Sri K.P.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs. ... Appellant

VERSUS

Mahant Suresh Das &Ors. etc. etc. ... Respondents

AND

OTHER CONNECTED CIVIL APPEALS

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NOTE ON JURISTIC PERSONALITY OF IDOLS AND AREAS

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JURISTIC PERSONALITY OF IDOLS AND AREAS

I. GENERAL

1.1. It has already been shown that:

a. In the Vedic periods there was no idol worship.
b. However, certain areas were regarded as sacral such as tanks, trees, rivers which were important to livelihood and treated with reverence, but not clothed with juristic personality as deities.
c. Idols have juristic personality which is limited in terms of their rights.
    - Their status will be determined according to Indo-Anglian law
    - *PN Mullick v. PK Mullick, (1925) 52 IA 245.*
    - The site would be vulnerable to the application of the law of limitation.
    - The site can be lost by adverse possession.

II. JURISTIC PERSONALITY OF 'AREAS'

Pleadings

2.1. In the Pleadings, this argument has been advanced to claim the entire area of the Mosque

i. This area as 'Sri Rama Janma bhumi (Ayodhya) (pr. 1)

"1. That the plaintiffs Nos. 1 and 2, namely Bhaagwan Sri Rama Virajman at Sri Rama Janma Bhumi, Ayodhya, also call Sri Rama Lala Virajman, and the Asthan Sri Rama Janma bhumi, Ayodhya, with the other Idols and places of worship situate thereat, are juridical persons with Bhagwan Sri Rama as the presiding Deity of the place. The Plaintiffs No.3 is a Vaishava Hindu, and seeks to represent the Deity and the Asthan as a next friend."

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ii. The reason for this claim was, after the suits have been consolidated and issues framed , there 'was an expectation' that the suits would be disposed of soon thereafter...(and) because of this indefinite delay (a gate was opened on 1.2.1986) (pr.12-13)

"12. The when issues were framed, and when the suits were consolidated, more than twenty five years ago, the expectation was that the suits would be disposed of soon thereafter. But for one reason or another, they continued to remain pending, and still continue to remain pending, with a dim prospect of their immediate hearing. Although the sewa and puja of the plaintiff Deities was being conducted regularly and properly yet Darshan was allowed only from behind a barrier. It is true that in the Temples in the Southern parts of India, the devotees are not permitted to go near the Deities for their Darshan and Puja and must do so from behing a barrier, but that is not the custom in the Northern parts of India, and it was hoped that after the decision of the suits, the devotees would be able to have a closer Darshan of the Plaintiff Deity No.1.

13. That because of the indefinite delay in the disposal of the said suits, on an application made by Defendant No.20, herein, in the interest of the worshippers, with the prayer for allowing a closer Darshan the Court of the Munsif Sadar, Faizabad, refused to pass orders but on appeal there from, the court of the District Judge, Faizabad by an order dated 1.2.1986, directed the authorities to remove the barriers by opening the locks on the gates O and P on the map, which is annexed there as Annexure No.1."

iii. There was concern about bad management by the receiver, but the solution was that: (at pr. 14)

'...the devotees of the plaintiff Deities are desirous of having a new Temple constructed, befitting their pristine glory, after removing the old structure at Sri Ram Janma Bhumi, Ayodhya.'

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Further, this was supported by "unanimous public opinion" (pr 15). The wait was for an 'extraordinary numbers of years'(pr. 18)

iv. The remedy was to create a Ram Janma Bhumi Nyas Trust (Defendant No. 21) whose members included Mahants, Members of the VHP [one of whom was described in *Ismail Farooqui (1994) 6 SCC 360* (at *p. 381-382)* as being involved in the Babri Mosque's destruction on 6 Dec. 1992.] Four trustees were to be appointed by the VHP who are mahatmas and 10 members who were 2 judges (Katju and Deoki Nandan Agarwal and Rajmata Scindhia (amongst others 5 eminent persons included members of the RSS (pr. 15-6)

v. Interestingly, the juristic personality is attributed to two plaintiffs:

'...they have a distinct personality of their own, separate from their worshippers and sevaks, and some of the actual parties thereto, who are worshippers, are to some extent involved in seeking to gratify their personal interest to be served by obtaining a control of the worship of the Plaintiff Deities.'

Accordingly, the plaintiffs were 'advised' to file a fresh suit of their own. (pr.18)

vi. The reason for the case was:

"(30) That the Hindu Public and the devotees of the Plaintiff Deities, who had dreamed of establishing Ram-Rajya in Free India, that is, the rule of Dharma and righteousness, of which Maryada Purushottam Sri Ramchandra Ji Maharaj was the epitome, have been keenly desirous of restoring his Janmasthan to its pristine glory, as a first step towards that national aspiration given to us by Mahatma Gandhi. For achieving this, they are publicly agitating for the construction of a grand Temple in the Nagar style. Plans and a model of the proposed Temple have already been prepared by the same family of architects who built the Somnath Temple. The active movement is planned to commence

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from September 30, 1989, and foundation stone of the new Temple building, it has been declared, shall be laid on November 9, 1989."

vii. It was stated that:

"(36) That the cause of action for this suit has been accruing from day to day, particularly since recently when the plans of Temple reconstruction are being sought to be obstructed by violent action from the side of certain Muslim Communalists."

viii. Consequently the Reliefs prayed were"

"(39) That the plaintiffs claim the following reliefs:

(A) A declaration that the entire premises of Sri Rama Janma Bhumi at Ayodhya, as described and delinated in Annexures I, II and III, belong to the plaintiff Deities.

(B) A perpetual injunction against the Defendants prohibiting them from interfering with, or raising any objection to, or placing any obstruction the construction of the new Temple building at Sri Rama Janma Bhumi, Aydhya, after demolishing and removing the existing buildings and structures etc., situate thereat, in so far as it may be necessary or expedient to do so for the said purpose.

(C) Costs of the suit against such of the defendants as object to the grant of relief to the plaintiffs.

(D) Any other relief or relief to which the plaintiffs may be found entitled."

2.2 It is important to describe the Nyas was created and registered on 18.12.1985 and its trustees included Mahatmas from different parts of India, Judges: Justice Shiv Nath Katju , Deoki Nandan Agarwal, Politicians: Rajmata Srimant Vijae Raje Scindia, RSS and VHP members.

2.3 Deoki Nandan Agarwal could not be a next friend.

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Thus it is clear that Suit No. 5 was a socio-political vehicle for the Nyas, pointing to the future and trying to recreate the past to serve the future.

2.4 The basis for building the new temple was:

i. Public records of 'unimpeachable authority' show that he manifested himself in that area in Ayodhya as Bhagwan Vishnu.

> *"20. That the place itself, or the ASTHAN SRI RAMA JANMA BHUMI, as it has come to be known, has been an object of worship as a Deity by the devotees of BHAGWAN SRI RAMA, as it personifies the spirit of the Divine worshipped in the form of SRI RAMA LALA or Lord RAMA the child. The Asthan was thus Deified and has had a juridical personality of its own even before the construction of a Temple building or the installation of the idol of Bhagwan Sri Rama thereat."*

ii. Hindus worship the Divine which has no quality of shape and form, but, can be known only to manifests ITSELF as a form ...For some even that is unnecessary. (at pr. 21)

> *"21. That it may be here stated that the Hindus do not worship the stone or the metal shaped into the form of their ISHTA DEVATA, of the stone of SALIGRAM which has no particular shape at all. They worship the Divine, which has no quality or shape or form, but can be known only when it manifests ITSELF in the form of an incarnation, and therefore, adopt the form of his incarnation as their ISHTA DEVA. For some even that is unnecessary. They can meditate upon the formless and the shapeless DIVINE and aspire for knowledge of him through his grace. It is the SPIRIT of the DIVINE which is worshipped by most Hindus, and not its material form or shape in an idol. This SPIRIT of the DIVINE in an idol is invoked by the ritual of pranapratishtha. The SPIRIT of the DIVINE is indestructible*

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and ever remains present everywhere at all times for any one to invoke it in any shape or form in accord with his own aspiration. Different persons are at different levels of realisation of the REALITY. Some find it helpful to pursue a particular set of rituals for their spiritual uplift. A large section of Hindus follow BHAKTI MARGA, and BHAGWAN SRI RAMA or BHAGWAN SRI KRISHNA is their ISHTA DEVA."

iii. *"The spirit is the deity... An idol is not necessary for invoking the Divine Spirit"*

Examples were given of Kedarnath (in the form of undulating surface of stone) and Gaya (where footprints of Lord Vishnu were found). This is then applied to the charan and Sita ki Rasoi.

In these cases, there were physical manifestation, undulating surface of stone and footprints.

2.5 It is submitted that this Janmabhumi basis is new and created in 1989 and sought to be established by reference to the Treatises, Travellers and Gazetteers.

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Appeal

2.6 It is clear that these assertions were not lost sight in the memorandum of the Civil Appeal No. 4768-4771 of 2011, which examines three aspects:

i. The synopsis itself invokes: (at pg. B)

'On the basis of the evidence on record the property in Suit is being worshipped as a 'deity' being believed to be the birthplace of Bhagwan Sri ram, from the times immemorial. The original temple on the present site in its present form was constructed by King Vikramaditya the greatest king of the greatest dynasty to rule India, namely the Gupta Dynasty, on the site believed to be the birth place of Bhagwan Sri Rama and the same was being worshipped by the

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entire Hindu community as such. The present temple was renovated by Garwal Dynasty in 10th/11th century. This temple was demolished under the command of Babar in 1528 and the disputed structure was thus 'constructed on the same. Extensive use of material of the old temple was used for the purpose.'

ii. Argument about rights under Article 25 of the Constitution. (Pg. 101, 109)

Note: It is not fair to distinguish religion of faiths practised, in India which originated outside India and those which originated in India. Both have the protection of India's Constitution and the essential practices test would not deprive the former category of constitutional rights.

iii. The legal consequence of the janambhumi as a juristic person is that such a juristic person would be immune from Adverse possession, Limitation, Acquisition; partibility res extra commercium and so on.

No title could be claimed for this area as res nullius (wrongly so termed) on the basis that the bhumi was already under ownership as janmabhumi.

The effect of such an approach would be that janmabhumi's property or part thereof could be leased, licensed, mortgaged or put to any use in respect of the shebait or any third party. The larger the area, the greater the impediment.

In the present case, the claim is for 1460 square yards which is already divided in law and facts.

2.7 The real reason for using the 'janambhumi' as a vehicle was to create a juristic personality to canvas two regimes:

(i) The idol regime;

(ii) The Bhumi regime

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2.8 The expectation was that the Bhumi regime would give them more rights as:

a) The bhumi could not be shifted;
b) It is inalienable;
c) No rights could be created;
d) No limitation applied;
e) No adverse possession;
f) No acquisition
g) No partibility etc.

These are legal consequences that emerge from the pleadings, appeal and arguments.

However, we submit that even if Plaintiff No. 2 is accepted as a juristic personality, such consequences cannot be accepted and the status of Plaintiff No. 2 in terms of legal consequences would be the same as an idol.

2.9 Proof is not just belief, but manifestation and worship in that form.

III. JURISTIC BASIS

3.1 P.N. Saraswati in his Tagore Law Lectures says: (at pg. 80-81)

> *"1. Having finished the subject of construction of temples, I propose now to deal with the topic of the consecration of images therein.*
>
> *2. The sacred writings of the Hindus notice two kinds of images, - one self-revealed and the other artificially created. This in the Padma Purana, Siva declares to Parvati: "Hear, O goddess, I speak of that partial abode of Hari ; it is celebrated of two kinds, the established and the self-revealed. The image of Hari 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. Now hear me speak of the self-revealed. Where the self-possessed Vishnu has placed himself on earth in stone or wood, for the benefit of mankind, that is*

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styled the self-revealed." Vishnu in the above passage is typical of all deities. Even in our own days the miraculous discovery of divine images in not unknown to the faithful. For those disinclined to believe in such miracles, it is easy to explain that the image might be really an old one re-discovered by accident or a new one manipulated for a pious fraud. A common preliminary to such finds is a vision which appears in a dream to one of the devout worshippers, who communicates the same to this relations and neighbours, whereupon a procession is formed to the indicated spot, when lo and behold the image is discovered to the delight of the faithful and to the advantage of the favoured dreamer who becomes the recognised custodian of the god and the medium of his worship. The sceptic will, no doubt, find in this a corroboration of his theory of fraud, and in many cases his surmise might be the correct one. It is not necessary, however, even for a purely rational explanation to impute fraud to the dreamer in every case. The causation of dreams is still so obscure that it is possible to imagine a man dreaming of the existence of an image or other thing after having come across it, or having himself deposited it in a fit of somnambulism; or the dream may be true like other recorded instances in the books which are explained either by way of accidental coincidence, or by some process of that transcendental psychic energy, the existence of which long known in the East is only now being acknowledged in the west, and forms the most prominent scientific problem of our times."

PN Saraswati adds: (at pg. 81)

"3. It is not necessary also to deny a natural origin in every case to one of these self-revealed deities. There is no end to the freaks of nature, and it is quite possible for wood or stone either in natural growth or by the application of other than human agency to assume fantastic shapes in which the devout might find some resemblance to their favourite divinity."

(See Annexed herewith extract of 'Hindu law of Endowment' by P.N. Saraswati.)

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3.2 In the present case, the Nyas was created on 18.12. 1985. The only movement that followed were the Kar Sewa. This was an entirely political movement. The Government's White Paper *(referred to in the impugned judgment at Vol. I pg. 1096-1097)* describes a socio-political movement that led to the destruction. This is described in the White Paper as follows (at pg.14)

> *"2.16. In 1989, the VHP started a country-wide movement for collection of consecrated bricks (Ram Shilas) in Ayodhya from all over the country. In November, 1989, the VHP laid the foundation stone of the proposed temple at a spot in front of the disputed structure. According to report of local officers and legal opinion available at that time this spot did not form part of the land involved in litigation. Earlier to that, an agreement was also signed (on 27-9-1989) in which the VHP undertook "to abide by the directive of the Lucknow Bench of the Allahabad High Court given on 14-8-1989 to the effect that the parties to the suits shall maintain the status quo and shall not change the nature of the property in question..." A copy of the agreement is at Appendix – II.*
>
> *2.17. The communal situation in the country deteriorated considerably in 1990 because of the tension generated from this dispute. Towards October, 1990, a programme of construction of the temple through kar seva was announced by the VHP. It was apprehended that this programme would cause damage to the disputed structure and elaborate arrangements of its security were made. Despite these arrangements, some volunteers of VHP managed to cause minor damage to the domes of the shrine on 30th October, 1990. Police and para-military forces had to open fire to control the crowd of Kar Seva seeking to storm the disputed shrine on 30th Oct, and 2nd Nov.1990. As per official records, 16 persons died in the firing."*

3.3 This can hardly be described as a consecration, especially, as it led to the illegal destruction of both Muslim and Hindu objects of prayer.

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IV. WITNESSES ON THE AREA AND PARIKRAMA

4.1 Concept of Parikrama has been described by the following witnesses of Hindu Parties:-

i. **OPW 4 [Vol 19 @ pgs. 807-853]**

- **Pg. 809**: *People used to visit Ram Janambhoomi for darshan & parikrama.*
- **Pg. 825**: *When I went to the disputed place i.e. Janam Bhoomi I worshipped the whole family of Bhagwan Ram and had Darshan. The idol was kept on the platform which was on left side on entering from the Hanumant dwar. After visiting the above platform, I used to go to the left side of the southern door and through the living the place of hermits to the Sita Rasoi for Darshan. Back from there, coming out from the Eastern door the Hanumant dwar I had Parikrama of the disputed site.*

ii. **OPW 5 (Pgs. 854-946/Vol. 19)**

- **Pg. 871:** *All round the Ram Janambhoomi temple, there is a Parikrama Marg. There was a wall of 2 feet to 2 ½ feet on all the four sides of the Parikrama marg. On the east of the disputed building after the 'Parikrama Marg' there is no wall and similarly, there was no wall in the southern side also- it is even land.*

iii. **OPW 6 (Pgs. 947-1000/Vol. 19)**

- **Pg. 950 (Para 5):-** *After having darshan of Shri Ram Janam Bhoomi, I have seen thousands of people doing Parikrama of the entire Shri Ram Janam Bhoomi premises from outside. I, alongwith my father and grandmother also had Parikrama of the entire Shri Ram Janam Bhoomi premises after darshans. Due to old age, my grandmother could do Parikrama only once whereas I and my father completed the Parikrama of Shri Ram Janam Bhoomi five times.*
- **Pg. 951 (Para 7-8)-** *Did parikrama of Shri Ram Janambhoomi*

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- **Pg. 985-** *I have performed Chaudah Kosi Parikrama three- four times and panchkosi Parikrama once.*
- **Pg. 986-** *I have done Parikrama always at night time and therefore could not see whether there was any mosque on the way or not… I do not know whether the Parikrama way is from behind the gurudwara or not because I used to Parikrama at night and I cannot tell as to what fell where on way to the Parikrama.*

iv. **OPW 7 (Pgs. 1104-1222/Vol. 20)**

- **Pg. 1151**-*On the rear side there was parikrama marg in the west- it is wrong to say that the thing which I call the parikrama marg was the pustha of the mosque.*
- **Pg. 1166**- *He had done the parikrama of Ram Chabutara.*
- **Pg. 1214-** *2 types of Parikrama are performed in Ayodhya known as panch kosi and chaudah kosi.*

Note: Panch Kosi and Chaudah Kosi are not related to the disputed site. Chaudah Kosi parikrama covers entire Ayodhya while Panch Kosi parikrama starts from Muzaffarnaka *(3 kms away from the Disputed Site)* and goes on till Lakshman Ghat.

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v. **OPW 8 (Pg. 1223-1250/Vol. 20 & Pgs. 1251-1422/Vol. 21)**

- **Pg. 1358-***The point at which I was standing in the western side of the disputed building on 6.12.1992 was in the middle of embankment wall.*

Note: This was actually a pushta/embankment to support the mosque which was built on a mount and the other witnesses have been referring to this embankment as the Parikrama.

vi. **OPW 16 (Pgs. 2538-2606/Vol. 26)**

- **Pg. 2563:** *There is specific place for parikrama, very close to the wall.*

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- **Pg. 2563:** *There are two types of Parikramas- Panch Kosi & Chaudah Kosi*

vii. **DW 3/1 (Pgs. 8697-9700/Vol. 50 &Pgs.8701-8911 /Vol. 51)**

- **Pg. 8704-** *There is parikrama marg in the back of disputed temple which is 5-6 feet wide.*
- **Pg. 8805-***The distance between Ram Chabutara and the window bar wall seen in this picture maybeof 5-6 feet where Parikrama of Ram Chabutara was performed.*

viii. **DW 1/ 2 (Pgs. 7792-7872/Vol. 47)**

- **Pg. 7848-***Towards the west ,of the disputed building there is slope and some plain area. Earlier there was Parikrama Marg on the edge with a slope. Whether there was embankment to support the building on the west side or not- I did not pay attention to that. I do not remember whether small wall was constructed or not on the west side of the Parikrama Marg. Again, said I have not seen and I do not remember also.*

ix. **DW 3/4 (Pgs. 9201-9278/Vol. 53)**

- **Pg. 9202-** *I have done panch kosi and chaudah kosi parikrama*

x. **DW 3/5 (Pgs. 9279-9444/Vol. 53)**

- **Pg. 9292-***The path around the temple was there for Parikrama. I had gone through that path. The Parikrama in south.*
  Note: However, according to other witnesses and the map, parikrama marg was on the west.

- **Pg. 9426-***He stated that he did Parikrama of Ram Chabutara.*

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xi. **DW 3/6 (Pgs. 9445-9450/Vol. 53 &Pgs. 9451-9539/Vol. 54)**

- **Pg. 9457-** *Parikrama was done only outside the complex.*
- **Pg. 9527-***It is wrong to say that the 'parikrama path' but it was the 'pushtha' of the Masjid. Parkirama marg was on all sides of the disputed complex.*

xii. **DW3/8 (Pgs. 9668-9700/Vol. 54&Pgs. 9701-9762/Vol. 55)**

- **Pg. 9747-** *Parikrama is inside the temple but some people did it outside the temple.*

4.2 A perusal of the above testimonies shows that all the witnesses have given different descriptions of the Parikrama Marg, while some say Parikrama was done at the Ram Chabutara, some say it was in the south, some say it was in the western side while some say it was all around the disputed site. Needless to say, that the argument that there was divinity attached to the land which is being sought to be proved by the parikrama will not stand when the witnesses have given varied descriptions of this parikrama marg.

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4.3 It is further relevant to note that there was no pleading with respect to parikrama in the plaint. In such circumstances, it cannot be said merely by virtue of parikrama, that divinity was attached to the land itself when no such averment was made in the plaint.

4.4 The only case cited by the opposite party in respect of the Parikrama argument is *Madura Tirupparankundaram etc Devasthanamsv Alikhan Sahib and Ors.[1931 (34) LW 340]*. This case clearly shows any form of parikrama is irrelevant and the hill in question, over which rights were claimed by Hindus, was accepted to be within

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the domain of the deity, *but the portion of the hill on which the mosque was situated was specifically excluded.*

4.5 Thus, it is clear that even though the Hindus were in possession of the hill since times immemorial and were doing parikrama of the hill as the image in the temple was an actual part of the hill, the mosque which was situated on the top of the hill was not disturbed and was held to be the property of the Mohemeddans.

V. BELIEF AS BASIS OF JURISTIC PERSONALITY OF AN AREA

5.1 A strong argument has been advanced that the belief of the worshippers since times immemorial sustains the claim that the area is a Juristic Personality or Ram Janma Bhoomi.

This is sought to be shown on the basis of some texts, traveller's accounts, gazetteers etc

5.2 It is submitted that:

a) No one can question a belief as a subjective phenomenon.
b) It is not enough to say that this area was regarded as sacral as the Janma Bhumi, but the belief manifested itself as actual prayer for that reason.
c) Further, and most importantly, the belief has to be consecrated by some recognition.

5.3 The relevant questions are:

a. What is the time when belief converts itself into not just sacrality but a personality?
b. In the case of idols, the time is the performance of *istha* and *purushta* ?
c. What converts a belief into a right?

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d. Is it not necessary that the 'area' not be just an area of belief but, according to Hindu law, a dedication of an area as Janmasthan which is capable of being absolutely owned and dedicated?

e. In other words, should it not be res nullius?
The submission that it becomes res nullius when it is owned is an incorrect interpretation.

f. Can belief be attached to any area as a vague general claim?

g. Since, it is claimed in the pleadings and appeal that such beliefs are protected under Article 25 of the Constitution of India, if a law were passed saying that Lord Rama was born here so the mosque must be demolished and set aside, would such a law be valid?

h. On whom is the onus to prove this?

VI. JUDGMENT

6.1 Arguments of Sri M.M Pandey- **Para 1707 @ pgs. 1114-1115/Vol.**

A. Existence of a Supreme Being which controls everything and possesses the capacity of conferring good on human beings, is admitted alike by Islam (Allah), Christianity (God) and Hindu Dharma (Bramhan or Onkar). This Supreme Being is outside the realm of Courts, hence is not a Juristic entity. According to Islam, a Messenger (Prophet Mohammad) pronounced the commands of Allah in the form of Quran and other spiritual edicts; according to Christianity too, a Messenger came earlier (Christ – Son of God) to deliver the Gospel of God. According to Hindus, Bramha manifests Himself in human form by 'Reincarnation' (Avatar) with all the powers of the Supreme Being subject to self-imposed human limitations. William Finch recorded this popular perception about Ram in early 17th Century. Bramha too is seen in many Forms: Bramha (the Creator), Vishnu (the Preserver), Mahesh (the Destroyer), Shakti (the Universal Energy) etc. Ram and Krishna are Reincarnations of Vishnu; In Shrimad Bhagwat Gita

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Chapter X, verse 31, Shri Krishna declared: "Among warriors, I am Ram."

B. This self-manifestation of the Supreme Being is known as SWYAMBHU reincarnation, and the place of reincarnation is treated to be sacred just as Islam holds Mecca (birthplace of Prophet Mohammad) or Christianity holds Bethlehem/Jerusalem (birthplace of Christ) as sacred. While Islam and Christianity do not have a concept of Deity, Hindu Dharma has elevated the concept of Sacredness into an object of Divinity fit for Worship and recognises it as a Deity in a physical form too with a Faith that its worship has the capacity of conferring well. At the same time, "a Hindu does not worship the 'Idol or the material body made of clay or gold or other substance' as a mere glance of the mantras or 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 incanation 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.*

C. The 'Self-revealed' Images are called SWYAMBHU where the Self-possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind. Thus 'Asthan Ram Janmabhumi', Plaintiff No. 2 in OOS 5 of 1989 is a Swyambhu Deity – the place where Lord Vishnu manifested Himself and was born as RAM, son of Kaushalya/King Dashrath.

6.2 In the Impugned Judgment, two Hon'ble Judges, Justice Sudhir Agarwal **(Conclusion at Para 2110 Page 1299, Vol 1; Discussion starts at Para 1683 pg. 1101/Vol. 1)** and Justice Sharma **(Conclusion at Pg. 3532/Vol. 3- Discussion starts at pg. 3515)** have held the Janamsthan to be deity, upholding the Plaintiff's version of a swayambu deity.

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6.3 The Basic arguments which have been made by the parties to contend that Janamsthan is a Swaymbhu deity, which have been subsequently accepted in the Impugned Judgment are as follows:-

a) Hindus do not pray to the physical form like the idol, but worship the divinity attached to such physical forms.

b) Hindus believe idols/images/ symbols to represent the deity and it is for the benefit of the worshippers that there is conception of the Supreme being which is bodiless.

c) For explaining the concept of Swayambhu Deity, reliance has been placed on the Judgment of this Hon'ble Court in ***Ram Jankijee Deities v. State of Bihar*, (1999) 5 SCC 50,** wherein it has been *inter alia* held as follows:-

> *"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 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***

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man-made image may be painted on a wall or canvas. *The SalgramShila 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."*

VII. ADVERSE POSSESSION & LIMITATION

7.1 ISSUES, PLEADINGS AND FINDINGS:

The issues of adverse possession arise in the following ways:

i. adverse possession in relation to temple.
ii. adverse possession in relation to *shebait.*
iii. adverse possession in relation to mosque.

7.2 For purposes of adverse possession the following **issues** were framed for consideration by the Hon'ble High Court:

- *Whether Nirmohi Akhara or the Hindu devotees in general acquired title by adverse possession for over 12 years? (**Issue No. 16 in OOS No. 5 of 1989**)*

7.3 The following are references in the **pleadings** that have a bearing on the issue of adverse possession:

i. Existence of the mosque admitted by the Plaintiff (Mahant Raghubar Das) in that suit of 1885.

[Page No. 279 at Para 20 of Written Statement of Defendant No. 4 in OOS No. 5 of 1989 in the Pleadings Volume.]

ii. Babri Masjid was built by Babar more than 400 years ago and Muslims have been in possession of the mosque, as a waqf property, since 1528 till the date of its attachment in December, 1949.

[Page No. 284 at Para 25 of Written Statement of Defendant No. 4 in OOS No. 5 of 1989 in the Pleadings Volume.]

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iii. Muslims have been regularly offering prayer in the mosque till 22.12.1949 and Friday prayers till 16.12.1949 and till that time no idol was present.

[Page No. 284 at Para 24(F) of Written Statement of Defendant No. 4 in OOS No. 5 of 1989 the Pleadings Volume]

iv. Although the Deity in Suit No. 5 have claimed that the Muslims were dispossessed in 1934, they have not produced any evidence in support of the claim and the case rests merely on *ipse dixit*. They have not been able to discharge the burden and prove that they were in possession.

[Page No. 249 at Para 26 of the Plaint in OOS No. 5 of 1989 of the Pleadings Volume.]

v. While it has been pleaded by the Plaintiffs that the suit premises have been under the management of Nirmohi Akhara since times immemorial and only Hindus were allowed to enter and worship the inner courtyard where the deity was installed, they have failed to establish that they ever had any access or right over the inner courtyard and more than an easementry right over the outer courtyard at any point of time.

[Page No. 269 at Para 44 of Additional Written Statement of Defendant No. 3 in OOS No. 5 of 1989 in the Pleadings Volume.]

vi. The argument that the site of Ram Janam Bhumi by itself is a deity is an argument taken for the first time in Suit No. 5. Here also, it is stated on mere *ipse dixit* that the disputed land never went out of the possession of the deity and its worshipers without any evidence to substantiate the claim.

[Page No. 247 at Para 24(C) and Page No. 249 at Para 25 of Plaint in OOS No. 5 of 1989 in the Pleadings Volume.]

7.4 Findings of the Hon'ble High Court relating to adverse possession are as follows:

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a) Hon'ble Mr. Justice S.U. Khan observed that since both the parties are in joint possession since before 1855 hence there is no need to decide the question of adverse possession. **(Page No. 109 of Vol. I of the Impugned Judgment)**

b) Hon'ble Mr. Justice Sudhir Agarwal observed as follows:-

i. No evidence of possession of the suit premises by Muslims prior to 1855 and of the outer courtyard at least since 1856-57. They might have enjoyed only right to passage so as to enter the inner courtyard. **(Page No. 1745 at Para 3107 of Volume II of the Impugned Judgment)**.

ii. The inner courtyard was previously under joint possession, however, Muslims discontinued with possession from 23.12.1949. Dispossession neither alleged nor proved. **(Page No. 1746 at Para 3110 and 3111 of Volume II of the Impugned Judgment).**

iii. After 1856-57 idols in the outer area were managed by Nirmohi. Moreover, ouster of Muslims immaterial since it was done under order of Court. **(Page No. 1746 at Para 3113 of Volume II of the Impugned Judgment).**

iv. Addition of relief of possession will not attract a larger period of limitation under Article 142 or 144 when only a suit for declaration was necessary.**(Page No. 1460 at Para 2434 of Volume II of the Impugned Judgment).**

v. In the outer courtyard Hindus perfected their rights by a continuous and exclusive possession. **(Page No. 1747 at Para 3115 of Volume II of the Impugned Judgment).**

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vi. Neither there was extinction of title of Plaintiff Nos. 1 and 2 in Suit No. 5 nor was there any issue of reacquisition thereof. **(Page No. 1749 at Para 3123 of Volume II of the Impugned Judgment).**

c) Hon'ble Mr. Justice Dharamveer Sharma observed as follows:-

i. Hindu Nihang Sikhs were continuously worshiping in the inner courtyard and there is no evidence that they were completely removed from the suit premises. **(Page No. 3369 Volume III of the Impugned Judgment)**

ii. Revenue records fail to establish exclusive possession of Muslims. On the contrary, Janam Asthan was identified and the disputed property was shown as Nazul Land therein which belongs to the State and there cannot be adverse possession against the State. **(Page No. 3369 and 3371 Volume III of the Impugned Judgment).**

iii. Adverse possession of debutter is not permissible **(Page No. 3369 Volume III of the Impugned Judgment).**

iv. Muslims did not acquire any right by adverse possession, however, Hindus have proved that they were worshiping even after the disputed structure was constructed. **(Page No. 3370 Volume III of the Impugned Judgment)**

v. Neither at the time of filing of the suit nor during the pendency of the suit the Muslims were in exclusive possession of the suit premises. **(Page No. 3371 Volume III of the Impugned Judgment)**

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vi. More than half of the property was in the exclusive possession of the Hindus and the same was acknowledged by the Court as well as by the Muslims in 1885. **(Page No. 3372 Volume III of the Impugned Judgment).**

vii. No evidence to show that after the damage caused to the Mosque in 1934, Muslims continued in possession. **(Page No. 3374 Volume III of the Impugned Judgment)**

viii. Possession can only be claimed within the time limit prescribed under the law of limitation and amendment in the plaint does not confer any right to get a relief of possession as the amendment cannot relate back to the date of the institution of the suit. **(Page No. 3377 Volume III of the Impugned Judgment)**

ix. Disputed structure was never exclusively used by Muslims from 1858 and onwards and even in the year 1885 it was not in the exclusive control of Muslims but was in exclusive control of Hindus **(Page No. 3378 Volume III of the Impugned Judgment)**

x. Offering of namaz upto 22.12.1949 has not been proved. **(Page No. 3378 Volume III of the Impugned Judgment)**

7.5 **SUBMISSIONS IN LAW:**

1. An unlimited and perpetual threat of limitation creates insecurity and uncertainty, adversely affecting public order and is contrary to the very object of the law of limitation. Since the Limitation Act is a self-contained code, any instance of claims

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that survive in perpetuity would have to be specifically provided by the legislature and cannot be read into the Act.

- *Palaniandi Gramani Manickammal* v. *V. Murugappa Gramani* AIR 1935 Mad 483

2. Adverse possession and Limitation are applicable to a trust and deity, as it is applicable to a waqf.
    - *Ravinder Kaur Grewal and Ors. vs Manjit Kaur and Ors. 2019 SCC OnLine SC 975 (para 33 and 60)*

3. Although the deity is treated as a minor for some purposes, this is not so for the purposes of adverse possession and limitation and the deity does not enjoy any special status. The law of limitation applies to a deity.
    - *Bishwanath vs Sri Thakur Radha Ballabhi, AIR 1967 SC 1044 (para10, 11)*
    - *Chttar Mal vs Panchu* Lal ILR (1926) 48 All 348 *(page 351)*
    - *Damodar Das vs Lakhan Das (1909-10) 37 IA 147 (page 151)*
    - *Surendrakrishna Roy vs Sri Sri Bhubaneswari, AIR 1933 Cal 295 (at p. 303)(confirmed by the Privy Council in appeal in AIR 1937 PC 185)*
    - *Radhakrishna Das vs Radharamana Swami AIR 1949 Ori. 1 (para14-15)*
    - *Sarangadeva Periya Matam & Anr. vs Ramaswami Gondar AIR 1966 SC 1603 (page 1606 at para 8)*
    - *Chamelibai Vallabhadas & Ors. vs Ramchandrajee & Ors. AIR 1964 MP 167 (para 17-24)*
    - *Sree Sree Ishwaree Bhubaneshwaree Thakurani vs Braja Nath De.1937 2 PC 447 (page 457-458)*

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Moreover, it is well settled law that adverse possession can be claimed against the math and shebait and such adverse possession is deemed to be adverse against the idol.

- *Parkasdas vs Janki Ballabha Saran AIR 1926 Oudh 444 (para 6 and 8)*
- *Nilmony Singh vs Jagabandhu Roy and Ors. (1896) ILR 23 Cal 536 (para 9)*

4. The essential requisites to establish acquisition of title to immovable property by adverse possession are nec vi, nec clam and nec precario i.e. not by force, not secretly and not by license or permission. The party claiming acquisition of title through adverse possession must establish that it was in possession.
    - *Karnataka Board of Waqf vs Government of India &Ors. (2004) 10 SCC 779 (para11-12)*
    - *Ravinder Kaur Grewal and Ors. vs Manjit Kaur and Ors. 2019 SCC OnLine SC 975 (para 24-25)*
    - *Tirath Singh and Ors. vs Delhi Wakf Board 2011(122) DRJ413 (para 8)*
5. Adverse possession requires some definite assertion about hostile intention to the knowledge of the true owner of the property.
    - *Deepak S. Gulalkari and Ors. vs Pundlikrao C. Bangar and Ors. AIR 2004 Bom 318 (para 10-13)*
    - *Smt. Sona Devi vs Nagina Singh and Ors. AIR 1997 Pat 67 (para 11, 12, 13)*

7.6 **IN SUM:**

1. Clearly, any claim of possession or adverse possession, from 1934 or 1949, founded on illegalities could not be the basis for any claim.

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2. A wider argument was made in respect of Plaintiff No. 2, i.e. Janam Bhumi, that the concept of limitation, adverse possession, alienability, acquisition of title by a third party, lease rights and possessory rights cannot be made applicable to a deity. However, the said arguments are completely unfounded and are in the teeth of the law laid down by the Hon'ble Courts. *(Relevant case laws have already been cited.)*

VI. CASE LAW:

8.1 Apart from the dharmasastra, not technically so-called requires a religious manifestation of such belief, the following cases have been appropriated to support a case of juristic personality of the area and its recognition on the basis of the following cases:

A. *Addangi Nageswara Rao V. Sri Ankamma Temple (1973), Andh W.R. 379*

i. This case was cited by the plaintiffs with reference to the Supreme Court decision of *Ram Jankijee Deities v State of Bihar [1999] 5 SCC 50.* In the present Addangi case of 1973, the Ankamma Devatha temple represented by its trustees to claim Ac 5-24 cents as an ancient grant to the Temple. The suit was resisted by the defendants (Shebaits and pujari's who sold the property to the defendant appellant) on the grounds (a) the temple did not exist, (b) in any event it had no title to the property (c) even if it did, the defendants had perfected their title by adverse possession. The *High Court* agreed with the subordinate judge, that the (and other) records show that the title vested in the deity. As far as the existence of the temple is concerned, the Court noted that the contradiction in the defendant's (shebaits of pujari's) stance:

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"It is beyond one's comprehension how there could be any poojari for a non-existing temple, if the story of the defendant is to be believed that there was no temple in existence."

ii. Further, the evidence concretely showed that there was a temple with endowed property. The *Court* observed.

"13. The fact that the temple has ceased to exist or ceased to be used as a place of religious worship either before or after the commencement of the Acts referred to above is absolutely of no consequence, if the property is endowed for the support of the temple, and that it was endowed for the support of the suit deity's temple is borne out by Exhibit A-4."

On adverse possession, the evidence showed that the vendors of the appellant were 'de facto' trustees who...

"sold the property outright forgetting that he has no other rights over the property except the right to manage just as the guardian of a minor manages the minor's estate. Therefore, we cannot understand how the 'hereditary poojari-trustees like Shebaits" could sell the property, of which they were only trustees, so as to confer any valid title on their vendee."

Thus, the case was decided *on facts and law* on the status of Shebait *de facto* trustees as in *Sree Sree Sridhar v Sushila Bala (1954) SCR 407, Prosumo v Golab Chand Baboo (1975) 21 A 145* at *pg. 51* which were also invoked in this Andhra Addangi case.

iii. Even on the existence of the temple, the Court relied on the wide "definition" in the Andhra – Madras – Andhra Statutes themselves namely Act II of 1927, xix of 1951 and XVII of 1966. It was in this connection the High Court invoked in HRE Board v Narasimhan AIR 1939 Mad 134 at 135; TRK Ramaswami v Board of Commrs HRE (1950) Mad 799, and Venkataramana Murthi v Sri Ram ... (1964) 2 An WR 457.

All this is in statutory context.

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iv. The Supreme Court in P.F. *Sadavarthy v Comms.* HRE ACR 1963 SC 510 (1962) Supp 2 SCR 276 (also cited in this judgment) lays down the correct law

> *"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."*

It should be noted this is also an interpretation of the Madras Hindu Religious Endowment Act (2 of 1977).

Thus, this case is not an authority for the proposition that belief alone effects religious endowments.

B. *The Poorhari Fakir v. Commr. HRE (1962) Supp. 2 SCR 276*

v. This case has been relied on while placing the *Addangi case (1973) 1 Andh.W.R. 379* by way of quotation abstracting a quotation from it without explaining the case or the context.

vi. This case concerned a grant given by Emperor Aurangzeb to Mukuldas Babajee of the Poohari Fakir Sadavarathy to maintain and distribute to Fakirs. A small temple was created. The Board of the Hindu Charitable and Charitable Endowments, Madras claimed that it was a public temple under its jurisdiction. The phrase that had to be interpreted was the definition in Section 9(12) the Madras Act 2 of 1927. The definition read as follows:

> *'Temple' 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 religious worship.'*

Thus , the Court laid down:

> *'The institution in suit will be a temple if two conditions are satisfied. One is that is a place of public religious worship and the other is that it*

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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. We are of opinion that the oral and documentary evidence fully establish the appellants' case that it is not a temple as defined in the Act.'

The Court emphasized that no grant could be linked to a 'non existent' future temple.

'The fact that the Inam Commissioner treated the grant relating to Exhibit P-50 to be in support of Sadavarti and for support of the temple of Sri Jagannadhaswami, would not make the grant for the purposes of the temple when the temple was itself not in existence at the time the grant was made and when a later sanad referring to it definitely stated that the original villages were granted for the purposes of charity. The observations of the Privy Council in Arunachellam's Case [(1919) L.R. 46 I.A. 204] that in the absence of the original grant the Inam Register is of great evidentiary value, does not mean that the entry or entries in any particular column or columns be acctepted at their face value without giving due consideration to other matters recorded in the entry itself.'

The Court also held:

'When there be good evidence about the temple being a private one, the mere fact that a number of people worship at the temple is not sufficient to come to the conclusion that the temple must be a public temple to which those people go as a matter of right as it is not usual for the owner of the temple to disallow visitors to the temple, even if it be a private one.'

vii. Apart from showing that Aurangzeb had made the grant to Hindu Fakirs, after examining the evidence in detail, the Court held that this was not a private temple because the grant could not be assumed in respect of a non-existent future temple.

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C. *Madura v. Alikhan Sahib (1931) 34 Law Weekly 340 (Privy Council)*

i. Madura (1931) concerned a Rock Temple where the inner shrine is hewn out of the hill. (at pg. 342)

> *'The Tirupparankundarm Temple is one of the famous rock temples of Southern India, It is situated at the base of a hill some 500 feet high; and is dedicated to Subramanya, the son Of Siva. The inner shrine of the temple is hewn out of the hill and in it, carved in the rock itself, is the image of the deity. Around the base of the hill is a pilgrims' way, nearly two miles in extent. This is said to be essential to the worship of the devotees, who perform the ceremony of 'pradakshinam' by going round the image of the deity with the right shoulder continuously presented to him.. As the image in the temple is an actual part of the hill, it is obvious that the performance of this rite necessitates the perambulation of the hill itself. This way which is also used for processions of the temple car on ceremonial occasions, is known as the 'ghiri veedhi' and it is claimed as the property of the temple. It is referred to in numerous documents, dating back to 1844, as the 'malaiprakaram' of the temple. The Subordinate Judge states that prakaram is a Sanskrit word meaning the outer round of the temple, or fort : malai merely means hill.'*

Some documents refer to it as God's hill. Many ancillary works were created.

ii. It was not disputed that the hill had been put to temple use: (at pg. 344)

> *'The evidence of all these acts extending over the greater part of the time since the East India Company first came into possession of this part of the country has been elaborately discussed by the Subordinate Judge. The conclusion to which he came was that they were acts of ownership, openly exercised by the temple authorities, and that taken in connexion with the admitted title of the temple to the shrines and other buildings*

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scattered over the hill, and their undoubted antiquity, they established the appellant's claim to all the unoccupied land within the 'ghiri veedhi'. The path itself he held to have been dedicated by the temple to the public use, and to be vested in the Taluk Board under the provisions of Madras Act 14 of 1920 and this finding has not been disputed before their Lordships.'

iii. After examination of all the historical documents, the Court affirmed the temple status which was not disturbed in the Muslim invasion and British period.

iv. However, the conclusion of the Subordinate Judge was (at p.341)

'The suit was tried by the Subordinate Judge of Madura. He decided against the Government claim and in favour of the temple, except in respect of the Nellitope, and the actual site of the mosque with its flagstaff and flight of steps leading up to it, which he held to be the property of the Mahomedan defendants. The decree of the Subordinate Judge was dated 25th August 1923.'

Thus, the Muslim parts of the hill were excluded. This was affirmed by Privy Council (at p.348)

'On the whole their Lordships are of opinion that the appellant has shown that the unoccupied portion of the hill has been in the possession of the temple from time immemorial and has been treated by the temple authorities as their property. They think that the conclusion come to by the Subordinate Judge was right and that no ground has been shown for disturbing his decree.'

v. Unfortunately, while reading this judgment, this aspect of the case which was crucial was not explicated.

D. *Hukum Chand v. Maharaj Bahadur Singh (1933) 60 IA 313*

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i. This case was cited by the Nirmohi Akhara and alluded to otherwise as it concerned the Parasvanath Hill and disputes between the Swetambari and Digambaris sects of the Jains.

Some issues had also been raised in the earlier case of *Maharaj Bahadur Singh v. Hukam Chand (1925) 24 All. L. J 100* on, inter alia, religious aspects of Jain belief.

ii. The Privy Council decided two important points:

a) On title to the Hill, it held as follows: (at p.320-1)

> *'The Subordinate Judge has based his finding that the whole hill is the debutter property of the Jain deities on the belief in its sanctity now entertained by both sects. As observed by Ross, J., that evidence undoubtedly establishes beyond a doubt that in the belief of the Jain community a spiritual quality in some way attaches to the hill, but this is a matter of faith and cannot in itself determine the physical ownership of the hill. On this part of the case their Lordships agree with the learned Judges of the High Court that the hill was not the debutter property of the Jain deities but the property of the Raja.'*

b) To the extent Digambaris did not worship the human person any reference was made to the charan the Court observed (at p322)

> *'The Swatambaris, who prefer to worship the feet themselves, have evolved another form of charan not very easy to describe accurately in the absence of models or photographs, which shows toe-nails, and, must be taken to be a representation of part of the foot. Thus, Digambaris refuse to worship as being a representation of a detached part of the human body. Both the lower Courts have held that the action of the Swetambari in placing charans of the description in three of the shrines is a wrong of which the Digambaris are entitled to complain.'*

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iii. Thus, it is submitted that this case does not establish a case for title of the hill (which had to be independently considered) which in this case vested in the Raja. Equally, the existence of charan did not obviate examining facts and beliefs related to them.

E. ***Shiromani Gurdwara Prabandhak Committee v. SomNath Das (2000) 4 SCC 146***

i. This case was cited to show that the Gurdwara Granth Sahib showed that an entity could have juristic personality.

ii. The Court held that here there were no two juristic persons but one and this did not mean that every idol or Guru Granth Sahib would become a deity where ever found.

The Court observed (at pr. 37- 8)

'37. The further 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 no 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[12] 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

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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.'

iii. This case clearly establishes that the Granth Sahib is integral to the Gurdwara and shown to be so.

iv. With respect, it does not establish a commonality between the deity' and janmabhumi since they represent different juristic personality claiming different legal consequences in that suit.

F. *Shri Thakur Gokul Nathji Maharaj v Nathji Bhogi Law (1953) All. 552 (Manupatra Copy)*

i. This case concerned a self revealed idol representing God himself with 300 years of reverence and exclusive properties.

ii. The facts are better stated from the judgment itself :

'The temple in question is a very old one dating back to some year prior to 1640 A. D. According to the traditions prevailing in the locality one Shri Ballabhacharya flourished in the sixteenth century of the Christian era, He was a devotee of Lord Krishna and was held in great esteem by the people. He had two sons, one of whom died issueless but the other had seven sons. To these seven grandsons Shri Ballabhacharya gave seven idols as representing Lord Krishna of whom he was a 'Bhakta'. These seven idols which were given to each grandson were installed by them in various parts of northern and western India. To the grandson, Shri Gokul Nathji was given the idol which was installed in Gokul in the temple known under the same name, i. e., Gokul Nathji. Grandson Gokul Nathji was himself a very pious man and a great devotee of Lord Krishna, so much so that some people started worshipping him as the incarnation of the Lord himself.

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Gokul Nathji, however, used to worship plaintiff 1 as the idol of Lord Krishna, and some followers, instead of worshipping Gokul Nathji the grandson of Shri Ballabhacharya, worshipped the idol and held that the idol as well as Gokul Nathji and his descendants were the representatives of God. These two sects that grew up were known as the 'Bharuchis' and the 'Nimar Yas'. 'Nimar Yas' worshipped plaintiff 1, while the 'Bharuchis' worshipped Gokul Nathji in his lifetime and after his death they worshipped his clothes, sandals, and such other things as were used by him and enshrined these articles of personal use in a temple.'

iii. The reason why these idols were self revealed is explained as follows:

'According to the traditions these idols that were handed over by Ballabhacharyaji to his seven grandsons were self-revealed idols of Lord Krishna and it is on that account that the learned Judge came to the conclusion that there could not have been due consecration according to law and it could not be said that the spirit of God ever came to reside in them.'

iv. Under these circumstances, the Court further observed:

'The learned Munsif has pointed out that there are elaborate provisions in Hindu Law which enable a stone image or an image made of wood to be changed and replaced by another. It cannot be said that the stone image or image made of wood or of gold or other materials is the real object of worship or the real person owning the property. The real owner of the property is deemed to be God Himself represented through a particular idol or deity which is merely a symbol.

From the evidence it is clear that plaintiff 1 as such a symbol has been the object of worship by a large sect of people known as 'Nimar Yas' for over three hundred years and extensive properties are owned by and are in the possession of the said idol. In the circumstances, we think it was unreasonable for the learned Judge to expect that there would be any direct evidence of consecration, nor is it reasonable after such a length of time to

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require the plaintiffs to prove affirmatively that such ceremonies were performed as would entitle the plaintiff to claim to be a juristic personality.'

v. The question that consecration did not require to be proved was in the following facts and circumstances:

'From the fact that the idol was said to be self-revealed the learned Judge assumed that there could have been no consecration of it. It is impossible after this length of time to prove by affirmative evidence whether there was or there was no consecration and we have not been referred to any book of authority or any evidence which would go to show that in the cases of idols which were deemed by their followers to be self-revealed no consecration takes place. From the fact and circumstances, however, it is abundantly clear that the idol was duly recognised by all those who believed in it as an idol of Lord Krishna and was worshipped as such. Properties were dedicated to it and properties have been brought to its use through centuries that it has existed. After all the question whether a particular idol is or is not duly consecrated must depend upon the religious faith and belief of its followers and we have no doubt that all that was necessary to deify it must have been done by those who believed in the said idol. On the facts found by the lower Courts, the lower Courts were right in coming to the conclusion that there was sufficient material for a presumption that plaintiff 1 was a juristic person recognised as such by the followers of that sect and, therefore, capable of owning property.'

vi. Although some passages were read from this judgment, it was not placed in context. Here the deification was established by practice which included the deity actually owning properties.

vii. This case does not apply to this case in that there is vulnerable proof of the belief. The property claim in the present Babri- Ram Temple case for the future and the consecration is yet to be made for a future temple.

G. *Maharani Hemantav. Gauri Shankar (l940-1) 68 IA 53*

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i. This case concerned the dedication of the river bank of Benares for use as a public bathing ghat. But this was a partial dedication and the proprietors. It was given in evidence that a Hindu pilgrim seeking religious merit would have to do manikarma, dashwamedha, Panch Ganga, Assi and Barni as panchtantras in Kashi. Ther Maharani had filed a plaint in get rid of the people who had established on the (ghatias) because they were abusing their priveleges and destroying use and beauty of the ghat. The trial judge granted ejection and injunction against the ghatias, the Full Bench reversed the trial judge. The Privy Council observed:

> *'As the rights claimed by the defendants have not been established, it is not clear that they have anything to gain by disputing whether the plaintiff is owner of the ghat or is merely the hereditary superintendent of a religious endowment. In either case, she would be entitled to maintain a suit in respect of the grievances complained of, and to obtain the same or similar relief. But as the plaintiff sued as owner and as the Full Bench appear to have held that she was a mere manager or mutwalli it is right to consider whether the trial Judge's declaration of the plaintiff's ownership was well founded.*
>
> *A bathing ghat on the banks of the Ganges at Benares is a subject-matter to be considered upon the principles of the Hindu law. If dedicated to such a purpose, land or other property would be dedicated to an object both religious and of public utility, just as much as is a dharamsala or a math, notwithstanding that it be not dedicated to any particular deity. But it cannot from this consideration be at once concluded that in any particular case there has been a dedication in the full sense of the Hindu law which involves the complete cessation of ownership on the part of the founder and the vesting of the property in the religious institution or object.'*

The Privy Council held that noting that this was a partial dedication and that the High Court lost the important distinction between transfer of ownership (which the ghatias did not have)

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and a prescriptive right (which they did subject to conditionalities) There was no proof that they were guardians or shebaits.

ii. This case is important because in the absence of a shebait (or guardian, no rights could be claimed and mere possession would not help against the actual owner.

H. *Deoki Nandan v. Murlidhar (1956) SCR 759*

i. While this case was whether the temple was private or public. The first issue from which succour was sought was that the idol is the owner in the ideal sense, but is not the beneficiary. But the worshippers are

This is unexceptional as a statement of the law of trusts read with Hindu law.

ii. What is relied upon is the following observation: (at pr. 7)

> *When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.*

It is in this context that the ascription of worshippers is made,

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iii. The worshippers are not the deity, nor creators of deity. The only right that they have is to worship and sue as next friend within the parameters of law.

IX. IMPACT OF STATUTES ON RELIGIOUS ENDOWMENTS

9.1 Statutes concerning Hindu religious Endowments are of two kinds:

a) General Regulatory Statutes beginning with the Religious Endowment Act 1863 and other statutes (this includes the Tirumala Tirupathi Devasthanams Act 1932)

b) Special Statutes for Temples as Vaishno Devi, Kashi Vishwanath, Shri Jagannath and Ors.

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9.2 While statutes in *Category (a)* are regulatory and tested for infringements to Art 25 and 28 (*Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiarof Sri Shirur Mutt, 1954 SCR 1005) Category (b)* are expropriatory in nature and vest the property in a statutory body. It follows that any juristic person (whether category a or b) would have to submit to the regulatory or expropriatory handing over, as the case may be.

There is a long list of cases where the state has taken over endowment property by statute.

Example:

(a) In the State of Maharashtra, the amendment to Hyderabad Atiyiyat Inquiries Act 1952, Section 6 was amended to enable transfer of Devasthanam Inam Lands for the use by state for public education and health purposes.

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Temples in Maharashtra such as Shirdi, Siddhivinayak, Mahalaxmi and Pandharpur can be alienated following the amendment to the Hyderabad Atiyiyat Inquiries Act 1952.

(b) In Puducherry, Puducherry Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2015 Chapter 2, Art 3 (vii) mentions the need to seek clearance from the Commissioner, Hindu Religious Institutions for acquisition of temple land.

9.3 This power of eminent domain has been accepted by Courts in:

1) *District Collector &Ors v. Andhra Pradesh Archaka Samakhya. 2008 (3) ALT 421*
2) In *Subramaniam Swamy v. Sri Devanasthamy Devasthanam 2007 3 MLJ 85,* the endowment land was acquired for building a girls school and was subsequently used for building of a private school by the name of St Joseph's English School.

9.4 There are also cases in the website of the High Courts which are:

i. A *Radhakrishnan v. Secretary to Govt.* decided on 26th March 2018 *(WP (MD) No 95 of 2018)*. This case deals with a dispute over payment of compensation post acquisition of temple lands.
ii. *Shri Thakur Dwara v. Chandigadh Administration (CWP No 9638 of 2005)* decided on 03.09.2014. A notification under the Land Acquisition Act 1894 is challenged vide which the land belonging to the temple and the temple itself was sought to be acquired for the public purpose of utilization thereof for the 5th Signals Battalion, CRPF, Mohali in the village Behlana.

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iii. *Suresh Hareshwar Naik v State of Maharashtra (WP No 13488 of 2017)* decided on 08.03.2018. This case deals with the State's power to regulate alienation of temple lands.

X. CONCLUSION

From these cases it may be concluded:

i. *Deities can be created by (a) self manifestation and (b) created by humans*

ii. *In the former case, there must be (a) a manifestation (b) a belief and (c) an overt religious act by which the area is recognized for worship (d) continuous worship takes place*

iii. *As far as idols are concerned, the land must be given absolutely, it must be consecrated, prayer based on belief should continue. Technically, even if the exact prayers are not made, the consecration followed by worship may not be enough.*

iv. *Worshippers are beneficiaries. Whether a temple is public or private will depend on thebelief and practice of the intended beneficiaries and whether the temple is thrown open to the public.*

v. *Belief is not the basis of juristic personality*

vi. *Although it is claimed that no restrictions apply to janmabhumi by way of limitation, adverse possession, the right to sue and so on. Any such area would be subject to similar restrictions*

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HINDU LAW OF ENDOWMENT

BY P.N. SARASWATI

CHAPTER IV.

(*Lectures IV and IX.*)

On the Consecration of Images.

Images classified into (1) Established, and (2) Self-revealed, 2; the latter not necessarily of fraudulent origin, 3; Inferiority of artificial images, 4; *Pratishthá*,—the meaning and different derivations of the word, 5, 6; merits of consecrating images considered separately from the merits of consecrating temples, 7; texts extolling consecration of images, 8—14.—Images classified according to Modes and Materials of construction, 15—20; worship of *paintings, Gossami v. Gossami*, 21; Images made of *clay*, 22—24; quality of clay to be used, 25; process of construction, 26, 27; the process in "*Durga Puja*," 28; quality of clay required for *lingams*, 29; Images of *wood*, 30; directions for cutting the timber, 31; the image of Jagannath, 32; Images of *stone*, 33; Images of *metals*,—gold, 34; silver, 35; baser metals, 36; Metals for *lingams*, 37; mercury, 38; *Gems* for images, 39; for *lingams*, 40; Images *encrusted* with stones, 41. *Animal products* used for making images, 42; Images and *lingams* made of *fragrant substances*, 43;—of *flowers*, 44; other materials for *lingams*, 45; Special efficacy of different materials, 46.—Size of images, 47; rule for images in separate temples, 48; rule for a *lingam* of clay or gem, 49.—Shape and figure of images, 50; rule for *lingams*, 51; Defect of construction in images and its consequences, 52—55; defects excusable in certain cases, 56; Consequences of defects in *lingams*, 57.—Installation; time and place, 58; persons competent to instal, 59; *Details of ceremonies*—(*a*) *Preparatory*: Erection of *Adhivasa Mandapa*, 60; of *Vedi*, 61; of *Snana Mandapa*, 62; and of a *Mandapa* for stores, 63; difference of opinion as to the requisite number of *Mandapas*, 64; proper time for erecting them, 65; (*b*) *Outside ceremonies*: Image purified on obtaining from artist, 66; carried to *Snana Mandap* in procession with dance,—preliminary ablution and invocation, 67; (*c*) *Ceremonies inside, the Snana Mandapa*, 68; the necessity of Sankalpa, 69; its formula, 70; Appointing the *Acharya* or priest, 71; his qualifications, 72; disqualifications, 73; the functions of *Dvárajápakas, Murttidharas*, and *Murttipas*, 74—76; (*d*) *Intermediate ceremonies*, 77; worship of the nine *Grahas*, 78; (*e*) The beginning of the *Acharyás* functions, 79; the ceremony of Ablution as in *Brihat Samhita*, 80; as in *Bhavishya Purána*, 81; (*f*) The ceremony of Prana Pratishtha, or vivifying the image, 82; its

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legal effect, 83; *the Dakor temple case*, 84; summary of judgment, 85; (*g*) The UTSARGA, or dedication of the temple to the idol, 86; (*h*) Concluding ceremonies of installation, 87.—DUTIES SUBSEQUENT TO CONSECRATION,—continuation of daily worship, and repurification in case of break in service, 88; in case of image being defiled, 89; Maintenance and preservation of pious works, 90; Worship of images enjoined as a daily duty, 91; The respect due to images, 92.—LEGAL EFFECT OF CONSECRATION: Inseparability of the deity and its consecrated image, *Durga Prosad Dass* v. *Sheo Prashad Pandah*, 93.

1. Having finished the subject of construction of temples, I propose now to deal with the topic of the consecration of images therein.

Classification of Images: Established or self-revealed.

2. The sacred writings of the Hindus notice two kinds of images,—one self-revealed and the other artificially created. Thus in the Padma Purana,[1] Siva declares to Parvati: "Hear, O goddess, I speak of that partial abode of Hari; it is celebrated of two kinds, the established and the self-revealed. The image of Hari 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. Now hear me speak of the self-revealed. 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." Vishnu in the above passage is typical of all deities. Even in our own days the miraculous discovery of divine images is not unknown to the faithful. For those disinclined to believe in such miracles, it is easy to explain that the image might be really an old one re-discovered by accident or a new one manipulated for a pious fraud. A common preliminary to such finds is a vision which appears in a dream to one of the devout worshippers, who communicates the same to his relations and neighbours, whereupon a procession is formed to the indicated spot, when lo and behold

[1] Uttara Khanda. Adhyaya, 73. Quoted in *Sabdakalpadruma*, p. 2536 loc. Pratimá.

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the image is discovered to the delight of the faithful and to the advantage of the favoured dreamer who becomes the recognised custodian of the god and the medium of his worship. The sceptic will, no doubt, find in this a corroboration of his theory of fraud, and in many cases his surmise might be the correct one. It is not necessary, however, even for a purely rational explanation to impute fraud to the dreamer in every case. The causation of dreams is still so obscure that it is possible to imagine a man dreaming of the existence of an image or other thing after having come across it, or having himself deposited it in a fit of somnambulism; or the dream may be true like other recorded instances in the books which are explained either by way of accidental coincidence, or by some process of that transcendental psychic energy, the existence of which long known in the East is only now being acknowledged in the West, and forms the most prominent scientific problem of our times.

Self-revealed images not necessarily fraudulent.

3. It is not necessary also to deny a natural origin in every case to one of these self-revealed deities. There is no end to the freaks of nature, and it is quite possible for wood or stone either in natural growth or by the application of other than human agency to assume fantastic shapes in which the devout might find some resemblance to their favourite divinity.

Inferiority of artificial images.

4. Coming now to the case of the artificial images (hereinafter called images) it is to be premised that the Hindu sages have always treated this form of worship as an inferior one,—fit only for those who are unable to grasp the abstract conception of the Supreme Being. This will appear clearly from the following texts:—

"I am in the fire for those who sacrifice; in the heart of those who recite prayers; in images for those of small

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understanding; for those possessed of true knowledge I am everywhere."[1]

"God is in the fire for those who sacrifice; in the heart of those who recite prayers; in images for those of small understanding; for those possessed of true knowledge Hari is everywhere."[2]

"For the needs of the worshippers, forms are invented of the Supreme Being (Brahma) who is *Chinmaya*, without a second, indivisible and incorporeal."[3]

Meaning and derivation of '*Pratishthá*.'

5. The text of the *Padma Purana*, cited above, *ante*, p. 80, speaks of the installation of artificial images according to the rites laid down in the *Shastras*. The entire process is known amongst the Hindus by the name of *Deva-pratishthá* or the *pratishthá* of gods. The latter word is derived from the prefix *prati* and the root *sthá*, and means literally standing well or firmly. Its technical meaning is stated in the *Mahá Kapila Pancharátra*[4] to denote the special presence of an all-pervading essence, in an image of earth, &c., by force of special hymns. The *Hayasirsha Pancharátra*[5] gives another derivation. "The god Hari is the supreme soul, and his energy is called *Sri*. The goddess *Sri* is revealed as the *prakriti* and Keshava is the *purusha*; the goddess does not remain without Vishnu, nor does Hari without the Lotus-born. The worshipped image is declared to be Krishna, and the pedestal the goddess residing in a lotus; their union in due form is proclaimed to be the *pratishthá*."

[1] Quoted in *Sabdakalpadruma*, p. 2538, loc. Pratimá, as from Agni Purana.

[2] Quoted in *Sabdakalpadruma*, p. 2538.

[3] Quoted in *Deva Pratishthá Tattvam*, p. 644.

[4] Quoted by Raghava Bhatta and Raghunandana:—*D. P. T.*, p. 646.

[5] Quoted in *H. B. V.*, p. 631.

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(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)

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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:
>
> '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.'
>
> *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 510 : 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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where the claim is made in defiance of the trust and on a title paramount to the settlor's. The very preamble of the Act shows that it contains provisions for the vesting and administration of property held in trust for charitable purposes, thus assuming that the settlor had a title to create the trust.

I may mention at the end that no other points, except those discussed in this judgment, were argued at the hearing of this appeal. Every other point was expressly abandoned, and it was agreed that if the first question, that is, of the interpretation of the Will of the 6th November 1884, were also decided in favour of the plaintiff-appellant, his suit must be decreed in its entirety except that, to the extent of 1-4 only in the self-acquired property of Raja Ajit Singh as specified in the schedules attached to the plaint and discussed in the judgment of the trial Court under Issue 5.

Having regard to my finding on the first question I would dismiss this appeal with costs.

Appeal dismissed.

A. I. R. 1926 Oudh 444

GOKARAN NATH MISRA AND RAZA, JJ.

Parkasdas—Plaintiff—Appellant.

v.

Janki Ballabha Saran—Defendant—Respondent.

Second Appeal No. 229 of 1925, Decided on 19th April 1926, from the decree of the Offg. Dist. J., Fyzabad, D/- 3rd March 1925.

(a) *Adverse possession—Patti land—Owner is not required to prove overt acts of possession—He is presumed to continue his possession until dispossessed—Formal delivery of possession through Court by a mortgagee after foreclosure—Decree against an idol is dispossession—Religious endowment.*

If a particular land bears the character of a parti land, jungle land, or tank land, the owner of such land is not required, in view of the character of the land, to prove his possession over the same by proving overt acts of possession. To expect such a proof from the owner of the land would be tantamount to asking him to prove which is almost impossible to prove. The law presumes his possession to continue till he is dispossessed, which dispossession can only take place if another person asserts clearly that he claims the right to hold possession as owner or shows by his conduct an intention to exclude the actual owner.

When a mortgagee after having foreclosed his mortgage, takes, formal delivery of possession through Court of a plot attached to an idol of patti land he must be deemed to have dispossessed the institution of the said land. The delivery of possession should, in the eyes of the law, be deemed to have destroyed the presumption as to the continuity of possession in favour of the actual owner. The possession of the mortgagee becomes adverse, not from the date when overt acts of physical possession are committed by the mortgagee, but from the time when delivery of possession of the property is taken by him from the Court: 8 *O. C.* 177, *Rel. on.* [P. 446, C. 1, 2]

(b) *Religious endowment—Idol is juridical person capable of holding property—Possession adverse against mahant is adverse against the idol—Limitation begins to run from the date of taking possession by alienee—Succeeding mahant does not get fresh start—Adverse possession—Limitation Act, Art.* 144.

An idol installed in a particular Asthan is a juridical person capable of holding property and getting it managed through its manager, shebait or mahant. Such a manager, shebait or mahant would represent the idol or the institution for the time being completely, and possession, if adverse, against the mahant for the time being must be deemed to be adverse against the idol or the institution, unless the character of the alienation under which possession was taken could be deemed to enure only for the lifetime of a particular manager, shebait or mahant. The adverse possession in such a case begins to run from thedate the alienee takes possessionof the property alienated, and each succeeding manager, shebait or mahant cannot get a fresh start so far as the question of limitation is concerned, upon the ground of his not deriving title from any previous manager, the reason being that the succeeding managers, shebaits or mahants form a continuing representation of the idol or the institution to which the endowed property has been dedicated: *A. I. R.* 1922 *P.C.* 123, *Dist.*; 23 *O.C.* 536; *A.I.R.* 1922 *Oudh* 24; 23 *Mad.* 271 (*P.C.*); 37 *Cal.* 885 (*P.C.*); 36 *Cal.* 1003; 38 *Cal.* 526 (*P.C.*); *A.I.R.* 1923, *P.C.* 175 and *A.I.R.* 1926 *Patna* 239, *Foll.* [P. 447, C. 1]

Niamat Ullah—for Appellant.

M. Wasim—for Respondent.

Judgment.—The suit, which has given rise to this appeal, was brought by the plaintiff-appellant in the Court of the Subordinate Judge of Fyzabad for possession of a plot of land measuring 6 biswas in area out of Kishtwar No. 114 and Abadi No. 344, situate in Mohalla Ramkot in Ajudhia. The suit was originally brought by one Mahant Sita Ram Das, who died during the pendency of the suit in the Court of the Munsif, and since his death has been represented by the present appellant, Mahant Parkash Das. Mahant Sita Ram Das, who originally brought the suit, claimed the plot in suit as a mahant of Birakt Asthan to which the land in suit is

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alleged to belong. The position of the plot in suit is shown clearly in the plan prepared by the commissioner. The defendant is the Mahant of another institution called Asthan Mangal Bhagwan, and claims the land through a deed of wakf executed by one Shiam Lal on the 24th October 1920. It appears that on the 4th May 1870 a decree in respect of the plot in dispute was passed by the Settlement Courts in favour of one Ram Das who was then the Mahant of Birakt Asthan. Several mahants succeeded one after another, and it is necessary to mention only one of them, namely, Mahant Dharam Das, who was removed from his post of the mahant of the said Asthan owing to his misconduct, and in whose place the original plaintiff, Mahant Sita Ram Das, was installed in the year 1909. Dharam Das had made several transfers relating to the property appertaining to the said Asthan and one such transfer was in the shape of a possessory mortgage (Ex. A-7) executed by him on the 29th September 1902 in favour of a mahant of Hanuman Garhi, known also as Sita Ram Das alias Sur Das in respect of some property including that in dispute.

The said mortgage contained a condition as to foreclosure. In the year 1906 proceedings for foreclosure of the said mortgage were taken by the mortgagee and a preliminary decree for foreclosure was passed on the 9th April 1906 (Ex. A-9) and that decree was made absolute on the 31st October 1906 (Ex. A-10). On the 30th January 1907 Mahant Sur Das got formal delivery of possession of the said property through the Court. On the 1st June 1912 the successor of Mahant Sur Das sold the property to one Bhagat Sunsun Ram (Ex. A-12) who obtained permission from the Municipal Board to construct an ahata round the land in dispute and obtained the said permission on the 8th August 1912 (Ex. A-1). On the 10th April 1916 Bhagat Sunsun Ram sold the property to one Shiam Lal (Ex. A-3), who subsequently, on the 4th October 1920, as stated above, made a wakf of the property in suit in favour of Asthan Mangal Bhawan of which the defendant is the mahant. It is said that the property in suit, along with other property, was in possession of the Maharaja of Tikamgarh, and in order to recover possession Mahant Sita Ram Dass, the original plaintiff, had to bring a suit against the said Maharaja which suit was decreed on the 14th May 1921, and this decree was confirmed in appeal by the late Court of the Judicial Commissioner of Oudh on the 31st March 1922 (Ex. 35). On the 21st May 1921 he took dakhal dehani on the basis of his decree, but on the objection raised by the defendant the Court restored to the latter possession of the property in dispute on the 26th November 1921 (Ex. A-19). The present suit has been brought on the 6th October 1922.

Two main pleas were taken in defence: one was to the effect that the plaintiff's title to the plot in dispute was denied; and the other that the plaintiff had not been in possession of the property in suit within limitation. The trial Court, the Munsif of Fyzabad, to whose Court the case was transferred for decision, found that the plot in dispute appertained to the institution known as Birakt Asthan and the plaintiff was therefore entitled to recover it. He however dismissed the plaintiff's suit on the ground that his possession within limitation had not been proved. The matter was carried further in appeal by the plaintiff-appellant and the learned Subordinate Judge of Fyzabad, who heard the appeal, concurred with the findings arrived at by the trial Court and therefore dismissed the appeal.

The plaintiff-appellant has now come up to this Court in second appeal and the main point which has been argued by the learned advocate for the appellant is the question of limitation. The argument advanced by him was to the effect that the plaintiff's title having been established his possession over the plot in dispute ought to be presumed inasmuch as it was parti land; and the defendant's possession could not be considered to be adverse because after taking formal delivery of possession on the 30th January 1907, no overt act had been committed by the defendant except the construction of an enclosure (ahata) on the land in dispute in the year 1912 in pursuance of a permission having been obtained from the Municipal Board. It was contended that the suit having been brought in 1922, that is within 12 years of the overt act mentioned above, was within limitation. It was also argued

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that formal delivery of possession in the year 1907, which had been taken out against the predecessor of the plaintiff Sita Ram Das, was of no avail because he had succeeded as mahant only in 1909.

The case was argued before us at great length and we have taken time to consider our judgment. As to the first contention, that the land in dispute being parti land and that the plaintiff's possession should consequently be presumed to continue, we are of opinion that after the formal delivery of possession in favour of the defendant on the 30th January 1907 no such presumption can be made. The proceedings for delivery of possession through Court must be deemed in law to have destroyed the presumption as to the continuity of the plaintiff's possession. It is true that if a particular land bears the character of a parti land, jungle land, or tank land, the owner of such land is not required, in view of the character of the land, to prove his possession over the same by proving overt acts of possession. To expect such a proof from the owner of the land would be tantamount to asking him to prove which is almost impossible to prove. The law, therefore, presumes his possession to continue till he is dispossessed, which dispossession can only take place if another person asserts clearly that he claims the right to hold possession as owner or shows by his conduct an intention to exclude the actual owner. We are supported in our view by a decision of a Bench of the late Court of the Judicial Commissioner of Oudh reported in *Thakur Sheo Narain Singh* v. *Bodal Singh* (1). It is, therefore, clear that when the defendant's predecessor-in-title Mahant Sur Das after having foreclosed his mortgage took the formal delivery of possession through Court of the plot in suit, he must be deemed to have dispossessed the institution, known as Birakt Asthan of the said land. The said delivery of possession should, in the eyes of the law, be deemed to have destroyed the presumption as to the continuity of possession in favour of the actual owner. We, therefore, hold that the possession of the defendant in respect of the plot in suit became adverse not from the year 1912 when overt acts of physical possession were committed by the defendant's predeceseor-in-title, but from the year 1907 when delivery of possession of the property was taken by Mahant Sur Das from the Court.

As to the next contention that adverse possession against the Mahant Dharam Das, who was succeeded by the plaintiff, could not be deemed to be adverse against the plaintiff, we are of opinion that the argument is not sound. The learned advocate for the appellant relied strongly on a case reported in *Vidya Varuthi Thirtha* v. *Balusami Ayyar* (2) to show that the possession of each succeeding mahant was merely for life and if any act constituting adverse possession was committed againt one mahant it could not be deemed to be adverse against the succeeding mahant whose possession must be deemed to have commenced from the date when he succeeded the previous Mahant. In our opinion this case dealt with an alienation under a permanent lease which under the law could enure only for the grantor's lifetime. It was, therefore, clearly a case in which adverse possession could not commence against a succeeding Mahant before he had actually succeeded to his office as a mahant. This case cannot be considered to be an authority for holding that, where the alienation is not by way of a lease but by way of a complete transfer under a foreclosure decree, which cannot be presumed to be good only for the life of the mortgagor but also against the succeeding mahant as well, the possession cannot be deemed to be adverse from the date that an alienation of a complete character takes place. This would be clear by an earlier decision of their Lordships of the Privy Council reported in *Abhi Ram Goswami* v. *Shyama Charan Nandi* (3), where their Lordships held that a mukarri patta was not tantamount to a conveyance in fee simple and the grant of such a patta of endowed property enured only for the lifetime of the grantor. The same view was taken by their Lordships of the Privy Council in *Sri Ishwar Shyam Chand Jin* v. *Ram Kanai Ghose* (4) and in *Subaiya Pandaram* v. *Mohamad Mustafa Maracayar* (5).

(1) [1905] 8 O. C. 177.

(2) A. I. R. 1922 P. C. 123.

(3) [1909] 36 Cal. 1003=36 I. A. 148=10 C. L.J. 284=19 M. L. J. 530=6 A. L. J. 857=11 Bom. L. R. 1234=4 I. C. 449 (P. C.).

(4) [1911] 38 Cal. 526=10 I. C. 683=38 I. A. 76 (P. C.).

(5) A. I. R. 1923 P. C. 175.

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In the last case their Lordships clearly pointed out that the case reported in *Vidya Varuthi Thirtha* v. *Balusami Ayyar* (2) was a case which related to the effect of an attempt on the part of a trustee to dispose of the property by a permanent mukarri lease. This, their Lordships said, he had no power to do, though he had had liberty to dispose of it during the period of his life and a grant made for a longer period may be good, but good only to the extent of his own life interest. Their Lordships further observed that possession in such a se could not be treated adverse and the succeeding trustee would be at liberty to institute proceedings to recover the estate and the statute would only run against him as from the time when he assumed the office and that such an argument had no relation to the case where the property had been acquired under an execution sale and possession retained throughout. In our opinion an idol installed in a particular Asthan is a juridical person capable of holding property and getting it managed through its manager, shebait, or mahant. Such a manager, shebait or mahant would represent the idol or the institution for the time being completely, and possession, if adverse, against the mahant for the time being must be deemed to be adverse against the idol or the institution, unless the character of the alienation under which possession was taken could be deemed to enure only for the lifetime of a particular manager, shebait or mahant. The adverse possession in such a case begins to run from the date when the alienee takes possession of the property alienated and each succeeding manager, shebait or mahant cannot get a fresh start, so far as the question of limitation is concerned, upon the ground of his not deriving title from any previous manager, the reason being that the succeeding manager, shebaits or mahants form a continuing representation of the idol or the institution to which the endowed property has been dedicated. We are supported in this view by a case decided by Banerji and Gordon, JJ., of the Calcutta High Court reported in *Nilmony Singh* v. *Jagabandhu Roy* (6) and another case decided by Lindsay, J. C., and reported in *Abdur Rashid* v. *Janki Das* (7). In *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram* (8), the same principle was laid down by their Lordships of the Privy Council.

In that case the manager of a particular religious foundation had sold certain lands belonging to the endowment to another person and delivered possession thereof. It was held that possession delivered to the purchaser was adverse to the vendor and a suit brought by a subsequent manager of the endowed property for possession of the property sold after the expiration of 12 years from date of the sale was barred by the law of limitation. In that case the plaintiff had sued for possession of the hereditary office and also for the property alienated which had originally belonged to the endowment. Their Lordships observed that there was no distinction between the office and the property of the endowment, the one being attached to the other, and that the plaintiff's suit having been brought after 12 years' adverse possession was barred under Art. 144 of the Limitation Act.

In *Damodar Das* v. *Adhkari Lakhan Das* (9) their Lordships took a similar view. That was a suit brought by the Mahant and Shebait of the Sadabart Math or temple of Thakur Sri Gopal Ji, situate at Bhadrak in the District of Balasore, to eject the defendant from certain properties which were alleged to belong to the idol and the math, and had been invalidly assigned in his favour by a previous mahant. The defendant set up limitation as his defence and the High Court of Calcutta allowed it to prevail. On appeal their Lordships of the Privy Council observed at page 151 that in point of law property in dispute should be deemed to have vested not in the mahant but in the legal entity, the idol, the Mahant being only his representative and manager. They, therefore, held that possession of the defendant was adverse to the idol because the mahant represented the idol and his exclusion virtually meant the exclusion of the idol; and on this ground their Lordships held that the suit was barred by limitation.

(6) [1896] 23 Cal. 536.
(7) A. I. R. 1922 Oudh 24.
(8) [1900] 23 Mad. 271=27 I. A. 69=10 M. L. J. 29=4 C. W. N. 329=2 Bom. L. R. 597=7 Sar 671 (P. C.).
(9) [1910] 37 I. A. 147=37 Cal. 885=7 I. C. 240=20 M. L. J. 624 (P. C.).

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The view which we have taken of the various cases decided by their Lordships of the Privy Council is the view which was recently taken by their Lordships of the Patna High Court in the case reported in *Badri Narain* v. *Kailash Gir* (10) decided by Mullick and Kulwant Sahay, JJ. We, therefore, hold that the possession which was taken by the defendant's predecessor-in-title, Mahant Sur Das, during the time that Mahant Dharam Das was the Mahant of Birakt Asthan, was adverse not only to the said mahant but to the Asthan itself, and that the Courts below have correctly decided that the plaintiff's suit is barred by limitation.

The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

(10) A. I. R. 1926 Patna 239.

A. I. R. 1926 Oudh 448

STUART, C. J.

Ram Jiawan and *another*—Petitioners,

v.

King-Emperor—Opposite party.

Criminal Reference No. 6 of 1926, Decided on 18th March 1926, made by S. J., Fyzabad.

Penal Code, S. 182—*False report.*

For a conviction uuder S. 182, it is not necessary that the false report must be taken down from dictation. 6 *A. L. J.* 236 *Dissented from.*

[P 448 C 2]

Rup Narayan Vanchoo — for Petitioner.

G. H. Thomas—for the Crown.

Order.—I am satisfied that the allegations made in the report that was entered at the police station on the 17th September 1925 were absolutely false and false to the knowledge of the men who made them. I am satisfied that the persons mentioned in the report were not seen collected in a suspicious manner and that the object of the report was to cause the police authorities to commence criminal proceedings against the persons mentioned in respect of an offence which they had not committed. This report was made, as is clear from the proceedings, by Ram Jiawan and Ram Naresh jointly. Ram Jiawan first stated the story and Ram Naresh corroborated him. But even if Ram Jiawan alone had told the story and Ram Naresh had said nothing, both the men were clearly guilty on the facts: Ram Jiawan under the provisions of S. 182 and Ram Naresh for abetment having engaged with Ram Jiawan in a conspiracy to make a false report and the false report having been made in pursuance of the conspiracy. In respect of the decision of the late Mr. Justice Karamat Husain which is reported in *Umrao Singh* v. *King Emperor* (1), it is sufficient to say that I do not agree with the view which he took. He laid down that it was impossible for any person to be convicted in respect of a false report unless false report had been taken down from his dictation. He thereby clearly overlooked the provisions of the law of abetment. It would be as well if the Courts did not quote from reports of Courts other than the Chief Court where those reports are not contained in the authorized law reports. I do not agree with the learned Sessions Judge that there is any reason to interfere in revision here. I think both men have been rightly convicted and the sentences are lenient. I therefore return the record.

Record returned.

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(1) [1908] 6 A. L. J. 236=2 I. C. 200

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MANU/WB/0088/1896

Equivalent Citation: (1896)ILR 23Cal536

IN THE HIGH COURT OF CALCUTTA

Decided On: 20.02.1896

Appellants: **Nilmony Singh**
Vs.
Respondent: **Jagabandhu Roy and Ors.**

Hon'ble Judges/Coram:
Banerjee and Hamilton Wincup Gordon, JJ.

Case Note:
Valuation of suit - Appeal--Bengal, N.W.P. and Assam Civil Courts Act (XII of 1887), Section 21, Sub-section (l)--"Value of the original suit"--Limitation Act (XV of 1877), Schedule II, Articles 134 and 144--Alienation of debutter property by a previous sebait--Sebait, Suit by succeeding--Adverse possession.

JUDGMENT

Banerjee and Hamilton Wincup Gordon, JJ.

1. This appeal arises out of a suit brought by the plaintiff appellant to recover khas possession of certain Immovable property with mesne profits, and to obtain a declaration that a pottah and a kabala set up by the defendants are illegal and collusive, upon the allegation that the property constitutes the debutter of the idol Sri Sri Kalachand Jeo Thakur; that the defendant No. 6 Srimati Chota Bahira was the former sebatt of the idol; that she has been removed from the office of sebait, and the plaintiff Nilmony Singh Deo has been appointed in her place by a decree of Court, dated the 27th December 1888; and that during the time that the property was under the management of the defendant No. 6, the pottah and the kabala sought to be set aside were executed in favour of the defendants Nos. 1 to 4, or their predecessor in title by the defendant No. 6 in collusion with the defendant No. 5, her son.

2. The defence was that the suit was barred by limitation; that the property belonged to the defendant No. 5, and did not form any part of the debutter property of the idol Sri Sri Kalachand Jeo Thakur; and that the defendants Nos. 1 to 4 are bond fide purchasers of the same for value and without notice of any debutter title. The defendants also took another objection, namely, that the suit had been over-valued with the object of changing the venue of appeal, and that upon a proper valuation of the property the value of the suit would be below Rs. 5,000.

3. Upon the question of valuation the lower Court has found in favour of the defendants. Upon the merits of the case it has found that the property is debutter property, and that the pottah and kabala set up by the defendants are genuine documents, but without coming to any decision as to their validity, the lower Court has dismissed the plaintiffs' suit upon the ground of limitation.

4. The plaintiff has preferred this appeal valuing it at the same amount at which the suit was valued, that is, Rs. 7,500; and his contention is that the Court below is wrong in holding that the suit was barred by limitation, and that it ought to have decreed the suit.

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5. The defendants have preferred a petition of objection in which they dispute the correctness of the lower Court's finding upon the question of debutter; and at the hearing of the appeal a preliminary objection was taken by the learned vakil for the respondents that the appeal under Section 21 of the Civil Courts Act lay to the District Judge and not to this Court, the value of the original suit having been found in this case to be below Rs. 5,000, and that the appeal was liable to be dismissed upon that ground, more especially as the appeal had been filed in this Court more than thirty days after the date of the decree appealed against, and therefore after the period allowed for appealing to the District Judge.

6. Having regard to the language of Section 21 and to the nature of the finding arrived at by the Court below upon the question of value, we are of opinion that this preliminary objection must fail. Section 21 of the Civil Courts Act, Sub-section (1) enacts that "save as aforesaid an appeal from a decree or order of a Subordinate Judge shall lie-(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed Rs. 5,000, and (b) to the High Court in any other case."

7. What then was the value of the original suit in this case? The value of the original suit as instituted was clearly above Rs. 5,000; and, if that is to be taken as the criterion, the appeal would lie to this Court. It was contended that "the value of the original suit" must be taken to mean, not the value which the plaintiff chooses to give to his suit, but the value which is found upon investigation by the Court below to be the value of the suit. We are not prepared to accept this contention as correct in the broad form in which it has been presented to us. There may be cases, and the present is one of them, in which the finding of the Court below upon the subject of value is itself questioned in the appeal; and there it cannot be said that the appellant, notwithstanding that he questions the correctness of the finding of the Court below as to valuation, is still bound to accept that finding for the purpose of determining what Court has jurisdiction in respect of the appeal. Questioning, as the plaintiff appellant did, the correctness of the finding as to value, and contending that his valuation was a correct one, he could not but have preferred the appeal to this Court as he has done. It was argued that if a suit is over-valued with the object of changin the venue of appeal, and it is found upon investigation that that was so, it would be wrong to allow the appellant to insist upon having his appeal heard by the Court to which it would lie upon the basis of his valuation, and that "the value of the original suit" contemplated in Section 21 must be taken to be the bond fide value of the suit. That may be so, but it is not necessary to consider the matter here, because, although the lower Court has found that the proper value of the suit is below Rs. 5,000, it does not find that the over-valuation was the result of any design. And, having regard to the evidence, the proper value comes so near Rs. 5,000 that it is difficult to say that the overvaluation was the result of any design to change the venue of appeal. The view we take is in accordance with the cases of Lakshman Bhatkar v. Babaji Bhatkar I.L.R. 8 Bom. 31 and Mahabir Singh v. Behari Lal I.L.R. 13 All. 320.

8. Coming now to the merits of the appeal, we observe that the appeal and the cross-objections open the whole case; and the first point for determination in the appeal is whether the suit is barred by limitation. The Court below is of opinion that it is barred under Article 144 of the second schedule of the Limitation Act. It has been contended before us that it is also barred under Article 134. On the other hand, it was contended that the suit could not come under Article 134, nor under Article 144, and that it was governed either by Section 10 of the Act or by Article 120.

9. The question is not altogether free from difficulty. It has been very fully argued

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before us by the learned senior Government Pleader Babu Hem Chandra Banerjee and Babu 'Ram Charan Mitra for the appellant, and by Babu Kali Kishan Sen for the respondents; and after giving our best consideration to the arguments, the conclusion we arrive at is that the suit is barred, and that it comes either under Article 134 or under Article 144. Article 134 relates to a suit to recover possession of Immovable property convoyed in trust and afterwards purchased from the trustee for a valuable consideration. The period of limitation prescribed is twelve years, and it runs from the date of the purchase. And the mokurri lease and the conveyance are both of dates long anterior to twelve years preceding the date of the institution of this suit. The question might arise as to whether the word "purchase" used in Article 134 would also include a mokurri lease. Ordinarily, the word "purchase" would not include the taking of a lease, but as Article 134 is evidently connected with Section 10 of the Act, it is not unlikely that the word "purchase" in Article 134 was intended to correspond to the words "assigns for valuable consideration" in Section 10. That the lease and the conveyance were both for valuable consideration is not disputed. What was alleged on behalf of the plaintiff was that the consideration was inadequate, and it was contended that valuable consideration under Article 134 must mean really valuable consideration, and not merely nominally valuable consideration. That may or may not be so; but in the present case, although the consideration might have been inadequate, it cannot be said to have been inadequate to such a degree as would justify our holding that it was merely nominal. It was contended that Article 134 did not apply to this case for the farther reason that the article was limited to purchasers from a trustee in his character as trustee, and in the present case the alienations were not made by the defendant No. 6 in that character. We are not prepared to give effect to this contention so far as it seeks to limit the application of Article 134. There is nothing in the article to limit its application in that way. It is doubtful, however, whether the documents can be regarded as having been executed by the former trustee or sebait. As regards the kabala, that was executed, not by the defendant No. 6, but by the defendant No. 5; and it is no part of the plaintiffs' case that the defendant No. 5 was trustee or sebait. And even as regards the mokurri, the executant was not defendant No. 6, but the defendant No. 5 through his guardian the defendant No. 6 and her co-widow. But granting that Article 134 does not apply, the case, we think, must come under Article 144. It is a suit for possession of Immovable property; and if Article 134 does not apply to it there is no other provision of the schedule that applies to it, except Article 144. It was contended that the suit would not be barred under Article 144, as limitation runs from the time when the possession of the defendant becomes adverse to the plaintiff, and the present plaintiff not claiming through or from any preceding sebait within the meaning of the explanation of the word plaintiff in Section 3, the possession of the defendants can only be said to have become adverse to the present plaintiff from the date of his appointment as sebait, that is, 1888, which is within twelve years of the date of the institution of the suit. We are of opinion that this contention is not sound. The property, granting it for the purposes of the present question to be debutter, was the property of the idol Sri Sri Kalachand Jeo Thakur. The idol is a judicial person capable of holding property as has been authoritatively settled by the decision of the Privy Council in the case of Shibessuree Dabia v. Mothoora Nath Acharjo 13 Moo. I.A. 270 : 13 W.R. P.C. 18, and the possession of the defendants who profess to derive title, not from the idol, but ignoring its> rights must be taken to have become adverse to the idol from the dates of the two alienations which are both more than twelve years before the date of the present suit. It is true that the idol, to use the language of their Lordships of the Judicial Committee in the case of Prosunno Kumari Debya v. Golab Chund Baboo 14 B.L.R. 450 : 23 W.R. 253 : I. L.R. 2 IndAp 145 can hold property only in an ideal sense, and that its acts relating to any property owned by it must be done by or through its manager or sebait :' but that does not show that each succeeding manager

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gets a fresh start as far as the question of limitation is concerned, upon the ground of his not deriving title from any previous manager. The succeeding sebaits, as was observed in the case just referred to, formed a continuing representation of the idol's property. If we were to hold otherwise, it would lead to a most anomalous result; for then it would follow that, although after any alienation of the idol's property, ten successive sebaits may not take any steps to recover the idol's property, the eleventh sebait, it may be after a hundred years or more, would still be in time to institute a suit for recovery of possession. Such a result the Legislature could not have contemplated. In our opinion under Article 144 the suit is barred by limitation. This view is in accordance with the decision of the Madras High Court in the case of Kannan v. Niluhandan I.L.R. 7 Mad. 337.

10. In this view it is not necessary to pronounce any opinion upon the merits of the case. But as the case was argued upon the merits as well, we think it right to make a few observations upon the merits of the case. It was strongly pressed upon us by the learned vakil for the respondents that the finding of the Court below as to the genuineness of the arpannama or deed of dedication, and as to the debutter character of the property is wholly unsustainable on the evidence. We have heard the evidence read. Though we must say that the first witness examined by the plaintiff to prove the arpannama is in our opinion an unreliable witness, so far as he deposes to the execution of that document, still, having regard to the age of the document, and to the fact of its having been filed in previous suits so far back as the year 1881, and having regard also to the fact that one of the defendant's own witnesses, Bara Lall Lachman Singh Deo, proves that Pancham Kumari had an idol of the name of Kalachand Jeo Thakur, and that she performed the sheba of Kalachand with the income of her properties in Nagpur, we are not prepared to dissent from the conclusion arrived at by the Court below.

11. As the suit fails upon the ground of limitation, it is not necessary to say anything more upon this point, or upon the other points raised in the appeal.

12. The appeal is accordingly dismissed with costs.

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anywhere as to whether the vocal cords were affected or not. The doctor, PW 7 specially stated in his evidence that the vocal cords were not at all affected and the victim could speak. This being the position, we do not find any substance in this point as well. For the foregoing reasons, we are of the view that the prosecution has failed to prove its case beyond reasonable doubts and the High Court was quite justified in upholding conviction of the appellant. As such, no ground whatsoever for interference by this Court is made out.

8. Accordingly, appeal fails and the same is dismissed.

(2004) 10 Supreme Court Cases 779

(BEFORE S. RAJENDRA BABU AND G.P. MATHUR, JJ.)

KARNATAKA BOARD OF WAKF .. Appellant;

Versus

GOVERNMENT OF INDIA AND OTHERS .. Respondents.

Civil Appeals No. 16899 of 1996† with Nos. 16900 and 16895 of 1996, decided on April 16, 2004

A. Muslim Law — Wakfs — Wakf Act, 1954 — Ss. 4, 26 & 56 — Nature of suit property — Whether government property or wakf property — Held, property must be "existing" wakf property on the date of commencement of the Act so as to entitle the Wakf Board to exercise power over the same — Where the property in question had been acquired by Govt. of India under Ancient Monuments Preservation Act, 1904 and entered in the Register of Ancient Protected Monuments long back and Govt. of India remaining in absolute ownership and continuous possession thereof for the last about one century, held, the property cannot be said to be an "existing" wakf property and therefore, appellant Wakf Board cannot exercise any right over the same — Hence subsequent notification issued in 1976 by the appellant Board showing the property as having been declared wakf property under S. 26 of the Wakf Act, and published in gazette, would be null and void and liable to be deleted — Factum of ownership, possession and title over the property, having been proved on admissible evidence and records by Govt. of India, appellant's claim over the property based on some borderline historical facts, unsubstantiated by concrete evidence and records, cannot be accepted (Paras 8 and 9)

B. Ancient Monuments Preservation Act, 1904 — S. 4 — Acquisition of immovable property by Govt. of India under the Act — Proof — Entry in Register of Ancient Protected Monuments — Evidentiary value of — Register maintained by Executive Engineer in charge of the ancient monuments produced wherein suit property was mentioned and the Govt. was referred to as the owner — When manner of acquisition was not under challenge, held, the entry in the Register could be treated as a valid proof of acquisition under the appropriate provisions of the Act (Para 8)

† From the Judgment and Order dated 10-3-1995 of the Karnataka High Court in RFA No. 549 of 1986

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C. **Specific Relief Act, 1963 — S. 34 — Suit for declaration of ownership and title over immovable property — Proof — Held, must be proved by admissible evidence and records — In a title suit of civil nature, there is no scope for historical facts and claims — Reliance on borderline historical facts would lead to erroneous conclusion — Plaintiff filing title suit should be very clear about origin of title over the property and must specifically plead it — Civil Procedure Code, 1908, Or. 6 R. 4** (Paras 8 and 12)

D. **Adverse Possession — Essentials of — Held, are exclusive physical possession and animus possidendi to hold as owner in exclusion to the actual owner — Facts to establish claim for adverse possession, stated — Pleas of adverse possession and of title are mutually inconsistent — Limitation Act, 1963, Art. 65**

In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "*nec vi, nec clam, nec precario*", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Physical fact of exclusive possession and the *animus possidendi* to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (*a*) on what date he came into possession, (*b*) what was the nature of his possession, (*c*) whether the factum of possession was known to the other party, (*d*) how long his possession has continued, and (*e*) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Para 11)

S.M. Karim v. *Bibi Sakina*, AIR 1964 SC 1254; *Parsinni* v. *Sukhi*, (1993) 4 SCC 375; *D.N. Venkatarayappa* v. *State of Karnataka*, (1997) 7 SCC 567; *Mahesh Chand Sharma (Dr.)* v. *Raj Kumari Sharma*, (1996) 8 SCC 128, *relied on*

A plaintiff, filing a title suit, should be very clear about the origin of title over the property. He must specifically plead it. The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. (Para 12)

S.M. Karim v. *Bibi Sakina*, AIR 1964 SC 1254; *P. Periasami* v. *P. Periathambi*, (1995) 6 SCC 523; *Mohan Lal* v. *Mirza Abdul Gaffar*, (1996) 1 SCC 639, *relied on*

In this case, the respondent obtained title under the provisions of the Ancient Monuments Act. But, the alternative plea of adverse possession by the respondent is unsustainable. The element of the respondent's possession of the suit property to the exclusion of the appellant with the *animus* to possess it is not specifically pleaded and proved. So are the aspects of earlier title of the appellant or the point of time of disposition. (Para 13)

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E. **Civil Procedure Code, 1908 — Or. 41 R. 27 — Scope of — Additional evidence — Production of**

Held :

The scope of Order 41 Rule 27 CPC is very clear to the effect that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, unless they have shown that in spite of due diligence, they could not produce such documents and such documents are required to enable the court to pronounce proper judgment. (Para 6)

Appeals dismissed R-P-M/Z/29967/S

Advocates who appeared in this case :

Salman Khurshid, Senior Advocate (Imtiaz Ahmed, Javed A. Warsi and Z. Ahmad Khan, Advocates, with him) for the Appellant;

Mukul Rohatgi, Additional Solicitor General (Sanjay Hegde, Satya Mitra, S. Wasim A. Qadri, Anil Katiyar and Ms Sushma Suri, Advocates, with him) for the Respondents.

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

1. (1997) 7 SCC 567, *D.N. Venkatarayappa* v. *State of Karnataka* 785*c-d*
2. (1996) 8 SCC 128, *Mahesh Chand Sharma (Dr.)* v. *Raj Kumari Sharma* 785*e-f*
3. (1996) 1 SCC 639, *Mohan Lal* v. *Mirza Abdul Gaffar* 786*a*
4. (1995) 6 SCC 523, *P. Periasami* v. *P. Periathambi* 785*f*
5. (1993) 4 SCC 375, *Parsinni* v. *Sukhi* 785*c-d*
6. AIR 1964 SC 1254, *S.M. Karim* v. *Bibi Sakina* 785*c-d*, 785*f*

The Judgment of the Court was delivered by

S. RAJENDRA BABU, J.— Three suits were filed by the first respondent in each of these cases seeking for a declaration that notifications issued by the Karnataka Board of Wakf i.e. the appellant before us, showing some of the defendants to be illegal and void or in the alternative, to declare the first respondent as owner of the suit properties on the ground that they have perfected their title by adverse possession and consequential relief for permanent injunction. There are three sets of properties in each of these three matters. One is CTS No. 24 of Ward No. VI, described as "Karimuddin's Mosque", another is CTS No. 36 of Ward No. VI, described as "Mecca Masjid" and the other is CTS No. 35 of Ward No. VI, described as "Water Tower". All of them were situated at Bijapur.

2. The claim made by the first respondent is that they acquired the suit property under the Ancient Monuments Preservation Act, 1904 (the Ancient Monuments Act) and a notification had been published in that regard and the suit property had been entered in the Register of Ancient Protected Monuments in charge of the Executive Engineer. Thereafter, the Government of India enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the suit property came to be under the management of the Department of Archaeological Survey, Government of India. It is asserted by the first respondent that in all the relevant records, the name of the Government of India has been shown as the owner of the suit property and that they came to know that the defendants got published Notification No. KTW/531/ASR-74/7490 dated 21-4-1976, showing the suit property as having been declared as "wakf property" in terms of Section 26 of the Wakf Act, 1954 and was also stated to have been published in the gazette.

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Inasmuch as the suit property since inception was under the ownership of the plaintiff with lawful possession thereof, the defendants could not have made any claim thereto nor got the same declared as wakf property. The defendants contested this claim of the plaintiffs in the original suits and that after following due procedure publication has been made in the Karnataka Gazette in terms of Section 67 of the Karnataka Land Revenue Act and the order passed by the officer concerned is binding on the plaintiff and, therefore, the plaintiff cannot claim any ownership on the ground of adverse possession.

3. While this is the stand of the Wakf Board, the appellant before us, and the other defendants described as to be "*mutawallis*" of the wakf property, stated that one of the Arab preachers, Peer Mahabari Khandayat came as a missionary to the Deccan as early as AD 1304 and occupied whole Arkilla and erected "Mecca Masjid" according to the established customs to offer prayer which is surrounded by a vast open area. The said property had all along for seven centuries been treated as wakf and has since after the time of the Peer, been managed, looked after and maintained by *sajjada nashin* from time to time. No one has interfered with their right. They claim that they have appropriate *sanads* to show that the property in question is wakf property and that another portion of the suit property also belongs to the *Darga* of Peer Mahabari Khandayat and Chinni Mahabari Khandayat Darga Arkilla, Bijapur and, therefore, the same has been appropriately entered in the wakf register.

4. The trial court raised several issues in the matter and gave a finding that on a consideration of the oral and documentary evidence in the case it is clear that even prior to the introduction of the Survey Department at Bijapur, the Government of India had taken these properties as ancient monuments and they are protecting them by keeping appropriate watch over these monuments but now the defendants have come forward contending that these properties are wakf properties and they have nothing to show that even after the demise of Peer Mahabari Khandayat they remained in the possession of the same. The properties in question were acquired by the Government of India as long back as 1900 and they started preserving them as important historical monuments and they remained in possession and enjoyment of them. This was clear both from oral and documentary evidence and on that basis, the trial court held that they are owning and managing the suit properties. The trial court also gave a finding that the Wakf Board itself declared these properties as wakf properties without properly following the relevant provisions of the Wakf Act and without following due procedure prescribed therein and in a case where there is a dispute as to who is a stranger to the wakf, a mere declaration by the Wakf Board will not bind such person and on that basis the trial court decreed the suit.

5. The matter was carried in appeal. A Division Bench of the High Court examined the matter once over again and affirmed the findings of the trial court. The Division Bench also noticed that at the end of the arguments the appellant made a submission that as they have not produced some of the important documents, the matter may be remanded to the trial court in order to enable them to produce the said documents and with a direction to the trial

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court for a fresh disposal in accordance with law. The High Court did not allow the plea raised by the appellant that there are documents in question which will go to the root of the matter or which would be necessary in terms of Order 41 Rule 27 CPC to permit them to adduce further evidence and on that basis rejected that claim. The High Court affirmed the various findings given by the trial court.

6. In the circumstances, the learned counsel for the appellant reiterated the claim made before the High Court that they should be permitted to adduce further evidence before the Court to substantiate their claim but when the matters were pending before the trial court and the High Court they had ample opportunity to do so. If they had to produce appropriate documents, they could have done so and also it is not clear as to the nature of the documents which they seek to produce which will tilt the matter one way or the other. The scope of Order 41 Rule 27 CPC is very clear to the effect that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, unless they have shown that in spite of due diligence, they could not produce such documents and such documents are required to enable the court to pronounce proper judgment. In this view of the matter, we do not think there is any justification for us to interfere with the orders of the High Court. However, in view of the arguments addressed by the learned counsel for the appellant, we have also gone into various aspects of the matter and have given another look at the matter and our findings are that the view taken by the High Court is justified. However, one aspect needs to be noticed. The High Court need not have stated that the first respondent is entitled to the relief even on the basis of adverse possession. We propose to examine this aspect.

7. The case advanced by the appellants is that one Arabian saint Mahabari Khandayat came to Bijapur around the 13th century, acquired certain properties (suit property) and constructed "Mecca Mosque" which is under the management of the lineal descendants of the said saint; that by virtue of notification bearing No. KTW/531/ASR-74/7490 dated 21-4-1976, issued by the appellant and the Karnataka Gazette Notification, p. 608/Part VI dated 8-7-1976, they became absolute owners and title-holders of the suit property; that pursuant to the circulars dated 8-6-1978 and 22-1-1979, the Deputy Commissioner of the districts were instructed to hand over possession of any wakf properties that are under the possession of any government department; that by virtue of the said circular the Assistant Commissioner, Bijapur held enquiry under Section 67 of the Karnataka Land Revenue Act, 1964 and arrived at the conclusion that the suit property is a wakf property; that the alleged acquisition by the respondent itself is a concocted story; that the notification and the gazette publication itself is a notice to all concerned and the respondent failed to reply to this notice; that the original suit is bad by limitation; that the original suit itself is not maintainable since there is no notice under Section 56 of the old Wakf Act; that the plea regarding title of the suit property by the respondent and the plea of adverse possession is mutually exclusive; that, therefore, the appeal is to be allowed.

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8. Pertaining to the ownership claim of the appellants over the suit property there is no concrete evidence on record. The contention of the appellants that one Arabian saint Mahabari Khandayat came to India and built the Mosque and his lineal descendants possessed the property, cannot be accepted if it is not substantiated by evidence and records. As far as a title suit of civil nature is concerned, there is no room for historical facts and claims. Reliance on borderline historical facts will lead to erroneous conclusions. The question for resolution herein is the *factum* of ownership, possession and title over the suit property. Only admissible evidence and records could be of assistance to prove this. On the other hand, the respondent produced the relevant copy of the Register of Ancient Protected Monuments maintained by the Executive Engineer in charge of the ancient monuments (Ext. P-1) wherein the suit property is mentioned and the Government is referred to as the owner. Since the manner of acquisition is not under challenge, the entry in the Register of Ancient Protected Monuments could be treated as a valid proof for their case regarding the acquisition of suit property under the appropriate provisions of the Ancient Monuments Act. Gaining of possession could be either by acquisition or by assuming guardianship as provided under Section 4 thereof. Relevant extracts of Ext. P-2, CTS records fortify their case. It shows that the property stands in the name of the respondent. Moreover, the evidence of Syed Abdul Nabi who is the power-of-attorney holder (of Defendants 2-A and 2-B in the original suit) shows that the suit property has been declared as a protected monument and there is a signboard to this effect on the suit property. He also deposed that the Government is in possession of the suit property and the Government at its expenditure constructed the present building in the suit property. On a conjoint analysis of Exts. P-1, P-2 and deposition of Syed Abdul Nabi, it could be safely concluded that the respondent is in absolute ownership and continuous possession of the suit property for the last about one century. Their title is valid. The suit property is government property and not of a wakf character.

9. The old Wakf Act is enacted "for the better administration and supervision of wakfs". Under Section 4 of the old Wakf Act, Survey Commissioner(s) could only make a "... survey of wakf properties existing in the State at the date of the commencement of this Act". The Wakf Board could exercise its rights only over existing wakf properties. Since the suit property itself is not an existing wakf property the appellant cannot exercise any right over the same. Therefore, all the subsequent deeds based on the presumption that the suit property is a wakf property are of no consequence in law. The notification bearing No. KTW/531/ASR-74/7490 dated 21-4-1976, issued by the appellant and the Karnataka Gazette Notification, p. 608/Part VI dated 8-7-1976 is null and void. The same is liable to be deleted. In view of this, the aspects relating to treating gazette notification as notice and limitation need not be looked into. As regards the compliance with notice under Section 56 of the old Wakf Act, the High Court based on evidence and facts ruled that the same is complied with. This is a finding of fact based on evidence.

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10. Now we will turn to the aspect of adverse possession in the context of the present case. The appellants averred that the plea of the respondent based on title of the suit property and the plea of adverse possession are mutually exclusive. Thus finding of the High Court that the title of the Government of India over the suit property by way of adverse possession is assailed.

11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "*nec vi, nec clam, nec precario*", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See *S.M. Karim* v. *Bibi Sakina*[1], *Parsinni* v. *Sukhi*[2] and *D.N. Venkatarayappa* v. *State of Karnataka*[3].) Physical fact of exclusive possession and the *animus possidendi* to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (*a*) on what date he came into possession, (*b*) what was the nature of his possession, (*c*) whether the factum of possession was known to the other party, (*d*) how long his possession has continued, and (*e*) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.)* v. *Raj Kumari Sharma*[4].]

12. A plaintiff filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See *S.M. Karim* v. *Bibi Sakina*[1].) In *P. Periasami* v. *P. Periathambi*[5] this Court ruled that: (SCC p. 527, para 5)

> "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property."

The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with

1 AIR 1964 SC 1254
2 (1993) 4 SCC 375
3 (1997) 7 SCC 567
4 (1996) 8 SCC 128
5 (1995) 6 SCC 523

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Mohan Lal v. *Mirza Abdul Gaffar*[6] that is similar to the case in hand, this Court held: (SCC pp. 640-41, para 4)

> "4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

13. As we have already found, the respondent obtained title under the provisions of the Ancient Monuments Act. The element of the respondent's possession of the suit property to the exclusion of the appellant with the *animus* to possess it is not specifically pleaded and proved. So are the aspects of earlier title of the appellant or the point of time of disposition. Consequently, the alternative plea of adverse possession by the respondent is unsustainable. The High Court ought not to have found the case in their favour on this ground.

14. In the result, these appeals stand dismissed.

(2004) 10 Supreme Court Cases 786

(BEFORE ARIJIT PASAYAT AND C.K. THAKKER, JJ.)

USMAN MIAN AND OTHERS .. Appellants;

Versus

STATE OF BIHAR .. Respondent.

Criminal Appeal No. 587 of 1999†, decided on October 4, 2004

A. Criminal Trial — Circumstantial evidence — When can conviction be based on — Principal fact can be inferred from the chain of circumstances — Circumstances must be proved beyond reasonable doubt and must be shown to be closely connected with the principal fact — Chain of incriminating circumstances must be consistent only with the hypothesis of guilt of the accused

B. Penal Code, 1860 — Ss. 302/34 — Circumstantial evidence — Accused's abscondence is a vital circumstance — Falsity of defence plea provides an additional link to the chain of incriminating circumstances — Held, incriminating circumstances proved by prosecution conclusively established commission of murder by accused-appellants — Hence their conviction upheld

A woman was found dead in her husband's house. The prosecution case was based on circumstantial evidence. The circumstances which were pressed into

6 (1996) 1 SCC 639

† From the Judgment and Order dated 7-8-1998 of the Patna High Court in Crl. A. No. 424 of 1986

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ber will have to be similar to any other members who has been allotted a parking place and whatever rights such other members are entitled to, the respondent Nos. 4 and 5 will also be entitled to in similar line. At any rate, if there be a dispute it will be open to the parties to agitate the dispute before any appropriate forum which can decide the said issue. There is no dispute about the flat. Membership is based on owning a flat in the society. By admitting respondent Nos. 4 and 5 to membership, does not mean that the society acquiesces in the transfer of the garage. Membership would be based on having a flat in the society. Respondent Nos. 4 and 5 have a flat.

14. Coming to the other issue namely that respondent Nos. 4 and 5 are undesirable persons, it is no doubt true that it will be open to the Managing Committee or General Body to consider as to whether the persons applying for membership are fit persons to be admitted as members considering over all circumstances. But that must be based on material and not whims and fancies. It appears that there are disputes between the Secretary of the Society and Respondent Nos. 4 and 5 as reflected in the affidavit filed by respondent No. 4 before this Court. It is however, not necessary for this Court to go into that aspect or that affidavit. Suffice it to say that the Revisional Authority itself noted that no material was placed which will support the contention as raised by the petitioner society. Once that be a finding and that finding is based on material before the Court, will not be possible for this Court to exercise its extraordinary jurisdiction. Even at this stage, no material has been placed before this Court to show that in fact respondent Nos. 4 and 5 are undesirable persons. This contention of the petitioner must also be rejected.

15. Lastly it was contended that considering the order of the appellate Court and the facts that many of the points urged had not been answered, the matter ought to be remanded back to the appellate Court. I am not impressed. All points were open to the parties in revision. Parties have raised their contentions before the authority. The Revisional Authority has considered the said contentions and has dealt with them. It is true that the Revisional Authority did hold that because of the complaint filed by respondent Nos. 4 and 5, against the society the membership was rejected. It is correct that the membership was rejected before the complaint was filed. There is therefore justification in the contention of the petitioner on that count. That however, is not material. There is no material on record that respondent Nos. 4 and 5 are undesirable persons. Considering above, no interference is called for.

16. In the light of the above, petition dismissed. No order as to costs.

17. The learned counsel for the petitioner prays that the interim order passed by this Court be continued. In my opinion this is not a fit case to continue interim relief considering the order of this Court. Hence, prayer rejected.

Petition dismissed.

AIR 2004 BOMBAY 318

(NAGPUR BENCH)

S. T. KHARCHE, J.

Deepak S. Gulalkari and others, Appellants v. Pundlikrao C. Bangar and others, Respondents.

S.A. No. 192 of 1990, D/- 22-3-2004.

Limitation Act (36 of 1963), Art. 65 — Adverse possession — Plea of — Suit for declaration and injunction — Plaintiffs had purchased suit plot from its owner — Defendants claim that they were in continuous possession of kutcha house on suit plot for more than 12 years and had perfected their title by adverse possession— Possession of defendants was only permissible — There was no definite assertion by them about hostile intention to knowledge of owner — Documents or receipts produced by them showing their induction as tenants — Mere payment of municipal taxes or electricity bills by defendants would not prove their title by adverse possession — Plaintiffs, entitled to grant of decree, directing defendants to deliver possession.

(Paras 10, 11, 14)

Cases Referred: Chronological Paras

State Bank of Travancore v. Arvindan Kunju Panicker, AIR 1971 SC 996 13

V. R. Choudhari, for Appellants; M.B. Badye, for Respondent No. 1; R.E. Mohare, for Respondent 3.

EV/GV/B259/2004/GSD-VNP/USA/23649/2004

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JUDGMENT :— By invoking the jurisdiction of this Court under Section 100 of the Code of Civil Procedure, this second appeal is filed by the original plaintiffs taking an exception to the judgment and decree dated 19-12-1989 passed by the learned Additional District Judge in Regular Civil Appeal No. 477 of 1987, whereby the appeal was allowed and the judgment and decree dated 28-12-1987 passed by the learned 10th Joint Civil Judge, Jr. Dn., Amravati, in Regular Civil Suit No. 405 of 1986 was set aside and the suit seeking possession, declaration, injunction and damages was dismissed.

2. Relevant facts are required to be stated as under :

The case of the plaintiffs is that they are the owners of the suit plot described in para 1 of the plaint which is shown by letters A, B, C, D, E in the map annexed with the plaint. The suit plot was part of the field Survey No. 42/2 of mouza Rajapeth. Originally this field was owned and possessed by Ruikar family of Yavatmal district. Shri Ruikar drew lay out by converting agricultural land into non-agricultural for residential purpose and sold some plots including plot No. 331 to one Shankar Bajirao Hingaspure by virtue of registered sale deed dated 29-7-1981 for consideration of Rs. 42,500/-. Thereafter the suit plot was transferred to some persons and lastly plaintiffs Nos. 1 and 2 purchased Western half portion of the said plot No. 33 for a consideration of Rs. 30,000/- from one Kondumal Gokulchand Khemchandani by registered sale deed dated 29-4-1985. Plaintiff Nos. 3 and 4 purchased the eastern half portion of plot No. 33 for a consideration of Rs. 30,000/- from one Sudhirkumar Umedrai Shah by virtue of registered sale deed dated 29-4-1985. It is contended that the defendants occupied the portion of the said plot which is shown by letters D E F G shown in the map annexed with the plaint. It is contended that the defendants have no right, title or interest in the suit plot and they have gone to the extent of taking electric connection in the kutcha house constructed on the suit plot from M.S.E.B. Defendant No. 3. In the circumstances, the plaintiffs were compelled to file the suit for possession.

3. The defendants resisted the claim of the plaintiffs by filing their written statement and contended that Shri Ruikar was the original owner of field survey No. 47/2 and one Dewaji Chidam was the manager, who was managing that property. It is contended that the said Dewaji Chidam had permitted the defendants to construct their residential house on the disputed plot in the year 1970 and a receipt was also scribed by him in that context. It is contended that the defendants were formerly working in the field of Shri Ruikar and hence they allowed them to reside on the disputed plot. It is further contended that the possession of the defendants is peaceful, continuous and without any disturbance and as an owner thereof for more than the statutory period and, therefore, they have perfected their title to the same by adverse possession and the suit is liable to be dismissed.

4. The trial Court framed the issues on the aforesaid pleadings and parties adduced evidence in support of their contentions. The learned trial Court on considering the evidence had recorded the findings that the plaintiffs are the exclusive owners of the disputed plot D E F G and the defendants have made encroachment on the disputed plot and the encroachment is shown by letters D E F G in the map annexed with the plaint and negatived the contentions of the defendants that they have perfected their title to the disputed plot by adverse possession. Consistent with these findings, the trial Court granted decree by directing the defendants to deliver the possession of the area under encroachment as shown by letters D E F G in the map and also restrained them from committing any act of trespass over the disputed plot shown by letters D E F G, with future enquiry into mesne profits.

5. The defendants being aggrieved by the judgment and decree passed by the trial Court carried appeal to the District Court. The learned Additional District Judge on hearing the parties allowed the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit. This is how the original plaintiffs are before this Court in second appeal.

6. Mr. Choudhari, learned counsel, for the appellants contended that the plaintiffs have established their title to the disputed plot which is plot No. 33. The plaintiff Nos. 1 and 2 purchased Western half portion of the said plot for consideration of

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Rs. 30,000/- from one Sudhirkumar Umedrai Shah by virtue of the registered sale deed dated 29-4-1985. It is contended that the defendants occupied the portion of the said plot which is shown by letters D E F G in the map annexed with the plaint and his possession is only permissive. It is contended that the defendants have no right, title or interest in the suit plot and they have gone to the extent of taking electric connection in the kutcha house constructed on the suit plot from defendant No. 3 M.S.E.B.

7. The contention of the defendants that they were permitted to occupy 360 sq. ft. area by Dewaji Chidam has been negatived by the trial Court because the defendants did not prove any right, title or interest in the disputed plot and their plea for adverse possession has been rightly negatived by the trial Court and, therefore, there was no reason for the appellate Court to disturb the findings of facts recorded by the trial Court. He contended that the appellate Court misdirected itself by misreading the evidence of Shankarrao (P.W. 1) and arrived at an erroneous finding that the plaintiffs have failed to establish their title to the disputed plot. He contended that the appellate Court has though recorded the finding that the defendants did not establish their title by virtue of adverse possession, has erroneously allowed the appeal, and, therefore, the same cannot be sustained in law. He contended that the possession of the defendant over the disputed plot was only a permissive possession and therefore, the plea of adverse possession raised by the defendants must fail and the judgment and decree passed by the trial Court deserves to be restored.

8. Mr. Badiye, learned counsel, for the defendants contended that the possession of the defendants over the suit plot from 1970 is not disputed. He pointed out that the defendants were paying the taxes to the Municipal Council for which the Municipal Council has issued the receipts. He further pointed out that the M.S.E.B. has provided electric connection in the kutcha house and the defendants are enjoying the possession continuously for more than 12 years to the knowledge of the owners and, therefore, they have perfected their title by adverse possession. He, therefore, contended that the appellate Court was perfectly justified in setting aside the judgment and decree passed by the trial Court and no interference into the same is warranted.

9. This Court has given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is in dispute that the original owner of field survey No. 47/2 situated at mouza Rajapeth was originally owned by Ruikar family and thereafter the said agricultural field was converted for residential purpose by drawing the layouts. It is also not in dispute that layout was sanctioned and plot No. 33 was sold to one Shankarrao vide registered sale deed dated 29-7-1981 and thereafter the suit plot was transferred in the name of some persons and lastly the plaintiffs Nos. 1 and 2 purchased the Western half portion of the said plot No. 33 and plaintiffs Nos. 3 and 4 purchased the eastern portion of the said plot No. 33 by virtue of the registered sale deed dated 29-7-1981.

10. The bone of contention of the learned counsel for the defendant is that they were permitted to use the area of 360 sq. ft. shown by letters D E F G by Dewaji Chidam some time in the year 1970 and thereafter the defendants had paid the municipal taxes and, therefore, they are in continuous and peaceful possession without any disturbance as an owner thereof for more than 12 years and, therefore, they have perfected their title by virtue of adverse possession to the kutcha house. This contention cannot be accepted for the simple reason that though it is stated that Dewaji Chidam, who was the manager of Ruikar family, had passed some receipts inducting the defendants as tenants on the suit plot, that document has not been produced on record.

11. Secondly, though the respondents are said to have paid the municipal taxes, electric bills etc. it did not follow that they have perfected their title by adverse possession. The receipts for payment of municipal taxes are issued as a matter of fiscal policy of the municipal council and those receipts cannot be taken into consideration to prove anybody's title to the property. The possession howsoever long it may be cannot become adverse to the knowledge of the true

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owners unless there is some definite assertion about hostile intention to the knowledge of the true owners.

12. It is well settled law that adverse possession means possession of the land or interest in the land by a wrong man against the will of the right man. Adverse possession, as its words imply, must be actual possession of another's land with intention to hold it and claim it as of his own, to the exclusion of the rightful owner. It must commence with the wrongful possession of the rightful owner at some particular time and must commence, in wrong against right. It must be actual, open, notorious and hostile under claim of right, continuous and exclusive and maintained for the statutory period. Possession and adverse possession do not mean the same thing. Mere user of the property cannot be taken as a definite assertion of the proprietary rights, there must be definite quality in the possession before it can be called adverse and some act of unequivocal character to put the owner on guard. There cannot be adverse possession if the claimant himself do not known that he was occupying somebody's land. However, permissive possession cannot be converted into adverse possession unless it is proved that the person in possession asserted an adverse title to the property, to the knowledge of the true owners for a period of 12 years or more.

13. The concept of adverse possession contemplates a hostile possession, i.e. possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possessed by a person who does not acknowledge the other's rights but deny them. Also a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to real owner and amounted to a denial of his title to the property claim. Permissive possession does not become hostile till there is assertion of adverse possession to the knowledge of the owner. Permissive character of the possession cannot be inferred from the attending circumstances even without direct evidence. If possession is found to be permissive at the inception the possessor cannot prescribe or sustain title or any claim to the grantor of the possession. However, permissive possession cannot be converted into adverse possession unless it is proved that the person in possession asserted an adverse title to the property, to the knowledge of the true owners for a period of 12 years or more. This Court is fortified in its view by the decision of the Supreme Court in State Bank of Travancore v. Arvindan Kunju Panicker, AIR 1971 SC 996, wherein it is held, "a permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of the true owners for a period of 12 years or more."

14. In such circumstances, it is not possible to accept that the defendants have perfected their title by adverse possession to the portion of the suit plot shown by letters D E F G admeasuring 360 sq. ft. as shown by the Commissioner in the map annexed with his report. In that view of the matter, it is clear that the appellate court has committed an error of law in setting aside the judgment and decree passed by the trial Court and, therefore, the judgment and decree of the appellate Court cannot be sustained in law and deserves to be set aside. In the result, the appeal is allowed. The judgment and decree passed by the appellate Court is set aside and that of the trial Court is restored. However, in the circumstances, there shall be no order as to costs.

Appeal allowed.

AIR 2004 BOMBAY 321

V. C. DAGA, J.

Babu Jaya Yedage and others, Petitioners v. Kasam Mohammed Patel and others, Respondents.

Writ Petn. No. 5389 of 2003, D/- 6-4-2004.

Bombay Court-Fees Act (36 of 1959), S. 46 — Payment of Court-fee — Claim for accident compensation — Claim for exemption from payment of Court-fee by petitioners women litigants as per notification dated 1-10-1994 — Said notification did not include claims arising out of tortious liability — Petitioners liable to pay Court-fee.

1999 (2) Bom CR 194, Foll.

(Para 6)

Cases Referred: Chronological Paras

Bipin Dalpatbhai Shah v. Vasantben R. Zaveri, 2001 (4) All MR 1 (Bom) 4

EV/GV/B288/2004/MDK/VNP/CSL/24207/2004

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order or decree obtained ex parte without any notice and consequential auction sale etc. But the court below lost sight of the nature of transactions and basic principles of once a mortgage always a mortgage and there must not be any clog on the equity of redemption (see Pomal Kanji Govind Ji v. Vrajlal Karsandas Purohit, AIR 1989 SC 436 (438) : (1989) 1 SCC 458. The defendant has admitted the execution of the mortgage deed and mortgage deed contained a recital that payment of rent was duty of mortgagee himself, in that event in view of Ist proviso to Section 60 of the T. P. Act being mandatory and the right of equity of redemption cannot be lost. It was the statutory obligation of the defendant mortgagee to supervise the property as common prudent man, particularly in view of the recitals in the mortgage deed.

28. In view of the aforesaid premises the judgment and decree of the lower appellate court cannot be sustained.

29. Resultantly the present appeal succeeds and the same is allowed. The decree of the lower appellate court is set aside and appeal is remanded back to the lower appellate court to decide afresh in accordance with law and in the light of the observations made above. The cost, however, shall abide the result.

Appeal allowed.

AIR 1997 PATNA 67

B. L. YADAV, J.

Smt. Sona Devi, Appellant v. Nagina Singh and others, Respondents.

Second Appeal No. 354 of 1994, D/- 20-3-1996.*

(A) Limitation Act (36 of 1963), Art. 64 — Adverse possession — Agreement to sell — Possession delivered to buyer — Suit for specific performance of agreement by buyer against owner — Decreed — Buyer directed to pay balance amount of consideration to a owner — Failure of buyer to pay the amount even on extended date — Buyer continuing to remain in possession of property — It is adverse possession.

Adverse possession is essentially a hostile possession against the title of the true owner. It includes possession by a defendant in practical contravention of the plaintiff's right. Normally the defendant's adverse possession is referred when he is in exclusive possession with the intention to hold himself as the owner. To put it differently it is possession with animus to hold the property in the possessor's own right and against the right of the true owner. (Para 11)

Where in a suit for specific performance of contract for sale filed by the purchaser against the owner of the property, which was decreed in favour of the purchaser, the purchaser was directed to pay the balance amount of sale consideration within prescribed time to the vendor, however, he failed to pay the amount even on extended date and the suit was dismissed and he remained in possession of property which was delivered to him after the execution of agreement in question, the possession of the purchaser would be adverse to the owner and suit for declaration of title filed by the owner after more than 12 years from date of agreement of sale or even from date of dismissal of suit of specific performance, was liable to be dismissed. (Para 11)

(B) Transfer of Property Act (4 of 1882), Ss. 91, 92 — Subrogation — Agreement to sell mortgaged property — Suit for specific performance by purchaser — Decreed — Purchaser directed to pay consideration amount to owner, mortgagor — Failure of purchaser to pay amount — Purchaser remaining in adverse possession of property for over 12 years — Has no interest in equity of redemption — Cannot be subrogated to rights of mortgagee. (Para 20)

(C) Civil P.C. (5 of 1908), O. 41, R. 31 —Judgment of reversal by appellate Court —Reasons given by trial Court for its findings — Not reversed by appellate court while

*Against judgment and decree of B.N.P. Singh, Addl. Dist. Judge No. 2, Patna, D/- 31-5-1994.

JN/JN/P49/96/JJS/CSL

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reversing findings of trial court — Judgment liable to be set aside in view of mandatory provisions of R. 31. (Para 21)

Cases Referred : Chronological	Paras
AIR 1995 SC 1607	21
AIR 1973 Patna 92	11
AIR 1971 Rajasthan 175	8, 19
AIR 1969 Kerala 293 (FB)	11
AIR 1965 Patna 87	13, 14
AIR 1960 Patna 474	7, 14
AIR 1957 SC 314	12
AIR 1950 Allahabad 316	11
AIR 1945 Madras 175	8, 18
AIR 1934 PC 23 : 61 Ind App 78	12
AIR 1923 Patna 592	8, 20

Krishna Prakash Sinha, Sr. Advocate, Mahendra Prasad Bharti and Sunil Kumar No. III, for Appellant; S. S. Ashgar Hussain, Sr. Advocate and Nawal Kishore Sharma, for Respondents.

JUDGMENT :— Whether the suit of the plaintiff-respondent was within time and whether sections 91 and 92 of the Transfer of Property Act, 1882 (compendiously the Act) have been correctly interpreted and whether the judgment of the lower appellate court was consistent with the statutory requirements of Order 41 Rule 31 of the Code of Civil Procedure (for short the Code), if not, its effect, are the substantial questions of law involved in the present Second Appeal preferred by the Defendant-Appellant, under Section 100 of the Code of Civil Procedure, 1908 (compendiously the Code) in a suit for declaration of title and confirmation of possession.

2. The averments in the plaint were that the plaintiff-respondent was the owner of plot No. 4312 are 2 decimals, with house thereon pertaining to khata No. 1339 in Village Digha Bujurg, P. S. Digha, Patna. The property was usufructuarily mortgaged to Hussaini (P.W. 3) who came in possession but created a sub-mortgage in favour of Sheo Pujan Rai (D.W. 1), who assigned his interest to Harbansh Rai by a registered deed dated 10-4-1974. Nagina Singh (Plaintiff No. 1) had been in need of money. He negotiated to sell the house to defendant No. 1 Smt. Sona Devi and executed an agreement for sale on 23-8-1973 for a sum of Rs. 9500/-, out of which an amount of Rs. 500/- was paid, whereas the balance was to be paid at the time of execution of the sale deed. But the plaintiff did not execute the sale deed even after notice being served. Ultimately a suit for specific performance of contract was filed and the same was decreed. She was directed to make payment of Rs. 7,000/- within three months from the date of decree but she failed to carry out the direction of the court even after extended time and ultimately her prayer for extension of time to permit her to make the deposit of the sale consideration was rejected and even the Civil Revision by her in the High Court also met the same fate. But she continued in possession and the plaintiff-respondent has to file the present suit with the averments that Smt. Sona Devi, defendant had not been the purchaser. Her status was not more than a mortgagee. She did not accept the mortgage money nor vacated the possession. Consequently the plaintiff has no option but to file the present suit for declaration of title and confirmation of possession. But as the plaintiff was not in possession he must have brought the suit for possession.

3. Defendant No. 1 Smt. Sona Devi filed written statement with the averment that there was an agreement for sale of the suit property with Nagina Singh, the plaintiff and defendant paid a sum of Rs. 500/- to the plaintiff, Nagina Singh. A sum of Rs. 2000/- was paid to Sheo Pujan Rai who was mortgagee at that time. Though she filed suit for specific performance of contract, but the sale deed could not be executed even after decretal of the suit as she failed to deposit the amount of sale consideration and the legal effect was that her suit for specific performance of contract stood rejected. But she continued in possession, otherwise than in accordance with law and till the suit was filed she remained in continuous adverse possession beyond the period of 12 years. Consequently the suit of the plaintiff was time barred. In pursuance of the agreement for sale her name was entered in the revenue papers including the State Sarista and she has been paying rent and was granted rent receipts. In this way she matured

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her right by adverse possession. The suit was liable to be dismissed.

4. The trial court by the decree dated 4-3-1992 dismissed the suit with cost. Against that the First Appeal was preferred by the plaintiff which was allowed.

5. During the pendency of the suit, however, the plaintiff has sold his interest to the vendees, who were ordered to be impleaded as parties but actually could not be impleaded for the fault either of the plaintiff-respondent or the vendees themselves.

6. An appeal, however, before the lower appellate court was filed by the plaintiff-respondent himself who has no interest in the properties after the execution of the sale deed and after the application for impleadment of the vendees has been allowed. But nevertheless even though this point was pressed before the lower court but the appeal by the plaintiff has been allowed by the decree dated 31-5-1994 passed by Shri B.N.P. Sinha, Additional District Judge-II, Patna (in T. A. No. 32/92).

7. Shri Krishna Prakash Sinha, learned Senior Counsel for the appellants, stranuously contended that even after decretal of the suit for specific performance of contract, the fendants-appellants could not deposit the amount as directed by the Court, even though time was extended but she continued in possession otherwise than in accordance with law, at least from the date of dismissal of the suit. The suit having been filed after 12 years from the date of her adverse possession, it is time barred. The provisions of sections 91 and 92 of the Act were incorrectly interpreted and it was contended that the suit cannot be decreed on correct interpretation of sections 91 and 92 of the Act. Smt. Sona Devi could not be subrogated. It was further contended that normally the interest created during the pendency of the suit remains effective subject to the decision of the suit. But as the vendees were ordered to be impleaded as parties in the trial court, in that event the vendor, the present plaintiff-respondent, Nagina Singh has no right left to file the appeal himself before the lower appellate court and the appeal was thus not maintainable and has illegally been allowed. Reliance was placed on Smt. Sarjug Devi v. Dulhin Kishori Kuer, AIR 1960 Patna 474.

8. Shri S. Asghar Hussain, learned senior counsel for the respondents refuted the submissions of the learned counsel for the appellant and urged that the suit was not time barred and on the correct interpretation of Sections 91 and 92 of the Act Smt. Sona Devi, Defendant-Appellant was subrogated and possession could not be adverse. Section 52 of the Act operates in a wide field and even after execution of the sale deed the plaintiff-respondent has rights and his appeal was maintainable before the lower appellate court and the same has been correctly allowed. Mr. Hussain leaned heavily on Ramkrishna Naidu v. Venkatasami Naidu, AIR 1945 Madras 175; Gudarmal v. Bansilal, AIR 1971 Rajasthan 175; Binanand Sawase v. Thuroo Mahto, AIR 1923 Patna 592.

9. Having evaluated the submissions of the parties points for determination are as to whether the suit was within time, and whether Sections 91 and 92 of the Act have been correctly interpreted and whether the plaintiff-respondent has got subsisting right to file an appeal before the lower appellate court.

10. As regards the first point as to whether the suit of the plaintiff-respondent was within time. On 23rd August, 1973 an agreement for sale was executed by Nagina Singh, plaintiff-respondent in favour of Smt. Sona Devi, defendant-appellant and Rs. 500/- was paid at the time of execution of Baibeyana and the remaining Rs. 9,000/- was to be paid at the time of execution of the sale deed. 22-2-1974 was the date for execution of the sale deed by Nagina Singh in favour of the plaintiff but he did not appear even though stamp was purchased on 26-10-73 and sale deed was scribed on 25-1-74. Legal notice through registered post was sent by defendant-appellant through an advocate and served on the plaintiff. In the notice it was mentioned that she was ready and willing to perform her part of contract and that plaintiff-respondent must accept the amount and execute the sale deed. But the plaintiff did

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do so and ultimately on 22-5-74 Title Suit . 25/74 for specific performance of con- ct was filed by Smt. Sona Devi. That suit s decreed on 30-4-74. Three months' time s allowed for deposit of balance considera- n amount. The present defendant-appel- nt, who was plaintiff there, made an appli- tion on 3-9-75 for extension of time to posit the balance of sale consideration. On 9-75 the application was allowed and time as extended up to 12-10-75. But again Sona evi did not pay the amount and made nother application on 11-11-75 for extension time which was allowed on 22-11-75 to ake payment up to 7-12-75 as the last chance evertheless Smt. Sona Devi failed to make ayment of balance amount and made nother application on 8-12-75 for extension f time to make the deposit which was ismissed on 9-12-75. Thereafter a Civil evision No. 906 of 1976 was filed by her in he High Court but the same met the same fate n 18-11-76. Even though Smt. Sona Devi vas delivered possession of the property prior o the execution of agreement for sale. But in ny case, the suit filed by her for specific performance of contract was dismissed as a consequence of her failure to make payment. Her possession at least from the date of the agreement for sale (23-8-73) was otherwise than in accordance with law. In the alterna- tive even if it is assumed to be so from 9-12-75 last date when the application for extension of time was dismissed and her suit for specific performance of contract stood dismissed in consequence. She continued in adverse pos- session for more than 12 years. Title Suit No. 38/88 was filed on 3-5-1988.

11. I am of the view that nature of the possession of Smt. Sona Devi was certainly adverse. It is beyond doubt that adverse possession is essentially a hostile possession against the title of the true owner. It includes possession by a defendant in practical contra- vention of the plaintiff's right. Normally the defendant's adverse possession is referred when he is in exclusive possession with the intention to hold himself as the owner. To put it differently it is possession with animus to hold the property in the possessor's own right and against the right of the true owner. (See Sajjad Ali v. Shahid Ali, AIR 1950 All 316). It is possession hostile and exclusive (see H. M. Jain v. Md. Nazir, AIR 1973 Patna 92; Kunjamma Cicily v. Kasim Beevi, AIR 1969 Kerala 293 (FB)).

12. It would not be inapt to refer the classical requirement of adverse possession that it should be "NEC VI, NEC CLAM and NEC PRECARIO" which connotes that ad- verse possession should be peaceful, open and continuous. Such possession must be adequate in continuity, in publicity and with a view to show that his/her possession is adverse to the true owner. (see Secretary of State v. Debendra Lal Khan, (1933) LR 61 Ind App 78 : AIR 1934 PC 23); P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314).

13. In Phul Kumari Devi v. Shambhu Prasad Singh, AIR 1965 Patna 87, it was held by the Division Bench of this Court that in order to determine as to whether the posses- sion of the defendant was adverse or not, the test to be applied is with reference to the animus of the parties. The intention of the parties is to be determined with reference to their acts or omission and conduct in relation to the property.

14. Coming to the next question as to whether Sections 91 and 92 of the Act have been correctly interpreted. Suffice it to say that Section 91 provides that apart from mortgagor other three types of persons namely, any person who has any interest, or charge upon, the property mortgaged etc. may also redeem the property. In my opinion, the interest which entitles a person to redeem (other than mortgagor) must be derived directly or indirectly from the mortgagor himself. In other words, a person may redeem the property only if he is affected by the mortgagee, and in case he/she is not affected then there is no occasion for redemption. There is no denying of the fact that Smt. Sona Devi has no interest in the equity of redemp- tion. This Court in Smt. Sarjug Devi v. Dulhin Kishori Kuer, AIR 1960 Patna 474 (supra) held that where a person has no interest in the equity of redemption or the property mortgaged and pays the mortgage

money, in volunteer subrogated Much emp was laid th would be s te Act. But complete a sion. Apar equitable ri of the ques Devi can mortgagee. sion 'subrg place of court has c v. Shambh 87) (supra) under the pays the he/she can

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18. As responden sami Naid a case on

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money, in that event he/she is a mere volunteer with no equity and cannot be subrogated to the rights of the mortgages. Much emphasis on behalf of the respondents was laid that Smt. Sona Devi, the appellant would be subrogated in view of Section 92 of te Act. But Smt. Sarjug Devi's case (supra) is complete answer to the respondent's submission. Apart from Section 92, there is no equitable right of subrogation. The next limb of the question was as to whether Smt. Sona Devi can be subrogated in place of the mortgagee. In common parlance the expression 'subrgation' means to substitute or to put in place of the mortgagee. In my opinion this Court has correctly held in Phul Kumari Devi v. Shambhu Prasad Singh (AIR 1965 Patna 87) (supra) that where a person has no interest under the equity of redemption but actually pays the mortgage money, in that event he/she cannot be subrogated.

15. The doctrine of subrogation is in fact equitable doctrine which existed even prior to Ist April, 1930 amendment. The right of one creditor to stand in the place of another comes under the technical head of subrogation which means nothing more than the substitution. It is a doctrine coming down from the Roman Law and also from Indian Jurisprudence. The essence of subrogation is that the party having interest in equity of redemption and pays off a mortgage, would become clothed with all the rights of the mortgagee.

16. Substantially subrogation is of two kinds; legal and conventional. Legal subrogation takes place when the mortgage debt is paid off by some person who has some interest to protect, whereas conventional subrogation takes place where a person pays of the debt has no interest to protect but he advances money under an agreement.

17. Section 92 is substantially a proviso to Section 91 of the Act. The lower appellate Court forgot to keep in mind the provision and failed to place a correct interpretation of Sections 91 and 92 of the Act.

18. As regards cases cited on behalf of the respondents, Ramkrishna Naidu v. Venkatasami Naidu, AIR 1945 Madras 175 (supra) is a case on different fact-situation. Discharge of mortage and execution of sale parts of same transaction were the material aspect in that case. The purchaser has legal interest. In the present case the appellant has no such legal interest rather she was just a volunteer.

19. In Gudarmal v. Banshilal, AIR 1971 Rajasthan 175 (supra) it was held that even the smallest interest in mortgaged property is sufficient to entitle a person to redcem mortgage. In the instant case the appellant was just a volunteer hence that case is besides the point.

20. In Binanand Sawase v. Thuroo Mahto, AIR 1923 Patna 592 (supra) it was held that where mortgages was in possession, trespass against mortgagor's interest must be known to mortgaor. In the instant case the facts were different. The appellant was not the mortgagee rather a volunteer and has filed the suit for specific performance of contract which was decreed but she could not pay the balance of the amount even after extended time and the suit was dismissed ultimately and she remained in possession over 12 years otherwise than in accordance with law and matured right by adverse possession. The present suit was time barred.

21. Reverting to the next point whether the lower appellate Court has rendered the judgment consistent with the provisions of Order 41, Rule 31 of the Code. In a judgment of reversal the finding recoded and the inference drawn and the reasons assigned by the trial Court must have been reversed by the lower appellate Court but the same was not done. In view of the mandatory provision of Order 41, Rule 31 of the Code whenever the judgment of the lower appellate Court was a judgment of reversal it was the primary duty of the appellate Court while reversing the findings of the trial Court to consider the reasons given by the trial Court and those reasons must also be reversed. But the same was not done. The finding of the lower appellate Court is not binding on the Second Appellate Court. This itself is a substantial question of law to set aside the decree of the lower appellate Court (See S. V. R. Mudaliar v. Mrs. Rajabu F. Buhari, AIR 1995 SC 1607).

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22. C.P.C. amendment of 1978 amended Section 100 of the Code. An appeal cannot be allowed unless the substantial questions of law are involved and they have been incorrectly decided. In the instant Second appeal all the questions of law are substantial questions of law and are involved.

23. In view of the premises aforesaid and applying the Aristotelian and Baconian methods of reasoning the present Second Appeal succeeds and the same is allowed. The decree of the lower appellate Court is set aside and that of the trial Court is restored. The suit of the plaintiff-respondent is dismissed with costs throughout.

Appeal allowed.

AIR 1997 PATNA 72

AFTAB ALAM, J.

Banju Devi and another, Appellants v. Uttam Kumar Gadia and others, Respondents.

Misc. Appeal No. 16 of 1992, D/- 31-10-1995.

Motor Vehicles Act (59 of 1988), Section 166 — Claim petition — Made in prescribed forms — No Column in Form to state about negligence — Absence of pleading that accident was caused due to rashnesh and negligence of driver — Applicant not precluded on that ground from leading any evidence in support of case that accident was caused due to rash and negligent driving of driver — Moreso, as in instant case, in petition under Section 92A (of old Act) it was specifically pleaded that accident was caused due to rash and negligent driving.

AIR 1973 Mysore 10, Foll.

Bihar Motor Vehicles Accidents Claims Tribunal Rules (1961), Rule 3. (Para 11)

Cases Referred : Chronological	Paras
AIR 1979 SC 1862	6
AIR 1977 SC 1248	6
AIR 1973 Mysore 10 (Foll.)	10

JN/LN/P102/95/JJS/CSL

Abhay Kumar Singh No. 1 and Mukeshwar Prasad Singh, for Appellants; Badri Narain Singh, Sujata Mukherjee and Debanian Choudhary (for No. 1) and Punam Singh (for No. 2), for Respondents.

JUDGMENT :— This appeal is directed against an order dated 16-11-1991 passed by the Motor Accidents Claims Tribunal, Godda in Title (Claim) Suit No. 11/1987. By the impugned order, the tribunal has rejected a claim made by the appellants under Section 110A of the Motor Vehicles Act, 1939, even before the case was taken up for trial, on the ground that in the claim petition there was no allegation of negligence on the part of the driver of the bus causing the fatal accident.

2. The claim for compensation arose from an accident in which one Ashwani Kumar Jha, the husband of appellant No. 1 was run over by a bus bearing registration No. BHJ 3877. The accident took place at Gorsanda Chowk between Godda and Pathargawan on 3-6-1987 at about 2.45 p.m. The husband of the appellant No. 1 died on the spot.

3. A claim application was filed under Section 110A of the Act on behalf of the widowed wife and the minor children of the deceased. The claim application, as required, was in the statutory form as prescribed under the Bihar Motor Vehicles Accidents Claims Tribunal Rules, 1961. It is no one's case that the claim application (in the statutory form) was not properly filled up or there was any other lacuna in the making of the application.

4. After the filing of the claim application, the claimants also filed a petition under Section 92(A) of the Act for payment of Rs. 15,000/- as no fault compensation. In para 1 of this petition, it wsas stated as follows :

"That the petitioner No. 1's husband died due to rash, negligent driving by the driver of the bus BHJ 3877 on 3-6-1987 at Gorsanda Chowk."

By order dated 23-12-1987 the Tribunal directed the owner of the bus, respondent No. 1 in this appeal, to pay to the petitioner the fixed amount of Rs. 15,000/- in accordance

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Cited in (1999) 5 SCC 50

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Addangi Nageswara Rao v. Sri Ankamma Devatha Temple, (1973) 1 Andh WR 379

Obdul Reddi, J.:— The result of this appeal will depend upon the answers we give on the three points urged by the learned. Counsel, Sri Y.G Krishna Murty, for the appellant (1) That the plaintiff temple is not in existence at all to claim any title to the suit property, (2) even assuming that there is any such temple in existence it has no title to the suit property, and (3) that the predecessors in interest of the defendant perfected their title by adverse possession and as such the plaintiff's rights, if any, to the property were lost by the date of the sale of the suit property to the defendant-appellant by the hereditary poojaris cf the temple.

2. The facts necessary for the determination of the points urged may be stated: Sri Ankamma Devatha temple, Ananthavaram represented by its trustees laid action for recovery of the suit property consisting of Ac. 5-24 cents on the ground that there is an ancient grant in favour of the temple and was confirmed by T.D No. 835. It is also the case of the plaintiff-temple that a patta was granted in its favour by the Tahsildar under the Andhra Inams Abolition and Conversion into Ryotwari Act in the year 1960, though the matter is now pending disposal by the Revenue Divisional Officer on an appeal preferred by the appellant herein. The defendant purchased the suit property under Exhibit B-1 dated 2nd July, 1962. The vendors of the defendant had no title to the property so as to confer better rights than they themselves possessed in the suit property by reason of the sale effected by them under Exhibit B-1. It is on these grounds that the suit was filed on 17th March, 1966 for possession and for past profits for the years 1962 to 1965 and future profits. The suit was resisted by the defendant on the ground that the vendors were the hereditary pujari-trustees like Shebaits owning beneficial interests in the property" with the obligation of rendering poojari service to the deity Page: 380and by reason of the families having been poojarisfor ovpr 60 years they have pre fected their title by adverse possession and as such the alienation in his favour is valid and cannot be impeached. It is also the case of the appellant-defen-dant that there is no temple in existence by the name of Ankamma Devatha temple and no such temple ever existed, that only a clay idol of the plaintiff is made for the purpose of celebrating Jataras annually and thereafter thrown away; and that beneficial enjoyment of the svit property was always with the vendors of the defendant and as such this action brought against him is mis conceived.

3. On the main issues arising out of the pleadings, the learned Subordinate Judge held that the suit property was endowed in favour of the deity as evidenced by the Inam Fair Register, Exhibit A-4 and that the vendors of the defendant had not acquired any title by adverse possession or otherwise and as such the sale is not valid so as to bine the plaintiff deity. The learned Subordinate Judge also found that the existence of the stone idols is sufficient to establish the existence of the temple and as such there is no merit in the contention of the appellant that there was no temple in existence as to say that the trustees had no locus stand to lay action.

4. So far as the title to the suit property concerned, there is Exhibit A-4, Inam Fair Register which, clearly establishes that the grant was in favor of the plaintiff-deity. Nowhere in any of the columns of Exhibit A-4 do we get an indication that the Polaris or any other persons were either the original grantees or were the persons in whose favors the grant was confirmed. Column 2 of Exhibit A-4 shows that the suit land, is Devadayam. Column 8 shows that it is for the support of the village goddess Ankamma and underneath we find an entry pagoda. Column 10 reads "permanent so long as the pagoda is efficiently maintained." Column 13 shows that the original grantee is the village goddess Ankamma and it is this deity's name that is entered in column 14 as entered in the register prepared

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according to Register 31 of 1802 or in the permanent settlement account of persons so entered. Column 16 also gives the name of the deity Ankamma and under column 21 it was to be confirmed so long as the pagoda is maintained in an efficient condition. The title deed No. is 835. The relevant entries which have been referred to above clearly bring out the fact that the original grantee was the deity and it was confirmed in the name of the deity and the title deed was also granted to the deity alone. There is absolutely no evidence on record to show that the polarizes i.e, the ancestors of the vendors of the defendant had anything to do with the lands confirmed in the name of the deity. Therefore, we have no hesitation in agreeing with the trial Court that the title to the suit property vests only in the plaintiff deity and not in anybody else.

5. The next question to be considered is whether there is a temple in exist nee. 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 (II of 1927), Act (XIX of 1951) and Act (XVII of 1966).** Varadachariar, J., sitting with Pandrang Row, J., in **H.R.E Board v. Narasimham (1939) 1 M.L.J 134, A.I.R 1939 Mad. 134 at 135** construing the expression 'a place of public religious Worship' observed:

"The test is not whether it conforms to any particular school of Agama Sastras. 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, it 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".

6. To the same effect was the view expressed by Viswanatha Sastry, J., in T.R.K Ramaswami Sarvai v. The Board of Commissioners for the Hindu Religious Endowments, Madras I.L.R (1950) Mad. 799.

7. The presence of an idol, though it is an invariable future of Hindu temple, 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 off rring 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."

8. A Division Bench of this Court consisting of Justice Satyanarayana Raju (as he then was) and Venkatesam, J., in **Venkataramana Murtbi v. Sri Rama Mandhircm (1964) 2 An.W.R 457** observed that the existence of an idol and a Dhwajasthanibham are not absolutely essential for making an institution a temple and so long as the test of public religious worship at that place is satisfied, it answers the definition of a temple.

9. Their Lordships of the Supreme Court in **P.F Sadavarthy v. Commissioner**, H.R & C.E A.I.R 1963 S.C 510 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."

10. 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 super human power which they should worship and invoke its blessings.

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11. It is an admitted fact that Ankamma Jatara is celebrated every year in the village and that there are poojaris also for the deity. The case of the defendant is that his vendors have been "hereditary trustees like Shebaits" to the plaintiff-temple. When the defence of the appellant is founded on his vendors' being the poojaris of the deity-temple, we are unable to understand how it could be contended that there is no temple in existence and all that exists there are "two stones" and no building as such and it is not possible from ihe two stonssto make out that they represent the drity Ankamma. It is further the case of the defendant that the "hereditary poojaris" have been owning the suit properties in their capacity as poojari-trustes from time immemorial and performing services to the deity. Theri fore in view of the admission in the written statement, it is a futile exercise in his attempt to show that there is no place of public worship as such and hence it is not a temple. It is beyond one's comprehension how there could be any poojari for a non-existing temple, if the story of the defendant is to be believed that there was no temple in existence.

12. Further there is positive and convincing evidence of P. Ws. 1 to 5 that jatara is being celebrated every year for the deity Ankamma at the place where the two idols stand near one Koritela Subbayya's house. The fact that at the date of Exhibit A-4 there was a pagoda in existence and that pagoda in the same form was not in existence today does not make any difference so long as the people congregate there and offer worship to the deity. That deity is being worshipped by the public is borne out by the written statement of the defendant himself for, as already noticed, it is his case that his vendors were the hereditary poojaris of the temple. It is a religious endowment and "religious endowment" as defined in the Act (XIX of 1951) or (XVII of 1966), to the extent material for our purpose, means "all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected, therewith or of any other religious charity and includes the institution concerned and also the premises thereof." Explanation, 2 to this definition further clarifies the position. It reads:

"All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for performance of any service or charity of a public nature connected therewith or of any Page: 382other religious charity shall be deemed to be a "religous endowment" or "endowment" within the meaning of this definition, notwithstanding that, before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed."

13. The fact that the temple has ceased to exist or ceased to be used as a place of worship either before or after the commencement of the Acts referred to above is absolutely of no consequence, if the property is endowed for the support of the temple, and that it was endowed for the support of the suit deity's temple is borne out by Exhibit A-4.

14. The only other point that survives is whether the vendors of the defendant had perfected their title by adverse possession by the date of the sale under Exhibit B-1 dated 2nd July, 1962. On his own showing in the written statement the appellant's vendors were the hereditary pujari-trustees like Shebaits owning beneficial interests in the properties with the obligation of rendering service of poojari having acquired the same either by transfer or prescription. It is also his case that apart from the vendors there were no trustees to the plaintiff-temple till P.W 1 was appointed as a trustee by the Department on 31st December, 1965. under Exhibit A-1. It is, therefore, clear from what is admitted in the written statement that the vendors of the, appellant were the de jacto trustees by virtue of their position as poojaris. It has been held in A.S Nos. 15 of 1966, 155 of 1967, and 198 of 1967 dated 5th August, 1970, by a Division Bench of this Court, to

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which one of us (Obul Reddi, J.) was a party, that no trustee can act contrary to the terms of his appointment or in breach of his duties nor can he claim adverse possession of the property owned by the temple as long as he continues to hold the office of a trustee, whether de facto or de jurenso observing, this Court followed what their Lordships of the Supreme Court ruled in Sree Sree hwar Sridhar Jew v. Sushila Bala **1954 S.C.J 17, 1954 S.C.R 407, A.I.R 1954 S.C 69 at 72**, that no de facto trustee can claim absolute rights in the property owned by the temple nor can that afford a basis of the claim by him for adverse possession against the idol. The vendors of the appellant, on his own showing, continued to be de facto trustees till the appointment of P.W 1 and limitation, therefore begins to run only from the date when a regularly appointed trustee takes charge. In **K.A Ankamma Devasthanam v. M. Venkataratnamma (1968) 1 An.W.R 19, A.I.R 1969 A.P 13**, a decision rendered by one of us (Obdul Reddi, J.), where hereditary trustees-claimed adverse possession against the temple, it was held that the hereditary trustees continued to be trustees till the appointment of the plaintiff in that case as trustee and that limitation under **Article 134-B of the Limitation Act** starts only from the date when a regularly appointed trustee takes charge.

15. The powers and duties of a Shebait of a Hindu math or temple have been considered in more than one decision by the Supreme Court and the Privy Council. The position of a Shebait,. it is well-settled, is similar to that of a manager or guardian of minor's estate. Lord Justice Knight Bruce in his judgment of the Judicial Committee in Pro sumo Kumari Debyay. Colab Chand Baboo **(1875) 14 B.L.R 450 at 469 (S.C), L.R 2 I.A 145 at 151**, 152 dealing with the authority of the Shebait of an idol's estate said:

"It is only in an ideal sense that property can be said to belong to an idol; the possession and management of it must, in the nature of things, be entrusted to some person as she bait or manager. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted and its worship discontinued for want of the necessary funds to reserve and maintain them."

16. That is what the Privy Council again said in **Palanicppa Chetty v. Sreemath Devasikamony Pandara Sannadhi** (1917) I.L.R 40 Mad. 709 (P.C), L.R 44 I.A 147, 33 M.L.J 1, A.I.R 1917 P.C 33.

17. This is not a case where any part of the property of the deity was sold for the upkeep or maintenance by one Shebait or de facto trustee but a case where he sold the property outright forgetting that he has no other rights over the property except the right to manage just as the guardian of a minor manages the minor's estate. Therefore, we cannot understand how the "hereditary poojari-trustees like Shebaits" could sell the property, of which they were only trustees, so as to confer any valid title on their vendee. We, therefore, find absolutely no merit in any of the points urged by the learned Counsel and dismiss the appeal with costs.

18. Appeal dismissed.

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December 22

THE POOHARI FAKIR SADAVARTHY OF BONDILIPURAM

v.

THE COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS

(B. P. SINHA, P. B. GAJENDRAGADKAR AND RAGHUBAR DAYAL, JJ.)

Hindu Law—Endowment—Temple—Public Temple—Conditions of—Inam Register—Entries—If could be accepted at their face value—Hindu Religious Endowments Act, 1926 (Mad. 2 of 1927), s. 9. cl. 12.

The Emperor Aurangazeb made certain grants to one Mukuldas Babajee, founder of the institution Poohari Fakir Sadavarthy, for the purpose of his maintenance and to carry on the distribution of Sadavarthy to Fakirs etc. The sixth head of the institution built a shrine for his private worship. It was adjunct to the aforesaid institution, and the public had no access to it without the permission of Mahant. The income from various properties granted to the founder and his disciples had been regularly utilised for the maintenance of the head of the institution and for distributing charities for the Sadhus and pilgrims; a part was spent on the expenses of the worship in the temple. The Board of Commissioners for Hindu Religious and Charitable Endowments, Madras held that the temple in suit was a public temple. The sole question for determination was whether this institution was a public temple as defined in the Act.

Held, that an institution would be a public temple within the Hindu Religious Endowments Act, 1926, if two conditions are satisfied; firstly, that it was a place of public religious worship and secondly, that it was dedicated to, or was for the benefit of, or was used as of right by the Hindu Community, or any section thereof, as a place of religious worship.

When there be good evidence about the temple being a private one, the mere fact that a number of people worship at the temple, is not sufficient to come to the conclusion that the temple must be a public temple to which those people go as a matter of right as it is not usual for the owner of the temple to disallow visitors to the temple, even if it be a private one.

In the present case the description of the temple with respect to its construction, equipment, practices, observances

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and the form of worship are not inconsistent with the inference from the other evidence that the temple is not a public temple. The temple is not a temple as defined in the Act and it is not used as of right by Hindu Community, or any section thereof, as a place of religious worship.

Held, further that the Inam Register is of great evidentiary value, but that does not mean that the entry or entries in any particular column or columns be accepted at their face value without giving due consideration to other matters recorded in the entry itself.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 87 of 1959.

Appeal from the judgment and decree dated April 6, 1955, of the former Andhra High Court in A.S.O. No. 134/50.

T. V. R. Tatachari, for the appellants.

Bhimasankaram, K. R. Choudhuri and *T. M. Sen*, for the respondent.

1961. December 21. The Judgment of the Court was delivered by :

RAGHUBAR DAYAL, J.—This is an appeal on a certificate granted by the High Court of Andhra Pradesh, against the judgment and order of the High Court reversing the judgment and order of the District Judge, Vizagapatam, holding that the place of worship in suit was not a temple as defined in the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927), hereinafter called the Act.

Raghubar Dayal J.

On March 28, 1947, the Board of Commissioners for Hindu Religious & Charitable Endowments, Madras, held the institution in suit to be a temple as defined in the Act. The appellants, thereafter filed a petition under s. 84(2) of the Act, in the Court of the District Judge, Vizagapatam, and prayed for the setting aside of the order of the Board. They alleged that the institution, known as the Poohari Fakir Sadavarthy, at Bondilipuram, Chicacole, a ongstanding institution, was started by one Malukdas

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Bavajee, some time during the reign of the Moghul Emperor, Aurangazeb. The Emperor, in recognition of the Bavajee's piety and devotion to God, made certain grants to him with the object and purpose of enabling him to maintain himself and carry on the distribution of Sadavarthy to Fakirs and Sadhus and to pray to God for the prosperity of the Empire and Emperor, according to what was stated in the well-known historical works like Bhakthamala by Maharaja Raghunandha Singh Deo of Rewa.

The institution flourished and continues up to this day. The original plaintiff No. 2, Rajaram Das Bavajee, was the ninth in succession from the founder Malukdas Bavajee. He died during the pendency of the proceedings and is now represented by appellant No. 2, Mahant Gangaram Das Bavajee. Sithaldas Bavajee, the sixth head of the institution, who lived in the first half of the Nineteenth Century built a temple and installed therein certain idols for his private worship. The shrine was an adjunct of the institution Poohari Fakir Sadavarthy. It is alleged to be a private temple known as Jagannadhaswami temple, Balaga, and is meant for the worship of the Mahant and his disciples, one of whom conducts the daily worship.

The income from the various properties granted to Malukdas Bavajee or his successors had been regularly utilised for the maintenance of the head of the institution and for distributing charities to the sadhus and pilgrims passing through Balaga. A part of the income was, however spent on the expenses of the worship in the temple and the incidental expenses connected with it.

The respondent Board denied that Jagannadhaswami temple was a private place of worship, that the public had no access to it without the permission of the Bavajee and alleged that the temple possessed all the features of a place of public

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religious worship and was dedicated to or for the benefit of or used as of right by the Hindu community as a place of religious worship.

The appellants examined five witnesses, including plaintiff No. 2, in support of their case. The respondent examined one witness. The plaintiffs also filed a number of documents. The respondent filed a few documents which included the Board's order dated March 28, 1947, and its enclosure.

The learned District Judge concluded, from the evidence, that Jagannadhaswami temple was not a temple as defined in the Act, it being a private temple existing for the benefit of the appellants only. He therefore set aside the impugned order of the Board. On appeal, the High Court came to a different conclusion and allowed the appeal. It mainly relied on the entries in the Inam registers with respect to the institution and on the following facts which it considered to be established :

(i) the temple is a very old temple constructed in or about the year 1750 ;

(ii) the temple has the structure and polity of a public temple ;

(iii) there are utsava vigrahams and vahanams ;

(iv) it has a big compound wall with the gate opening into the Chinna Bazaar Road ;

(v) regular worship is performed every day at the scheduled time ;

(vi) there is an archaka who performs worship ;

(vii) a large number of pilgrims attend every day and partake in the food given after naivedyam to the God ;

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(viii) there are utsavams and the rathotsavam which is particularly conducted on large scale and is attended by members of the public.

The High Court relied on the statement of the solitry witness examined for the Board and rejected the statements of the witnesses examined for the appellants.

The sole question for determination in this appeal is whether this institution is a 'temple' as defined in the Act. Clause (12) of s. 9 of the Act reads :

"'Temple' 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 religious worship."

The institution in suit will be a temple if two conditions are statisfied. One is that 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. We are of opinion that the oral and documentary evidence fully establish the appellants' case that it is not a temple as defined in the Act.

The documents on record and bearing dates from 1698 to 1803 A. D. mention the grants to be for the purposes of the Bavajee, i.e., the head of the institution. The first document, Exhibit P-1, (is of the Hizri year 1117, corresponding to 1698 A.D., and purports to be executed by Ibrahim Khan, Bahadur, a humble servant of Badshah Alamgir Ghazi., i.e., Emperor Aurangazeb. This order says :

"The village of Cheedivalasa, Boonamali Pargana Haveli (town) towards Kaling of the

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said Sirkar, has been fixed and continued as a complete inam in favour of Poohari (Poojari) Fakir Sadabarty in accordance with the Sanads of the previous rulers. Meanwhile, in view of the claims of the said person it has been confirmed as per endorsement in accordance with momooli (usage) and mustamir (continuing, lasting long). It is necessary that the said village be placed in the enjoyment of the said person so that, utilising the incomes thereof for his own maintenance, he may engage himself in praying for the stability of the State till eternity."

The purpose of the other grants is stated in practically similar terms and it is necessary to quote them. None of the grants of land or other property on record bears a date subsequent to that of the year 1803 A.D. The documents, Exhibits P-47, P-48 and P-49 are orders of the Collectors and refer to the villages of Cheedivalasa and Thallavalasa, and the last two state that the income of these two villages was given for sadavarthy (feeding) for the respective year to Phalari (Phulhari) Bavaji. There is no mention in any of these two documents that any grant was being made for the purposes of the temple or for the purposes of the Bavaji as well as for those of a temple.

The only reference to the construction of the temple is in Exhibit P-52, an extract from the Register of Inams dated May 22, 1865, with respect to village Vanzangi. The name of the village, however, does not appear in the document itself. It is stated in this document :

> "About century ago, the trustees built a temple of Jagannadhaswamy."

According to this note, the temple may be said to have been built in about 1760 A.D. The documents of the period from 1761 to 1803 A.D. Exhibits P-31

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to P-49, do not record that the grants under them were for the expenses of the temple as well. The grants simply mention them to be for the expenses of Fakirs, in the name of Poohari Fakir Sadavarthy, and not for the temple. The non-reference to the temple in the various documents is consistent with the temple being for the private worship of the head of the Sadavarti Institution and being an adjunct to that institution, as in that case there was to be no grant to the temple and the grant had to be to the Sadavarti institution or to its head.

It is also a matter for surprise that no independent grant to this temple was made subsequent to its coming into existence. Some one religiously and charitably disposed could have thought of endowing some property to this public temple erected by the Head of a well-known institution in that part of the country, where, it has been held judicially, there is a presumption of a temple being a public temple. We may make it clear that among the documents referred to, we are not at the moment including entries in the Inam registers. It follows from an examination of the various documents of the period between 1698 and 1803 A.D., that the various endowments were for the Fakir or Bavajee who ran the Sadavarti institution and that none of the grants was for the temple or even for the Sadavarti institution itself, it being always in the name of the Bavajee in charge of that institution.

Before discussing the entries in the inam registers which carry great weight, we may first refer to the Rules in pursuance of which the entries in the Inam registers were made, after due investigation. The various extracts from the Inam registers which have been filed show that the proposals for the grant were confirmed under rule 3, clause (1), tax free. This makes it of importance to consider the rule

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thus referred to. It is one of the rules for the adjudication and settlement of the inam lands of the Madras Presidency and is quoted at page 219 in the case reported as *Arunachellam Chetty* v. *Venkatachalapathi Guruswamigal* (1) :

> "If the inam was given for religious or charitable objects, such as for the support of temples, mosques, colleges, choultries, and other public buildings or institutions, or for services therein, whether held in the names of the institutions or of the persons rendering the services; it will be continued to the present holders and their successors, and will not be subject to further interference, so long as the buildings or institutions are maintained in an efficient state, and the services continue to be performed according to the conditions of the grant."

It was also said at page 217 :

> "But the Inam Register for the year 1864 has been produced, and to it their Lordships attach importance. It is true that the making of this Register was for the ultimate purpose of determining whether or not the lands were tax free. But it must not be forgotten that the preparation of this Register was a great act of state, and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. It is to be remembered that the Inam Commissioners through their officials made inquiry on the spot, heard evidence and examined documents, and with regard to each individual property the Government was put in possession not only of the conclusion come to as to whether the land was tax free, but of a statement of the history and tenure of the property itself. While their Lordships do not doubt that such a report would not displace actual

(1) [1919] L. R. 46 I. A. 204.

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and authentic evidence in individual cases; yet the Board, when such is not available, cannot fail to attach the utmost importance, as part of the history of the property, to the information set forth in the Inam Register."

Exhibit P-50 is the extract from the Inam Register No. 48 relating to village Tallavalasa in the Taluk of Chicacole in the district of Ganjam. The note of the Deputy Collector, Inam Commissioner, records *inter alia* the following particulars :

(1) The village was granted originally by the Nawab Mafuz Khan in Hiziri 1155 corresponding with A.D. 1739 to one Inamdar Bairagi; as the original sanad is not forthcoming it is impossible to mention here without entering into details, the object of the grant and the tenure of the village. This mokhasa jahagiri is in possession of the person in column (11) who is known by the name of Palahara Mahant Bartudoss Bavaji, 'a Bairagi'.

(2) This Bartudoss Bavaji pleaded that this village and three other villages were granted in the district by the former Rulers for Sadavarti and for certain other Divine Service, and that the proceeds of them were appropriated to the expenses attendant on the temple of Sri Jagannadhaswami to some extent and to distributing Sadavarti or supplying victuals, fire-wood, etc., or dressed food to Bairagis and others resorting to Rameswaram from Benaras and vice versa.

(3) This Bartudoss Bavaji produced a sanad of Sri Seetaram Ranzi Maharaja, the former zamindar of Vizianagaram in Vizagapatam district, granted to one Gopaladass Palahari Bavaji, dated Subhakrutu year, corresponding with A.D. 1782. This Sanad

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showed that the said Gopaladass was then a manager of the branch of charity and that this village was granted free from any tax in lieu of the income in the villages of Balaza, Petranivalasa and Serumohannadpuram which were granted originally by the authorities for the support of the charity and which were resumed and incorporated with circar lands. The sanad explicitly stated that the proceeds of the village were to be appropriated for Sadavarti.

(4) On the whole it appears that this mokhasa was granted for 'Sadavarti' and for the support of the temple of Sri Jagannadhaswami in Balaga. There is a Bairagi Mattam in Balaga and a temple of Sri Jagannadhaswami.....This is therefore a charitable grant. To keep up the object of grant, I think the village may be confirmed on its present tenure.

(5) Column 8, meant for noting the description of the inam, mentioned:

'Granted for the support for the Sadavarti Bairagi mattam in Balaga and of the temple of Sri Jagannadhaswami in the same village now efficiently kept up.'

(6) In column 10, under the heading 'hereditary, unconditional for life only or for two or three lives' is mentioned 'hereditary'.

(7) Column 11 meant for recording the name of the grantor and the year of the grant, mentions, under it, Mafusu Khan Nawab, dated Hijiri 1155.

(8) In column 13, Mandasa Palahari Bairagi is mentioned as the original grantee.

(9) Under column 18, referring to relationship to original grantee or subsequent registered holders, is written 'Sadavarti

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Bairagi mattam and the temple of Sri Jagannadhaswami in Balaga Trustee Palahara Mahant Barta Dasu Bavaji'.

It is clear from the fact that the grant was considered 'a charitable grant' that the grant was not taken to be for the purposes of the temple, but was taken to be a grant for the purposes Sadavarti. This is also clear from the Statement of Bartudoss Bavaji that it is only a part of the proceeds which is spent on the temple and not a major portion of the proceeds, as his statement is to the effect that the proceeds are appropriated to the expenses attendant on the temple 'to some extent'. There is no suggestion that the temple was in existence in 1739 A. D. when the grant was made. This makes it clear that no grant could have been made for the expenses of the temple and that a small portion of the proceeds was naturally spend on the temple by the Bavaji after the temple had been constructed. Any statement in these entries about the grant being both for Sadavarti and for the expenses of the temple appears to be due to the wrong inference of the person making the enquiry. He could easily commit such an error on account of the existence of a temple at the time of the enquiry and on account of the expression 'divine service'. The 'divine service' really meant, as would appear from the expression in the other documents of the period 1698 to 1802 A.D., service by way of prayers for the stability and continuity of the State'.

The expression that the grant was 'hereditary' also supports the conclusion that the grant was to the Bavajee personally and not to the temple even if the temple existed at the time of the original grant. In fact, the sanad granted by Seetaram Ranzi Maharaja and produced before the enquiry officers explicitly stated that the proceeds of the village were to be appropriated for Sadavarti.

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This extract therefore supports the case of the appellants even though the name of the temple has been mentioned along with Sadavarti Bairagi. The confirmation of the grant, tax free, was recommended by the Deputy Collector, Inam Commissioner, under Rule 3, Clause (1). The order of the Officiating Inam Commissioner dated July 1864 is: 'Confirmed on present tenure', and column 9 described the tenure as 'tax free'.

Exhibit P-51 is the extract from the Inam Register in the Zamindari estate of Tekkaly in the Chicacole Taluk, Ganjam District, and relates to the village Chinna Zavanapalli. The report of the Deputy Collector shows that the claim of the then Bavajee was that the village was granted in the name of Gopaladoss, trustee and priest of the mattam in Hijari 1165, corresponding to 1752 A.D. It further records:

> "It is explained by the Zamindar's shiristadar on behalf of the Zamindar that this was granted for the support of the mattam and this is not a personal grant. This was entered in the permanent settlement account as an agrahar. The object of the grant is to feed Bairagis and etc., who travel between Benaras and Rameswaram or supply victuals clothes and etc. This branch of charity is known by the name of 'sadavarti'. The proceeds of this village with the other villages, which granted for the support of the charity are appropriated to sadavarti and to worship the idols in the temple of the mattam.....As this is granted on the whole for the support of the charity branch, it should, I think, be confirmed on its present tenure."

The entries under the various columns are practically on the lines of the entries in Exhibit P-50. The entries in this register also support the case of the appellants to the extent that the original grant

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in 1752 A. D., was to the then Bavajee and was for the purposes of the charity.

Exhibit P-52 is the extract from the Register of Inams with respect to village Vanzangi. It records very clearly :

> "The object of this grant is to give 'sadavarti' to travellers, that is, distributing alms and supplying victuals to travellers. This grant was made during the reign of 'Alangir Padsha'. Ever since the Inam is continued undisturbed. About century ago, the trustees built a temple of Jagannadhaswamy. Now in addition to distributing alms and giving Sadavarti to Bairagis and others, the idol in the temple is worshipped and annual festivals are made. It appears that the Trustee is defraying charges to meet the object of the grant and that he is not mis-appropriating the proceeds of the Inam in any way."

The inam was confirmed as a charity grant to Mandasu Sadavarty Charity according to the terms of the grant. This extract is of great importance as it, in clear terms, mentions that the object of the grant was to give sadavarti to travellers and that it was confirmed as a charity grant to this charity. It speaks of the erection of the temple and still states that the Trustee was defraying the charges to meet the object of the grant. This indicates that the expenses of the temple were taken to be incidental to the expenses of the entire sadavarti and that the temple was just an adjunct to the sadavarti institution.

Exhibit P-7, Parwana dated November 15, 1722, corresponding to 14th day of Rabial Awwal 1135 Hijiri, refers to the grant of this village to Poohari Fakir Sadavarti.

Exhibit P-53 is the extract from the Register of Inams relating to village Ragolu in Chicacole

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Taluk. It records : 'In the sanad it was mentioned that the inam was given for the support of fakirs to the original grantee about a century ago. The other notes in this extract are practically identical with those in Exhibit P-52. The final order of the Inam Commissioner was also in terms similar, and was 'confirmed to the fakirs the sadavarti charity according to the grant, free, there being no excess'. It is interesting to note that in column 2 (general class to which inam belongs) is noted 'Dewadayam', i.e., dedicated to God ; that in column 8 meant for the description of the inam is noted : 'for the support of Pagoda of Sri Jagannadhaswami in Bondilipuram', and that the entry in column 11 indicates that Anavaruddin Khan Bahadur made the grant in Hijiri 1171 corresponding to 1754-55 A. D. It is clear that the note about the land being dedicated to God is wrong in view of the definite statement that the Sanad mentioned that the inam was given for the support of fakirs to the original grantee (Mandasa Palahari Bairagi in Column 13) about a century ago and that it was the trustees of the institution who constructed the temple. When the temple was constructed by the trustees of the institution, viz., the Sadavarti institution, the original grant could not have been to the temple or to God. The entries in this extract confirm the construction we have placed on similar entries in Exhibit P-52 and other extracts indicating the grant to the temple.

Exhibit P-54 is the extract from the Inam Register of No. 85 Tallavalasa in the Taluk of Chicacole in the District of Ganjam. It is mentioned in this that Pratapa Rudra Narayana Devu granted this village to Falar Gosayi for the support of the 'Bavajee' or Swami, in Hiziri 1141 which would correspond to about 1747 A. D. It is also noted in the report that the object of the grant was that the proceeds should be appropriated for divine purpose and that the proceeds were appropriated to the temple and sadavarti. The note 'for the support

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of the pagoda of Jagannadhaswami' in column 8 meant for the description of the inam, again, appears to be an entry made under an erroneous impression. There was no temple in existence when the grant was made in about 1747 A. D.

Exhibit P-55 is an extract from the Register of Inams in the village of Balaga of Chicacole taluk dated August 13, 1881. It mentions, under the heading 'by whom granted and in what year,' 'the grant was made by Rajah Narayana Gazapati raz Bahadur under orders of Alamgir Padsha on 14th May of Hiziri 1171 corresponding with English years 1754-55'. It is also noted : the Sanad granted is in existence.' It is stated therein that as these lands appear from a former firman to have been granted to Sadavarti Mandass Bavaji for planting topes and raising buildings; they should be restored to him in pursuance of the long-standing right. This means that the firman, which was not forth coming during the inam enquiry, dated from very early times. It must be noted again that this extract also describes the inam as Devadayam, i. e., dedicated to God. Again, clearly, this entry is wrong in view of the sanad which was in existence clearly stating that the lands were granted under a firman to Sadavarti Mandass Bavaji for planting topes and raising buildings and also in view of what is recorded in Exhibit P-12, a parvana of 1742 A.D., under the seal of Nawab Jafer Ali Khan. It records :

> "It has been proved that Mandas; the successor of Poohari (Poojari) Faqir Sadabarti has, per endorsement full six kattis of land, free from assessment, in the village of Balaga and etc., villages of the said Haveli Sircar, fixed for the expenses of the coming and going Fakirs in accordance with the sanads of the previous rulers. Therefore in consideration

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of the blessings to follow, it has been confirmed as of yore."

It was the result of this wrong view of the enquiry officer that the Inam Commissioner confirmed the grant free of quit rent so long as the service was kept up, presumably the service of the deity, as the distribution of charity would not be properly described as 'service.'

The fact that the Inam Commissioner treated the grant relating to Exhibit P-50 to be in support of Sadavarti and for support of the temple of Sri Jagannadhaswami, would not make the grant for the purposes of the temple when the temple was itself not in existence at the time the grant was made and when a later sanad referring to it definitely stated that the original villages were granted for the purposes of charity. The observations of the Privy Council in *Arunachellam's Case* (1) that in the absence of the original grant the Inam Register is of great evidentiary value, does not mean that the entry or entries in any particular column or columns be accepted at their face value without giving due consideration to other matters recorded in the entry itself. We have already stated that the 'divine service' referred to in this entry does not refer to any religious worship but to the prayers to be offered by the grantee for the preservation of the State.

We do not find anything on record to support the observations in the High Court judgment that the Bavajee, with the consent of the Ruler for the time being, constructed a temple and appropriated the income for carrying out the worship of the temple. No document states that the temple was constructed by the Bavajee after obtaining the consent of the ruler for the time being. Exhibits P-52 and P-53 just mentioned that the trustees built a temple of Sri Jagannadhaswami. The

(1) (1919) L. R. 46 I. A. 204.

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expression 'trustees' refers to the trustees of the Sadavarti institution and not to the trustees of the temple as such. There is nothing in these documents to support the view that the temple was built with the consent of the ruler for the time being.

The appellants examined five witnesses to support their case that the Hindu public have no right to offer worship in the temple which is a private temple. The learned Judges described the statement of Janardhana Prasad Bhatt, P.W. 4, as worthless. No particular reliance is placed on his statement by the appellants in this Court. The appellants, however, contend that the statements of the other witnesses have been rejected by the High Court for inadequate reasons.

The first witness is Iswara Satyanarayana Sarma, P.W.1. He was aged 63 at the time of his deposition in 1949. He was a Sanskrit and Telugu Pandit in the Municipal High School and practised as an Ayurvedic Doctor. He has given reasons for the view that the temple is not a public temple. It is not necessary to refer to them. His statement has been rejected as he was considered to be interested in the Mahant who had been his patient and as the statement made by him that people including the sishyas, i.e., the disciples, take permission of the Mahant for worshipping, was considered artificial. This witness did not state that even disciples had to take permission of the Mahant for worship and so the latter reason was based on an erroneous impression of his statement. The mere fact that the Mahant consults him for his ailments and the ailments of other sadhus is no ground for him to make false statements. He is not under obligation to the Mahant. It may be that the Mahant is under obligation to him.

The next witness is P. Kameswara Rao, P.W.2. He is aged about 30 years. He was the

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Additional Public Prosecutor of Vizagapatam, had been Municipal Councillor for a decade, President of the Co-operative Central Bank and resided close to the temple. He was in a very good position to know about the public worshipping at the temple as a matter of right. He stated that he never found the public using the temple and that he himself might have visited the temple roughly about a hundred times. He was put a direct question in cross-examination and gave a clear-cut answer. He denied from personal knowledge that the place was used as a place of public religious worship and that members of the public who were Hindus had a right of access to the temple for purposes of religious worship. It may be mentioned that the question also referred to the temple being built as a place of public religious worship and the answer would include a denial of this fact. It is obvious that the witness could not have known anything about it. He seemed to have overlooked the significance of this part of the question. We do not consider that his denying this fact on personal knowledge affects his veracity in any way, and especially, when he further stated that his personal knowledge consisted of three facts : (i) his attending the Rathayatra and seeing that no offerings of harati and dakshina were made ; (ii) his not seeing any member of the public entering the temple whenever he entered into the temple ; and (iii) whenever he entered the temple, he took the permission of the mahant. The learned Judges rejected his testimoney with this observation :

> "The evidence of this witness is more like an advocate supporting the case of mahant than that of a witness, who has come into the witness box to speak of facts. The aforesaid facts based on his personal knowledge afford a very slender foundation for the conclusion which this witness has so boldly asserted in the witness box."

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The expression 'the aforesaid facts' had reference to the facts on which his personal knowledge was based. Thes facts, in our opinion, afford good ground for the view expressed by him that the temple was not a public temple. He visited the temple so many times, and never saw any member of the public visit it. He himself took permission from the Mahant when he entered the temple. Nothing could be better corroboration of his own statement than his own personal conduct in seeking permission from the Mahant. We do not see any good reason for discrediting his testimony.

The next witness is G. Venkata Rao, P.W. 3, aged 48 years. He is a chairman of the Municipal Council, Chicacole, Secretary & Vice-President of the Co-operative Central Bank. His statement has been considered to be very artificial. His statement that whenever he visited the temple he asked the permission of the Mahant is good corroboration of his statement that he considered the temple to be a private temple and not a public one. The facts that the Mahant is also a Municipal Commissioner and consults him occasionally as a doctor, are no good grounds to discredit him.

The last witness is the plaintiff No. 2, the predecessor of the appellant No. 2. He is undoubtedly interested in the succes of the proceedings started by him. But that alone is no reason to ignore his statement altogether. In fact, his statement should be accepted in view of the support it gets from the statements of the other three witnesses just referred to.

It is very significant, as pointed out by learned counsel for the appellants, that none from the Hindu public of the place has been examined for the respondent in support of its contention that the Hindu public go to this temple for worship as a matter of right. Quite a good number of people

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should have been available for the purpose if it was a fact.

The respondent, on the other hand, examined only M. Adinarayana Rao, who had been Inspector of Hindu Religious Endowments Board of the Chicacole division from 1946 to 1948. He certainly states that the temple in suit is a public temple in which all people can go as a matter of right for worship. It is a moot question as to how he can make such a statement even if he had seen a number of people entering the temple and worshipping there, which itself is not a fact. When there be good evidence about the temple being a private one, the mere fact that a number of people worship at the temple is not sufficient to come to the conclusion that the temple must be a public temple to which those people go as a matter of right as it is not usual for the owner of the temple to disallow visitors to the temple, even if it be a private one. He stated that there were several festivals like Nethroshasevam, the car festival and kalyanam. In cross-examination he had to admit that he had not visited the kalyan festival and did not know when it was celebrated. This is sufficient to indicate that he is a zealous witness. He stated that there was an archak, but he could not give the archak's name. Ordinarily, it need not have been expected of him to have known the archak's name. But, considering that he was an Inspector of the Board and had visited the temple officially also and had to submit a report, it is rather difficult to believe that if he had realy found an archak, a priest other than the Mahant and his disciples, he would not have considered it essential for the purposes of his enquiry to know his name. We see no reason to prefer his shaky statement to the statements of the witnesses examined for the appellants.

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We need not consider the statements of the witnesses with respect to the features associated with the public temple and which are said to be absent in the temple in suit. It is admitted by the respondent's witness that there is a Tulsi plant before the shrine. It is strenuously urged for the appellants that no public has a Tulsi Kotta, and this contention seems to find support from the statement made by the respondent's witness in re-examination that generally, in Oriya temples no flag-staffs are located and Tulsi plants are grown instead. The description of the temple with respect to its construction, equipment, practices, observances and the forms of worship are not inconsistent with the inference from the other evidence that the temple is not a public temple.

The statement of the respondent's witness that generally Oriya temples have no flag-staffs and have Tulsi plants has significance in one other connection also. It was said in *Mundancheri Koman* v. *Achuthan Nair* (1) at page 408 that in the greater part of the Madras Presidency, where private temples were practically unknown, the presumption is that temples and their endowments form public charitable trusts. The presumption is certainly rebuttable. The evidence in this case sufficiently rebuts it. The temple is situate at a place which was practically at the boundary of the Madras Presidency, and close to the common boundary between that Presidency and Orissa. The presumtion with respect to the temple in the Madras Presidency, therefore, will be a very weak one with respect to the temple so situated.

We are therefore of opinion that the temple in suit is not a temple as defined in the Act as it is not used as of right by the Hindu community, or any section thereof, as a place of religious worship. We therefore allow the appeal with costs throughout, set aside the order of the Court below and

(1) (1934) L. R. 61. I.A. 405.

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restore the order of the District Judge, Vizagapatam, setting aside the order of the Board dated March 28, 1947.

Appeal allowed.

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December 21

PRAMATHA NATH TALUQDAR

v.

SAROJ RANJAN SARKAR

(S. K. DAS, J. L. KAPUR, and M. HIDAYATULLAH JJ.)

Criminal Complaint—Scope of enquiry—Second complaint on same facts but fresh evidence—When can be entertained—Exceptional circumstances—Manifest error—Code of Criminal Procedure, 1898 (Act 5 of 1898), ss. 200, 202, 203, 204—Criminal Matter—Special Bench—Validity of Constitution—Calcutta High Court (Appellate) Rules—Sanction—Abetment by conspiracy—Code of Criminal Procedure, 1891 (Act 5 of 1898), s. 196A—Indian Penal Code, 1860 (XLV of 1860), ss. 107, 109, 120A, 120B.

On March 17, 1954, Promode Ranjan a brother of N. R. Sarkar filed a complaint under s. 200 Code of Criminal Procedure against Pramathanath and S. M. Basu alleging offences punishable under ss. 467, 471 and 109 of the Indian Penal Code, before the Chief Presidency Magistrate in respect of a document appointing Pramathanath as the Managing Director of N. R. Sarkar & Co. and the minutes of the Board meeting resolving the same. It was alleged therein that the signatures of N. R. Sarkar on those documents were forgeries. After considering the evidence of the Handwriting Expert the Magistrate dismissed the complaint. Promode Ranjan preferred a revision petition to the High Court. The High Court dismissed the revision Petition. By an application dated January 6, 1956, when the revision petition was pending, attention of the High Court was drawn to the fact that the minutes dated January 16, 1948, had been typed on a letter bearing at the top in print "Telephone City 6091" where as the City Exchange had not come into existence till December 1948. The Supreme Court granted special leave against the dismissal of the revision petition by the High Court but the appeal was withdrawn.

On April 3, 1959, Saroj Ranjan, another brother of N.R.Sarkar, laid a complaint on the same facts and allegations

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in paragraph 5 of his judgment clearly shows that the peishkush or permanent assessment in respect of these estates was the balance struck after making a deduction on account of the pay of the village servants which the proprietor had to meet. The figures appearing in Ex. V-A, Ex. VI-A and Ex. VIII-A appear to have been adopted by the Special Deputy Collector for assessing the amount of the village service cess to which the plaintiff would be liable. There is therefore no reason to hold that the plaintiff is now made to pay more than what was deducted from the peishkush on account of the obligation of maintaining and paying the village officers.

For the foregoing reasons, I must hold that the levy of the village service cess in question is legal and the plaintiff cannot therefore claim a refund of the same.

As the plaintiff's claim fails on the merits, it is unnecessary to consider the plea of limitation with respect to the amounts levied for faslis 1328 and 1329. It seems to me that, in view of the allegations made in the plaint, those payments can reasonably be deemed to have been made by the plaintiff under protest. If so, the proper Article applicable to the present suits would be Art. 16 of the Limitation Act which provides a period of one year. The claim as regards the refund of those amounts would therefore be barred.

In the result, these second appeals fail and are dismissed with costs.

N. R. R. *Appeals dismissed.*

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PRIVY COUNCIL.

[From the High Court of Judicature at Madras].

Lord Atkin, Lord Thankerton, Lord Macmillan, Sir George Lowndes and Sir Dinshah Mulla.

12th May, 1931.

MADURA, TIRUPPARANKUNDRAM, ETC., DEVASTHANAMS ... *Appellant.*

v.

ALIKHAN SAHIB and others ... ... *Respondents.*

Waste land—General presumption of ownership in the Crown—Inapplicability in the case of waste land within a temple enclosure.

The general presumption that waste lands are the property of the Crown is not applicable in the case of waste land which is physically within a temple enclosure and over which such acts of ownership as are capable of being exercised have been consistently so exercised by the temple authorities from time immemorial.

Upjohn, K.C., and *Narasimham* for the Appellant.

L. De Gruyther, K.C., and *B. Dube* for the Respondents.

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JUDGMENT.

Sir George Lowndes.—Their Lordships have to determine in this appeal the ownership of a barren hill in the Madura District of Madras. The claimants before the Board are the Government, represented by the Secretary of State for India in Council, and the Tirupparankundram Temple. The Mohammedan community, who have a mosque on the highest point of the hill, were parties to the proceedings in the Indian Courts, but they have not been represented on the present appeal. The Madura Taluk Board was also a party to the suit but has not appeared on the appeal.

In the trial Court, the temple, represented by its manager, was the plaintiff. He claimed the whole hill, with the exception of certain cultivated and assessed lands and the site of the mosque, as temple property. The Mohammedan defendants asserted their ownership of the particular eminence upon which the mosque stands, and of a portion of the main hill known as the *Nellitope*. The Secretary of State, who will be referred to as the respondent, claimed to be the owner of all the unoccupied portions of the hill as Government *Poramboke* or waste appertaining to the village of Tirupparankundram, which is admittedly Government property.

The suit was tried by the Subordinate Judge of Madura. He decided against the Government claim and in favour of the temple, except in respect of the *Nellitope*, and the actual site of the mosque with its flagstaff and the flight of steps leading up to it, which he held to be the property of the Mohammedan defendants. The decree of the Subordinate Judge was dated the 25th August, 1923.

The Government were apparently content with this decision. The unoccupied portions of the hill were probably of little value to them, and neither the Secretary of State nor the temple manager appealed. The Mohammedans were dissatisfied and appealed, but as their only grievance was against the temple, they did not make the Secretary of State a party. The result, their Lordships think, must have been unexpected.

The greater part of three years elapsed before the appeal came on for hearing. When it did, the learned Judges of the High Court thought that the Government ought to be represented before them. A notice was issued, and on the 20th April, 1926, the Secretary of State put in cross-objections contesting the decision of the Subordinate Judge upon every head of his judgment. The appeal was taken up again on the 4th May, 1926, and was somewhat summarily dealt with. The learned Judges found that the ownership of the hill belonged to the Government; they

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dismissed the appeal by the Mohammedans, allowed the cross-appeal of the Secretary of State, and dismissed the suit. They agreed that both the Hindus and the Mohammedans had established certain rights over the hill, but thought it unnecessary to decide what they were. This, in some ways, strange conclusion was reached in a single day's hearing, though before the Subordinate Judge the trial had occupied the Court for more than thirty days, and the appeal before their Lordships has necessitated an unusually protracted hearing.

The Tirupparankundram Temple is one of the famous rock temples of Southern India. It is situated at the base of a hill some 500 feet high; and is dedicated to Subramanya, the son of Siva. The inner shrine of the temple is hewn out of the hill and in it, carved in the rock itself, is the image of the deity. Around the base of the hill is a pilgrim's way, nearly two miles in extent. This is said to be essential to the worship of the devotees, who perform the ceremony of *Pradakshinam* by going round the image of the deity with the right shoulder continuously presented to him. As the image in the temple is an actual part of the hill, it is obvious that the performance of this rite necessitates the perambulation of the hill itself. This way, which is also used for processions of the temple car on ceremonial occasions, is known as the *Ghiri Veedhi*, and it is claimed as the property of the temple. It is referred to in numerous documents, dating back to 1844, as the *Malaiprakaram* of the temple. The Subordinate Judge states that *prakaram* is a Sanskrit word meaning the outer round of the temple, or fort: *malai* merely means hill.

Within the perimeter of the *Ghiri Veedhi* are certain cultivated and assessed lands, and also some houses, to which the temple makes no claim. But in addition to the main temple there are also within the *Ghiri Veedhi* certain smaller shrines of almost equal sanctity, and a number of old-established *mandapams* or rest houses, together with tanks and bathing places for the pilgrims, and at least in one place a garden for the use of the temple. These are scattered about irregularly over the lower slopes of the hill, which contains various springs, the water of which is supposed to be of great religious efficacy.

The temples are evidently of considerable antiquity, probably dating back to the 13th century A. D., and possibly earlier. The worship of Siva, to which they are devoted, is usually of a phallic nature, Siva as a member of the Hindu triad presiding over the destruction and reproduction of life. It is stated in a report of the Director-General of Archaeology in India, which is embodied in an order of the Local Government, that the whole

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rock is worshipped by the Hindu community as a *Linga*, and there seems to be some reason to believe that Madura is the home of this peculiar form of worship (Nelson's Manual, Pt. III, 48). The hill itself is frequently referred to in temple documents and also in some of the early Government records as the *Swamimalai* or God's Hill.

It is, in their Lordships' opinion, clear on the evidence that such acts of ownership as are capable of being exercised in the case of a hill of this character have been consistently so exercised by the temple authorities for the greater part of a century. They have regularly repaired, and in some cases widened, the *Ghiri Veedhi* for the passage of the temple car, removing obstructions and taking stone as required from the hill. In one case they bought and took in a house site for this purpose. The record of these works goes back to 1835 and the sums expended were at times considerable. Prior to 1842 the temple was under the direct control of the collector of the District, and constant references were made to him with regard to the expenditure. In no case do the collector's replies suggest any limitation of the temple's proprietary rights over the unoccupied portions of the hill. In one instance in 1841 it appears that a Hindu devotee desired to build a new *mandapam* outside the *Ghiri Veedhi* to the north. This was submitted to the collector, who replied that it would be more useful if built beside the *Ghiri Veedhi*. His letter does not suggest that the sanction of Government would be required to such an appropriation of a portion of the hill.

Trees have also been planted on the *Ghiri Veedhi* and their produce and the timber have been regularly appropriated by the temple. In 1861 a claim seems to have been made to the sale proceeds of a dead tree. Complaint was made to the collector, and the *taluk tahsildar* was ordered not to interfere with the "avenue of trees surrounding the Tirupparankundram hill" as they belonged to the temple. Some years later a similar dispute arose, an inquiry was held and the sale proceeds of the tree were again awarded to the temple.

Considerable works have been carried out by the temple authorities from time to time for improving the water supply to the bathing tanks, conduits, culverts and other permanent structures being erected, and stone in large quantities being taken from the hill for their construction. On one occasion, as the temple accounts show, a number of bridges were built at a cost of several thousand rupees; on another a compound wall was put up round the precincts of one of the smaller temples, evidently enclosing a portion of the hill. On a third occasion a new *mandapam* was built.

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The evidence of all these acts extending over the greater part of the time since the East India Company first came into possession of this part of the country, has been elaborately discussed by the Subordinate Judge. The conclusion to which he came was that they were acts of ownership, openly exercised by the temple authorities, and that taken in connection with the admitted title of the temple to the shrines and other buildings scattered over the hill, and their undoubted antiquity, they established the appellant's claim to all the unoccupied land within the *Ghiri Veedhi*. The path itself he held to have been dedicated by the temple to the public use, and to be vested in the Taluk Board under the provisions of Madras Act XIV of 1920, and this finding has not been disputed before their Lordships. But he held that the sub-soil of the *Ghiri Veedhi* and all other rights of property in and over it remained with the temple.

The only acts on the part of Government which he thought could be regarded as assertions of a proprietary right were two attempts to quarry stone on the hill. The first occasion was in 1879 when the railway was under construction. The temple authorities were asked whether they had any objection and whether they claimed rights over the hill. They did object, emphatically. The superintendent of the temple wrote that "the big hill and the *malaiprakaram* street belonged to the temple" and were in its possession: that they had employed watchmen to prevent the quarrying, and he asked that it should be stopped: and this apparently was done. In 1904 the Government again attempted to lease the quarrying rights: the temple authorities again objected, and the lease was cancelled. There was also some oral evidence about quarrying, but the Subordinate Judge thought it was of no value. Their Lordships have perused this evidence and see no reason to differ from the Subordinate Judge's estimate of it.

Their Lordships do not regard the abandonment by Government of their quarrying proposals as an admission of the temple's rights over the hill, but it is at least consistent with their existence. The Subordinate Judge took the view that abandonment, on a claim of ownership by the temple, deprived the incidents of any probative value on behalf of the respondent, and their Lordships think that this is correct.

The learned Judges of the High Court do not appear to have doubted the facts upon which the Subordinate Judge relied, nor do they discuss them in any way. They regard them as "quite consistent with the ownership of the hill being with" Government, and to "be explained as acts done with the permission of the sovereign authority."

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Their main criticism of the Subordinate Judge is that "he refused to draw the proper presumption from the admitted facts of the case," and that this vitiates his consideration of all the evidence. The presumption which they draw is that the unoccupied portions of the hill belong to Government, and they appear to base this upon historical grounds.

It is necessary, therefore, to trace shortly the fortunes of the temple in the 17th and 18th centuries, for which the authorities relied on are principally the "Madura Gazetteer," and Nelson's "Manual of the Madura Country," a compilation of great interest which has frequently been cited before this Board.

There appears to be no doubt that under the Nayakkan Kings of Madura the seven temples in, and in the immediate neighbourhood of the capital were endowed with large revenues derived from a number of villages. The temples were known as the *Hafta Devasthanam*, and included the Tirupparankundram Temple. It seems probable that this endowment was due mainly to the generosity of Tirumala, a famous member of that dynasty who reigned from 1623 to 1659. During the century and a half that followed, the history of Madura is a confused record of internecine warfare, in which the incursions of Mohammedan, Mysorean and Mahratta invaders played the largest part, and these were succeeded by the gradual, but by no means peaceful, penetration of the East India Company. During these troublous times the *Hafta Devasthanam* lands seem to have disappeared piecemeal. What remained of them when Chanda Sahib, nominally representing the Nawab of Arcot, established himself in Madura in 1738 were then confiscated. His domination was interrupted by another invasion of the Mahrattas, who probably restored a portion of the old endowments. They again were ousted by the Nizam in 1744, and the temples fared no better than before. Then followed the intervention of the East India Company. Madura was eventually subdued by their troops under Mahomed Yusuf Khan, who in due course established himself as ruler. In 1763 he was beseiged in Madura by the Company's army, and after a memorable defence was betrayed and executed.

Thenceforward Madura seems to have come gradually under the Company's control, and after the fall of Seringapatam the civil and military administration of the District was formally made over as part of the Carnatic, to the British under Lord Clive's treaty with Azim-ul-Dowlah of the 31st July, 1801. (Aitchison's Treaties, 4th Ed. X, 57.)

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Mahomed Yusuf Khan (above referred to), who was apparently a Hindu by birth, re-established the endowment of the temples by a money grant, possibly derived from the revenues of the confiscated villages, but the villages themselves were not restored.

This was the position when Mr. Hurdis, who was already in charge of the adjoining District of Dindigul, became the first British Collector of Madura, and carried out an elaborate survey and settlement of the country. He was in considerable doubt as to the course that should be adopted with regard to the *Hafta Devasthanam* lands. The Board of Directors ordered their restoration to the temples, but for some unexplained reason this order was never carried out, a *tasdik* or annual allowance in money being paid in lieu thereof to each of the temples. The Tirupparankundram *tasdik*, according to Nelson's account, was a sum of Rs. 2,651-8-3.

Their Lordships will now return to the matter with which the present appeal is immediately concerned. The question is whether any presumption should be drawn from the confiscation of the endowed villages as to the proprietary rights in the waste land situate within the *Ghiri Veedhi* and forming part of the *Malaiprakaram*. It is admitted that the village of Tirupparankundram, in which the temple is situated, was part of this endowment.

The Subordinate Judge thought that there was nothing in the long story, which their Lordships have attempted to summarise in the preceding pages, to suggest that the temple had ever been ousted from its possession of the hill.

The High Court, on the other hand, took the view that the hill being part of the village, it must be presumed to have been confiscated with the village, and to have become in 1801 Government property.

The conclusion to which their Lordships have come is that the Subordinate Judge was right. There is no trace in the historical works to which they have been referred of any interference by the Mohammedan invaders with the sacred hill or the immediate surroundings of the temple. They and the other predatory forces which established themselves from time to time in Madura, no doubt seized the revenue-producing lands which formed the joint endowment of all the temples, and these must have included the cultivated and assessed lands within the *Ghiri Veedhi*, but there seems to be no suggestion that the Tirupparankundram Temple or any of its adjuncts passed at any time into secular hands. It was probably during some interval of Mohammedan domination that the mosque and some Mohammedan

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houses were built (though the Mohammedans themselves ascribe the mosque to a much earlier period), but this was an infliction which the Hindu occupants of the hill might well have been forced to put up with ; it is, their Lordships think, no evidence of their expropriation from the remainder.

But the more relevant period to consider is that following the cession of sovereignty in 1801. The only rights which the temple can assert against the respondent are rights which the East India Company granted to them or allowed them to retain (see *Secretary of State* v. *Bai Rajbai* (1) and their Lordships think the evidence shows that the temple was left after 1801 in undisturbed possession of all that it now claims. Indeed, the policy of the Directors seems to have been rather to restore to the temples what they had been deprived of in the long years of anarchy which had preceded British rule, than to mulct them of any remnant that was left. It is, in their Lordships' view, hardly conceivable that the East India Company would have wished, for no gain to themselves, to appropriate what was plainly the *prakaram* of an ancient temple studded with shrines, *mandapams* and other accessories to the worship of its devotees. Nor is there in the reports of Mr. Hurdis, or of any of his successors, which are summarised in the Nelson Manual, any hint of such a policy or of any claim by Government to rights over the hill.

Their Lordships do not doubt that there is a general presumption that waste lands are the property of the Crown, but they think that it is not applicable to the facts of the present case where the alleged waste is, at all events physically, within a temple enclosure. They see no reason to disagree with the Subordinate Judge's discussion of the authorities on this question. Nor do they think that any assistance can be derived, under the circumstances of this case, from the provisions of the Madras Land Encroachment Act, III of 1905, on which the respondent has relied.

There is one other document to which their Lordships think it desirable to refer. It is said to be a list of temple properties appertaining to the *Hafta Devasthanam*, dated in 1863, and signed by two native revenue officials. The extract printed in the record refers to the Tirupparankundram Temple, and against an entry of "*Subrahmany Swami* temple and hill" sets out a number of measurements totalling 572, 544 square feet, which appears to be approximately the area included within the *Ghiri Veedhi*. The document was admitted in evidence on behalf of the temple without objection, as the record shows.

(1) 42 I.A., 229=I.L.R., 39 Bom., 625=2 L.W., 731 (P.C.).

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Its materiality is that under the Religious Endowments Act of 1863, all temple endowments, which had been vested in the Board of Revenue under Madras Regulation VII of 1817, were to be handed back to local committees, and it is said that this was a list or record of the properties prepared for this purpose under Government instructions.

The appellant thought that the document would be elucidated by a certain Government Order of 1861, and called upon the Local Government to produce it, but they declined to do so, nor did they offer any explanation of the document at all, though it came upon the record at an early stage of the case. The Subordinate Judge thought it showed that at the date of its preparation, at all events, the whole hill was regarded by the Government officials as temple property. The High Court make no reference to it in their judgment. Before the Board the only suggestion for the respondent is that it is a mere record of the area of the hill, and that the collocation of the temple and the hill lends no support to the appellant's case.

Their Lordships do not regard the document of itself as of any great probative value, but its date is certainly significant, and in the absence of any explanation from Government, they think that the inference drawn by the Subordinate Judge was justified.

On the whole their Lordships are of opinion that the appellant has shown that the unoccupied portion of the hill has been in the possession of the temple from time immemorial and has been treated by the temple authorities as their property. They think that the conclusion come to by the Subordinate Judge was right and that no ground has been shown for disturbing his decree. They will therefore humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court dismissing the appellant's suit should be set aside and that the decree of the Subordinate Judge, dated the 25th August, 1923, should be restored. The Secretary of State must pay the appellant's costs in the High Court and before this Board.

N. R. R. *Appeal allowed.*

T. L. Wilson & Co: Solicitors for the Appellant.

Solicitor, India Office: Solicitor for the Secretary of State.

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SIR SETH HUKUM CHAND AND OTHERS (PLAINTIFFS) . . . . . } APPELLANTS ;

AND

MAHARAJ BAHADUR SINGH AND OTHERS (DEFENDANTS) . . . . . } RESPONDENTS.

J. C.*
1933
May 12.

ON APPEAL FROM THE HIGH COURT AT PATNA.

Jains—Rights of Worship—Parasnath Hill—Works executed by Swetambaris —Suit by Digambaris—Limitation—Suit for Declaration—Continuing Wrong—Specific Relief Act (I. of 1877), s. 56—Indian Limitation Act, (XI. of 1908), s. 23 ; Sch. I., art. 120.

Parasnath Hill, which is regarded as sacred by both the Swetambari and the Digambari sects of the Jain community, is not debattar property of the Jain deities installed thereon, but the property of the Swetambaris by purchase in 1918 from the zamindar with whose ancestors it was permanently settled. The Swetambaris in erecting on the hill buildings for the accommodation of temple servants and dharmasalas for the use of pilgrims, and in putting sentries and night watchmen thereon, have not unlawfully interfered with the rights of worship of the Digambaris. But alterations made by the Swetambaris in the character of the charans in certain shrines was an interference with those rights. A suit for a declaration brought by Digambaris more than six years after the alterations was not barred as to that matter by art. 120 of the Indian Limitation Act, 1908, because the alterations were a continuing wrong within s. 23 of that Act ; the plaintiffs had not, by, acquiescence or otherwise, disentitled themselves under s. 56 of the Specific Relief Act, 1877, to the relief prayed.

Decree of the High Court varied.

APPEAL (No. 121 of 1930) from a decree of the High Court (August 8, 1928), which modified a decree of the Subordinate Judge of Ranchi (May 26, 1924).

The appellants, representing the Digambari sect of the Jain community, instituted a suit against the respondents, representing the Swetambari sect of that community, alleging that various acts done or threatened to be done by the Swetambaris on Parasnath Hill were an unlawful interference with the rights of worship of the Digambaris.

* *Present :* LORD THANKERTON, SIR JOHN WALLIS, and SIR LANCELOT SANDERSON.

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The trial judge made certain declarations and granted injunctions prayed for; upon appeal the High Court (Ross and Wort JJ.) set aside certain of the declarations, and corresponding injunctions, but otherwise affirmed the judgment.

The facts of the case, and the grounds of the judgments in the High Court appear from the judgment of the Judicial Committee.

1933. March 10, 13, 14. *De Gruyther K.C.*, *Hyam* and *Champat Rai Jain* for the appellants.

Dunne K.C. and *Wallach* for the respondents.

May 12. The judgment of their Lordships was delivered by

SIR JOHN WALLIS. This case is the result of further disputes between the two sects of Jain as to their rights of worship on Parasnath Hill. As so much turns on the beliefs now entertained by the whole Jain community with reference to the sacred character of this hill, their Lordships will begin by citing the opening paragraphs of the judgment delivered by Lord Phillimore a few years ago in *Maharaj Bahadur Singh* v. *Hukum Chand* (1), in which this subject is most felicitously dealt with.

"The Jains recognize 24 highly saintly personages—men who have attained salvation or nirvana, who are called tirthankars (finders of the ford, across the river of death). These four and twenty are counted in many respects as higher than the gods or some of the gods in the Hindu pantheon. Twenty of them are believed to have attained nirvana in the present cycle of the world's history upon the Hill Parasnath in the district of Hazaribagh in Bengal, with the result that the hill is held in reverence by Jains. The hill itself has some remarkable natural features, and rises into several peaks. Twenty spots apparently marked out by natural features, are believed to be places from which the 20 tirthankars quitted earth; and at each of these spots, a footprint of the saint is worshipped. There is a small

(1) (1925) 24 All. L. J. 100 (P. C.).

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enclosure covered with a cupola, which at the present moment is made of white marble. These spots have been set apart from remote antiquity. The four remaining tirthankars quitted earth in other parts of India. In respect of them conventional spots have been since the year 1868 set apart and treated in a similar way. Upon the hill there are also a shrine to a lesser saint called Gautama Swami, an important temple in one of the highest parts of the mountain called Jalmandil, certain platforms set apart for religious contemplation, and two dharmasalas or rest-houses for pilgrims. The hill is much frequented by pilgrims, who take the 24 shrines or tonks in regular order, worshipping at each. According to the tenets of the Digambara, this worship must be performed fasting, and the whole hill is so sacred that from the moment they set foot on it, they must abstain from any office of nature, even spitting."

These practices are observed on their pilgrimages by the Swetambaris as well, but the Digambaris in the present case go much further and take up the position that any course of action inconsistent with their due observance, such as the regular and continuous employment of human beings on the hill or the building thereon of dwellings for them, necessarily involves a sacrilegious pollution and desecration of the sacred hill which they have a right to restrain. These are matters for the Jains themselves, and the Civil Courts are only concerned with them in so far as they are relevant to questions of civil right such as an alleged interference with the plaintiffs' rights of worship on the hill, and in that case the issue must be, not whether the acts complained of are in accordance with orthodoxy or with previous practice, but whether they do in fact interfere with the plaintiffs' rights of worship.

In 1918 the Swetambaris, who have all along been in management of the shrines, acquired by purchase the proprietary rights of the Raja of Palgunj in the hill, and in 1920, not long before the institution of the present suit, they availed themselves of the greater freedom of action so acquired by posting sentries and night watchmen on the top of the hill and by beginning to erect dwellings there for them and

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for the pujaris and other temple servants in daily employment on the hill, and also dharmasalas or rest-houses for the accommodation of the pilgrims. They also proposed to erect a gate at the top of the winding pilgrim way which, starting from the village of Madhuban at the foot of the hill, provides a six mile ascent to the hill top. This gate the Digambaris alleged was intended to obstruct the Digambaris' access to the hill. These are some of the acts complained of in the present suit, which is a representative one instituted on behalf of the Digambaris against the Swetambaris pursuant to Order I., r. 8, of the Code of Civil Procedure, and their Lordships will dispose of them in the first instance.

In paras. 5 and 9 of the plaint the plaintiffs alleged that the entire hill and every stone of it is held sacred and is an object of adoration and worship for both sects of the Jain community, and that on account of its special sanctity no building for human habitation can be erected on it, and the very idea of such a thing is considered sacrilegious.

The first defendant, in para. 10 of his written statement, did not admit that the Digambaris regarded every part and parcel of the hill as sacred, and denied that they had any rights in the hill, except as thereinafter stated. The ideas of sanctity conveyed in the plaint were highly exaggerated, and the Jain tenets were not opposed to buildings for human habitation on the hill, nor were they regarded as sacrilegious, provided that they were not unconnected with religious purposes. The Subordinate Judge at Ranchi, to which Court the case had been transferred from Hazaribagh, acting mainly on the large body of oral evidence as to the sanctity attached by Jains to the hill, held that it was the endowed or debattar property of the Jain deities thereon, and that the plaintiff Digambaris were entitled to see that the hill—their most sacred tirth—was kept immaculate and not defiled or desecrated; and he accordingly granted an injunction, with corresponding declarations, restraining the defendants from posting sentries and night watchmen on the hill or proceeding with the building of the proposed dwellings and dharmasalas,

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and also from erecting the gate which he found was intended to obstruct the Digambaris' access to the hill.

On appeal to the High Court, both the learned judges, in separate but concurring judgments, reversed this part of the lower Court's decree, holding that the hill was not the debattar property of the Jain deities thereon, but was the property of the Raja of Palgunj, whose title, it is now finally settled by the recent decision of this Board, passed to the Swetambaris by the sale deed of March 9, 1918. They further held that the acts complained of were not shown to have interfered with the Digambaris' rights of worship of the twenty-one ancient shrines as confirmed to them by the judgment of the Board delivered by Lord Phillimore in the case already mentioned, and that the proposed gate was not shown to be intended to obstruct their access to the hill.

As regards the question of the hill being debattar property, as pointed out in the High Court judgments, it cannot be said that this issue was very clearly raised in the pleadings, but it has been dealt with by both the lower Courts on all available evidence, and, in their Lordships' opinion, it is desirable that it should now be finally decided, so as not to give occasion for further litigation between the two sects. Their Lordships will therefore proceed to consider it.

The Jain shrines on Parasnath Hill are undoubtedly of great antiquity, but very little is known of their past history or as to the time when the now prevailing views as to the sanctity of the whole hill first obtained acceptance. The early work referred to in the argument for the appellants merely extols the superior efficiency of the abishekam or ablution ceremony when performed at the shrines as compared with the same ceremony when performed in ordinary temples. From the 16th to the 18th century, the Jagat Seths, a wealthy and powerful family of bankers at Murshidabad, who belonged to the Swetambari sect, appear to have maintained the shrines, but on the cession to the East India Company in 1765 they removed to Calcutta.

At the decennial settlement in 1790, and afterwards at the permanent settlement, the hill was included in the zamindari

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of the Raja of Palgunj, which raises a legal presumption that it was his property. During the greater part of last century, the Raja of Palgunj, failing any one better qualified, bore the expenses of the shrines, and recouped himself by taking a share of the pilgrims' offerings.

The hill itself is twenty-five square miles in extent, and rises to a height of nearly 4500 feet at top of the highest peak. According to the report of Lieut. Beadle, who visited it in 1846, it was covered, except at the very top, by forest trees and by dense jungle infested by wild beasts and was uninhabited by man, the few Santhal hamlets on the lower ranges being apparently overlooked. Since the coming of the British Raj, he said the number of pilgrims had been increasing annually. They were mostly of a wealthier class as compared with the Hindu pilgrims to Jagannath, but owing to the construction of the Grand Trunk Road, which passes underneath the hill at a distance of 200 miles from Calcutta, he thought it bade fair to become a very popular shrine. The advent of the railway, and the construction of sixteen miles of metalled road from the nearest railway station to Madhuban, now make access easy, and pilgrims visit the hill in thousands every year. Otherwise the conditions are not much altered. In 1861, a military sanatorium was opened near the top of the hill, not far from some of the shrines, on a site acquired from the Raja, but was discontinued four years later. A dak bungalow and a branch of the Dublin Mission now occupy the site. In 1876 the Raja granted a permanent lease of 2000 acres more than half-way up the hill, and abutting on the pilgrim's way, to an English planter named Boddam, who opened a tea plantation there, and there is now another plantation in the same neighbourhood. At the beginning of this century, the Swetambaris began the construction of a large white marble temple over the Parasnath shrine at the top of the highest peak. The Digambaris were strongly opposed to this as affecting the unique and most impressive characteristics of the place, and so it is said to have been the beginning of the quarrel between the two sects about the hill.

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Their Lordships will now refer as briefly as possible to the evidence which shows, in their opinion, that the Raja's title, which has now passed to the Swetambaris, is unassailable. In the first place, the fact that the Jains are not shown to have taken any objection to the military sanatorium and the tea plantation, both of which, in the light of the evidence in this case, must have been most distasteful to them, tells strongly against their present claim. In a suit filed by the Raja in 1867 against a member of the Swetambari sect, to establish his title to the hill and a share of the offerings, the lower Court found that he was the proprietor of the whole hill except the shrines themselves, but the decree was reversed by the High Court on the ground that the plaintiff had not established any cause of action against the defendant. In 1872, these disputes were settled by an ekranama between the Raja and the Swetambari sect by which he undertook among other things to grant them land, stones, and timber for any new shrines. This stipulation involved a clear admission of the Raja's title to the hill.

In 1888, in consequence of the action of the lessee of the tea plantation in starting a lard factory which involved the slaughtering of pigs, a thing peculiarly offensive to the Jain religion, the Swetambaris filed a suit against the Raja and the lessee alleging that they were trespassers, and also that the lessee's action was a breach of one of the Raja's covenants in the ekranama, of which the lessee had notice when he entered into the lease. In the plaint they claim title under an alleged ancient grant from the Emperor at Delhi which has always been rejected whenever put forward, but the case of debattar now set up was distinctly raised by additional issues as to whether the hill was dedicated to the religious purposes of the Jain religion, and as such vested in, and the property of, the Jain community. These claims of title were examined and rejected in elaborate judgments by the lower Court and the High Court, which held that the property was in the Raja, but that the acts complained of were a breach of an implied restrictive covenant by the Raja in the ekranama of which the lessee had notice.

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In 1900, the Digambaris are found joining with the Raja in successfully suing the Swetambaris for removing certain stairs which they had erected under licence from the Raja. In that suit the Swetambaris merely denied that the hill was the exclusive property of the Raja, and alleged that the plaintiffs had no right to interfere with the pilgrim way, but it was held that the defendants were not entitled to remove the stairs which had become annexed to the soil and were vested in the Raja as owner.

In 1903 the Digambaris filed another suit about the new temple, which however was discontinued. In the plaint it was admitted that the hill was the property of the Raja, subject to the Jains' rights of worship.

For the last twenty years the two sects have been engaged in a struggle to acquire the Raja's title for their own sect which has now been finally determined by the judgment of the Board in favour of the Swetambaris.

The Subordinate Judge has discounted much of this evidence on the ground that one or other sect was not a party to the particular suit, but it is not a question of res judicata, but of repeated admissions and of the successful assertion of the Raja's title whenever challenged. Nor is there, in their Lordships' opinion, any foundation for the further suggestion that the Jains were not in a position to assert their rights. They are a wealthy community and must have incurred enormous costs in the litigation already mentioned, and in the twenty years' further litigation arising out of their efforts to acquire the Raja's title, whereas in 1903 the Raja was driven to seek relief under the Chota Nagpur Encumbered Estates Act, largely owing to the heavy expenses he had already incurred in litigation with them about the hill.

The Subordinate Judge has based his finding that the whole hill is the debattar property of the Jain deities on the belief in its sanctity now entertained by both sects. As observed by Ross J., that evidence undoubtedly establishes beyond a doubt that in the belief of the Jain community a spiritual quality in some way attaches to the hill, but this is a matter of faith and cannot in itself determine the physical ownership

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of the hill. On this part of the case their Lordships agree with the learned judges of the High Court that the hill was not the debattar property of the Jain deities but the property of the Raja.

On this basis, the learned judges rightly proceeded to consider whether the acts complained of interfered with the Digambaris' rights of worship on the hill. Now eating and drinking, spitting and the offices of nature, and many other things which are unseemly and irreverent acts in a place of worship, are naturally and properly prohibited in the ancient "Ashatana of Jain temples"; but, as observed by Ross J., these rules can only be applied by analogy to a vast expanse like Parasnath Hill, and must be subject to reasonable modifications in practice, and this is what is shown by the evidence to have happened.

No serious objection seems to have been taken to the military sanatorium while it existed, or to the plantations with their cooly lines lower down, though they involved a complete disregard of these rules. Further, writing in 1846, Lieut. Beadle says that a religious meeting or mela was held on the hill every year for a fortnight in January, and that shopkeepers ascended with grain and other provisions for the wants of the worshippers, and there is evidence that a Hindu mela is still held on the hill every year.

In a suit in 1910 it was proved that by immemorial custom the primitive and backward Santhals in the neighbourhood are entitled to hold a hunt on the hill enjoined on them by their religion on one particular day in the year. Eight to sixteen thousand Santhals take part in the hunt, working round the hill and across the pilgrim way, and the day ends with sacrifices to their gods and their annual caste meeting.

None of these things, however distasteful, appear to have interfered with the Jains' worship on the hill.

The objection to the erection of buildings on the hill seems to have been put forward prominently for the first time by the Digambari pundits in opposition to the erection of the Parasnath temple. According to their teaching, as deposed to by some of the witnesses, it is an act of ashatana to build

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a temple on the sacred hill, and it is also an act of āshatana to pull it down or to leave it standing, in the latter case because it involves the daily presence of pujaris on the hill to worship the images in the temple. Even so, it was not attempted to stop the building on this ground in the suit filed in 1903 and afterwards discontinued.

Coming now to the acts complained of, owing to the increase in the number of pilgrims, pujaris and other temple servants have for some time been employed in daily attendance on the hill without objection being taken. Whether spending the night there was allowed or tolerated is a matter of controversy. All that is now proposed is to erect dwellings for them on the top of the hill instead of requiring them to make the long ascent and descent every day, to build dharmasalas or rest-houses for pilgrims, and to station sentries and night watchmen on the hill. Their Lordships agree with the learned judges that it is not proved that any of these acts will interfere with the Digambaris' rights of worship. As to the proposed gateway, the Courts cannot assume that it will be used to obstruct the Digambaris' rights of access to the hill; if it should be, they will have their remedy. For these reasons their Lordships are of opinion that as to this part of the case the appeal fails.

The remaining question as to the alterations in three of the shrines may be dealt with more briefly, as both the lower Courts are in substantial agreement about the facts and have only differed on the question of limitation. The charans in the old shrines were impressions of the footprints of the saints, each bearing a lotus mark. The Swetambaris, who prefer to worship the feet themselves, have evolved another form of charan, not very easy to describe accurately in the absence of models or photographs, which shows toe nails, and must be taken to be a representation of part of the foot. This the Digambaris refuse to worship as being a representation of a detached part of the human body. Both the lower Courts have held that the action of the Swetambari in placing charans of the description in three of the shrines is a wrong of which the Digambaris are entitled to complain.

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As regards limitation the Subordinate Judge held on rather insufficient grounds that the acts complained of took place within six years of suit, so that this part of the claim could not be barred by art. 120, but he also held that it could not be barred under that article as it was a continuing wrong, as to which, under s. 23 of the Indian Limitation Act, a fresh period begins to run at every moment of the day on which the wrong continues. The High Court, on the other hand, were of opinion that it was not a continuing wrong and that the claim was barred under art. 120. In their Lordships' opinion the Subordinate Judge was right in holding that the acts complained of were a continuing wrong and consequently that this part of the claim is not barred. This question is covered by the decision of this Board in *Rajroop Koer* v. *Abul Hossein* (1), a case of diverting an artificial watercourse and cutting off the water supply of the plaintiff's lower lying lands.

The fact that there is no period of limitation in suits arising out of continuing wrongs, except as regards actions for compensation which are governed by art. 36, does not however conclude the question, because under the law of India declarations and injunctions are discretionary forms of specific relief, and under s. 56 of the Specific Relief Act, 1877, the Court may refuse to grant an injunction if the plaintiff by acquiescence or other conduct has disentitled himself to such relief. No such case, however, was made in the lower Courts, and no sufficient cause has been shown for refusing to grant the reliefs prayed for as to this part of the case.

Lastly, it is not disputed that, in so far as it strikes out declaration 4 in the Subordinate Judge's decree and the direction as to the form of charan to be placed in two other shrines, the High Court's decree is not in accordance with their judgment.

In the result their Lordships will humbly advise His Majesty that this appeal ought to be allowed in part, and the decree of the High Court varied: (*a*) by deleting therefrom the directions which strike out from the decree of the Subordinate

(1) (1880) L. R. 7 I. A. 240.

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Judge (1.) declaration 4, and (2.) his direction requiring the defendants to remove from the tonks of Padam Prabhu, Sri Abhinandan Nathji and Dharam Nath the new charans placed by them therein and to put in these three tonks, as well as the tonks of Sri Subudhinath and Sri Chandra Prabhu, footprints as had originally been there; and (*b*) by setting aside the direction as to costs. In other respects the decree of the High Court ought to be affirmed. As regards costs, their Lordships think that justice will be done by ordering the appellants to pay two-thirds of the respondents' costs incurred in both Courts below and two-thirds of their costs of this appeal. For this purpose the direction as to costs of the Subordinate Judge should also be set aside, and any costs already paid under the orders of the Courts below will have to be adjusted to bring about the result arrived at.

Solicitors for appellants: *Barrow, Rogers & Nevill.*

Solicitors for respondents: *Hy. S. L. Polak & Co.*

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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.

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(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. *Shromani 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.

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

1. (1999) 5 SCC 50, *Ram Jankijee Deities* v. *State of Bihar* 165*c-d*
2. (1984) 2 SCC 600, *Pritam Dass Mahant* v. *Shiromani Gurdwara Prabandhak Committee* 160*e*

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3. (1981) 1 SCC 449 : 1981 SCC (L&S) 200, *Som Prakash Rekhi* v. *Union of India* 159*f*
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*
7. AIR 1938 Lah 369 (FB), *Masjid Shahid Ganj* v. *Shromani Gurdwara Parbandhak Committee* 158*f*
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 (*punnarth*) 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 Goundar*[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."

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...."
>
> (emphasis supplied)

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)

> "*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."

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

† Salmond : *Jurisprudence*, 10th Edn., pp. 324-25

7 (1969) 1 SCC 555

8 ILR (1888) 12 Bom 247

9 (1984) 2 SCC 600

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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 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 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.
>
> 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 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)

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 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 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 further 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 no 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*[11] 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

11 (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 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". 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. 2735-36 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, the point raised by the petitioners in this petition is unsustainable for the same reasons and is therefore dismissed.

(2000) 4 Supreme Court Cases 168

(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 24068 of 1998

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MANU/UP/0272/1953

Equivalent Citation: AIR1953All552

IN THE HIGH COURT OF ALLAHABAD

Appeal No. 972 of 1940

Decided On: 01.02.1952

Appellants: **Gokul Nathji Maharaj and Ors.**
Vs.
Respondent: **Nathji Bhogi Lal**

Hon'ble Judges/Coram:
Sudhir Bhushan Malik, C.J. and Brij Mohan Lall, J.

Counsels:
For Appellant/Petitioner/Plaintiff: N.P. Asthana, B.L. Dave and K.B. Asthana, Advs.

For Respondents/Defendant: Harnandan Pd., S.C.

Case Note:
Trust and Societies - endowment -
where idol had been the object of worship by large sect of people for over three hundred years and extensive properties were in possession of the idol it is unreasonable to expect that there would be any direct evidence of consecration.

JUDGMENT

Sudhir Bhushan Malik, C.J.

(1) This is a plaintiffs appeal against the decree passed by a learned single Judge of ; Court allowing a Second Appeal and dismissing the plaintiffs' suit. The plaintiff-appellants are represented by Dr. N. P. Asthana, but learned counsel for the respondent. Sri Harnandan Prasad, states that he has received no instructions from his client. The suit was filed by Shri Thakur Gokul Nathji Maharaj, 'birajman' at Gokul through plaintiff 2, who claimed to be the owner of the property in suit, but to prevent the defendant raising the question whether it was plaintiff 1 or plaintiff 2 who was the owner of the property it was said in the plaint that plaintiff 2 had joined plaintiff 1 also as a co-plain-tiff and the suit was, therefore, filed in the name of both the plaintiffs.

The allegations in the plaint were that the land in suit belonged to the plaintiffs and one Dwarka bad his house on it that in the flood of 1924 the house of Dwarka was washed away and in 1933 the defendant took wrongful possession of the materials worth Rs. 100/-lying on the site and built a Dharamshala thereon. The reliefs claimed by the plaintiffs were for removal of the constructions made by the defendant and for vacant possession being given to them; an injunction to be issued to the defendant not to interfere in future with the plaintiffs' possession of the land; Rs. 100/- as damages for the price of the materials unlawfully used by the defendant; and for costs. The plaintiffs' claim for Rs. 100/-was dismissed by the lower appellate Court on the ground that it was not proved that the defendant had utilised any part of the materials of Dwarka's house. The other reliefs were given to the plaintiffs.

(2) In appeal a learned single Judge of this Court held that plaintiff 1 was not a

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juristic person and could not own property, that Plaintiff 2 had no right of ownership and that mandatory injunction could not be granted because the suit was filed almost three years after the constructions were made. He allowed the appeal and dismissed the plaintiffs' suit.

(3) It has been urged by learned counsel for the appellants that as regards the first finding that plaintiff 1 was not a juristic person the learned Judge was clearly in error. The point was very carefully considered by the lower Courts and we must say they wrote excellent judgments and took great care in the consideration of all the materials placed before them. The temple in question is a very old one dating back to some year prior to 1640 A. D.

According to the traditions prevailing in the locality one Shri Ballabhachary flourished in the sixteenth century of the Christian era, He was a devotee of Lord Krishna and was held in great esteem by the people. He had two sons, one of whom died issueless but the other had seven sons. To these seven grandsons Shri Ballabhacharya gave seven idols as representing Lord Krishna of whom he was a 'Bhakta'. These seven idols which were given to each grandson were installed by them in various parts of northern and western India. To the grandson, Shri Gokul Nathji was given the idol which was installed in Gokul in the temple known under the same name, i.e., Gokul Nathji.

Grandson Gokul Nathji was himself a very pious man and a great devotee of Lord Krishna, so much so that some people started worshipping him as the incarnation of the Lord himself. Gokul Nathji, however, used to worship plaintiff 1 as the idol of Lord Krishna, and some followers, instead of worshipping Gokul Nathji the grandson of Shri Ballabhacharya, worshipped the idol and held that the idol as well as Gokul Nathji and his descendants were the representatives of God. These two sects that grew up were known as the 'Bharuchis' and the 'Nimar Yas'. 'Nimar Yas' worshipped plaintiff 1, while the 'Bharuchis' worshipped Gokul Nathji in his lifetime and after his death they worshipped his clothes, sandals, and such other things as were used by him and enshrined these articles of personal use in a temple.

(4) The defendant challenged the plaintiffs' claim on several grounds but, one of the grounds was that plaintiff 1 was not a consecrated idol and was, therefore, incapable of holding properties. There was no serious dis- pute as to the facts already stated by us above and as a matter of fact those facts have been found by the lower Courts on the evidence available on the record and thus they could not be made subject matter of challenge in this Court in second appeal,

According to the traditions these idols that were handed over by Ballabhacharyaji to his seven grandsons were self-revealed idols of Lord Krishna and it is on that account that the learned Judge came to the conclusion that there could not have been due consecration according to law and it could not be said that the spirit of God ever came to reside in them. As it was pointed out by the learned Munsif in his very careful judgment that according to true Hindu belief the idol is not worshipped as such but it is the God behind the idol which is the object of worship.

The learned Munsif has pointed out that there are elaborate provisions in Hindu Law which enable a stone image or an image made of wood to be changed and replaced by another. It cannot be said that the stone image or image made of wood or of gold or other materials is the real object of worship or the real person owning the property. The real owner of the property is deemed to be God Himself represented through a particular idol or deity which is merely a symbol.

From the evidence it is clear that plaintiff 1 as such a symbol has been the object of

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worship by a large sect of people known as 'Nimar Yas' for over three hundred years and extensive properties are owned by and are in the possession of the said idol. In the circumstances, we think it was unreasonable for the learned Judge to expect that there would be any direct evidence of consecration, nor is it reasonable after such a length of time to require the plaintiffs to prove affirmatively that such ceremonies were performed as would entitle the plaintiff to claim to be a juristic personality.

(5) From the fact that the idol was said to be self-revealed the learned Judge assumed that there could have been no consecration of it. It is impossible after this length of time to prove by affirmative evidence whether there was or there was no consecration and we have not been referred to any book of authority or any evidence which would go to show that in the cases of idols which were deemed by their followers to be self-revealed no consecration takes place. From the fact and circumstances, however, it is abundantly clear that the idol was duly recognised by all those who believed in it as an idol of Lord Krishna and was worshipped as such. Properties were dedicated to it and properties have been brought to its use through centuries that it has existed.

After all the question whether a particular idol is or is not duly consecrated must depend upon the religious faith and belief of its followers and we have no doubt that all that was necessary to deify it must have been done by those who believed in the said idol. On the facts found by the lower Courts, the lower Courts were right in coming to the conclusion that there was sufficient material for a presumption that plaintiff 1 was a juristic person recognised as such by the followers of that sect and, therefore, capable of owning property.

(6) As regards the claim of plaintiff 2, no doubt some controversy was raised in the trial Court whether the title vested in plaintiff 1 or plaintiff 2. The lower appellate Court held that plaintiff 2 had failed to prove that he was the owner of plaintiff 1 or 'Gaddinashin', but that he had been managing the temple and its affairs since 1916 and was thus the 'de facto Gaddinashin' of the temple. The learned Judge of the lower appellate Court rightly held that as the suit had been filed on behalf of both the plaintiffs it was not necessary to go further into the question about the rival claims between the plaintiffs 'inter se'. The learned Judge has held as follows :

> ".....the determination of this question (whether the owner is plaintiff 1 or plaintiff 2) in this case is otiose, as it is essentially a question between the plaintiffs themselves. At least one of them is such owner."

On the findings recorded by the learned Judge he might as well have held that it was plaintiff 1 who was the owner of the property. The other findings recorded by the learned Civil Judge appear to us to be clear findings of fact based on evidence. The learned Judge held that the land in suit was in the possession of a tenant of the plaintiffs named Dwarka; that this 'kachha' house of Dwarka existed and was in his possession till 1924 when there was a flood and the house was washed away and the land lay vacant; that it was not till 1933 that the defendant took possession of the land and started building Dharmshala; and that there could, therefore, be no question of limitation as the suit was filed in 1936. On these findings the plaintiffs' suit for possession was rightly decreed.

(7) The learned single Judge held that the defendant has not succeeded in proving that the plaintiffs have acquiesced in any way in the building of the Dharmshala and in the circumstances, therefore, there is no reason why the plaintiffs' suit for the other reliefs, except the claim for Rs. 100/- as damages, should not have been decreed.

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(8) The result, therefore, is that we set aside the decree of the learned single Judge and restore the decree passed by the lower appeal late Court, but as the respondent is not represented before us we make no order as to costs of this appeal.

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MAHARANI HEMANTA KUMARI DEBI AND OTHERS . . . . . } APPELLANTS;

AND

GAURI SHANKAR TEWARI AND OTHERS RESPONDENTS.

J. C.* 1940 *Dec. 4.*

ON APPEAL FROM THE HIGH COURT AT ALLAHABAD.

Bathing Ghat—Dedication to public—Partial—Retention of ownership—Ghatias—No rights to specific parts of ghat—Exercise of profession of ghatia on ghat—Consent of owner necessary.

Under the Benares school of Hindu law, as under the Bengal school, there may be partial dedication of property to religious or charitable uses, and the bank of the Ganges at the Pryag Ghat, Benares, while dedicated to the public for the purposes of bathing, has not been so dedicated as to make an end of private ownership therein. Ghatias exercising their profession at the Pryag Ghat have not acquired, whether by custom, prescription or lost grant, a right to exclusive possession over specific plots of land on the ghat, and to place platforms and canopies over them. In order that they may stand, sit or squat on the ghat for the purposes of exercising their profession as ghatias the consent of the owner of the ghat must be obtained.

Jaggamoni Dasi v. *Nilmoni Ghosal* (1882) I. L. R. 9 C. 75, at 76, and *Chairman of the Howrah Municipality* v. *Khetra Krishna Mitra* (1906) 4 Cal. L. J. 343, at 348, referred to.

Decree of the High Court (1936) I. L. R. 58 A. 818, set aside.

APPEAL (No. 64 of 1939) from a judgment and decree of the High Court (January 3, 1936), which modified a judgment and decree of the Court of the First Additional Subordinate Judge of Benares (June 25, 1930).

By the suit out of which this appeal arose the appellant, Maharani Hemanta Kumari Debi, sought to establish her proprietary right to the Pryag Ghat on the river Ganges, at Benares, to which Hindu pilgrims resorted for bathing and for the performance of religious ceremonies. She also sought to eject from the ghat the respondents, fourteen persons, who were ghatias engaged in assisting the pilgrims in the performance of their religious rites. The respondents disputed the

* *Present:* LORD ATKIN, LORD THANKERTON, and SIR GEORGE RANKIN.

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J. C. 1940 — MAHARANI HEMANTA KUMARI DEBI v. GAURI SHANKAR TEWARI. ——

appellant's claim to proprietorship and her right to eject them. Pending this appeal the appellant, who was the widow of the last male owner of the Puthiya Raj estate, had accelerated by relinquishment the interest of her husband's reversioners, and they were joined as appellants.

The facts appear from the judgment of the Judicial Committee.

The Subordinate Judge held that the ghat had been dedicated to the public by the appellant's predecessors, but, in his opinion, such dedication did not divest the donor of his right of ownership. He also held that the ghatias had acquired no rights by adverse possession or by custom, and that they were liable to be ejected. In the result, he passed a decree as claimed by the appellant.

On appeal by a number of the defendants the Full Bench of the High Court (Sulaiman C.J., Bajpai and Ganga Nath JJ.), to whom the matter was referred by a Division Bench (Thom and Iqbal Ahmad JJ.), held that the ghat had been dedicated by the appellant's predecessors to the public, that she had no right of ownership, but only of management, and that the respondents as ghatias using the ghat, and as members of the public, had a right to resort to it. The Court discharged the trial judge's order of ejectment and the injunction granted by him to restrain the respondents from using the ghat as ghatias or sitting or squatting over the same. They discharged also the declaration made by the trial judge that the appellant was the owner of the ghat. The appeal is reported at (1936) I. L. R. 58 A. 818.

1940. Oct. 30, 31; Nov. 4. *C. S. Rewcastle* K.C. and *G. Sidney Smith* for the appellants. Such a right as the respondents claim does not appear anywhere to have been recognized under Hindu law. On the documents it is submitted, first, that the ghatias are in no sense a recognized community, and, secondly, that their services are not essential in any way to the efficacy of the ablutions and ceremonies of the bathing public. The dedication of the ghat to the use of bathers did not deprive the appellant of her proprietary rights in the ghat,

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and the High Court was wrong, it is submitted, in finding that she is, in respect of the ghat, a mutawalli or manager and not the absolute owner. Having found that ghatias had no customary right, and had been sitting on other ghats by leave and licence of the owners, and that the respondents had not established any right by custom, grant or prescription to specific sites on the suit ghat, the High Court ought, it is contended, to have found that the ghatias could not sit on the ghat except by leave and licence of the appellants. The appellants are entitled to a decree ejecting the respondents, or to an injunction restraining them from using the ghat as ghatias without the consent of the appellants as owners. *Maharaj Bahadur Singh* v. *Paresh Nath Singh* (1) appears to be in point, and the present case is in principle the same as *Harrison* v. *Duke of Rutland.* (2)

J. M. Parikh and *P. V. Subba Row* for the respondents. The respondents submit to any order preventing them from doing anything which obstructs the use of the ghat by the general public, but it is submitted that whatever form the order may take provision should be made for the respondents to have the right to such use of the ghat as may be necessary for the proper discharge of their functions. The use of this ghat by ghatias has been going on for centuries, generation after generation, without any licence. This is the first time that this class of case has come before the Board, and, there being ghats all over India, the judgment will be regarded there as of great importance. Prayag Ghat has, by reason of its dedication to the public, become impressed with the character of public trust property, and the claim of the appellant for a declaration of her proprietary right in the ghat is misconceived, her true position in relation to the property is analogous to that of the dharmakarta or manager of a Hindu temple, and no more. It was said in *Vidya Varuthi Thirtha* v. *Balusami Ayyar* (3) that "It is also to be remembered that a "'' trust ' in the sense in which the expression is used in English "law, is unknown in the Hindu system, pure and simple

(1) (1904) I. L. R. 31 C. 839.
(2) [1893] 1 Q. B. 142.
(3) (1921) L. R. 48 I A 302, 311.

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"Religious institutions, known under different names, are "regarded as possessing the same 'juristic' capacity, and "gifts are made to them eo nomine."

Similar considerations to those in *Chotalal Lakhmiram* v. *Manohar Ganesh Tambekar* (1) are applicable to the present case. The English notions of property must not be adopted; the essence of the Hindu law is that in such circumstances as the present the ownership ceases to belong to the original owner, and he is only superintending. The dedication took place before the sale of 1814 to the appellant's predecessor. A statement of the law as it stands to-day is to be found in Mulla's Principles of Hindu Law, 8th ed., paras. 406 and 407. [Reference was also made to Macnaghten's Hindu Law (1829), vol. i., p. 217, and to *Municipal Board of Cawnpore* v. *Lallu* (2).] The services of the respondents are essential for the proper use by the public of the ghat, and they are entitled both as ghatias ministering to the needs of the pilgrims and as members of the public to use the ghat, and they are not liable to be ejected from it.

P. V. Subba Row followed, and on the history and description of the ghat referred to District Gazetteers of the United Provinces, vol. xxvi., Benares, p. 242; Non-Christian Religious Systems, Hinduism, by Sir Monier Monier-Williams, pp. 171-5; and to Benares, The Sacred City, by E. B. Havell, pp. 90, 106.

C. S. Rewcastle K.C. replied, and referred to Mulla's Principles of Hindu Law, 8th ed., p. 275; to Mayne's Hindu Law, 9th ed., p. 615; 10th ed., p. 913; and to *Jaggamoni Dasi* v. *Nilmoni Ghosal*. (3) There seems to be no support, either in text books or in case law, for the view advanced for the respondents. The whole of the evidence as to dedication is the other way.

Dec. 4. The judgment of their Lordships was delivered by SIR GEORGE RANKIN. The sanctity which Hindu thought and feeling attribute to the Ganges and the special

(1) (1899) L. R. 26 I. A. 199.
(2) (1898) I. L. R. 20 A. 200.
(3) (1882) I. L. R. 9 C. 75.

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veneration which its stream commands as it flows past the holy city of Benares (Kashi) are manifested by the temples and bathing ghats upon the banks. The efficacy of its waters to wash away every form of sin and pollution, is widely accepted doctrine among the orthodox, and brings the Hindu pilgrims in large numbers seeking to acquire religious merit and advantage. According to evidence given in the present case, "Mankarnika, Dasaswamedh, Panch Ganga, Assi and Barna "are the *panch tirthas* of Kashi: one who comes to Kashi "on pilgrimage has to visit all these five places." In this appeal their Lordships are concerned with a bathing ghat which is known as the Pryag or Puthiya ghat, and is covered by the name Dasaswamedh—the name of a mohalla of the city.

The suit was brought on February 15, 1929, in the court of the Additional Subordinate Judge of Benares. The plaintiff was Maharani Hemanta Kumari Debi, widow of the last male owner of the Puthiya Raj estate. She claimed to be owner of the ghat. She will be referred to as "the plaintiff," notwithstanding that pending this appeal she has by relinquishment accelerated the interest of her husband's reversioners, who have been joined with her as appellants to His Majesty in Council. She impleaded six sets of defendants, fourteen persons in all, alleging that they belonged to a class of Brahmins known as ghatias, and that they, and their predecessors, had been allowed by the owners of the ghat to sit on different portions of it in order to gain a livelihood by receiving alms and gifts from pilgrim bathers. She complained that the defendants were abusing the permission granted to them, by altering the condition of the steps, putting down platforms of earth and wood, erecting canopies, and blocking up the free space to the detriment of the utility, cleanliness and beauty of the ghat. She alleged that the defendants were mere squatters; that she had been willing to allow them to continue to sit on the ghat if they would execute written agreements for the proper conduct of the ghat; but that they had failed or refused so to do. She asked for relief in different forms—a declaration that she was the owner of the ghat, and that the defendants

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had no right to sit on any portion of it; an order of ejectment of the defendants; an order for removal of the various obstructions put up by the defendants; and an injunction restraining the defendants "from using any portion of the "said Pryag ghat as ghatias in any season of the year, and "from sitting and squatting over the same for the purposes of "collecting *dan dakshina* from the bathers."

A number of written statements were filed. The defendants numbered 2, 8 and 11 pleaded that they were mere servants of other defendants. The main defence, as pleaded on behalf of the rest, denied the plaintiff's proprietary right, and set up that the ghatias were a community whose business and duty it was to assist bathers; that a ghat necessarily involved a right on the part of some members of this community to occupy portions of it by the use of seats or platforms of the kind known as *chaukis* or *takhts*; that this right was a form of property heritable and transferable by the Hindu law; that the defendants and their ancestors had been in occupation of definite sites on the ghat for hundreds of years; and that they had been guilty of no impropriety. They maintained that a right to occupy sites on the ghat by laying out *chaukis* and *takhts* had become vested in them by lost grant, prescription or custom.

The learned trial judge heard more than twenty witnesses, and by his judgment (June 25, 1930) came to the conclusion that the plaintiff's ownership of the ghat was proved, and that she had a right to sue as owner notwithstanding that the ghat was dedicated to the use of the public for purposes of bathing. He found that the *ghatias* do not belong to any particular class of community, but are called *ghatias* because they sit on the ghats. He thought that there was nothing in any Shastra to show that their presence at the ghat is indispensable for the performance of religious ceremonies, or that a bath in the Ganges would not yield any spiritual benefit unless accompanied by gifts to them. He found that in the case of the plaintiff's ghat, and neighbouring ghats, the ghatias had sat by leave and licence of the owners. He negatived the existence of any customary right in the

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defendants, and found that at no time had any grant of any interest in the ghat been made to them. He further held that they could have no claim by prescription to an exclusive right to occupy any specific portion of a bathing ghat dedicated to the use of the public. In the result, he found for the plaintiff, but, following a practice which is not to be commended, he contented himself with ordering "that the plaintiff's suit as "prayed be decreed," without formally stating the terms of the various orders, declarations and injunctions which he was granting, save by this reference to prayers in the plaint, which might well have been improved by revision.

An appeal to the High Court was taken by a number of the defendants. On March 27, 1935, it came before a Division Bench, who, in referring it to a Full Bench, recorded an order mentioning that before them it was not in dispute that the plaintiff was owner of the ghat, or that the defendants or their predecessors had sat on different portions of the ghat for generations; also that the defendants did not claim any right by virtue of adverse possession, but that they did claim a right of property in the ghat in respect of their long use of it for the purpose of assisting the bathers. A single judgment was given by the Full Bench (Sulaiman C.J., Bajpai and Ganga Nath JJ.) on January 3, 1936. The learned judges maintained the decree of the trial judge in so far as it directed removal of railings, planks, canopies and other articles of obstruction, but discharged the trial judge's order of ejectment and the injunction granted by him to restrain the defendants from using the ghat as ghatias or sitting or squatting over the same. They discharged also the declaration made by the trial judge that the plaintiff was owner of the ghat.

The plaintiff upon this appeal complains of these variations, and asks that the decree of the trial judge be restored.

In the view of the learned judges of the Full Bench the right claimed by the defendants may be divided into two parts: (1.) a right to exclusive possession over specific plots of land, and to place platforms and canopies over them; (2.) the right to minister to the needs of the bathing public, and to receive alms and gifts for their services. As regards the

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first, the Full Bench found some difficulty in appreciating the nature of the right claimed, but they found that ghatias as members of a class have no customary right, and that the individual defendants could have no right by custom to exclusive possession of any parts of the ghat. The claim to such a right by prescription or lost grant was also held to be bad. The Full Bench considered it to be proved that the *takhts* and canopies had been obstructions leaving little space for passage, injurious to the pavement and dangerous to the public using the ghat. In their Lordships' view, the reasons given by the learned judges in their judgment fully justify their order for removal of the obstructions, and their rejection of the defendants' claim to have acquired any rights in this ghat, whether by custom, prescription or grant. The defendants have not appealed from the High Court's decree.

But the Full Bench set aside the trial judge's decree of ejectment and the injunction granted by him on the ground that such relief would interfere with the right of "the bathing "public" to take to the ghat persons who may help in the proper performance of "spiritual ablutions" and ceremonies. It would be inconvenient, in a suit not constituted for the purpose, that an attempt should be made to define with exactness the extent of the user which the public have as of right in this ghat. But if it be assumed that any bather may bring with him his own priest, or his own friend, to assist in ceremonial ablutions, this is not, in their Lordships' view, a valid reason for refusing to the plaintiff an order in ejectment together with a properly framed injunction. The defendants have been sitting on the ghat for the purpose of carrying on their occupation there, and have claimed to be entitled to exclusive possession of parts of the ghat as a right of property. If the plaintiffs' ownership and possession entitle her to relief, then, upon it appearing that the defendants have no such rights as they claim, she is as well entitled to an order that the defendants should remove themselves as to an order for removal of their canopies. They are not persons who come with bathers to the ghat, but persons who cumber the ghat in order to intercept the bathers, and who do so continuously,

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habitually, and as an occupation or profession. A right to stand, sit or squat on the ghat for the purposes of exercising the profession of ghatias may be acquired by consent of the plaintiff but, as matters stand, it is not the right of any of the defendants.

As the rights claimed by the defendants have not been established, it is not clear that they have anything to gain by disputing whether the plaintiff is owner of the ghat or is merely the hereditary superintendent of a religious endowment. In either case she would be entitled to maintain a suit in respect of the grievances complained of, and to obtain the same or similar relief. But as the plaintiff sued as owner, and as the Full Bench appear to have held that she was a mere manager or mutawalli, it is right to consider whether the trial judge's declaration of the plaintiff's ownership was well founded.

A bathing ghat on the banks of the Ganges at Benares is a subject-matter to be considered upon the principles of the Hindu law. If dedicated to such a purpose, land or other property would be dedicated to an object both religious and of public utility, just as much as is a dharamsala or a math, notwithstanding that it be not dedicated to any particular deity. But it cannot from this consideration be at once concluded that in any particular case there has been a dedication in the full sense of the Hindu law, which involves the complete cessation of ownership on the part of the founder and the vesting of the property in the religious institution or object. There may or may not be some presumption arising in respect of this from particular circumstances of a given case, but, in the absence of a formal and express endowment evidenced by deed or declaration, the character of the dedication can only be determined on the basis of the history of the institution and the conduct of the founder and his heirs. That the dedication of property to religious or charitable uses may be complete or partial is as true under the Benares as under the Bengal school of Hindu law. Partial dedication may take place not only where a mere charge is created in favour of an idol or other religious object, but also, as Mr.

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Mayne in his well known work was careful to notice, "where "the owner retained the property in himself, but granted the "community or part of the community an easement over it "for certain specified purposes" (Hindu Law and Usage, 6th ed., 1900, para. 438, p. 567). In *Jaggamoni Dasi* v. *Nilmoni Ghosal* (1) the plaintiff's ancestor had built a temple and bathing ghat, as well as a room and another ghat for use by persons at the point of death. The defendant having used the ghat for the landing of goods, Field J. observed (2) :— "There is here no deed of endowment, and no evidence has "been taken as to the exact purpose and object of this so-called "endowment. The first question which suggests itself is "whether the plaintiff's father, in building these temples, this "*antorjoli* room, and this ghat, intended to give to the Hindu "community a right of easement over the soil, or intended to "transfer the ownership of the buildings as well as the owner- "ship of the soil to such community. It by no means neces- "sarily follows that, because the plaintiff's father erected "this ghat and this *antorjoli* room, and allowed the Hindu "community to use them for the purposes set out in the plaint, "he intended to divest himself of the ownership of the soil, etc."

The judgment of the Full Bench in the present case is open to criticism in respect that it does not take due account of this distinction. Speaking of the tolls collected from shopkeepers on the ghat at festivals, the learned judges, though noticing that no trustee or manager had ever been appointed, and that the plaintiff and her predecessors had bought the land, built the masonry steps and had always looked after and repaired the ghat, say (3) :—"The ghat having been dedicated "to the public, it is not conceivable that the plaintiff or her "predecessors could have ever wished to appropriate its "income to their private use, nor has the plaintiff made any "attempt to show that its income was ever appropriated by "her or her predecessors. It therefore appears that the "plaintiff and her predecessors realised the income of the "ghat and made repairs as a manager or mutawalli and not

(1) (1882) I. L. R. 9 C. 75.
(2) Ibid. 76.
(3) (1936) I. L. R. 58 A. 823–4.

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"as an absolute proprietor. . . . . The plaintiff is not entitled "to a declaration of an absolute proprietary title in the ghat, "as the same has been dedicated to the public, and the plaintiff "has only the right of reversion if ever the ghat ceases to "be used as such."

Another passage deals with the right of the defendants as follows (1): "The ghat having been dedicated to the public, "the defendants could not have acquired any right under any "grant or prescription which might interfere with or limit "the rights of the public. As already stated, there is no "difference in principle between the dedication of a ghat to "the public and the dedication of a high-road."

Now there is the very broadest distinction between saying that the plaintiff's ownership is not absolute because it is qualified by the public's right of user for purposes of bathing, and saying that the plaintiff is not the owner at all, but a mere mutawalli in whom nothing vests because her predecessor had dedicated the ghat in the full sense of divesting himself completely of all interest therein. When in English law the owner of land is said to have dedicated it for a highway it is not intended or implied that his right of ownership has been divested. On the contrary, if any member of the public exceeds the permitted user a right of action in trespass arises to the dedicator or his successor in title by virtue of his ownership and possession: *St. Mary, Newington* v. *Jacobs* (2); *Harrison* v. *Duke of Rutland.* (3) Dedication in the full sense known to the Hindu law is a different matter. In the usual case of complete dedication made to an idol, for example, the property ceases altogether to belong to the donor, and becomes vested in the idol as a juristic person. Complete relinquishment by the owner of his proprietary right is, however, by no means the only form of dedication known to the Hindu law, and is very different from anything that could ordinarily be inferred from the public user of a highway. From the standpoint of the Hindu law "it is not essential to a valid "dedication that the legal title should pass from the owner,

(1) I. L. R. 58 A. 823, 827.
(2) (1871) L. R. 7 Q. B. 47.
(3) [1893] 1 Q. B. 142.

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"nor is it inconsistent with an effectual dedication that the "owner should continue to make any and all uses of the "land which do not interfere with the uses for which it is "dedicated": per Mookerjee J. in *Chairman of the Howrah Municipality* v. *Khetra Krishna Mitra* (1). When the dedication is only partial the property in some parts of India might none the less in common parlance be described as debottar; but whether it be charged with a sum of money for the worship of an idol, or be subjected to a right of limited user on the part of the public, it would descend and be alienable in the ordinary way; "the only difference being," as Mr. Mayne observes in the passage already referred to in this judgment, "that it passes "with the charge upon it." (Hindu Law and Usage, 6th ed., 1900, para. 438, p. 567.)

The conclusion of the Full Bench that the plaintiff had only the right of reversion if ever the ghat ceases to be used as such appears to have been drawn from the mere fact that the ghat was "dedicated to the public." But a review of the history of the ghat and the conduct of the plaintiff and her predecessors is required to determine whether the river bank at this spot was dedicated in such sense as to make an end of private ownership therein. The written statements of the defendants set up that "the land on the bank of the holy "River Ganges between the two confluents of Baruna and Assi "rivulets in the city of Benares is waqf property from time "immemorial, the same having been dedicated to the Hindu "community at large." The exceeding sanctity of the river is not of itself a reason why a pious benefactor of the public should do more than provide access to its waters. Whether the question be limited to the ghat in suit or be enlarged by consideration of the evidence about neighbouring ghats, it seems to their Lordships that there is no substantial ground for holding that the plaintiff's predecessors, or any of them, had divested themselves of all property in this ghat and had accepted the position of having a mere right of management. No express dedication has been proved by production of a deed of endowment or otherwise. No manager has ever been

(1) (1906) 4 Cal. L. J. 343, 348.

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appointed. Not one instance has been shown in which the plaintiff or any predecessor has purported to act as superintendent, sebait or mutawalli. On the contrary, they have been treated as owners whenever by disrepair the ghat has attracted the attention of public authority. They have repaired and substantially improved the ghat at their own expense. They have closed it to bathers on proper occasions, and have levied tolls on the keepers of shops at festivals. That their expenditure upon the ghat has exceeded their receipts, and that they would not wish to make a profit from the tolls is probable enough, but in no way tends to prove that they have parted with all right as owners of the soil. The evidence as to agreements taken from ghatias upon nearby ghats is strong to show that in them the proprietors have retained their rights of ownership notwithstanding that the ghats are public bathing places. The learned trial judge very reasonably thought that the evidence was overwhelming to show the plaintiff's proprietary right, and their Lordships, though bearing well in mind that there was a bathing ghat at this spot before the purchase by the plaintiff's predecessor in 1814, think that there is little to support a contrary view. The river bank at Benares is a sacred and historic spot with a powerful claim to the regard of a pious Hindu; but the practice of bathing in the Ganges is not in general so directly connected with the worship of a particular deity that nothing short of complete dedication would be appropriate for a public bathing ghat. The character of the use to be made of the bank does not require it. Nor does the public right of use for purposes of bathing take its origin as a rule from an immediate and express act of dedication; rather does it begin by acts of user which are acquiesced in by the owner of the property, who in due course makes provision for the public needs as an act of charity or piety. It may well be doubted whether a complete abandonment of the owner's rights is at all usual in the case of public bathing ghats, though it might be common enough in the case of tanks dedicated to the public for bathing purposes; even then, the ownership of the banks would be another matter.

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Their Lordships are of opinion that the declaration made by the trial judge as to the plaintiff's ownership, as well as his order of ejectment against the defendants, was correct. They think that the terms of the permanent injunction to be granted to the plaintiff should restrain the defendants from frequenting the Prayag ghat, without the consent of the plaintiff or her successor in title, for the purpose of acting as ghatias thereon, and from sitting or squatting upon the same without such consent in the exercise of the profession or occupation of ghatias.

They will humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court, dated January 3, 1936, be set aside, and that the decree of the Additional Subordinate Judge of Benares, dated June 25, 1930, be restored, with the variation mentioned as to the terms of the permanent injunction. The respondents will pay the costs of the plaintiff in the High Court and of the appellants in this appeal. The appellants must, however, pay to the respondents the costs of the application to restore the appeal, which had been dismissed for non-prosecution, as directed by the Order in Council of July 25, 1939, and there must be a set-off as regards these costs.

Solicitors for appellants: *Douglas Grant & Dold.*
Solicitor for respondents: *Harold Shephard.*

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Bhagwati J.

lant to the respondent formed the basis of the enquiry which was held by the General Manager and the appellant could not be allowed to justify its action on any other grounds than those contained in the charge-sheet. The respondent not having been charged with the acts of insubordination which would have really justified the appellant in dismissing him from its employ, the appellant could not take advantage of the same even though these acts could be brought home to him. We have, therefore, come to the conclusion that the order made by the Labour Appellate Tribunal was correct even though we have done so on grounds other than those which commended themselves to it.

We accordingly dismiss this appeal but having regard to the conduct of the respondent which we have characterised above as reprehensible we feel that the ends of justice will be met if we ordered that each party do bear and pay its own costs of this appeal.

Appeal dismissed.

1956

October 4

DEOKI NANDAN
v.
MURLIDHAR.

[JAGANNADHADAS, VENKATARAMA AYYAR, B. P. SINHA and S. K. DAS JJ.]

Hindu Law—Religious endowment—Temple—Public or private—Question of mixed fact and law—Gift to idol—Whether worshippers are the beneficiaries—Dedication to public—Construction of will—Ceremonies relating to installation of idol—User of temple.

The issue whether a religious endowment is a public or a private one is a mixed question of law and fact the decision of which must depend on the application of legal concepts of a public and a private endowment to the facts found and is open to consideration by the Supreme Court.

Lakshmidhar Misra v. *Rangalal* ([1949] L.R. 76 I.A. 271), referred to.

The distinction between a private and a public endowment is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof,

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Though under Hindu law an idol is a juristic person capable of holding property and the properties endowed for the temple vest in it, it can have no beneficial interest in the endowment, and the true beneficiaries are the worshippers, as the real purpose of a gift of properties to an idol is not to confer any benefit on God, but the acquisition of spiritual benefit by providing opportunities and facilities for those who desire to worship.

Prosunno Kumari Debya v. *Golab Chand Baboo* ([1875] L.R. 2 I.A. 145), *Maharaja Jagadindra Nath Roy Bahadur* v. *Rani Hemanta Kumari Debi* ([1904] L.R. 31 I.A. 203), *Pramatha Nath Mullik* v. *Pradhyumna Kumar Mullik* ([1924] L.R. 52 I.A. 245) and *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra* ([1910] I.L.R. 37 Cal. 128), referred to.

A pious Hindu who was childless constructed a temple and was in management of it till his death. He executed a will whereby he bequeathed all his lands to the temple and made provision for its proper management. The question was whether the provisions of the will disclosed an intention on the part of the testator to dedicate the temple to the public or merely to the members of the family.

Held, that the recital in the will that the testator had no sons coupled with provisions for the management of the trust by strangers was an indication that the dedication was to the public.

Nabi Shirazi v. *Province of Bengal* (I.L.R. [1942] 1 Cal. 211), referred to.

Held further, that the performance of ceremonies at the consecration of the temple (*Prathista*), the user of the temple and other evidence in the case showed that the dedication was for worship by the general public.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 250 of 1953.

Appeal from the judgment and decree dated July 14, 1948 of the Chief Court of Audh, Lucknow in Second Appeal No. 365 of 1945 arising out of the decree dated May 30, 1945 of the Court of District Judge, Sitapur in Appeal No. 4 of 1945 against the decree dated November 25, 1944 of the Court of Additional Civil Judge, Sitapur in Regular Civil Suit No. 14 of 1944.

A. D. Mathur, for the appellant.

Jagdish Chandra, for respondent No. 1.

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Deoki Nandan v. Murlidhar

1956. October 4. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—The point for decision in this appeal is whether a Thakurdwara of Sri Radhakrishnaji in the village of Bhadesia in the District of Sitapur is a private temple or a public one in which all the Hindus are entitled to worship.

One Sheo Ghulam, a pious Hindu and a resident of the said village, had the Thakurdwara constructed during the years 1914-1916, and the idol of Shri Radhakrishnaji ceremoniously installed therein. He was himself in management of the temple and its affairs till 1928 when he died without any issue. On March 6, 1919, he had executed a will whereby he bequeathed all his lands to the Thakur. The provisions of the will, in so far as they are material, will presently be referred to. The testator had two wives one of whom Ram Kuar, had predeceased him and the surviving widow, Raj Kuar, succeeded him as Mutawalli in terms of the will and was in management till her death in 1933. Then the first defendant, who is the nephew of Sheo Ghulam, got into possession of the properties as manager of the endowment in accordance with the provisions of the will. The appellant is a distant agnate of Sheo Ghulam, and on the allegation that the first defendant had been mismanaging the temple and denying the rights of the public therein, he moved the District Court of Sitapur for relief under the Religious and Charitable Endowments Act XIV of 1920, but the court declined to interfere on the ground that the endowment was private. An application to the Advocate-General for sanction to institute a suit under section 92 of the Code of Civil Procedure was also refused for the same reason. The appellant then filed the suit, out of which the present appeal arises, for a declaration that the Thakurdwara is a public temple in which all the Hindus have a right to worship. The first defendant contested the suit, and claimed that "the Thakurdwara and the idols were private", and that "the general public had no right to make any interference".

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The Additional Civil Judge, Sitapur, who tried the suit was of the opinion that the Thakurdwara had been built by Sheo Ghulam "for worship by his family", and that it was a private temple. He accordingly dismissed the suit. This judgment was affirmed on appeal by the District Judge, Sitapur, whose decision again was affirmed by the Chief Court of Oudh in second appeal. The learned Judges, however, granted a certificate under s. 109(c) of the Code of Civil Procedure that the question involved was one of great importance, and that is how the appeal comes before us.

The question that arises for decision in this appeal whether the Thakurdwara of Sri Radhakrishnaji at Bhadesia is a public endowment or a private one is one of mixed law and fact. In *Lakshmidhar Misra v. Rangalal*(1), in which the question was whether certain lands had been dedicated as cremation ground, it was observed by the Privy Council that it was "essentially a mixed question of law and fact", and that while the findings of fact of the lower appellate court must be accepted as binding, its "actual conclusion that there has been a dedication or lost grant is more properly regarded as a proposition of law derived from those facts than as a finding of fact itself". In the present case, it was admitted that there was a formal dedication; and the controversy is only as to the scope of the dedication, and that is also a mixed question of law and fact, the decision of which must depend on the application of legal concepts of a public and a private endowment to the facts found, and that is open to consideration in this appeal.

It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is public or private, and then to examine, in the light of those principles, the facts found or established. The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are

(1) [1949] L.R. 76 I.A. 271.

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ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment. The position is thus stated in Lewin on Trusts, Fifteenth Edition, pp. 15-16:

"By public must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained....".

Vide also the observations of Mitter J. in *Nabi Shirazi* v. *Province of Bengal*(1). Applying this principle, a religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof.

Then the question is, who are the beneficiaries when a temple is built, idol installed therein and properties endowed therefor? Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it. But does it follow from this that it is to be regarded as the beneficial owner of the endowment? Though such a notion had a vogue at one time, and there is an echo of it in these proceedings (vide para 15 of the plaint), it is now established beyond all controversy that this is not the true position. It has been repeatedly held that it is only in an ideal sense that the idol is the owner of the endowed properties. Vide *Prosunno Kumari Debya* v. *Golab Chand Baboo*(2); *Maharaja Jagadindra Nath Roy Bahadur* v. *Rani Hemanta Kumari Debi*(3) and *Pramatha Nath Mullik* v. *Pradhyumna Kumar Mullik*(4). It cannot itself make use of them; it cannot enjoy them or dispose of them, or even protect them. In short, the idol can have no beneficial interest in the endowment. This was clearly

(1) I.L.R. [1942] 1 Cal. 211, 227, 228.
(2) [1875] L.R. 2 I.A. 145, 152.
(3) [1904] L.R. 31 I.A. 203.
(4) [1924] L.R. 52 I.A. 245.

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laid down in the Sanskrit Texts. Thus, in his Bhashya on the Purva Mimamsa, Adhyaya 9, Pada 1, Sabara Swami has the following:

देवग्रामो, देवक्षेत्रमिति, उपचारमात्रम्। यो यदभिप्रेतं विनियोक्तुमर्हति, तत्तस्य स्वम्। न च ग्रामं क्षेत्रं वा यथाभिप्रायं विनियुङ्क्ते देवता। तस्मान्न संप्रयच्छतीति। देवपरिचारकाणां तु ततो भूतिर्भवति, देवतामुद्दिश्य यत् त्यक्तम्।

"Words such as 'village of the Gods', 'land of the Gods' are used in a figurative sense. That is property which can be said to belong to a person, which he can make use of as he desires. God however does not make use of the village or lands, according to its desires. Therefore nobody makes a gift (to Gods). Whatever property is abandoned for Gods, brings prosperity to those who serve Gods".

Likewise, Medhathithi in commenting on the expression "Devaswam" in Manu, Chapter XI, Verse 26 writes:

देवानुद्दिश्य, यागादि क्रियार्थं धनं यदुत्सृष्टं, तद्देवस्वम्, मुख्यस्य स्वस्वामिसंबन्धस्य, देवानां असंभवात्। न हि देवता इच्छया धनं नियुञ्जते। न च परिपालनव्यापारस्तासां दृश्यते।

"Property of the Gods, Devaswam, means whatever is abandoned for Gods, for purposes of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the property owned, is impossible of application to Gods. For the Gods do not make use of the property according to their desire nor are they seen to act for protecting the same".

Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (*Gaunartha*), and the true purpose of a gift of properties to the idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship.

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In *Bhupati Nath Smritititirtha* v. *Ram Lal Maitra*(1), it was held on a consideration of these and other texts 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 *Hindu Religious Endowments Board* v. *Veeraraghavachariar*(2), Varadachariar J. dealing with this question, referred to the decision in *Bhupati Nath Smritititirtha* v. *Ram Lal Maitra* (supra) and observed:

"As explained in that case, the 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".

When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family,

(1) [1910] I.L.R. 37 Cal. 128. (2) A.I.R. 1937 Mad. 750.

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and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

In the light of these principles, we must examine the facts of this case. The materials bearing on the question whether the Thakurdwara is a public temple or a private one may be considered under four heads: (1) the will of Sheo Ghulam, Exhibit A-1, (2) user of the temple by the public, (3) ceremonies relating to the dedication of the Thakurdwara and the installation of the idol with special reference to *Sankalpa* and *Uthsarga*, and (4) other facts relating to the character of the temple.

(1) The will, Exhibit A-1, is the most important evidence on record as to the intention of the testator and the scope of the dedication. Its provisions, so far as they are material, may now be noticed. The will begins with the recital that the testator has two wives and no male issue, that he has constructed a Thakurdwara and installed the idol of Sri Radhakrishnaji therein, and that he is making a disposition of the properties with a view to avoid disputes. Clause 1 of Exhibit A-1 provides that after the death of the testator "in the absence of male issue, the entire immovable property given below existing at present or which may come into being hereafter shall stand endowed in the name of Sri Radhakrishnaji, and mutation of names shall be effected in favour of Sri Radhakrishnaji in the Government papers and my wives Mst. Raj Kuer and Mst. Ram Kuer shall be the Mutawallis of the waqf". Half the income from the properties is to be taken by the two wives for their maintenance during their lifetime, and the remaining half was to "continue to be spent for the expenses of the Thakurdwara". It is implicit in this provision that after the lifetime of the wives, the whole of the income is to be utilised for the purpose of the Thakurdwara. Clause 4 provides that if a son is born to the testator, then the properties are to be divided between the son and the Thakurdwara in a specified

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proportion; but as no son was born, this clause never came into operation. Clause 5 provides that the Mutawallis are to have no power to sell or mortgage the property, that they are to maintain accounts, that the surplus money after meeting the expenses should be deposited in a safe bank and when funds permit, property should be purchased in the name of Sri Radhakrishnaji. Clause 2 appoints a committee of four persons to look after the management of the temple and its properties, and of these, two are not relations of the testator and belong to a different caste. It is further provided in that clause that after the death of the two wives the committee "*may* appoint my nephew Murlidhar as Mutawalli by their unanimous opinion". This Murlidhar is a divided nephew of the testator and he is the first defendant in this action. Clause 3 provides for filling up of vacancies in the committee. Then finally there is cl. 6, which runs as follows:

"If any person alleging himself to be my near or remote heir files a claim in respect of whole or part of the waqf property his suit shall be improper on the face of this deed".

The question is whether the provisions of the will disclose an intention on the part of the testator that the Thakurdwara should be a private endowment, or that it should be public. The learned Judges of the Chief Court in affirming the decisions of the courts below that the temple was built for the benefit of the members of the family, observed that there was nothing in the will pointing "to a conclusion that the trust was a public one", and that its provisions were not "inconsistent with the property being a private endowment". We are unable to endorse this opinion. We think that the will read as a whole indubitably reveals an intention on the part of the testator to dedicate the Thakurdwara to the public and not merely to the members of his family.

The testator begins by stating that he had no male issue. In *Nabi Shirazi* v. *Province of Bengal* (supra), the question was whether a wakf created by a deed of the year 1806 was a public or a private

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endowment. Referring to a recital in the deed that the settlor had no children, Khundkar J. observed at p. 217:

"The deed recites that the founder has neither children nor grandchildren, a circumstance which in itself suggests that the imambara was not to remain a private or family institution".

Vide also the observations of Mitter J. at p. 228. The reasoning on which the above view is based is, obviously, that the word 'family' in its popular sense means children, and when the settlor recites that he has no children, that is an indication that the dedication is not for the benefit of the family but for the public.

Then we have clause 2, under which the testator constitutes a committee of management consisting of four persons, two of whom were wholly unrelated to him. Clause 3 confers on the committee power to fill up vacancies; but there is no restriction therein on the persons who could be appointed under that clause, and conceivably, even all the four members might be strangers to the family. It is difficult to believe that if Sheo Ghulam intended to restrict the right of worship in the temple to his relations, he would have entrusted the management thereof to a body consisting of strangers. Lastly, there is clause 6, which shows that the relationship between Sheo Ghulam and his kinsmen was not particularly cordial, and it is noteworthy that under clause 2, even the appointment of the first defendant as manager of the endowment is left to the option of the committee. It is inconceivable that with such scant solicitude for his relations, Sheo Ghulam would have endowed a temple for their benefit. And if he did not intend them to be beneficiaries under the endowment, who are the members of the family who could take the benefit thereunder after the lifetime of his two wives? If we are to hold that the endowment was in favour of the members of the family, then the result will be that on the death of the two wives, it must fail for want of objects. But it is clear from the provisions of the will that the testator contemplated the continuance

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of the endowment beyond the lifetime of his wives. He directed that the properties should be endowed in the name of the deity, and that lands are to be purchased in future in the name of the deity. He also provides for the management of the trust after the lifetime of his wives. And to effectuate this intention, it is necessary to hold that the Thakurdwara was dedicated for worship by members of the public, and not merely of his family. In deciding that the endowment was a private one, the learned Judges of the Chief Court failed to advert to these aspects, and we are unable to accept their decision as correct.

2. In the absence of a deed of endowment constituting the Thakurdwara, the plaintiff sought to establish the true scope of the dedication from the user of the temple by the public. The witnesses examined on his behalf deposed that the villagers were worshipping in the temple freely and without any interference, and indeed, it was even stated that the Thakurdwara was built by Sheo Ghulam at the instance of the villagers, as there was no temple in the village. The trial Judge did not discard this evidence as unworthy of credence, but he held that the proper inference to be drawn from the evidence of P.W. 2 was that the public were admitted into the temple not as a matter of right but as a matter of grace. P.W. 2 was a pujari in the temple, and he deposed that while Sheo Ghulam's wife was doing puja within the temple, he stopped outsiders in whose presence she used to observe purdah, from going inside. We are of opinion that this fact does not afford sufficient ground for the conclusion that the villagers did not worship at the temple as a matter of right. It is nothing unusual even in well-known public temples for the puja hall being cleared of the public when a high dignitary comes for worship, and the act of the pujari in stopping the public is expression of the regard which the entire villagers must have had for the wife of the founder, who was a pardanashin lady, when she came in for worship, and cannot be construed as a denial of their rights. The learned Judges of the Chief Court also relied on the decision

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of the Privy Council in *Babu Bhagwan Din* v. *Gir Har Saroon*(1) as an authority for the position that "the mere fact that the public is allowed to visit a temple or thakurdwara cannot necessarily indicate that the trust is public as opposed to private". In that case, certain properties were granted not in favour of an idol or temple but in favour of one Daryao Gir, who was maintaining a temple and to his heirs in perpetuity. The contention of the public was that subsequent to the grant, the family of Daryao Gir must be held to have dedicated the temple to the public for purpose of worship, and the circumstance that members of the public were allowed to worship at the temple and make offerings was relied on in proof of such dedication. In repelling this contention, the Privy Council observed that as the grant was initially to an individual, a plea that it was subsequently dedicated by the family to the public required to be clearly made out, and it was not made out merely by showing that the public was allowed to worship at the temple "since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away". But, in the present case, the endowment was in favour of the idol itself, and the point for decision is whether it was a private or public endowment. And in such circumstances, proof of user by the public without interference would be cogent evidence that the dedication was in favour of the public. In *Mundancheri Koman* v. *Achuthan*(2), which was referred to and followed in *Babu Bhagwan Din* v *Gir Har Saroon*(1), the distinction between user in respect of an institution which is initially proved to have been private and one which is not, is thus expressed:

"Had there been any sufficient reason for holding that these temples and their endowment were originally dedicated for the tarwad, and so were private trusts, their Lordships would have been slow to hold that the admission of the public in later times possibly owing to altered conditions, would affect the private character of the trusts. As it is, they are of

(1) [1939] L.R. 67 I.A. 1. (2) [1934] L.R. 61 I.A. 405.

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opinion that the learned Judges of the High Court were justified in presuming from the evidence as to public user which is all one way that the temples and their endowment were public religious trusts".

We are accordingly of opinion that the user of the temple such as is established by the evidence is more consistent with its being a public endowment.

3. It is settled law that an endowment can validly be created in favour of an idol or temple without the performance of any particular ceremonies, provided the settlor has clearly and unambiguously expressed his intention in that behalf. Where it is proved that ceremonies were performed, that would be valuable evidence of endowment, but absence of such proof would not be conclusive against it. In the present case, it is common ground that the consecration of the temple and the installation of the idol of Sri Radhakrishnaji were made with great solemnity and in accordance with the Sastras. P. W. 10, who officiated as Acharya at the function has deposed that it lasted for seven days, and that all the ceremonies commencing with *Kalasa Puja* and ending with *Sthapana* or *Prathista* were duly performed and the idols of Sri Radhakrishnaji, Sri Shivji and Sri Hanumanji were installed as ordained in the Prathista Mayukha. Not much turns on this evidence, as the defendants admit both the dedication and the ceremonies, but dispute only that the dedication was to the public.

In the court below, the appellant raised the contention that the performance of *Uthsarga* ceremony at the time of the consecration was conclusive to show that the dedication was to the public, and that as P. W. 10 stated that *Prasadothsarga* was performed, the endowment must be held to be public. The learned Judges considered that this was a substantial question calling for an authoritative decision, and for that reason granted a certificate under section 109(c) of the Code of Civil Procedure. We have ourselves read the Sanskrit texts bearing on this question, and we are of opinion that the contention of the appellant proceeds on a misapprehension. The ceremonies relating to dedication are *Sankalpa*, *Uthsarga* and *Pra-*

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thista. *Sankalpa* means determination, and is really a formal declaration by the settlor of his intention to dedicate the property. *Uthsarga* is the formal renunciation by the founder of his ownership in the property, the result whereof being that it becomes impressed with the trust for which he dedicates it. Vide The Hindu Law of Religious and Charitable Trust by B. K. Mukherjea, 1952 Edition, p. 36. The formulae to be adopted in *Sankalpa* and *Uthsarga* are set out in Kane's History of Dharmasastras, Volume II, p. 892. It will be seen therefrom that while the *Sankalpa* states the objects for the realisation of which the dedication is made, it is the *Uthsarga* that in terms dedicates the properties to the public (*Sarvabhutebyah*). It would therefore follow that if *Uthsarga* is proved to have been performed, the dedication must be held to have been to the public. But the difficulty in the way of the appellant is that the formula which according to P. W. 10 was recited on the occasion of the foundation was not *Uthsarga* but *Prasadothsarga*, which is something totally different. '*Prasada*' is the '*mandira*', wherein the deity is placed before the final installation or *Prathista* takes place, and the Prathista Mayukha prescribes the ceremonies that have to be performed when the idol is installed in the *Prasada*. *Prasadothsarga* is the formula to be used on that occasion, and the text relating to it as given in the Mayukha runs as follows:

"ततः.....प्रासादोत्सर्गं कुर्यात्। तत्र मासपक्षाद्युल्लिख्य, इमं शिलेष्टकादार्वादिनिर्मितं.....तत्तद्देवतालोकावाप्तिकामः, कुलद्वयानुग्रहाय, अमुकदेवताप्रीतये, अहमुत्सृजामीति, कुशयवजलानि क्षिप्त्वा, देवं नत्वा, ब्राह्मणान् भोजयेदिति।"

It will be seen that this is merely the *Sankalpa* without the *Uthsarga*, and there are no words therein showing that the dedication is to the public. Indeed, according to the texts, *Uthsarga* is to be performed only for charitable endowments, like construction of tanks, rearing of gardens and the like, and not for religious foundations. It is observed by Mr. Mandlik in the Vyavahara Mayukha, Part II, Appendix II, p. 339

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that "there is no *utsarga* of a temple except in the case of repair of old temples". In the History of Dharmasastras, Volume II, Part II, p. 893, it is pointed out by Mr. Kane that in the case of temples the proper word to use is *Prathista* and not *Uthsarga*. Therefore, the question of inferring a dedication to the public by reason of the performance of the *Uthsarga* ceremony cannot arise in the case of temples. The appellant is correct in his contention that if *Uthsarga* is performed the dedication is to the public, but the fallacy in his argument lies in equating *Prasadothsarga* with *Uthsarga*. But it is also clear from the texts that *Prathista* takes the place of *Uthsarga* in dedication of temples, and that there was *Prathista* of Sri Radhakrishnaji as spoken to by P.W. 10, is not in dispute. In our opinion, this establishes that the dedication was to the public.

(4) We may now refer to certain facts admitted or established in the evidence, which indicate that the endowment is to the public. Firstly, there is the fact that the idol was installed not within the precincts of residential quarters but in a separate building constructed for that very purpose on a vacant site. And as pointed out in *Delroos Banoo Begum* v. *Nawab Syud Ashgur Ally Khan*(1), it is a factor to be taken into account in deciding whether an endowment is private or public, whether the place of worship is located inside a private house or a public building. Secondly, it is admitted that some of the idols are permanently installed on a pedestal within the temple precincts. That is more consistent with the endowment being public rather than private. Thirdly, the puja in the temple is performed by an archaka appointed from time to time. And lastly, there is the fact that there was no temple in the village, and there is evidence on the side of the plaintiff that the Thakurdwara was built at the instance of the villagers for providing a place of worship for them. This evidence has not been considered by the courts below, and if it is true, that will be decisive to prove that the endowment is public.

(1) [1875] 15 Ben. L.R. 167, 186.

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It should be observed in this connection that though the plaintiff expressly pleaded that the temple was dedicated "for the worship of the general public", the first defendant in his written statement merely pleaded that the Thakurdwara and the idols were private. He did not aver that the temple was founded for the benefit of the members of the family. At the trial, while the witnesses for the plaintiff deposed that the temple was built with the object of providing a place of worship for all the Hindus, the witnesses examined by the defendants merely deposed that Sheo Ghulam built the Thakurdwara for his own use and "for his puja only". The view of the lower court that the temple must be taken to have been dedicated to the members of the family goes beyond the pleading, and is not supported by the evidence in the case. Having considered all the aspects, we are of opinion that the Thakurdwara of Sri Radhakrishnaji in Bhadesia is a public temple.

In the result, the appeal is allowed, the decrees of the courts below are set aside, and a declaration granted in terms of para 17(a) of the plaint. The costs of the appellant in all the courts will come out of the trust properties. The first defendant will himself bear his own costs throughout.

Appeal allowed.

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List of Statutes

Government Control over Temples:

I. State wise Statutes:

1. Act XI of 1864 (abolishing the role of pundits in the court of law)*
2. Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (amended up to 2015)
3. Bihar Hindu Religious Trusts Act, 1950 (amended up to 2013)
4. Bombay Public Trusts (Gujarat Amendment) Act 1961
5. Bombay Public Trusts Act, 1950 (subsequently renamed as Maharashta Public Trusts Act 1950) r/w Bombay Public Trusts Rules, 1951
6. Charitable Endowments Act 1890
7. Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 r/w Karnataka Hindu Religious Institutions and Charitable Endowments Rules, 2002
8. Orissa Hindu Religious Endowments Act, 1951 (Amended up to 2018)
9. The Oudh Laws Act, 1876
10. The Himachal Pradesh Hindu Public Religious Institutions and Charitable Endowments Act, 1984
11. The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997.
12. The Madhya Pradesh Public Trusts Act, 1951 has been repealed by the Bombay Public Trusts (Unification and Amendment) Act, 1959-(Bombay Act No. VI of 1960).
13. The Madras Hindu Religious And Charitable Endowments Act, 1951
14. The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
15. The Travancore-Cochin Hindu Religious Institutions Act 1949
16. The Travancore-Cochin Hindu Religious Institutions Act, 1950 (amended up to 2007)
17. Travancore-Cochin Hindu Religious Institutions (Amendment) Act, 2018.
18. Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950

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19. Uttar Pradesh Hindu Religious Institutions (Prevention of Dissipation of Properties) (Repeal) Act, 2000

II. Specific Statutes For Temples:

1. Shri Jagannath Temple Act 1955
2. Jammu and Kashmir Mata Vaishnodevi Shrine Act 1988
3. The Uttar Pradesh Shri Badrinath and Shri Kedarnath Temples Act, 1939
4. The Uttar Pradesh Badrinath Temple Amendment Act 1963
5. The Uttar Pradesh Kashi Vishwanath Temples Act, 1983
6. Tirumala Tirupati Devasthanams Act 1932
7. The Bodh Gaya Temple Act 1949
8. The Pandharpur Temples Act 1973
9. The Shree Sai Baba Sansthan Trust (Shirdi) Act 2004

III. Whether land can be separated and retained while handing over temple administration to Government during process of "nationalization of temple"?

1. Shri Jagannath Temple Act 1955

Section 16. Alienation of the Temple properties :–

(1) No movable property of a nonperishable nature of which the Committee is in possession and the value of which is more than Rs. 50,000 [fifty thousand rupees] and no Jewelleries shall be sold, pledged or otherwise alienated **without the previous approval of the State Government.**

(2) Save as otherwise expressly provided in this Act **no immovable property** taken possession of by the Committee shall be leased out for more than five years or mortgaged, **sold or otherwise alienated except with the previous sanction of the State Government**.

[(3)Any transfer of immovable property recorded in the name of Lord Jagannath of Puri by any person including any institution being the Marfatdar of such property shall be absolutely null and void and of no force or effect whatsoever, unless [Chief

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Administrator] or any officer authorised by him in writing in this behalf, execute the deed of such transfer as one of the executant.
(4) Notwithstanding anything contained in the Registration Act, 1908 (Act 16 of 1908) no deed of transfer of any immovable property executed in contravention of the provisions of sub-section (3) above shall be accepted for registration.]

Section 16-A. Removal of encroachment of Temple Land :–

(1) The provisions contained in the Orissa Prevention of Land Encroachment 2 [Act, 1972] 2
[Orissa Act 6 of 1972] shall be applicable, as far as may be, in respect of unauthorized occupation of any land belonging to the Temple as if it were property of Government within the meaning of that Act.
(2) 1 [Chief Administrator] may with the prior approval of the Committee, make an application for taking up appropriate proceedings under the said Act to the authority competent there under and thereupon it shall be lawful for such authority to take action in accordance with the provisions contained in that Act.

Case Law: Deben Sethi and others v. State of Orissa and others: 2012 (Supp,-I) OLR 656
(Land Committee took decision to dispose of the landed properties of Lord Jagannath to persons, who were possessing the land with permanent structure since long- Government of Orissa approved the recommendation of the Land Committee Petitioners' possession over land is disputed - Enquiry report reveals that Ac. 0.018 decimals of land was found to be lying vacant without being surrounded by fence - petitioners also could not show any document regarding their possession over Ac. 0.018 decimals - Held, no right, title and interest accrue or have accrued in favour of petitioners in respect of the land in question belonging to Lord Jagannath

2. Jammu and Kashmir Mata Vaishnodevi Shrine Act 1988

Statement of Objects: An Act to provide for better management, maintainenance and better governance of Shri Mata Vaishno Devi shrine and its endowments including the lands and buildings attached or apartment to the Shrine , beginning from Katra up to the holy Cave and the adjoining hill locks currently under the Dharmath Trust.

Section 3(b): "Endowment" means all the property movable or immovable belonging to, or given or endowment for the improvement, maintenance of the worship in the Shrine or for the performance of any service or charity connected there with and includes the idols install there in, the premises of the Shrine, the land, buildings attached and appurtenant there to, beginning from Katra up to the Holy Cave and the adjoining

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Hill locks currently under the Dharmath Trust or property belonging to Baridar or baridar (s) association with in the area specified in the preamble of this Act

3. Uttar Pradesh Shri Badrinath [And Shri Kedarnath] Temples Act, 1932 (amended up to 2002)

Section 3(b): Endowment: means all property, movable or immovable belonging to, or given or endowed for the maintenance or improvement or additions to or worship in the Temple or for the performance of any service or charity connected there with and includes the idols is installed therein, the premises of the Temple and gifts of property made to anyone within the precincts of the Temple

Section 3 (c): 'Temple fund' means the Endowment and includes all sums received by or on behalf of, or for the time being held for the benefit of the Temple, and also include all the endowments which have been or may hereafter be made of the Temple or any other deity thereof in the name of any person or for the convenience, comfort or benefit of the pilgrims thereto, as well as all offerings made to, any of the deities comprised in the Temple;

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Section 4: The ownership of the temple fund shall vest in the deity of Shri Badrinath of Shri Kedarnath as the case may be, and the committee shall be entitled to its possession.

4. The Uttar Pradesh Kashi Vishwanath Temples Act, 1983

Section 5: Vesting of the Temple and its Endowments

The ownership of the temple and its endowments will rest in the deity of Kashi Vishwanath

Section 13: Board to be in possession of the temple and its properties

(1) The Board shall be entitled to take and be in possession of all the movable and immovable properties, cash, valuables, jewelleries, records, document, material object or other asset, as aforesaid shall, subject to all just exceptions, produce and deliver the same, when required, under this Act to the Chief Executive Officer.

5. Tirumala Tirupati Devasthanams Act 1932

The Temple was established as a result of Tirumala Tirupathi Devasthanam Act, 1932 (in short 'TTD Act'). The aforesaid Act was followed in 1933 by a special Act in

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1951 whereby the administration of the Temple was handed over to the control of the Andhra Pradesh Government.

Since the enactment of the Hindu Charitable and Religious Institutions Act, 1989, the management and administration vests in the Board called "TTD Board" constituted under Section 96 of the aforesaid Act.The Andhra Pradesh Charitable and Hindu Religious Institution and Endowments Act (1969), sections 85 to 91, expanded the provisions of TTD. The A.P. Charitable & Hindu Religious Institutions & Endowments Act (1987) superseded the 1979 act.

6. The Bodh Gaya Temple Act 1949 (amended in 2013 to allow entry to non-hindus)

Section 8. Limitations on Committee's Powers to alienate property:

(1) No movable property of a non-perish able nature appertaining to the temple shall be transferred without the previous sanction of the Committee, and, if the value of the property is more than one thousand rupees, without the previous approval of the [State] Government.
(2) No immovable property appertaining to the temple shall be leased for more than three years or mortgaged, sold or otherwise alienated except with the previous sanction of the committee and the [State] Government.

7. The Pandharpur Temples Act 1973

Section 32(1) The Committee shall have power –

(d) to undertake any scheme or plan for the purpose od augmenting the revenues of the endowment and registered trust and execute them;
(e) to inquire into and to take steps to recover and take possession of the properties of the endowment and registered trusts, and execute them
(f) **to dispose of any property of the endowment or of the registered trusts**, and to borrow money with the previous sanction of the Charity Commissioner, subject to terms and conditions as maybe agreed to in this situation.

8. The Shree Sai Baba Sansthan Trust (Shirdi) Act 2004

Section 3: *Reconstitution of Sansthan trust and transfer to and vesting of properties in that Trust.*

(1): On the appointed day, in place of the public trust registered under the *Bombay Public Trusts Act, 1950, by the name of "Shirdi Sansthan of Shri Sai Baba" at Shirdi, District Ahmednagar (hereinafter referred to as "the erstwhile trust"), a trust by the name of "the Shree Sai Baba Sansthan Trust (Shridi)", shall be deemed to be re-constituted under this Act.

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(2) **On the appointed day, all the properties, whether movable or immovable (including all assets, rights, liabilities and obligations) of the erstwhile trust shall, by virtue of this Act, stand transferred to and vested in, the Sansthan Trust and the Executive Officer shall, on behalf of the Committee, be entitled to their possession and management from that day.**

Section 4: *Transfer of possession of properties to Sansthan Trust and transfer to and vesting of properties in that trust*

(1) The Board of Management of the erstwhile trust and every other person in possession of any immovable property of the erstwhile trust, which has vested under section 3 in the Sansthan Trust, shall hand over possession thereof, alongwith movable property thereon with a full inventory, to the Executive Officer on behalf of the Committee forthwith but in any case not later than one month or such longer period as may be allowed by the Committee, in writing.

(2) The Board of Management of the erstwhile trust and every other person in possession of the movable property of the erstwhile trust which is in the form of deposits in banks or investment in shares shall, within thirty days or such longer period not exceeding sixty days in the aggregate from the appointed day, as the Committee may allow, transfer or cause to be transferred, such property, with a full inventory, to the Executive Officer on behalf of the Committee.

(3) The Executive Officer shall prepare a list of the entire movable and immovable property vested under section 3 in the Sansthan Trust showing detailed description and approximate value of each property and submit a copy thereof to the Charity Commissioner and the Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department, within ninety days from the appointed day. The original list of the properties shall be preserved permanently in the office of the Sansthan Trust.

(4) Where any property is handed over or transferred as provided under subsection (1) or (2), the Executive Officer shall, after due verification of the inventory, pass a receipt in writing for the same to the transferor, and thereupon, the Executive Officer shall be responsible for safe custody of such property.

(5) The Board of Management of the erstwhile trust and every other person who has handed over or transferred any property of the erstwhile trust to the Executive Officer and obtained the receipt thereof under sub-section (4) shall, stand indemnified, released and discharged from all accounts, suits or other legal proceedings, claims and demands or liability in respect of that property.

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