[4] in which it has been laid down that the party must have either actual or constructive communication of the order which is an essential requirement of fair play and natural justice. The date of award used in proviso (*b*) to Section 18(2) of the Act must be the date when the award is either communicated to the party or known by him either actually or constructively. The award in the said case was passed on 25-3-1951. Notice of the award was however given to the appellant as required by Section 12(2) on 13-1-1953 by which he received information about making of the said award. It was observed that it was necessary for the Collector to give immediate notice of his award under Section 12(2) of the Act.

3 (2014) 2 SCC 720 : (2014) 2 SCC (Civ) 187
4 AIR 1961 SC 1500

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14. This Court has laid down in *Harish Chandra*[4] with respect to the knowledge of the award by a party thus: (AIR p. 1504, para 6)

> "*6.* ... The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered, the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in a literal or mechanical way."

15. The decision of the Madras High Court in *O.A.O.A.M. Muthiah Chettiar* v. *CIT*[5] had been considered and approved by this Court in *Harish Chandra*[4] thus: (AIR p. 1505, para 10)

> "*10.* It may, however, be pertinent to point out that the Bombay High Court has taken a somewhat different view in dealing with the effect of the provision as to limitation prescribed by Section 33-A(2) of the Income Tax Act, 1922. This provision prescribes limitation for an application by an assessee for the revision of the specified class of orders, and it says that such an application should be made within one year from the date of the order. It is significant that while providing for a similar period of limitation Section 33(1) specifically lays down that the limitation of sixty days therein prescribed is to be calculated from the date on which the order in question is communicated to the assessee. In other words, in prescribing limitation Section 33(1) expressly provides for the commencement of the period from the date of the communication of the order, whereas Section 33-A(2) does not refer to any such communication; and naturally the argument was that communication was irrelevant under Section 33-A(2) and limitation would commence as

4 *Harish Chandra Raj Singh* v. *Land Acquisition Officer*, AIR 1961 SC 1500
5 1950 SCC OnLine Mad 320 : AIR 1951 Mad 204 : ILR 1951 Mad 815

(80)

from the making of the order without reference to its communication. This argument was rejected by the Bombay High Court and it was held that it would be a reasonable interpretation to hold that the making of the order implies notice of the said order, either actual or constructive, to the party affected by it. It would not be easy to reconcile this decision and particularly the reasons given in its support with the decision of the same High Court in *Jehangir Bomanji*[6]. The relevant clause under Section 33-A(2) of the Income Tax Act, 1922 has also been similarly construed by the Madras High Court in *O.A.O.A.M. Muthiah Chettiar* v. *CIT*[5], 'If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time', observed Rajamannar, C.J., 'limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore must be presumed to have the knowledge of the order'. In other words, the Madras High Court has taken the view that the omission to use the words 'from the date of communication' in Section 33-A(2) does not mean that limitation can start to run against a party even before the party either knew or should have known about the said order. In our opinion this conclusion is obviously right."

It is thus clear that either party should have actual knowledge or constructive notice i.e. should have known about the said order.

16. In the instant case it is apparent that the Housing Society had preferred objections and was aware of the land acquisition process and determination of compensation and has filed objections which stood rejected on 4-9-1982. Thus, the constructive knowledge of the award is fairly attributable to it when it was so passed. Constructive notice in legal fiction signifies that the individual person should know as a reasonable person would have. Even if they have no actual knowledge of it. Constructive notice means a man ought to have known a fact. A person is said to have notice of a fact when he actually knows a fact but for wilful abstention from inquiry or search which he ought to have made, or gross negligence he would have known it. Constructive notice is a notice inferred by law, as distinguished from actual or formal notice; that which is held by law to amount to notice. The concept of constructive notice has been upheld by this Court in *Harish Chandra*[4].

17. It is also apparent that the Society had actively participated in the other pending cases with respect to determination of compensation in which award had been passed on 2-1-1989. Thus the reference sought on the strength of the notice under Section 12(2) issued and received on 31-12-1988 would not provide limitation to the Society for seeking reference with respect

6 *Jehangir Bomanji Wadia* v. *C.D. Gaikwad*, 1954 SCC OnLine Bom 7 : AIR 1954 Bom 419
5 1950 SCC OnLine Mad 320 : AIR 1951 Mad 204 : ILR 1951 Mad 815
4 *Harish Chandra Raj Singh* v. *Land Acquisition Officer*, AIR 1961 SC 1500

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20. The provisions of Section 42 of the Rajasthan Tenancy Act declare the transaction entered into by a Scheduled Caste with any person other than a person of a Scheduled Caste or by a Scheduled Tribe with any other tribe to be void. Section 42 of the Rajasthan Tenancy Act is extracted hereunder:

> "**42.** ***General restrictions on sale, gift and bequest.***—The sale, gift or bequest by a khatedar tenant of his interest in the whole or part of his holding shall be void, if—
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> * * *
>
> (*b*) such sale, gift or bequest is by a member of a Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe;
>
> (*bb*) such sale, gift or bequest, notwithstanding anything contained in clause (*b*), is by a member of Saharia Scheduled Tribe in favour of a person who is not a member of the said Saharia Tribe."

21. The so-called agreements dated 15-2-1974, 17-2-1974, 21-2-1974 and 21-2-1976 which were purportedly entered into by the Society with the khatedars were thus clearly void as per the mandate of Section 42 of the Rajasthan Tenancy Act. The Notification in the instant case under Section 4 was issued on 12-1-1982. The plea of part-performance under Section 53-A of the Transfer of Property Act was also not available to the Society as transaction is void.

22. Equally futile is the submission that since the Society is a juristic person, sale cannot be said to be in contravention of Section 42 of the Rajasthan Tenancy Act. "Sale" is permitted by a person of the Scheduled Caste to another person of the Scheduled Caste. The Society cannot be said to be a person of "Scheduled Caste". The Society cannot be said to be a person included in the notification issued under Article 341 of the Constitution of India. Article 341 of the Constitution envisages notification to be issued for inclusion of Scheduled Caste in relation to a State or Union Territory. The expression "person" in Section 42(*b*) of the Rajasthan Tenancy Act is to a natural person and not a juristic person and the mere fact that some of the persons of the Society belong to the Scheduled Caste would not make the transaction with such a Housing Society valid one.

23. This Court in *State of Rajasthan* v. *Aanjaney Organic Herbal (P) Ltd.*[7] has considered the question of the provisions of Section 42 of the Rajasthan Tenancy Act and held that bar is attracted to a juristic person: (SCC p. 287, paras 12-13)

> "*12.* The expressions 'Scheduled Castes' and 'Scheduled Tribes', we find in Section 42(*b*) of the Act have to be read along with the constitutional provisions and, if so read, the expression 'who is not a member of the Scheduled Caste or Scheduled Tribe' would mean a person other than those who have been included in the public notification

7 (2012) 10 SCC 283 : (2012) 4 SCC (Civ) 1168 : (2012) 2 SCC (L&S) 983

as per Articles 341 and 342 of the Constitution. The expression 'person' used in Section 42(*b*) of the Act therefore can only be a natural person and not a juristic person, otherwise, the entire purpose of that section will be defeated. If the contention of the Company is accepted, it can purchase land from Scheduled Caste/Scheduled Tribe and then sell it to a non-Scheduled Caste and Scheduled Tribe, a situation the legislature wanted to avoid. A thing which cannot be done directly cannot be done indirectly overreaching the statutory restriction.

13. We are, therefore, of the view that the reasoning of the High Court that the respondent being a juristic person, the sale effected by a member of Scheduled Caste to a juristic person, which does not have a caste, is not hit by Section 42 of the Act, is untenable and gives a wrong interpretation to the abovementioned provision."

In view of the aforesaid dictum it is crystal clear that the sale to the Society which is a juristic person is ab initio void and not recognisable in the eye of the law.

24. This Court in *Manchegowda* v. *State of Karnataka*[8] has considered the validity of Sections 3, 4 and 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 which prohibited transfer of granted lands and provided for resumption thereof, it was held that even the prohibited transaction effected prior to commencement of the Act can be nullified and Sections 4 and 5 are not violative of Article 19(1)(*f*) as it stood prior to its omission in 1978. Neither the provision is violative of Articles 31 and 31-A of the Constitution of India and a transferee shall have no property right and recovery of such property would not attract Article 31 or 31-A. This Court also held that the provisions have reasonable nexus with the object sought to be achieved. The Scheduled Castes and Scheduled Tribes form a distinctive class. Exclusion of other communities from the provision is not discriminatory. The right of the legislature to declare such transactions to be void has been upheld by this Court in the following manner: (*Manchegowda case*[8], SCC pp. 308-09, para 12)

"*12*. In pursuance of this policy, the legislature is undoubtedly competent to pass an enactment providing that transfers of such granted lands will be void and not merely voidable for properly safeguarding and protecting the interests of the Scheduled Castes and Scheduled Tribes for whose benefit only these lands had been granted. Even in the absence of any such statutory provisions, the transfer of granted lands in contravention of the terms of the grant or in breach of any law, rule or regulation covering such grant will clearly be voidable and the resumption of such granted lands after avoiding the voidable transfers in accordance with law will be permitted. Avoidance of such voidable transfers and resumption of the granted lands through process of law is bound to take time. Any negligence and delay on the part of the authorities entitled to take action to avoid such transfers through

8 (1984) 3 SCC 301

appropriate legal process for resumption of such grant may be further impediments in the matter of avoiding such transfers and resumption of possession of the granted lands. Prolonged legal proceedings will undoubtedly be prejudicial to the interests of the members of the Scheduled Castes and Scheduled Tribes for whose benefit the granted lands are intended to be resumed. As transfers of granted lands in contravention of the terms of the grant or any law, regulation or rule governing such grants can be legally avoided and possession of such lands can be recovered through process of law, it must be held that the legislature for the purpose of avoiding delay and harassment of protracted litigation and in furthering its object of speedy restoration of these granted lands to the members of the weaker communities is perfectly competent to make suitable provision for resumption of such granted lands by stipulating in the enactment that transfers of such lands in contravention of the terms of the grant or any regulation, rule or law regulating such grant will be void and providing a suitable procedure consistent with the principles of natural justice for achieving this purpose without recourse to prolonged litigation in court in the larger interests of benefiting the members of the Scheduled Castes and Scheduled Tribes."

25. Without payment of compensation land can be resumed, has also been held by this Court and even in a case when grant was for a certain period, the land could be resumed. The vires of the provisions contained in Sections 4 and 5 resuming the land without compensation have been upheld. In *Manchegowda*[8], this Court has laid down thus: (SCC pp. 312-13, paras 19-20)

"*19.* We have earlier noticed that the title which is acquired by a transferee in the granted lands, transferred in contravention of the prohibition against the transfer of the granted lands, is a voidable title which in law is liable to be defeated through appropriate action and possession of such granted lands transferred in breach of the condition of prohibition could be recovered by the grantor. The right or property which a transferee acquires in the granted lands, is a defeasible right and the transferee renders himself liable to lose his right or property at the instance of the grantor. We have further observed that by the enactment of this Act and particularly Section 4 and Section 5 thereof, the legislature is seeking to defeat the defeasible right of the transferee in such lands without the process of a prolonged legal action with a view to speedy resumption of such granted lands for distribution thereof to the original grantee or their legal representatives and in their absence to other members of the Scheduled Castes and Scheduled Tribes communities. In our opinion, this kind of defeasible right of the transferee in the granted lands cannot be considered to be property as contemplated in Articles 31 and 31-A. The nature of the right of the transferee in the granted lands on

8 *Manchegowda* v. *State of Karnataka*, (1984) 3 SCC 301

transfer of such lands in breach of the condition of prohibition relating to such transfer, the object of such grant and the terms thereof, also the law governing such grants and the object and the scheme of the present Act enacted for the benefit of weaker sections of our community, clearly go to indicate that there is in this case no deprivation of such right or property as may attract the provisions of Articles 31 and 31-A of the Constitution.

20. In *Amar Singh* v. *Custodian*[9], this Court while considering the provisions of the Administration of Evacuee Property Act, 1950 (31 of 1950) and the nature of right in the property allotted to a quasi-permanent allottee held that the interests of a quasi-permanent allottee did not constitute property within the meaning of Articles 19(1)(*f*), 31(1) and 31(2) of the Constitution. This Court observed at SCR p. 834: (AIR p. 611, para 25)

> '*25.* The learned counsel for the petitioners has strenuously urged that under the quasi-permanent allotment scheme the allottee is entitled to a right to possession within the limits of the relevant notification and that such right to possession is itself "property". That may be so in a sense. But it does not affect the question whether it is property so as to attract the protection of fundamental rights under the Constitution. If the totality of the bundle of rights of the quasi-permanent allottee in the evacuee land constituting an interest in such land, is not property entitled to protection of fundamental rights, mere possession of the land by virtue of such interest is not on any higher footing.' "

26. In the instant case, the transaction is ab initio void, that is, right from its inception and is not voidable at volition by virtue of the specific language used in Section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of the Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of Section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under Section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India.

9 AIR 1957 SC 599 : 1957 SCR 801

27. In *State of M.P.* v. *Babu Lal*[10] the provisions contained in Section 165(6) of the M.P. Land Revenue Code, 1959 came up for consideration before this Court. The High Court directed the State to file a suit for declaring the decree null and void. The decision was set aside. It was held that the case was a glaring instance of violation of law as such the High Court erred in not issuing a writ. The decision of the High Court was set aside. The transfer which was in violation of the proviso to Section 165(6) transferring the right of bhuswami belonging to a tribe, was set aside.

28. This Court in *Lincai Gamango* v. *Dayanidhi Jena*[11], while considering the provisions of the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 which prohibited alienation of rural property by a tribal to a non-tribal, declared such transaction to be null and void. This Court while relying upon the decision in *Amrendra Pratap Singh* v. *Tej Bahadur Prajapati*[12] has laid down that no right can be acquired by adverse possession on such inalienable property. Adverse possession operates on an alienable right. It was held that non-tribal would not acquire a right or title on the basis of adverse possession.

29. The relevant discussion is extracted hereunder: (*Lincai Gamango case*[11], SCC pp. 440-41, para 7)

> "*7.* We find both these reasons given by the High Court are not sustainable. Coming first to the second point, we find that there is a decision of this Court directly on this point. It is reported in *Amrendra Pratap Singh* v. *Tej Bahadur Prajapati*[12]. The matter related to transfer of land falling in tribal area belonging to the Scheduled Tribes. The matter was governed by Regulations 2, 3 and 7-D of the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 viz. the same Regulations which govern this case also. The question involved was also regarding acquisition of right by adverse possession. Considering the matter in detail, in the light of the provisions of the aforesaid Regulations, this Court found that one of the questions which falls for consideration was 'whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of aboriginal tribe?' (SCC p. 76, para 14 of the judgment). In context with the above question posed, this Court observed in para 23 of the judgment as follows: (SCC p. 80)
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> > '*23.* ... The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by the doctrine of adverse possession

10 (1977) 2 SCC 435
11 (2004) 7 SCC 437 : AIR 2004 SC 3457
12 (2004) 10 SCC 65

as having been alienated involuntarily, by default and inaction on the part of the rightful claimant....'

This Court then noticed two decisions—one that of the Privy Council in *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande*[13] and *Karimullakhan* v. *Bhanupratapsingh*[14], holding that title by adverse possession on *inam* lands, *watan* lands and *debutter* was incapable of acquisition since alienation of such land was prohibited in the interest of the State. We further find that the decision in *Madhia Nayak*[15] relied upon by the High Court was referred to before this Court and it is observed that the question as to whether a non-tribal could at all commence prescribing acquisition of title by adverse possession over the land belonging to a tribal which is situated in a tribal area, was neither raised nor had that point arisen in *Madhia Nayak*[15]. It is further observed that the provisions of Section 7-D of the Regulations are to be read in the light of the fact that the acquisition of right and title by adverse possession is claimed by a tribal over the immovable property of another tribal but not where the question is in regard to a non-tribal claiming title by adverse possession over the land belonging to a tribal situate in a tribal area. It is, therefore, clear in view of the decision in *Amrendra Pratap Singh*[12] that a non-tribal would not acquire right and title on the basis of adverse possession. Therefore, the second ground for setting aside the order passed by the appellate court falls through. Therefore, the other factual aspect about the possession of the respondents over the disputed land and entries in their favour may also not be of much consequence, in any case, this aspect of the matter has to be seen and considered afresh in the light of other facts and circumstances of the case."

30. This Court in *Amrendra Pratap*[12] has laid down that the expression "transfer" would include any dealing with the property when the word "deal with" has not been defined in the statute. Dictionary meaning as the safe guide can be extended to achieve the intended object of the Act. The transaction or the dealing with alienable property to transfer title of an aboriginal tribe and vesting the same in non-tribal was construed as transfer of immovable property. Extending the meaning of the expression "transfer of immovable property" would include dealing with such property as would have the effect of causing or resulting in transfer of interest in immovable property. When the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society, the court would not hesitate in placing an extended meaning, even a stretched one, on the word, if in doing so the statute would succeed in attaining the object sought to be achieved. When the intendment of the Act is that the property should remain so confined in its operation in relation to tribals that the immovable property

13 (1922-23) 50 IA 255 : AIR 1923 PC 205
14 AIR 1949 Nag 265
15 *Madhia Nayak* v. *Arjuna Pradhan*, (1988) 65 Cut LT 360
12 *Amrendra Pratap Singh* v. *Tej Bahadur Prajapati*, (2004) 10 SCC 65

to one tribal may come but the title in immovable property is not to come to vest in a non-tribal, the intendment is to be taken care of by the protective arm of the law and be saved from falling prey to unscrupulous devices, and this Court concluded any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of "transfer of immovable property".

31. It was further submitted on behalf of the Society that though a purchaser after issuance of notification under Section 4(1) of the Land Acquisition Act cannot question the legality of the notification, but, can lay a claim for payment of compensation. Reliance has been placed on *U.P. Jal Nigam* v. *Kalra Properties (P) Ltd.*[16] When we consider the aforesaid dictum, this Court has laid down that after notification under Section 4(1) was published, sale of land is void against the State and M/s Kalra Properties acquired no right, title or interest in the land and it is a settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under Section 6. M/s Kalra Properties, though acquired no title to the land, at best would be entitled to step into the shoes of the owner and claim compensation. However, in the instant case, it was a transaction which was not only void against the State but also void inter se vendor and vendee.

32. The right to claim compensation cannot be enforced by the Society on the basis of such transaction as that would defeat the very object of the Act and the constitutional provisions including such castes and tribes under the protective umbrella of the Schedules to Articles 341 and 342 of the Constitution, they cannot be deprived of the right to obtain the compensation of the land legally held by them and they cannot be made to fall prey to unscrupulous devices of land grabbers. The right to claim compensation is based on right, title or interest in the land, cannot be transferred by virtue of the mandate of Section 42 to a juristic person like the Society. It is the duty of the State to ensure that the benefit reaches to such persons directly and not usurped by intermeddlers as what is intended by the protection of the right to hold property of SC/ST, cannot be taken away by disbursing the compensation to the Society. The persons of SC/ST, as the case may be, are the only rightful claimants to disbursal of compensation and such right cannot be tinkered with by void transaction as the purpose of compensation is the resettlement of the Scheduled Castes or Tribes.

33. The other decision relied upon by the Society is *V. Chandrasekaran* v. *Administrative Officer*[17] wherein this Court laid down thus: (SCC pp. 143-44, paras 15-18)

> "*15.* The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again. In

16 (1996) 3 SCC 124

17 (2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416

Lila Ram v. *Union of India*[18] this Court held that, any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In *Sneh Prabha* v. *State of U.P.*[19], this Court held that a Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be 'an impediment to any one to encumber the land acquired thereunder'. The alienation thereafter does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in *Union of India* v. *Shivkumar Bhargava*[20].

16. Similarly, in *U.P. Jal Nigam* v. *Kalra Properties (P) Ltd.*[16], this Court held that, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person interested in compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation. [See also *Star Wire (India) Ltd.* v. *State of Haryana*[21].]

17. In *Ajay Krishan Shinghal* v. *Union of India*[22], *Mahavir* v. *Rural Institute*[23], *Gian Chand* v. *Gopala*[24] and *Meera Sahni* v. *Lt. Governor of Delhi*[25] this Court categorically held that, a person who purchases land after the publication of a Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of the vendor's title. In view of this; the sale of land after issuance of a Section 4 notification is void and the purchaser cannot challenge the acquisition proceedings. (See also *Tika Ram* v. *State of U.P.*[26])

18. In view of the above, the law on the issue can be summarised to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title."

18 (1975) 2 SCC 547
19 (1996) 7 SCC 426
20 (1995) 2 SCC 427
16 (1996) 3 SCC 124
21 (1996) 11 SCC 698
22 (1996) 10 SCC 721
23 (1995) 5 SCC 335
24 (1995) 2 SCC 528
25 (2008) 9 SCC 177
26 (2009) 10 SCC 689 : (2009) 4 SCC (Civ) 328

34. Reliance has been placed on *Dossibai Nanabhoy Jeejeebhoy* v. *P.M. Bharucha*[27] so as to contend that the "person interested" in the land under Section 9 of the Land Acquisition Act would include a person who claims interest in compensation to be paid on account of acquisition of land and the interest contemplated under Section 9 is not restricted to legal or proprietary estate or interest in the land but such interest as will sustain a claim to apportionment, is the owner of the land. In our opinion, the decision is of no avail. The instant transaction being void as per Section 42 of the Rajasthan Tenancy Act and the property was inalienable to non-Scheduled Caste. Obviously, the logical corollary has to be taken that no right in apportionment to compensation can be claimed by the Society.

35. In *Himalayan Tiles and Marble (P) Ltd.* v. *Francis Victor Coutinho*[28], it was laid down that "person interested" within the meaning of Section 18 of the Land Acquisition Act would include a body, local authority, or a company for whose benefit the land is acquired. The company for whose benefit the land had been acquired was liable to pay compensation, was held to be a "person interested". The decision is of no help to the cause espoused by the Society and the reliance on the same is misplaced.

36. It was vehemently urged on behalf of the Society that having failed to take recourse to the provisions of Section 175 of the Rajasthan Tenancy Act, the khatedars have lost their remedy for ignoring the title acquired by the Society which has been perfected by the compromise decrees passed by the civil court.

37. Section 175 of the Rajasthan Tenancy Act is extracted below:

> "**175.** ***Ejectment for illegal transfer or sub-letting.***—(1) If a tenant transfers or sub-lets, or executes an instrument purporting to transfer or sub-let, the whole or any part of his holding otherwise than in accordance with the provisions of this Act and the transferee or sub-lessee or the purported transferee or sub-lessee has entered upon or is in possession of such holding or such part in pursuance of such transfer or sub-lease, both the tenant and any person who may have thus obtained or may thus be in possession of the holding or any part of the holding, shall on the application of the landholder, be liable to ejectment from the area so transferred or sub-let or purported to be transferred or sub-let.
>
> (2) To every application, under this section, the transferee or the sub-tenant or the purported transferee or the sub-tenant, as the case may be, shall be joined as a party.
>
> (3) On an application being made under this section, the court shall issue a notice to the opposite party to appear within such time as may be specified therein and show cause why he should not be ejected from the area so transferred or sub-let or purported to be transferred or sub-let.

27 (1958) 60 Bom LR 1208
28 (1980) 3 SCC 223

(4) If appearance is made within the time specified in the notice and the liability to ejectment is contested, the court shall, on payment of the proper court fees, treat the application to be a suit and proceed with the case as a suit:

Provided that in the event of the application having been made by a Tahsildar in respect of land held directly from the State Government no court fee shall be payable.

(4-A) Notwithstanding anything to the contrary contained in sub-section (4), if the application is in respect of contravention of the provisions contained in Section 42 or the proviso to sub-section (2) of Section 43 or Section 49-A, the court shall, after giving a reasonable opportunity to the parties of being heard, conclude the enquiry in a summary manner and pass order, as far as may be practicable within a period of three months from the date of the appearance of the non-applicants before it, directing ejectment of the tenant and his transferee or sub-lessee from the area transferred or sub-let in contravention of the said provisions.

(5) If no such appearance is made or if appearance is made but the liability to ejectment is not contested, the court shall pass order on the application as it may deem proper."

38. There is no doubt about it that Section 175 provides for ejectment for illegal transfer or sub-letting in contravention of the provisions of the said Act. However, there is no question of ejectment proceedings being filed in the instant case under the aforesaid provision that would have been exercised in futility as admittedly the possession has already been taken by the State on 22-5-1982. Apart from that, voidity of the transaction can be looked into in these proceedings also when right to claim compensation is asserted by the Society and from factual conspectus of the instant case it is apparent that the khatedars belong to the Scheduled Castes and they cannot be deprived of their right to claim compensation, intendment of Section 42 can be effectuated in these proceedings.

39. On behalf of the Society, reliance has been placed on a decision of this Court in *Nathu Ram* v. *State of Rajasthan*[29] in which this Court has considered the provisions of the Rajasthan Tenancy Act as it stood prior to its amendment made in the Act. The limitation prescribed was 12 years from the date of transfer. After the amendment, it is thirty years. It was also laid down that though the transfer was by itself void but the period of limitation would be applicable. In the instant case, there is no question of initiating the process under Section 175 of the Rajasthan Tenancy Act as much before passing of the decrees by the civil court in the year 1986, possession had been taken by the State in May 1982 much before limitation lapsed. Thus, institution of proceedings for ejectment was not warranted.

40. In *Ram Karan* v. *State of Rajasthan*[30], this Court has laid down that transfer of holding by a member of the Scheduled Caste to a member not belonging to the Scheduled Caste by virtue of Section 42 of the Rajasthan Tenancy Act is forbidden and unenforceable. Such a transaction is unlawful even under Section 23 of the Contract Act and an agreement or such transfer would be void under Section 2(*g*) of the Contract Act. This Court also

29 (2004) 13 SCC 585
30 (2014) 8 SCC 282 : (2014) 4 SCC (Civ) 306

considered limitation for filing ejectment under Section 175. The proceeding filed after 31 years was held to be barred by limitation. The decision is distinguishable for the aforesaid reasons.

41. It was next contended on behalf of the Society that the Society has acquired a right and such right to hold property cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold the property is claimed, due procedure must be complied with. Reliance has been placed on *Lachhman Dass* v. *Jagat Ram*[31], in which this Court has laid down thus: (SCC p. 454, para 16)

> "*16.* Despite such notice, the appellant was not impleaded as a party. His right, therefore, to own and possess the suit land could not have been taken away without giving him an opportunity of hearing in a matter of this nature. To hold property is a constitutional right in terms of Article 300-A of the Constitution of India. It is also a human right. Right to hold property, therefore, cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold a property is claimed, the procedures therefor must be complied with. The conditions precedent therefore must be satisfied. Even otherwise, the right of pre-emption is a very weak right, although it is a statutory right. The court, while granting a relief in favour of a pre-emptor, must bear it in mind about the character of the right, vis-à-vis, the constitutional and human right of the owner thereof."

42. Reliance has also been placed in *Tukaram Kana Joshi* v. *Maharashtra Industrial Development Corpn.*[32] in which it has been laid down thus: (SCC p. 358, para 8)

> "*8.* The appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the 'law', as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar* v. *State of Gujarat*[33], it has been held as follows: (SCC p. 627, para 48)
>
> > '*48. In other words, Article 300-A only limits the power of the State that no person shall be deprived of his property save by authority of law. There [is] no deprivation without [due] sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.*' " (emphasis supplied)

31 (2007) 10 SCC 448
32 (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491
33 1995 Supp (1) SCC 596

In *Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd.* v. *State of Rajasthan*[34] and *Mathew Varghese* v. *M. Amritha Kumar*[35], observations as to the similar effect had been made.

43. When we consider the aforesaid submission, it is apparent that the right to hold property cannot be taken away except in accordance with the provisions of the statute but in the instant case, we are of the considered view that the right to hold property albeit had not been acquired by the Society, as the transaction was ab initio void and a nullity. On the other hand, the land has been acquired by the State Government and even the right to claim compensation was denied to the Society in the award passed on 30-11-1982 by rejecting their objections. The recourse to Section 175 was not required as already held by us. The question of entitlement of the Society is involved in the cases in view of the award dated 30-11-1982 rejecting the right of the Society to claim compensation. Thus, it cannot be said that there is violation of the principles laid down by this Court in the aforesaid cases with respect to the right to hold property which cannot be taken away except as provided in the provisions of the statute.

44. Coming to the question of direction to consider allotment of land and quantum of compensation determined in the instant case, the Reference Court had determined compensation at Rs 260 per square yard whereas the High Court has determined it at Rs 100 per square yard and the Division Bench has in addition ventured into directing the State Government to consider the prayer for allotment of 25% of the developed land to the Society in the light of the Circular dated 27-10-2005 issued by the State Government and its decision in *Ratni Devi* v. *State of Rajasthan*[2] decided on 12-4-2007.

45. First, we take up the question as to the legality of the direction issued by the High Court with respect to allotment of 25% of the developed land in terms of the order passed in *Ratni Devi*[2].

46. When we consider the Circular dated 27-10-2005, the State Government considered the prevalent scheme in which khatedars could "surrender" their land without compensation and would obtain 25% of the developed residential area in lieu thereof. Paras 1 and 4 of the Circular are relevant and are quoted below:

> "1. In the matters of land acquisition on making a surrender of the land by the khatedar, he will be entitled for maximum 20% residential and 5% commercial land to the said person from whom the land has been acquired. But for the khatedar no other person shall be allotted the land, even if nominated by him.
>
> * * *
>
> 4. These provisions shall only be applicable, in case of future acquisitions. These provisions shall be (*sic* not)* specifically be applicable,

34 (2013) 11 SCC 1

35 (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254

2 Special Appeal No. 697 of 1995, decided on 12-4-2007 (Raj)

* **Ed.**: See below at p. 631*b*

wherein the Land Acquisition Officer has already declared the award and the compensation amount has been paid/deposited in the court or 15% land has been allowed to be allotted in the award."

It is apparent from Para 1 that the Circular is applicable in the matter of land acquisition when the khatedars surrendered their lands. Para 4 of the Circular makes it clear that the provisions shall apply in case of future acquisitions and the provisions shall not apply where the Land Acquisition Officers have already passed the award(s).

47. In the instant case, even the prevalent instructions which have been modified did not confer any right on the Society or the khatedars to claim the developed land. It was not a case of surrender of land; thus there was no question of the provisions of the Circular being applied as the Circular was in the form of guidelines for future acquisitions where the khatedars surrendered their lands and award has not been passed. For the aforesaid reasons, the aforesaid Circular could not have been pressed into service by the Society and that too at the appellate stage before the Division Bench. The Division Bench has gravely erred in law while issuing the aforesaid directions which were wholly unwarranted and uncalled for.

48. When we consider the decision in *Ratni Devi*[2], it was based upon a concession made by the counsel who appeared on behalf of the Jaipur Development Authority. The applicability of the Circular was not considered by the Division Bench. The matter was decided on the basis of concession and the agreement between the parties. It was submitted before us on behalf of the Rajasthan Housing Board that a review petition had been preferred for recalling the aforesaid concession made unauthorisedly before the Court. Be that as it may. In our opinion, the Circular itself is not applicable and it was clearly a misadventure on the part of the Division Bench in the instant case to rely upon the aforesaid decision in *Ratni Devi*[2]. No negative equality could be claimed.

49. Earlier Circular dated 13-12-2001 had been issued by the Deputy Secretary to the Government of Rajasthan with respect to allotment of 15% of the developed land. It has not been issued in the name of the Governor. This Court has considered the enforceability of such circulars in *Jaipur Development Authority* v. *Vijay Kumar Data*[36]. This Court has referred to the decision in *Jaipur Development Authority* v. *Radhey Shyam*[37] in which the decision of LAO to allot the plots in addition to compensation was set aside and it was held that even in execution it was open to raise the question of validity or nullity of the decree.

2 *Ratni Devi* v. *State of Rajasthan*, Special Appeal No. 697 of 1995, decided on 12-4-2007 (Raj)
36 (2011) 12 SCC 94 : (2012) 2 SCC (Civ) 245
37 (1994) 4 SCC 370

Following is the relevant discussion in *Vijay Kumar Data*[36]: (SCC pp. 100-01, paras 12-13)

"*12*. The question whether the Land Acquisition Officer could issue direction for allotment of land to the awardees, sub-awardees and their nominees/sub-nominees was considered by this Court in *Radhey Shyam case*[37]. After noticing the provisions of Sections 31(3) and 31(4) of the 1953 Act on which reliance was placed by the Senior Counsel appearing for the respondents, this Court held that the Land Acquisition Officer did not have the jurisdiction, power or authority to direct allotment of land to the claimants. This is clearly borne out from the following extracts of para 7 of the judgment: (SCC p. 374)

'*7. A reading of sub-section (4) of Section 31, in our considered view, indicates that the Land Acquisition Officer has no power or jurisdiction to give any land under acquisition or any other land in lieu of compensation. Sub-section (4) though gives power to him in the matter of payment of compensation, it does not empower him to give any land in lieu of compensation. Sub-section (3) expressly gives power "only to allot any other land in exchange". In other words the land under acquisition is not liable to be allotted in lieu of compensation except under Section 31(3), that too only to a person having limited interest.* ... The problem could be looked at from a different angle. Under Section 4(1), the appropriate Government notifies a particular land needed for public purpose. On publication of the declaration under Section 6, the extent of the land with specified demarcation gets crystallised as the land needed for a public purpose. If the enquiry under Section 5-A was dispensed with, exercising the power under Section 17(1), the Collector on issuance of notice under Sections 17, 9 and 10 is entitled to take possession of the acquired land for use of public purpose. Even otherwise on making the award and offering to pay compensation he is empowered under Section 16 to take possession of the land. Such land vests in the Government free from all encumbrances. The only power for the Government under Section 48 is to denotify the lands before possession is taken. *Thus, in the scheme of the Act, the Land Acquisition Officer has no power to create an encumbrance or right in the erstwhile owner to claim possession of a part of the acquired land in lieu of compensation. Such power of the Land Acquisition Officer if is exercised would be self-defeating and subversive to public purpose.*'

13. The Court in *Radhey Shyam case*[37] also considered the question whether the appellant could challenge the award in the execution proceedings and answered the same in the affirmative. The reasons for this conclusion are contained in para 8 of the judgment, the relevant portion of which is extracted below: (SCC pp. 374-75)

'*8*. ... We have already said that what is executable is only an award under Section 26(2), namely, the amount awarded or the

36 *Jaipur Development Authority* v. *Vijay Kumar Data*, (2011) 12 SCC 94 : (2012) 2 SCC (Civ) 245
37 *Jaipur Development Authority* v. *Radhey Shyam*, (1994) 4 SCC 370

claims of the interests determined of the respective persons in the acquired lands. Therefore, the decree cannot incorporate any matter other than the matters determined under Section 11 or those referred to and determined under Section 18 and no other. *Since we have already held that the Land Acquisition Officer has no power or jurisdiction to allot land in lieu of compensation, the decree even, if any, under Section 18 to the extent of any recognition of the directions in the award for the allotment of the land given under Section 11 is a nullity. It is open to the appellant to raise the invalidity, nullity of the decree in execution in that behalf. Accordingly we hold that the execution proceedings directing delivery of possession of the land as contained in the award are, invalid, void and unexecutable.*'" (emphasis in original)

50. In *Vijay Kumar Data*[36], this Court referred to the decision in *Jaipur Development Authority* v. *Daulat Mal Jain*[38] in the following terms: (*Vijay Kumar Data case*[36], SCC pp. 102-03, paras 14-15)

"*14.* The legality and correctness of the order dated 24-9-1993 passed by the Division Bench of the Rajasthan High Court in DBCSAW No. 680 of 1992 was considered in *Jaipur Development Authority* v. *Daulat Mal Jain*[38]. This Court noted that the Lokayukta of Rajasthan had severely criticised the actions of the then Minister of Urban Development and Housing Department; Commissioner, Jaipur Development Authority and Zonal Officer of the Lal Kothi Scheme, referred to the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 and held: (SCC p. 49, para 22)

'22. *Therefore, there was no policy laid by the Government and it cannot be laid contrary to the aforestated rules and no such power was given to an individual Minister by executive action, as the land was already notified conclusively under Section 6(1) for public purpose, namely, earmarked scheme. Since the persons whose land was acquired were not owners having limited interest therein, qua the owners having lost right, title and interest therein, the sub-awardees or nominees, after the acquisition under Section 4(1), would acquire no title to the land nor such ultra vires acts of the Minister would bind the Government. The actions, therefore, taken by the Minister-cum-Chairman of the appellate authority and bureaucrats for obvious reasons would not clothe the respondents with any vestige of right to allotment. Acceptance of the contentions of the respondents would be fraught with dangerous consequences. It would also bear poisonous seeds to sabotage the schemes defeating the declared public purpose.* The record discloses that such allotment in many a case was in violation of the Urban Land Ceiling Act which prohibits holding the land in excess of the prescribed ceiling limit of

36 *Jaipur Development Authority* v. *Vijay Kumar Data*, (2011) 12 SCC 94 : (2012) 2 SCC (Civ) 245
38 (1997) 1 SCC 35

the urban land. In some instances, a person whose land of 500 sq yd was acquired, was compensated with allotment of 2000 sq yd and above, which is against the public policy defeating even the Urban Land Ceiling Act. Would any responsible Minister or a bureaucrat, with a sense of public duty and responsibility, transfer such land to sabotage the planned development of the scheme? Answer has obviously to be in the negative. The necessary inference is that the policy does not bear any insignia of a public purpose, but appears to be a device to get illegal gratification or distribution of public property defeating the public purpose by misuse of public office.'

15. The Court further held in *Daulat Mal Jain case*[38] that the decision taken by the Minister and the actions of the bureaucrats were meant to benefit only those who had illegally secured transfer of land after the publication of the notification issued under Section 4 and that the so-called policy is a policy to feed corruption and to deflect the public purpose. This is evinced from para 23 of the judgment, which is extracted below: (SCC pp. 49-50)

> '*23.* There is no iota of evidence placed on record that under the so-called policy, anyone from the general public could equally apply for allotment of the plots or was eligible to apply for such allotment nor any such general policy was brought to our notice. The allotment has benefited only a specified class, namely, the awardees, sub-awardees or nominees and none else. *The decision by the Minister or the actions of the bureaucrats was limited to the above class which included the respondents. Legitimacy was given to the void acts of Chottey Lal, the erstwhile owner as well as LAO. Directions were given by the Minister and the bureaucrats acted to allot the land under the very void acts. They are ultra vires the power. These acts are in utter disregard of the statute and the rules. Therefore, by no stretch of imagination it can be said to have the stamp of public policy; rather it is a policy to feed corruption and to deflect the public purpose and to confer benefits on a specified category, as described above.*' " (emphasis in original)

51. The plea of discrimination was adversely commented upon by this Court in *Vijay Kumar Data*[36] referring to the decision in *Daulat Mal Jain*[38] thus: (*Vijay Kumar Data case*[36], SCC pp. 103-04, para 16)

> "*16.* The plea of discrimination which found favour with the High Court was also negatived by this Court in *Daulat Mal Jain case*[38] by making the following observations: (SCC p. 50, para 24)
>
> '*24.* The question then is whether the action of not delivering possession of the land to the respondents on a par with other persons who had possession is an ultra vires act and violates Article 14 of the Constitution? We had directed the appellants to file an affidavit

38 *Jaipur Development Authority* v. *Daulat Mal Jain*, (1997) 1 SCC 35
36 *Jaipur Development Authority* v. *Vijay Kumar Data*, (2011) 12 SCC 94 : (2012) 2 SCC (Civ) 245

explaining the actions taken regarding the allotment which came to be made to others. An affidavit has been filed in that behalf by Shri Pawan Arora, Deputy Commissioner, that allotments in respect of 47 persons were cancelled and possession was not given. He listed various cases pending in this Court and the High Court and executing court in respect of other cases. It is clear from the record that as and when any person had gone to the court to get the orders of LAO enforced, the appellant authority resisted such actions taking consistent stand and usually adverse orders have been subjected to decision in various proceedings. Therefore, no blame of inaction or favouritism to others can be laid at the door of the present set-up of the appellant authority. When the Minister was the Chairman and had made illegal allotments following which possession was delivered, no action to unsettle any such illegal allotment could have been taken then. That apart, they were awaiting the outcome of pending cases. It would thus be clear that the present set-up of the bureaucrats has set new standards to suspend the claims and is trying to legalise the ultra vires actions of the Minister and predecessor bureaucrats through the process of law so much so that illegal and ultra vires acts are not allowed to be legitimised nor are to be perpetuated by aid of Article 14. That apart, Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.' "

52. In *Vijay Kumar*[36] this Court after quoting the Circular of the State Government dated 6-12-2001 issued by the Deputy Secretary of the Administration has observed thus: (SCC pp. 118-19, paras 49 & 52-54)

"*49.* It is trite to say that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in such manner as may be

36 *Jaipur Development Authority* v. *Vijay Kumar Data*, (2011) 12 SCC 94 : (2012) 2 SCC (Civ) 245

specified in the rules to be made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)].

* * *

52. Article 166 was interpreted in *State of Bihar* v. *Kripalu Shankar*[39] and it was observed: (SCC pp. 43-44, paras 14-15)

> '*14*. Now, the functioning of the Government in a State is governed by Article 166 of the Constitution, which lays down that there shall be a Council of Ministers with the Chief Minister at the head, to aid and advise the Governor in the exercise of his functions except where he is required to exercise his functions under the Constitution, in his discretion. Article 166 provides for the conduct of government business. It is useful to quote this article:
>
> "**166.** ***Conduct of business of the Government of a State.***—(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
>
> (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
>
> (3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."
>
> *15*. Article 166(1) requires that all executive action of the State Government shall be expressed to be taken in the name of the Governor. This clause relates to cases where the executive action has to be expressed in the shape of a formal order or notification. It prescribes the mode in which an executive action has to be expressed. Noting by an official in the departmental file will not, therefore, come within this article nor even noting by a Minister. Every executive decision need not be as laid down under Article 166(1) but when it takes the form of an order it has to comply with Article 166(1). Article 166(2) states that orders and other instruments made and executed under Article 166(1), shall be authenticated in the manner prescribed. While clause (1) relates to the mode of expression, clause (2) lays down the manner in which the order is to be authenticated and clause (3) relates to the making of the rules by the Governor for the more convenient transaction of the business of the Government. A study of this article, therefore, makes it clear that the notings in a file get culminated into an order affecting right of parties only when it reaches the head of the department and is

39 (1987) 3 SCC 34 : 1987 SCC (Cri) 442

expressed in the name of the Governor, authenticated in the manner provided in Article 166(2).'

53. It is thus clear that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. A reading of the Letter dated 6-12-2001 shows that it was neither expressed in the name of the Governor nor was it authenticated in the manner prescribed by the rules. That letter merely speaks of the discussion made by the Committee and the decision taken by it. By no stretch of imagination the same can be treated as a policy decision of the Government within the meaning of Article 166 of the Constitution.

54. We are further of the view that even if the instructions contained in the Letter dated 6-12-2001 could be treated as policy decision of the Government, the High Court should have quashed the same because the said policy was clearly contrary to the law declared by this Court in *Radhey Shyam case*[37] and *Daulat Mal Jain case*[38] and was a crude attempt by the political functionaries concerned of the State to legalise what had already been declared illegal by this Court."

53. Thus, it is apparent that the Circular in question cannot be pressed into service by the Society. Apart from inapplicability, it is also apparent that the very purpose of issuing such circulars is not to benefit the purchaser who has acquired the right after issuance of notification under Section 4 of the Rajasthan Land Acquisition Act, and in violation of the mandate of Section 42. Consequently, the High Court had no jurisdiction to direct allotment of land. Even the khatedars were not entitled to such direction/benefit as the circulars are not applicable in such cases.

54. We may refer to the decision in *Hari Ram* v. *State of Haryana*[40] relied upon on behalf of the Society in which this Court considered passing of different orders, in respect of persons similarly situated, relating to same acquisition proceedings. The action was held to be violative of Article 14 being discriminatory. There is no doubt about it that different standards cannot be applied for withdrawal from acquisition. The present is not such a case. The Circular is not applicable. We cannot direct the State to act upon the circulars which are not applicable. Under the Code that all actions of the State are to be fair and legitimate, we cannot create negative equality and confer a benefit that too on the strength of a concessional statement which is not provided by the Circular. Concession made by the counsel in *Ratni Devi case*[2] cannot widen the scope of the Circular.

37 *Jaipur Development Authority* v. *Radhey Shyam*, (1994) 4 SCC 370
38 *Jaipur Development Authority* v. *Daulat Mal Jain*, (1997) 1 SCC 35
40 (2010) 3 SCC 621 : (2010) 1 SCC (Civ) 787
2 *Ratni Devi* v. *State of Rajasthan*, Special Appeal No. 697 of 1995, decided on 12-4-2007 (Raj)

55. We may also refer to other decisions relied upon in *Usha Stud and Agricultural Farms (P) Ltd.* v. *State of Haryana*[41] laying down that once a State Government has taken a conscious decision to release the land, there would be no justification whatsoever for the State for not according similar treatment to the appellants is also of no avail to the Society.

56. Coming to the quantum of compensation to be awarded in the instant case, it was submitted on behalf of the Society and the khatedars in the respective appeals that the compensation determined by the High Court is on the lower side. Adequate compensation has not been determined. It was submitted that oral evidence which was relied upon by the Reference Court ought to have been acted upon by the High Court. It was contended that the oral evidence cannot be ignored by virtue of the decisions in *State of Gujarat* v. *Rama Rana*[42], *Satyanarayana* v. *Bhu Arjan Adhikari*[43] and *Ramanlal Deochand Shah* v. *State of Maharashtra*[44].

57. The price of the land per square yard was determined by the Reference Court. The documentary evidence which has been referred to by the Reference Court comprises of Ext. 1 agreement dated 26-8-1982 @ Rs 135 per square yard, Ext. 3 agreement dated 7-1-1982 @ Rs 165 per square yard, agreement dated 28-9-1981 @ Rs 135 per square yard for 244 sq yd and agreement dated 5-5-1979 @ Rs 94 per square yard. Certain transactions of 1983 were also referred to which have to be ignored being subsequent to the date of notification under Section 4. However, referring to the oral statement of the witnesses in which value was stated to be much more, the Reference Court has arrived at the conclusion of Rs 260 per square yard. The Single Bench of the High Court considered and referred to both the oral and documentary evidence. Ext. 1 agreement dated 26-8-1982 about the sale of Plot No. 55 situated in Krishna Vihar Gopalpura @ Rs 115 per square yard; Ext. 3 is agreement for sale of land of 200 sq yd, agreement dated 7-1-1982 @ Rs 165 per square yard situated at Maharani Farm, Durgapura. Ext. 4-A agreement for sale of 244 sq yd dated 29-8-1981 @ Rs 135 per square yard situated at Brijalpur from Krishnapuri Housing Society; Ext. 5 agreement dated 24-7-1982 of 18,000 sq yd of land @ Rs 125 per square yard for a total amount of Rs 22,55,000 entered into between Meena Kumari Housing Society and trustee Devi Shanker Tiwari; Ext. 7 agreement dated 16-9-1983 about the sale of land measuring 147 sq yd for Rs 22,100 approximately @ Rs 150 per square yard and the land situated in Gram Panchayat Bhagyawas, Ext. 8 agreement dated 5-5-1979 of 34,000 sq yd @ Rs 90-94 per square yard.

58. It also considered oral evidence in detail and has not relied upon the same and has arrived at the average price to be Rs 135 per square yard

41 (2013) 4 SCC 210 : (2013) 2 SCC (Civ) 556
42 (1997) 2 SCC 693
43 (2011) 15 SCC 133 : (2014) 2 SCC (Civ) 350
44 (2013) 14 SCC 50 : (2014) 2 SCC (Civ) 397

making certain deduction as large area has been acquired. In case area in question had been developed, certain area was bound to go in the development. Thus, deduction which has been made to arrive at the figure of Rs 100 per square yard is proper. We find in the facts and circumstances of the case that the finding arrived at by the Single Bench is appropriate. No doubt about it. Oral evidence can also be taken into consideration but in the facts of this case, the best evidence is documentary evidence which has to prevail. In the face of the documentary evidence evincing the price of the land per square yard the oral evidence which was based upon ipse dixit and without any sound basis, could not have been accepted by the Reference Court. Thus, the grave error which was committed had been rightly set at naught by the Single Bench of the High Court, which determination of compensation has also not been interfered by the Division Bench.

59. Reliance has been placed upon *State of Gujarat* v. *Rama Rana*[42] with respect to acceptance of oral evidence in which case there was failure on the part of the Agricultural Department to produce statistics as to the nature of the crops and the prices prevailing at that time. In that context, it was observed that oral evidence cannot be rejected due to such failure and the court has a duty to subject the oral evidence to great scrutiny and to evaluate the evidence objectively and dispassionately to reach a finding on compensation.

60. Reliance has also been placed on *Satyanarayana* v. *Bhu Arjan Adhikari*[43] in which it has been laid down that an analysis of the evidence by the Reference Court has to be satisfactory. Reliance has also been placed on *Ramanlal Deochand Shah* v. *State of Maharashtra*[44] laying down that it is for the claimant to prove that the amount awarded by the Collector needs an enhancement and for that purpose, oral and documentary evidence can be adduced and when there is non-consideration of material evidence, the case can be remanded to lead evidence. In this case, there is proper scrutiny and evaluation of oral and documentary evidence by the High Court. The decision of the High Court with respect to determination of compensation deserves to be upheld.

61. The High Court has rejected the application under Order 1 Rule 10 filed by the khatedars. In the facts of this case, particularly when the issue of violation of Section 42 of the Rajasthan Tenancy Act was raised by the State Government and reference was also as to the award passed in 1982 in favour of the khatedars in which the Society was denied the right to receive compensation. Obviously, the khatedars were required to be heard as the adjudication of their right was involved in the matter to decide to whom the compensation is payable, and whether the Society was entitled to claim

42 (1997) 2 SCC 693
43 (2011) 15 SCC 133 : (2014) 2 SCC (Civ) 350
44 (2013) 14 SCC 50 : (2014) 2 SCC (Civ) 397

compensation on the basis of void transaction. It was also submitted before us that the khatedars have sought reference under Section 30 against the Society, that question can be decided in those proceedings. However, the factual matrix and its determination of the question as to entitlement of the Society is necessary in the instant case, as such we have decided it. More so, the plight of downtrodden class of the Scheduled Caste khatedars cannot be prolonged and considering the provisions which have been enacted for their protection, and the constitutional mandate, we are inclined to exercise our power to set at rest the dispute between the parties and hold that only khatedars, in case some of them have died, their legal representatives would be entitled to receive the compensation which has been determined in the instant case.

62. In order to protect the interest of the Scheduled Caste persons, we further direct that the Society or other intermeddler, or power-of-attorney holder shall not be paid compensation on their behalf and the Collector/Land Acquisition Officer to ensure that the compensation is disbursed directly to the khatedars or their legal representatives, as the case may be, and that they are not deprived of the same by any unscrupulous devices of land grabbers, etc. Let the compensation be disbursed within a period of three months from today along with other permissible statutory benefits.

63. The direction issued by the High Court to grant 25% of the developed land is hereby set aside. The appeals preferred by the Rajasthan Housing Board and the khatedars are allowed to the aforesaid extent and the remaining appeals are dismissed. The parties to bear their own costs as incurred.

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1959 Supp (2) SCR 583 : AIR 1959 SC 951

In the Supreme Court of India

(BEFORE SUDHI RANJAN DAS, C.J. AND SUDHANSHU KUMAR DAS, P.B. GAJENDRAGADKAR, K.N. WANCHOO AND M. HIDAYATULLAH, JJ.)

MAHANT RAM SAROOP DASJI ... Appellant;

Versus

S.P. SAHI, SPECIAL OFFICER-IN-CHARGE OF THE HINDU RELIGIOUS TRUSTS AND OTHERS ... Respondents.

Civil Appeal No. 343 of 1955, decided on April 15, 1959

Advocates who appeared in this case :

L.K. Jha, Senior Advocate, (B.K.P. Sinha & R.C. Prasad, Advocates, with him), for the Appellant;

Mahabir Prasad, Advocate-General for the State of Bihar (Ishwari Nandan Prasad & S.P. Varma, Advocates, with him), for the Respondents.

The Judgment of the Court was delivered by

SUDHANSHU KUMAR DAS, J.— This appeal on a certificate granted by the High Court of Patna is from a judgment of the said High Court dated September 13, 1954, in a writ proceeding numbered as Miscellaneous Judicial Case No. 39 of 1954 in that court, which the appellant had instituted on an application made under Article 226 of the Constitution in the circumstances stated below.

2. It was alleged that one Mahatma Mast Ramji, a Hindu saint, owned and possessed considerable properties in the district of Monghyr in the State of Bihar. About two hundred years ago, he built a small temple at Salouna in which he installed a deity called Sri Thakur Lakshmi Narainji. This temple came to be known as the Salonna asthal. Mast Ramji died near about the year 1802. He was succeeded in turn by some of his disciples, one of whom was Mahant Lakshmi Dasji. He built a new temple in 1916 into which he removed the deity from the old temple and installed two new deities, Sri Ram and Sita. In 1919 Mahant Lakshmi Dasji died. He left three disciples, Vishnu Das, Bhagwat Das and Rameshwar Das. A dispute arose among these disciples about succession to the gaddi, which was settled sometime in February 1919. By that settlement it was arranged that Vishnu Das would succeed Mahant Lakshmi Das as the shebait and would be succeeded by Bhagwat Das, and thereafter the ablest "bairagi" of the asthal, born of Brahmin parents, would be eligible for appointment as shebait. Bhagwat Das died sometime in 1935 and again a dispute arose between one Rameshwar Das, the youngest chela of Mahant Lakshmi Das, and Ram Saroop Das who is the present Mahant and appellant before us. Rameshwar Das, it appears, filed an application under the Charitable and Religious Trusts Act (14 of 1920) for a direction upon Mahant Ram Saroop Das to render an account of the usufruct of the asthal. This application was contested by Mahant Ram Saroop Das, who said that the properties appertaining to the Salouna asthal did not constitute a public trust within the meaning of the provisions of the Charitable and Religious Trusts Act (14 of 1920) and therefore he was not accountable to any person. Mahant Ram Saroop Das also applied for and obtained permission under Section 5 of the aforesaid Act to institute a suit for a declaration that the Salouna asthal and the properties thereof did not constitute a public trust. Such a suit was brought in the Court of the Subordinate Judge of Monghyr who, however, dismissed the suit. Then, there was an appeal to the High Court of Patna and by the judgment and decree passed in First Appeal No. 10 of 1941 dated March 5, 1943, the High Court gave a declaration to the effect that the Salouna

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asthal and the properties appertaining thereto did not constitute a public trust within the meaning of the provisions of the Charitable and Religious Trusts Act, (14 of 1920). Some eight years later, the Bihar Hindu Religious Trusts Act, 1950 (Bihar 1 of 1951), hereinafter referred to as "the Act", was passed by the Bihar Legislature and received the President's assent on February 21, 1951. It came into force on August 15, 1951. The Bihar State Board of Religious Trusts (one of the respondents before us) was constituted under this Act to discharge in regard to religious trusts other than Jain religious trusts the functions assigned to it under the several provisions of the Act. On November 14, 1952, this Board, in exercise of the powers conferred on it under Section 59 of the Act, asked the appellant to furnish to the Board a return of the income and expenditure of the asthal. The appellant replied by a letter dated December 1, 1952, that the Salouna asthal was a private institution to which the Act did not apply, and also drew the attention of the Board to the judgment and decree of the High Court in First Appeal No. 10 of 1941. The Board, however, gave a reply to the effect that it was not bound by the declaration made by the High Court and asked the appellant to obtain a declaration in respect of his claim under the provisions of the Act or to submit a return. Thereafter, on January 22, 1954, the appellant made his application under Article 226 of the Constitution in which he averred (*a*) that the Salouna asthal was not a religious trust within the meaning of the Act; (*b*) that the properties appertaining thereto did not constitute a religious trust and the appellant was not a trustee within the meaning of the Act; (*c*) that the Act did not apply to private trusts; and (*d*) that the demand made by the respondent Board amounted to an interference with the appellant's fundamental right to hold the asthal properties. The appellant accordingly prayed for the issue of a writ quashing the order of the respondent Board requiring the appellant to submit a return of income and expenditure and also for an order directing the respondent Board and its officers to refrain from interfering with the appellant in his right of management of the Salouna asthal and the properties appertaining thereto.

3. The High Court of Patna by its judgment complained against, dismissed the petition on the main ground that the language of Section 2(1) of the Act, which defined a "religious trust" for the purposes of the Act, was wide enough to cover within its ambit both private and public trusts recognised by Hindu law to be religious, pious or charitable and that the Salouna asthal did not come within any of the two exceptions recognised by the section, namely, (*1*) a trust created according to Sikh religion or purely for the benefit of the Sikh community; and (*2*) a private endowment created for the worship of a family idol in which the public are not interested. The High Court also held that the materials on the record were not sufficient to decide the question whether the Salouna asthal and the properties thereof constituted a religious trust of a public character, but proceeding on the footing that the Act applied to private trusts, it expressed the view that the restrictions imposed on the trustee by the several provisions of the Act were not violative of the fundamental right guaranteed under Article 19(1)(*f*) of the Constitution, inasmuch as there was no legal reason why the State should not exercise superintendence and control over the administration of private trusts as in the case of public trusts. In a judgment dated October 5, 1953, dealing with the same question in some earlier cases, the High Court had, however, expressed a somewhat different view. It had then referred to the principle that when a legislature with limited power makes use of a word of wide and general import, the presumption must be that it is using the word with reference to what it is competent to legislate, and adopting that principle it said that Section 2(1) of the Act should be read in a restricted sense so as to include only Hindu religious or charitable trusts of a public character and the provisions of the Act would accordingly apply to such trusts only.

4. The principal point urged before us on behalf of the appellant is one of

construction — do the provisions of the Act apply to private religious trusts? The contention of the appellant is that they do not. It is necessary to refer at this stage to some of the relevant provisions of the Act. In connected Civil Appeals Nos. 225, 226, 228, 229 and 248 of 1955 in which also we are delivering judgment today, we have referred to the provisions of the Act in somewhat greater detail. In this appeal we shall refer to such provisions only as have a bearing on the principal point.

5. We start with the definition clause in Section 2(1). It says—

> "'religious trust' means any express or constructive trust created or existing for any purpose recognised by Hindu law to be religious, pious or charitable, but shall not include a trust created according to the Sikh religion or purely for the benefit of the Sikh community and a private endowment created for the worship of a family idol in which the public are not interested";

The expression "trust property" in Section 2(*p*) means the property appertaining to a religious trust and the expression "trustee" in Section 2(*n*) is defined in the following terms—

> "'trustee' means any person, by whatever designation known, appointed to administer a religious trust either verbally or by or under any deed or instrument or in accordance with the usage of such trust or by the District Judge or any other competent authority, and includes any person appointed by a trustee to perform the duties of a trustee and any member of a committee or any other person for the time being managing or administering any trust property as such;"

The next important section for our purpose is Section 4 as amended by Bihar Act 16 of 1954, which gives effect to certain amendments and repeals. Sub-section (5) of Section 4 is in these terms—

> "The Religious Endowments Act, 1863 (20 of 1863), and Section 92 of the Code of Civil Procedure, 1908 (5 of 1908), shall not apply to any religious trust in this State, as defined in this Act."

Chapter V of the Act contains a series of sections which delimit the powers and duties of the State Board of Religious Trusts. Section 28, the opening section of the chapter, states the general powers and duties of the Board. Section 29(1) has a bearing on the question at issue before us. It states inter alia that where the supervision of a religious trust is vested in any committee or association appointed by the founder or by a competent court or authority, such committee or association shall continue to function under the general superintendence and control of the Board unless superseded by the Board under sub-section (2) of the section. If an order of supersession is passed, the committee or association or any other person interested in the religious trust may within 30 days of the order of the Board under sub-section (2) make an application to the District Judge for varying, modifying or setting aside the order of supersession. Section 30, so far as it is relevant for our purpose, states—

> "When any object of a religious trust has ceased to exist or has, in the opinion of the Board, become impossible of achievement, the Board may, of its own motion or on the application of any Hindu, after issuing notice in the prescribed manner, to the trustee of such trust and to such other person as may appear to the Board to be interested therein and after making such inquiry as it thinks fit, determine the object (which shall be similar or as nearly similar as practicable to the object which has ceased to exist or become impossible of achievement) to which the funds, property or income of the trust or so much of such fund, property or income as was previously expended on or applied to the object which has ceased to exist or become impossible of achievement, shall be applied."

Section 32 defines the power of the Board to settle schemes for proper administration of religious trusts. It states:

> "32. (1) The Board may, of its own motion or on application made to it in this

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behalf by two or more persons interested in any trust,—

(*a*) settle a scheme for such religious rust after making such inquiry as it thinks fit and giving notice to the trustee of such trust and to such other person as may appear to the Board to be interested therein;

(*b*) in like manner and subject to the like conditions, modify any scheme settled under this section or under any other law or substitute another scheme in its stead:

Provided that any scheme so settled, modified or substituted shall be in accordance with the law governing the trust and shall not be contrary to the wishes of the founder so far as such wishes can be ascertained.

(2) A scheme settled, modified or substituted instead of another scheme under this section shall, unless otherwise ordered by the District Judge on an application, if any, made under sub-section (3) come into force on a day to be appointed by the Board in this behalf and shall be published in the Official Gazette.

(3) The trustee of, or any other person interested in, such trust, may within three months from the date of the publication in the Official Gazette of the scheme so settled, modified or substituted instead of another scheme, as the case may be, make an application to the District Judge for varying, modifying or setting aside the scheme; but, subject to the result of such application, the order of the Board under sub-sections (1) and (2) shall be final and binding upon the trustee of the religious trust and upon every other person interested in such religious trust.

(4) An order passed by the District Judge on any application made under sub-section (3) shall be final."

It may be here stated that the expression "person interested in religious trust" is defined in Section 2(*g*). The definition is in these terms—

"'person interested in a religious trust' means any person who is entitled to receive any pecuniary or other benefit from a religious trust and includes,—

(*i*) any person who has a right to worship or to perform any rite, or to attend at the performance of any worship or rite, in any religious institution connected with such trust or to participate in any religious or charitable ministration under such trust;

(*ii*) the founder and any descendant of the founder; and

(*iii*) the trustee;"

The only other section which need be quoted in full is Section 48 of the Act which is in these terms:

"48. (1) The Board, or with the previous sanction of the Board, any person interested in a religious trust may make an application to the District Judge for an order—

(*a*) removing the trustee of such religious trust, if such trustee—

(*i*) acts in a manner prejudicial to the interest of the said trust; or

(*ii*) defaults on three or more occasions in the payment of any amount payable under any law for the time being in force in respect of the property or income of the said trust or any other statutory charge on such property or income; or

(*iii*) defaults on three or more occasions in the payment of any sum payable to any beneficiary under the said trust, or in discharging any other duty imposed upon him under it; or

(*iv*) is guilty of a breach of trust.

(*b*) appointing a new trustee;

(*c*) vesting any property in a trustee;

(*d*) directing accounts and inquiries; or

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

(2) The order of the District Judge under sub-section (1) shall be final."

6. Now, the argument on behalf of the appellant is that on a true and proper construction of the aforesaid provisions of the Act, considered in the background of previous legislative history with regard to religious, charitable or pious trusts in India, the definition clause in Section 2(1) of the Act is confined to religious, pious or charitable trusts of a public nature recognised as such by Hindu law. In order to appreciate this argument it is necessary to state first the distinction in Hindu law between religious endowments which are public and those which are private. To put it briefly, the essential distinction is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust (see the observations in *Nabi Shirazi* v. *Province of Bengal*)[1]. The distinction in this respect between English law and Hindu law has been thus stated by Dr Mukherjea in his *Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts* (1952 Edn., pp. 392-96): "In English law charitable trusts are synonymous with public trusts and what is called religious trust is only a form of charitable trust. The beneficiaries in a charitable trust being the general public or a section of the same and not a determinate body of individuals, the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. In English law the Crown as *parens patriae* is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern. ... One fundamental distinction between English and Indian law lies in the fact that there can be religious trust of a private character under Hindu law which is not possible in English law."

7. On behalf of the appellant it has been pointed out that so far as public religious and charitable trusts are concerned, there are a number of legislative enactments, both general and local, which aim at controlling the management and administration of such trusts and provide for remedies in cases of mal administration. So far as private religious trusts are concerned, there are no specific statutory enactments and such trusts are regulated by the general law of the land. The British Government, when it was first established in India, following the tradition of the former rulers, assorted by virtue of its sovereign authority the right to visit public religious and charitable endowments and to prevent and redress abuses in their management. A Regulation for that purpose was passed in Bengal in 1810 (Regulation 19 of 1810) and one for Madras in 1817 (Regulation 7 of 1817). In Bombay also there was a Regulation (17 of 1827) which related to endowments of the same character. In 1863 was passed the Religious Endowments Act (20 of 1863), which repealed the Bengal and Madras Regulations insofar as they related to purely religious institutions and their control was transferred from the Board of Revenue to non-official committees constituted under the Act of 1863. It is worty of note, however, that the Act of 1863 also applied to public religious endowments only. In course of time it was found that the Act of 1863 did not provide adequate protection to public religious trusts against abuses which led to their control by the State and the remedies provided by that Act did not go far enough. Then came the Charitable Endowments Act, 1890 (6 of 1890) and the Charitable and Religious Trusts Act, 1920 (16 of 1920), both of which related to public trusts; the former related exclusively to public trusts for charitable purposes unconnected with religious teaching or worship while the latter related to trusts

created for public purposes of a charitable or religious nature. In the Civil Procedure Code of 1877 a specific section was introduced viz. Section 539, under which a suit could be instituted in case of any alleged breach of any express or constructive trust created for public religious or charitable purposes. This section was later amended, and in this amended form it became Section 92 of the present Civil Procedure Code, the first condition necessary to bring a case within its purview being the existence of a trust, whether express or constructive for public purposes of a religious or charitable nature. It is clear beyond doubt that a private trust is outside the operation of Section 92 of the Civil Procedure Code. Of the local Acts, the earliest was that of the Bombay Presidency of the year 1863. In more recent years were passed the Orissa Hindu Religious Endowments Act, 1939, the Bombay Public Trusts Act, 1950 and the Madras Hindu Religious and Charitable Endowments Act, 1951, all of which relate to public religious institutions and endowments. No local Act has been brought to our notice which clearly or unmistakenly sought to include within its ambit private religious trusts.

8. On behalf of the appellant it has been submitted that though the definition clause in Section 2(1) of the Act is expressed in wide language, other provisions of the Act make it clear that it is confined to public trusts only. Section 2(1) of the Act, we have pointed out, recognises two exceptions: first, a trust created according to the Sikh religion or purely for the benefit of the Sikh community; and, second, a private endowment created for the worship of a family idol, in which the public are not interested, it is not disputed that the second exception is an instance of a private trust, in which the public are not interested. The High Court has taken the view that inasmuch as the definition clause mentions by way of an exception only one instance of a private endowment, *all private endowments created otherwise than for the worship of a family idol must be included within the definition on the maxim of expressio unius exclusio alterius*. We do not think that this view is quite correct. First of all, let us examine some other provisions of the Act which specifically refer to the definition clause and see what the legislature has itself taken it to mean. Take, for example, Section 4 of the Act, as amended by Bihar Act 16 of 1954. This section amends and repeals certain earlier Acts like the Charitable Endowments Act, 1890 and the Charitable and Religious Trusts Act, 1920, both of which we have already pointed out related exclusively to public trusts. Sub-section (5) of Section 4 states that the Religious Endowments Act, 1863 and Section 92 of the Code of Civil Procedure, 1908 shall not apply to *any* religious trust in the State, *as defined in this Act*. The Religious Endowments Act, 1863 and Section 92 of the Civil Procedure Code, — both apply to public trusts; they have no application to private trusts. If the definition clause was intended to include within its ambit private trusts (other than those created for the worship of a family idol), then it is difficult to understand why sub-section (5) of Section 4 should be worded as it has been done. That sub-section in effect says that two earlier enactments which apply exclusively to public trusts shall not apply to *any* trust (we emphasise the word "any") as defined in the Act. If private trusts created otherwise than for the worship of a family idol were included in the definition of religious trust, then sub-section (5) was entirely otiose or redundant so far as those private trusts were concerned for the earlier enactments never applied to them. The obvious indication is that all trusts defined in the Act are public trusts and, therefore, it became necessary to exclude the operation of earlier enactments which but for the exclusion would have applied to such trusts. If the intention of sub-section (5) of Section 4 was to exclude *some* trusts only out of many included within the definition clause from the operation of the earlier enactments, as is contended for by the learned Advocate-General of Bihar, then the use of the word "any" appears to us to be particularly inapt. Sub-section (5) of Section 4 was amended by Bihar Act 16 of 1954. Before the amendment it read as follows:

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"4. (5) The Religious Endowments Act, 1863 and Section 92 of the Code of Civil Procedure, 1908 shall not apply to any Hindu Religious Trust in the State of Bihar."

Prior to the amendment, sub-section (5) made no reference to the definition clause; it merely said that two of the earlier enactments shall not apply to any Hindu Religious Trust in the State of Bihar. The amended sub-section, however, specifically; refers to the definition clause and states that two of the earlier enactments, which apply only to public trusts, shall not apply to any trust as defined in the Act. In our opinion, by sub-section (5) of Section 4 the Legislature itself has spoken and indicated the true scope and effect of the definition clause.

9. Secondly, it may be asked why the legislature having before it the earlier enactments which applied to public trusts only, failed to use the word "public" before the word "purpose" in the definition clause? This is a pertinent question which must be faced. The answer, we think, is this. Charitable trusts are public trusts, both under the English and Indian law; in England a religious trust being a form of charitable trust is also public, but in India, according to Hindu law, religious trust may be public or private. But the most usual and commonest form of a private religions trust is one created for the worship of a family idol in which the public are not interested. Any other private religious trust must be very rare and difficult to think of. Dealing with the distinction between public and private endowments in Hindu law, Sir Dinshah Mulla has said at p. 529 of his *Principles of Hindu Law* (11th Edn.)—

> "Religious endowments are either public or private. In a public endowment the dedication is for the use or benefit of the public. When property is set apart for the worship of a family god in which the public are not interested, the endowment is a private one."

Obviously enough, the definition clause merely quotes the typical example of a private endowment mentioned above. It is also significant that the exclusion of an endowment created for the worship of a family idol is based on the adjectival clause which follows it viz. "in which the public are not interested". In other words, the exclusion is based on the essential distinction between a public and private trust in Hindu law. If the test is that the public or any section thereof are not interested in the trust, such a test is characteristic of *all* private trusts in Hindu law. It also shows that there may be a trust created for the worship of a family idol in which the public may be interested. Those are cases of trust which began as a private trust but which eventually came to be thrown open to the public. This also indicates that the definition was intended to cover only public trusts".

10. We now turn to some of the other provisions of the Act, which we have earlier quoted. Section 29(1) which talks of supervision of a religious trust being vested in any committee or association appointed by the founder or by a competent court or authority is ordinarily appropriate in the case of a public trust only. Section 30(1) which embodies the doctrine of *cypres* permits any Hindu to make an application for invoking the power of the Board to determine the object to which funds, property and income of a religious trust shall be applied *where the original object of the trust has ceased to exist* or has become impossible of achievement. This section is also inappropriate in the case of private trust, the obvious reason being that any and every Hindu cannot be interested in a private trust so as to give him a locus standi to make the application. Further, it is difficult to visualise that a Hindu private debutter will fail, for a deity is immortal. Even if the idol gets broken or is lost or stolen, another image may be consecrated and it cannot be said that the original object has ceased to exist. Section 32 is an important section of the Act and confers power on the Board to settle schemes for proper administration of religious trusts. Now, the section says that the Board may exercise the power of its own motion or on application made to it in this behalf by two or more persons interested in any trust. The language of the section

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follows closely the language of Section 92 of the Civil Procedure Code, so far as the phrase "two or more persons interested in any trust" is concerned. It is difficult to understand why in the case of a private trust, it should be necessary that two or more persons interested in the trust must make the application to settle a scheme for such a trust. In a private or family debutter the beneficiaries are a limited and defined class of persons, as for example, the members of a family. If the trustee or shebait is guilty of mismanagement, waste, wrongful alienation of debutter property or other neglect of duties, a suit can certainly be instituted for remedying these abuses of trust. Under the general law of the land the founder of the endowment, or any of his heirs is competent to institute a suit for proper administration of the debutter, for removal of the old trustee and for appointment of a new one. It is not necessary in such a case that two or more persons interested in the trust must join in order to institute the suit. The condition of "two or more persons" is appropriate only to a public trust, the reason being that a public trust is a matter of public concern. Section 48 of the Act is also analogous to Section 92 of the Code of Civil Procedure and one of the reasons for excluding the operation of Section 92 of the Code of Civil Procedure from trusts as defined by the Act is the existence of provisions in the Act which are analogous to Section 92 of the Code of Civil Procedure. This section is also more appropriate to public trusts than to private trusts. In fact, the Act contains provisions, as the preamble states, for the better administration of Hindu religious trusts in the State of Bihar and for the protection and preservation of properties appertaining to such trusts and for that purpose certain earlier enactments like the Religious Endowments Act, 1863, the Charitable Endowments Act, 1890, the Charitable and Religious Trusts Act, 1920 and the Civil Procedure Code, 1908 have either been amended or excluded from operation. All those earlier enactments related only to public trusts and if the intention was that the Act would apply to private trusts as well, one would expect that that intention would be made clear by the use of unambiguous language. We find, on the contrary, that though the definition clause in Section 2(1) is expressed in somewhat wide language, sub-section (5) of Section 4 makes clear what the true scope and effect of the definition clause is.

11. For the reasons given above, we hold that the definition clause does not include within its ambit private trusts and the Act and its provisions do not apply to such trusts.

12. Learned counsel for the appellant has in the alternative argued before us that if the Act applies to private trusts, several of its provisions will be violative of the fundamental right guaranteed to citizens under Article 19(1)(*f*) of the Constitution inasmuch as the restrictions imposed thereby on trustees of private trusts, in which the public are not interested, cannot be justified as reasonable restrictions in the interests of the general public within the meaning of clause (5) of Article 19. The High Court negatived this argument by adopting the rule of English law that in the case of a charitable corporation where the founder is a private person, he and his heirs become visitors in law and where such heirs are extinct or incompetent, their powers devolve on the Crown or the State; therefore, it is in the interests of the general public that the State should exercise superintendence and control over the administration of private trusts as in the case of public trusts. This view of the High Court has been seriously contested before us, and learned counsel for the appellant has submitted that there is no warrant for the adoption of the rule of English law in view of the fundamental distinction between English and Hindu law as to private religious trusts. He has also drawn our attention to the following observations of Dr Mukherjea (*Hindu Law of Religious and Charitable Trust*, 1952 Edn., p. 393) on this point:

> "In English law there is a 'visitatorial' power attached to all eleemosynary corporations. A visitor has the right to settle disputes between members of the corporation, to inspect and regulate their actions and generally to correct all abuses

and irregularities in the administration of charity. The law allows to the founder of an eleemosynary institution full powers to make regulations for its creation and such powers include the right of nominating visitors. Under the law of England as it stood before 1926, if a private person was the founder of a charitable corporation, then he and his heirs became automatically the visitors. The descent of the rights of a visitor to heirs has now been abolished by the Administration of Estates Act, 1925 and it is not clear as to who would be visitor in default of appointment by the founder.

Most probably such rights would devolve upon the Crown as they did when the founder's heirs became extinct or could not be found or the heir was a lunatic."

He has further submitted that whatever be the position in English law, the guarantee of a fundamental right must depend on the terms of Article 19 of the Constitution and such guarantee cannot be whittled down by importing artificial rules of English law.

13. In view of our finding on the question of construction of the definition clause read with Section 4(5) and other provisions of the Act, we consider it unnecessary to pronounce finally on the contentions referred to in the preceding paragraph, except merely to state that a serious question of the constitutional validity of several provisions of the Act would have undoubtedly arisen if the Act were held to apply to private trusts as well.

14. On our finding that the Act does not apply to private trusts, the appellant is entitled to succeed in his appeal. The High Court has said that the materials on the record of the case are not sufficient to decide the question whether the Salouna asthal and the properties of the mahant constitute a trust of a public character. This question, however, was the subject of a contested litigation and the appellant had obtained a declaration in First Appeal No. 10 of 1941 that the Salouna asthal and the properties appertaining thereto did not constitute a public trust. The respondents were not parties to that litigation and may not be bound by that judgment; but on behalf of the respondents no affidavit was filed nor were any materials placed to show that the position is different from what was declared by the High Court. The High Court commented on the fact that the appellant did not produce before the court all the documents in his possession. A petition has been filed before us for taking in evidence the documents which were considered by the High Court in First Appeal No. 10 of 1941. We do not think that in the circumstances of this case it is necessary to consider that evidence afresh. As long as the declaration made by the High Court in First Appeal No. 10 of 1941 stands and in the absence of some evidence to the contrary, the appellant is entitled to say that the Salouna asthal and the properties appertaining thereto do not constitute a public trust and the Act and its provisions do not apply to it.

15. Our attention has been drawn to Section 43 of the Act as amended by Act 17 of 1956. That section says inter alia that all disputes as to whether any immovable property is or is not a trust property shall be enquired into, either on its own motion or on an application, by the authority appointed in this behalf by the State Government by notification in the Official Gazette. Without expressing any opinion as to the constitutional validity of Section 43 of the Act we merely point out that no decision has been given under Section 43 of the Act (as it stood prior or after the amendment) against the appellant in respect of the Salouna asthal and the properties appertaining thereto. It would be open to the respondents to take such steps as may be available to them in law to get it determined by a competent authority that the trust in question is a public trust.

16. We would accordingly allow this appeal, set aside the judgment and order of the High Court dated September 13, 1954, and direct the issue of an appropriate writ quashing the order of the respondent Board calling upon the appellant to file a

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statement of income and expenditure with regard to the properties of the Salouna asthal and also prohibiting the respondents from interfering with the rights of the appellant in the management of the Salouna asthal and the properties appertaining thereto, unless and until the respondents have obtained the necessary determination that the Salouna asthal is a public trust. The appellant will be entitled to his costs throughout.

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* Appeal from the Judgment and Order dated 13th September, 1954 of the Patna High Court in Misc. Judl. Case No. 39 of 1954.

[1] (1942) ILR 1 Cal 211, 228

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AIR 1956 SC 382

In the Supreme Court of India

(BEFORE VIVIAN BOSE, B. JAGANNADHADAS, BHUVANESHWAR PRASAD SINHA, SYED JAFER IMAM AND N. CHANDRASEKHARA AIYAR, JJ.)

VIKRAMA DAS MAHANT ... Appellant;

Versus

DAULAT RAM ASTHANA AND OTHERS ... Respondents.

Civil Appeal No. 149 of 1951, decided on February 15, 1956

Advocates who appeared in this case :

N.C. Chatterjee, Senior Advocate. (M.S.K. Sastri, Advocate, with him), for the Appellant;

K.B. Asthana and C.P. Lal, Advocates, for the Respondents.

The Judgment of the Court was delivered by

B. JAGANNADHADAS, J.— This is an appeal by the first defendant against the affirming judgment and decree of the High Court of Allahabad dated 22-2-1949, on a certificate granted by the said Court under Article 133(1)(*a*) of the Constitution. The suit out of which this appeal arises relates to an ancient Thakurdwara in the village of Amaulipur containing a temple of Sri Hanumanji and Sri Thakurji, the entire institution being known as Amaulipur Asthan (hereinafter referred to as "the Asthan"). The Asthan owns large property dedicated to it and specified in Lists A, B and C of the plaint. The entire income of these properties is spent for the *Bhog* of the idols and in maintaining a *Sada-Bart* for *Sadhoos* and *Faqirs*. There is a fairly long history of litigation relating to this Asthan since about 1926 which it is necessary to set out for a correct appreciation of the points that arise for decision in the present appeal.

2. One Ganapat Das, a previous Mahant of the Asthan died in the year 1920. He was succeeded by Mahant Bharat Das, still alive, who according to the plaintiffs' case, became mentally deranged. Bharat Das appears to have executed on the 1ath May, 1925, a power of attorney in favor of one Gomati Das. About a year later i.e. on the 10 -7-1926, he executed another document purporting to transfer his Mahantship in favour of the present first defendant-appellant, Vikrama Das. This led to a suit No. 27 of 1927 by Gomati Das against the present first defendant, for the declarations that (*a*) the deed of 10-7-1926, is null and void, and (*b*) he himself was the Mahant of the Asthan validly in possession and occupation of the Asthan and its properties. The trial court decided that suit in favour of Gomati Das and granted him both the declarations he had asked for. On appeal, the High Court modified the decree to the extent that the declaration in favour of the plaintiff that he was in the position of the Mahant of the Asthan was set aside. But the decree of the trial court was maintained in so far as it declared the deed of 10-7-1926, to be null and void as against the Asthan. There was a further appeal by the first defendant, Vikrama Das, to the Privy Council. In view of the fact that the plaintiff failed in the High Court to establish his title as Mahant, the Privy Council held that he was not entitled to get a declaration that the deed of 10-7-1926, was null and void as against the Asthan. The suit was accordingly dismissed in its entirety. The judgment of the Privy Council was given on the 25-10-1935. A copy of the judgment is not on the record in these proceedings but it is to be found reported in *Mahant Bikram Das* v. *Mahant Gomti Das*[1].

3. During the pendency of the appeal in the Privy Council, three persons by name Bansi Das, Raghubir Das and Ram Sarup Das applied to the Collector of the District

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der Section 92 (read with Section 93) of the CPC for permission to file a civil suit in respect of the Asthan for the removal of Mahant Bharat Das. The permission was granted by order of the Collector dated the 18-11-1933. A suit under Section 92 of the CPC was accordingly filed on the 27-11-1933. This was suit No. 90 of 1933 in the Court of the Subordinate Judge, Basti. The plaint therein prayed for a decree (*a*) for the removal of the then Mahant Bharat Das and for the appointment of his alleged disciple Ram Sarup Das as Mahant, (*b*) for the appointment of a Committee consisting of seven named persons for fulfilling the objects of the *waqf*, and (*c*) for the entrustment of the properties of the trust to the said Ram Sarup Das and the Committee for management and for preparation of a scheme. It is necessary to notice that the suit was filed by only two of the three persons to whom sanction had been granted fed by the Collector i.e. by Bansi Das and Raghubir Das and that the third viz. Ram Sarup Das whose appointment as Mahant, on removal of the existing incumbent, was prayed for, was not a party to the suit. The sole defendant in the suit was Bharat Das described as "Mahant Bharat Das insane under the guardianship of Devi Prasad Singh". A written statement contesting the suit was filed by the said Devi Prasad Singh on behalf of Mahant Bharat Das on the 30-1-1934. The suit was compromised shortly thereafter and a petition of compromise was filed on the 3-4-1934. The compromise was to the effect that the various reliefs asked for by the plaintiffs should be decreed including the prayer for the appointment of Ram Sarup Das as Mahant, with the condition that the Asthan should be responsible to maintain the defendant, Mahant Bharat Das, during his life time and that Ram Sarup Das should be liable to maintain him out of the income of the trust property. A decree in terms of the compromise was also passed on the same date. It may be noticed that this was prior to the date of the judgment of the Privy Council which was given about a year and a half later on the 25-10-1935. According to the plaint in the present suit, Bharat Das was removed from Mahantship by the aforesaid compromise decree and Ram Sarup Das began to manage the Asthan and its properties along with the trustees appointed under the said decree, having got his name entered by the Revenue Court in the registers in respect of all the villages connected with the Asthan. After the present defendant, Vikrama Das, succeeded in the Privy Council in getting the suit against him by Gomati Das dismissed, he made an application in the Revenue Court for rectification of *Khewat* relating to the properties of the Asthan. By the date of the institution of the present plaint, the *Khewats* was changed in the name of the first defendant only in respect of the properties mentioned in List C but similar applications in respect of other properties were pending.

4. The present suit has been filed for a declaration that the plaintiffs and the second defendant are the trustees of the Asthan and the properties appertaining thereto in Lists A, B and C, with which the first defendant, Vikrama. Das, had no concern, and also for possession in respect of the said properties, in case the first defendant was considered to be in possession of the same by virtue of mutation of names in his favour (in the revenue records). The plaint was filed by four persons. Three out of them viz. Daulat Ram Asthana, Raja Ram Pandey and Ram Prasad Singh, were persons who had been appointed as trustees under the compromise decree in Suit No. 90 of 1933. The fourth plaintiff is one Baba Bansi Das. According to the plaint, he was impleaded in order that, in the alternative, a decree for possession may be passed in favour of the said fourth plaintiff on the footing that he is the successor to Mahant Bharat Das. Vikrama Das who figured as the defendant in the litigation which went up to the Privy Council is the first defendant in this suit and the third defendant is Mahant Bharat Das described as "insane under the guardianship of Devi Prasad Singh". The second defendant is one Pandit Chandra Sekhar Pandey who was one of the seven persons enumerated as trustees under the compromise decree in suit No. 90 of 1933. The first defendant is the only contesting defendant. He raised various pleas which

may be substantially summarised as follows:

1. The plaintiffs have no right to maintain the suit, the decree under which they claim to be trustees being an invalid and collusive one to which he was not a party.
2. The property in dispute is in no way *waqf* property. It has not been made a *waqf* for any Asthan or for any idol. Bharat Das was the owner of the property and not a trustee.
3. The contesting defendant is the most closely related *Nihang Sanyasi* from the spiritual family of Bharat Das and was duly appointed *Mahanta* according to the custom after the execution of the deed dated the 10-7-1926.

5. Various issues were framed and a decree was granted in favour of the plaintiffs on the 13-2-1943. As against this decree, the first defendant, Vikrama Das, filed an appeal to the High Court, which dismissed it by its judgment and decree dated 22-2-1949. Hence the present appeal before us by the first defendant.

6. It is desirable at this stage to notice some changes in the course of these proceedings as regards the array of some of the original parties to the present litigation. The fourth plaintiff, Baba Bansi Das, filed an application dated the 11-11-1942, in the trial court itself asking his name to be removed from the array of plaintiffs and this was ordered. The second plaintiff, Raja Ram Pandey, died during the pendency of the appeal, in the High Court and the appeal was continued as against the other two plaintiffs as respondents. Plaintiffs 1 and 3, Daulat Ram Asthana and Ram Prasad Singh died after leave to appeal to this Court was granted by the High Court, the former on the 2-2-1951, and the latter on the 19-2-1952. The appellant filed an application in the High Court (after two other futile applications) on the 3-9-1953, praying that the second defendant Chandraskhara Pandey may be treated as the trustee against whom the present appeal may be continued in the place of the deceased Plaintiffs 1 to 3. It was also stated in the application that two other persons. Ram Sarup Das and Shyam Narayan Pandey were intermeddling with the trust estate and that they should also be impleaded. A report was thereupon called for by the High Court from the lower court. The Civil Judge submitted a report to the effect that Chandra Sekhara Pandey appeared and disclaimed any interest, that Shyam Narayan Pandey did not appear in spite of personal service and that Ram Sarup Das was an intermeddler and was intermeddling with the trust estate. When the report came up for consideration by the High Court, it was prayed on behalf of the appellant that the names of Daulat Ram Asthana and Ram Prasad Singh may be removed from the record and that the name of Ram Sarup Das who had been found to be intermeddling with the trust estate may be substituted as the respondent against whom the appeal was to be continued. This prayer was opposed on behalf of Ram Sarup Das. But the High Court directed him to be brought on record because, he claimed to be in possession of the properties and was intermeddling with the trust estate. This order was affirmed by this Court by its order in Chambers dated the 5-5-1955. Earn Sarup Das is accordingly the only respondent before us. At the hearing of the appeal counsel for Ram Sarup Das raised the preliminary question that he has been wrongly brought on record as a legal representative. He is not, however, prepared to say that Ram Sarup Das has no interest in the trust estate or that he is not in possession thereof. On the other hand, he claims to be in possession and maintains his title to the Mahantship by virtue of the compromise decree. We cannot, therefore, uphold the preliminary objection. The continuance of the appeal as against Ram Sarup Das as directed by the High Court and as accepted by this Court in its order dated the 5-5-1955, must stand.

7. At the trial of the suit various issues were framed of which it is sufficient to notice the more important ones and the findings thereon. The first issue was in substance whether the properties in suit i.e. the Asthan and the properties attached

thereto are *waqf* property subject to a public trust for religious and charitable purposes or whether they are the personal properties of the Mahant of the Asthan. After elaborate consideration, the finding on this issue was that the Asthan and the properties which are appurtenant thereto are assuredly not the personal property of the Mahant of the Asthan but that they are *waqf* and subject to a public trust of a religious and charitable nature. The next important issue is issue No. 6 which runs as follows:

"Is Ram Sarup Das the lawful Mahant of the Asthan? Are the plaintiffs entitled to seek a declaration to that effect without impleading him?"

8. The finding thereon is as follows:

"It has been alleged by the plaintiffs that Ram Sarup Das was initiated as a Chela by Bharat Das and is therefore a lawful successor. But be that as it may, he is the Mahant by virtue of the decree. After the decree Ram Sarup Das entered into possession of the Asthan property and his name was recorded in the revenue papers until it was expunged in 1940 by the Board of Revenue. The plaintiffs have every right to seek declaration of Mahantship of Ram Sarup Das, for they as trustees and he as Mahant, are knit together into a body by the common bond of management of the Asthan. It was not at all necessary to implead Ram Sarup Das for there are no differences between the trustees and the Mahant. The defendant at any rate cannot raise objection to the omission to implead Ram Sarup Das, for there is no privity between the defendant and Ram Sarup Das and neither derives title through the other".

9. The next important issues are Nos. 4 and 5, which run as follows:

"*Issue No. 4:* Is Amaulipur a subordinate branch of Hanuman Garhi? What is the rule of succession to Mahantship of the Amaulipur Asthan?

Issue No. 5: Is the defendant lawful successor-in-interest of Bharat Das and is he entitled to hold the property as such?"

10. Before noticing the finding on these two issues, it is necessary to mention that the first defendant based his title to the Mahantship on two grounds, viz. (1) the suit Asthan at Amaulipur is a subordinate branch of Hanuman Garhi and that the defendant who is said to be the Mahant of Jhundi Jamaat in Patti Ujjainiya of Hanuman Garhi by virtue of succession to his Guru Mahabir Das and the said Garhi belongs to the same spiritual family as that of Mahant Bharat Das. Hence by custom he is entitled to succeed to the Amaulipur Garhi (presumably because Bharat Das became incompetent), and (2) the document executed by Bharat Das on the 10-7-1926, transferring the Mahantship to him entitles him thereto.

11. The finding of the trial court on a consideration of both the above grounds appears from the following extracts from its judgment.

"There is no warrant for connecting the Amaulipur Asthan with Hanuman Garhi. No custom entitling a Sadhoo of Hanuman Garhi to succeed to the Amaulipur Gaddi has been established.

The defendant is reither the Chela of Bharat Das nor of Bharat Das Guru. As the succession to the Mahantship of Amaulipur has always been in the line of senior Chela, Bikrama Das would by no means be the prospective Mahant of Amaulipur after Bharat Das. The defendant has stated in this Court that the office of Mahant is transferable only to the prospective Mahant. As I have held that Bikrama Das could not be prospective Mahant of Amaulipur, transfer of Mahantship of this Asthan to the defendant would be illegal according to his own theory".

12. The learned trial Judge after noticing the judgment of the Privy Council and the fact that the document of the 10-7-1926, on which the first defendant, Vikrama Das, relied, appears to have been cancelled by another document by Bharat Das executed on the 29-10-1926, summed up as follows:

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"I, therefore, hold that Mahantship did not pass on to the defendant, and he has no right or title to the Asthan and its properties. Qua these, he is a rank trespasser and he is not entitled to retain them even if he has somehow been able to grab at them. He has no right to meddle with the affairs of the Asthan".

13. Another important issue is No. 3 which is as follows:

"Does the decree in Section 92 Suit No. 90 of 1933 entitle the plaintiffs to sue?

Is the defendant not entitled to challenge it? Is the decree a nullity for the reasons set out in the written statement?"

14. The reasons referred to are set out in para 12 of the written statement under six heads as follows:

"(A) The said suit was entirely collusive.

(B) Bharat Das was, in no way, an insane and even if it be presumed, on the false allegations of the plaintiffs that he was an insane, no proper and impartial person was appointed as his guardian. Devi Prasad, resident of Udipur, who was nominated as his guardian, is a close member of the family of Ram Prasad Singh, resident of Udipur, one of the trustees, and was in collusion with the plaintiffs, the arbitrary trustees in the suit aforesaid.

(C) The contesting defendant was not a party to Sit No. 90 of 1933.

(D) The proceedings in Suit No. 90 of 1933 were taken during the pendency of Suit No. 27 of 1927 and (the proceedings) are, therefore, invalid and null and void according to law and justice and also under Section 52 of the Transfer of Property Act.

(E) The suit aforesaid was beyond the scope of Section 92 of the CPC and necessary proceedings were also not taken under Section 4.

(F) The compromise in the aforesaid suit was caused to be accepted by the Court by deceiving the Court and on concealing the real facts".

15. At the trial a further objection was taken to the validity of the decree on the ground that the suit which resulted in that decree was instituted by only two out of the three persona who had obtained the Collector's sanction to institute the suit and that accordingly the institution of the suit as well as the decree thereupon were invalid. The finding of the learned Judge on this issue is as follows:

"There is no doubt that there were, more than one, irregularities in the suit. The decree in question was passed by a competent court which has jurisdiction to try the suit. The suit itself has been instituted with the sanction of the Collector. The decree is perfectly good so long as it is not set aside by a competent court at the instance of Bharat Das. As it stands it is operative even as against Bharat Das himself".

16. It was further found as follows:

"The decree arms the present plaintiffs with the right of possession of the Asthan and its properties and of their management. This right had been violated in respect of certain properties by an adverse order of the Revenue Courts and was in jeopardy with regard to the other properties at the date of the suit by the pendency of mutation applications of the defendant and the plaintiffs undoubtedly had, by virtue of the decree, the right to institute the present suit. The defendant can escape from the clutches of the decree in Suit No. 90 of 1933 only if he succeeds in making out a legal title to the Asthan and the property, eligible to the Court's recognition and it is, therefore, necessary to determine the defendant's rights qua the Asthan and its property".

17. There were a number of other minor issues which have mostly been answered in favour of the plaintiffs and out of which it is sufficient to notice only Issues 8, 11 and 12 which are as follows:

Issue 8: Are the plaintiffs alone not competent to sue?

Issue 11: Is the suit time-barred?

Issue 12: Is the suit barred by Section 42 of the Specific Relief Act?"

18. As regards issue No. 8 the finding is as follows:

"There is no force in this plea. The only surviving trustees are the plaintiffs and Chandra Sekhar (2nd Defendant), the rest of those who were appointed by the decree in Section 92 suit having died since".

19. As regards issue No. 11 the finding is as follows:

"This plea is based upon the fact that a suit for cancellation of the deed dated 10 -7-1926, has become time barred and as the subject of the present suit is supposed by the defendant to be in reality cancellation of that deed he sets up the bar of limitation. In the first place, I do not think that it was necessary for the plaintiffs to seek cancellation of the aforesaid deed as a necessary preliminary to the enforcement of their rights as trustees and they could very well ignore the deed. The defendant relied upon the deed and it was for him to establish its validity. The cause of action for the present suit has been furnished by the order of the Board of Revenue directing mutation in favour of Bikrama Das and the object of the present suit is no other than abrogation of the Revenue Court's order by a civil court's decree which is the only effective remedy of mistakes in mutation committed by the Revenue Courts. The suit was instituted well within time".

20. As regards issue No. 12 the finding is as follows:

"The defendant has pleaded Section 42 inasmuch as the plaintiffs have sought a mere declaration in respect of the properties and not possession as well. The defendant was not in actual possession of the properties in suit. He has made an abortive attempt to prove his possession by examining a few unscrupulous tenants but the evidence on record is overwhelmingly in favour of plaintiffs' possession. The only properties against which the defendants' name was mutated prior to the suit are those included in list C and the plaintiffs have sought possession of these properties. It was not necessary for the plaintiffs to sue for anything more than a declaration in respect of the properties against which the name of Ramsarup Das stood recorded at the date of institution of the suit. Subsequent acquisition of possession by the defendant will not entitle him to raise the plea of SSction 42."

21. It is on these various findings that the trial Court passed the following decree in favour of the plaintiffs.

"It is ordered and decreed that the plaintiffs' claim about the declaration on the point that the plaintiffs and Defendant 2 are the trustees of the Asthan of Amaulipur and the properties connected with it mentioned in lists A, B and C and are the managers of the properties aforesaid as of right, with which the defendants have no concern and also about the recovery of possession in favour of Plaintiffs 1 to 3 as trustees and Mahant Ram Sarup Das as the Mahant of the Asthan of Amaulipur over the properties mentioned in Schedule C, be decreed".

22. The substantial contentions raised before the High Court as appears from its judgment and as summarised in the order of the High Court granting the certificate are three-fold.

1. The decree in Suit No. 90 of 1933 was bad.
2. The plaintiffs were not de facto trustees.
3. There had been valid assignment from Bharat Das in appellant's favour.

23. We have now to see what the findings of the High Court are. As regards issues Nos. 1 and 12, the learned Judges said as follows:

"Learned counsel for the appellant has not, in his able argument, challenged the finding of the court below that the Asthan and the property in dispute constituted a

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trust, that they were not the personal and private property of Bharat Das and that the *plaintiffs are, and the appellant is not*, in actual possession thereof."

24. As regards the title of the defendant covered by Issues 4 and 5, the learned Judges recorded their findings as follows:

> "In view of the findings arrived at by the learned Civil Judge and which as we have seen, have not been challenged before us, the Asthan and the property in dispute were not the personal and private property of Bharat Das and he could not make a valid assignment thereof in favour of the appellant, who according to his finding, cannot be regarded as his rightful successor. In other words, the appellant, who is also, according to the finding of the learned Civil Judge, not in possession of the property in dispute, must be regarded as a mere trespasser".

25. The High Court appears to have given no positive finding on issue No. 6 relating to the title of Ram Sarup Das but has apparently maintained the trial court decree which may be claimed to involve such a finding. The main contest before the High Court appears to have been concentrated on the finding of the trial court relating to issue No. 3. In agreement with the view taken by the trial court, the High Court held on this issue that notwithstanding certain irregularities, the decree was not void and that such a decree was only voidable at the instance of the persons whom it purported to bind and who were in fact parties to the decree and that the appellant in the present case, who was merely a trespasser, had no such right to avoid the decree. As regards the plea that the said previous suit and decree under Section 92 were collusive, the learned Judges recorded their opinion as follows:

> "We are not satisfied that there was any collusion or dishonesty on the part of the plaintiffs in their suit under Section 92 of the CPC. The circumstances had in fact made the institution of such a suit imperative and there is nothing to show that the plaintiffs were actuated by anything but the best of motives in instituting that suit and obtaining the orders of the court for the proper management of the trust property. We are, therefore, of opinion that the plaintiffs are by virtue of the decree in Suit No. 90 of 1933 entitled to maintain the present suit".

26. On the question as to de facto trusteeship and as to the right to institute the suit on that basis, the High Court held as follows:

> "But even if it be held that the decree in Suit No. 90 of 1933 does not entitle the plaintiffs to institute the present suit, there can be no doubt that as de facto trustees they are titled to maintain it. It is, however, argued on behalf of the appellant that this doctrine of de facto trusteeship cannot apply to the present case because the possession of the plaintiffs cannot, be regarded as clear and undisputed. It is said that the plaintiffs obtained a decree in their favour and came into possession of the trust by stealing a march upon the appellant who was at the time prosecuting his appeal in the Privy Council and that the possession of the plaintiffs cannot be regarded as honest. Having regard to the circumstances in which the plaintiffs instituted a suit under Section 92 of the CPC, the contention of the learned counsel for the appellant does not appear to be justified. There is nothing to show that the plaintiffs' possession of the trust property ever since they obtained a decree in the year 1934 has not been clear and undisputed. No doubt, after the decision of the appeal by the Privy Council in the year 1935 the appellant did start making an attempt to obtain mutation of names with respect to some of the property belonging to the trust in his favour. But that would not affect the nature of the plaintiffs' possession. As we have seen, the appellant has no title to the property and is not in actual possession of any portion of it. Even if he were, his possession would only be that of a trespasser and the plaintiffs as de facto trustees are clearly entitled to maintain the suit against him".

27. Thus, the learned Judges of the High Court held that the plaintiffs had the right

maintain the suit on two grounds. (1) The decree in Suit No. 90 of 1933 was valid until set aside. (2) In any case the plaintiffs were de facto trustees who had clear and undisputed possession of the trust and its properties and as such they could maintain the suit.

28. It may also be mentioned at this stage that in the High Court a point appears to have been pressed that the judgment of the trial court holding that the defendant had no title under the document date the 10-7-1926, in effect amounted to cancellation of that document and that the Court was not competent, having regard to the frame of the suit, to give any such relief. It was pointed out that the plaint had originally asked for a declaration to the effect that the appellant acquired no rights in the property in suit by virtue of the document but that that relief was dropped by a subsequent amendment. The learned Judges of the High Court point out that the plaintiffs' case is that Bharat Das being a mere trustee had no right to execute the document in favour of the appellant and that the document is therefore without effect and that therefore it was unnecessary for the plaintiffs to ask for cancellation of the document. They found, therefore, this point also in favour of the plaintiffs. As a result all the findings above mentioned, in concurrence with those of the trial court, the High Court merely dismissed the appeal.

29. The only point urged before us by the learned counsel for the appellant Shri N.C. Chatterji, is that the view taken by both the lower courts to the effect that in spite of a number of irregularities relating to Suit No. 90 of 1933 under Section 92 of the CPC the decree was one that cannot be said to be without jurisdiction and that therefore it was only voidable and not void and that it could be avoided only by a person having interest and title, is not correct. He urged strongly that when permission by the Collector was given to three named persons a suit filed by only two out of them was wholly incompetent having regard to the mandatory nature of the provision in Section 92(2) of the CPC which enjoins that "save as provided by no suit claiming any of the reliefs specified in sub-section (1) (of Section 92) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section". He strongly relied on the decision of the Privy Council in *Musammat Ali Begam* v. *Ali Khan*[2] and the dictum therein as follows:

> "Where the consent in writing of the Advocate-General or Collector has been given to a suit by three persons as plaintiffs the suit cannot validly be instituted by two only. The suit as instituted must conform to the consent".

30. He also strenuously urged that there is no proof that Mahant Bharat Das was insane or that there was any determination by the court before which that suit was filed as to the alleged insanity of Bharat Das in order to justify the appointment of Devi Prasad Singh as the guardian for him. He also urged that the compromise was not sanctioned by the Court in the interest of the trust as apart from the interests of Mahant Bharat Das. He also contended strongly that the fact of the suit having been filed during the pendency of the Privy Council appeal and the decree having been obtained within six months from the date of the suit is extremely suspicious and that on the face of it the said decree was fraudulent and collusive. He strenuously urged further that it was for the plaintiffs to make out their title and their right to possession. He pointed out that the title of the plaintiffs was based entirely and specifically on the compromise decree as appears not only from the plaint but from their pleader's statement at the trial dated the 2-12-1942, which is as follows:

> "The plaintiffs' claim is not based on any custom, nor will the plaintiffs prove any custom.
>
> The plaintiffs establish the title of Mahant Ram Sarup Das by means of the decision passed in case under Section 92 and not by means of any custom. Mahant Ram Sarup Das was not appointed as Mahant by means of any custom, nor with the

help of any custom taken in proof of his appointment, nor will any custom be proved". It was accordingly urged that before any decree could be given in favour of the plaintiffs it was necessary to establish the validity of the decree in Suit No. 90 of 1933.

31. On the other side, the learned counsel, Shri K.B. Asthana, contested the proposition that a suit filed by only two out of three persons who got the sanction from the Collector is incompetent and the decree therein is void except possibly in a case where the terms of the sanction are clear that the suit is to be filed only by all the three persons acting jointly. It may also be noticed that the omitted third person, Ram Sarup Das, was the very person in whose favour appointment as Mahant was prayed in the plaint therein. Counsel further urged that even if a suit filed by two out of the three persons is defective in its institution as being contrary to what is provided in Section 92 of the CPC, this does not affect the jurisdiction of the Court to pass the decree when no objection in that behalf was raised, since admittedly the court had jurisdiction in respect of the subject-matter of the suit. It was argued that an application for sanction of the compromise was made to the Court, that the Court did in fact sanction the compromise and that the sanction was sufficient to operate as against the Mahant and the institution which he, through his guardian, must be taken to represent. As regards the suggestion of fraud or collusion it was urged that the High Court has given a conclusive finding negativing the same and that that finding cannot be reopened before us.

32. So far as the attack based on the ground of fraud or collusion is concerned we are of the opinion that it is no longer open to be challenged before us, in view of the finding of the High Court. As regards the other contentions raised before us relating to the validity of the compromise decree, we do not consider it necessary, notwithstanding strenuous arguments on both sides, to decide between the rival contentions in the view that we are, prepared to take as to the appropriate order to be passed by this Court in this appeal.

33. Learned counsel for the respondent, Ram Sarup Das, relied on the finding of the High Court that the plaintiffs were, at any rate, de facto trustees in possession of the Asthan and its properties and that as such they were entitled to maintain the suit. It appears to us that this contention is not without force. Both the courts below have concurrently found that consequent on the compromise decree in suit No. 90 of 1933, the plaintiffs along with the other trustees and Ram Sarup Das have obtained possession of the Asthan and its properties and that (except those in list C) the properties were mutated in the name of Ram Sarup Das and that they have been in possession and management of the Asthan and its properties since then. Both the courts have also found that the first defendant, Vikrama Das, had no possession at any time notwithstanding that he was able, after the Privy Council decree, to get some of the properties mutated in his name. They have also held that the plaintiffs with Ram Sarup Das have been continuing in possession all along or at any rate up to the date of the suit. In these circumstances the question before us is whether person who has been in de facto possession and management of the Asthan and its properties from 1934 to 1941 (and thereafter up-to-date) claiming to be its trustee under the decree of a court, valid or invalid, has not sufficient interest to maintain proceedings for the warding off of a cloud cast by the defendant's action against the interests of the Asthan. (See *Mahadeo Prasad Singh* v. *Karia Bharti*[3] and *Ram Charan Das* v. *Naurangi Lal*[4]. It is to be remembered as pointed out by the trial court in its finding under Issue No. 11, already quoted above, that the present suit is virtually a suit for abrogation of the Revenue Court's order directing mutation of the name of the 1st defendant, Vikrama Das. Undoubtedly such a mutation would seriously jeopardise the interests of the Asthan. This is particularly so in view of the fact that the first defendant has all along been claiming the properties of the Asthan to be the private and personal

properties of the Mahant and that he himself is claiming to be the validly appointed Mahant for the time being, a claim which has been not only continued throughout in both the courts below but has been persisted in even in this Court as appears from ground No. 10 in the application filed to the High Court for leave to appeal to this Court and also ground No. 7 in the appellant's statement of case filed in this Court. It is with reference to the contention which has been thus raised and maintained throughout, that both the courts below have come to concurrent findings (1) that the Asthan was a public trust and that the properties attached thereto are not the private properties of the Mahant, (2) that the defendant was not entitled to the Mahant-ship of the Asthan either by virtue of his claim to succeed thereto or by virtue of the document dated 10-7-1926, executed by Bharat Das, and (3) that he had at no time any possession of these properties. It is true that the plaintiffs expressly based their suit on the title which they claim under the compromise decree. But even if that title fails, the further question remains, namely whether the original plaintiffs or Ram Sarup Das could not maintain the proceedings for the protection of the Asthan in their capacity as the de facto managers who have been in possession and management for a substantial number of years.

34. Now the ordinary rule that persons without title and who are mere intermeddlers cannot sue as of right is clear. But where public trusts are concerned, courts have a duty to see that their interests and the interests of those for whose benefit they exist are safeguarded. Therefore, courts must possess the power to sustain proper proceedings by them in appropriate cases and grant relief in the interests of and for the express benefit of the trust, imposing such conditions as may be called for.

35. In the present case, if Ram Sarup Das has no title and if he is an inter meddler which is the basis on which he has been brought on record so is the other side and obviously the Court cannot allow a public trust to be left to the mercy of unauthorised persons who are scrambling for a position of vantage in its management. But as it is right and proper that somebody should be permitted to continue the present litigation on behalf of the trust, the question is, who. We consider that, in view of Ram Sarup Das's long management and possession as Mahant and in view of the fact that he is purporting to act on its behalf and for its interests, it is proper that he should be allowed to continue to act on behalf of the trust until his title is investigated in appropriate proceedings and that this Court should grant a decree in his favour in these proceedings for the benefit of the trust.

36. In this view, we maintain the concurrent findings of the courts below against the defendant on the three matters hereinabove specified, that is (1) that the Asthan is a public trust and that the properties attached thereto are not the private properties of the Mahant, (2) that the defendant is not entitled to the Mahantship of the Asthan either by virtue of his claim to succeed thereto or by virtue of the document dated the 10-7-1926, executed by Bharat Das, and (3) that he had at no time any possession of these properties. But we discharge the findings in favour of the original plaintiffs or Ram Sarup Das, based on the question of validity of compromise decree and leave the question open.

37. In the result, therefore, the decree of the trial court in so far as it gives effect to the decree in Suit No. 90 of 1933 will be vacated. We direct that in place thereof a declaration should be substituted that, the mutation in favour of the 1st defendant in respect of the Asthan or the properties pertaining thereto does not in any way affect the rights of the Asthan or of any duly constituted Mahant thereof, that the 1st defendant has no concern therewith and is not entitled to possession of the Asthan or its properties, and that Ram Sarup Das may recover, in execution proceedings, for the benefit of the Asthan, possession of such of the properties in lists A, B and C of which the defendant may have obtained possession by reason of such mutation. Subject to

the modification of the decree as above indicated the appeal must be dismissed with costs throughout.

38. But this is only a stop gap expedient. We cannot shut our eyes to the fact that we have before us a public trust of which, on the facts now before us, an alleged intermeddler claiming under a decree said to be void is in possession and management. It may be, when proper proceedings are instituted to determine the matter, that it will be found that he is not without legal authority or it may be proper to invest him with that authority if he has not already got it, or again it may be better to have another person or body. But those are not matters we need decide in these proceedings. All we need do is to bring the present state of facts to the notice of the Advocate-General of Uttar Pradesh and leave him to consider whether he should not, of his own motion, institute proceedings under Section 92 of the CPC or take other appropriate steps. Let a copy of this judgment be sent to him.

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* (On appeal from the judgment and decree dated 22-2-1949 of the Allahabad High Court in First Appeal No. 156 of 1943 arising out of the judgment and decree dated 19th/27-2-1943 of the Court of Civil Judge, Basti in Original Suit No. 21 of 1941).

[1] 1935 Allahabad Weekly Reporter 1408 : 1935 Oudh W.N. 1284

[2] (1938) LR 65 IA 198, 207

[3] (1934) LR 62 IA 47

[4] (1933) LR 60 IA 124

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1938 SCC OnLine Mad 424 : AIR 1940 Mad 617

Madras High Court
(BEFORE WADSWORTH, J.)

Subramania Gurukkal ... Appellant;
Versus
Abhinava Poornapriya A. Srinivasa Rao Sanib ... Respondent.
Second Appeal No. 1149 of 1934
Decided on November 16, 1938

JUDGMENT

1. The appellant who was the defendant in trial Court is an archaka in possession of lands alleged to belong to a temple in a village situated within the Ami estate. On 27th January, 1932 the Court of Wards which was then in charge of the estate dismissed the defendant from his office of archaka on the ground that he had failed to render service and had failed to give any explanation to the charges connected with his default. After the dismissal the suit was filed by the Jagirdar represented by his next friend the manager of the estate under the Court of Wards as trustee of the temple to recover possession of the lands connected with the archaka service. Certain dates are of importance. The late jagirdar of Arni died on 25th June, 1931. The order of dismissal of the defendant was passed on 27th January, 1932. The suit was filed on 22nd April, 1932; and on 23rd November, 1932 after the suit had been filed but before it was decreed there was a notification making the new jagirdar a ward under the Court. It is common ground that in the interim between the death of the old jagirdar and this notification the Court of Wards continued in charge of the estate. In the trial Court the defendant pleaded that the trusteeship did not vest in the jagirdar that the land was not recoverable, that the dismissal was invalid, that the defendant had established adverse possession and that the suit was not maintainable when no fresh archaka had been appointed.

2. The trial Court held that the plaintiff was the trustee of the temple that the dismissal was not valid owing to the absence of evidence of failure to render service, that the inam is the property of the temple, that the plea of adverse possession was bad and that the suit was not maintainable when no new archaka had been appointed. As a result of these findings the learned District, Munsif gave a decree in the interests of the institution declaring that the plaintiff was the trustee of the suit temple, that the suit lands were inam lands dedicated to the temple and that the defendant was an archaka under the plaintiff; but the suit was dismissed so far as it prayed for possession of the lands. There was an appeal by the plaintiff and no memorandum of cross-objections by the defendant. The lower Appellate Court therefore held that the declarations embodied in the trial Court's decree would hold good in the absence of any memorandum of cross-objections. On the other issues the lower Appellate Court held in favour of the plaintiff and decreed the suit with costs.

3. Now the main contentions in appeal relate (1) to the refusal of the lower Appellate Court to re-open the question of the trusteeship in the absence of a

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Memorandum of cross-objections, (2) to the question of limitation, (3) to the validity of the dismissal, and (4) to the effect of the absence of any notification declaring the new jagirdar a ward of the Court (a) on the order of dismissal and (b) on the maintainability of the suit. There is little substance in any of the contentions except the last one. I am of opinion that the lower Appellate Court was quite right in not allowing the correctness of the declarations embodied in the trial Court's decree to be canvassed in the absence of a memorandum of cross-objections. So much follows from the terms of O. 41, R. 22 of the CPC. It is not a case in which the dismissal of the suit can be supported without traversing the grounds upon which the defendant has failed to convince the trial Court. It is a case of a specific declaration not prayed for by the plaintiff but added to the dismissing decree by the trial Court expressly in order to safeguard the interests of the institution. If the defendant had a grievance against the embodiment of this positive declaration in the decree, he should have taken objection to it in a formal way and no such objection having been taken, it must, I think, be inferred that the lower Court's declaration is conclusive.

4. Nor is there any substance in the contention based on limitation and adverse possession. The contention is that there was an earlier dismissal order in 1914 which the defendant ignored remaining in possession of the lands and rendering such service as he thought was obligatory. If these facts stood alone, it might be argued that he had at least established a right to retain the lands subject to the minimum of service which he admitted to be required of him.

But there was another proceeding in 1923 in the course of which the defendant gave an explanation to the trustees which can only be read as admitting the power of the trustee to control his office and his enjoyment of the emoluments thereof. In such circumstances there can, I think, be no question of any prescriptive right in the defendant adverse to the trust. The argument regarding the invalidity of the dismissal has no merits unless it can be based on the technical ground that the Court of Wards had no authority at the time of the dismissal. There were proper charges framed relating to the service; the defendant was given due notice of those charges and required to submit an explanation which he contumaciously refrained from giving. In such circumstances the only possible course for the controlling authority would be to remove him from office and if that authority was empowered to do so, no Court could rightly hold that the dismissal was wrong.

5. There remains the question of the consequence of the absence of any notification under the Act at the time when the dismissal order was passed and when the suit was filed. Section 57 of the Madras Court of Wards Act, gives certain limited powers to the Court of Wards to retain possession of an estate on the death of the ward. S. 58 imposes certain limitations on the successor to the estate when the Court of Wards has decided thus to retain possession. Neither of these Sections can, in my opinion, be taken to authorize the Court of Wards, in the absence of a notification, to continue to function as trustee of a temple of which the ward is the hereditary trustee. Therefore, on the death of the late jagirdar, his successor having taken no steps to assume the control of the trust properties and the Court of Wards continuing to administer those trust properties under the impression that it was legally entitled to do so, the position of the Court of Wards would be that of a de facto trustee. It was managing the temples in the interests of the trusts under the bona fide impression that it had a power and a duty to do so. It seems to me that a de facto trustee of a Hindu temple has those powers which are conferred upon a trustee under the Hindu Religious

Endowments Act. S. 9(13) of that Act defines a trustee as, a person, by whatever designation known, in whom the administration of a religious endowment is vested and includes any person who is liable as if he were a trustee.

6. This definition clearly would include a de facto trustee administering the trust honestly and holding himself liable for the properties of the trust. Under S. 43, the control of office holders and servants attached to the temple is vested in the trustee and a special machinery is provided for appeals by any such office holder or servant who is aggrieved by the decision of the trustee. I have held in a recent case, (1938) 2 MLJ 516[1], that the provisions of S. 43 read with Section 73 of the same Act were intended to oust the jurisdiction of the Civil Court to question the propriety of any order of dismissal. From this it follows that any technical defect in the legal qualifications of the Court of Wards to function as trustee at the time of this dismissal would not enable the dismissed person to question the validity of the dismissal in a Civil Court.

7. I am moreover inclined to think, quite apart from these statutory provisions, that a de facto trustee of a Hindu temple in actual management of that temple and acting bona fide in the interests of the institution can validly pass an order dismissing a temple servant or officer, provided that the dismissal is for good grounds and that the procedure is one to which no objection can be taken.

8. To hold otherwise would be to hold that when for any reason a religious trust is without a legal trustee the temple servants would be entirely uncontrolled and would be at liberty to ignore their obligations towards the trust. There is moreover no doubt as to the capacity of a de facto trustee in possession and management of a temple to bring a suit for the recovery of temple lands. This power has been recognized in 61 MLJ 887[2] and 1913 MWN 181[3], as well as in numerous other decisions. Moreover, it seems to me to follow from first principles that such a power must exist. It is the duty of the Court to protect trust property from misappropriation and diversion from the objects to which it was dedicated. When trust property is without a legal guardian owing to any defects in the machinery for the appointment of a trustee or owing to the unwillingness of the legal trustee to act, it would be a monstrous thing if any honest person recognized as being in charge of the institution and actively controlling its affairs in the interests of the

trust should not be entitled, in the absence of anyone with a better title, to take those actions which are necessary to safeguard the objects of the trust. In this view I dismiss the appeal with costs. Leave refused.

C.R.K./G.N.

9. *Appeal dismissed.*

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1. *Ramanatha Gurukkal* v. *Arunachalam Chettiar*, (1988) 25 AIR Mad 972 : 179 IC 504 : ILR (1939) Mad 81 : (1938) 2 MLJ 516.

2. *Appasami Pillai* v. *Ramu Tevar*, (1932) 19 AIR Mad 267 : 136 IC 340 : 61 MLJ 887.

3. *Kasi Chetti* v. *Srimathu Devasikamoney Nataraja Dikshitar*, (1913) MWN 181 : 16 IC 622.

(13) (128)

J. C. 1925

DHANRAJ JOHARMAL v. SONI BAI.

In case any of the debts have been barred by the wilful neglect or default of the defendant he would necessarily be liable for those debts. For the purpose of taking these accounts and giving effect to the decree generally a receiver should be appointed.

Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed with costs, and that the amendments they have indicated should be embodied in the decree.

Solicitors for appellants: *Barrow, Rogers & Nevill.*
Solicitor for respondent: *H. S. L. Polak.*

J. C.* 1925 April, 25

PRAMATHA NATH MULLICK (PLAINTIFF) APPELLANT;

AND

PRADYUMNA KUMAR MULLICK AND ANOTHER (DEFENDANTS) . . . RESPONDENTS.

ON APPEAL FROM THE HIGH COURT AT CALCUTTA.

Hindu Law—Family Idol—Partition—Shebait moving Idol to his own House during his Pala—Dispute between Shebaits—Representation of Idols—Nature of Property in consecrated Idol.

A Hindu having consecrated an idol as a household deity bequeathed it with the rest of his property to his adopted son, J., directing him to maintain the worship. J. built a thakurbari, and dedicated it to the idol by a deed under which the idol was not to be removed therefrom unless another suitable thakurbari was provided. After J.'s death a partition took place between his three sons; the thakurbari remained joint, but annual turns of performing the worship were appointed. One brother (the appellant) claimed a declaration that during his turn of worship he had the right to remove the idol to his own house; the other brothers (respondents) contended that the right was excluded by the deed. The trial judge held that J., not being the founder of the worship, could not impose any condition upon the dedication, and made the declaration prayed. The appellate Court dismissed the suit, holding that the condition was for the benefit of

Present: LORD SHAW, LORD BLANESBURGH, SIR JOHN EDGE, and MR. AMEER ALI.

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the idol, and accordingly was binding. The Judicial Committee affirmed the views (*a*) that the idol could not be regarded as a mere chattel in the hands of J.; (*b*) that J. was shebait, not founder; but:—

Held, that the will of the idol as to its location must be respected, and that accordingly the suit should be remitted in order that the idol might appear by a disinterested next friend to be appointed by the Court; that the female members of the family, having the right to participate in the worship, should be joined; and that a scheme for regulating the worship should be framed.

Khetter Chunder Ghose v. *Hari Das Bundopadhya* (1890) I. L. R. 17 C. 557 distinguished.

Mitta Kunth Audhicarry v. *Neerunjun Audhicarry* (1874) 14 Ben. L. R. 166, as to partition of the right to perform the worship of an idol, approved.

Decrees set aside and suit remitted.

APPEAL (No. 59 of 1924) from a decree of the High Court in its Appellate Jurisdiction (April 10, 1923) reversing a decree of that Court in its Original Jurisdiction.

The appellant brought a suit in the High Court against the respondents, his separated brothers, claiming, among other relief, that he was entitled to remove certain family idols to his own residence during his turn of worship, and for an injunction restraining the respondents from interfering with the right claimed.

The respondents relied upon a condition as to the location of the idols contained in a deed by which their father (Jadulal) had dedicated a thakurbari to the use of the idols.

The facts appear from the judgment of the Judicial Committee.

The trial Judge (Greaves J.) made the declaration prayed holding that Jadulal, not being the founder of the worship, could not impose a condition as to the location of the idols which would bind shebaits who came after him.

On appeal the decree was set aside. The learned judges (Sanderson C.J. and Richardson J.) rejected a contention that the idols were merely movable property as to which Jadulal as owner could impose any condition which he pleased. They were of opinion that the only question of substance was whether Jadulal in his capacity as shebait exceeded his authority in accepting the gift on the thakur's behalf subject to the condition; the true test was whether

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the condition was or was not for the benefit of the thakur. In their view it was so, since it insured that the thakur should always have a suitable abode, and be secured from undignified journeys; the three branches might split into numerous sub-branches, each with its own turn of worship, so that transfers of location might become numerous. They did not regard the condition as making a change in the character of the worship.

The suits were accordingly dismissed.

1925. Feb. 2, 3, 5. *Dunne K.C.* and *S. Hyam* for the appellant. As the High Court rightly held, Hindu law does not forbid the shebait of an idol from taking it to his own house during his period of worship: Stokes' Hindu Law Books, Mayukha (citing Narada), p. 80; Mitakshara, ch. 2, s. 12; ss. 3, p. 467; *Dwarkanath Roy* v. *Jannobee Chowdhrain* (1); *Ram Soondur Thakoor* v. *Taruck Chunder Turkoruttun*. (2) The deed of 1888, upon its true construction, does not take away the right of temporary removal for the purpose of worship. Further, Jadulal had no power to impose an absolute impediment to removal. The founder of the worship could have imposed what conditions he pleased, but Jadulal was not the founder. The deed itself refers to the idol as having been "established and consecrated" by Mutty Lal; his widow had rights in it. As to the powers of a shebait reference was made to *Greedharreejee* v. *Rumanlolljee* (3); *Prosunno Kumari Debya* v. *Golab Chand* (4); *Rajeshwar Mullick* v. *Gopeswar Mullick*. (5)

In any case the appellant had the right as shebait to move the other two idols, as they are not mentioned in the deed.

De Gruyther K.C. and *Parikh* for the respondents. If the appellant's contention is right, each of the shebaits, who might be numerous, could remove the idol during his turn, with the result that the idol would never be in the thakurbari.

(1) (1865) 4 Suth. W.R. 79.
(2) (1872) 19 Suth.W.R. 28.
(3) (1889) L.R. 16 I.A. 137.
(4) (1875) L.R. 2 I.A. 145, 151.
(5) (1907) 12 Cal.W.N. 823.

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Mutty Lal, having no children, was absolute owner of the idol. Under his will Jadulal took it as his property and without endowment. He therefore was competent to impose by the deed any condition which he pleased. A mere consecration of the idol by Mutty Lal had not the effect of a dedication, and imposed no restriction on Jadulal's ownership: *Brojosoondery Debia* v. *Luchmee Koonwaree*. (1) There is no clear authority that a shebait can remove an idol to his own residence. The appellant enjoyed his office of shebait by virtue of the deed, and must observe its conditions. A removal of the idol from the thakurbari could be effected only by the whole body of shebaits: *Konwar Doorganath Roy* v. *Ram Chunder Sen* (2); *Ramanatham Chetti* v. *Murugappa Chetti* (3); *Khetter Chunder Ghose* v. *Hari Das Bundopadhya*. (4) [Reference was made also to *Nubkissen Mitter* v. *Hurrischunder Mitter* (5); *Thandavaroya Pillai* v. *Shunmugam* (6); *Sethuramaswamiar* v. *Meruswamiar* (7); *Ramanathan Chetty* v. *Murugappa Chetty* (8); also to Dubois' Hindu Manners, Customs and Ceremonies (Beauchamp's Translation, 1897), vol. ii., p. 655, as to Salgram Sila.] The deed applies to the two idols not named in it, as they were merely ancillary to that mentioned by name.

Dunne K.C. in reply. The property in a consecrated idol is not merely property in a chattel, but also property in the right to worship; that right, including the right to possession, is divisible by appointing turns of worship: *Nubkissen Mitter* v. *Hurrischunder Mitter* (5); *Mitta Kunth Audhicarry* v. *Neerunjun Audhicarry* (9); *Gaur Mohan Chowdhry* v. *Madan Mohan Chowdhry* (10); *Debendronath Mullick* v. *Odit Churn Mullick* (11); *Khetter Chunder Ghose* v. *Hari Das Bundopadhya*. (4) After a partition in that manner the right of worship is separate: Manu, ch. 3, s. 67 (Bühler's Laws of Manu, pp. 81, 82).

(1) (1873) 15 Ben.L.R. 176 (P.C.).
(2) (1876) I.L.R. 2 C. 341.
(3) (1906) L.R. 33 I.A. 139, 143.
(4) (1890) I.L.R. 17 C. 557.
(5) (1818) 2 Morley, 146.
(6) (1908) I.L.R. 32 M. 167.
(7) (1909) I.L.R. 34 M. 470.
(8) (1903) I.L.R. 27 M. 192.
(9) (1874) 14 Ben.L.R. 166.
(10) (1871) 6 Ben.L.R. 352.
(11) (1878) I.L.R. 3 C. 390.

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April 28. The judgment of their Lordships was delivered by LORD SHAW. The questions raised by this appeal are of a wide and general importance. They have reference to the control and worship of a Hindu family idol. It may be explained that although one idol is referred to, called of course the Thakur, there were two others, the Thakurani, a female idol referred to in some of the papers as the consort of the Thakur, and there was also a third, a sacred or deified stone called the Salgram Sila. These three idols became the objects of the pious worship of the family of the founder, Mutty Lal Mullick, who originally installed them. But the points in the case can be more simply treated by referring to the one—namely, the principal idol the Thakur.

The appeal is from a decree dated April 10, 1923, made by the High Court in Calcutta in its Civil Appellate Jurisdiction reversing a decree dated June 1, 1922, made by the same Court in its Original Civil Jurisdiction.

The case was argued at great length, and a large mass of authorities was cited.

Before entering upon the legal questions which were debated, their Lordships think it not inadvisable to state the family history, in so far as it concerns the installation of this idol. It was established and consecrated many years ago by a wealthy Hindu inhabitant of Calcutta, Babu Mutty Lal Mullick, in his family dwelling-house, in a Thakur Ghar, or room therein, set apart for worship.

Mutty Lal Mullick died in 1846 leaving a widow, Ranganmoni, and an adopted son, Jadulal, then two years of age. He left a will dated August 17, 1846 (shortly before his death). He had for some time prior to his death set up and established and consecrated the idol, and no doubt is thrown upon the fact that the idol so installed became unquestionably the object of worship by himself and the family. The will provided that his widow should be the malik or proprietor and attorney, for the protection and care of the whole of his estate until his adopted son Jadulal attained the age of twenty, and the enumeration included the Sri Iswar Thakurs, Thakuranis, etc., established by him and ancestorial.

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Upon the adopted son attaining twenty the property was to be made over to the son as his heir. There was a power to the widow in case the adopted son died without issue to adopt another. A gift was made to the widow of one lac of rupees, together with various jewels and silver, with right of residence in the family residence. With regard to the maintenance and worship of the idol certain funds, amounting to Rs. 600 a month, were to be drawn by the widow and therewith she was to defray the expenses of the idol's sheba (or worship) and for religious festivals and ceremonies, "in the method that I have paid and defrayed the same hitherto." Upon the adopted son attaining twenty the widow was to "make over the whole of the property to him fully and he will in a like manner protect the whole of the property and effectuate the Kreah Karmas, or religious acts and ceremonies."

It seems accordingly clear that in Mutty Lal Mullick's lifetime the idol was, as already stated, established as a household god; and the pious founder, narrating his own upkeep and maintenance of the deity, gave funds in order that those should be continued; and he prescribed the duty of continuance to the widow during the adopted son's minority and upon the son thereafter during his life.

One of the questions emerging at this point, is as to the nature of such an idol, and the services due thereto. A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of law, a "juristic entity." It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.

A useful narrative of the concrete realities of the position is to be found in the judgment of Mukerji, J. in *Rambrahma Chatterjee* v. *Kedar Nath Banerjee* (1): "We need not describe

(1) (1922) 36 C.L.J. 478, 483.

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here in detail the normal type of continued worship of a consecrated image—the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest."

The person founding a deity and becoming responsible for these duties is de facto and in common parlance called shebait. This responsibility is, of course, maintained by a pious Hindu, either by the personal performance of the religious rites or—as in the case of Sudras, to which caste the parties belonged—by the employment of a Brahmin priest to do so on his behalf. Or the founder, any time before his death, or his successor likewise, may confer the office of shebait on another.

The testator Mutty Lal Mullick did not adopt the latter course, but he acted as shebait with the Brahmin assistance referred to. After his death his widow officiated similarly as the ministrant of the worship, and she used, as directed, the endowed funds specially destined for the upkeep and worship of the deity. After the adopted son Jadulal reached the age of twenty he then became de facto the person, charged with the same duties, to be performed as fully as his adoptive father and mother had performed them.

It must be remembered in regard to this branch of the law that the duties of piety from the time of consecration of the idol are duties to something existing which, though symbolising the Divinity, has in the eye of the law a status as a separate persona. The position and rights of the deity must, in order to work this out both in regard to its preservation, its maintenance and the services to be performed,

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be in the charge of a human being. Accordingly he is the shebait custodian of the idol and manager of its estate. And so, paying proper respect to the religious proprieties of the case, the father, mother and adopted son were successively and de facto ministrants and custodians of this idol.

The period during which this state of matters existed was in the narrative from anterior to 1846 till the year 1864. The widow's charge of the affairs of the idol had come to an end; and Jadulal the son's period of administration, he having reached the age of twenty, had begun. Jadulal died in the year 1894. What had happened during his period of administration was this: that in 1881 he enlarged the old family dwelling-house containing the thakurbari in which the household gods had hitherto resided and were worshipped. He had erected a puja dalan for the worship of all the family thakurs, including the three referred to, that is to say, instead of one house with its thakurbari for the family, two houses were erected on adjoining plots of ground and between these the puja dalan was erected, having a private entrance from each of the private dwellings so that the family worship was conducted with due decorum and propriety in what was practically an annexe to either house.

Two other events occurred which are important during this period of Jadulal's regime. In 1888 he executed a deed of trust providing particular premises for the location and worship of the deities in the puja dalan aforesaid. The terms of this deed are the centre of the contentions raised by the parties in the appeal and will be more particularly hereinafter referred to. The other fact affecting this period was that in the year 1891 Ranganmoni, the widow of Mutty Lal Mullick, died. She made a very large endowment in favour of the family idol, amounting to about one lac of rupees. By her will she appointed Jadulal her executor and trustee and she made a disposition of her property in these terms: "I give and devise my tenanted land, No. 129, Bowbazar Street in Calcutta, to my said trustee, his heirs and representatives to be held by him and them upon trust, to apply the rents and income thereof, after providing for the payment of taxes and

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other outgoings, in the performance of the daily and periodical worship of the idol, consecrated by my late husband, called Radha-Shamsunder, such worship to be performed by my said son and his descendants."

Jadulal died in 1894, leaving issue three sons and four daughters. The estates were large, and a suit for partition among the three sons ensued. Questions of importance were raised as to: (1.) The provisions of Jadulal's will; and (2.) The endowment by Ranganmoni.

On the former head the disputes and differences were submitted to the arbitration of the late Mr. W. C. Bonnerjee, who delivered an award in 1899. That award was made a rule of Court. In the partition proceedings, Mr. Bonnerjee declared that the three sons, as Jadulal's heirs, were entitled to the residue of the father's estate in three equal shares. He allotted one of the two houses to the first son, another to the third son, and, in regard to the second son, the present appellant, he was, so to speak, paid out in money in order that he might erect a desirable residence for himself. Among other trusts declared in Jadulal's will was the following—namely: "The trust for the worship of the said Jadulal Mullick's hereditary Goddess Sri Sri Singhabahini Debi and other family deities during his turn or pala of worship."

It is to be observed that, although the turn or pala of worship as amongst the three sons was recognized in that part of the award, the idols in question in this case were not named.

In a subsequent part of the award various turns of worship were given to the sons in order. As to the thakurbari, or puja dalan, plans were referred to, and it was declared to be the joint property of the three sons. Prohibition was made against the two sons vested in the adjoining properties raising any structure or building of any kind which might interfere with the joint property. The situation created by this deed accordingly was that, while the deities were not named, the joint property of the three sons in the house dedicated to the idol was declared and the system of worship by turn or pala was established.

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With regard to Ranganmoni's estate and endowment, a suit was brought in 1904, and in June, 1905, it was decreed that a scheme should be framed for carrying on the varied trusts of the lady's will and; subject to provision being made therefor, her estate should be divided into three equal shares among the plaintiff and defendants in this suit. A commission was accordingly issued to Babu Bhupendra Nath Basu to frame a scheme of worship and to partition the residue. This was done by return to the commission, which appointed the worship of Thakur Sri Sri Radha Shamsunderji, the idols in question in this suit, in the following terms: "I direct that the sheba and worship of the Thakur Sri Sri Radha-Shamsunderji and of the thakur located at Mahesh and Brindaban and the Ekodistha sradh will be performed by the parties and their heirs by turns of one year each, the first turn commencing from the 1st day of Baisakh in the Bengali year 1317 and such first turn shall devolve on the said Pradyumna Kumar Mullick and his heirs, the second turn commencing from first day of the month of Baisakh 1318 shall devolve on the said Pramatha Nath Mullick and his heirs, and the third turn commencing from the first day of the month of Baisakh 1319 shall devolve on the said Manmatha Nath Mullick and his heirs, and so on by rotation. On the demise of any one of the parties, his heirs will become entitled to his turn of worship, and the party having the turn of worship will perform such worship without any interference by any of the other parties."

The family very sensibly acted in accordance with the rules set down in these proceedings. The practical result was that the parties, now judicially separated, continued the worship of the idols. The idol was, of course, not removed by the parties during their period of worship or pala because in the building as constructed the idols were located as mentioned in a building adjoining their respective houses.

In the year 1910-11 the second son's establishment was set up. The idol was removed to his house in connection with certain festivals considered suitable for the occasion and, after these were concluded in February, 1911, was brought

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back to the puja dalan. In May, 1911, the second son's year of pala, or turn of worship, came round and the family idol was removed to the thakurbari of his house and family worship continued there for one year. In 1914 the same thing occurred, the first respondent being still an infant. It is not suggested in any part of the case that these temporary transfers of the location of the family idol (such temporary transfers on occasions of festivals are familiar in the community) were not conducted with complete reverence and propriety and without interruption of the ordinary daily services tendered to the idol or any of the rights connected with its worship. In short, the results of the partition suit, the interpretation of the wills of Jadulal and Ranganmoni, and the awards made therein, were so far worked out without defect or friction.

When the appellant's pala, however, again came round—namely in 1917, the transfer of the idol by him as before to his thakurbari was objected to by the first respondent, who had now attained majority (with whose objection the third son concurs); and the broad question in this appeal is whether that objection is well founded in law.

In substance the objection is founded upon the deed executed in 1888 by Jadulal.

The argument in the appellate Court is thus recorded by Richardson J.: "The learned standing counsel, Mr. B. L. Mitter, founding on Mutty Lal's will, argued that the testator treated the idols or images which he had set up as his personal property and left them absolutely to Jadulal. When pushed, Mr. Mitter said that Jadulal might, if he had so pleased, have thrown them into the river."

The appellate Court rejected that proposition. And this Board can give no countenance to it. As is added in the judgment referred to: "The inclusion of the idols, however, among items of property, movable and immovable, does not show that the testator regarded his interest in them in the same light as his interest in his secular property. The careful directions given later in the will show that the testator

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intended the worship of the ancestral deities and the deities he had established to be a charge upon his estate."

There may be, in the nature of things, difficulties in adjusting the legal status of the idol to the circumstances and requirements of its protection and location and there may no doubt also be a variety of other contacts of such a persona with mundane ideas. But an argument which would reduce a family idol to the position of a mere movable chattel is one to which the Board can give no support. They think that such an argument is neither in accord with a true conception of the authorities, nor with principle. The Board does not find itself at variance with the views upon this subject taken in the appellate Court or with the analysis of the authorities there contained.

The appellate Court, it is true, felt itself constrained by the terms of the deed of 1888 to arrive at a conclusion adverse to the case of the appellant; but upon the main points in argument, both as to the contention that the household god was mere property, and as to Jadulal's right being absolute therein, this appeal was argued before the Board by the counsel for the respondents here on the footing that if the appellate Court's decree depended on the reasons given, it could not be defended. The Board is, on the contrary, of the opinion that, upon the two points they discussed, the reasoning and view of the High Court are sound.

Their Lordships would only add, on the subject of property, that the argument is said to be supported by the judgment of Banerjee J. in *Khetter Chunder Ghose* v. *Hari Das Bundopadhya*. (1) In that case the facts were that the household idol was made over to relatives, owing to the family, whose idol it was, being unable to carry on the worship on account of the paucity of profits of the endowed lands, and it was held that the transfer was justified in the interests of the idol. It was a proper and a pious act. The shebait, being charged fundamentally with the duty of seeing to the worship being carried on, and having the concurrence of the entire family to the transaction, did have power to carry through the

(1) I.L.R. 17 C. 557.

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transaction "for the purpose of performing its worship regularly through generation to generation." The members of the family were thereby deprived of no right of worship. The interests of worshippers and idol were conserved. Their Lordships do not think that such cases form any ground for the proposition that Hindu family idols are property in the crude sense maintained, or that their destruction, degradation or injury are within the power of their custodian for the time being. Such ideas appear to be in violation of the sanctity attached to the idol, whose legal entity and rights as such the law of India has long recognized.

The argument as to property being thus displaced, their Lordships have now to consider the position of Jadulal, the grantor of the deed of 1888.

Was he shebait of this idol in the narrower sense as the appellant contends or did he succeed by virtue of Mutty Lal's will to the rights and privileges possessed by the testator? In the deed of 1888, Jadulal declares as follows: "whereas the said Babu Mutti Lal Mullick, the father of the said Jadulal Mullick, established and consecrated the Thakur called Radha Shamsunderji." As has been seen, during his life Mutty Lal Mullick had de facto performed piously and regularly all the duties which the law would charge upon the custodians of the idol. It stands without question that Jadulal himself was fully performing similar duties and functions. As was said by Lord Hobhouse in *Greedharreejee* v. *Rumanlolljee* (1): "According to Hindu law, when the worship of a thakur has been founded the shebaitship is held to be invested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution."

A similar principle appears also to have been implied in the judgments of *Jagannath Prasad Gupta* v. *Runjit Singh* (2); *Sheoratan Kunwari* v. *Ram Pargash* (3); *Jai Bansi* v. *Chattar Dhari Sing.* (4)

(1) L.R. 16 I.A. 137, 144.
(2) (1897) I.L.R. 25 C. 354.
(3) (1896) I.L.R. 18 A. 227.
(4) (1870) 5 Ben.L.R. 181.

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To apply this law to the present case, Jadulal was the sole heir of his father and, by the general law of India, he thus stood vested with the right of custody of, and management of the trust for the family idol which his father had consecrated and set up. So far as the legal status and rights of Jadulal as grantor of the deed of 1888, the deed proceeds to narrate: "Whereas the said Jadulal Mullick is now desirous of dedicating the said premises to the said thakur in the manner hereinafter expressed." This is perfectly correct language in acknowledgment of the fact that the thakur existed and was the capable recipient in law of the property dedicated to it. The deed then proceeds to declare that certain premises, described in the schedule, "shall be for ever held by the said Jadulal Mullick his heirs, executors, administrators and representatives to and for the use of the said Thakur Radha Shamsundarji to the intent that the said thakur may be located and worshipped in the said premises and to and for no other use or intent whatsoever: Provided always that if at any time hereafter it shall appear expedient to the said Jadulal Mullick his heirs, executors, administrators or representatives so to do it shall be lawful for him or them upon his or their providing and dedicating for the location and worship of the said thakur another suitable thakurbari of the same or greater value than the premises hereby dedicated to revoke the trusts hereinbefore contained and it is hereby declared that unless and until another thakurbari is provided and dedicated as aforesaid the said thakur shall not on any account be removed from the said premises and in the event of another thakurbari being provided and dedicated as aforesaid the said thakur shall be located therein but shall not similarly be removed therefrom on any account whatsoever."

This passage has been quoted in full so as to make clear the three propositions which seem to follow—namely, First, the recognition as mentioned of the idol as the dedicatee: Second, the conveyance in no respect whatever appears to be a conveyance of the idol, but is a conveyance of the premises described in the schedule to and for the use of the

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idol and for no other use: Third, this use is not to be interfered with by Jadulal's heirs, executors, administrators or representatives except upon providing for the dedicatee another thakurbari of the same or a larger value. When that is done Jadulal's heirs, etc., could revoke the trusts of the premises affecting the present pujah dalan, and unless and until that is done the idol is not to be removed therefrom.

It is this last proposition which raises the real difficulty in the case and their Lordships express no surprise that the High Court should have felt it. Upon a full consideration their Lordships have come to the conclusion that this was not a dedication, in any sense of the word, of the idol as property, nor of the idol at all. It was a dedication of real estate in trust for the idol, recognized as a legal entity, to which such dedication might be made.

The true view of this is that the will of the idol in regard to location must be respected. If, in the course of a proper and unassailable administration of the worship of the idol by the shebait, it be thought that a family idol should change its location the will of the idol itself, expressed through his guardian, must be given effect to. This is in accordance with what would appear to be the sound principle of the position and it is further in accord with the authority on the subject. In the case already referred to so far did the decision go that it was expressly said by Lord Hobhouse in *Greedharreejee* v. *Rumanlolljee* (1): "The thakur dowjee, or those who speak for him on earth, need not take advantage of this gift."

A fortiori it is open to an idol acting through his guardian the shebait to conduct its worship in its own way at its own place, always on the assumption that the acts of the shebait expressing its will are not inconsistent with the reverent and proper conduct of its worship by those members of the family who render service and pay homage to it.

A question was raised whether the right of worship of an idol can be made the subject of partition. Their Lordships

(1) L.R. 16 I.A. 137.

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have already referred to this point when dealing with the arbitration proceedings.

The point arose especially in the case of *Mitta Kunth Audhicarry* v. *Neerunjun Audhicarry*. (1) The headnote is as follows: "The reasons for which one of several joint owners is entitled to a partition of the joint property, apply also to the case of a joint right of performing the worship of an idol. The joint owners of such a right are entitled to perform their worship by turns." And, in Sir Richard Couch's judgment, the following rule of law is referred to: "The suit is founded upon the right of the plaintiff, as property, to a partition. No doubt the plaintiff is entitled to that; and the decree of the first court was right in awarding it. But that decree has not made provision for the term that each of the three persons, the plaintiff and the two defendants, should have, and does not state whether the plaintiff is to have his turn first, or second, or third. We must therefore direct the Extra Assistant Commissioner to determine by lot in what order the plaintiff and the two defendants shall exercise the right to worship the idol. And having determined that, he should insert in his decree, so that it will be settled in what order they are to exercise the right of worship."

The sole objection made in these proceedings to the removal by one of the shebaits during his pala or turn of worship to his residence is founded upon the deed of 1888 already analysed. "In para. 13 of the defence "this defendant admits that the plaintiff's turn of worship commenced on and from . . . . April 14, 1917. On April 2, 1917, this defendant, who had attained majority on or about November 20, 1914, ... objected." In the evidence of the first respondent, he deposed as follows: "Babu Bhupendra Nath Basu divided the turn of worship of 6 thakurs, and each of us have one year . . . . my only objection is based on the deed of dedication; apart from the deed there would be objection to the removal because the thakur has its own house where arrangements are made for sheba. I have said that my only objection is on the deed of dedication." While, however, this is the only objection

(1) 14 Ben.L.R. 166, 169.

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actually made by the objecting defendant, it has to be pointed out that the idol is not otherwise represented in the proceedings, though the result might conceivably vitally affect its interests. In that sense the contest has related to the establishment of individual rights as between contesting shebaits. The interests of the female members of the family, especially in view of the fact that they are excluded from the managership of the idols, might need special protection. They are entitled to participate in the worship established by Mutty Lal Mullick without obstruction or inconvenience.

Their Lordships are accordingly of opinion that it would be in the interests of all concerned that the idol should appear by a disinterested next friend appointed by the Court. The female members of the family should also be joined, and a scheme should be framed, for the regulation of the worship of the idols.

Their Lordships will therefore humbly advise His Majesty that the case should be remitted to the High Court to be dealt with in accordance with this report. It will be necessary in these circumstances to set aside the decrees of both the Courts below. The parties must their own costs in the Courts of India and before this Board; any costs paid under either of the decrees of the Courts below will be repaid.

Solicitors for appellant: *Sandersons & Orr-Dignams.*
Solicitors for respondents: *J. J. Edwards & Co.*

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(BEFORE R. S. SARKARIA AND V. D. TULZAPURKAR, JJ.)

PROFULLA CHORONE REQUITTE AND OTHERS .. Appellants;

Versus

SATYA CHORONE REQUITTE .. Respondent.

and

Vice-Versa

Civil Appeal Nos. 1873-1874 of 1970†, decided on March 2, 1979

Hindu Law — Religious endowment — Shebaitship — Not only an office but a heritable property in a limited sense which devolves according to Hindu law in absence of any stipulation in the endowment or usage or custom to the contrary — Shebaitship generally not transferrable but can be relinquished in favour of co-shebaits — Question whether shebaits can put an end to or give a different direction to the endowment, left open (Paras 20 to 27)

Hindu Law — Religious endowments — Private and public — Distinction (Para 23)

Hindu Law — Religious endowment — Shebaits — Who are — Interpretation of will creating the endowment — No express provision for shebaitship made in the wills creating absolute debutter in favour of deity enshrined in the dwelling house and providing for use of the house for residence of descendants of the testator — Among the trustees, those who were descendants, relinquishing trusteeship — On facts and interpretation of the wills, only the sons and descendants and not the trustees, held, were shebaits having right to reside in the house — Wills (Paras 29 to 52)

Hindu Law — Religious endowments — Shebaits — Right to maintain suits — Held, only shebaits and not trustees have locus standi to maintain suits in respect of debutter property — Where all shebaits not impleaded suit, held, not maintainable — Civil Procedure Code, 1908, Order 1, Rule 3 (Para 53)

One 'D' made two wills in 1898, one in respect of his dwelling house situated in the then French territory of Chandernagore and the other regarding his properties in the then British India appointing his wife, two sons and two nephews as executrix, executors and trustees. By his will in respect of his Chandernagore house, he created an absolute debutter in favour of his family deity and bequeathed to his executors and trustees the house "upon trust to stand possessed of and to hold, retain and use the premises as endowed or debutter, property for the service and worship" of the deity. In the will in respect of the properties in British India also, he intended that his "wife and sons, and sons' wives, and other relatives" would use the Chandernagore house for residence and also made provisions for the seva puja of the family idol there and for other religious festivals. The wills provided that in the event of death, retirement, refusal to act or incapacity of any of the trustees, the continuing trustees or the executor or administrator of the last acting trustee might appoint any other person in his place. Accordingly, after the death of the testator, the trustees and thereafter their successors came into possession

†From the Judgment and Decree dated July 21, 1969 of the High Court in Appeal from Appellate Decree 30 of 1967.

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of the debutter property. Some time in 1934 a dispute arose among the descendants of the settlor 'D', some of whom were the then trustees, with regard to the accommodation in their residential occupation in the Chandernagore house. The dispute was referred to arbitration and the arbitrator held that the heirs of 'D' and his descendants alone, and not the trustees, had the right to act as shebaits of the deity. This award was accepted by the trustees. But subsequently, the plaintiff-trustees filed a suit for ejectment of the defendant-heir of 'D' from some of the rooms occupied by them in the Chandernagore house on the ground that the defendant was only a licensee of the plaintiff and the licence had been revoked. The defendant on the other hand pleaded that he was in occupation of the rooms in his own right as a shebait, that the plaintiffs had no right to represent the deity and had no locus standi to maintain the suit as trustees and that since all the shebaits had not been joined as parties, the suit was incompetent. The Subordinate Judge and the District Judge dismissed the suit but the Division Bench of the High Court having partially allowed the appeal, the present appeal by certificate under Article 133(1)(b) was brought by the plaintiffs. Dismissing the appeal the Supreme Court

Held :

(1) Shebait is the human ministrant and custodian of the idol, entitled to deal with all its temporal affairs and to manage its property. As regards the administration of the debutter, his position is analogous to that of a trustee; yet, he is not precisely in the position of a trustee in the English sense, because under Hindu Law, property absolutely dedicated to an idol, vests in the idol, and not in the shebait. However, in almost every case, the shebait has a right to a part of the usufruct, the mode of enjoyment, and the amount of the usufruct depending again on usage and custom, if not devised by the founder.. (Para 20)

As regards the service of the temple and the duties that appertain to it, shebaitship is an office blended with property and as such, apart from the obligations and duties resting on him in connection with the endowment, the shebait has a personal interest in the endowed property. He has, to some extent, the rights of a limited owner. Shebaitship being property, it devolves like any other species of heritable property. It follows that, where the founder does not dispose of the shebaiti rights in the endowment created by him, the shebaitship devolves on the heirs of the founder according to Hindu Law, if no usage or custom of a different nature is shown to exist. (Paras 21 and 22)

Gossamee Shree Greedharreejee v. *Ramanlaljee*, 16 IA 137 : ILR 17 Cal 3, *relied on*

Although shebaitship is heritable property, yet, it cannot be freely transferred by the shebait. But some of the exceptions to this general rule are : alienation in favour of next shebait or one in favour of the heir of the transferor, or in his line of succession, or in favour of a co-shebait particularly when it is not against the presumed intention of the founder. If any one of the shebaits intends to get rid of his duties, he should surrender his office in favour of the remaining shebaits. In the case of such a transfer in favour of co-shebait, no policy of Hindu law is likely to be affected, much less the presumed intentions of the founder. (Paras 26 and 27)

Nirode Mohini v. *Shibdas*, ILR 36 Cal 975 : 13 CWN 1084 : 3 IC 76; *Mansharam* v. *Pranshankar*, ILR 6 Bom 298 : 6 Ind Jur 426 and *Raghunath* v. *Purnanand*, ILR 47 Bom 529 : AIR 1923 Bom 358, *relied on*

It is, however, not yet settled as to whether the principle of English

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law of trusteeship that the beneficiaries in a private trust, if sui juris and of one mind, have the power or authority to put an end the trust or use the trust fund for any purpose and divert it from its original object, is applicable in the case of shebait in private endowment or debutter created under Hindu law. (Para 24)

Doorganath Roy v. *Rain Chunder Sen*, LR 4 IA 52 : ILR 2 Cal 233 and *Pramatha Nath Mullick* v. *Pradhyumna Kumar Mullick*, 52 IA 245 : AIR 1925 PC 139, *referred to*

(2) There is a distinction between a public and private debutter. In a public debutter or endowment, the dedication is for the use or benefit of the public. But in a private endowment, when property is set apart for the worship of a family idol, the public are not interested. The present case is one of a private debutter. (Para 23)

(3) It the present case, on a combined reading of the two wills together as also from the evidence on record it appears that : the testator's intention was that his heirs and descendants would also be entitled to use the Chandernagore house as their family dwelling house and they in fact continued to live there accordingly ; that although the trustees were provided with the funds for the sewa puja of the family deity and for other festivals out of the estate left by the testator, they were not expressly constituted as shebaits of the deity ; that the legal title in the endowed property was expressly vested in the family idol and not in the trustee ; that only the descendants and heirs of the founder, who live in the endowed house, have throughout been acting as ministrants of the family idol ; and that by virtue of the arbitration award those trustees who were not descendants of the founder 'D', went out of the picture long ago and thus had validly renounced their shebaiti rights in favour of their co-shebaits who were descendants of the founder. Therefore, the defendant and other descendants of 'D' became co-shebaits of the deity by operation of the ordinary rules of Hindu law and the trustees were excluded. The defendant-respondent, being a grandson of 'D' and a shebait, was thus entitled to reside in the disputed rooms of the Chandernagore house. (Paras 41, 42, 49, 51 and 52)

(4) The trustees by themselves, have no right to maintain the suit in respect of the debutter property, the legal title to which vests in the idol and not in the trustees. The right to sue on behalf of the deity vests in the shebaits. All the shebaits of the deity not having been made parties, the suit was not properly constituted, and was liable to be dismissed on this score alone. (Para 53)

It is not necessary to decide whether the 'trust' created by the will was a continuing trust or not, or whether the mode of devolution of the office of trustees indicated by the founder in his will was or was not hit by the rule in **Tagore** v. **Tagore**, LR 1 IA Supp. 47. (Para 51)

Ganesh Chunder v. *Lal Behary*, 63 IA 448 : AIR 1936 PC 318 ; *Jagadindra* v. *Rani Hemanta Kumari*, 31 IA 203 : ILR 32 Cal 129 : 6 Bom LR 765 and *Monohar* v. *Bhupendra*, 60 Cal 452 : AIR 1932 Cal 791, *referred to*

R/4316/C

Advocates who appeared in this case :
Lal Narain Sinha, Senior Advocate, (*Sukumar Ghosh*, Advocate, with him), for the Appellants in C. A. 1873 of 1970 and Respondent in C. A. 1874 of 1970 ;
A. K. Sen, Senior Advocate, in C. A. 1874 of 1970, (*D. N. Mukherjee*, Advocate, with him), for the Respondent in C. A. 1873 of 1970 and Appellants in C. A. 1874 of 1970.

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The Judgment of the Court was delivered by

Sarkaria, J.—These two appeals on certificate arise out of the appellate judgment and decree, dated July 21, 1969, of the High Court at Calcutta. The facts of the case are as follows.

1a. Late Babu Durga Chorone Requitte was the grandfather of Satya Chorone Requitte, defendant, and plaintiffs 1 and 2. He owned considerable immovable property. He was an inhabitant of Chandernagore (then a French territory). The suit property is situated in Chandernagore. Among others, it included a big residential house containing about 84 or 85 rooms with extensive grounds, gardens and tanks. In this house, which he was occupying for his residence, he had his family deity, Sree Sree Iswar Sridhar Jiew.

2. Durga Chorone made and published two wills, one dated June 4, 1898, with regard to his properties in the then British India, and the other dated June 6, 1898 with regard to his properties situated in the French territory of Chandernagore. By these two wills, Durga Chorone appointed his wife, Saraswati Dassi, his two sons, Shyama Chorone Requitte and Tarini Chorone Requitte and his nephews, Ashutosh Das and Bhola Nath Das, executrix and executors and trustees of the estate left by him. The wills provided that the trustees would hold the bequeathed properties left by the testator according to the terms of the wills for the legatees and the beneficiaries mentioned therein. The wills also provided that in case of death or retirement or refusal or incapacity to act of any of the trustees, the continuing trustees or trustee for the time being, or the executors or administrators of the last acting trustee might appoint any other person or persons to be a trustee or trustees in place of the trustee or trustees so dying or desiring to retire from or refuse, etc. But, in no case, the number of the trustees should be less than two.

3. By his will, dated June 6, 1898, Durga Chorone created an absolute debutter in favour of the said family deity and devised and bequeathed to his executors and trustees named therein, his dwelling house with gardens and tanks appertaining thereto situated in Chandernagore, "upon Trust to stand possessed of and to hold, retain and use the premises an endowed or debutter property for the service and worship of" his said family deity. By that will, he further directed that this family idol "shall be located in my said house in Chandernagore which said house and premises shall be appropriated and devoted solely and exclusively to the Thakur or idol".

4. The testator died on August 27, 1898. Thereafter, the will, dated June 6, 1898, was duly probated and the trustees came into possession of the debutter properties and carried on the administration of the estate and the seva and puja, as directed in the will.

5. Smt. Saraswati, widow of Babu Durga Chorone, who was one of the trustees named in the will, died on October 30, 1913, while her son, Shyama Chorone, another trustee, died on December 21, 1925. Thereupon, Tulsi Chorone son of Shyama Chorone was appointed a new trustee in place of his father. Bhola, the other co-trustee, refused to act as such. Therefore, his son,

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Devindra was appointed as trustee by the continuing trustees. Tarani Chorone died on or about May 29, 1939 and the continuing trustees appointed his son, Profulla Chorone as a trustee. Tulsi Chorone died on August 17, 1952 and the continuing trustees similarly appointed Bhagwati, son of late Shyama Chorone as a new trustee. Debendranath Das died on or about March 7, 1956, and the continuing trustees appointed Satish Chandra Das, a son-in-law of late Shyama Chorone as a new trustee in his place.

6. In or about the year 1934, the descendants of the settlor, Durga Chorone, some of whom were the then trustees, referred certain disputes with regard to the endowed property to the arbitration of one Bhringeswar Sreemany. The disputes referred to the arbitrator included rival claims by the sons and grandsons of Durga Chorone, to their residence in the debutter property belonging to the family deity. The arbitrator made an award on September 6, 1934, whereby he allotted room Nos. 72 and 82 to Satya Chorone, respondent, which had been in their use and occupation from before. The arbitrator made similar allotments of other rooms in the said house in favour of other sons and grandsons of the settler.

7. On April 20, 1959, Profulla Chorone Requitte, Bhagwati Chorone Requitte and Satish Chorone Das, the then trustees, instituted Title Suit 28 of 1959 in the Court of the Subordinate Judge, 1st Court, Hooghly. The plaintiffs prayed for two reliefs in the plaint: (i) Possession by ejectment of the defendant, Satya Chorone Requitte, primarily from all the six rooms, alleging that the defendant had been occupying the same as licences under the plaintiffs and the said licence had been revoked; (ii) in the alternative, for possession of the four rooms mentioned in Item 1 of Schedule 'B' of the plaint, which had not been allotted to him under the award.

8. The plaintiffs' case, as laid in the plaint, was that since the dwelling house belonging to the deity had a large number of rooms the trustees allowed temporarily the sons and grandsons of Durga Chorone to occupy and use for their families some of the rooms in the said dwelling house as licensees. It was further alleged that in the year 1958, the defendant illegally and forcibly occupied room Nos. 63, 35, 46 and 57 in the aforesaid house without the knowledge and consent of the trustees causing serious inconvenience in the due performance of the religious ceremonies of the deity according to the terms of the will. It was further contended somewhat inconsistently that the dwelling house at Chandernagore being absolute debutter belonging to the deity, no person, except the trustees, has any legal right in the said house which can only be used for the sewa puja of the family deity located in the house; that the arbitration award of 1934 is not binding on the deity and/or the trustees who were not parties to that arbitration; that the award was beyond the scope of the reference and was adverse to the Trust, itself.

9. In his written statement the defendant traversed the material allegations in the plaint and asserted that he was in use and occupation of the rooms in dispute in his own right as a shebait. He further pleaded that the plaintiffs had no right to represent the deity and had no locus standi to maintain the

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suit as trustees; that since all the Shebaits had not been joined as parties, the suit was incompetent.

10. The Subordinate Judge dismissed the suit, holding, inter alia, that:

(i) By his will, Babu Durga Chorone had absolutely dedicated the property in dispute to the family deity, Sree Sree Iswar Sridhar Jiew, but he had not, under that will, made any testamentary disposition of his shebaiti rights in respect of this debutter property which, on the death of the testator, devolves under Hindu Law upon his descendants, who in consequence, were entitled to reside in the house as shebaits.

(ii) The trustees were not shebaits. Only the descendants of Babu Durga Chorone had become shebaits and had shebaiti right in the endowed property.

(iii) The award made by the arbitrator, Bhringeswar Sreemany, was valid and binding upon the plaintiffs.

(iv) The plaintiffs could not recover possession from the defendant as trustees.

(v) The plaintiffs were not entitled to represent the deity and had no locus standi as trustees to maintain the suit on behalf of the deity.

(vi) the defendant had a right to occupy the rooms in suit as co-shebaits.

(vii) The plaintiffs having not claimed any relief in terms of the arbitration award, were not entitled to any relief in respect of room Nos. 35, 46, 57 and 63.

11. Aggrieved, the plaintiffs preferred an appeal to the District Judge, who dismissed the same and affirmed the decision of the trial Court.

12. Against the appellate decree of the District Judge, the plaintiffs carried a second appeal to the High Court at Calcutta. The Division Bench of the High Court, by its judgment dated July 21, 1969, allowed the appeal in part, and granted the plaintiffs a decree for Khas possession of room Nos. 35, 46, 57 and 63 in the said dwelling house; but not in respect of room Nos. 72 and 82 mentioned as item 1 of Schedule 'B' to the plaint.

13. After obtaining the certificate under Article 133(1)(b) of the Constitution, as it then stood, the plaintiffs have filed Civil Appeal 1873 of 1970 against the partial dismissal of their claim in respect of room Nos. 72 and 82, while the defendant has filed Civil Appeal 1874 of 1970, praying that the plaintiffs' suit ought to have been dismissed in respect of room Nos. 35, 46, 57 and 63 also. Both the appeals will be disposed of by this common judgment.

14. The following pedigree table which has been compiled from the material on record by the learned Counsel for the appellant, will be helpful in understanding the relationship of the parties and other connected facts:

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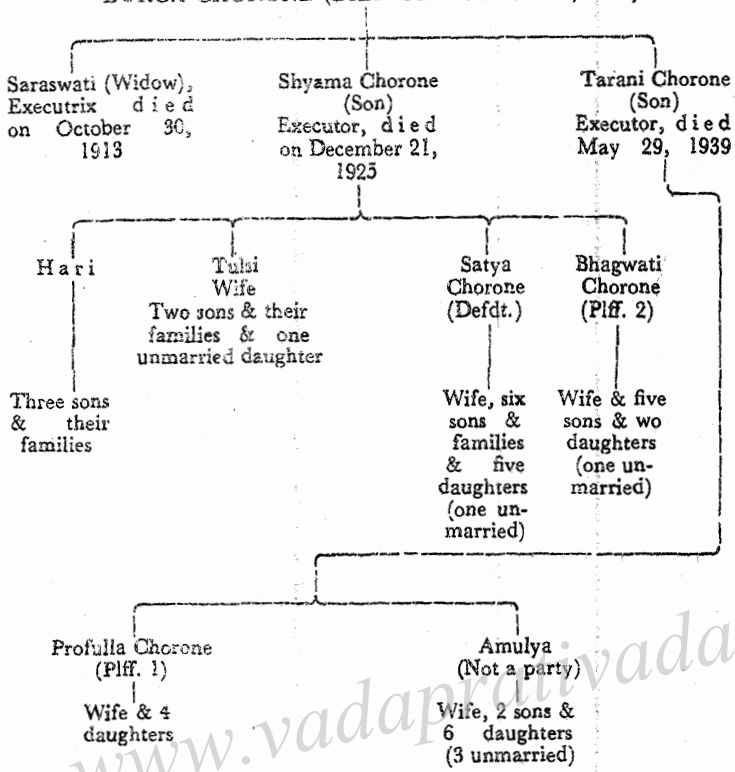
DURGA CHORONE (DIED ON AUGUST 27, 1898)



15. The principal question that falls to be determined in these appeals is, whether the settlor had constituted the same set of persons as shebait as well as trustees. This question turns on a construction of the will.

16. Mr. Lal Narain Sinha, learned Counsel for the appellant in Civil Appeal 1873 of 1970, submits that the answer to this question must be in the affirmative because the settlor, Durga Chorone Requitte had by express words in the will (Ex. 6/6A), dated June 6, 1898, imposed an obligation on the trustees to hold, manage and use the suit property which he had thereby dedicated to the family idol, for the service and worship of the idol. It is maintained that although the word 'shebait' is not used in the will, yet the said obligation cast on the trustees by inevitable implication, clothed them with the character of shebaits, also.

17. As against this, Mr. Ashok Sen contends that the answer to the question posed must be in the negative. It is urged that the words "to hold, retain and use the premises . . . for the service and worship of my family deity", on which Mr. Sinha's argument rests, do not necessarily mean that the

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testator had disposed of his shebaitship rights, also, and vested them in the trustees. It is stressed that there are no words in the will which, expressly or by necessary implication constituted the trustees as shebaits; that the testator has not used the word 'shebait' anywhere in the will; nor did he employ the word 'manage' or 'manager' anywhere in the will while charging the trustees to hold and use the premises as debutter property of the idol. According to the learned Counsel, if the will is construed as a whole in the light of the surrounding circumstances, it would be clear that the trust created was not a continuing trust but one which would terminate as soon as the executor-trustees handed over the bequeathed properties to the beneficiaries. It is pointed out that the two wills, one dated June 4, 1898, and the other dated June 6, 1898, should be read as complementary to each other. The necessity of executing two separate wills arose, because the properties bequeathed by the will (Ex. 6) were situated in the then French territories while those covered by the will dated June 4, 1898, were situated in British India. There were several beneficiaries under these wills, and the family idol was one of them. The recitals in these wills — according to the counsel — particularly in the will dated June 4, 1898, show that the testator had kept, intact, the right of residence of his widow and daughters-in-law and other heirs in the property dedicated to the idol. This, says Mr. Ashok Sen, is a sure indication of the fact that the founder did not want to part with his shebaiti rights, which were heritable property, in favour of the trustees, to the exclusion of his natural heirs under Hindu Law.

18. Mr. D. B. Mukherjee, appearing for the appellants in Civil Appeal 1874 of 1970, further submitted that the words "to hold, retain and use the premises as endowed or debutter property for the service and worship of my family deity", if properly construed in the context of the will as a whole and surrounding circumstances, mean that the executors and trustees would hold the property in trust for the benefit of the deity and the shebaits. In the alternative, Counsel submitted that even if it is assumed arguendo, that they were so appointed, the line of succession set out in the will would be hit by the principles laid down in **Tagore** v. **Tagore**[1]; **Ganesh Chunder** v. **Lal Behary**[2]; **Jagadindra** v. **Rani Hemanta Kumari**[3]; and by the rule against perpetuities (**Manohar** v. **Bhupendra**[4]). It is further contended that since the founder did not dispose of the shebaitship but only founded the worship of the Thakur, shebaitship would vest in the heirs of the founder. For this proposition, reliance has been placed on **Gossamee Shree Greedharreejee** v. **Ramanlaljee**[5].

19. In reply to this, Mr. Sinha submits that trusteeship with power to nominate successor is an estate recognised by law, and in such a case the founder does not create an estate of inheritance contrary to Hindu Law of Succession, nor does the question of the rule of perpetuity arise because the founder does not determine the choice of the succeeding trustees. Reference has been made in this behalf to ILR 24 Madras 219, and Underhill's treatise on "Trusts", 12th Ed. pp. 534-35 at 23-31. It is maintained that the trust in question is a continuing trust; it did not come to an end when the trustees

1. 1 IA Supp 47
2. 63 IA 448: AIR 1936 PC 318
3. 31 IA 203: ILR 32 Cal 329; 8 Bom LR 765
4. 60 Cal 452: AIR 1932 Cal 791
5. 16 IA 137: ILR 17 Cal 3

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had fully performed their duties and obligations as executors of the will, that the general principle underlying Section 77 of the Trust Act is applicable to the case in hand. It is further submitted that of the two wills, the later must prevail and reference to the earlier will, for the purpose of determining whether the heirs of the settlor had been given a right of residence in the suit property, is irrelevant.

20. Before dealing with these contentions, it will be appropriate to have a clear idea of the concept, the legal character and incidents of shebaitship. Property dedicated to an idol vests in it in an ideal sense only; ex necessitas, the possession and management has to be entrusted to some human agent. Such an agent of the idol is known as shebait in Northern India. The legal character of a shebait cannot be defined with precision and exactitude. Broadly described, he is the human ministrant and custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property. As regards the administration of the debutter, his position is analogous to that of a trustee; yet, he is not precisely in the position of a trustee in the English sense, because under Hindu Law, property absolutely dedicated to an idol, vests in the idol, and not in the shebait. Although the debutter never vests in the shebait, yet, peculiarly enough, almost in every case, the shebait has a right to a part of the usufruct, the mode of enjoyment, and the amount of the usufruct depending again on usage and custom, if not devised by the founder.

21. As regards the service of the temple and the duties that appertain to it, he is rather in the position of the holder of an office; but even so, it will not be quite correct to describe shebaitship as a mere office. "Office and property are both blended in the conception of shebaitship". Apart from the obligations and duties resting on him in connection with the endowment, the shebait has a personal interest in the endowed property. He has, to some extent, the rights of a limited owner.

22. Shebaitship being property, it devolves like any other species of heritable property. It follows that, where the founder does not dispose of the shebaiti rights in the endowment created by him, the shebaitship devolves on the heirs of the founder according to Hindu Law, if no usage or custom of a different nature is shown to exist. [**Gossamee Shree Greedharreejee** v. **Ramanlaljee** (supra).]

23. Then, there is a distinction between a public and private debutter. In a public debutter or endowment, the dedication is for the use or benefit of the public. But in a private endowment, when property is set apart for the worship of a family idol, the public are not interested. The present case is one of a private debutter. The distinction is important, because the results logically following therefrom have been given effect to by courts, differently.

24. According to English law, the beneficiaries in a private trust, if sui juris and of one mind, have the power or authority to put an end to the trust or use the trust fund for any purpose and divert it from its original object. Whether this principle applies to a private endowment or debutter created

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under Hindu Law, is a question on which authorities are not agreed. In **Doorganath Roy** v. **Ram Chunder Sen**[6], it was observed that while the dedication is to a public temple, the family of the founder could not put an end to it, but "in the case of a family idol, the consensus of the whole family might give the (debutter) estate another direction" and turn it into a secular estate.

25. Subsequently, in **Pramatha Nath Mullick** v. **Pradhyumna Kumar Mullick**[7], the Judicial Committee clarified that the property cannot be taken away from the idol and diverted to other purposes without the consent of the idol through its earthly agents who, as guardians of the deity, cannot in law consent to anything which may amount to an extinction of the deity itself.

26. Although, shebaitship is heritable property, yet, it cannot be freely transferred by the shebait. But there are exceptions to this general rule. Some of such exceptions recognised in several decisions are: alienation in favour of next shebait, or one in favour of the heir of the transferor, or in his line of succession, or in favour of a co-shebait, particularly when it is not against the presumed intention of the founder. See **Nirode Mohini** v. **Shiba Das**[8] and **Mancharam** v. **Pranshankar**[9].)

27. The Bombay High Court has also pointed out in **Raghunath** v. **Purnanand**[10], that if any one of the shebaits intends to get rid of his duties, the proper thing for him to do would be to surrender his office in favour of the remaining shebaits. In the case of such a transfer in favour of co-shebait, no policy of Hindu law is likely to be affected, much less the presumed intentions of the founder.

28. Now, let us deal with the problem in hand in the light of the principles cited above.

29. The first question that falls for determination is: Whether the founder's intention was to confer rights of shebaitship on the persons designated by him as 'trustees' in his will? In other words, did he by the will, dated June 6, 1898 (Ex. 6/6A), dispose of the shebaitship of the deity, also? If the answer to this question is found in the negative, shebaiti rights in this endowed property will devolve, according to Hindu law, on all the heirs of the founder, including the defendant. In that situation, the defendant with his family, like the other co-shebaits, will be taken as residing in the **debutter property**, in his own right. If, however, the answer to the said question is found in the affirmative, the further question to be considered would be with regard to the effect of the award dated June 29, 1934 (Ex. C), on the respective claims of the parties.

30. We will now take up the first question.

31. Mr. Sinha, learned Counsel for the appellants, submits that since by his will, dated June 6, 1898, the founder had "devised and bequeathed"

6. LR 4 IA 52: ILR 2 Cal 233
7. 52 IA 245: AIR 1925 PC 139
8. ILR 36 Cal 975: 13 CWN 1084: 3 IC 76
9. ILR 6 Bom 298: 6 Ind Jur 426
10. ILR 47 Bom 529: AIR 1923 Bom 358

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the Chandernagore house to the plaintiff-trustees "upon trust to stand possessed of" and "to hold, retain and use the premises an endowed or debutter property for the worship of the family Thakur", his intention was to constitute the trustees as shebaits of the property having the exclusive right to manage the debutter, to serve the idol and to preserve its property. It is submitted that the founder had by these express words, invested the trustees both with the legal title and shebaitship, although the beneficial title (in an ideal sense) was vested in the idol.

32. The passage in the will on which Mr. Sinha relies for the construction propounded by him runs as under:

> I desire, devise and bequeath to my Executors and Executrix and Trustees hereinafter named . . . my dwelling house with garden and tanks appertaining thereto situate in Lal Bagan in Chandernagore. Upon trust to stand possessed of and **to hold, retain and use the premises an endowed or debutter property for the service and worship of my family Thakur or idol Shreedhar Jiew,** which thereby direct shall be located in my said house in Chandernagore which said house and premises shall be appropriated and devoted solely and exclusively to the Thakur or Idol. (emphasis supplied)

33. The crucial words are those that have been underlined*.

34. It may be observed that this will, in English, appears to have been drafted in pursuance of legal advice by an expert draftsman. The omission of the words "management", "manager", "custodian of the idol" or "ministrant of the idol" from the will, therefore, cannot but be intentional.

35. It seems clear to us that the underlined* words in the above extract, by themselves, merely create a trust or endowment and indicate the nature and purpose of the endowment. These words do not touch or deal with shebaiti rights. This inference receives support from the surrounding circumstances.

36. Further, in arriving at the true import of the words "to hold, retain and use the premises an endowed or debutter property for the service and worship of my family Thakur", it will not be improper to look to the conduct of the trustees and the members of the family of the founder.

37. There is no antagonism between the two wills, one dated June 4, 1898, and the other dated June 6, 1898, of the founder. Indeed, in a sense, they are complementary to each other. There is a reference in the will, dated June 4, 1898, to the testator's dwelling house at Chandernagore, which under the will (Ex. 6) was endowed to the family deity. From the following provisions in the will, dated June 4, 1898, it is clear that the testator intended that the dwelling house at Chandernagore would be used by his heirs for their residence:

> (a) I further direct my said Executors and Trustees out of the said rents and profits of the said premises number 39, Chowringhee Road to pay monthly a sum of Rupees Fifty for the maintenance to each of my daughter-in-law Smt. Gopeswari Dassee wife of my eldest son Shyama

*Herein given in bold.

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Chorone Requittee and Nagendra Moni Dassee wife of youngest son Tarani Chorone Requitte during their lives respectively and provided they reside with their respective husbands at my dwelling house in Chandernagore.

(b) The Trustees shall pay monthly a sum not exceeding Rupees Two hundred, in addition to the interest of Government securities of the nominal value of Rupees Twenty thousand hereinafter mentioned and directed to be applied for the purpose of household and other monthly expenses of my family, namely, wife and sons and sons' wives and other relatives of mine who shall reside in my dwelling house at Chandernagore.

(c) To pay and apply the net interest of Government securities on the nominal value of Rupees Twenty thousand for the household and other monthly expenses of my family, namely, wife and sons and also sons' wives and other relatives of mine who shall reside in my family dwelling house at Chandernagore and also to pay and apply the net interest of Government securities of the nominal value of Rupees Six thousand for the costs and expenses of keeping and maintaining my said family dwelling house at Chandernagore in proper repair and in payment of all taxes and assessments in respect thereof.

(emphasis supplied)

38. Looking to the general tenor of the document, it will not be inappropriate to interpret the words "wife, and sons, and sons' wives, and other relatives of mine" in the above-quoted portions of the will, as including all the descendants and heirs of the testator.

39. Thus construed conjointly, the two wills make it clear that although the entire family house, comprising 84 or 85 rooms, at Chandernagore was formally endowed to the family idol, yet the testator's intention was that his heirs and descendants would also be entitled to use this house as their family dwelling house, apart from the room wherein the idol was enshrined.

40. It may be further noted that in the will dated June 4, 1898, the testator made the following provisions for the sewa puja of the idol at Chandernagore and for other religious festivals:

(i) The trustees shall set apart interests of Government securities for the daily expenses of worship of the idol.

(ii) The trustees shall pay and apply the net interest of Government securities of the nominal value of Rs.25,000 for the yearly expenses of the Durga Puja festival at Chandernagore.

(iii) The trustees shall pay and apply the net interest of Government securities of the nominal value of Rs.15,000 for the yearly expenses of the Dolejatra of the family idol, Thakur Sreedhar Jiew at Chandernagore.

41. The aforesaid provisions further show that although the trustees were provided with the funds for the sewa puja of the family deity and for other festivals out of the estate left by the testator, but they were not expressly

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constituted as shebaits of the deity. It will, therefore, be not unreasonable to infer that the intention of the testator was that these funds would be expended for the purposes indicated by him, through the shebaits.

42. Another telling circumstance appearing in evidence is that after the death of the widow and the two sons of the testator, their heirs, also, continued to live in this family dwelling house at Chandernagore.

43. It may be further noted that by the will dated June 6, 1898, no legal title in the endowed property was vested in the trustees. The title was expressly vested in the family idol to whom the property was absolutely dedicated. The testator did not create a trust estate in the sense in which it is understood in English law.

44. The above-quoted provisions from the wills further show that no rights to act as ministrant of the idol were conferred upon the trustees. On the other hand, a mere obligation to hold and use the property for the endowment indicated was imposed upon the persons designated as 'trustees'.

45. Reading the two wills together, with particular focus on the provisions extracted in this judgment, it is clear that the testator, Durga Chorone Requitte, did leave shebaitship undisposed of, presumed intention being that shebaitship should devolve on his natural heirs who would have a right to use the suit house as their family dwelling house. The rights conferred on the trustees under the will may, at the most, amount to a curtailment of the right to manage the endowed property which a shebait would otherwise have. But such curtailment by itself would not make the ordinary rules of succession in Hindu law inapplicable in regard to the devolution of shebaitship, which is heritable property.

46. The upshot of the above discussion is that in spite of the interposition of the trust for management of the endowed property, the shebaitship remained undisposed of, and, as such, the defendant and other descendants of Durga Chorone Requitte became co-shebaits of the deity by the operation of the ordinary rules of Hindu law.

47. In arriving at the conclusion that in spite of the interposition of the trust, the founder by his will left the shebaitship undisposed of, and as such, the defendant also, under Hindu law, became one of the shebaits, we are fortified by the inference arising out of the facts admitted by no less a witness than plaintiff 3, Satish Chandra Dass, himself, who alone deposed for the plaintiffs. Though he claimed that there were no shebaits of the deities and the trustees were managing the shebas, he categorically admitted the following facts:

(a) "The disputed house is a big house", having 84-85 rooms. "It is the only family dwelling house" of the sons and grandsons of Durga Chorone Requitte, who live in it, while "the deity is installed in room 56 in the first floor".

(b) The inmates of the disputed house, as far as practicable, look after the bath of the deity as also the preparation of Naibedya (tray containing the offerings) and Bhog (food) of the deity.

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48. Thus even according to the plaintiffs-appellants, only the descendants and heirs of the founder, who live in the endowed house, have throughout been acting as ministrants of the family idol, which, as already noticed, is one of the vital characteristics of a shebait. In other words, the sons and the descendants of Durga Chorone Requitte, alone, have throughout been acting as co-shebaits of the family deity, to the exclusion of the 'trustees' who were not his descendants.

49. The first two courts were, therefore, right in holding that the shebaiti rights remained with the heirs of the founder.

50. Assuming for the sake of argument, that the 'trustees' were also vested with the rights and obligations of a shebait, then also, the evidence on the record shows that those trustees who were not descendants of the founder, Durga Chorone Requitte, never acted as such. They went out of the picture long ago and must be presumed to have renounced their shebaiti rights in favour of their co-shebaits who were descendants of the founder. It is in evidence that in 1934, a dispute arose among the descendants of the founder with regard to the accommodation in their residential occupation. Thereupon, the trustees agreed with the descendants of the founder by means of the agreement (Ex. E) to refer the dispute to the sole arbitration of Shri Bhringeswar Sreemany. The arbitrator, inter alia, held that the heirs of late Durga Chorone Requitte and his descendants alone had the right to act as shebaits. There is documentary evidence on the record to show that this award (Ex. G) given by the arbitrator was accepted by the 'trustees'. The present plaintiffs-appellants, by their letter dated June 18, 1950 (Ex. A/7), asserted their rights on the basis of this award and described the defendant-respondent as shebait of the deity. The letters (Exs. A-8 and A-10) also point to the same conclusion.

51. Thus, even if it is assumed that originally, the trustees were regarded as having been constituted as shebaits, then also, those among them who were not family members of descendants of the founder, renounced and relinquished their shebaiti rights, if any, in favour of the descendants of the founder. Such a relinquishment made in favour of the co-shebaits, will be valid.

52. From whatever angle the matter may be looked at, the conclusion is inescapable that shebaitship of the family deity remained solely with the descendants of the founder; and the defendant-respondent who is admittedly a grandson of the founder had been regarded as one of the shebaits, and as such, entitled to reside in the disputed rooms. All the shebaits were therefore, necessary parties; but all of them have not been impleaded. The trustees by themselves, have no right to maintain the suit in respect of the debutter property, the legal title to which vests in the idol, and not in the trustees. The right to sue on behalf of the deity vests in the shebaits. All the shebaits of the deity not having been made parties, the suit was not properly constituted, and was liable to be dismissed on this score alone.

53. In the view we take, it is not necessary to decide whether the 'trust' created by the will of Durga Chorone Requitte was a continuing trust or not, or whether the mode of devolution of the office of trustees indicated by the founder in his will, was or was not hit by the rule in **Tagore** v. **Tagore** (supra).

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54: For the foregoing reasons, we allow the defendant's appeal (Civil Appeal 1874 of 1970), set aside the judgment of the High Court, and dismiss the plaintiffs' suit. In the result, Civil Appeal 1873 of 1970 filed by the plaintiffs, ipso facto fails, and is dismissed. In the circumstances of the case, there will be no order as to costs.

(1979) 3 Supreme Court Cases 423
1979 SCC (Cri) 523

(BEFORE S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.)

ANANTA MOHANTA .. Appellant;

Versus

STATE OF ORISSA .. Respondent.

Criminal Appeal No. 327 of 1974, decided on March 22, 1979

Criminal Procedure Code, 1973 — Sections 378 and 384 — Reversal of acquittal by the High Court justified where the trial Court after reaching a clear finding on the reliability of the prosecution witnesses disbelieved them on the basis of surmises and conjectures and for reasons wholly untenable in law (Para 1)

Criminal Trial — Witnesses — Related — If the witnesses related to the deceased are reliable and true, failure to examine independent witnesses not fatal (Para 2)

Criminal Trial — Weapons and Wounds — Failure to send the axe used for committing the murder for confirming that the blood was human blood, held, not fatal to the conviction if other reliable evidence available (Para 2)

Appeal dismissed M/4358/[S]R

The Judgment of the Court was delivered by

Fazal Ali, J.—In this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, the trial Court acquitted the appellant of the charges under Section 302 but the State filed an appeal to the High Court and the High Court reversed the order of acquittal of the appellant and convicted the appellant under Section 302, IPC, and sentenced him to imprisonment for life. We have gone through the judgment of the High Court and the learned Sessions Judge and we find ourselves in complete agreement with the view taken by the High Court. The approach made by the Sessions Judge was manifestly wrong and absolutely perverse. The High Court has pointed out in its judgment that the Sessions Judge came to a clear finding that the witnesses examined in the case, i.e. PWs 1, 2, 3 and 4 were reliable and nothing was elicited from their cross-examination which may go to discredit their testimony. In spite of this clear finding the learned Sessions Judge appears to have disbelieved the witnesses mainly on the basis of surmises and conjectures and for reasons which are wholly untenable in law. In the circumstances, the High Court was fully justified in reversing the finding of the trial Court.

2. The conviction of the appellant is based on the evidence of PWs 1, 2 and 4 before whom the deceased has made an oral dying declaration that he was killed by the appellants. It is true that these witnesses are close relations

petitioner of its products was much higher than the control price which included elements of SDF. While the collection and remittance to SDF has been discontinued w.e.f. April 1994, the petitioner made its claim for the first time in 1999 which would appear to be rather incongruous. It is submitted that the claim made by the petitioner is not bona fide and the writ petition has been filed with ulterior motives, which are not difficult to fathom. SAIL had stressed immediate need for restructuring and modernising all the main steel plants. Due to recession, SAIL has been passing through a severe financial position and has to suffer a loss of Rs 1574 crores in 1998-99. It has further to suffer the burden of interest to the tune of Rs 2017 crores per annum for modernisation. In the aforesaid circumstances, the petitioner does not have any right to claim any relief in the writ petition pertaining to utilisation of SDF. It is quite apparent that from the very nature of the creation of SDF, the manner of remittance to SDF and purpose of its utilisation, it is a fund created ultimately for the utilisation by the member steel producers only.

14. We do not think it is a fit case where this Court in the exercise of its powers under Article 136 of the Constitution of India should grant leave to appeal from the impugned judgment of the High Court. Leave to appeal is refused. Special leave petition is dismissed.

(2000) 4 Supreme Court Cases 146

(BEFORE M. JAGANNADHA RAO AND A.P. MISRA, JJ.)

SHIROMANI GURDWARA PRABANDHAK COMMITTEE, AMRITSAR .. Appellant;

Versus

SOM NATH DASS AND OTHERS .. Respondents.

Civil Appeal No. 3968 of 1987† with SLPs (C) Nos. 2735-36 of 1989, decided on March 29, 2000

A. Jurisprudence — Juristic person — Meaning and concept of — How created — Legal status of such juristic person — Religious endowment for gurdwara — Guru Granth Sahib installed in a gurdwara — Held, a juristic person — It replaced the Guru after the tenth Guru and is worshipped by Sikhs as a living Guru — It cannot be equated either with any other sacred book such as Geeta, Bible or Quran or with an idol — Gurdwara and Guru Granth Sahib are not two separate juristic persons but one integrated whole — Status of Guru Granth Sahib as a juristic person is not affected merely because of non-appointment of a manager for acting on its behalf — Sikh Gurdwaras Act, 1925, Ss. 2(12), 7, 8, 10 and 25-A — Civil Procedure Code, 1908, S. 92 — General Clauses Act, 1897, S. 3(42) — Words and Phrases — "juristic person", "endowment" — Trusts — Religious and charitable endowments

† From the Judgment and Order dated 19-4-1985 of the Punjab and Haryana High Court in FAO No. 449 of 1978

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B. Trusts — Religious and charitable endowments — Once an endowment is made it never reverts to the donor

Held :

"Guru Granth Sahib" is a "juristic person". (Para 42)

The very words "juristic person" connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person. Essentially, every human person is a person. However, for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living, inanimate, object or thing. It may be a religious institution or any such useful unit which may impel the courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. (Para 11)

Roscoe Pound's Jurisprudence, Part IV, 1959 Edn., pp. 192-93; *Corpus Juris Secundum*, Vol. LXV, p. 40; *Corpus Juris Secundum*, Vol. VI, p. 778; *Salmond on Jurisprudence*, 12th Edn., p. 305; *Jurisprudence by Paton*, 3rd Edn., pp. 349 and 350; *Analytical and Historical Jurisprudence*, 3rd Edn., p. 357, *relied on*

A "juristic person" is not roped in any defined circle. With the changing thoughts, changing needs of the society, fresh juristic personalities were created from time to time. (Para 28)

When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, maybe for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of a juristic person when it is recognised by the society as such. Each religion has a different nucleus, as per its faith and belief, for treating any entity as a unit.

(Paras 19 and 30)

Sarangadeva Periya Matam v. *Ramaswami Goundar*, AIR 1966 SC 1603; *Deoki Nandan* v. *Murlidhar*, AIR 1957 SC 133; *Som Prakash Rekhi* v. *Union of India*, (1981) 1 SCC 449 : 1981 SCC (L&S) 200; *Yogendra Nath Naskar* v. *CIT*, (1969) 1 SCC 555, *relied on*

Masjid Shahid Ganj v. *Shiromani Gurdwara Parbandhak Committee*, AIR 1938 Lah 369 (FB), *approved*

Manohar Ganesh Tambekar v. *Lakhmiram Govindram*, ILR (1888) 12 Bom 247; *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra*, ILR (1909-10) 37 Cal 128 : 14 CWN 18; *Board of Commrs. for the Hindu Religious Endowments* v. *Parasaram Veeraraghavacharlu*, AIR 1937 Mad 750 : (1937) 2 MLJ 368, *cited*

When belief and faith of two different religions are different, there is no question of equating one with the other. It is not necessary for "Guru Granth Sahib" to be declared as a juristic person that it should be equated with an idol. If "Guru Granth Sahib" by itself could stand the test of its being declared as such, it can be declared to be so. (Para 29)

In the Sikh religion, the Guru is revered as the highest reverential person. It is said that Adi Granth or Guru Granth Sahib was compiled by the fifth Guru

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Arjun. The last living Guru, Guru Gobind Singh, expressed in no uncertain terms that henceforth there would not be any living Guru. The Guru Granth Sahib would be the vibrating Guru. He declared that "henceforth it would be your Guru from which you will get all your guidance and answer". It is with this faith that it is worshipped like a living Guru. It is with this faith and conviction, when it is installed in any gurdwara it becomes a sacred place of worship. Sacredness of the gurdwara is only because of placement of Guru Granth Sahib in it. This reverential recognition of Guru Granth Sahib also opens the hearts of its followers to pour their money and wealth for it. It is not that it needs it, but when it is installed, it grows for its followers, who through their obeisance to it, sanctify themselves and also for running the *langer* which is an inherent part of a gurdwara. (Paras 31 and 33)

Pritam Dass Mahant v. *Shiromani Gurdwara Prabandhak Committee*, (1984) 2 SCC 600, *relied on*

Khushwant Singh: *A History of the Sikhs*, Vol. I, p. 307, *relied on*

In this background and on overall considerations it must be held that "Guru Granth Sahib" is a "juristic person". It cannot be equated with an "idol" as idol worship is contrary to Sikhism. As a concept or a visionary for obeisance, the two religions are different. Yet, for its legal recognition as a juristic person, the followers of both the religions give them respectively the same reverential value. Thus the Guru Granth Sahib has all the qualities to be recognised as such. Holding otherwise would mean giving too restrictive a meaning of a "juristic person", and that would erase the very jurisprudence which gave birth to it. (Para 34)

The view that a juristic person could only act through someone, a human agency and as in the case of an idol, the Guru Granth Sahib also could not act without a manager is erroneous. No endowment or a juristic person depends on the appointment of a manager. It may be proper or advisable to appoint such a manager while making any endowment but in its absence, it may be done either by the trustees or courts in accordance with law. The property given in trust becomes irrevocable and if none was appointed to manage, it would be managed by the "court as representing the sovereign". This can be done by the court in several ways under Section 92 CPC or by handing over management to any specific body recognised by law. But the trust will not be allowed by the court to fail. Endowment is when the donor parts with his property for it being used for a public purpose and its entrustment is to a person or group of persons in trust for carrying out the objective of such entrustment. Once endowment is made, it is final and it is irrevocable. It is the onerous duty of the persons entrusted with such endowment, to carry out the objectives of this entrustment. They may appoint a manager in the absence of any indication in the trust or get it appointed through court. So, if entrustment is to any juristic person, mere absence of a manager would not negate the existence of a juristic person. (Para 35)

Manohar Ganesh Tambekar v. *Lakhmiram Govindram*, ILR (1888) 12 Bom 247; *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami*, ILR (1903-05) 27 Mad 435, 457, *approved*

Yogendra Nath Naskar v. *CIT*, (1969) 1 SCC 555, *relied on*

Words and Phrases, Permanent Edition, Vol. 14-A, p. 167, *referred to*

Further, gurdwara and Guru Granth Sahib cannot be treated as two juristic persons and so it is not correct to say that these two could not be there in the same building. In fact both are so interwoven that they cannot be separated. The

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installation of "Guru Granth Sahib" is the nucleus or nectar of any gurdwara. If there is no Guru Granth Sahib in a gurdwara it cannot be termed as a gurdwara. When one refers a building to be a gurdwara, he refers to it so only because Guru Granth Sahib is installed therein. Even if one holds a gurdwara to be a juristic person, it is because it holds the "Guru Granth Sahib". So, there do not exist two separate juristic persons, they are one integrated whole. (Para 37)

Ram Jankijee Deities v. *State of Bihar*, (1999) 5 SCC 50, *relied on*

Again the view that if Guru Granth Sahib is a "juristic person" then every copy of Guru Granth Sahib would be a "juristic person" is based on an erroneous approach. An "idol" becomes a juristic person only when it is consecrated and installed at a public place for the public at large. Every "idol" is not a juristic person. So every Guru Granth Sahib cannot be a juristic person unless it takes a juristic role through its installation in a gurdwara or at such other recognised public place. (Para 38)

As regards the particular Gurdwara in question it was contended that the basis for mutating of the name of "Guru Granth Sahib Barajman Dharamshala Deh", by deleting the name of the ancestors of the respondents, based on farman-e-shahi issued by the then Ruler of the Patiala State dated 18-4-1921 is liable to be set aside, as this farman-e-shahi did not direct the recording of the name of "Guru Granth Sahib". It is not possible to accept this contention on facts. The mutation of name was not because of direction issued by the farman-e-shahi. So no error could be said to have been committed, when mutations were recorded. The farman-e-shahi if at all may be said to have led to the inquiry but it was not the basis. (Paras 43 and 45)

Examining the merits it is found that the mutation in the revenue papers in the name of Guru Granth Sahib was made as far back as in the year 1928, in the presence of the ancestors of the respondents and no objection was raised by anybody till the filing of the present objection by the respondents as aforesaid under Sections 8 and 10 of the 1925 Act. This is after a long gap of about forty years. Further, this property was given in trust to the ancestors of the respondents for a specified purpose but they did not perform their obligation. It is also settled that once an endowment it never reverts even to the donor. Then no part of these rights could be claimed or usurped by the respondent's ancestors who in fact were trustees. Hence even on merits, any claim to the disputed land by the respondents has no merit. Thus, any claim over this disputed property by the respondents fails and is hereby rejected. (Para 47)

R-M/ATZ/22422/Corr-20/C

Suggested Case Finder Search Text (*inter alia*) :

juristic near person*

Advocates who appeared in this case :

M.S. Gujral, Ujagar Singh, Harbans Lal, Hardev Singh, Ms Madhu Moolchandani, Ms B.K. Brar, Ms Shobha, S.K. Mehta, Ashok Kr. Mahajan, A.V. Palli, Ms Rekha Palli, P.N. Puri, Atul Sharma, D.D. Sharma, Dhurv Mehta, Aman Vachher, D.P. Sharma, Narinder Singh, R.K. Aggarwal, Advocates, for the appearing parties.

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4. (1969) 1 SCC 555, *Yogendra Nath Naskar* v. *CIT* 160*a*, 164*e*, 164*e-f*
5. AIR 1966 SC 1603, *Sarangadeva Periya Matam* v. *Ramaswami Goundar* 158*f*
6. AIR 1957 SC 133, *Deoki Nandan* v. *Murlidhar* 159*b*
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8. AIR 1937 Mad 750 : (1937) 2 MLJ 368, *Board of Commrs. for the Hindu Religious Endowments* v. *Parasaram Veeraraghavacharlu* 159*d*
9. ILR (1909-10) 37 Cal 128 : 14 CWN 18, *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra* 159*b*, 159*d-e*
10. ILR (1903-05) 27 Mad 435, 457, *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami* 164*e*
11. ILR (1888) 12 Bom 247, *Manohar Ganesh Tambekar* v. *Lakhmiram Govindram* 160*a-b*, 164*e*

The Judgment of the Court was delivered by

MISRA, J.— The question raised in this appeal is of far-reaching consequences and is of great significance to one of the major religious followers of this country. The question is whether "the Guru Granth Sahib" could be treated as a juristic person or not. If it is, then it can hold and use the gifted properties given to it by its followers out of their love, in charity. This is by creation of an endowment like others for public good, for enhancing the religious fervour, including feeding the poor etc. Sikhism grew because of the vibrating divinity of Guru Nanakji and the 10 succeeding Gurus, and the wealth of all their teachings is contained in "Guru Granth Sahib". The last of the living Guru was Guru Gobind Singhji who recorded the sanctity of "Guru Granth Sahib" and gave it the recognition of a living Guru. Thereafter, it remained not only a sacred book but is reckoned as a living Guru. The deep faith of every earnest follower, when his pure conscience meets the divine undercurrent emanating from their Guru, produces a feeling of sacrifice and surrender and impels him to part with or gift out his wealth to any charity maybe for gurdwaras, dharamshalas etc. Such parting spiritualises such follower for his spiritual upliftment, peace, tranquillity and enlightens him with resultant love and universalism. Such donors in the past, raised a number of gurdwaras. They gave their wealth in trust for its management to the trustees to subserve their desire. They expected the trustees to faithfully implement the objectives for which the wealth was entrusted. When selfishness invades any trustee, the core of trust starts leaking out. To stop such leakage, the legislature and courts step in. This is what was happening in the absence of any organised management of gurdwaras, when trustees were either mismanaging or attempting to usurp such trusts. The Sikh Gurdwaras and Shrines Act, 1922 (6 of 1922) was enacted to meet the situation. It seems, even this failed to satisfy the aspirations of the Sikhs. The main reason being that it did not establish any permanent committee of management for Sikh gurdwaras and did not provide for the speedy confirmation by judicial sanction of changes already introduced by the reforming party in the management of places of worship. This was replaced

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by the Sikh Gurdwaras Act, 1925 (Punjab Act 8 of 1925) under which the present case arises. This Act provided a legal procedure through which gurdwaras and shrines regarded by Sikhs as essential places of Sikh worship were to be effectively and permanently brought under Sikh control and management, so as to make it consistent with the religious followings (*sic* feelings) of this community.

2. About 56 persons of Villages Bilaspur, Ghodani, Dhamot, Lapran and Buani situated in Village Bilaspur, District Patiala moved petition under Section 7(1) of the said Act for declaration that the disputed property is a Sikh gurdwara. The State Government through Notification No. 1702 GP dated 14-9-1962 published the aforesaid petition in the Gazette including the boundaries of the said gurdwaras which were to be declared as Sikh gurdwaras. Thereafter, a composite petition under Sections 8 and 10 of the said Act was filed by Som Dass, son of Bhagat Ram, Sant Ram, son of Narain Dass and Anant Ram, son of Sham Dass of Village Bilaspur, District Patiala, challenging the same. They claimed it to be a dharamshala and dera of udasian being owned and managed by the petitioners and their predecessors since the time of their forefathers and that they being the holders of the same, received the said dera in succession, in accordance with their ancestral share. They also claimed to be in possession of the land attached to the said dera. They denied it to be a Sikh gurdwara. This petition was forwarded by the Government to the Sikh Gurdwara Tribunal, hereinafter referred to as "the Tribunal". In reply to the notice, the Shiromani Gurdwara Parbandhak Committee, hereinafter referred to as "SGPC" (appellant), claimed it to be a Sikh gurdwara, having been established by the Sikhs for their worship, wherein "Guru Granth Sahib" was the only object of worship and it was the sole owner of the gurdwara property. It denied this institution to be an udasi dera. However, the appellant Committee challenged the locus standi of the respondent to file this objection to the notification. The appellant's case was that under Section 8 an objection could only be filed by any hereditary office-holders or by 20 or more worshippers of the gurdwara, which they were not. The Tribunal held that the petitioners before it (respondents here), admitted in their cross-examination that the disputed premises was being used by them as their residential house, that there was no object of worship in the premises, neither were they performing any public worship nor were they managing it. So it held that they were not hereditary office-holders, as they neither managed it nor performed any public worship. Thus, their petition under Section 8 was rejected on 9-2-1965 by holding that they have no locus standi. Aggrieved by this they filed first appeal being FAO No. 40 of 1965 which was also dismissed by the High Court on 24-3-1976, which became final. Thereafter, the Tribunal took the petition under Section 10 in which the stand of SGPC was that the land and the buildings were the properties of "Gurdwara Sahib Dharamshala Guru Granth Sahib" at Bilaspur. The respondents and their predecessors along with

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their family members had all along been its managers and they had no personal rights in it. The Tribunal framed two issues:

"(*1*) What right, title or interest have the petitioners in the property in dispute.

(2) What right, title or interest has the notified Sikh Gurdwara in the property in dispute."

3. The Tribunal decided both Issue 1 and Issue 2 in favour of the present appellants and held that the disputed property belonged to SGPC. Thus the respondents' petition under Section 10 was also rejected on 4-9-1978. The Tribunal's conclusion is reproduced hereinbelow:

"The above discussion shows that the respondent Committee has been successful in bringing its case rightly in clauses 18(1)(*a*) and 18(1)(*d*) of the Act and has been successful in discharging its onus as regards Issue 2 and the issue is, therefore, decided in favour of the respondent Committee and against the petitioners.

For the reasons given above, it is held that the petitioners have failed to prove that they have got any right, title or interest in the property in dispute and Issue 1 is decided against them and this petition is dismissed with costs. However, it is declared that the institution in dispute, namely, Gurdwara Sahib Dharamshala Guru Granth Sahib, situated in the revenue estate of Bilaspur, Tehsil Sirhind, District Patiala is the owner of the property in dispute consisting of gurdwara building, the plan of which is given in Notification No. 1702 GP dated 14-9-1968 at p. 2527 and the agricultural land measuring 115 bighas 12 biswas the details of which are given in the copy of jamabandi for the year 1955-56 AD attached to the abovesaid notification at p. 2529 and is comprised of Khasras Nos. 456 min, 457, 451, 644 and 452 bearing Khawat No. 276, Khataunis Nos. 524 to 527."

4. Aggrieved by this, the respondents filed first appeal being FAO No. 449 of 1978. During its pendency, SGPC on the basis of final order passed by the High Court in FAO No. 40 of 1965 against the order of the Tribunal rejecting the Section 8 application, filed Suit No. 94 of 1979 against the respondents under Section 25-A of the Act for the possession of the building and the land. The respondents contested the suit by raising objection about misdescription of the property in the plaint and also raising an issue about jurisdiction since the income from the gurdwara was more than Rs 3000 per annum for which a committee was to be constituted before any suit could be filed. On contest, the said suit of SGPC was decreed and the respondents' objections were rejected, against which the respondents filed FAO No. 2 of 1980. The High Court vide its order dated 11-2-1980 directed this FAO No. 2 of 1980 to be listed for hearing along with FAO No. 449 of 1978. It is also relevant to refer to, which was also stated by the respondents in their petition before the Tribunal, that a notification under Section 9 of the Act was published declaring the disputed gurdwara to be a Sikh gurdwara.

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5. It is necessary to give some more facts to appreciate the contentions raised by the respective parties. In jamabandi Ex. P-1 of 1961-62 BK, (which would be 1904 AD), Mangal Dass, Sunder Dass and Bhagat Ram, sons of Gopi Ram Faqir Udasi were mentioned as owners in possession of the land. They had also mortgaged part of this land to some other persons. This Village Bilaspur where the disputed gurdwara exists formed part of the erstwhile Patiala State. The then ruler of the Patiala State issued farman-e-shahi dated 18-4-1921. Its contents are quoted hereunder:

> "In future, instructions be issued that so long the appointment of a Mahant is not approved by Ijlas-i-khas through Deori Mualla, until the time, the Mahant is entitled to receive turban, shawl or bandhan or muafi etc. from the Government, no property or muafi shall be entered in his name in the revenue papers.
>
> It should also be mentioned that the land which pertains to any dera should not be considered as the property of any Mahant, nor the same should be shown in the revenue papers as the property of the Mahant, but these should be entered as belonging to the dera under the management of the Mahant and that the Mahants shall not be entitled to sell or mortgage the land of the dera. Revenue Department be also informed about it and the order be gazetted."

6. On Maghar 10, 1985 BK (1920 AD) at the instance of Rulia Singh and others the Patwari made a report in compliance with the aforesaid farman-e-shahi for the change of the entries in favour of "Guru Granth Sahib Barajman Dharamshala Deh". This was based on the inquiry and evidence produced before him. In this mutation proceeding which led to the mutation viz., Ex. P-8, Narain Dass, Bhagat Ram and Atma Ram Sadh appeared before the Revenue Officer and stated that their ancestors got this land which was gifted in charity (*parmarth*) by the then proprietors of the village. This land was given to the ancestors of the respondent for the purpose that they should provide food and comfort to the travellers passing through this village. In the same proceeding Kapur Singh, Inder Singh Lambardars and other rightholders of the said village also stated that their forefathers had given this land in the name of "Guru Granth Sahib Barajman Dharamshala Deh" under the charge of these persons for providing food and comfort to the travellers. But Atma Ram and others, ancestors of the respondents were not performing their duties. This default was for a purpose, which is revealed through the last settlement that they got this land entered in their personal names in the revenue records against which a matter was pending before the Deori Mualla in the mutation proceedings. Based on the evidence, the Revenue Officer after inquiry recorded the finding that Atma Ram and the others admitted that this land had been given to them without any compensation for providing food and shelter to the travellers which they were not performing. He further held that Atma Ram and the others could not controvert the aforesaid assertion made by the villagers. So, based on this inquiry and evidence on record, he ordered the mutation, in the name of "Guru Granth Sahib

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Barajman Dharamshala Deh" by deleting the name of Atma Ram and the others from the column of ownership of the land. He further observed, so far as the question of appointment of manager or Mohatmim was concerned, it was to be decided by the Deori Mualla as the case about this was pending before the Deori Mualla. Similarly, in the other Mutation No. 693 which is Ex. P-9 in 27th Maghar, 1983 (1926 AD) also, mutation was ordered by removal of the name of Narain Dass, Bhagat Ram, sons of Gopi Ram in favour of "Guru Granth Sahib Barajman Dharamshala Deh". Since that date till the filing of the petitions by the respondents under Sections 8 and 10 of the Act entries in the ownership column of the land continued in the name of "Guru Granth Sahib Barajman Dharamshala Deh" and no objection was filed either by the ancestors of the respondents or the respondents themselves.

7. It was for the first time objection was raised by the respondents through their counsel before the High Court in FAO No. 449 of 1978 regarding validity of Exs. P-8 and P-9 contending that the entry in the revenue records in the name of Guru Granth Sahib was void as Guru Granth Sahib was not a juristic person. The case of the respondents was that the Guru Granth Sahib was only a sacred book of the Sikhs and it would not fall within the scope of the word "juristic person". On the other hand, with vehemence and force learned counsel for the appellant SGPC submits that Guru Granth Sahib is a juristic person and hence it can hold property, can sue and be sued. On this question, whether Guru Granth Sahib is a juristic person, a difference arose between the two learned Judges of the Bench of the High Court. Mr Justice Tiwana held it to be a juristic person and dismissed both the FAOs, namely, FAOs Nos. 449 of 1978 and 2 of 1980 upholding the judgment of the Tribunal. On the other hand Mr Justice Punchhi, (as he then was) recorded dissent and held the Guru Granth Sahib not to be a juristic person, but did not decide the issue on merits. The case was then referred to a third Judge, namely, Mr Justice Tewatia who agreed with the view of Mr Justice Punchhi and held the Guru Granth Sahib not to be a juristic person. After recording this finding the learned Judge directed that the FAO may be placed before the Division Bench for final disposal of the appeal on merits.

8. The question whether Guru Granth Sahib is a juristic person is the main point which is argued in the present appeal to which we are called upon to adjudicate. It is relevant to mention here that after adjudication of the question whether the Guru Granth Sahib is a juristic person, the matter again went back to the same Bench which again gave rise to another conflict between Justice Tiwana and Mr Justice Punchhi. Justice Tiwana held on merits that mutations were valid and the respondents had no right to this property. But Mr Justice Punchhi held to the contrary that the mutation was invalid and this property was the private property of the respondents. Thereafter, the said FAO No. 449 of 1978 and FAO No. 2 of 1980 were placed before the third Judge, namely, Justice J.B. Gupta, who concurred with the view taken by Mr Justice Punchhi, as he then was. He recorded the following conclusion:

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"... in view of the findings that Guru Granth Sahib is not a juristic person, and that the notification issued under Section 9 was not conclusive, in view of the Full Bench judgment of this Court in *Mahant Lachhman Dass Chela Mahant Moti Ram case* the findings of the Tribunal are liable to be set aside. The Tribunal mainly based its findings on the mutations, Exhibits P-8 and P-9, which are in the name of Guru Granth Sahib, since Guru Granth Sahib is not a juristic person, any mutation sanctioned in its name in the present case was of no consequence. There is no other cogent evidence except the said mutations relied upon by the Tribunal in that behalf. Similar was the position as regards the building. In that behalf, the Tribunal relied upon the notification issued earlier. The same being not conclusive, there was no other reliable evidence to conclude that the building formed part of the Sikh gurdwara, notified under Section (*sic*). In these circumstances, I concur with the view taken by M.M. Punchhi, J. in the order dated 16-12-1986."

9. The foundation of his decision on merits is based on the finding that Guru Granth Sahib is not a juristic person and hence Exs. P-8 and P-9, the mutations in its name were not sustainable. The present appellants preferred Special Leave Petition No. 7803 of 1988 in this Court, which was dismissed in default on 16-11-1995 and its restoration application was also dismissed on 19-8-1996. In this petition it was specifically stated that the present Civil Appeal No. 3968 of 1987 is pending in this Court. However, it is significant as we have said above, the judgment of Mr Justice Gupta concurring with the judgment of Mr Justice Punchhi, as he then was, was mainly on the basis that the mutation in the name in favour of "Guru Granth Sahib Barajman Dharamshala Deh" was void inasmuch as the Guru Granth Sahib was not a juristic person. Thus the foundation of that decision rests on the question which we are considering.

10. The crux of the litigation now rests on the question whether the Guru Granth Sahib is a juristic person or not. Now, we proceed to consider this issue.

11. The very words "juristic person" connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person. Essentially, every human person is a person. If we trace the history of a "person" in the various countries we find surprisingly it has projected differently at different times. In some countries even human beings were not treated to be as persons in law. Under the Roman Law a "slave" was not a person. He had no right to a family. He was treated like an animal or chattel. In French colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons only through a statute.

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Similarly, in the U.S. the African-Americans had no legal rights though they were not treated as chattel.

12. In *Roscoe Pound's Jurisprudence*, Part IV, 1959 Edn., at pp. 192-93, it is stated as follows:

> "In civilized lands even in the modern world it has happened that all human beings were not legal persons. In Roman law down to the constitution of Antoninus Pius the slave was not a person. 'He enjoyed neither rights of family nor rights of patrimony. He was a thing, and as such like animals, could be the object of rights of property.' ... In the French colonies, before slavery was there abolished, slaves were 'put in the class of legal persons by the statute of April 23, 1833' and obtained a 'somewhat extended juridical capacity' by a statute of 1845. In the United States down to the Civil War, the free Negroes in many of the States were free human beings with no legal rights."

13. With the development of society, where an individual's interaction fell short to upsurge social developments, cooperation of a larger circle of individuals was necessitated. Thus, institutions like corporations and companies were created, to help the society in achieving the desired result. The very constitution of a State, municipal corporation, company etc. are all creations of the law and these "juristic persons" arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognised in law to be a legal unit.

14. *Corpus Juris Secundum*, Vol. LXV, p. 40 says:

> "*Natural person.*—A natural person is a human being; a man, woman, or child, as opposed to a corporation, which has a certain personality impressed on it by law and is called an artificial person. In the CJS definition of person it is stated that the word 'person', in its primary sense, means natural person, but that the generally accepted meaning of the word as used in law includes natural persons and artificial, conventional, or juristic persons."

15. *Corpus Juris Secundum*, Vol. VI, p. 778 says:

> "*Artificial persons.*—Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic."

16. *Salmond on Jurisprudence*, 12th Edn., p. 305 says:

> "A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human beings is one of the most noteworthy feats of the legal imagination. ...
>
> Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases. Those which are actually recognised by our own system, however, are of comparatively few types. Corporations are undoubtedly legal persons, and the better view is that registered trade

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unions and friendly societies are also legal persons though not verbally regarded as corporations.... If, however, we take account of other systems than our own, we find that the conception of legal personality is not so limited in its application, and that there are several distinct varieties, of which three may be selected for special mention....

1. The first class of legal persons consists of corporations, as already defined, namely, those which are constituted by the personification of groups or series of individuals. The individuals who thus form the corpus of the legal person are termed its members....

2. The second class is that in which the corpus, or object selected for personification, is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute personality, not to any group of persons connected with the institution, but to the institution itself....

3. The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses — a charitable fund, for example or a trust estate... ."

17. *Jurisprudence by Paton*, 3rd Edn., p. 349 and 350 says:

"It has already been asserted that legal personality is an artificial creation of the law. Legal persons are all entities capable of being right-and-duty-bearing units — all entities recognised by the law as capable of being parties to a legal relationship. Salmond said: 'So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties....'

... Legal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, an idol. Twenty men may form a corporation which may sue and be sued in the corporate name. An idol may be regarded as a legal persona in itself, or a particular fund may be incorporated. It is clear that neither the idol nor the fund can carry out the activities incidental to litigation or other activities incidental to the carrying on of legal relationships, e.g., the signing of a contract, and, of necessity, the law recognises certain human agents as representatives of the idol or of the fund. The acts of such agents, however (within limits set by the law and when they are acting as such), are imputed to the legal persona of the idol and are not the juristic acts of the human agents themselves. This is no mere academic distinction, for it is the legal persona of the idol that is bound to the legal relationships created, not that of the agent. Legal personality then refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities."

18. *Analytical and Historical Jurisprudence*, 3rd Edn., at p. 357 describes "person":

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"We may, therefore, define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights or duties may be attributed."

19. Thus, it is well settled and confirmed by the authorities on jurisprudence and courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living, inanimate, object or thing. It may be a religious institution or any such useful unit which may impel the courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol was recognised as a juristic person, it was known it could not act by itself. As in the case of a minor a guardian is appointed, so in the case of an idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for a charitable purpose it can create institutions like a church, hospital, gurdwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose inasmuch as he receives it for that purpose alone in trust. When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, maybe for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of a juristic person when it is recognised by the society as such.

20. In this background, we find that this Court in *Sarangadeva Periya Matam* v. *Ramaswami Gounder*[1] held that a "mutt" was the owner of the endowed property and that like an idol the mutt was a juristic person and thus could own, acquire or possess any property. In *Masjid Shahid Ganj* v. *Shromani Gurdwara Parbandhak Committee*[2] a Full Bench of that High Court held that a mosque was a juristic person. This decision was taken in appeal to the Privy Council which confirmed the said judgment. Sir George Rankin observed:

"In none of these cases was a mosque party to the suit, and in none except perhaps the last is the fictitious personality attributed to the mosque as a matter of decision. But so far as they go these cases support the recognition as a fictitious person of a mosque as an institution — apparently hypostatising an abstraction. This, as the learned Chief Justice

1 AIR 1966 SC 1603
2 AIR 1938 Lah 369 (FB)

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in the present case has pointed out, is very different from conferring personality upon a building so as to deprive it of its character as immovable property."

21. There may be an endowment for a pious or religious purpose. It may be for an idol, mosque, church etc. Such endowed property has to be used for that purpose. The installation and adoration of an idol or any image by a Hindu denoting any god is merely a mode through which his faith and belief is satisfied. This has led to the recognition of an idol as a juristic person.

22. In *Deoki Nandan* v. *Murlidhar*[3] this Court held:

"In *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra*[4] it was held on a consideration of these and other text that a gift to an idol was not to be judged by the rules applicable to a transfer to a 'sentient being', and that dedication of properties to an idol consisted in the abandonment by the owner of his dominion over them for the purpose of their being appropriated for the purposes which he intends. Thus, it was observed by Sir Lawrence Jenkins, C.J. at p. 138 that 'the pious purpose is still the legatee, the establishment of the image is merely the mode in which the pious purpose is to be effected' and that 'the dedication to a deity' may be 'a compendious expression of the pious purposes for which the dedication is designed'. Vide also the observations of Sir Ashutosh Mookerjee at p. 155. In *Board of Commrs. for the Hindu Religious Endowments* v. *Parasaram Veeraraghavacharlu*[5] Varadachariar, J., dealing with this question, referred to the decision in *Bhupati*[4] and observed:

> 'As explained in the case, that purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as a public trust.' "

23. In *Som Prakash Rekhi* v. *Union of India*[6] this Court held that "a legal person" is any entity other than a human being to which the law attributes personality. It was stated: (SCC p. 461, para 26)

> "Let us be clear that the jurisprudence bearing on corporations is not myth but reality. What we mean is that corporate personality is a reality and not an illusion or fictitious construction of the law. It is a legal person. Indeed, 'a legal person' is any subject-matter other than a human being to which the law attributes personality. 'This extension, for good and sufficient reasons, of the conception of personality ... is one of the

3 AIR 1957 SC 133
4 ILR (1909-10) 37 Cal 128 : 14 CWN 18
5 AIR 1937 Mad 750 : (1937) 2 MLJ 368
6 (1981) 1 SCC 449 : 1981 SCC (L&S) 200

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most noteworthy feats of the legal imagination.'† Corporations are one species of legal persons invented by the law and invested with a variety of attributes so as to achieve certain purposes sanctioned by the law." a

24. This Court in *Yogendra Nath Naskar* v. *CIT*[7] held that the consecrated idol in a Hindu temple is a juristic person and approved the observation of West, J. in the following passage made in *Manohar Ganesh Tambekar* v. *Lakhmiram Govindram*[8]:

"The Hindu law, like the Roman law and those derived from it, recognises not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations. A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it, and *the rule will give effect to the bounty, or at* least protect it so far, at any rate, as it is consistent with his own *dharma* or conceptions of morality. A trust is not required for the purpose: the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English law. In early times a gift placed, as it was expressed, 'on the altar of God' sufficed to convey to the church the lands thus dedicated. ... It is consistent with the grants having been made to the juridical person symbolised or personified in the idol...." b c

(emphasis supplied) d

25. Thus, a trust is not necessary in Hindu law though it may be required under English law.

26. In fact, there is a direct ruling of this Court on the crucial point. In *Pritam Dass Mahant* v. *Shiromani Gurdwara Prabandhak Committee*[9] with reference to a case under the Sikh Gurdwara Act, 1925 this Court held that the central body of worship in a gurdwara is *Guru Granth Sahib*, the holy book, which is a juristic entity. It was held: (SCC p. 605, para 14) e

"14. From the foregoing discussion it is evident that the sine qua non for an institution being a Sikh gurdwara is that there should be established Guru Granth Sahib and the worship of the same by the congregation, and a Nishan Sahib as indicated in the earlier part of the judgment. There may be other rooms of the institution meant for other purposes but the crucial test is the existence of Guru Granth Sahib and the worship thereof by the congregation and Nishan Sahib." f

Tracing the ten Sikh Gurus it records: (SCC pp. 603-04, paras 9, 11 & 12)

"They were ten in number each remaining faithful to the teachings of Guru Nanak, the first Guru and when their line was ended by a conscious decision of Guru Gobind Singh, the last Guru, succession was invested in g

† Salmond : *Jurisprudence*, 10th Edn., pp. 324-25

7 (1969) 1 SCC 555

8 ILR (1888) 12 Bom 247 h

9 (1984) 2 SCC 600

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a a collection of teachings which was given the title of Guru Granth Sahib. This is *now the Guru of the Sikhs*.

* * *

The holiest book of the Sikhs *is Guru* Granth Sahib compiled by the Fifth Master, Guru Arjan. It is the Bible of Sikhs. After giving his followers a central place of worship, Hari Mandir, he wanted to give them a holy book. So he collected the hymns of the first four Gurus and b to these he added his own. Now this Sri Guru *Granth Sahib is a living Guru of the Sikhs*. Guru means the guide. Guru Granth Sahib gives light and shows the path to the suffering humanity. Wherever a believer in Sikhism is in trouble or is depressed he reads hymns from the Granth.

When Guru Gobind Singh felt that his worldly sojourn was near, he made the fact known to his disciples. The disciples asked him as to who c would be their *Guru in future*. The Guru immediately placed five pies and a coconut before the holy Granth, bowed his head before it and said:

> The Eternal Father Willed, and I raised the Panth.
> All my Sikhs are ordained to believe the Granth as their preceptor.
> d Have faith in the holy Granth as your Master and consider it.
> The visible manifestation of the Gurus.
> He who hath a pure heart will seek guidance from its holy words.

The Guru repeated these words and told the disciples not to grieve at his departure. It was true that they would not see his body in its physical e manifestation but he would be ever present among the Khalsas. Whenever the Sikhs needed guidance or counsel, they should assemble before the Granth in all sincerity and decide their future line of action in the light of teachings of the Master, as embodied in the Granth. The noble ideas embodied in the Granth would live forever and show people the path to bliss and happiness." (emphasis supplied)

f 27. The aforesaid conspectus visualises how "juristic person" was coined to subserve to the needs of the society. With the passage of time and the changes in the socio-political scenario, collective working instead of individualised working became inevitable for the growth of the organised society. This gave manifestation to the concept of juristic person as a unit in various forms and for various purposes and this is now a well-recognised g phenomenon. This collective working, for a greater thrust and unity gave birth to cooperative societies, for the success and implementation of public endowment it gave rise to public trusts and for the purpose of commercial enterprises, the juristic person of companies was created, so on and so forth. Such creations and many others were either statutory or through recognition by the courts. Different religions of the world have different nuclei and h different institutionalised places for adoration, with varying conceptual beliefs and faith but all with the same end. Each may have differences in the

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perceptive conceptual recognition of God but each religion highlights love, compassion, tolerance, sacrifice as a hallmark for attaining divinity. When one reaches this divine empire, he is beholden, through a feeling of universal brotherhood and love which impels him to sacrifice his wealth and belongings, both for his own bliss and for its being useful to a large section of the society. This sprouts charity, for public endowment. It is really the religious faith that leads to the installation of an idol in a temple. Once installed, it is recognised as a juristic person. The idol may be revered in homes but its juristic personality is only when it is installed in a public temple.

28. Faith and belief cannot be judged through any judicial scrutiny. It is a fact accomplished and accepted by its followers. This faith necessitated the creation of a unit to be recognised as a "juristic person". All this shows that a "juristic person" is not roped in any defined circle. With the changing thoughts, changing needs of the society, fresh juristic personalities were created from time to time.

29. It is submitted for the respondent that decisions of courts recognised an idol to be a juristic person but they did not recognise a temple to be so. So, on the same parity, a gurdwara cannot be a juristic person and Guru Granth Sahib can only be a sacred book. It cannot be equated with an idol nor does Sikhism believe in worshipping any idol. Hence Guru Granth Sahib cannot be treated as a juristic person. This submission in our view is based on a misconception. It is not necessary for "Guru Granth Sahib" to be declared as a juristic person that it should be equated with an idol. When belief and faith of two different religions are different, there is no question of equating one with the other. If "Guru Granth Sahib" by itself could stand the test of its being declared as such, it can be declared to be so.

30. An idol is a "juristic person" because it is adored after its consecration, in a temple. The offerings are made to an idol. The followers recognise an idol to be symbol for God. Without the idol, the temple is only a building of mortar, cement and bricks which has no sacredness or sanctity for adoration. Once recognised as a "juristic person", the idol can hold property and gainfully enlarge its coffers to maintain itself and use it for the benefit of its followers. On the other hand in the case of a mosque there can be no idol or any images of worship, yet the mosque itself is conferred with the same sacredness as temples with idols, based on faith and belief of its followers. Thus a temple without an idol may be only brick, mortar and cement but not the mosque. Similar is the case with the church. As we have said, each religion has a different nucleus, as per its faith and belief for treating any entity as a unit.

31. Now returning to the question, whether Guru Granth Sahib could be a "juristic person" or not, or whether it could be placed on the same pedestal, we may first have a glance at the Sikh religion. To comprehend any religion fully may indeed be beyond the comprehension of anyone and also beyond any judicial scrutiny for it has its own limitations. But its silver lining could easily be picked up. In the Sikh religion, the Guru is revered as the highest

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reverential person. The first of such most revered Gurus was Guru Nanak Dev, followed by succeeding Gurus, the tenth being the last living, viz., Guru Gobind Singhji. It is said that Adi Granth or Guru Granth Sahib was compiled by the fifth Guru Arjun and it is this book that is worshipped in all the gurdwaras. While it is being read, people go down on their knees to make reverential obeisance and place their offerings of cash and kind on it, as it is treated and equated to a living Guru. In the book *A History of the Sikhs* by Khushwant Singh, Vol. I, p. 307 it is said:

> "The compositions of the Gurus were always considered sacred by their followers. Guru Nanak said that in his hymns 'the true Guru manifested Himself, because they were composed at His orders and heard by Him' (Var Asa). The fourth Guru, Ram Das said: 'Look upon the words of the True Guru as the supreme truth, for God and the Creator hath made him utter the words' (Var Gauri). When Arjun formally installed the Granth in the Hari Mandir, he ordered his followers to treat it with the same reverence as they treated their Gurus. By the time of Guru Gobind Singh, copies of the Granth had been installed in most gurdwaras. Quite naturally, when he declared the line of succession of Gurus ended, he asked his followers to turn to the Granth for guidance and look upon it as the symbolic representation of the ten Gurus.
>
> The Granth Sahib is the central object of worship in all gurdwaras.
>
> It is usually draped in silks and placed on a cot. It has an awning over it and, while it is being read, one of the congregation stands behind and waves a flywhisk made of yak's hair. Worshippers go down on their knees to make obeisance and place offerings of cash or kind before it as they would before a king: for the Granth is to them what the Gurus were to their ancestors — the Saccha Padshah (the true Emperor)."

32. The very first verse of the Guru Granth Sahib reveals the infinite wisdom and wealth that it contains, as to its legitimacy for being revered as a Guru. The first verse states:

> "The creator of all is One, the only One. Truth is his name. He is doer of everything. He is without fear and without enmity. His form is immortal. He is unborn and self-illumined. He is realized by Guru's grace."

33. The last living Guru, Guru Gobind Singh, expressed in no uncertain terms that henceforth there would not be any living Guru. The Guru Granth Sahib would be the vibrating Guru. He declared that "henceforth it would be your Guru from which you will get all your guidance and answer". It is with this faith that it is worshipped like a living Guru. It is with this faith and conviction, when it is installed in any gurdwara it becomes a sacred place of worship. Sacredness of the gurdwara is only because of placement of Guru Granth Sahib in it. This reverential recognition of Guru Granth Sahib also opens the hearts of its followers to pour their money and wealth for it. It is not that it needs it, but when it is installed, it grows for its followers, who

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through their obeisance to it, sanctify themselves and also for running the langer which is an inherent part of a gurdwara.

34. In this background, and on overall considerations, we have hesitation to hold that "Guru Granth Sahib" is a "juristic person". It cannot be equated with an "idol" as idol worship is contrary to Sikhism. As a concept or a visionary for obeisance, the two religions are different. Yet, for its legal recognition as a juristic person, the followers of both the religions give them respectively the same reverential value. Thus the Guru Granth Sahib has all the qualities to be recognised as such. Holding otherwise would mean giving too restrictive a meaning of a "juristic person", and that would erase the very jurisprudence which gave birth to it.

35. Now, we proceed to examine the judgment of the High Court which had held to the contrary. There was a difference of opinion between the two Judges and finally the third Judge agreed with one of the differing Judges, who held Guru Granth Sahib to be not a "juristic person". Now, we proceed to examine the reasoning for their holding so. They first erred in holding that such an endowment is void as there could not be such a juristic person without appointment of a manager. In other words, they held that a juristic person could only act through someone, a human agency and as in the case of an idol, the Guru Granth Sahib also could not act without a manager. In our view, no endowment or a juristic person depends on the appointment of a manager. It may be proper or advisable to appoint such a manager while making any endowment but in its absence, it may be done either by the trustees or courts in accordance with law. Mere absence of a manager (*sic* does not) negative the existence of a juristic person. As pointed out in *Manohar Ganesh* v. *Lakhmiram*[8] (approved in *Yogendra Nath Naskar case*[7]) referred to above, if no manager is appointed by the founder, the ruler would give effect to the bounty. As pointed in *Vidyapurna Tirtha Swami* v. *Vidyanidhi Tirtha Swami*[10] ILR Mad (at p. 457), by Bhashyam Ayyangar, J. (approved in *Yogendra Nath Naskar case*[7]) the property given in trust becomes irrevocable and if none was appointed to manage, it would be managed by the "court as representing the sovereign". This can be done by the court in several ways under Section 92 CPC or by handing over management to any specific body recognised by law. But the trust will not be allowed by the court to fail. Endowment is when the donor parts with his property for it being used for a public purpose and its entrustment is to a person or group of persons in trust for carrying out the objective of such entrustment. Once endowment is made, it is final and it is irrevocable. It is the onerous duty of the persons entrusted with such endowment, to carry out the objectives of this entrustment. They may appoint a manager in the absence of any indication in the trust or get it appointed through court. So, if entrustment is to any juristic person, mere absence of a manager would not negate the existence of a juristic person. We, therefore, disagree with the High Court on this crucial aspect.

10 ILR (1903-05) 27 Mad 435, 457

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36. In *Words and Phrases*, Permanent Edition, Vol. 14-A, at p. 167:

> "Endowment" means property or pecuniary means bestowed as a permanent fund, as endowment of a college, hospital or library, and is understood in common acceptance as a fund yielding income for support of an institution."

37. The other difficulty, the learned Judges of the High Court felt, was that there could not be two "juristic persons" in the same building. This they considered would lead to two juristic persons in one place viz., "gurdwara" and "Guru Granth Sahib". This again, in our opinion, is a misconceived notion. They are not two "juristic persons" at all. In fact both are so interwoven that they cannot be separated as pointed by Tiwana, J. in his separate judgment. The installation of "Guru Granth Sahib" is the nucleus or nectar of any gurdwara. If there is no Guru Granth Sahib in a gurdwara it cannot be termed as a gurdwara. When one refers a building to be a gurdwara, he refers to it so only because Guru Granth Sahib is installed therein. Even if one holds a gurdwara to be a juristic person, it is because it holds the "Guru Granth Sahib". So, there do not exist two separate juristic persons, they are one integrated whole. Even otherwise in *Ram Jankijee Deities* v. *State of Bihar*[1] this Court while considering two separate deities, of Ram Jankijee and Thakur Raja they were held to be separate "juristic persons". So, in the same precincts, as a matter of law, existence of two separate juristic persons was held to be valid.

38. Next it was the reason of the learned Judges that if Guru Granth Sahib is a "juristic person" then every copy of Guru Granth Sahib would be a "juristic person". This again in our considered opinion is based on an erroneous approach. On this reasoning it could be argued that every idol at private places, or carrying it with one self each would become a "juristic person". This is a misconception. An "idol" becomes a juristic person only when it is consecrated and installed at a public place for the public at large. Every "idol" is not a juristic person. So every Guru Granth Sahib cannot be a juristic person unless it takes a juristic role through its installation in a gurdwara or at such other recognised public place.

39. Next submission for the respondent is that "Guru Granth Sahib" is like any other sacred book, like the Bible for Christians, the Bhagwat Geeta and the Ramayana for Hindus and the Quran for Islamic followers and cannot be a "juristic person". This submission also has no merit. Though it is true Guru Granth Sahib is a sacred book like others but it cannot be equated with these other sacred books in that sense. As we have said above, Guru Granth Sahib is revered in gurdwara, like a "Guru" which projects a different perception. It is the very heart and spirit of a gurdwara. The reverence of Guru Granth on the one hand and other sacred books on the other hand is based on different conceptual faith, belief and application.

40. One other reason given by the High Court is that the Sikh religion does not accept idolatry and hence Guru Granth Sahib cannot be a juristic

[1] (1999) 5 SCC 50

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person. It is true that the Sikh religion does not accept idolatry but, at the same time when the tenth Guru declared that after him, the Guru Granth will be the Guru, that does not amount to idolatry. The Granth replaces the Guru henceforward, after the tenth Guru.

41. For all these reasons, we do not find any strength in the reasoning of the High Court in recording a finding that the "Guru Granth Sahib" is not a "juristic person". The said finding is not sustainable both on fact and law.

42. Thus, we unhesitatingly hold "Guru Granth Sahib" to be a "juristic person".

43. The next challenge is that the basis for mutating of the name of "Guru Granth Sahib Birajman Dharamshala Deh", by deleting the name of the ancestors of the respondents, based on farman-e-shahi issued by the then Ruler of the Patiala State dated 18-4-1921 is liable to be set aside, as this farman-e-shahi did not direct the recording of the name of "Guru Granth Sahib". For ready reference the said farman-e-shahi is again quoted hereunder:

> "In future, instructions be issued that so long the appointment of a Mahant is not approved by Ijlas-i-khas through Deori Mualla, until the time, the Mahant is entitled to receive turban, shawl or bandhan or muafi etc. from the Government, no property or muafi shall be entered in his name in the revenue papers.
>
> It should also be mentioned that the land which pertains to any dera should not be considered as the property of any Mahant, nor the same should be shown in the revenue papers as the property of the Mahant, but these should be entered as belonging to the dera under the management of the Mahant and that the Mahants shall not be entitled to sell or mortgage the land of the dera. Revenue Department be also informed about it and the order be gazetted."

44. It was also submitted that it was not known whether this farman-e-shahi was administrative in nature or was issued as a sovereign. If it was administrative it could not have the same force of law.

45. We have examined this farman-e-shahi. It does not direct the authorities to mutate the name of "Guru Granth Sahib". It merely directed, the Revenue Authority that till the Mahant's appointment is approved by the Deori Mualla, no property or muafi received by a Mahant should be entered in his name, in the revenue papers. Further the land of any dera should not be considered to be that of the Mahant. This was only a directive which is protective in nature. In other words it only directed that they should be done after ascertaining the fact and if the land was of the dera it should not be put in the name of the Mahant. In other words, it stated — enquire, find out the facts and do the needful. The mutation in the case before us was not on account of this farman-e-shahi but was made because of the application made by one Rulia Singh and others of Village Bilaspur to the Patwari, and mutation was done only after a detailed inquiry, after examining witnesses and other evidence on the record, which resulted in Ex. P-8 and Ex. P-9. In the said proceedings a number of witnesses appeared before the Revenue

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Officer and stated that their ancestors gifted this disputed land for charity (punnarth) for the benefit of public, who were the proprietors and was merely entrusted to the ancestors of the respondents for management. The claimants had no rights over it. Admittedly they did not receive this land for any payment nor for any service rendered by them to such donors. Their statement was that this land was given to them with the clear direction that they should use it for providing food and comfort to the travellers (musafran) passing through the village. They further gave evidence that their forefathers gave it in the name of "Guru Granth Sahib Barajman Dharamshala Deh". In spite of this, Atma Ram and others and their predecessors did not perform their obligations. On the contrary, with oblique motives they got this disputed land entered in their name in the revenue records which was an attempt to usurp the property. The Revenue Officer after inquiry held that Atma Ram and other ancestors of the respondents admitted that this land was given without making any payment and was specifically meant for providing food and shelter to the travellers which function they were not performing. It was only after such an inquiry, he ordered the mutation by ordering deletion of the name of Atma Ram and others. With reference to the question of appointment of a manager, he recorded that this had to be decided by the Deori Mualla, where such a case about this was pending. Similar was the position in the other mutation proceedings about which an application was also made to the Revenue Officer, where the names of Narain Dass, Bhagat Ram, sons of Gopi Ram were deleted and the aforesaid name was mutated resulting in Ex. P-9. So, the mutation of name was not because of direction issued by the farman-e-shahi. So no error could be said to have been committed, when Ex. P-8 and Ex. P-9, viz., mutations were recorded. The farman-e-shahi if at all may be said to have led to the inquiry but it was not the basis.

46. This takes us to the last point for our consideration. After the said difference of opinion between the two learned Judges, Mr Justice M.M. Punchhi did not decide the case on merits though the other Judge Mr Justice Tiwana, held on merits in favour of the appellants, i.e., that the property belonged to the gurdwara. When the case again returned to the same Bench for decision on merits there was again a difference of opinion. It was again referred to the third Judge who concurred with Mr Justice Punchhi. Against this the appellants filed special leave petition in this Court which was dismissed for default as aforesaid. However, we find that the third Judge who concurred with Mr Justice Punchhi based his finding on the ground that "Guru Granth Sahib" was not a juristic person hence entries Exs. P-8 and P-9 were invalid. But once the very foundation falls, and Guru Granth Sahib is held to be a juristic person, the said finding cannot stand. Thus, in our considered opinion there would not be any useful purpose to remand the case. That apart since this litigation stood for a long time, we think it proper to examine it ourselves.

47. Learned Senior Counsel for the respondents who argued with ability and fairness said that in fact the only question which arises in this case is

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whether Guru Granth Sahib is a juristic person. Examining the merits we find that the mutation in the revenue papers in the name of Guru Granth Sahib was made as far back as in the year 1928, in the presence of the ancestors of the respondents and no objection was raised by anybody till the filing of the present objection by the respondents as aforesaid under Sections 8 and 10 of the 1925 Act. This is after a long gap of about forty years. Further, this property was given in trust to the ancestors of the respondents for a specified purpose but they did not perform their obligation. It is also settled, once an endowment, it never reverts even to the donor. Then no part of these rights could be claimed or usurped by the respondent's ancestors who in fact were trustees. Hence for these reasons and for the reasons recorded by Mr Justice Tiwana, even on merits, any claim to the disputed land by the respondents has no merit. Thus, any claim over this disputed property by the respondents fails and is hereby rejected. We uphold the findings and orders passed by the Tribunal against which Suit No. 94 of 1979 and FAO No. 2 of 1980 were filed.

48. For the aforesaid reasons and in view of the findings which we have recorded, we hold that the High Court committed a serious mistake of law in holding that the Guru Granth Sahib was not a juristic person and in allowing the claim over this property in favour of the respondents. Accordingly, this appeal is allowed and the judgment and decree passed by the High Court dated 19-4-1985 and 28-1-1988 in Suit No. 94 of 1979 and FAO No. 2 of 1980 dated 28-1-1982 are hereby set aside. We uphold the orders passed by the Tribunal both under Section 10 of the said Act in Suit No. 94 of 1979. Appeal is, accordingly, allowed. Costs on the parties.

SLPs (Civil) Nos. 2235-36 of 1989

49. The main question raised in these special leave petitions is the same as has been raised in Civil Appeal No. 3968 of 1987, which we have disposed of today. In view of this, no point raised by the petitioners in this petition is unsustainable for the same reasons and is therefore dismissed.

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(BEFORE K.T. THOMAS AND D.P. MOHAPATRA, JJ.)

HRIDAYA RANJAN PRASAD VERMA AND OTHERS .. Appellants;

Versus

STATE OF BIHAR AND ANOTHER .. Respondents.

Criminal Appeals Nos. 313-14 of 2000†, decided on March 31, 2000

A. Criminal Procedure Code, 1973 — S. 482 — Quashing of complaint and criminal proceedings — Abuse of process of court — Transaction of sale of land by appellants to Respondent 2 Society — Cheques issued by

† From the Judgment and Order dated 13-4-1999 of the Patna High Court in Crl. Misc. Nos. 22880 and 24038 of 1998

regard to it, I will not attempt any definition of the word "judgment." I will only say this, that I am not prepared to say that every order on a contested petition is a judgment. The line dividing judgments from orders must be drawn somewhere short of this. Having regard to the fact that in the case before us no substantial right of the defendants has been adversely affected by the order under appeal, I would say that it does not fall on the judgment side of the line. Beyond this I make no further attempt.

Grant and Greatorex, solicitors for appellant.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

RAMA REDDY (3RD DEFENDANT), APPELLANT,

1925, October 28.

v.

RANGADASAN AND OTHERS (PLAINTIFFS AND 4TH AND 5TH DEFENDANTS), RESPONDENTS.*

Limitation Act (IX of 1908), arts. 134 and 144—Hindu Law—Religious endowment—Temple—Trustee—Alienation by trustee, not for a valid purpose—Suit against alienee to recover temple property, more than twelve years after alienation—Bar of limitation—Temple property, whether vested in idol or trustee—Trustee, mere Manager—Adverse possession.

Where a trustee of a Hindu temple improperly alienated temple property and a suit was instituted by a succeeding trustee to recover the property from the alienee more than twelve years from the date of the alienation,

Held, that, in the case of a Hindu temple, its property vested in the idol and the trustee was only a manager for the time being; that the trustee could not convey a valid title to the transferee, and therefore article 134 of the Limitation Act, 1908, did not apply to a suit for recovery of the temple property improperly

* Letters Patent Appeal No. 158 of 1924.

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alienated by the trustee; *Sri Vidya Varuthi Thirthaswami* v. *Baluswami Ayyar* (1921) I.L.R., 44 Mad., 831 (P.C.), applied;

that article 144 of the Act did not apply to a case of alienation by a trustee, where the alienee derived possession from the trustee, and that consequently the suit was not barred by limitation.

Semble.—Where a person takes possession of temple property, not derivatively from the trustee but hostilely against the trustee, article 144 will apply as against the trustee and the idol.

APPEAL under clause 15 of the Letters Patent against the judgment of MADHAVAN NAYAR, J., in Second Appeal No. 1230 of 1921 preferred against the decree of J. J. COTTON, District Judge of Coimbatore, in Appeal Suit No. 33 of 1921 preferred against the decree of P. G. RAMA AYYAR, Principal District Munsif of Erode, in Original Suit No. 713 of 1918.

The plaintiff sues as the present pujari and trustee of the suit temple to recover possession of certain lands, which were granted to an ancestor of the plaintiff as the manager for the time being of the suit temple. The lands had been sold by the first and second defendants (who were the father and uncle of the plaintiff and defendants 6, 7 and 8, respectively) to the third defendant in 1893. The plaintiff alleged that the lands had been granted as service inam to their family for doing pujari service; that the alienation by his father and the uncle were not valid and he instituted this suit in 1918. The District Munsif dismissed the suit as barred by limitation. On appeal, the Subordinate Judge reversed and remanded the suit, holding that if the plaintiff's family were entitled to a beneficial interest in the inam, the suit would not be barred by limitation on the authority of the decisions in 13 Mad., 277, and 10 M.L.T., 781. After remand the District Munsif again dismissed the suit and on appeal the District Judge confirmed the decree and dismissed the appeal. The lower Appellate Court found that the plaintiff was the pujari or trustee of the suit

(1.85)

temple and that the suit property was attached to the temple. The plaintiff preferred a second appeal, which was heard by MADHAVAN NAYAR, J., who held that the suit was not barred under article 134, Limitation Act, and relied on the decision of the Privy Council in 44 Madras, 831, reversed the decrees of the lower Courts and gave a decree to the plaintiff as prayed, subject to his paying Rs. 1,709 to the third, fourth and fifth defendants for value of improvements. The third defendant preferred this Letters Patent Appeal.

T. R. Ramachandra Ayyar and *N. P. Narasimha Ayyar* for appellant.

T. M. Krishnaswami Ayyar for respondents.

JUDGMENT.

DEVADOSS, J.—This is an appeal against the judgment of MADHAVAN NAYAR, J., giving a decree to the plaintiff. The third defendant has preferred this Letters Patent Appeal. The question for determination is whether the suit is barred by article 134 of the Limitation Act. The plaintiff is the trustee of a temple. The finding is that the property is the property of the temple. The contention of Mr. Ramachandra Ayyar is that the suit is barred under article 134 inasmuch as the suit was brought more than twelve years after the date of the alienation. Article 134 gives a period of twelve years for the recovery of possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for valuable consideration. The argument advanced is that the suit is barred by article 134, if the transferor is held to be a trustee, and if he is not a trustee, then the suit is barred by reason of article 144 of the Limitation Act. The finding that the transferor is a trustee cannot be challenged now. The simple

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question is therefore whether article 134 applies to the case. It was decided in *Sri Vidya Varuthi* v. *Baluswami Ayyar*(1) that a permanent lease of mutt property granted by the head of the mutt could not create any interest in the property to enure beyond the life of the grantor and consequently article 134 of Schedule I of the Limitation Act of 1908, did not apply to a suit brought by the successor of the grantor for the recovery of the property. Mr. Ramachandra Ayyar tries to get over this decision by contending that the transferee was only a lessee and that he did not deny the title of the mutt but only contended that he was entitled to be in perpetual possession of the property being a permanent lessee. Mr. AMEER ALI in delivering the judgment of their Lordships observed—

"It is also to be remembered that a 'trustee' in the sense in which the expression is used in the English law is unknown in the Hindu system, pure and simple."

With reference to the head of a mutt or Shebait he observed,

"In no case was the property conveyed to or vested in him, nor is he a 'trustee' in the English sense of the term, although in view of the obligations and duties resting on him he is answerable as a trustee, in the general sense, for maladministration."

In the case of a religious institution the property is vested in the idol and the trustee is only a manager for the time being. In the case of a mutt the head of the mutt for the time being is entitled to use the income of the mutt property subject to the maintenance of the Thambirans and the ascetics attached to the mutt. In the case of a trustee of a temple he is not entitled to use any portion of the income for himself. In the case of a wakf if the deed of trust makes provision for the maintenance of the Muthavalli or the trustee for the time being, he may use the income for

(1) (1921) I.L.R., 44 Mad., 831 (P.C.).

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himself as allowed by the deed of trust, but in the case of Hindu religious institutions no trustee of any institution is entitled to use any portion of the income for himself if the property is vested in the idol. The decision in 44 Madras cannot be said to apply only to cases of leases. The remarks of their Lordships apply to cases of all alienations of property. A permanent lease is as much an alienation as a sale. The mere fact that rent is payable by the permanent lessee does not make a permanent lease any the less an alienation than a sale. Has the trustee of a religious institution the right to alienate the kudivaram interest in the temple property? Can it be said, if he lets into possession tenants so as to enable them to acquire occupancy rights, that he does not alienate the kudivaram interest? The mere fact that the tenants pay the melvaram to the temple cannot convert the transfer of the kudivaram into anything less than an alienation of it. A trustee therefore cannot convey a valid title to the transferee and therefore article 134 does not apply to a suit for the recovery of the temple property improperly alienated by the trustee. The case in *Subbayya Pandaram* v. *Mahammad Musthapha Marakayar*(1) has no application to the present case. In that case the property was vested in the trustees and it was sold in execution of a decree. It was held that the suit was barred by article 144. In that case it was distinctly found that the property was vested in the person against whom the decree was obtained and the property being vested in him he could by transfer give a title to the vendee and if the transaction is not set aside within 12 years the vendee gets a good title. The case in *Kuppuswami Mudaliar* v. *Samia Pillai*(2) does not touch the point under discussion. There the holder of a religious office

(1) (1917) I.L.R., 40 Mad., 751. (2) (1922) 42 M.L.J., 1.

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was dismissed from the office, but he continued to be in possession of the property for more than 12 years after his dismissal and a suit by the successor was held to be barred. The property was vested in the person and he held the office for the time being and when he was dismissed from the office his possession became adverse to his successor and the successor not having sued within 12 years his suit was barred.

There were a few cases which may be said to support the contention of Mr. Ramachandra Ayyar that an invalid alienation of trust property should be set aside within 12 years, and, if not so set aside, the vendee under the invalid sale gets a good title. The decision in *Gnana Sambanda Pandara Sannadhi* v. *Velu Pandaram*(1) and *Damodar Das* v. *Lakhan Das*(2) supports this view. In *Gnana Sambanda Pandara Sannadhi* v. *Velu Pandaram*(1), the hereditary managers of the property with which a religious foundation was endowed had purported to sell and assign the management and lands of the endowment to the representative of another institution. It was held that the possession delivered to the purchaser was adverse to the vendors, and after 12 years, the successor of the vendor could not recover possession of the property conveyed.

Their Lordships observed at page 279,

"There is no proof of any custom in this case, and consequently these deeds of sale are void and did not give any title to the purchasers. The title remained in Chockalinga and Nataraja and the possession which was taken by the purchaser was adverse to them. . . . "

"Their Lordships are of opinion that there is no distinction between the office and the property of the endowment. The one is attached to the other, but if there is, article 144 of the same schedule is applicable to the property. That bars the suit after 12 years' adverse possession."

(1) (1910) I.L.R., 23 Mad., 271. (2) (1919) I.L.R., 37 Calc., 885.

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In *Damodar Das* v. *Lekhan Das*(1), the Privy Council held that where two chelas divided two institutions and the property among themselves one chela could not recover the property on the death of the other. Sir ARTHUR WILSON, who delivered the judgment of their Lordships, observed at page 894,

> "It follows from this that the learned Judges were further right in holding that from the date of the *ekrarnama* the possession of the junior *chela*, by virtue of the terms of that *ekrarnama* was adverse, to the right of the idol and of the senior chela, as representing that idol, and that therefore the previous suit was barred by limitation."

There is no discussion in *Vidya Varuthi Thirthaswami* v. *Baluswami Ayyar*(2) of the decisions in *Gnana Sambanda Pandara Sannadhi* v. *Velu Pandaram*(3) and in *Damodara Das* v. *Lekhan Das*(1). In view of their Lordships' decision in *Sri Vidya Varuthi Thirthaswami* v. *Baluswami Ayyar*(2), the decisions in the former cases cannot be considered to be good law. The principle underlying these decisions seems to be this: that where the trustee of a religious institution who is only a manager for the time being, alienates any property belonging to the trust, he cannot give a valid title to the alienee, for he himself has no interest in the property and the alienee can only get what the manager himself possesses, namely, of being in possession of the property. The principle of adverse possession would apply to cases where a person who could assert his title does not assert his title within the period fixed by article 144 of the Limitation Act. In the case of a minor whose property has been improperly alienated by the guardian he has the right of suit within three years after his attaining majority. The legal fiction is that an idol is a minor for all time and it has to be under

(1) (1910) I.L.R., 37 Calc., 885. (2) (1921) I.L.R., 44 Mad., 831 (P.C.).
(3) (1900) I.L.R., 23 Mad., 277.

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perpetual tutelage and that being so, it cannot be said that the idol can ever acquire majority, and a person who acquires title from a trustee of a temple cannot acquire any title adverse to the idol, for the idol is an infant for all time and the succeeding trustee could recover the property for the idol at any time. Though the language has been loosely used as if the trustee occupies a position similar to that of the karnavan of a Malabar tarwad, or the managing member of a joint Hindu family, or the guardian of a minor, yet his position is different from that of any of these. It is contended by Mr. Ramachandra Ayyar that a trustee can alienate the property for certain purposes. In order to preserve the trust or with the sanction of the Court he could alienate the property, but such alienation is under exceptional circumstances. But where he purports to convey the title to the property which is vested in him the vendee cannot be said to derive title from a man who could never give a good title to him. If the vendee buys knowing that the trustee has no right to convey title to the property which is vested in the idol, he cannot set up article 144 in answer to a suit by the trustee for the recovery of the property. His possession is that of the trustee and a trustee's possession can never be adverse to the idol. No doubt if a person takes possession of the immovable property belonging to a temple and keeps the trustee and the persons connected with the temple out of possession and is able to assert such possession adversely to the trust for over 12 years, he could acquire a valid title under section 28 of the Limitation Act. But where such person acquires possession from the manager, his possession can only be with the consent of the trustee for the time being and therefore his possession can never become adverse to the temple. The observation

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of one of us in *Jagya Rao Bahadur Garu* v. *Gohar Bibi*(1), apply to the present case;

"If the properties are trust properties, any person claiming from a trustee cannot acquire a prescriptive title against the trust. Whether the document is valid or invalid, it would not give a right to anybody claiming under that document to prescribe for a title against the trust."

MADHAVAN NAYAR, J., held similarly in *Lakshminarayana Kulluraya* v. *Rajamma*(2). In a recent case in *Govinda Row* v. *Chinnathambi Pillai*(3). PHILLIPS, J., held that a permanent lessee could not set up the bar of limitation in a suit for recovery of possession of the property by the trustee. He held that article 134 did not apply to that case. As regards the contention that article 144 applied, the learned Judge observed:—

"This contention was negatived by their Lordships on the ground that the idol has no power to bring a suit except through the trustee and consequently there can be no question of the suit being barred unless it could not have been brought at an earlier date."

Reliance is placed upon *Ramrup Gir* v. *Lal Chand Marwari*(4). In that case the Patna High Court held that the alienation by the Mahant did not give a good title to the alienee, unless it is proved that the alienation was one which could bind the institution. In the course of the judgment, DAS, J., observed:—

"In my opinion the true rule is this; where the property is vested in the juridical person as it was in Damodar Das's case (37 Calcutta, 888) and the Mahant is only the representative and manager of the idol, the act of alienation is a direct challenge upon the title of the idol; and the idol, or the manager of the idol on behalf of the idol, must bring the suit within 12 years from the date of the alienation. But where the title is in the Mahant or the Shebait, as it was in the two other cases to which I have referred, the act of alienation is not a challenge upon the title of the idol, though the property may be endowed property in the sense that its income has to be appropriated to

(1) (1923) 17 L.W., 521 (529).
(2) (1925) 21 L.W., 250.
(3) (1925) 49 M.L.J., 640.
(4) (1922) 67 I.C., 401.

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the purposes of the endowment, and there is no adverse possession so long as the person making the alienation is alive; and the possession of the defendant becomes adverse to the plaintiffs only when a new title has come into existence capable of maintaining the suit and which has not approved of or acquiesced in the alienation."

With due respect to the learned Judge, I am unable to follow his reasoning as regards the property vesting in an idol. Where a manager alienates property belonging to an idol, his act cannot be said to be a challenge on the title of the idol. When the idol is incapable of asserting its will except through its manager, how can it be said that the manager's act is a challenge on its title? An idol, as I have already observed, being under perpetual tutelage can never assert its will and therefore the manager or the trustee who alienates its property cannot by his act be said to challenge the title of the idol. He might as well set up his own title against the idol. Can any express trustee or manager of a temple set up his own title against the trust or the temple? If the manager cannot set up an adverse title to the property vested in the idol, can he by his act allow a person who derives title from him to assert a title which he himself could not assert against the idol. The case of *Ramrup Gir* v. *Lalchand Marwari*(1), is against the principle of the decision in *Sri Vidya Varuthi Thirthaswami* v. *Baluswami Ayyar*(2), and therefore it cannot be relied upon in support of the argument for the appellant.

In the result the appeal fails and is dismissed with costs of first respondent.

WALLER, J. WALLER, J.—I agree.

K.R.

(1) (1922) 67 I.C., 401. (2) (1921) I.L.R., 44 Mad., 831 (P.C.).

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1946 SCC OnLine All 120 : AIR 1947 All 375

In the High Court of Allahabad
(BEFORE MALIK AND RAGHUBAR DAYAL, JJ.)

Doongarsee Syamji Joshi and others ... Plaintiffs Appellants;
Versus
Mukhia Tirbhuwan Das and others ... Defendants Respondents.
First Appeal No. 87 of 1942
Decided on September 9, 1946

The Judgment of the Court was delivered by

MALIK, J.:— The facts of this case are very simple. One Khetsi Tilloo was a Hindu residing in Bombay. He came to Muttra and ultimately settled there. He had a private deity and before he died he executed a will dated 25-10-1909, by which he dedicated all his properties to the deity. The deity is known as Charnarvind Sri Thakur Gokuleshji Maharaj and is installed in the house situate in Golpara at Muttra. In accordance with the terms of this will one Mt. Saraswati Bai, who was no relation of Khetsi Tilloo and, as a matter of fact, belonged to a different caste, was appointed the manager and mutwalli after him. On her death, one Chaturbhuj son of Dongersi, who was the wife's sister's son of Khetsi Tilloo, was to be the mutwalli. Khetsi Tilloo did not nominate any one as mutwalli after Chaturbhuj. He, however, appointed four persons as managers or supervisors and gave them the right to nominate a mutwalli after the death of the two persons nominated by him. The will further provided that the four persons nominated by him or their survivor had the right to appoint a successor to any of them. It is admitted that the four supervisors are all dead and that they took no interest in the deity or in its management, nor did they appoint any one as their successor. It is further the common case of the parties that Chaturbhuj Doongarsee predeceased Mt. Saraswati.

2. Khetsi Tilloo died on 27-8-1914. On his death, Mt. Saraswati became the mutwalli and, as such, was in possession of the property dedicated to the deity. Chaturbhuj died sometime in the year 1935 and Mt. Saraswati died in September 1936. Mt. Saraswati had on 27-2-1936 executed a will under which she appointed Mukhia Tirbhuwan Das, defendant 1 as the mutwalli. This she must have done as she realised that Chaturbhuj being already dead and the four supervisors appointed by the founder having all died there was no one who could appoint the next mutwalli. She further nominated five persons as trustees or supervisors and gave them the same powers as had been given to the supervisors appointed by Khetsi Tilloo, the only difference being that while the will of Khetsi Tilloo was a brief document, Mt. Saraswati's was more elaborate and contained clearer directions as to the management and *sewa, puja*. After the death of Mt. Saraswati, Mukhia Tirbhuwan Das, defendant 1 took charge of the deity and its *sewapuja* and took possession of the properties at Muttra. Since September 1936 Mukhia Tirbhuwan Das has thus been managing the property of the deity at Muttra.

3. In the trust properties are included houses Nos. 105 and 107 situate in mohalla

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Khand Bazar, Qazi street, Bombay. In the will of Khetsi it was provided that Chaturbhuj Doonarsee was to realise the rent of these houses and pay Rs. 50 per month to Mt. Saraswati for the expenses of the Thakurji and the rest of the income he could utilise for his own purposes. It is clear from the will of Khetsi that the two houses were dedicated to the deity but Chaturbhuj during his lifetime was to remain in possession of the two houses and utilise the balance of the income, after payment of Rs. 50 for his own purposes. There is no provision for Chaturbhuj's wife or his descendants. After the death of Mt. Saraswati, when Mukhia Tirbhuwan Das got into possession of the property of the deity at Muttra and started managing the same, he gave notice on 19-10-1936, to Mst. Velabai widow of Chaturbhuj, claiming Rs. 2,500 from her as the income of the houses. Mt. Velabai, it appears, did not send any reply. On 1-7-1937 plaintiff 1 Doongarsee Shyamji Joshi of Bombay, filed a suit in the Bombay High Court as the

next friend of the deity against Velabai for possession of the properties belonging to the diety and for the preparation of a scheme. The suit was compromised and a compromise decree was prepared on 6th August, 1937 under which Dongarsee Shyamji Jhosi, Gordhan Das Vallabh Das Dayal and Velabai were appointed managers and trustees of the properties of the deity. It is on the strength of this consent decree of the Bombay High Court that the present suit was filed. In the plaint the plaintiffs claimed that defendant 1 was not a validly appointed mutwalli of the deity and was not entitled to attend to or carry on the worship. Possession of the house in Muttra was claimed and it was prayed, among other prayers, that a decree in favour of the plaintiffs for possession of the house and certain movable properties might be passed in their favour. It may be noted here that no allegations were made in the plaint about mismanagement of the properties nor was there any charge that defendant 1 had not duly performed (?) and looked after the deity. The plaint was based simply on the allegation that the defendant had no legal right to possession as Mt. Saraswati could not appoint her successor and that the plaintiffs were legally en-titled to bring the suit and to eject the defendant and obtain possession of the property.

4. The suit was defended on the ground that the plaintiffs had no right to bring the suit. The defendant also alleged that he had been duly appointed the mutwalli and that he was not bound by the decree of the Bombay Court to which he was no party and which was further alleged to be a collusive decree. Defendants 2 to 5 were the supervisors nominated by Mt. Saraswati and it does not appear that they filed any written statement or took any interest in the suit. Defendant 6, Bhikhimal Saraf, (who on the death of Ram Das defendant became defendant 5), was in possession of certain movables belonging to the deity and was, therefore, impleaded. He too does not appear to have put in any appearance.

5. The lower Court framed nine issues. It held that Mt. Saraswati had no right to appoint her successor and the defendant was, therefore, not a duly appointed mutwalli, but he was in fact, in possession, of the property and was the *de facto* manager of the deity. As regards the plaintiffs, the lower Court held that plaintiffs 1 to 3 had no right to bring the suit and that the defendant was not bound by the decree of the Bombay High Court which the lower Court held was also collusive. The result, therefore, was that the plaintiffs' suit was dismissed with costs.

6. The plaintiffs have filed this appeal. On behalf of the plaintiffs, learned counsel for the appellants has urged two points. His allegations are firstly that the diety is himself a party to the suit through a next friend and the position of a deity being

exactly the same as that of a minor, any one could file a suit as the next friend of the diety and if the lower Court had considered that another person should be appointed as the next friend the Court should have made the appointment, but no such objection having been taken it must be now accepted that plaintiffs 1 to 3 could act as the next friends of the deity and the deity being the owner of the property the suit was bound to be decreed. His next argument is that the decree of the Bombay High Court preparing the scheme of management is binding on all, and though the defendants were no parties to the same, their only remedy was to go to the Bombay High Court and to ask that Court to modify the scheme if they could satisfy that Court that the scheme was not in the best interest of the deity and that the defendant could not in this case ask the Court to go behind that decree and to hold that plaintiffs 1 to 3 were not the properly appointed trustees of the property at Muttra.

7. The first argument of learned counsel is that any one can file a suit as the next friend of the deity and that to such a suit the provisions of O. 32 of the CPC though strictly not applicable, should be applied so that the decree could be passed in favour of the deity and all that the Courts need see is whether the person purporting to act as the next friend has any interest adverse to the minor and in case the Court is of the opinion that the person purporting to act as the next friend is not a proper person, the Court may appoint some one else. Learned counsel has further developed this argument by urging that the deity was a plaintiff to the suit as plaintiff 4 and that the suit was brought on behalf of the deity by plaintiffs 1 to 3 as the next friends. The defendants, if they had any such objection, should have urged in the Court below that plaintiffs 1 to 3 had some interest adverse to the deity, and in that case the Court might have appointed another next friend on the analogy of O. 32 and the rules in that order framed by this Court. That the defendants never having taken any such objection in the Court below it must be held that no objection could be taken to plaintiffs 1 to 3 acting as next friends of the idol. The analogy of a deity being treated as a minor is a very imperfect analogy and we cannot carry it far enough to make O. 32 of the CPC applicable. In cases where the sebaits of a temple have done something which is obviously adverse to the interest of the institution it may be that the Courts would allow a disinterested third party to file a suit, but such suits must be filed in the

interest of the foundation or the deity, as the case may be. The cases relied on by learned counsel where a sebait transferred property be-longing to the deity and a stranger was allowed to file a suit as next friend can be distinguished on that ground.

8. Learned counsel has relied on the case in A.I.R. 1915 Cal. 376[1]. In that case an application was filed by Sm. Karunamoyee Dassi who wanted to be appointed the next friend of the plaintiff deity Thakurani Sri Sri Annapuma Debi with the object of continuing the suit in the name of the idol for the setting aside of certain transfers of the debutter property made by the sebait. The argument was that ordinarily the proper person to sue on behalf of an idol was the sebait and that in certain circumstances it may be that somebody else could be appointed to look after the interests of an idol in a suit. It was held by Sen J.:

> "It is obvious that circumstances may well arise when it would be impossible to expect any of the sebaits to institute a suit; for instance, all the sebaits may be misappropriating debutter property and secularizing it; the idol may be despoiled by all the sebaits acting in concert. In such a case, it is not possible to expect any of the sebaits to institute a suit to protect the property of the idol. In those circumstances what is to happen? It seems to me that the only course open would

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be for some person to come forward and institute a suit as the next friend of the idol. The matter would first come up before the Court by a suit being instituted by a person claiming to be next friend of the idol. It would be permissible for the defendants thereafter to come up before the Court and contest the fitness of the next friend to act as such. The Court would then investigate the matter and decide upon the suitability of the persons instituting the suit to act as next friend."

9. Learned counsel strongly relied on these observations, but, to our mind, those observations must be restricted to a suit of the nature before that Court where the suit was brought obviously in the interest of the deity to protect it from its sebaits who were trying to misappropriate the debutter property, the reason being that in a case of that kind the only way the Court could give relief to the deity was by holding that the action of the sebaits was illegal and was not binding on the deity.

10. Learned counsel has also referred to certain observations of a Bench of the Calcutta High Court in A.I.R. 1945 Cal. 268[2]. The facts of that case were that there was a suit filed by a Hindu deity Sri Sri Iswar Sridhar Jieu Thakur for the recovery of some money lent, and the question that arose in that case was who was the proper person entitled to represent the deity in that suit. Tushar Ranjan claimed to represent the deity as one of the plaintiffs (plaintiff 2), the suit being constituted as one by the deity represented by its sebaits. Plaintiff 1 was Nirmal who was also one of the sebaits. The other sebait Harimohan was impleaded as a *pro forma* defendant. The trial Court at first held that the loan was not due to the deity, but the advance was made by Harimohan out of his private funds and dismissed the suit. There was an appeal in the Calcutta High Court which was allowed and the case was remanded. After the remand none of the plaintiff-sebaits appeared and the pleader informed the Court that he had no instructions to proceed with the case. The result was that the suit was dismissed for default. It was at this stage that Jyoti Prasad appeared on the scene and claimed that he had been appointed sebait under a document executed by Harimohan who was one of the sebaits and he filed an application for restoration of the suit on the allegation that the other sebaits had entered into a collusive arrangement with the debtors at the expense of the deity and the question, therefore, arose whether Jyoti Prasad could continue the proceedings. Various points were raised in the case, one of the points being whether the suit must be deemed to be a suit by the deity or by the sebait. It was argued that if it was a suit by the sebait then Jyoti Prasad's application to continue the suit must be deemed to be barred by limitation under Section 22(1) of the Limitation Act. The main discussion in the case centred round the point whether the right to sue vested in the deity or in its sebaits, as it was held that Jyoti Prasad was also a duly appointed sebait. The case is not very helpful for the decision of the point whether a third party can or cannot file a suit as next friend, but even in that case Joyti Prasad was allowed to continue the suit on the finding that the sebaits who had originally filed the suit had colluded with the defendants and had done something which was prejudicial to the interest of the deity. The decision of this Court in 45 ALL. 319[3] by Ryves and Daniel JJ. is also to the same effect. That was a suit for the recovery of property wrong, fully alienated by the sebait and it was held that the suit by a disinterested person connected with the idol acting as its next friend was maintainable.

11. In the case before us there are no allegations that it is in the interest of plaintiff 4, the deity, that the defendant should be removed and plaintiffs 1 to 3 put in charge of its property, nor are there allegations of any waste or mismanagement. There are no allegations in the plaint that defendant 1 is not a fit person to look after the deity or that he is not looking after the deity and its property properly. Neither the defendant nor plaintiffs 1 to 3

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can claim to be the properly appointed sebaits of the deity and Saraswati Bai, who was the last sebait, was as great a well wisher of the deity as plaintiffs 1 to 3 and it cannot be said that when she selected defendant 1 and put him in charge, though strictly speaking she may not have had the legal authority, she did not act in the best interest of the deity. The result of accepting the argument of learned counsel would be that any person can constitute himself as the next friend of a deity and file a suit in the name of the deity for possession of the property by the dispossession of a *de facta* sebait who may be managing the property and looking after the deity to the satisfaction of everybody and get hold of the property in the name of the idol till such time as he is dispossessed again by somebody else. We are not prepared to hold that such is the law that any third person can constitute himself as next friend and file a suit and claim an absolute right to possession of the property simply because he has filed the suit in the name of the deity.

12. Learned counsel for the respondent has placed great reliance on a decision of their Lordships of the Judicial Committee in 32 Cal. 129[4]. In that case their Lordships dealing with the respective rights of an idol and its sebait held that though the idol was the owner of the property the sebait had the right of management, and dealing with the question of limitation whether a suit brought by a sebait who was a minor on the date when the cause of action arose and who brought the suit within 3 years after attaining majority was within time, their Lordships observed:

> "But assuming the religious dedication to have been of the strictest character, it still remains that the possession and management of the dedicated property belongs to the sebait and this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the sebait, not in the idol. And in the present case the right to sue accrued to the plaintiff when he was under age ....."

13. Learned counsel for the respondent has urged that the idol has no right of suit and the right vests only in the sebait. The point was fully considered by Nasim Ali and Biswas JJ. in A.I.R. 1945 Cal. 268[2] and by Nasim Ali and Pal JJ. in A.I.R. (1941) 2 Cal. 477[5]. In the latter case Nasim Ali J. pointed out the similarity and the difference between a minor and a Hindu idol. In every suit the question arises whether the suit is brought in the enforcement of the right which vests in the plaintiff who has filed the suit, and in a case where a sebait has filed a suit for the enforcement of his own rights there can be no doubt that he is entitled to maintain the suit in his own name. An idol, though it is a juristic person, is in charge of its sebait who, for all practical purposes, represents it. But there may be cases where the right of the sebait and the right of the idol are at conflict and in such a case it may be that the idol may bring a suit for the vindication of its rights through a disinterested third party as its next friend. We do not think we can accept the contention of learned counsel for the respondent that an idol has no right of suit at all, though we agree with him that a suit in the name of the idol can be filed only in the interest of the idol and not with the object of getting hold of its property by the person purporting to act as next friend.

14. Learned counsel for the respondents has also relied on a decision of the Calcutta High Court in A.I.R. 1937 Cal. 559[6] where in a case of a private debutter it was held that a third party, who was not a member of the family, had no right of suit and that such right was possessed only by a *de jure* manager or by a *de facto* manager who was in possession of the property and was exercising the right in the interest of the idol. His contention is that this is a case of a private debutter and the deity and its property are in the possession of the defendant who is, therefore, its *de*

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facto manager and the plaintiffs' suit being a suit for possession merely on the strength of the compromise decree of the Bombay High Court the only point for decision in the case is how far the compromise decree of the Bombay High Court binds the deity and the defendant. To our mind, this contention is correct, though we must say that there is a certain amount of misconception about the term "private idol" and "public idol".

15. There is really no such thing as an idol which is the private property of an individual or a family or which belongs to the public. According to Hindu philosophy, an idol, when it is installed in a temple is the physical personification of the deity and after consecration the stone image gets its soul breathed into it. Before an idol can be installed in a temple,- the temple must be dedicated to it and it becomes its private property. The books of ritual contain a direction that before removing the image into the temple the building itself should be formally given away to God for whom it is intended. The sankalpa, or the formulae of resolve, makes the deity himself the recipient of the gift which, as in the case of other gifts, has to be made by the donor [illegible]ing in his hands water, sesamum, the sacred kush grass and the like. It is this cere, mony which divests the proprietorship of the temple from those who had built it and vests it in the image which by, the process of vivification

has acquired existence as a juridical personage. A temple building, therefore, under the strict Hindu law is the property of God and the idol and cannot be the private property of an individual or a family or a section of the public. The property dedicated to an idol in an ideal sense vests in the deity, though no Hindu professes to give the property to God. He only dedicates it to the worship of God and under the strict Hindu law the King, who is the servant and the protector of the deity, is the custodian of the property: *see*, 37 Cal. 128[7] at p. 153.

16. In 62 I.A. 245[8] a case in which the question of the location of the private idol was in suit, their Lordships of the Judicial Committee observed:

> "It must be remembered in regard to this branch of the law that the duties of piety from the time of consecration of the idol are duties to something existing which, though symbolising the Divinity, has in the eye of the law a status as a separate *persona*."

17. At page 255 of the same report their Lordships refused to give countenance to the argument that the idols or images which Mutty Lal had set up were his personal property and that he had left them absolutely to Jadu Lal and Jadu Lal might, if he had so pleased, have thrown them into the river. Again at page 256, their Lordships have observed:

> "An argument which would reduce a family idol to the position of a mere movable chattel is one to which the Board can give no support. They think that such an argument is neither in accord with a true conception of the authorities, nor with principles."

18. In that case, though the temple was a private temple, their Lordships held that the will of the idol in regard to location must be respected and sent the case back to the High Court of Calcutta with a direction that the idol should appear by a disinterested next friend appointed by the High Court, so that the wishes of the idol may also be ascertained by the Court with respect to its location.

19. To our mind, the only difference between a private and public temple is that while in a private temple the public at large have no right to worship or right of

management, they have these rights in a public temple. In both such trusts the rights and liabilities of the deity must always be the same. This does not apply to a, case where, though the property is dedicated to the idol, there are further directions as regards the income and in such cases people, who are beneficially interested in the fund, may have certain independent rights of their own. In the case of a public temple the public have a right of worship and a right of management and they are entitled to have their rights properly protected under Section 92 of the CPC. In the case of a private temple the Court would not entertain a suit at the instance of a person who can have no interest in the temple as he does not belong to the family of the founder. Courts may, in those special cases where the person in charge of a private temple or its properties has done something against its interest, allow a member of the public to act as the next friend of an idol to bring a suit solely in the interest of the idol and for the protection of the property, but such a suit cannot be entertained unless it is clear that the suit has been filed in the interest of the idol and for the vindication of its rights. We have already held that there are no allegations in the plaint that this is a suit of that nature. The suit is in vindication of the right of plaintiffs 1 to 3 to be the persons entitled solely to look after and manage the property of the deity and that claim of the plaintiffs can only be based on the compromise decree of the Bombay High Court.

20. Coming to the decree of the Bombay High Court, we have already mentioned the circumstances in which the consent decree was passed by that Court. The suit was filed on the original side of the Bombay High Court by Thakur Gokleshji Maharaj through its friend Doongersey Shamji Joshi of Bombay against Velabai, widow of Chaturbhuj Doongersey. The relief claimed in the plaint, as appears from the consent decree, was that it be declared that the properties described in Exs. A and B to the plaint, that is, the properties in Bombay and Muttra, belonged to the deity and that some fit and proper person be appointed to conduct the worship of the plaintiff deity with power to take charge of and manage the said properties and lastly that a scheme be framed for regulating the worship of the plaintiff and for appointment of successors to continue the worship of the plaintiff. Velabai was not interested in the trust or the trust properties, she being the widow of Chaturbhuj Doongersey who had predeceased Saraswati Bai. Chaturbhuj Doongersey was the wife's sister's son of the founder and it cannot be said, therefore, that he belonged to the family of the founder. His widow was no doubt in wrongful possession of the house property in Bombay, otherwise she had no interest. We do not know what interest Doongersey Shamji Joshi had in the deity. The case was compromised and Doongersey Shamji Joshi, Velabai and one Gordhandas Vallabhdas Dayal, became the managers and trustees under this compromise. In the compromise no rights were reserved for the heirs of the founder—we do not know whether there were any — and it was assumed that the right of worship was vested in the family of Chaturbhuj Doongersey. Under the law, as we have already said, the family of Chaturbhuj Doongersey had no such vested

right of management of the property of the deity or of its worship.

21. The compromise also gave the defendant and other members of the family of Chaturbhuj Doongersey the absolute right to remove the deity from Muttra to Bombay. It would appear, therefore, that in this compromise it was assumed that Chaturbhuj Doongersey should be treated as the founder and all the rights that the founder or his family had were given to the family of Chaturbhuj Doongersey. But as in the case before their Lordships in 52 Cal. 809[8], the wishes of the idol as regards its location

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were not considered. The compromise decree cannot have any greater sanctity or binding effect than the compromise on which it was based. The compromise between the plaintiff and the defendant of that case could not bind a third party who was not a party to the compromise and further the compromise was not such that we can say that the interest of the idol was considered by the Court and a proper scheme was prepared by it.

22. In a proper case where all parties interested in a deity or in its management or worship are impleaded and the deity itself is represented by a disinterested third party, the Court may, after giving due consideration to the matter, prepare a scheme which may be considered to be binding against third persons not so interested; for example, if in the case of a private deity all the persons interested therein are parties to a suit, in a scheme prepared by the Court, a trustee or manager so appointed may have the right to claim rent from tenants or eject a trespasser or file suits in his own name as sebait and the Courts may not allow the defendant to raise the question of the propriety of his appointment. As a matter of fact, even a de facto sebait's or de facto mutwalli's right to bring such suits is now well recognised. In 57 ALL. 159[9]. their Lordships of the Judicial Committee recognised the right of a de facto mahant of a math, accepted as such by all persons interested and in possession of the math, to bring a suit for recovery of property from a trespasser for the benefit of the math. The right of a de facto sebait or mutwalli has also been recognised in 41 C.W.N. 1849[6], 35 C.W.N. 768[10], 37 ALL. 86[11], A.I.R. 1927 Mad. 69[12] and other cases. But we cannot hold that by a compromise decree of the kind, as in this case, the parties to the compromise can assume the right to eject the de facto manager of the deity when he was no party to the compromise. In the case of a suit for a scheme under Section 92 of the CPC the suit is filed in a representative capacity and on behalf of the public and, as such, the other members of the public may be bound by the decision. It cannot be claimed that the Bombay suit was a representative suit and the decree binds anybody who was not a party.

23. Learned counsel for the respondents has urged that only a person interested in the endowment, i.e. who belonged to the family of the founder, could apply for a scheme in a private trust. It is not necessary for us in this case to consider that point as we feel satisfied that the suit filed in the Bombay High Court was not a suit filed in the interest of the deity, nor was the interest of the deity properly considered, nor was it properly represented in that litigation. In any case, we must hold that the person who was the de facto manager or sebait at the time when that suit was filed was a necessary party to that suit. We, therefore, agree with the decision of the Court below that the plaintiffs are not entitled to rely on the decision of the Bombay High Court and urge that the consent decree gives them an absolute right of possession and that the defendant has no right to challenge their authority.

24. Learned counsel for the appellants has urged that the only remedy open to the defendant is to go to the Bombay High Court to have the consent decree set aside before he can challenge the competency of the plaintiffs to maintain the suit.

25. The defendant was no party to that Bombay suit and we do not see why it is necessary for him to go to that Court. The lower Court has held that the Bombay suit was collusive. Learned counsel has urged that there was no evidence of any collusion and that no such case of collusion or fraud was suggested in the cross-examination of the plaintiffs or their witnesses. It is not necessary for us to go to the length of holding that the suit in the Bombay High Court was filed as a result of any fraud or collusion, but there is no doubt that suit was filed soon after the defendant had given a notice to Velabai. In that suit the defendant was not impleaded as a party and the suit was compromised, the parties to the litigation appointed themselves as managers and trustees and gave themselves the right to take charge of the idol's property. Under the circumstances we cannot hold that the decree of the Bombay High Court gives the

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plaintiffs a right to dispossess the defendant who is the de facto shebait and take charge of the deity or its property.

26. Under Section 120 of the CPC, (Act 5 [V] of 1908) Ss. 16, 17 and 20 of the Code do not apply to a High Court in exercise of its original civil jurisdiction. Under cl. 12, Letters Patent, the High Court of Judicature at Bombay has original civil jurisdiction to try suits in cases of immovable property where such property is situate within the original jurisdiction of that

Court, or where the cause of action has arisen within the same limits, and if the cause of action has arisen in part within the local limits of the ordinary original jurisdiction of the Court, then with the leave of the Court, or if the defendant at the time of the commencement of the suit was living or carrying on business within those limits. The deity in the case before us was in Muttra. The defendant was in charge of its property at Muttra and was carrying on the worship of the deity at Muttra. Any suit against the defendant who was the de facto manager either for possession of the property situate there or for a scheme could not be filed in the Bombay High Court, and we, therefore, agree with the contention of learned counsel for the respondent that the Bombay High Court had no jurisdiction to entertain the suit for preparation of a scheme for the worship of the idol situate in Muttra. In the result this appeal is dismissed and the decree of the trial Court is affirmed. Plaintiffs 1 to 3 must pay the costs of the defendant-respondents in both the Courts.

G.N.

27. *Appeal dismissed.*

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1955 SCC OnLine All 420 : AIR 1957 All 77

In the High Court of Allahabad
(BEFORE AGARWALA AND SAHAI, JJ.)

Mukundji Mahraj ... Appellant;
Versus
Persotam Lalji Mahraj ... Respondent.

First Appeal No. 579 of 1945
Decided on May 6, 1955

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The Judgment of the Court was delivered by

AGARWALA, J.:— This is a plaintiff's appeal arising out of a suit for a declaration that proceedings in Suits Nos. 503 of 1928 and 138 of 1930 and 66 of 1937 do not bind the plaintiff and that the plaintiff may be awarded possession over the property in dispute. The plaintiff is an idol Sri Thakur Mukundji Maharaj, installed in a temple, situate in mohalla Bengali Ghat in the city of Mathura.

2. The idol sues through its next friend Surra Chaube who claims to be its Manager. The defendant is one Goswami Purshottam Lalji who is the purchaser at auction of half of the temple in which the plaintiff idol is installed. The property in dispute is this half portion of the temple which has been taken possession of by the defendant in the following circumstances. The plaintiff idol was under the Shebaitship of one Mahant Bhagwat Das who was a follower of the Vaishnavite Ramanandi Sampradaya. Earlier history of the Shebaits of the idol is not known. But it is common ground that the Shebaits had been Bairagis, that is to say, Vaishnavites who had renounced the world. Mahant Bhagwat Das made a will on 11-9-1922, which was duly registered and by which he nominated Narsingh Das to succeed him as Mahant and appointed five trustees to look after the management of the idol's properties.

3. Bhagwat Das died in 1923 and Narsingh Das, as provided in the will, became the Manager of the temple and its property. Narsingh Das borrowed a sum of Rs. 380/- under a promissory note executed by him from one Mathura Dass Thackersay, belonging to Ballabhkul Sampradaya. It was mentioned in the promissory note that the amount, was needed for the purpose of ragbhog expenses of the idol.

4. Nar Singh Das died some time in the beginning of 1928 and thereafter Mathura Dass Thackersay brought a suit upon his promissory note, being Suit No. 503 of 1928 against the idol Sri Thakur Mukund Ji Maharaj under the guardianship of one Kanhaiya Lal, alleged to be a disciple of Narsingh Das deceased. To this suit three other persons were impleaded as defendants; namely, Kanhaiya Lal personally, Sukhbasi, brother of Narsingh Das and Narain Das, the excluded chela.

5. Narain Das was, however, later on exempted from the suit which was not defended by any other defendant, and Mathura Das Thackersay obtained an ex parte decree on 1-12-1928 against the idol under the guardianship of Kanhaiya Lal and Kanhaiya Lal and Sukhbasi for Rs. 428/- and Rs. 48/7/6 as costs. It may be noted that the trustees were no party to this suit. In the plaint it was stated that Narsingh Das

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having died "there was a dispute as to the succession to the Mahantship between Kanhaiya Lal, Sukhbasi and Narain Das" and that for that reason all three of them had been impleaded in the suit.

6. Narain Das filed an application for setting aside the ex parte decree on 30-5-1929 alleging that he was the Manager and mutwalli of the idol after the death of Narsingh Das, that Kanhaiya Lal or Sukhbasi had nothing to do with the management, that fraudulently he had been exempted from the suit and an ex parte decree had been obtained against the idol and that the idol will suffer irreparable loss if the ex parte decree was not set aside. This application was dismissed but it does not appear on what grounds as the judgment is not on the record.

7. Thereafter in 1929 Mathura Dass Thackersay put his decree in execution and had one half of the temple's building attached and sold at auction. The sale was held in favour of the defendant Goswami Purshottam Lalji Maharaj. For what sum the sale was held is also not known as the sale certificate is not on the record. But it appears that some amount which is, according to the plaintiff a sum of Rs. 1,600/- was still lying in Court as the property of the judgment-debtor after satisfying the decretal amount in full.

8. Narain Das brought a suit (No. 222 of 1929) on behalf of the idol through himself as its manager

and impleaded himself as plaintiff 2 as against Sukhbasi and Kanhaiya Lal. The trustees were also impleaded in the suit, three as co-plaintiffs and two as pro forma defendants.

9. In the suit Narain Das claimed to be the Mahant of the idol and alleged that he was entitled to the management of the temple and prayed that Sukhbasi Lal and Kanhaiya Lal be restrained from entering into the temple and interfering with the plaintiff's worship and management of the same. It was alleged in the plaint that Nar Singh Das had in his life time appointed Narain Das as his successor.

10. The trial Court dismissed the suit. There was an appeal and the appeal was allowed and the suit decreed and an injunction issued against Sukhbasi Lal and Kanhaiya Lal restraining them from interfering with the management of the idol and its properties by Narain Das. Kanhaiya Lal came to this Court in second appeal, but the appeal was dismissed.

11. It was held by this Court that there was no legal successor to the Shebaitship on the demise of Narsingh Das, that the five trustees of the temple permitted Narain Das to come back and take up the position of Shebait for the maintenance of worship of the idol and that in these circumstances Narain Das was entitled to represent the idol and the defendants had no right of management of the idol's properties. Thus it was conclusively decided as between the idol and Narain Das on the one hand and Sukhbasi Lal and Kanhaiya Lal on the other that Sukhbasi and Kanhaiya Lal did not represent the idol at all and that Narain Das was a de facto manager of the idol.

12. After the purchase of one half of the temple building at auction sale, the defendant-respondent Goswami Purshottam Lalji filed a suit in 1930 for partition of his half share of the temple. The defendants to the suit were Thakur Mukund Ji Maharaj (the idol), presumably under the guardianship of Kanhayalal and Sukhbasi. Narain Das was not impleaded in the suit in any form nor were the trustees. A preliminary decree was passed on 23-7-1930 and actual possession over the half share was taken by the defendant respondent on 25-12-1936.

13. On 10-2-1931 Narain Das handed over the management of the temple to Surra Chaube through whom the present suit has been brought by the idol under a written document Ex. 14, and according to Surra Chaube he has been managing the temple since then.

14. One Ramanuj Das alleging himself to be the chela of Narsingh Das brought a Suit No. 176 of 1937 against the defendant respondent for a declaration that the decree obtained by him was not binding on the idol. The suit was filed in forma pauperis but the application to sue in forma pauperis was dismissed on the ground that Ramanuj was not a pauper.

15. The present suit was instituted by the idol through Surra Chaube on 26-5-1942 within 12 years of the date of the delivery of possession over the half share in execution of decree in Suit No. 138 of 1930 for partition.

16. The plaintiff's case was that after the death of Narsingh Das, Narain Das become the actual Mahant and that he left the management in the hands of Surra Chaube who had been since then managing the affairs of the plaintiff idol and that Narain Das had died and Surra Chaube being the actual trustee and manager of the temple was competent to sue on behalf of the idol.

17. According to the plaintiff, the decrees in Suits Nos. 503 of 1928 and 138 of 1930 and the proceedings taken therein were collusive and fraudulent and not binding on him, and he is entitled to get possession over the property in dispute. According to him, the promissory note executed by Narsingh Das was fictitious and without consideration and without any legal necessity, and Narain Das who was the actual Mahant had no knowledge of the decree in the partition suit, and the idol was not properly represented in that suit.

18. The defence to the suit was that Narsingh Das did borrow the amount for which he executed, a promissory note, that the promissory note was for legal necessity, that the decrees in Suits Nos. 503 of 1928 and 138 of 1930 and the proceedings taken thereunder were binding on the plaintiff, that the plaintiff was duly represented in those proceedings, that there was no collusion or fraud and the plaintiff could not sue through Surra Chaube who was a stranger and not in charge of the management, that the suit was barred by time and that it was also barred by Section 11 of the CPC. The Court below framed the following issues:

(1) Whether Surra Chaube has the right to file this suit for the plaintiff Thakur Ji?

(2) Whether in Suits Nos. 503 of 1928 and 138 of 1930 of Munsif Mathura the plaintiff deity was properly represented?

Was decree No. 503 of 1928 collusively obtained for a fictitious debt?

(3) Is the claim barred by Section 41 of the Transfer of Property Act?,

(4) Is the claim time barred?

(5) To what relief is plaintiff entitled?"

19. The Court came to the conclusion that after the death of Narsingh Das, Narain Das was a de facto Shebait and that when he left Mathura for good, he declared that in his absence Surra Chaube would carry on the Sewa Puja of the deity, that Surra Chaube had been paying water tax and was in possession of the property and performing the Sewa Puja and that therefore he was entitled to maintain the suit.

20. It further held that the promissory note was executed by Narsingh Das for consideration and for legal necessity, that the income from the property could not exceed Rs. 12/- or Rs. 15/- per mensem, that the income from the offerings was uncertain and that the loan was taken for the expenses of the deity, that after the death of Narsingh Das quarrels arose as to the succession to the office of Mahant, that there was no de jure Shebait after Narsingh Das, that Sukhbasi and Kanhaiya were persons found to be in possession in the litigation started in 1929 and therefore the

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plaintiff was properly represented in Suit No. 503 of 1928 by Kanhaiya Lal who was in actual charge of the temple; that in Suit N. 138 of 1930 the plaintiff idol was sued through Kanhaiya and Sukh basi who were really in possession, that the suit was not barred by Section 41 of the Transfer of Property Act, that the suit was barred by limitation under Article 95, Limitation Act and that unless and until the decree in Suit No. 503 of 1928 was set aside no relief in this suit could be granted. In the result the suit was dismissed. Against this decree the plaintiff has come up in appeal to this Court. The case has been argued with great ability on behalf of both the parties.

21. In this Court it has been urged on behalf of the appellant that the decrees passed in Suits Nos. 503 of 1928 and 138 of 1930 were null and void and not binding on the plaintiff idol for the following reasons:

Firstly, because the idol was not properly represented in the said suits and the decrees against the idol were, therefore, null and void.

Secondly, because there was no legal necessity for the loan and the idol's property could not be sold in execution of a decree passed on the basis of the loan.

Thirdly, even if there was legal necessity for the loan, the temple of the idol which is inalienable could not be sold in execution of the decree passed on the basis of the loan.

Fourthly, that the promissory note having been executed by Narsingh Das personally, even though for a necessity of the idol, no decree could be passed against the idol on its basis.

22. And fifthly, that the suit was not barred by limitation.

23. After hearing counsel for both the parties we have come to the conclusion that the decrees passed and the proceedings taken in the aforesaid suits were null and void against the plaintiff idol for more reasons than one.

24. In the first place, we find that the idol was not properly represented in those suits. The Court below has found that Narain Das was a de facto Mahant of the plaintiff idol, but in another part of the judgment it has also held that Kanhaiya and Sukhbasi were in actual possession of the management of the temple. The finding seems to be contradictory.

25. In Suit No. 222 of 1929 which was hotly congested upto the High Court it was held as between the plaintiff idol and Narain Das on the one hand and Sukhbasi and Kanhaiya on the other that Narain Das was the de facto Mahant of the plaintiff idol, entitled to bring a suit on its behalf and that Sukhbasi and Kanhaiya had no right to interfere in its management. The evidence in the present case also shows that after the death of Narsingh Das it was Narain Das who was actually managing the properties and doing the Sewa Puja of the plaintiff idol and that after him it was Surra Chaube who has been looking after the management.

26. In support of the plaintiff's claim we have the statements of Surra Chaube, Hari Shanker, Gokal, Gajadhar and Gopi who swear that Sukhbasi and Kanhaiya did not act as managers of the plaintiff idol or the properties of the temple and that Narain Das was the Mahant after the death of Narsingh Das. Having examined their statements carefully, we find no reason to disbelieve their testimony.

27. On behalf of the defendant, we have the statements of the defendant himself, of Bhikki Ram, Pairokar of the defendant, Seli Ram and Bidur. It is admitted by some of these witnesses that Narain Das worked as plaintiff's Mahant for some time after

winning the case from the High Court against Sukhbasi and Kanhaiya Lal.

28. The defendant admitted that Sia Ram (probably Kanhya Lal) or Sukhbasi did not pay water-tax in his presence. He also admitted that Kanhaiya Lal and Sukhbasi worked for the plaintiff deity for about a year only, that this was after Narsingh Das's death. Now Narsingh Das died in the year 1928 and therefore according to the defendant himself, Kanhaiya and Sukhbasi worked as the idol's Mahants only upto 1929 and not thereafter. It follows, therefore, that even according to the defendant's own statement, Kanhaiya Lal and Sukhbasi did not represent the plaintiff idol at the time when Suit No. 138 of 1930 was instituted.

29. In the plaint filed by Mathura Das Thackersay in July 1928 in Suit No. 503 of 1928 it was stated that there was a dispute between Sukhbasi, Kanhaiya Lal and Narain Das as to the succession to the Mahantship of the idol upon the death of Narsingh. It appears to us that as held in Suit No. 222 of 1929 the trustees allowed Narain Das to take up the Mahantship after the death of Narsingh Das, but Sukhbasi and Kanhaiya Lal who were related to Narsingh Das contested the right of Narain Das and interfered with his management, but were never in fact able to assume de facto Mahantship of the idol.

30. We, therefore, hold that in Suits Nos. 503 of 1928 and 138 of 1930 the plaintiff idol was not properly represented and that the decrees passed and the proceedings taken under them are not binding on it.

31. In the second place, we find that the loan taken by Narsingh Das was not for legal necessity. Bhagwat Das had clearly laid down in his will that not more than Re. 1/- per day was to be spent for ragbhog. The burden of showing that there was legal necessity was on the creditor or his representative, the defendant-respondent auction purchaser. It is in evidence that a portion of the temple was let out on a monthly rental of Rs. 10/-. Two other Kothris on the roadside which were used as shops were also let out. Then there was income from offerings.

32. The lower Court has recorded no finding as to what the income from the offerings was. According to the plaintiff, the income from offerings was Rs. 20/- to Rs. 25/- per month. The defendant's witnesses put it at a few rupees per month. In the circumstances it cannot be said that the income was not sufficient to meet the expenses. The fact that Narsingh Das took loans from other persons under two mortgage deeds is immaterial as they were executed to comply with a decree which was passed against him. The defendant respondent failed to discharge, the burden that there was legal necessity for the loan.

33. Where there is no necessity for the loan and the creditor brings a suit against the idol and obtains a decree against it, represented by a Mahant Who had taken the loan and the property of the idol is sold in execution of the decree, the succeeding Mahant is not bound by the decree and may recover possession over the property on behalf of the idol treating the auction purchaser as a trespasser.

34. Even if the idol is represented in the suit by a Mahant other than the one who took the loan, the decree is not binding on the idol unless the issue of legal necessity was fairly raised, contested and finally decided, *Prosunno Kumari Debya* v. *Golabchand*, 2 Ind App 145 (PC) (A). In the present case the said issue was never raised or contested or decided in the two suits mentioned above.

35. In the third place, we are of opinion, that a temple cannot be sold in execution of a decree obtained by a creditor on the basis of a loan taken by a Mahant even if it be for legal necessity. No case has been cited before us either in favour of or against this proposition. But considering the matter on first principles we consider that the law must be considered to be as stated by us. Where property is dedicated to an idol, it is intended to be a permanent dedication.

36. The idol represents a deity or a spiritual being whose existence is recognised by

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the Hindu Law. That deity or spiritual being is supposed to exist for ever. Obviously it being not a natural person cannot act like ordinary human beings. It cannot by itself therefore transfer any property. These actions have to be done by a trustee or a manager or a Shebait on behalf of the idol. The endowment may be made subject to the condition that the property shall be inalienable, either by means of a voluntary transfer or in execution of a decree or otherwise.

37. The prohibition against a condition absolutely restraining the transferee from transferring the interest transferred to him as laid down in Section 10 of the Transfer of Property Act does not affect the idol to whom the transfer is made, because an idol by itself is incapable of making any transfer or disposing of its interest in the property. If the disposal has to be made, it has to be made by someone else and the conditions under which that someone else can make the disposal must be governed

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by some other law and not by Section 10 of the Transfer of Property Act.

38. There is nothing in law to prevent a donor from laying down as one of the conditions of the endowment, that the manager or shebait or trustee, acting for an idol, in whose favour the endowment is made, shall not be able to dispose of or part with the property. Where, therefore, endowment so provides, the property cannot be alienated either by voluntary transfer or in execution of a decree or order.

39. Where the terms of an endowment are not known, one has to turn to the general rules of Hindu law on the subject. The general rule of Hindu law as laid down by the Privy Council in 2 Ind App 145 (PC) (A) is that property devoted to religious purposes is ordinarily inalienable. The exception to this rule has also been laid down by the Privy Council in that case. Say their Lordships:

> "notwithstanding that property devoted, to religious purposes is as a rule inalienable, it is in their Lordships opinion competent for the Shebait of property dedicated to the worship of an idol in the capacity as Shebait and Manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigations, attacks and the like objects, the power, however, to incur such debts must be measured by existing necessity for incurring them."

40. The first and foremost duty of a Mahant or a Shebait of an idol is to preserve and maintain the idol as an institution, that is to say as an object of worship. This presumes that the temple, that is to say, the abode of the idol, is to be preserved and maintained as it was intended by the donor or founder. Property other than the temple endowed for the purposes of the idol may have to be alienated if it is absolutely necessary for the purpose of preservation of the idol and its temple. No Shebait or Mahant can, therefore, have the right of alienating the temple itself.

41. Debts may be incurred for the purposes mentioned by the Privy Council including the upkeep of the religious worship. And if the income of the idol obtained from, offerings and the profits of the endowed property is not sufficient to keep up the usual religious worship, a part of the endowed property may be alienated but there is no justification for alienating the whole of the idol's properties and in any case, none whatever for alienating the temple, because religious worship under Hindu law can be performed simply with water, leaves and flowers which involve no expense. As J.C. Ghosh observed in his *Tagore Law Lectures for 1904 on Religious Endowments*, Vol. II, at page 217:

> "Worship can be performed simply with water and leaves and flowers and thus

there can be no necessity for alienating dedicated properties for ostentatious worship. The only valid necessity which the Courts should recognise in case of land is the payment of revenue and rent and repairs of embankments, reservoirs of water and the like. But for these purposes the income of property is ordinarily sufficient. Even for such purposes absolute alienation cannot be justified for they are only necessary for protection. The Courts should therefore only under very extraordinary circumstances recognise any necessity as justifying alienation of dedicated property."

42. This view finds support from the opinion of Sir Bhashyam Ayyanger J. in *Vidyapuma* v. *Vidyanidhi* ILR 27 Mad 435 (B).

43. In *Devasikamoney Pandarasasannadhi* v. *Palaniappa Chettiar*, ILR 34 Mad 535 (C), the headnote ran thus:

"The requirements of daily worship, and of performance of festivals are among the purposes for which the trustees of a temple may alienate the corpus in the absence of other means of providing for such needs."

44. But on an examination of the judgment, we find that the headnote is misleading. What was stated in that case was:

"The requirements of daily worship, of buildings suitable for the carrying on of such worship and even of the essential festivals intended to cultivate the religious emotions of the section of the public for whose benefit the temple is dedicated may afford grounds for the alienations of part of the corpus of the property of the temple. That such alienations ought only to be resorted to as extreme measures in the absence of other reasonable means of providing for the needs of the temple may well be accepted as the canon of judgment in regard to the validity of particular alienations."

45. When debts are properly incurred for an idol, the proper decree that should be passed in I such cases whether the loan is secured or unsecured is one directing the defendant to pay the decretal amount within a fixed period, and directing further that if the amount is not paid within that period a receiver shall be appointed to realise the rents and profits of the debutter property and the proceeds from offerings, etc. and after payment of all expenses connected with the institution and the performance of the ceremonies and festivals and a reasonable provision for the maintenance of the Shebait or Mohunt, the balance shall be applied in discharge of the plaintiff's debt until such debt has been paid; off, vide *Mulla's Hindu Law* Edn. 11, page 520, see *Vibhudapriya Thirtha Swamiar* v. *Lakshmindra Thirtha Swamiar*, ILR 50 Mad 497 : (AIR 1927 PC 131) (D) and *Niladri Sahu* v. *Chaturbhuj Das*, ILR 6 Pat 139 : (AIR 1926 PC 112) (E).

46. Where a Manager or a Shebait of an idol could not have permanently alienated the endowed property for a particular purpose, e.g., for daily worship, the property cannot be sold in execution of a decree obtained on the basis of a loan taken for such a purpose. The endowed property can be sold in execution of a decree only when it is shown to the satisfaction of the Court that the decretal amount cannot be realised from the profits of the property and that the loan was for such a necessity as would have justified or entitled the Shebait or the Manager to make a permanent alienation of the endowed property.

47. For an absolute alienation of a debuttor property, there must, it would seem be an imperative necessity constraining the manager to make it, ILR 34 Mad 535 (C), *Anantakrishna Shastri* v. *Prayag Das*, ILR 1937-1 Cal 84 (F), *Himangshu* v. *Radha Madan Mohan* 43 Cal WN 943 (G), *Venkataramana Ayyangar* v. *Kasturi Ranga*, ILR 40 Mad 212 : AIR 1917 Mad 112 (FB) (H).

48. Whatever may be said about a permanent alienation of endowed property other than a temple, in the very nature of things, having regard to the duties of a Manager

or a Shebait towards the idol or institution, there can be no necessity of alienating the temple or any portion of it in which the idol is installed. The maintenance of the entire building is the prime concern of the Manager or the Shebait.

49. The temple has a special sanctity distinct from other endowed property. To alienate the temple itself is to cut at the root of the very existence of the idol in the habitation intended by the founder. Hindu Sentiment views the alienation of a temple as a sacrilege. Not until the idol has been removed from the temple in accordance with shastric rites and has assumed a new habitation and the temple

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abandoned as a place of worship may the temple be alienated or sold in execution of a decree.

50. In our opinion the sale of the temple in execution of the decree No. 503 of 1928 was totally void and it did not bind the plaintiff idol. After the death or removal of the Mahant who represented the idol in the suit in which the decree was passed, the succeeding Mahant who was no party to the proceedings can challenge the validity of the decree and treat the proceedings as null and void.

51. In view of the above findings it is not necessary for us to decide the point whether on the promissory note executed by Mahant Narsingh Das, a decree could be obtained against the idol if it was properly represented.

52. This brings us to the question of limitation. As the idol was not properly represented in the aforesaid suits, the decrees were nullities as against the idol. In such cases the principle laid down by the Privy Council in *Rashidunnisa* v. *Muhammad Ismail*, ILR 31 All 572 (PC) (I) and by this Court in *Dwarika Halwai* v. *Sitla Prasad*, 1940 All LJ 166 : (AIR 1940 All 256) (J) applies. The decree is not merely voidable, but null and void. The decrees being nullities can be ignored and the plaintiff is not under the necessity of having them set aside before suing for possession.

53. Limitation would run against the plaintiff from the date on which the defendant took effective possession over the property, see *Sudarsan Das* v. *Ram Kirpal Das*, AIR 1950 PC 44 (K). This possession was taken in 1936. The period of limitation would be 12 years under Article 142, Limitation Act. The suit was, therefore, well within time.

54. It was urged that the plaintiff came to Court on the allegation that the decrees were collusive and fraudulent and that therefore he could not be allowed to urge that the decrees were null and void because there was no proper representation of the idol. This plea is not open to the defendant-respondent, because a definite issue was framed by the Court below upon it, being issue No. 2, and evidence was led by both parties. In the plaint itself it was clearly stated that the plaintiff idol was not properly represented in Suit No. 503 of 1928, vide paras. 12, 13 and 14.

55. It was then urged on behalf of the defendant-respondent that the present suit was barred by O. 9, R. 9 of the CPC, because one Ramanuj Das filed Suit No. 66 of 1937 for the same relief as was sought in the present case and the same was dismissed in default. It is not the defendant's case that Ramanuj Das was de jure or de facto Mahant or manager of the plaintiff idol nor is it the case of the plaintiff.

56. Indeed the evidence of the plaintiff is that shortly before the death of Narain Das and after his death, it was Surra Chaube who was the Mahant and Manager of the plaintiff idol. No issue was framed on this point in the Court below. Moreover the application for leave to sue in forma pauperis was rejected and there was no decision in the suit itself. The decision in that case cannot operate as a bar to the present suit.

57. A half-hearted attempt was made to argue that the present suit was barred by

S. 11, because of the decisions in Suits Nos. 503 of 1928 and 138 of 1930, but as has been found above, the plaintiff-appellant was not properly represented in those suits, and the decisions in those suits cannot bind the plaintiff under the doctrine of res judicata. Nor does the dismissal of the application filed by Narain Das on behalf of the plaintiff idol for setting aside the ex parte decree have the effect of res judicata on the trial of the present suit. The judgment of the Court dismissing the application has not been filed in this case and we do not know on what grounds it was dismissed. The result, therefore, is that we allow this appeal, set aside the decree of the Court below and decree the plaintiff's suit with costs throughout.

D.R.R.

58. *Appeal allowed.*

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(21)

(21)

(1965) 1 SCR 96 : AIR 1965 SC 906

In the Supreme Court of India

(BEFORE P.B. GAJENDRAGADKAR, C.J. AND J.C. SHAH AND N. RAJAGOPALA AYYANGAR, JJ.)

IDOL OF THAKURJI SHRI GOVIND DEOJI MAHARAJ, JAIPUR ... Appellant;

Versus

BOARD OF REVENUE, RAJASTHAN, AJMER AND OTHERS ... Respondents.

Civil Appeal No. 326 of 1962*, decided on August 24, 1964

Advocates who appeared in this case :

B.K. Bhattacharya, Senior Advocate (S.N. Mukherjee, Advocate, with him), for the Appellant;

G.C. Kasliwal, Advocate-General for the State of Rajasthan (K.K. Jain and R.N. Sachthey, Advocates, with him), for the Respondent.

The Judgment of the Court was delivered by

P.B. GAJENDRAGADKAR, C.J.— The short point of law which arises in this appeal is whether under Rule 5 of the Jaipur Matmi Rules, 1945, the appellant the Idol of Thakurji Shri Govind Deoji Maharaj, is liable to pay the Matmi amount in question. It appears that Respondent 1, the Board of Revenue, had passed an order on 6th November, 1956, directing that the Matalaba Matmi amounting to Rs 15,404/14/6 be recovered from the Shebait of the appellant temple. The appellant disputed the validity of this order and filed a Writ Petition (No. 10 of 1957) in the High Court of Rajasthan contending that the said amount was not recoverable from the appellant. The High Court has dismissed this writ petition and the appellant has come to this Court with a certificate granted by the High Court.

2. In its petition, the case for the appellant was that several lands had been granted to the appellant from time to time and that these grants were made in the name of the Idol, and that the Seva Pooja of the Idol and the management of its properties was entrusted to the Goswami ever since the Idol of Thakurji Shri Govind Deoji Maharaj was taken to Jaipur from Brindaban. On the death of the Ninth Shebait, Goswami Shri Krishna Chandra succeeded to the Shebaitship in 1888 and continued to be in management as such Shebait until 1935. On his death, his eldest son Goswami Bhola Nath succeeded and Seva Pooja was looked after by him during his lifetime. On the death of Goswami Bhola Nath in 1945, his eldest son Goswami Pradumna Kumar succeeded to the Shebaitship and has been carrying on the management of the properties of the temple and looking after the Seva Pooja of the Idol. It was during the management of Pradumna Kumar that the impugned order has been passed by Respondent 1. According to this order, Matmi has been sanctioned "in favour of Goswami Bhola Nath on the death of Krishna Chandra Deo and in favour of Pradumna Kumar Deo on the death of Bhola Nath" and the total amount directed in that behalf is Rs 15,404/14/6. The appellant's petition specifically averred that the property in question had been granted to the Idol itself and that the Shebaits have been performing the Seva Pooja of the Idol and managing the properties of the temple as such Shebaits. On these allegations, the appellant prayed that an appropriate writ, order or direction should be issued prohibiting Respondent 1 and the Collector, Sawai Madhopur, Respondent 2, and their nominees or agents from recovering or from taking any step for the recovery of any Matalaba Matmi under the impugned order of Respondent 1 from the petitioner's estate. The appellant also claimed that an

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appropriate order or direction or writ should be issued quashing the said impugned order as well as the prior order dated 20th April, 1954 on which the latter order was based.

3. Respondents 1, 2 and the State of Rajasthan which was joined as Respondent 3 disputed the appellant's claim and made several pleas. In regard to the allegation of the appellant that the properties in question had been granted to the Idol, the respondents' reply merely stated that that allegation was not admitted as the documents regarding the original grants were not traceable. The respondents urged that the Matalaba Matmi had been properly levied by Respondent 1 against the Shebaits and that the appellant's grievance that its properties were not liable to pay the said amount was not well-founded.

4. The High Court has proceeded to deal with this dispute on the basis that the appellant, the Idol of Thakurji Shri Govind Deoji Maharaj was the owner of the properties. It, however, took the view that since the Shebaits were managing the properties and performing the Seva Pooja of the appellant Idol. Shebaitship itself being property the relevant Rules applied, because the beneficial interest which the Shebaits held could be said to amount to a "State grant" within the meaning of Rule 4 (1). On this view, the High Court came to the conclusion that what is contemplated in the Matmi Rules is the succession to a Shebait. In that connection, the High Court referred to the fact that the predecessors of the present Shebait had applied for Matmi and the present Shebait himself had similarly filed an application in that behalf. According to the High Court, the plain meaning of the definition of "Matmi" is that it is payable at the time of the recognition of the succeeding Shebait. In this connection, the High Court has also observed that the writ petition had been filed by the Idol and though the Shebait appeared as the agent of the Idol, it was not a petition filed by the Shebait as such, and since the impugned order had been passed against the Shebait, the grievance made by the Idol was technically not justified. Even so, since the High Court was inclined to take the view that by virtue of the beneficial interest which the Shebait have in the property of the temple the impugned order had been properly passed, the High Court considered the merits of the writ petition filed by the appellant and dismissed it with costs. The main judgment has been delivered by Bhandari J. Modi J. has agreed with the conclusions of Bhandari J. and in a brief order he has indicated the principal grounds on which his conclusions rested. Modi J. also held that it was not possible for the Court to help the appellant in view of the Rules as they stand. He thought that the only relief which the appellant can secure is by moving Respondent 3 to exercise its discretion under clause (*xvii*) of Rule 20 and get exemption from the payment of the amount in question. It is against this decision that the appellant has come to this Court.

5. The Jaipur Matmi Rules came into force in 1945 and some of the relevant provisions of these Rules must now be considered. Rule 4 contains definitions. Rule 4 (1) defines a "State grant" as meaning a grant of an interest in land made or recognised by the Ruler of the Jaipur State and includes a jagir, muamla, suba, istimrar, chakoti, badh, bhom, inam, tankha, udak, milak, aloofa, khangi, bhog or other charitable or religious grant, a site granted free of premium for a residence or a garden, or other grant of a similar nature. Rule 4(2) defines a person holding a State grant as a "State Grantee". Rule 4(;) refers to "Matmi" and defines it in these terms:

> "'Matmi' means mutation of the name of the successor to a State grant on the death of the last holder. The person in whose name matmi is sanctioned is called the 'Matmidar' and the sum payable by him on his recognition as such by the State is called 'Matalaba Matmi.'"

Rule 4(4) defines "Nazrana" thus:

> "'Nazrana' is the sum payable, in addition to matalba matmi, by an adopted son

or by a successor other than a direct male lineal descendant of the last holder."

It will thus be noticed that under Rule 4(1) a State grant means, inter alia, a grant of an interest in land made by the Ruler of the Jaipur State and it includes a charitable or religious grant. The High Court has dealt with the present writ petition on the basis that the grant has been made in favour of the Idol. In fact, the two grants to which our attention was invited fully support this view. The copy of the Patta dated 21st Ramzan St. 1123 (Annexure Exbt. 4) shows that the Villages Dehra and Salampukh Balahadi in Pargana Hindaun Baseshu Prasad were allotted for "Punya Bhog" of Thakurji Sriji. Similarly, the copy of the Patta dated Katik Badi 8 of Smt 1808 (Annexure Exbt. 5) shows that the Village Govindpur Bas Hathyod Tehsil Qasaba Sawai Jaipur was allotted for the Bhog (food offerings) of Thakurji Sriji. Therefore, we feel no difficulty in dealing with the present appeal on the same basis which the High Court has adopted in its judgment. The grants in question were grants made in favour of the Idol and not in favour of the Shebaits. It is well known that a religious grant can be made either in favour of the Idol as such or may be made to a person burdening the grantee with the obligation to render requisite services to the temple. It is with the first category of grants that we are concerned in this appeal. The grant is one to the Idol and if the Shebait manages the properties granted to the Idol, it is by virtue of his Shebaitship and not because he is in any manner a grantee from the State as such.

6. Rule 5 provides that all State grants shall be subject to Matmi with certain exceptions. With these exceptions we are not concerned. Rule 6 provides for the submission of death reports by persons claiming succession to a grant. Rule 7 prescribes the penalty for the successor's failure to make the report. Rule 8 provides for attachment of State grants pending Matmi. Rule 9 provides for the Bhograj expenses during attachment of a bhog grant. Under Rule 12, a claim for succession to a State grant, if not made within a year of the last holder's death, shall be rejected as time-barred and the grant resumed. Rule 13 deals with the question of the persons entitled to succeed. Rule 14 deals with the same problem in the absence of a direct male lineal descendant. The proviso to Rule 14 lays down, inter alia, that in the case of a grant for the maintenance of a temple, other than a Jain temple, it shall be within the discretion of the Government to select as successor any one of the male lineal descendants of the original grantee, with due regard to his suitability for the performance of worship. With the rest of the Rules we are not concerned in the present appeal.

7. The question which arises is, can the grant made to the appellant be said to attract the operation of Rule 5? Rule 5 prescribes for the levy of Matmi in respect of State grants and if the said Rule applies, the appellant would have no case. In deciding the question as to whether the appellant's estate is liable to pay Matmi under Rule 5 it is necessary to examine the nature of this Matmi, and find out whether a claim in respect of it can be made against the appellant. We have already noticed that Matmi means mutation of the name of the successor to a State grant on the death of the last holder. It is obvious that in the case of a grant to the Idol or temple as such there would be no question about the death of the grantee and, therefore, no question about its successor. An Idol which a juridical person is not subject to death, because the Hindu concept is that the Idol lives forever, and so, it is plainly impossible to predicate about the Idol which is the grantee in the present case that it has died at a certain time and the claims of a successor fall to be determined. That being so, it seems difficult to hold that any claim for Matmi can be made against the appellant; and that must clearly lead to the inference that no amount can be recovered from the properties belonging to the Idol on the ground that Matmi is claimable against a person who claims to be the successor of the Shebait of the appellant.

8. The learned Advocate-General was unable to dispute this position. He, however,

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attempted to argue that all grants pertaining to the properties of the appellant were not before the Court, and so, it may not be proper to proceed on the basis that all the properties of the appellant have been granted to the appellant in its own name. We are not impressed by this argument. We have already noticed that a specific averment was made by the appellant in para 3 of its writ petition that all the State grants made to the appellant from time to time were in the name of the Idol, and though the respondents did not specifically admit this averment, they pleaded that since the documents regarding the original grants were not traceable, they required the appellant to prove its case in that behalf. The appellant produced two grants and it appears from the judgment of the High Court that the matter was proceeded with on the basis that the Idol is the grantee of all the properties. That being so, we do not think it is open to the Advocate-General now to contend that some of the properties may have been granted to the Shebaits no doubt burdened with the obligation to perform the services of the Idol.

9. The High Court appears to have taken the view that because a Shebait has some kind of a beneficial interest in the property of the temple, that beneficial interest itself could be treated as a State grant and it is on this basis that the High Court held that the impugned order passed by Respondent 1 was valid. In the present case we are not concerned to enquire whether for recognising a succeeding Shebait any Matmi can be recovered by the respondents; but since the High Court has laid emphasis on the fact that the Shebait has a beneficial interest in the properties granted to the appellant, it is necessary to point out that though the Shebait by virtue of the special position attaching to Shebait under the Hindu law can claim some beneficial interest, that interest is derived not by virtue of the grant made by the State, but by virtue of the provisions of Hindu law, or custom, or usage of the temple or locality where the temple is situated. In *Tilkavat Shri Govindalalji Maharaj* v. *State of Rajasthan*[1] the position of the Shebaits was incidentally considered, and the observations made by Justice Ameer Ali in *Vidya Varuthi Thirtha Swamigal* v. *Baluswami Ayyar*[2] were cited with approval. "In almost every case," said Justice Ameer Ali, "the Mahant is given the right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him, nor is he a trustee in the English sense of the term, though in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for mal-administration". Therefore, it seems to us that the High Court was in error in holding that the beneficial interest of the Shebaits in the properties granted to the appellant amounted to a State grant, and so, the impugned order was perfectly valid. The incidental effect of the conclusions reached by the High Court may perhaps be taken to be that the order passed by Respondent 1 being valid, the amount in question can be recovered from the properties of the appellant. That is why we thought it necessary to clarify the position in law on this point.

10. In fact, by Civil Misc. Petition No. 1081 of 1964 it has been brought to our notice by the appellant that it had made a compensation claim because lands granted to the appellant had been resumed by the State of Rajasthan by Notification No. F. (388)/REV/1.A/53 dated 1st January, 1959 and that an annual sum by way of annuity to the Deity had been sanctioned by the State of Rajasthan under its order dated 24th April, 1962. This order has, however, directed that the amount of Rs 15,404/14/6 which has been ordered by Respondent 1 to be recovered by way of Matmi should be deducted and that, it is urged before us by the appellant, cannot be done. This fact clearly shows that the appellant is justified in apprehending that though the order of Matmi dues has been nominally passed against the present Shebait, it may be enforced against the properties belonging to the appellant. Since we have held that the properties granted to the appellant constitute State grants under Rule 4(1), but do not become liable to pay Matmi dues under Rule 4(3), we must hold that the

appellant's writ petition was justified inasmuch as it asked for an appropriate direction restraining the respondents and their nominees or agents from recovering the said amount from the appellant's estate. Therefore, prayer made by the appellant in para 16(1) of its writ petition must be allowed. Since we are not concerned with the validity of the order passed by Respondent 1 against the present Shebait, we propose to express no opinion in regard to the merits of the prayer contained in para 16(2) of the writ petition.

11. The result is, the appeal is allowed, the order passed by the High Court is set aside and the appellant's writ petition is allowed with costs.

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* Appeal from the Judgment and Order dated 10th September, 1959 of the Rajasthan High Court in DB Civil Writ Petition No. 10 of 1957

[1] AIR 1963 SC 1638

[2] 48 IA 302 at p. 311