

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

% *Date of decision : July 15, 2015*

+ **RFA(OS) 67/2015**

RAJESH GIRI Appellant
Represented by: Mr.Abhishek Kumar, Adv.

versus

SUBHASH MITTAL & ORS Respondent
Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

CM 1230/2015

Exemption allowed subject to just exceptions.

CM 12302/2015

For the reasons stated in the application the delay of 11 days in filing the appeal is condoned.

RFA(OS) 67/2015

1. Aggrieved by the order dated May 14, 2015 dismissing the suit filed by the appellant being CS(OS) No.3280/2014 the appellant Rajesh Giri files the present appeal.
2. The suit was filed by Rajesh Giri in his capacity as a worshiper and he sought the following prayers:

“1. Pass a decree of declaration and the Sale Deed dated 28.03.2005 and two sale deeds of even dates dated 12.05.2010 in respect of trust property i.e. property bearing No.674, Gali

Ghanteshwar Katra Neel, Chandni Chowk, Delhi, be declared as null and void.

2. *The defendant No.1 to 5 be directed by way of mandatory injunctions to produce the ancient idol of 'Shri Radha Krishan Ji Maharaj' with the directions to defendant Nos.3 to 5 to reconvert the said Waqf property i.e. property bearing No.674, Gali Ghanteshwar Katra Neel, Chandni Chowk, Delhi, as temple of Radha Krishan Ji Maharaj whereby the defendants also be restrained to stop the plaintiff from worshiping the said idol of 'Shri Radha Krishan Ji Maharaj'.*

3. *The defendant No.6 be directed by way of mandatory injunction to rectify its record of mutation whereby remutating the property on the name of the Waqf.*

4. *The defendant Nos. 1-5 also be directed by way of permanent injunctions not to sell the suit property and not to create any third party interest upon the property forever.*

5. *Permanent injunction thereby permanently restraining the defendant Nos. 1 to 5 and their successors, assignees, LRs etc for using the Waqf property other than the purposes for waqf which was created by virtue of Will dated 19.11.1930."*

3. Vide the impugned judgment the learned Single Judge came to the conclusion that there is no averment in the plaint that the execution of the sale deeds last of which was dated May 12, 2010 was learnt by the appellant on a later date and the suit having been instituted on September 18, 2014 was thus beyond the period of limitation, having not been filed within three years from the date of execution of the sale deed as per Article 58 of Schedule I of the Limitation Act. That apart the learned Single Judge also noted that not only the suit was barred by limitation but the appellant has made out no cause of action to file the suit.

4. Since no summons were issued to the defendants in the suit we are not required to issue notice to the defendants while deciding the present appeal.

5. Learned counsel for the appellant relies upon the decision in AIR 1993 SC 1145 Kapoor Chand and Ors. Vs. Ganesh Dutt and Ors. to contend that when the temple is found to be a public temple, the law is well settled 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 worshipers. In relation to limitation learned counsel for the appellant refers to Article 94 of Schedule I of the Limitation Act to contend that period of limitation prescribed for suits in relation to trust properties is 12 years and not three years as held by the learned Single Judge.

6. In the plaint the appellant Rajesh Giri stated that he was one of the worshipper of the ancient idol of Shri Radha Krishan Ji Maharaj enshrined at waqf/endowment/temple bequeathed by one Nikko Bibi in the name of God by virtue of her Will dated November 20, 1930. Rajesh Giri challenged the malicious and malafide act of the defendant/ respondent Nos. 3 to 5 who sold the waqf/endowment property i.e. temple to defendant/ respondent No.1 and 2 i.e. Subhash Mittal and Shyam Putela. In the mutation records of the MCD the property/temple was registered as a waqf/endowment property since 1940 on the strength of Will dated November 20, 1930. However, the MCD illegally transferred/mutated the said property in its record into the name of defendant/ respondent No.1 & 2. The Sub-Registrar registered the sale deeds dated May 12, 2010 in favour of defendant/ respondent No.1 & 2 on the basis of interpolated and bogus documents/Deeds created by Trustees in order to unlawfully transfer Title of the waqf/temple property adverse to the right of the beneficiary of Trust i.e. Shri Radha Krishan Ji Maharaj.

7. From the averments in the plaint it is clear that the appellant herein

was seeking declaration of the sale deed dated March 28, 2005 and two sale deeds dated May 12, 2010 in respect of the trust property as null and void. Article 94 of Schedule I of the Limitation Act provide a period of limitation of 12 years to set aside a transfer of immovable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment made by Manager thereof for valuable consideration. Thus, even if there is no averment in the plaint as to when Rajesh Giri came to know about the sale deeds, the date of knowledge cannot be prior to March 28, 2005 and May 12, 2010 and thus the suit seeking declaration of the sale deeds as null and void was within the period of limitation since it related to trust property.

8. Distinguishing the judgment reported as AIR 1967 SC 1044 Bishwanath and Anr. Vs. Shri Thakur Radhaballabhji and Ors. the learned Single Judge held that the decision in Bishwanath (supra) did not apply to the factual matrix of the present case as in Bishwanath's case the suit was for possession where the "Shibait" of the temple had not come forward to take any legal proceedings. The Supreme Court in the decisions reported as AIR 1957 133 Deoki Nandan Vs. Murlidhar and Kapoor Chand and Ors (supra) held that though under Hindu law an idol is a juristic person capable of holding property and the properties endowed for the temple vest in it, however it can have no beneficial interest in the endowment and the true beneficiaries are the worshippers as the real purpose of 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. It was thus held that the worshipers have a right to file a suit to set aside transfer of immovable property comprised in a Hindu religious or charitable endowment made by a Manager thereof for valuable consideration

and the same would be governed by Article 94 to Schedule I of the Limitation Act.

9. Consequently, the impugned judgment dated May 14, 2015 is set aside. The suit i.e. CS(OS) No. 3280/2014 is restored and be listed before the learned Single Judge on July 30, 2015.

10. No costs.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 15, 2015
‘ga’