

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

+ **RFA No.632/2017**

% **19th July, 2017**

SMT. RAJ RANI SHARMA & ORS. Appellants
Through: Ms. Sonam Anand, Advocate.

versus

SH. SUMER SEGAL & ANR. Respondents
Through: Mr. Ankit Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the judgment of the trial court dated 18.3.2017 whereby the suit filed by the respondents/plaintiffs have been decreed against the appellants/defendants for possession of the property no.322, situated in Kucha Ghasi Ram, Chandni Chowk, Delhi as shown in red colour in the site plan. A decree of *mesne* profits at Rs.3,000/- per month along with interest at 9% per annum has also been passed in terms of the impugned judgment in favour of the respondents/plaintiffs and

against the appellants/defendants. The subject suit has been decreed for possession against the appellants/defendants as they were only licencees of the suit property, being the legal heirs of the priest of the temple, and who in spite of notice had failed to vacate the suit property.

2. The facts of the case are that there is a temple in the name and style of Visheshwar Mahadev Temple on the ground floor of residential portion of property no.322, situated in Kucha Ghasi Ram, Chandni Chowk, Delhi. A portion of ground floor comprising of two rooms, stores, verandah, kitchen and toilet were attached to the temple and were meant for sewadar of the temple for conducting of sewa/pooja in the temple. The temple was originally created by a private trust in terms of the testament dated 29.8.1929 of one Sh. Dewan Rai Bahadur Bisheshur Nath and the temple was a private family temple meant for the family members of Sh. Dewan Rai Bahadur Bisheshur Nath. As per his Will Sh. Dewan Rai Bahadur Bisheshur Nath appointed his second son Sh. Rai Bahadur Dr. Baij Nath as executor of the Will dated 29.8.1929. Sh. Rai Bahadur Dr. Baij Nath appointed Sh. Harish Chander Shastri as sewadar of the

temple. The administration and management of the trust along with the temple was handed over by Sh. Rai Bahadur Dr. Baij Nath to his son Sh. Prem Nath Segal by a trust deed dated 13.1.1950 also giving the power to appoint another male member from the descendants of Sh. Rai Bahadur Dr. Baij Nath as trustee. Sh. Prem Nath Segal after death of Sh. Rai Bahadur Dr. Baij Nath in the year 1950 nominated his eldest son as a successor to the office of the trust by means of a registered testament dated 24.5.1951. After the death of Sh. Prem Nath Segal, his son Sh. Prakash Nath Segal assumed the charge of the trust and temple. Thereafter on 26.3.1985, a trust deed was executed between Sh. Prakash Nath Segal and Sh. Sumer Segal appointing the respondent no.1/plaintiff no.1/Sh. Sumer Segal as a sole trustee. Sh. Harish Chander Shastri who was serving as a sewadar of the temple expired on 2.2.1984 and his son Sh. Vinay Chand Sharma approached the respondents/trust for his appointment as sewadar of the temple vide his letter dated 30.3.1984 and he was so appointed vide letter dated 31.3.1984. On account of his being appointed as a sewadar he was given a right to reside in the suit property besides being provided free electricity and water. Sh. Vinay Chand Sharma continued as

sewadar till his death on 13.10.2010. On the death of Sh. Vinay Chand Sharma, it is pleaded that right of the appellants/defendants to occupy the suit premises automatically stood terminated. The respondents/plaintiffs through a communication dated 14.1.2011 asked the appellants/defendants to vacate the suit property. A reminder was also given on 7.6.2013. Thereafter, the subject suit was filed.

3. The appellants/defendants pleaded that there was no right in the respondent no.1 to act as a trustee. The suit was stated to be an abuse of the process of law. It was pleaded by the appellants/defendants that testament dated 29.8.1929 executed by Sh. Dewan Bahadur Bisheshur Nath was concealed from the court. It was further pleaded that the temple was not a private family temple. It was further pleaded that the appellants/defendants and their predecessors have been occupying the suit premises since the year 1949, and therefore, they were in settled uninterrupted and continuous possession and therefore could not be evicted. The trust deed dated 26.3.1985 was pleaded to be illegal. The suit was prayed to be dismissed.

4. After pleadings were complete the trial court framed the following issues:-

- “1. Whether the plaintiff is entitled for decree of possession in respect of suit property bearing no.322, Kucha Ghasi Ram, Chandani Chowk, Delhi 110006 as prayed for? OPP
2. Whether plaintiff is entitled for a decree of mesne profit alongwith pendente lite and future interest as per prevalent market rate as prayed for? OPP
3. Whether the plaintiff has locus standi to file the present suit? OPP
4. Whether the plaintiff no.1 is authorized person to file the suit on behalf of plaintiffs? OPP
5. Whether the defendants have any right to retain the possession of the suit property being legal heirs of Sh. Harish Chander Shastri, priest of the private temple in question? OPD
6. Relief if any.”

5. Evidence which has been led by the parties is referred to in paras 16 and 17 of the judgment of the trial court and which paras read as under:-

“16. In order to prove their case, plaintiffs examined Mr. Sumer Segal (S. Segal) as PW-1, who tendered his evidence through affidavit Ex.PW-1/A. He has relied upon the application Ex.PW-1/1, office copy of notice under order 12 rule 8 CPC as Ex.PW-1/2, original postal receipts as Ex.PW-1/3 and Ex.PW-1/4, office copy of rejection letter dated 16.08.2011 as Ex.PW-1/5, postal receipts in respect to rejection letter as Ex.PW-1/6 to Ex.PW-1/9 and English translation of the rejection letter as Ex.PW-1/10.

17. On the other hand, defendants examined Sh. Amit Sharma as DW-1 who tendered his evidence through affidavit Ex.DW-1/A. He has relied upon the water bills Ex.DW-1/1 to Ex.DW-1/6, telephone bills Ex.DW-1/7 to Ex.DW-1/25 and vouchers for purchase of pooja material Ex.DW-1/26 to Ex.DW-1/51. Defendants also examined Sh. Sumit Sharma as DW-2 who tendered his evidence through affidavit Ex.DW-2/A.”

6. It is seen that the trust deeds dated 13.1.1950 and 26.3.1985 are admitted documents and have been exhibited as Ex.P-2 and Ex.P-3. It was also not disputed that Sh. Vinay Chand Sharma was appointed as a sewadar in the suit property and which was in terms of the admitted appointment letter dated 31.3.1984 and which letter was hence exhibited as Ex.P-5. The application of Sh. Vinay Chand Sharma dated 30.3.1984 on the basis of which he was appointed vide letter dated 31.3.1984 was also an admitted document and was exhibited as Ex.P-4. The court below has held that predecessor-in-interest of the appellants/defendants Sh. Vinay Chand Sharma being appointed in terms of the documents Ex.P-4 and Ex.P-5 only as a sewadar in his own right, therefore, on the death of Sh. Vinay Chand Sharma the appellants/defendants were only licencees and hence once licence is terminated they have no right to stay in the suit property and hence the suit for possession was liable to be decreed. It was also held by the trial court that the appellants/defendants being licencees were not entitled to challenge the title of the respondents/plaintiffs by virtue of Section 116 of the

Indian Evidence Act, 1872. The relevant paras of the judgment of the trial court are paras 21 to 23 and these paras read as under:-

“21. The case of the plaintiff is that the plaintiff no.1 is the sole trust of plaintiff no.2 through trust deed Ex.P-2 and Ex.P-3. The suit property was individual property before 1950 and thereafter, it became a trust property on the basis of the trust created by Dr. Baij Nath in the year 1950. Sh. Vinay Chand Sharma was father of defendants nos. 2, 3 & 4 and husband of defendant no.1 and after the death of Sh. Vinay Chand Sharma his licence stood terminated and plaintiffs have never given any permission to defendants to occupy the suit property. The defendant no.3 has moved an application dated 06.07.2011 Ex.PW-1/1 for his appointment as Sewadar in place of his father late Sh. Vinay Chand Sharma. Thereafter, PW-1 sent a written communication through letter dated 16.08.2011 Ex.PW-1/2 and postal receipts through which this letter was sent are Ex.PW-1/3 and Ex.PW-1/4 and sought production of the original of this letter dated 16.08.2011 which was in power and possession of defendant no.3 and PW-1 got issued a notice dated 21.12.2016 under order 12 rule 8 CPC. The copy of the said communication dated 16.08.2011 was sent to other defendants through Ex.PW-1/10 which were sent through postal receipts Ex.PW-1/6 to Ex.PW-1/9. PW-1 carried-out repairs in the said property by his own expenses detailed in Ex.P-11.

22. PW-1 was cross-examined by ld. Counsel for the defendants and in cross-examination nothing could be elicited which could disbelieve the testimony of PW-1 inasmuch as PW-1 has admitted that Sh. Harish Chander Shastri was appointed as Sewadar in the year 1940, who happened to be the grand father of defendants nos. 2, 3 & 4 at the salary of Rs.10/- and after the death of Sh. Harish Chander Shastri, his son Sh. Vinay Chand Sharma was appointed as Sewadar through appointment letter Ex.P-5 on the request of late Sh. Vinay Chand Sharma through application / letter Ex.P-4. PW-1 further admitted that the records of his appointment as a trustee are available with PW-1 and appointment letter of Sh. Vinay Chand Sharma was signed by him. PW-1 admitted that in Ex.P-5, no ground for removal from the post of Sewadar has been mentioned. PW-1 has further admitted that his uncle has given charge of the trust in the year 1985 and trust deed in this respect is available on record.

23. It may be noted that DW-1 and DW-2 have pleaded and tried to prove that their right in the suit property as a licensee is hereditary and they are to continue with the possession of the suit property till the trust is in existence and they have tried to prove their possession through various documents but the possession of the suit property has not been disputed by the plaintiffs. The contention of the counsel of the defendant is that the office of the defendant is hereditary in as much as Vinay Chand Sharma and

his father Sh. Harish Chander Shastri are having hereditary office to occupy the suit property as a priest of the temple but this contention is neither here nor there in as much as there was no appointment letter of Sh. Harish Chander Shastri but appointment letter of late Sh. Vinay Chand Sharma Ex.P-4 is available on record and a bare perusal of this appointment letter depicts that late Sh. Vinay Chand Sharma had assured that he will not claim any right, title or interest in the suit property/ trust known as Visheshwar Mahadev Temple. Therefore, the predecessor in interest of the defendants was occupying the suit property as a licensee and after his death, licence of late Sh. Vinay Chand Sharma was not in existence and defendant being legal heirs of the licensee, are not entitled to any right, title or interest in the suit property being his legal heirs. The defendants being legal heirs of the licensee are not entitled to challenge the title of the plaintiffs over the suit property by virtue of Section-116 of the Indian Evidence Act.”

(underlining added)

7. The aforesaid facts and evidence referred to in paras 21 to 23 of the judgment of the trial court therefore leave no manner of doubt that Sh. Vinay Chand Sharma was appointed in terms of the application and appointment letter Ex.P-4 and Ex.P-5 and there cannot be a claim of hereditary office being occupied by Sh. Vinay Chand Sharma more so when Sh. Vinay Chand Sharma himself never raised this plea at any point of time. Also the issue of priest having inherited the office of priest is only *qua* public temple and not *qua* private temple. No evidence worth the name has been led on behalf of the appellants/defendants to show that the temple was a public temple. In any case, the trust deeds Ex.P-2 and Ex.P-3 clearly show that the temple was a private temple.

8. I cannot agree to the argument urged on behalf of the appellants/defendants as regards any concealment of trust deed dated 29.8.1929 for the two reasons. Firstly if the appellants/defendants want to rely on this testament, then, they had to produce and prove the same and secondly, in any case, once the specific trust deeds Ex.P-2 and Ex.P-3 are admitted, the temple is indubitably a private temple.

9. This Court hearing the first appeal under Section 96 CPC can interfere with the findings and conclusions of the trial court if findings and conclusions of the trial court are illegal and perverse. Once the trial court has taken a view on the basis of the evidence on record, this Court is not entitled to interfere with one possible and plausible view taken by the trial court.

10. Dismissed.

JULY 19, 2017
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VALMIKI J. MEHTA, J