2024:DHC:3610

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 2 April 2024
Pronounced on: 6 May 2024

\+ EX.F.A. 42/2023 and CM APP No. 52484/2023

ANKIT MISHRA & ANR. ..... Appellants
Through: Mr. Abhishek Grover, Adv.

versus

SANTOSH SHARMA & ORS. ..... Respondents
Through: Mr. Sarojanand Jha, Ms. Rajreeta Ghosh, & Mr. Rahul Kumar, Advs. for R5

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% 06.05.2024

1. I never thought that God would, one day, be a litigant before me.

2. This appears, however, thankfully, to be a case of Divinity By Proxy.

The *lis*

3. Appellant 2 in this appeal is Lord Hanuman, worshipped by millions across the globe and known by over a thousand names, among them Anjaneya and Bajrangbali. Appellant 1 Ankit Mishra is a 31 year old youth, who claims to be the next friend of Appellant 2.

The corpus of the dispute is a property situated at T-201, Jain Colony, Part-I, Uttam Nagar, New Delhi.

CS 642/2019, from which the present appeal originates

4. Respondent 5 Suraj Malik instituted a suit (CS 642/2019) against Lakhan Lal Sharma as Defendant 1 and Respondent 1 Santosh Sharma, as Defendant 2, before the learned Additional District Judge ("the learned ADJ"). Lakhan Lal Sharma and Santosh Sharma were husband and wife. The case set up by Suraj Malik in the suit may be stated thus:

(i) Respondents 2 to 4 Yogesh Sharma, Pankaj Sharma and Jyoti Sharma are the children of Lakhan Lal Sharma and Santosh Sharma. Lakhan Lal Sharma expired on 27 January 2020, during the pendency of the suit CS 642/2019.

(ii) Suraj Malik claimed to be the owner of the suit property. He asserted that his grandfather Sukhbir Singh Kataria was the original owner of the suit property, having acquired possession of the suit property from one Sat Prakash under a General Power of Attorney (GPA), agreement to sell, affidavit, receipt and registered Will dated 8 December 1997.

(iii) Sukhbir Singh Kataria expired on 4 June 2008, prior to which he had executed a registered Will dated 25 January 2008 bequeathing all his movable and immovable properties,

including the suit property, to his wife Murti Devi, the grandmother of Suraj Malik. It was asserted that neither Sukhbir Singh Kataria nor Murti Devi ever parted with possession of the suit property during their lifetime.

(iv) Murti Devi executed GPA dated 2 August 2018, whereby she appointed Suraj Malik as her attorney.

(v) In exercise of the authority vested in him by the said GPA, Suraj Malik visited the suit property on 9 September 2018. He was shocked to find that Lakhan Lal Sharma and Santosh Sharma had trespassed on the suit property by breaking its locks and were not only in occupation of the suit property but had also carried out unauthorised construction thereon. Suraj Malik addressed a criminal complaint in that regard to the office of the DCP(South-West) and the SHO Bindapur Police Station on 15 September 2018. On no action being taken by the police authorities on the said complaint, Suraj Malik filed proceedings before the learned Metropolitan Magistrate, Dwarka Courts, New Delhi under Section 156(3) of the Indian Penal Code 1860 which was registered as Complaint Case 1578/2019 (***Murti Devi v. Lakhan Lal Sharma and Anr***.).

(vi) On 6 May 2019, Murti Devi executed a registered Gift Deed in favour of Suraj Malik, gifting the suit property to him.

(vii) Inasmuch as (a) Sukhbir Singh Kataria was the absolute owner of the suit property, (b) by virtue of the Will dated 25 January 2008 executed by him, Murti Devi became its absolute owner after his demise and (c) neither Sukhbir Singh Kataria nor Murti Devi had ever parted possession of the suit property or authorised anyone to deal with the suit property or enter into possession thereof, it was alleged that Lakhan Lal Sharma and Santosh Sharma were trespassers, who had illegally usurped the suit property. It was further asserted that Lakhan Lal Sharma and Santosh Sharma had never produced any document manifesting titular or possessory rights over the suit property.

(viii) Asserting that, in these circumstances, he was entitled to be restored possession of the suit property, Suraj Malik instituted CS 642/2019, seeking

(a) a decree of declaration, declaring that Lakhan Lal Sharma and Santosh Sharma, as well as their descendents and legal representatives, had no right, title or interest in the suit property,

(b) a decree of possession, restoring possession of the suit property to Suraj Malik,

(c) a decree of permanent injunction, restraining Lakhan Lal Sharma and Santosh Sharma from claiming any right, title or interest in the suit property, and

(d) *mesne* profits and damages.

5. Lakhan Lal Sharma and Santosh Sharma, as the defendants in the suit, filed a written statement, in which they claimed ownership of the suit property by adverse possession since 2000. It was further alleged that they had constructed a temple on the suit property out of their own funds.

6. Lakhan Lal Sharma and Santosh Sharma also filed a list of witnesses before the learned ADJ. Only two witnesses were named; Satpal Sharma as DW-1 and Manish Ahuja as DW-2. Both were shown to be residing at the suit property located at T-190, Jain Colony.

Order dated 10 November 2022 in CS 642/2019

7. During the pendency of CS 642/2019 Lakhan Lal Sharma expired and was substituted by his children Yogesh Sharma, Pankaj Sharma and Jyoti Sharma.

8. The dispute in CS 642/2019 was referred to the Mediation Centre, Dwarka Courts, which was successful in negotiating an amicable settlement between Suraj Malik and Santosh Sharma and her children. The terms of the Settlement Agreement dated 31 October 2022 read thus:

> "a) Both the parties have settled all their claims/ disputes with regard to present suit as well as abovementioned connected case for a sum of Rs. 11,00,000/- (Rupees eleven lacs only), as full and final settlement, which shall be paid by the plaintiff to the defendants by way of demand draft, in three installments before the Ld. Referral Court, as under: -

(i) First installment of Rs. 1,00,000 (Rupees one lac only) shall be paid by the plaintiff to the defendant no. 2 (on behalf of other defendants/ LR of defendants) on or before 18.12.2022.

(ii) Second installment of Rs. 5,00,000/- (Rupees Five Lac only) shall be paid by the plaintiff to the defendant no. 2 (on behalf of other defendants/ LR of defendants) on or before 18.12.2022.

(iii) Third installment of Rs. 5,00,000/- (Rupees five lacs only) shall be paid by the plaintiff to the defendant no. 2 (on behalf of other defendants/ LR of defendants) on or before 31.01.2023.

c) The abovesaid settled amount shall be paid by the plaintiff to the defendant no. 2 Ms. Santosh Sharma Sh. Yogesh Sharma, Ms. Jyoti Sharma and Sh. Pankaj Sharma, shall have no objection regarding the same.

d) The defendant no. 2 (Santosh Sharma) and LR's of defendant no. 1 shall vacate the suit property and handover key of same before the Ld. Referral Court on 31.01.2023. After handing over the peaceful and vacant possession of the suit property, neither the defendant no. 2 nor LR's of defendant no. 1 or any other person claiming under them shall not have any right, title or interest in the suit property.

e) The plaintiff shall withdraw the present suit as well as abovementioned connected case within a week after handing over the peaceful and vacant possession of the suit property, by the defendant no. 2 and LR's defendant no. 1."

9. Accordingly, CS 642/2019 was decreed by the learned ADJ, Dwarka Court, on 10 November 2022, in terms of the aforesaid settlement agreement dated 31 October 2022.

CS 471/2023

10. On 18 April 2023, the appellant Ankit Mishra, along with two other plaintiffs Pankaj Kumar and Manish Ahuja, instituted CS 471/2023 before the learned Senior Civil Judge, Dwarka, against Santosh Sharma and her children Yogesh Sharma, Pankaj Sharma and Jyoti Sharma as Defendants 1 to 4 and Suraj Malik as Defendant 5, pleading as under:

(i) Lakhan Lal Sharma was the *pujari*/priest at a temple dedicated to Lord Hanuman, situated in the suit property since 1997. Consequent on the death of Lakhan Lal Sharma in 2020, Yogesh Sharma (Respondent 2) was the *pujari* at the temple.

(ii) Lakhan Lal Sharma had commenced residing in the suit property around 1997, which was owned by Sukhbir Singh Kataria. "Around the same time", it was contended that, as per the wishes of Sukhbir Singh Kataria, a temple dedicated to Lord Hanuman was constructed in the suit property and Lakhan Lal Sharma officiated as the priest at the temple. It was further contended that neighbouring colony residents were also continuously offering prayers to the deities at the temple.

(iii) CS 642/2019 was filed by Suraj Malik in collusion with Santosh Sharma and her children, for obtaining recovery of the suit property on which the temple was in existence. The settlement decree dated 10 November 2022 was also wrongfully obtained by concealing the fact of existence of a temple on the suit property. The decree was an attempt, by Suraj Malik,

Santosh Sharma and her children to obstruct and interfere with the right of Ankit Mishra and other plaintiffs in CS 471/2023 to worship at the temple.

(iv) Premised on the above allegations, the appellant Ankit Mishra and other plaintiffs in CS 471/2023 sought

(a) a declaration that they were entitled to offer prayers and perform rituals at the temple situated in the suit property, and

(b) an order of permanent injunction restraining Santosh Sharma and her children as well as Suraj Malik from causing any damage to the deities in the temple or from obstructing the appellant Ankit Mishra or the other plaintiffs in CS 471/2023 from continuing to offer worship and perform rituals in the temple.

Order dated 19 April 2023 passed in CS 471/2023

11. On 19 April 2023, the learned Additional Senior Civil Judge (ASCJ) dismissed CS 471/2023 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (the CPC), on the ground that no cause of action had arisen in favour of the plaintiff in the said suit (i.e. the appellant Ankit Mishra and other plaintiffs), as there was nothing to indicate that they had been restrained in performing worship at the alleged temple situated on the suit property.

12. This order attained finality, as it was never challenged by Ankit Mishra or by anybody else.

Ex 52/2023, in which the impugned order has been passed

13. On or around 8 February 2023, Suraj Malik filed Ex 52/2023 before the learned ADJ, seeking execution of the judgment and decree dated 10 November 2022, decreeing CS 642/2019. It was contended, by Suraj Malik, that, out of the total amount of ₹ 11 lakhs payable under the compromise decree, ₹ 6 lakhs stood paid to the judgment debtors Santosh Sharma and her children in two instalments, and that they were refusing to receive the remaining amount of ₹ 5 lakhs, or hand over vacant and peaceful possession of the suit property to Suraj Malik. Notice was issued, on the execution petition on 17 March 2023, returnable on 14 April 2023. Warrants of possession of the suit property were also issued by the learned ADJ on 4 August 2023.

The present objection petition

14. Four months after the dismissal of CS 471/2023, and 17 days after issuance of warrants of possession in Ex 52/2023, Ankit Mishra chose to institute objections in the Execution Petition (C) 52/2023 under Section 47[1] of the CPC. He, however, sought to invoke divine

[1] **47. Questions to be determined by the Court executing decree**. –
(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.
(2) (Deleted)
(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

assistance in the objection, by co-opting none less than lord Hanuman as Objector 2.

15. Consequent on the objections being dismissed by the impugned order dated 19 April 2023, Ankit Mishra and Lord Hanuman are now before this Court as Appellants 1 and 2.

16. The relevant paragraphs in the objection petition deserve to be reproduced in *extenso*¸ thus:

> "3. That around the year 1997 the Temple came into existence at the property T 201, Jain Colony, Part-1, Uttam Nagar, New Delhi-110 059 and Shri Lakhan Lal Ji Sharma (Since Deceased)/ Pujari ji and his family lived in one portion of the property. The owner of the property one Mr. Kataria has already expired.
>
> 4. That applicant no. 2, Bhagwan Shiv ji, Shree Ram Darbar, Devi Durga Mata ji, Bhagwan Kishanji and other visible and invisible deities exists within the Temple which are being worshipped by Hindu Devotees continuously till date by performing puja and other rituals within the temple premises.
>
> 5. That since the existence of the temple, applicant no.1, his family and other colony residents and people living nearby have been continuously offering their prayers to the deities at the temple and performing rituals and religious ceremonies.
>
> 6. That the Applicant No. 1 has been worshipping, offering prayers and rituals at the temple since a long time now and has a deep religious beliefs attached with the temple and the deities therein.
>
> 7. That the Non-Applicants in collusion and connivance with each other filed a fraudulent Civil Suit bearing CS No. 642 of 2019

Explanation I. – For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II. –

(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

before the District Judge, Dwarka inter-alia seeking recovery of possession of the property bearing no. T-201, Jain Colony, Part-1, Uttam Nagar, New Delhi-110 059 i.e. the property on which the aforesaid Temple is in existence, on the basis of false and fabricated averments and by concealment of existence of temple on the said property.

8. That in the said Civil Suit a settlement decree dated 10.11.2022 was wrongfully obtained by concealing the fact of existence of Temple on the said property in active collusion and connivance of the non-applicants/ Decree Holder and JDs herein.

9. That the said collusive decree is an attempt of the Non-Applicants to impose restrictions, invade, creating obstacles, hindrances obstruction and interfere with the right of the Applicant to offer prayers, perform rituals of Deities at the said Temple. The property is already vested in the applicant no. 2 and other deities present in the temple as such cannot be transferred/ alienated by the non-applicants in any manner. It is well settled that deity is the owner of the temple property as such the same cannot be alienated by non-applicants.

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13. That now the applicants have come to know that on 04.08.2023, this Hon'ble Court has issued warrant of possession of the property in favour of the Decree Holder as such the applicants are constrained to file the present objections."

17. Premised on the above submissions and assertions, the appellants prayed that the request of Respondent 5 Suraj Malik for execution of judgment and decree dated 10 November 2022 be rejected as the judgement and decree had been obtained by fraud by concealing the fact that there was a temple in the suit property in which neighbours, including the Appellant 1 Ankit Mishra have been praying since years.

<u>Response to objection petition by Respondents 1 and 3</u>

18. While clothing it as a rebuttal to the objection petition, Respondents 1 and 3 Santosh Sharma and Pankaj Sharma, predictably, have, in their reply, ultimately let their guard down and have sought to plead, in para 13, that "the decree is liable to be set aside as the Decree Holder has played a fraud upon the judgment debtors and the Temple in further of his illegal intentions."

19. Prior thereto, in the reply, Respondents 1 and 3 seek to contend that the temple was "developed" by Lakhan Lal Sharma with help and donations from others, that the settlement decree dated 10 November 2022 was obtained by "pressurizing" Respondents 1 and 3 and by concealing the existence of the temple on the suit property. Nonetheless, the reply concludes with the prayer that the objections of the appellant be dismissed with costs.

Respondent 5's response to the objection petition

20. Respondent 5 Suraj Malik has, in his reply, strongly opposed the objections of the appellant. The reply contended that the appellants had no *locus standi* to maintain the objections, and that, save bald and unsubstantiated averments, the objection petition was unsupported by any documents as would render it maintainable at their instance. The temple, it was contended, was an illegal structure, constructed by Lakhan Lal Sharma after trespassing into the suit property, behind the back of Suraj Malik. An unauthorized and illegal

temple, it was contended, did not vest its worshippers with any right whatsoever.

21. Suraj Malik further pointed out, in his reply to the objection petition of the appellant, that the objection petition was silent as to how the temple, or the land on which it was constructed, vested in the deity, even while Sukhbir Singh Kataria retained ownership of the land. No document evidencing the legal status of the temple, or of any trust or endowment which was managing its affairs, was on record. As against this, Suraj Malik had placed, on record, the registered will of Sukhbir Singh Kataria and the registered gift deed whereby Murti Devi gifted the suit property to Suraj Malik.

22. No one, it was submitted, could claim a right to offer worship at an illegal private temple. Nor could Ankit Mishra claim a right to maintain the objection petition as the next friend of the deity.

23. The maintainability of the objection petition was also questioned on the basis of the dismissal of Civil Suit 471/2023 by the learned ASCJ on 19 April 2023, which decision had become final.

24. It was further alleged that the objections were collusive in nature. Ankit Mishra had instituted CS 471/2023 in which he impleaded Manish Ahuja as Plaintiff 3. Manish Ahuja was DW-2 and Satpal Sharma was DW-1 in CS 642/2019. The address of Ankit Mishra was shown to be similar to that of Satpal Sharma. Thus, Ankit Mishra was always aware of the proceedings in CS 642/2019, and

chose to remain a fence sitter without becoming a party therein. The objection petition was, therefore, an unholy attempt at derailing the execution. It was pointed out, in this context, that, in compliance with the terms of settlement dated 31 October 2022 and the compromise decree dated 10 November 2022, Suraj Malik had already paid ₹ 6 lakhs to the judgment debtors Santosh Sharma and her children, and that ₹ 5 lakhs stood deposited before the learned ADJ. Possession of the suit property had, nonetheless, not been handed over by Santosh Sharma to Suraj Malik.

25. The claim of the appellants that the temple came into existence in 1997, it was submitted, was false. It was pointed out that Sukhbir Singh Kataria had himself purchased the vacant plot on 8 December 1997. No material had been placed on record, by the appellants, to support the assertion that the temple had come into existence in 1997.

26. That the objection petition was completely lacking in *bona fides* was also apparent from its institution on 21 August 2023, nearly four months after CS 471/2023 was dismissed on 19 April 2023 and only after warrants of possession were issued by the learned ADJ on 4 August 2023 in the execution petition.

27. Suraj Malik also denied, in his response to the objection petition, the assertion that Ankit Mishra was a worshipper at the temple or that the deity was the constructive owner of the land on which the temple was situated. The assertion that neighbours were worshipping at the temple was also denied.

28. Resultantly, it was prayed that the objection petition be dismissed and the decree dated 10 November 2022 executed.

The Impugned Order

29. The learned ADJ has, *vide* the impugned order dated 25 September 2023, dismissed the objection petition of the appellants. The learned ADJ has noted the submission of Ankit Mishra that the judgment and decree dated 10 November 2022 was obtained by fraud and suppression and that, if it were permitted to be executed, Ankit Mishra's right to worship at the temple, which was in existence in the suit property since 1997, would stand compromised. The request of the appellants that the objection petition be regarded as having been instituted under Order XLVII Rule 97 of the CPC and decided in accordance with Rules 97 to 103 of Order XLVII[2] was also recorded.

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[2] **97. Resistance or obstruction to possession of immovable property**. –
(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.
(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

98. Orders after adjudication. –
(1) Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—
(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
(b) pass such other order as, in the circumstances of the case, it may deem fit.
(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree-holder or purchaser. –

30. In rejecting the objections of the appellants, the learned ADJ has reasoned thus:

(i) Objections under Order XLVII of the CPC were summary in nature. The executing court could not go behind the decree.

(ii) The execution was for a judgment and decree rendered on compromise. Part payment of the settlement amount had been made by Suraj Malik. It was only after warrants of possession for the suit property had been issued that the objections had been filed.

(iii) The appellants had no *locus standi* to prefer the objections, under Order XLVII Rule 58[3] of the CPC. Nor

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(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession. – Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination,—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined. – All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

[3] **58. Adjudication of claims to, or objections to attachment of, property**. –

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

would they have merit even if considered under Order XLVII Rule 97. The appellants had no right, title or interest in the suit property. The objections were premised on bald and unsubstantiated averments. There were no supporting documents. No explanation, as to how part of the suit property was converted into a temple, was forthcoming. No details or documents relating to coming into existence of the temple were, either, placed on record. In fact, Ankit Mishra was, as per his averments, only 5 years old when the temple came into being.

(iv) The Constitution Bench of the Supreme Court had, in ***M. Siddiq v. Mahant Suresh Das***[4], held that, where the *pujari* or *shebait* acted against the interests of a deity, a worshipper could sue on behalf of the deity as its next friend, but that, where the *bona fides* of the worshipper were contested, the Court had to scrutinize his intentions. The power of the Court to do so *ex debito justitiae* was also conceded.

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, the title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

[4] **(2020) 1 SCC 1**

(v) Ankit Mishra had not been able to show any *bona fides* as would entitle him to sue as the next friend of the deity Appellant 2. In fact, Ankit Mishra was always well aware of the execution proceedings, and clandestinely waited for warrants of possession to be issued before seeking to derail the proceedings. The fact that CS 642/2019 was cited as part of the cause of action in CS 471/2023 by Ankit Mishra itself indicated that he was aware of CS 642/2019 and the proceedings therein.

(vi) Having, thus, failed to show *bona fides*, Ankit Mishra had no right to represent the deity Appellant 2 as its "next friend".

(vii) Dedication of a property as a religious endowment and consequent extinction of its private character did not require any express dedication or document, as held by the Supreme Court in ***The Commissioner for Hindu Religious and Charitable Endowments v. Sri Ratnavarma Heggade***[5] and ***R.M. Sundaram v. Sri Kayarohanasamy and Neelayadhakshi Amman Temple***[6], and could be inferred from the circumstances. Use of the property for religious or public purposes for sufficient length of time was a factor which would justify an inference of endowment. The facts of the present case, however, indicated that the suit property was purely private in nature. Even if, therefore, the temple was opened to the public

[5] **(1977) 1 SCC 525**
[6] **2022 SCC OnLine SC 888**

on certain festive occasions, as contended by the appellants, that would not render it a public temple, so as to entitle a worship to titular rights in respect thereof.

(viii) No right to worship, under Article 25 of the Constitution of India, can vest in an illegal religious structure built on private land belonging to another. No right, in such event, vests in the deity installed in the said religious structure.

Present appeal

31. Claiming to be aggrieved by the impugned order dated 25 September 2023, Ankit Mishra has instituted the present appeal, co-opting Lord Hanuman as Appellant 2.

Rival Submissions

Submissions of Mr. Abhishek Grover for the appellants

32. Mr. Abhishek Grover submits, at the outset, that the learned ADJ has erred in failing to adjudicate the objections raised by the appellants in accordance with the protocol of Order XXI Rules 97 to 103 of the CPC. For the proposition that a third party, who is in threat of dispossession from the suit property as a consequence of execution

of a decree obtained without impleading him, has a right to object under Order XXI Rule 97, Mr. Grover relies on ***Shreenath v. Rajesh***[7].

33. Mr. Grover submits that, in the plaint in CS 642/2019, Suraj Malik concealed the fact that a temple was standing on the suit property. The judgment and decree dated 10 November 2022 had, according to Mr. Grover, been obtained in collusion between Suraj Malik and Santosh Sharma. In the process, behind the back of the appellants, in particular Appellant 1 Ankit Mishra, their rights have been jeopardized.

34. The dismissal, by the learned ADJ, of CS 471/2023, on 19 April 2023, points out Mr. Grover, was under Order VII Rule 11, on the ground that, as there was nothing to indicate that the right of the plaintiffs, in that suit, to worship at the temple, had been prejudiced in any manner, no cause of action existed.

35. Mr. Grover draws my attention to para 9 of the objection petition preferred by the appellants before the learned ADJ. He submits that the assertions contained in para 9 give rise to a triable issue which has, under Order XXI Rule 97, to be considered on merits. It could not have been rejected outrightly without a trial.

36. Mr. Grover submits that the right that the appellants seek to canvas is a right that the law guarantees. The averments in the objection petition, to the effect that Ankit Mishra, as also other

[7] **AIR 1998 SC 1827**

residents of the locality, used to offer prayers at the temple, he submits, are by themselves sufficient to confer, on it, the status of a public temple. Besides, points out Mr. Grover, Suraj Malik had also, in his reply to the objection petition as well as in his written submissions tendered to the learned ADJ, admitted that the villagers used to occasionally offer prayers at the temple, on festive occasions. It could, therefore, he submits, be sought to be contended that the temple was a public temple.

37. The land, on which a public temple is situated, submits Mr. Grover, vests in the deity and cites, in this context, para 17 of ***State of M.P. v. Pujari Utthan Avam Kalyan Samiti***[8]**.** To a query from the Court as to whether, if a trespasser on land builds a temple thereon, the owner of the land loses all right to recover it, as the land vests in the deity, Mr. Grover, even while acknowledging that the owner would retain the right to recover the land if it is a private temple, would seek to contend that, if the temple, by passage of time and by operation of law, acquires the status of a public temple, the owner loses all right over the land, which thereby and thereafter vests in the presiding deity of the temple. The very fact that the public were offering prayers at the temple, he submits, renders it a public temple, as the public cannot possibly be offering prayers at a private temple.

38. A deity, submits Mr. Grover, citing para 17 of ***Jini Dhanrajgir v. Shibu Mathew***[9]**,** is a minor, whose rights can be protected by its

[8] **(2021) 10 SCC 222**
[9] **2023 SCC OnLine SC 643**

"next friend", and a worshipper of the deity is competent to sue on its behalf, and protect its interests, as its next friend. Thus, he submits, does Appellant 1 acquire the legal right to protect the interests of Appellant 2 which, as he would seek to submit, are being frittered away by Suraj Malik and Santosh Sharma in collusion with each other.

39. At the very least, submits Mr. Grover, the issues raised in the objection petition were triable, and deserved consideration, and could not have been thrown out in a summary manner, as the impugned order purports to do.

Mr. Sarojanand Jha's submissions in response

40. Responding to Mr. Grover, Mr. Jha has advanced only two submissions.

41. Firstly, submits Mr. Jha, in order for the land, on which the temple was situated, to vest in the deity, there has to be an endowment of the property for religious purposes. There must, therefore, be a pleading, on the part of the appellants, that the suit property was endowed for religious purposes. There is no such pleading. Ergo, the suit property, of which Suraj Malik was the rightful owner, could not vest in the deity. He cites paras 5 and 6 of ***Deoki Nandan v. Murlidhar***[10].

[10] **AIR 1957 SC 133**

42. Secondly, submits Mr. Jha, the application is vitiated by *mala fides* and collusion between Appellant 1 and Santosh Sharma and her children, Respondents 1 to 4. He points out that Manish Ahuja, Plaintiff 3 in CS 471/2023, was cited as a witness by Santosh Sharma in CS 642/2019. The entire attempt, submits Mr. Jha, is for Ankit Mishra and Respondents 1 to 4 to somehow retain possession of the suit property, and endlessly frustrate the attempt of Suraj Malik to regain possession thereof. He relies, in this context, on paras 37 to 40 and 68 to 70 of ***Bal Bhagwan v. D.D.A.***[11] and paras 6 to 12 of ***Durga P. Mishra v. G.N.C.T.D.***[12]

Analysis

Collusion

43. This is obviously a case of rank collusion with an intent to grab the suit property, after having deprived Suraj Malik of its use for 22 years and, thereafter, also demanded and recovered ₹ 11 lakhs to restore its possession to him.

44. In CS 642/2019, Santosh Sharma cites Manish Ahuja and Satpal Sharma as her witnesses. Ankit Mishra was not included in the list of witnesses by Santosh Sharma. The address of Ankit Mishra and Satpal Sharma was, however, the same, i.e. T-190, Jain Colony, Part I, Uttam Nagar, New Delhi. After the suit got compromised, CS

[11] **277 (2021) DLT 370**
[12] **2023 SCC OnLine Del 2865**

471/2023 was filed, this time, by Ankit Mishra as Plaintiff 1, relegating Manish Ahuja to the status of Plaintiff 3, trying to obstruct execution of the decree. Ankit Mishra's address was also shown, in CS 471/2023, as T-190, Jain Colony, Part I, Uttam Nagar, New Delhi. Satpal Sharma was excluded from the memo of parties in CS 471/2023 – apparently deliberately.

45. After CS 471/2023 was dismissed, on 19 April 2023, the objections from which this appeal emanates were preferred to the execution filed by Suraj Malik. Only, this time, the only terrestrial objector was Ankit Mishra, omitting Manish Ahuja from the scene.

46. Santosh Sharma, Manish Ahuja and Ankit Mishra have, plainly, acted in contumacious collusion so as to deprive Suraj Malik of the benefit of the judgment and decree dated 10 November 2022, even after having entered into a settlement with him, whereunder considerable amounts were recovered by them from Suraj Malik.

47. This is the worst and most pernicious kind of practice that can be resorted to. Worse, in order to lend a veneer of credibility to his ill-motivated objections, Ankit Mishra chose to include Lord Hanuman as objector 2.

48. This case, therefore, presents a textbook example of the malaise noted by the Supreme Court in its judgment dated ***Rahul S. Shah v. Jinendra Kumar Gandhi***[13] in which it was observed thus:

> "22. These appeals portray the troubles of the decree-holder in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of decree. As on 31-12-2018, there were 11,80,275 execution petitions pending in the subordinate courts. As this Court was of the considered view that some remedial measures have to be taken to reduce the delay in disposal of execution petitions, we proposed certain suggestions which have been furnished to the learned counsel of the parties for response. We heard Mr Shailesh Madiyal, learned counsel for the petitioner and Mr Paras Jain, learned counsel for the respondent.
>
> 23. This Court has repeatedly observed that *remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees*. This was discussed even in the year 1872 by the Privy Council in ***General Manager of the Raj Durbhunga v. Coomar Ramaput Sing***[14], which observed that *the actual difficulties of a litigant in India begin when he has obtained a decree*. This Court made a similar observation in ***Shub Karan Bubna v. Sita Saran Bubna***[15], wherein it recommended that the Law Commission and Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. *The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.*
>
> 24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the

[13] **(2021) 6 SCC 418**
[14] **1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605**
[15] **(2009) 9 SCC 689**

procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. *Firstly*, the question must be the one arising between the parties and *secondly*, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, *there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.*

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, *the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.*

27. *This is antithesis to the scheme of the Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order 1 and Order 2 which relate to parties to suits and frame of suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go.*

30. As to the decree for the delivery of any immovable property, Order 21 Rule 35 provides that possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

> 31. As the trial continues between specific parties before the courts and is based on available pleadings, sometimes vague description of properties raises genuine or frivolous third-party issues before delivery of possession during the execution. *A person who is not party to the suit, at times claims separate rights or interests giving rise to the requirement of determination of new issues.*
>
> 32. While there may be genuine claims over the subject-matter property, *the Code also recognises that there might be frivolous or instigated claims to deprive the decree-holder from availing the benefits of the decree. Sub-rule (2) of Rule 98 of Order 21 contemplates such situations and provides for penal consequences for resistance or obstruction occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by the transferee, where such transfer was made during the pendency of the suit or execution proceedings.* However, such acts of abuse of process of law are seldom brought to justice by sending the judgment-debtor, or any other person acting on his behalf, to the civil prison.
>
> 33. In relation to execution of a decree of possession of immovable property, it would be worthwhile to mention the twin objections which could be read. Whereas under Order 21 Rule 97, a decree-holder can approach the court pointing out about the obstruction and require the court to pass an order to deal with the obstructionist for executing a decree for delivering the possession of the property, the obstructionist can also similarly raise objections by raising new issues which take considerable time for determination."
>
> (Emphasis supplied)

To effectuate expeditious execution of decrees and prevent misuse by unwarranted objections, the Supreme Court issued a slew of directions, in the various sub-paras of para 42 of the report:

> "42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:
>
> 42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath,

which are in possession of the parties including declaration pertaining to third-party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. *The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner.* Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit *or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.*

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other

expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. *The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.*

42.11. Under Section 60 CPC the term "… in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts."

49. The facts of the present case are stark. The defendants grabbed the plaintiff's land. The plaintiff sued to recover possession. The defendants pleaded adverse possession. Ultimately, the defendants asked the plaintiff to pay ₹ 11 lakhs to vacate. The suit was decreed on those terms. Thereafter, the plaintiff actually paid the amount of ₹ 6 lakhs. The defendants still did not vacate. The plaintiff filed for execution. In the execution, the present appellant, who is a third party,

filed an objection saying there is a public temple on the property dedicated to Lord Hanuman and that, therefore, the land belongs to Lord Hanuman and that he was entitled to protect Lord Hanuman's interest as his next friend, as a deity is a minor in law. The executing Court dismissed the objections. The appellant-objector is in appeal.

50. The appellant claims never to have known of the pendency of the suit. The truth has, however, a sneaky way of making itself known and it has, in this case, to the appellant's misfortune.

51. Ankit Mishra stays at T-190, where Satpal Sharma also stays. Satpal Sharma was DW-1 in CS 642/2019 and was, therefore, clearly aware of the suit proceedings. After the suit was decreed, Ankit Mishra made an entrance via CS 471/2023. So as not to disclose the fact that he was staying with Satpal Sharma, Ankit Mishra co-opted only DW-2 in CS 642/2019, i.e. Manish Ahuja, as a co-plaintiff, omitting Satpal Sharma. Now, in the present objection, Ankit Mishra plays a lone hand – except for Lord Hanuman – and sets up a story of his having been an innocent worshipper at the temple, who became aware of the entire proceedings only when the bailiff came to take possession.

52. "Oh, what a tangled web we weave", classically observed Sir Walter Scott[16], "when first we practice to deceive". A strand here, and a strand there, of the web, is invariably out of place. Para 14 of the objection petition filed by Ankit Mishra before the learned ADJ

[16] In Marmion: A Tale Of Flodden Field

contains one such loose strand, in the averment that "the cause of action (for instituting the objection petition) further arose *on institution of CS No. 642 of 2019* and on 31.10.2022 when the matter was fraudulently settled before the mediation centre …" Thus, it stands acknowledged, by Ankit Mishra, that *he was aware of the institution of CS 642/2019*. The plea of ignorance, till the time when the bailiff was appointed by the learned ADJ, thus stands definitively falsified.

53. An elaborately orchestrated plan is apparent, to which Santosh Sharma, Manish Ahuja, Ankit Mishra and Satpal Sharma are parties. Participants and witnesses were carefully chosen so as to make it appear that each proceeding was independent of the other. It is apparent that everyone was alive to the proceedings in the suit and that Ankit Mishra is no more than an opportunistic fence sitter, who was waiting in the wings, for the right time to strike. In doing so, an entirely new dispute, foreign to the proceedings in the suit, was fabricated. The dispute being new, it is sought to be contended, even by Mr Grover before me, that it necessitates a trial.

54. The response by Santosh Sharma and her children (Respondents 1 to 4) to the objection petition of Ankit Mishra is revealing. Even while praying, in conclusion, that the objection petition be dismissed with costs, the reply asserts that "the decree is liable to be set aside as the Decree Holder has played a fraud upon the judgment debtors and the Temple in furtherance of his illegal intentions". Respondents 1 to 4 are, therefore, in active and tacit collusion with the appellant in

seeking to obstruct the execution of the decree – *after* having occupied Suraj Malik's property for 22 years and insisted on being paid ₹ 11 lakhs to vacate.

55. Despite service of advance notice of this appeal on them, Respondents 1 to 4 did not choose to enter appearance. Nonetheless, to be fair to them, even after reserving orders, I directed the appellant to serve the papers of this appeal on Respondents 1 to 4 through learned Counsel who represented them before the learned ADJ, returnable on 2 May 2024. That has also been done. They have, however, chosen to remain absent.

56. The attempt is, obviously, to subject Suraj Malik to an endless fresh round of litigation, on a plea which is not even as thin as tinsel, thereby frustrating, for an unpredictable length of time, his attempt at reaping the fruits of his decree. If the attempt has not succeeded, it is only because of the orders earlier passed in this case, which have ensured execution of the decree and, consequently, restoration of the property to Suraj Malik. Even so, Mr. Grover has left no stone unturned in trying to convince the Court that Suraj Malik had been given possession of the Land of the Lord.

57. Quite obviously, the present appeal is liable to be dismissed on this sole ground alone. Not only this, the appellant has, in keeping with the law declared in para 42.10 of ***Rahul S. Shah***, to be awarded compensatory costs, which would be quantified later.

Section 47 of the CPC – Applicability

58. Neither was Ankit Mishra, or was the deity-Appellant 2, a party to CS 642/2019. Section 47 of the CPC applies only to determination of questions arising between parties to a suit or their representatives, relating to the execution, discharge or satisfaction of the decree passed in the suit. Inasmuch as the appellants were not parties to CS 642/2019, and were also not representatives of any of the parties to the said suit, they could not maintain the objection petition filed by them under Section 47 of the CPC.

On merits

59. Though the objections filed by the appellants could not have been preferred under Section 47 of the CPC, Mr. Grover sought to invoke the principle that the filing of an application under a wrong provision does not vitiate the application itself, if the application is maintainable under some other provision of the law. There can be no cavil with this proposition.

60. Mr. Grover submits that, therefore, even if Section 47 of the CPC has erroneously been invoked in the objection petition filed by his clients, the petitioner could have been treated as one preferred under Order XXI Rule 97 of the CPC. He cites, for this purpose, ***Shreenath***.

61. In principle, the invocation, by Mr. Grover, of the decision in ***Shreenath*** is justified. Without entering into the details of the said decision, suffice it to state that the Supreme Court, in that case, held that the combined application of Rules 97 and 99 of Order XXI of the CPC entitles "a person holding possession of an immovable property on his own right", who is being sought to be dispossessed from the said property by a decree holder, or by the auction purchaser of property sold in execution of a decree, to complain of such dispossession. The objections filed by Ankit Mishra would, therefore, in principle be maintainable under Order XXI Rule 99 of the CPC. This is, however, subject to the caveat that the objectors-appellants *hold possession of the suit property in their own right.*

62. The relevant paras of the objection petition stand reproduced in para 16 *supra*. What has to be seen, therefore, is whether the objection petition disclosed that the objectors-appellants were holding possession of the suit property in their own right. If they were not, or if there were insufficient averments in the objection petition, on the basis of which the Court could hold that they were, the objection petition would not be maintainable under Order XXI Rule 99 of the CPC.

63. The objection petition averred that the temple came into existence at the suit property in 1997, Lakhan Lal Sharma was its *pujari*, and that the deities in the temple were being worshipped by devotees continuously till date. It is admitted, in para 3 of the

objection petition, that the owner of the property was Sukhbir Singh Kataria.

64. The learned ADJ has, in the impugned order, held that the temple was situated on purely private land, belonging to Suraj Malik. The land on which a temple was situated could be said to vest in the deity only if the temple was a public temple. If a person were to occupy private land, and construct a temple thereon, the owner of the land could not be said to have become disentitled from obtaining possession of the land merely because there was a temple on it, and the land on which the temple was situated, by operation of law, vested in the presiding deity in the temple. The learned ADJ holds that, though the public were permitted to offer worship on certain festive occasions, such as Janmashtami, that would not convert a private temple into a public temple.

65. Mr. Grover does not dispute the legal proposition that the land on which a purely private temple is situated would not vest in the deity. He, however, disputes the finding of the learned ADJ that the temple in the present case was a purely private temple. He submits that the finding, in the impugned order, that members of the public were, even if on festive occasions, permitted to offer prayers in the temple, itself *ipso facto* converted it into a public temple. According to Mr. Grover, it would be unrealistic to believe that members of the public would be permitted to offer worship at a purely private temple.

66. Whether such a proposition is unrealistic, or not, is not an issue which need detain us. If a person constructs a temple on his private property, essentially meant for himself and his family, there is no proscription on his allowing members of the public to offer prayers at the temple on festive occasions. This is not an unknown practice, and Mr. Grover's contention that it is unrealistic, too, does not appear to be correct.

67. As I said, however, that is not really the issue in controversy. The learned ADJ holds that the mere offering of prayers at the temple on certain festive occasions would not convert it into a public temple. The correctness of this finding is questioned by Mr. Grover.

68. The law in this regard is classically exposited by a bench of 3 Hon'ble judges of the Supreme Court in ***Goswami Shri Mahalaxmi Vahuji v. Ranchhoddas Kalidas***[17]. After observing that the onus of proving that the temple is a public temple lay on the person who so asserted, the Supreme Court proceeds to lay down the law thus:

> "15. Though most of the present day Hindu public temples have been founded as public temples, there are instances of private temples becoming public temples in course of time. Some of the private temples have acquired a great deal of religious reputation either because of the eminence of its founder or because of other circumstances. They have attracted large number of devotees. Gradually in course of time they have become public temples. Public temples are generally built or raised by the public and the deity installed to enable the members of the public or a section thereof to offer worship. In such a case the temple would clearly be a public temple. If a temple is proved to have originated as a public temple, nothing more is necessary to be proved to show that it is a public temple but *if a temple is proved to have originated as a*

[17] **(1969) 2 SCC 853**

private temple or its origin is unknown or lost in antiquity then *there must be proof to show that it is being used as a public temple. In such cases the true character of the particular temple is decided on the basis of various circumstances. In those cases the courts have to address themselves to various questions such as:*

> "(1) *Is the temple built in such imposing manner that it may prima facie appear to be a public temple?*
>
> *(2) Are the members of the public entitled to worship in that temple as of right;*
>
> *(3) Are the temple expenses met from the contributions made by the public?*
>
> *(4) Whether the Sevas and Utsavas conducted in the temple are those usually conducted in public temples?*
>
> *(5) Have the management as well as the devotees been treating that temple as a public temple?"*

16. Though the appearance of a temple is a relevant circumstance, it is by no means a decisive one. The architecture of temples differs from place to place. *The circumstance that the public or a section thereof have been regularly worshipping in the temple as a matter of course and they can take part in the festivals and ceremonies conducted in that temple apparently as a matter of right is a strong piece of evidence to establish the public character of the temple. If votive offerings are being made by the public in the usual course and if the expenses of the temple are met by public contribution, it is safe to presume that the temple in question is a public temple. In brief, the origin of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, rights exercised by the devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple are factors that go to establish whether a temple is a public temple or a private temple.* In ***Lakshmana v. Subramania***[18] the Judicial Committee was dealing with a temple which was initially a private temple. The Mahant of this temple opened it on certain days in each week to the Hindu public free to worship in the greater part of the temple, and on payment of fees in one part only. The income thus received by the Mahant was utilised by him primarily to meet the expenses of the temple and the balance went to support the Mahant and his family. The Privy Council held that

[18] **AIR 1924 PC 44**

the conduct of the Mahant showed that he had held out and represented to the Hindu public that the temple was a public temple at which all Hindus might worship and the inference was, therefore, that he had dedicated it to the public. In ***Mundancheri Koman v. Achutan Nair***[19] the Judicial Committee again observed that the decision of the case would depend on the inferences to be derived from the evidence as to the way in which the temple endowments had been dealt with and from the evidence as to the public user of the temples. Their Lordships were satisfied that the documentary evidence in the case conclusively showed that the properties standing in the name of the temples belonged to the temples and that the position of the manager of the temples was that of a trustee. Their Lordships further added that if it had been shown that the temples had originally been private temples they 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. In ***Deoki Nandan v. Murlidar***[20], this Court observed that 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 private endowment to the facts found. Therein it was further observed that the distinction between a public and private endowment is that whereas in the former the beneficiaries which meant the worshippers are specific individuals and in the later the general public or class thereof. In that case the plaintiff sought to establish the true scope of the dedication from the user of the temple by the public. In ***Narayan Bhagwant Rao Gosavi Balajiwale v. Gopal Vinayak Gosavi***[21], this Court held that the vastness of the temple, the mode of its construction, the long user of the public as of right, grant of land and cash by the rulers taken along with other relevant factors in that case were consistent only with the public nature of the temple.

17. In examining the evidence adduced by the plaintiffs in proof of the fact that the temple in question is a public temple we have to bear in mind the tests laid down by the courts for determining whether a given temple is a public temple or not."

69. In ***Sree Panimoola Devi Temple v. Bhuvanachandran Pillai***[22], the Supreme Court held, in paras 5 to 7, thus:

[19] **[(1934) 61 IA 405**
[20] **[(1956) SCR 756**
[21] **(1960) 1 SCR 773**
[22] **(2015) 12 SCC 698**

"5. The case of the plaintiffs all along and also in the counter-affidavit filed before this Court has been that the temple was initially a private temple, but the same acquired the status of a public temple with passage of time due to the visits of large number of persons and offerings made by the general public, including their participation in the religious rites performed therein. Even if we are to accept the aforesaid position, the said fact by itself would not be sufficient to enable a determination in favour of the plaintiffs.

6. In this regard, following observation of the Privy Council in ***Babu Bhagwan Din v. Gir Har Saroop***[23], may be extracted with profit:

> "… In these circumstances *it is not enough in Their Lordships' opinion, to deprive the family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela.* Worshippers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol; they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. *Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple must be considered in their historical setting in such a case as the present*; and *dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family*. Such an inference, if made from the fact of user by the public, is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away; and, as worship generally implies offerings of some kind, it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity."

7. Reliance has been placed by the learned counsel for the respondent-plaintiffs on a decision of this Court in ***Bala Shankar Maha Shanker Bhattjee v. State of Gujarat***[24], to contend that worship by the general public for long and offerings made by the public would give a private temple a status of a public temple.

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[23] **AIR 1940 PC 7**
[24] **1995 Supp (1) SCC 485**

> 8. A reading of the opinion of this Court in ***Bala Shankar*** makes it clear that *the worship by the members of the public and offerings made was one of the several circumstances considered relevant by this Court for determination of the question, namely, whether the temple in question—Kalika Mataji Temple—is a public temple.* There were several other relevant aspects that were taken into account by the Court to answer the said question, namely, *cash allowance paid from the State treasury to maintain the deity from time to time; fixed grants given by the Rulers i.e. Scindia and British Rulers; the Temple and its properties being shown in government records as belonging to Mataji and the respondents being shown as Pujaris*. The reliance placed on ***Bala Shankar***, therefore, is of no consequence."

70. The features that distinguish a private temple from a public temple also stand explained in ***Radhakanta Deb v. Commissioner of Hindu Religious Endowments***[25]:

> "4. The sole question that falls for determination in this appeal is as to whether or not the appellant-temple was a public endowment as alleged by the respondent or a family deity as alleged by the appellant.
>
> *****
>
> 6. The concept of a private endowment or a private trust is unknown to English law where all trusts are public trusts of a purely charitable and religious nature. Thus, under the English law what is a public trust is only a form of charitable trust. Dr Mukherjee in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts (1952 Edition) has pointed out that in English law the Crown is the constitutional protector of all properties subject to charitable trusts as these trusts are essentially matters of public concern. The learned Author has further pointed out that one fundamental distinction between English and Indian law lies in the fact that there can be religious trust of a private character under the Hindu law which is not possible in English law. *It is well settled that under the Hindu law, however, it is not only permissible but also very common to have private endowments which though are meant for charitable purposes yet the dominant intention of the founder is to instal a family deity in the temple and worship the same in order to effectuate the spiritual*

[25] **(1981) 2 SCC 226**

benefit to the family of the founders and his descendants and to perpetuate the memory of the founder. In such cases, the property does not vest in God but in the beneficiaries who have installed the deity. In other words, the beneficiaries in a public trust are the general public or a section of the same and not a determinate body of individuals as a result of which the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. The members of the public may not be debarred from entering the temple and worshipping the deity but their entry into the temple is not as of right. This is one of the cardinal tests of a private endowment. Similarly, even the Mahomedan law recognises the existence of a private trust which is also of a charitable nature and which is generally called *waqf-allal-aulad*, where the ultimate benefit is reserved to God but the property vests in the beneficiaries and the income from the property is used for the maintenance and support of the family of the founder and his descendants. In case the family becomes extinct then the *waqf* becomes a public *waqf*, the property vesting in God. A public *waqf* under the Mahomedan law is called *waqf-fi-sabi-lil-lah*.

7. The question as to whether the religious endowment is of a private nature or of a public nature has to be decided with reference to the facts proved in each case and it is difficult to lay down any test or tests which may be of universal application. It is manifest that where the endowment is lost in antiquity or shrouded in mystery, there being no document or revenue entry to prove its origin, the task of the court becomes difficult and it has to rely merely on circumstantial evidence regarding the nature of the user of the temple. In the instant case, however, as there are two documents which clearly show the nature of the endowment, our task is rendered easier. *It is well settled that the issue whether a religious endowment is a public or a private one must depend on the application of legal concept of a deity and private endowment, as may appear from the facts proved in each case. The essential distinction between a private and a public endowment is that whereas in the former the beneficiaries are specified individuals, in the latter they are the general public or class of unascertained people.* This doctrine is well known and has been accepted by the Privy Council as also by this Court in a large catena of authorities. *This being the essential distinction between the nature of a public or a private endowment, it flows that one of the crucial tests to determine the nature of the endowment would be to find out if the management of the property dedicated is in the hands of the strangers or members of the public or in the hands of the founders or their descendants. Other factors that may be considered would*

be the nature of right of the worshippers, that is to say, whether the right to worship in the temple is exercised as of right and not as a matter of concession. This will be the strongest possible circumstance to indicate that the endowment was a public one and the beneficiaries are the worshippers and not a particular family. After all, an idol is a juristic person capable of holding property and *the property dedicated to the temple vests in the deity*. *If the main worshippers are the members of the public who worship as a matter of right then the real purpose is to confer benefit on God. Some of the circumstances from which a public endowment can be inferred may be whether an endowment is made by a person who has no issue and who after installing the deity entrusts the management to members of the public or strangers which is a clear proof of the intention to dedicate the temple to public and not to the members of the family. Where, however, it is proved that the intention of the testator or the founder was to dedicate the temple merely for the benefit of the members of the family or their descendants, the endowment would be of a private nature.*

8. The mere fact that members of the public are allowed to worship by itself would not make an endowment public unless it is proved that the members of the public had a right to worship in the temple. In ***Deoki Nandan v. Murlidhar*** this Court observed as follows:

> "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 ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment.
>
> * * *
>
> *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."

(emphasis supplied)

9. This view was reiterated in a later decision of this Court in ***Mahant Ram Saroop Dasji v. S.P. Sahi***[26], where S.K. Das, J., as he then was, speaking for the court clarified the law thus:

> "But the most usual and commonest form of a private religious trust is one created for the worship of a family idol in which the public are not interested.... Dealing with the distinction between public and private endowments in Hindu law, Sir Dinshah Mulla has said at p. 529 of his Principles of Hindu Law (11th Edition):
>
> > 'Religious endowments are either public or private. In a public endowment the dedication is for the use or benefit of the public. When property is set apart for the worship of a family God in which the public are not interested the endowment is a private one.'"

10. In ***Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi*** the same principles were reiterated and it was pointed out that *the entries made in the Inam Register showing the nature of the endowment were entitled to great weight and taken with the vastness of the temple, the mode of its construction, the long user by the public as of right and grants by rulers and other persons were clear pointers to the fact that the endowment was of a public nature*.

11. In the case of ***Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das***[27], this Court laid down some important tests to determine the nature of the endowment. In this connection, the following observations need specific mention: (SCC pp. 579-80, paras 13, 14 & 15)

> "Therefore, *evidence that sadhus and other persons visiting the temple are given food and shelter is not by itself indicative of the temple being a public temple or its properties being subject to a public trust.*
>
> *Evidence that the Mahants used to celebrate Hindu festivals when members of the public used to attend the temple and give offerings and that the public were admitted to the temple for darshan and worship is also not indicative of the temple being one for the benefit of the public. . . . The fact that members of the public used to come to the temple*

[26] **AIR 1959 SC 951**
[27] **(1971) 1 SCC 574**

> *without any hindrance also does not necessarily mean that the temple is a public temple, for members of the public do attend private temples*. . . Yet, the Privy Council held that *the general effect of the evidence was that the family had treated the temple as family property and the mere fact of the members of the public having come to the temple and having made offerings and the mela having been held which gave popularity to the temple and increased its esteem in the eyes of the public and the fact that they were never turned away were not enough to hold the temple and the properties as a public trust*.
>
> * * *
>
> *Thus, the mere fact of the public having been freely admitted to that temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right*."

12. *It may thus be noticed that this Court has invariably held that the mere fact that the members of the public used to visit the temple for the purpose of worship without any hindrance or freely admitted therein would not be a clear indication of the nature of the endowment. It is manifest that whenever a dedication is made for religious purposes and a deity installed in a temple, the worship of the deity is a necessary concomitant of the installation of the deity, and therefore, the mere factum of worship would not determine the nature of the endowment. Indeed if it is proved that the worship by the members of the public is as of right that may be a circumstance which may in some cases conclusively establish that the endowment was of a public nature*. In ***Dhaneshwarbuwa Guru Purshottambuwa v. Charity Commissioner***[28] all the aforesaid cases were summarised and the principles indicated above were reiterated.

13. In ***Gurpur Guni Venkataraya Narashima Prabhu v.B.G. Achia***[29] Krishna Iyer, J., reiterated these very principles in the following words: (SCC p. 20, para 4)

> The law is now well settled that "the mere fact of the public having been freely admitted to the temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right".

[28] **(1976) 2 SCC 417 : AIR 1976 SC 871 : (1976) 3 SCR 518**
[29] **(1977) 3 SCC 17, 20**

(see ***Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das***)

14. Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guide-lines to determine on the facts of each case whether an endowment is of a private or of a public nature:

> (1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;
>
> (2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;
>
> (3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;
>
> (4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."
>
> (Emphasis supplied)

71. The principles that distinguish private temples from public endowments or public temples are apparent from the extracts from the decisions cited supra, and, for ease of reference, they have been italicised and underscored. It is needless to redirect them. Suffice it, however, to say that the fact that the public worship at a private temple, even with free access, does not *ipso facto* indicate that the

temple is a public temple. Neither does the land on which a private temple is constructed vest in the deity, merely because the public are allowed to worship there. What is of essence is the purpose for which the temple was constructed and dedicated to the deity consecrated in it, and the purpose for which the temple has been thrown open to the public. The onus to establish that the temple, though initially privately constructed, acquires public character with the passage of time, is all the persons who asserting.

72. If such person is able to prove the existence of the various circumstances which, as per the decisions cited *supra*, would support the inference that the temples of public character, nothing more is required. In the present case, however, there is not even an averment of the existence of any of the circumstances. It is an admitted position that the land on which the temple was constructed is private land, presently belonging to Respondent 5 Suraj Malik. How the temple came to be constructed is not averred in the objection petition. Though there is an averment that the temple was constructed in 1997, even that is unsupported by evidence. When the temple was constructed is, therefore, a matter of pure conjecture. In this context, the submission of Mr. Jha that the plot that Mr. Kataria purchased on 8 December 1997 was vacant, also merits mention.

73. Whether, at any point of time, the land was endowed for religious purposes, also finds no mention; indeed, that is not even the case of the appellants. All that is said is that the public worship at the temple. Even that is in the nature of a bold averment, with no

reference to any material on which it is based. There is no averment that the worship was as a matter of right. Mere worship, by the public, at the private temple, does not convert it into a public temple. The averments in the objection petition, therefore, do not even make out a *prima facie* case of the disputed temple, in the present case, being a public temple.

74. The submission of Mr. Grover that, in view of the specific averment, in the objection petition, that members of the public used to worship at the temple, was sufficient to justify subjecting the matter to trial cannot, therefore, be accepted. Indeed, if such were the position, it would lead to disastrous consequences, which no civilised system of law could countenance. As has happened in the present case, a person could grab the property of another, squat thereon, construct a temple on the property, allow the public to occasionally worship there, and obstruct, permanently, the restoration of the property to its rightful owner. Allowing such a pernicious practice would be driving the last nail in the coffin of justice.

75. Mr. Grover's exhortation, to this Court, to at least subject matter to trial, completely obfuscates the difference between a suit and an execution proceeding. Had the issues raised by Mr. Grover been raised during the pendency of the suit, the Court might, perhaps, have had no option but to allow a trial thereon, howsoever unwholesome the submissions might have appeared at first blush. The demographics, however, change once the matter is in execution. In ***Rahul S. Shah***, the Supreme Court has clearly proscribed the

"mechanical" issuance of notice by executing courts on objections filed by third parties, asserting independent rights, to frustrate the objection proceedings. The obvious sequitur is that the averments in the objection petition must make out a case which calls for serious consideration, and indicates a *bona fide* ventilation of rights, rather than a covert attempt to derail the execution of the decree. Court does not, merely on the basis of bald averments in the objection petition, issue notice, thereby setting in issue a fresh round of litigation for the hapless decree holder, with all its pernicious sequelae.

76. None of the averments which could suffice to even make out a *prima facie* case, worthy of consideration, of the temple, situated on the suit property, being a public temple, with the land on which it is constructed vesting in the deity, even pleaded, much less supported by any material evidence. In such circumstances, if the Court were to issue a notice on the objection petition, it would set in motion a fresh round of litigation to which the decree holder would help to be subjected, at the instance of a hyper-adventurous objector who, in cahoots with the judgment debtor, seeks every which way to obstruct the restoration of the possession of the property to its rightful owner.

77. There is, therefore, nothing to indicate, even *prima facie*, that the temple was a public temple. The submission that Appellant 1 was entitled to defend Lord Hanuman as his next friend does not, therefore, survive for consideration.

Right to worship

78. There is no averment, either in the objection petition filed by the appellants before the learned ADJ, or in the present appeal, that prayers and worship were being offered by the public at the temple as a matter of right. In the absence of any such averment, no member of the public can claim a right to worship at the temple. There is no concept, in the law, of the right to worship vesting in the public at a private temple, unless the owner of the temple makes such a right available or, with the passage of time and in compliance with the indicia identified by the Supreme Court in the judgments cited *supra*, the private temple has metamorphosed into a public temple.

79. The learned ADJ is, therefore, correct in his finding that no right of Ankit Mishra, to worship at the temple, stands infracted by the restoration of possession of the temple to Suraj Malik, its rightful owner, as no such right existed in the first place.

Costs

80. The Court is constrained to observe that the manner in which the process of the law has been abused by the appellants is an affront, not only to the law, but to the Court and its entire process. There can be no scope of leniency in such a case. The plaintiff had to cough up a huge amount to Santosh Sharma and her children in order to obtain a decree directing them to surrender possession of the suit property. Significantly, Santosh Sharma and her children did not choose to

contest the suit on merits. The allegation of trespass was, therefore, impliedly accepted. After thus having had to disgorge money to persuade Santosh Sharma and her children, as trespassers in the suit property to vacate the suit property, Suraj Malik has been subjected to a fresh round of litigation, this time, by the unholy coterie of Santosh Sharma, Manish Ahuja and Ankit Mishra.

81. As already observed, the decision of the Supreme Court in ***Rahul S. Shah*** requires *compensatory costs* to be awarded in such a case. Ankit Mishra cannot, therefore, escape costs. Apropos the quantum, I am persuaded to adopt a lenient stance only because Suraj Malik has not had, either before the learned ADJ or before this Court, to suffer the travails of a fresh trial, to ascertain the right of the appellants. Besides, albeit with the interference of this Court, the suit property now stands restored to Suraj Malik.

82. While, therefore, the manner in which the appellants have used the judicial process would warrant imposition of much higher costs, I am, in the facts of the present case, inclined to peg the costs payable by Appellant 1 to Suraj Malik at ₹ 1 lakh. Costs would be payable within four weeks from today, by means of a crossed cheque or demand draft, deposited in the registry, favouring Suraj Malik. On such deposit being made, Suraj Malik would be entitled to withdraw the said cheque or demand draft.

83. In order to avoid Appellant 1 Ankit Mishra now advancing the contention that the costs had to be shared by Lord Hanuman, it is

clarified that the costs would be entirely payable by him- with a small 'h'.

Conclusion

84. The appeal is therefore dismissed *in limine*, with costs of ₹ 1 lakh, to be paid by Appellant 1 Ankit Mishra to Respondent 5 Suraj Malik, in the manner set out hereinabove. Let the costs be paid within four weeks, and compliance reported to this Court immediately thereupon.

85. The appeal stands dismissed in the above terms.

C. HARI SHANKAR, J.

MAY 6, 2024/*dsn*