

RSA-2503-2011(O&M) and
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COCp-1773-2022(O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) RSA-2503-2011(O&M) &
XOBJC-21-C-2012(O&M)

Pandit Jugal Kishore (since deceased) through his legal representatives

...Appellants

Versus

Hindu Community and Worshippers of Sohna Town, Tehsil and District
Gurgaon (now Gurugram) through its representatives

...Respondents

(2) COCP-3436-2017(O&M)

Hanuman Mandir (Chhoti Bageechi) Suraksha Samiti (Regd.), Sohna

...Petitioner

Versus

Bhagwant Kishore and another

...Respondents

(3) COCP-1773-2022(O&M)

Hanuman Mandir (Chhoti Bageechi) Suraksha Samiti (Regd.), Sohna

...Petitioner

Versus

Bhagwant Kishore and another

...Respondents

Reserved on:-22.5.2023

Date of pronouncement:-07.07.2023

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CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Anupam Gupta, Senior Advocate with
Mr.Bhavnik Mehta, Advocate;
Mr.Gautam Pathania, Advocate;
Mr.Sukhpal Singh, Advocate and
Mr.S.S. Virk, Advocate
for the appellants in RSA-2503-2011 and
for the respondents in both COCPs.

Mr.Puneet Jindal, Senior Advocate with
Mr.Rajesh Arora and Ms.Navroop Jawanda, Advocate
for the petitioners in both COCPs and
for respondent No.6 in RSA-2503-2011.

H.S. MADAAN, J.

1. By this order, I shall dispose of one RSA-2503-2011 filed on behalf of appellant Pandit Jugal Kishore (since deceased) through his legal representatives and two contempt petitions bearing COCP-3436-2017 and COCP-1773-2022 filed on behalf of petitioner Hanuman Mandir (Chhoti Bageechi) Suraksha Samiti (Regd.), Sohna.

2. Briefly stated, facts of the case are that plaintiff Hindu Community and Worshippers of Sohna Town, Tehsil and District Gurugram through its representatives and respectable public men and worshippers i.e. Chitru Mal Saini, Pardhan Saini Sabha (Regd.), Sohna and 10 other persons and one organization along with worshippers of Sohna Town, as described in the list Annexure A statedly having common interest, had brought a suit under Section 92 CPC against defendants Pandit Jugal Kishore son of Sh.Sadhu Ram, resident of Hanuman Mandir, Baba Kaharak Singh Marg, Cannaught Place, New Delhi and Gian Chand

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Jogi son of Sh.Hukam Chand Jogi, resident of Hanuman Mandir, Chhoti Bageechi, Sohna, Tehsil and District Gurugram, seeking removal of defendants from the public temple and its charitable property detailed in para No.2 of the plaint referred to as the disputed property. In addition to that, the plaintiffs had sought issuance of direction to both the defendants to render the accounts of the income and expenditure of the temple and its property and settle/frame the scheme of management of the temple and property attached therewith known as Hanuman Mandir Chhoti Bageechi Suraksha Samiti, Sohna for effective management and administration of the affairs of the deities, temple and charitable property.

3. As per the version of the plaintiffs, the temple Chhoti Bageechi Hanuman Ji Maharaj situated at Sohna has deity of Hanuman Ji Maharaj, which was installed and the temple was constructed by inhabitants of Sohna town by contributing donations about 200 years back; in addition to the temple, one Dharamshala, one *Piao*, one stage were constructed and a Ramlila ground and a small garden were prepared; a *pucca* well was dug by the inhabitants of Sohna town from the donations so collected and this property is being used for public charitable purposes; on various festivals such as 'Annkut' 'Ram Navmi' etc., Bhajan Kirtan and other religious rites were observed in this property, whereas the garden known as Bageechi is being used by the public for morning and evening walk, in that way, all the inhabitants of Sohna town are having free access to the temple and property attached therewith and they

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are treating the same as public charitable property.

As the version of the plaintiffs goes, the land underneath the disputed property i.e. Haveli situated in Mohalla Kayasthwara in Sohna town and 12 acres of land situated at village Lakhuwas were donated by biswedars of the properties to the deity, though defendant No.1 wrongly claimed himself to be manager/Mahant of said public trust and defendant No.2 had started proclaiming himself to be Pujari of the disputed property, though both of them are liable to be removed from the property in question; defendant No.1 staked his claim over the disputed property being Mahant on the basis of adoption by Baba Kewal Dass, a Shebait-cum-Pujari of the temple but the adoption had not taken place in a legal manner, regarding which there are judicial pronouncement in Civil Suit No.228 of 1978 titled as 'Jugal Kishore Versus Chote Lal' as well as Suit No.36 of 7.4.1977 titled as 'Kali Charan etc. Versus Bhim Singh etc.'; the defendant No.1 claimed himself to be Mahant of the disputed property, whereas the office of Mahant is not hereditary and that the first and foremost condition for a person claiming himself to be Mahant is that he should completely renounce the world, severing all his connections with his natural/adopting family but defendant No.1 had not done so; even otherwise, he was not appointed either as Shebait or the Mahant of the disputed property; further the defendant No.1 had failed to perform his pious and legal obligation as Shebait; he was not maintaining the disputed property in proper manner in which any religious or charitable property

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should be maintained; defendant No.1 had been consistently admitting the disputed property to be the property of the public but he had been doing mis-administration and wanted to alienate such property.

4. With regard to the defendant No.2, the plaintiffs had alleged that defendant No.2 was physically dispossessed from the temple and its property in the year 1978 in execution of decree passed against him and defendant No.2 had also caused loss and injury to the deities and properties meant for charitable purposes by illegally and unauthorisedly usurping the 'Pujapa' for his personal use without spending even a single paisa for the upliftment/improvement of the temple and its properties since 3.5.1978. According to the plaintiffs, defendant No.2 was bound to maintain accounts of the 'Pujapa' income of the deities and its expenditure but he had failed to do so and furthermore he was guilty of lowering down the prestige of the temple property by misusing the temple courtyard by tethering his cattle, place his trucks tyres and other items and also raising illegal temporary and pucca constructions in the shape of *Chhappar* over a part of the disputed property.

5. The plaintiffs have contended that for effective management and administration of the temple and its properties, they have formed a society known as Hanuman Mandir (Chhoti Bageechi Suraksha Samiti, Sohna), which is plaintiff No.12 in the suit and a constitution has been framed for the running of said society.

The plaintiffs prayed that the suit be decreed.

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6. On notice, both the defendants appeared and filed separate written statements contesting the suit.

In the written statement filed by defendant No.1, he had controverted the pleadings of the plaintiffs contending that in respect of the same property, a previously instituted suit bearing No.469 of 3.6.1993 was pending, therefore, the present suit was liable to be stayed; the plaintiffs had suppressed true and material facts from the Court and the suit was not maintainable; the plaintiffs had no title or interest whatsoever and they were estopped from filing the suit by their own act and conduct; the plaintiffs had no locus standi to bring the suit. According to the defendant No.1, he was an adopted son of Mahant Kewal Dass and the suit property was private endowment of which defendant No.1 was the Mohatmim/Shebait/Manager-cum-Mahant and the suit property was governed by Religious Endowment Act and therefore provisions of Section 92 CPC were not applicable. According to defendant No.1, initially an idol of Hanumanji was installed in the house of Sunder Dass son of Mangal Dass, the predecessor-in-interest of answering defendant and the house was later on converted into a temple by the ancestors and forefathers of the defendant No.1 and right from the very beginning, the suit property had been in continuous occupation and possession of defendant No.1 and his forefathers and was being maintained and managed by them; this possession was so reflected in the revenue record; the suit property was not public charitable property because it was never

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created for the public and it was never looked after and managed by inhabitants of Sohna town. The defendant denied that residents of the village had collected donations for the purpose of raising construction of the temple and creating other properties attached therewith or that the temple and the properties attached there with were ever managed by inhabitants of Sohna town. According to the answering defendant, the construction had been raised by his forefathers from their own funds and no donation whatsoever was ever received either from the plaintiffs or any other person. Defendant No.1 had further contended that earlier Kewal Dass was Manager/Shebait/Mahant of the disputed property; he had died in the year 1944 but during his life time, he had adopted defendant No.1 Pandit Jugal Kishore as his son; an adoption deed was executed and got registered by Kewal Dass on 10.8.1942 by virtue of which the defendant No.1 inherited the rights of Kewal Dass in his property. Such defendant denied the allegations with regard to mis-administration or misuse of the disputed property. According to such defendant, he had been continuously protecting interest of deity in the disputed property facing various litigations; the plaintiffs were having evil eyes on the property and with intention to grab the same, they had formed a society to take over management and administration, to which they had no right. According to the answering defendant, after his adoption by Kewal Dass in the year 1942, he was being treated as his son by his relatives as well as by his adoptive father Kewal Dass. Such defendant denied that for being Mahant

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of a charitable property, one has to renounce the world. Such defendant had filed a counter claim, seeking a decree for injunction against the plaintiffs but it was later on withdrawn by him.

In the written statement filed on behalf of defendant No.2, he had raised various legal objections challenging the locus standi of the plaintiffs to bring the suit stating that it was liable to be stayed under Section 10 of CPC and that it was not maintainable and further plaintiffs were estopped from filing the suit by their own act and conduct. Such defendant also denied that the suit property is a public charitable trust or is being looked after, managed and brought up by public of Sohna town or that any public charitable trust is there in the disputed property. According to such defendant, since the time of installation of deity, it is being looked after by forefathers of defendant No.2 and thereafter by defendant No.2 himself; they have been rendering valuable service to the deity and the temple and the plaintiffs have no right, title or interest either in the disputed property or in the management of the deity and its property and they have no right to seek any account of the offering. This defendant denied that he was ever dispossessed from the temple or that he had ceased to work as Pujari of the disputed property.

7. The plaintiffs had filed separate replications to the written statements controverting the allegations in the written statements whereas reiterating the averments in the plaint.

8. On the pleadings of the parties, following issues were

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framed:

1. Whether the present suit has been filed by a properly authorized person? OPP.
2. Whether the property in dispute was built by the public at large by their mutual contribution if so its effect? OPP.
3. Whether the property in dispute as detailed in para no.2 of the plaint is a public temple and charitable property, if so its effect?OPP.
4. Issue No.3 is proved whether the plaintiffs are entitled to get the scheme framed as envisaged under Section 92 of CPC with respect to this property? OPP.
5. Whether the plaintiffs have no locus standi and cause of action to file and maintain the suit? OPD.
6. Whether the plaintiffs are estopped by their act and conduct from filing the present suit? OPD.
7. Relief.

The following additional issue was framed vide order dated
9.9.1996:-

6A Whether the present suit is liable to be stayed as averred in para No.2 of preliminary objection of written statement. If so, its effect? OPD.

Further vide order dated 11.6.2005, the following additional
issue was framed:-

6B Whether Pt.Jugal Kishore, defendant No.1 is validly adopted

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son of Baba Kewal Dass as alleged? OPD.

9. Both the parties were afforded adequate opportunities to lead their evidence in support of their respective claims.

During the course of evidence of the plaintiffs, they examined PW1 Ramanand, DRK, Gurugram, PW2 Devender Singh, DRK, Gurugram, PW3 L.D. Kalra, Lineman/LDC, HSEB, Sohna, PW4 Dharampal Gupta, PW5 Budhi Chand, PW6 Chandi Ram, PW7 Mool Chand Punia, PW8 Shri Chand, PW9 Lajja Ram, PW10 Hukam Chand, PW11 Diwan Chand, PW12 Devender Kumar, PW13 Kishan Lal, PW14 Hargovind, PW15 Balraj ALM, HVPN, Sohna, PW16 Chote Lal, DRK, PW17 Harish Vig, PW18 Shri Parkash, PW19, Satish Kumar Gupta, PW20, Jitender Kumar, PW21 Parveen Kumar, PW22 Raghubir Singh, PW23 Kanhiya Lal, PW24 Neki Ram, PW25 Shri Chand, PW26 Ram Babu, PW27 Sanjiv Kumar Aggarwal, PW28 Chaudhary Moti Ram, PW29 Tej Singh, PW30 Nanak Chand, PW31 Dariyao Singh, PW32 Kishan Chand Dagar, PW33 Rajender Kumar, PW34 L.S. Rawat, PW35 Mahant Jagdish Prasad, PW36 Arvind Singh, PW37 Vijay Kumar, PW38 Raghunandan Lal, PW39 Mahant Narender Sharma, PW40 Chaman Parkash, PW41 B.R. Uppal, PW42 Ashok Kumar, PW43 Om Parkash, PW44 Gopal Singh, PW45 Prem Lata, PW46 Ram Chander, PW47 B.P. Mishra, PW48 H.K. Bhutani and PW49 D.K. Saxena. The plaintiffs produced in evidence several documents.

In rebuttal, the defendants examined DW1 Narayan, DW2

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Gian Chand, DW3 Jagidh Singh, DW4 Jugal Kishore @ Jugal Das and DW5 Mahesh Kumar. The defendants had also relied upon various documents.

10. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Sr.Divn.), Gurugram after giving issue-wise findings dismissed the suit of the plaintiffs vide judgment and decree dated 23.11.2007.

11. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Gurugram, which was assigned to Additional District Judge, Gurugram, who vide judgment and decree dated 18.12.2010 accepted the appeal partly decreeing the suit of the plaintiffs to the extent that Hanuman Mandir Chhoti Bageechi along with Ramlila stage and shops etc. situated in Khasra Nos.626 and 627 is property of public temple and defendant No.1 Jugal Kishore is Mohatamim/Mahant of the property and defendant No.2 Gian Chand has got no concern with the same. The defendant No.1 being Mohatamim/Manager has the duty cast upon him to manage accounts of the property and plaintiffs can approach the District Judge for framing scheme to effectively manage and administer the affairs of the temple and other properties situated in Khasra Nos.626 and 627 and under the scheme a decent amount has to be fixed to be given to defendant No.1 Jugal Kishore being its Manager so that he can live a decent life, which shall be determined under the scheme to be framed by the District Judge.

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12. Being dissatisfied with the judgment and decree passed by Additional District Judge, Gurugram, the defendant No.1 has filed RSA-2503-2011, notice of which was given to the respondents.

13. The respondent No.6 in the appeal, namely, Hanuman Mandir (Chhoti Bageechi), Suraksha Samiti (Regd.), Sohna had filed XOBJC-21-C-2012 under Order 41 Rule 22 read with Section 151 CPC contending that the findings recorded by the First Appellate Court regarding Jugal Kishore being Mahant/Pandit and holding Jugal Kishore to be adopted son of Kewal Dass are wrong. Furthermore, the observations made with regard to plaintiffs approaching District Judge, Gurugram for framing scheme under Section 92 for management of the temple are wrong and are liable to be set aside by way of modification in the impugned judgment.

The cross-objections are being resisted by the appellant.

14. It may be mentioned here that appellant Jugal Kishore had expired on 8.9.2012 during the pendency of the appeal and on an application having been filed, his sons namely, Bhagwant Kishore and Nawal Kishore, were brought on record vide order dated 4.8.2014.

15. A petition under Sections 11 and 12 of the Contempt Act bearing COCP-3436-2017 has also been filed by petitioner Hanuman Mandir (Chhoti Bageechi), Suraksha Samiti (Regd.), Sohna through its President Chaudhary Mahender Singh against Bhagwant Kishore and Nawal Kishore, sons of Pt. Jugal Kishore to punish them for willfully and deliberately disobeying the order dated 3.5.2012 passed by the High Court

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and subsequently the order dated 4.8.2014 and the statement made before the police at Gurugram pursuant to the complaint filed by petitioner in view of the order passed by this Court in CRM-M-19907 of 2013 vide which a direction had been issued to the Commissioner of Police to decide the representation, on the allegations that appellant/defendant Jugal Kishore is a self designated Mahant having no interest in the welfare of the temple, this Court vide order dated 3.5.2012 while issuing notice of motion had stayed execution of decree of the lower appellate Court regarding the property comprised in Khasra No.627 (old No.1468), though no interim stay was granted regarding property bearing khasra No.626(Old No.1467), the appellant Pandit Jugal Kishore had died on 8.9.2012 during pendency of the regular second appeal, this Court vide order dated 4.8.2014 had admitted the appeal and further adjourned the case for arguments on the application for appointment of receiver, for the reason that after death of appellant Pt. Jugal Kishore, his sons Bhagwant Kishore and Nawal Kishroe had been representing themselves as Mahant though both were not appointed as such and had been impleaded as LR's for the purpose of prosecution of the case, both the respondents had created nuisance in the administration of the temple, which is under the control of Chhoti Bageechi Hanuman Mandir, registered society, after death of Pt. Jugal Kishore, there is no Mahant and property is owned and managed by the petitioner society, the respondents have deliberately and intentionally disobeyed the order passed by the lower Appellate Court as

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well as order of this Court dated 3.5.2012.

The petitioner society had submitted a complaint before Police Commissioner, Gurugram and further petitioner with its office bearer had filed a petition to Secretary, Legal Service Authority, Gurugram. Therefore, action be initiated against the respondents.

That petition was resisted by the respondents.

16. Other contempt petition bearing COCP-1773-2022 has also been filed by petitioner Hanuman Mandir (Chhoti Bageechi), Suraksha Samiti (Regd.), Sohna through its President Sant Singh against Bhagwant Kishore and Nawal Kishore, sons of Pt. Jugal Kishore, seeking taking of action against respondents for willful, deliberate violation of order dated 3.5.2012 passed in RSA-2503-2011 for disobedience of the order passed by this Court by demolishing and changing the structure of Hanuman Temple situated at Khasra No.626, which falls under the domain of public endowment and taking absolute control over the Gulak and everyday take away all the gifts/donations/Chadava for their personal use, as such respondents are getting undue enrichment by taking help of team of bouncers, threatening to throw away the members of the petitioner society and even removed/damaged all the CCTV cameras installed by the petitioner society in the premises of the temple.

17. On getting notice of these contempt petitions, the respondents therein had appeared. Replies to the petitions were filed. Responding to the allegations in the petitions such respondents denied the same

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vehemently contending that respondents have not violated or disobeyed any order of this Court. On the other hand, it is the petitioner, who is acting and conducting itself as if the order dated 4.8.2014 passed by this Court has never been passed and does not exist. The allegations in the contempt petition that respondents had damaged and changed the structure of Hanuman Temple were vehemently contested. Dismissal of the contempt petitions was sought.

18. I have heard learned counsel for the parties besides going through the record.

19. While dismissing the suit filed by the plaintiffs, the trial Court had mainly drawn the following conclusion:

(i) The suit property belongs to a juristic person i.e. deity installed in Hanuman Temple popularly known as Choti Bageechi Hanuman Ji and defendant No.1 Jugal Kishore is manager of the suit property, which is private endowment.

(a) While making such observations, the trial Court has referred to the earlier litigation with regard to the property in question wherein defendant No.1 Jugal Kishore himself had mentioned that property belongs to Sh.Hanumanji Maharaj and he is Mahant of the abovesaid temple. The details of the earlier litigation in which such admissions had been made by defendant No.1 are mentioned in paras no.67 to 70 of the judgment. No reason was found to declare the admission so made by defendant No.1 to be erroneous or under some misconception. Therefore,

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that was taken to be binding upon defendant No.1 Jugal Kishore.

(b) Free access of the public to the suit property and users of various installations available on the suit property by the public at large leading to the conclusion that defendant No.1 by own act and conduct as well as subsequent behaviour the dedication of the property to the deity was complete.

(c) For giving that finding, the trial Court has observed that the suit property as per the admission of the plaintiffs in their pleadings is being managed and controlled by defendant No.1. The plaintiffs have rather levelled allegations of mismanagement and mis-administration against defendant No.1 in their pleadings. The plaintiffs have sought removal of defendants No.1 and 2 from the temple thereby admitting the control and management of defendant No.1 over the suit property. There is ample evidence to show that collection of offerings popularly known as Pujapa as being retained by defendant No.2 himself and is not being utilized by anybody for raising construction over the suit property, as such since the offerings to the deity are not being used for the purpose of maintenance of temple or for construction and development of any part of the temple that leads to inference that public has not been treating the suit property as a public charitable endowment and although it can be taken that several constructions have been raised either by individual or by public by way of donation to the deity but such donation by itself does not convert the property and deity into public charity and religious

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endowment. The plaintiffs have failed to point out the manner in which the suit property is being maintained by them and what is constitution of the public charitable endowment claimed by the plaintiffs, who are the office bearers or the managing committee of the said endowment and trust and in what manner it was constituted and it maintains the suit property. The plaintiffs have failed to furnish any kind of account pertaining to management and administration of the suit property. In the earlier litigation detailed in 76 of the judgment Jugal Kishore defendant No.1 was held to be Mahant cum Pujari of idol of Murti Hanumanji installed in Mandir Hanumanjit, Chhoti Bageechi and such finding had attained finality.

(ii) Defendant No.1 Jugal Kishore was found to be adopted son of Baba Kewal Dass.

It was observed that as per case of the defendants, defendant No.1 was adopted by Baba Kewal Dass in the year 1942 and a certified copy of adoption deed had been placed on record as Ex.D13/1 and in various revenue record pertaining to the suit property, defendant No.1 has been recorded to be adopted son of Kewal Dass. The objections with regard to adoption were considered and dealt with in paras No.82 to 86 of the judgment. It had been observed that the adoption in question had taken place prior to coming into being of Hindu Adoption & Maintenance Act, 1956, therefore the requirements provided under that Act could not have been anticipated by the parties and then those fulfilled. Therefore, no fault

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can be found with the adoption of Jugal Kishore by Baba Kewal Dass and he is to be taken as validly adopted son of Baba Kewal Dass. Thus by act, conduct and behaviour, defendant No.1 Jugal Kishore was treated as son of Baba Kewal Dass. But then Jugal Kishore having been found to be manager of the suit property only has no right to alienate any part of the suit property.

(iii) Since the suit property was not found to be a public charitable religious endowment, the plaintiffs were not found entitled for framing of scheme for management and administration of the suit property. The plaintiffs were also not found to have any locus standi to bring the suit and no cause of action for filing the suit was found to have been arisen to them. Therefore, the suit was not found to be maintainable.

20. Issue No.1 was decided against the plaintiffs and in favour of the defendants holding that the suit had not been filed by properly authorized person. Issue No.2 was decided against the plaintiffs in favour of the defendants holding that property in dispute was not built by the public at large by their mutual contribution and it did not have nature of public charitable trust. Issue No.3 was decided against the plaintiffs in favour of the defendants holding that the suit property is not a public temple and charitable property. Issue No.4 was decided against the plaintiffs in favour of the defendants holding that plaintiffs are not entitled to get the scheme framed as envisaged under Section 92 of CPC with respect to the suit property. Issue No.5 was decided against the plaintiffs

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in favour of the defendants holding that plaintiffs have no locus standi and cause of action to file and maintain the suit. Issues No.6 and 6A were decided against the defendants holding that those were not pressed by the counsel for the defendants during the course of arguments and furthermore no evidence either oral or documentary had been adduced by defendants in that regard. With regard to issue No.6B, that was decided in favour of the defendants holding that Jugal Kishore – defendant No.1 is validly adopted son of Kewal Dass. As a result of findings on all the issues, the suit of the plaintiffs was dismissed with costs.

21. When the judgment and decree passed by the trial Court were challenged in appeal before District Judge, Gurugram, which was assigned to Additional District Judge, Gurugram, learned Additional District Judge, Gurugram extensively referring to the revenue record with regard to the suit property concluded that Murti Mandir Hanumanjit existed on shamlat-deh and Sunder Dass was not proprietor in shamlat-deh, therefore, he cannot be assumed to be owner of the Mandir and hence it was a public temple.

Making reference to sale deed Ex.D9/A executed in the year 1892, learned Additional District Judge, Gurugram has found that Murti Mandir Hanumanji was already in existence and established in adjoining khasra No.1468 of which Harsaran Dass was Pujari and occupancy rights in Khasra Nos.1467, Old No.627 were not purchased by a Harsaran Dass for establishing a Hanuman Mandir, rather those occupancy rights were

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purchased by Murti Hanumanji, which was already in existence and possession had been delivered to Murti Mandir Hanumanji and mutation was accordingly sanctioned. This being the state of affairs and in terms of entry in the subsequent jamabandi for the year 1911-12, khasra No.1359(627) was shown to be owned by Madan Mohan and others, proprietors of shamlat patti kayasthan and was shown in possession of Bhuri and others, occupancy tenants through Mandir Hanumanji Be-Ehatimam Sukhdev and occupancy rights, which had been purchased by deity had later on matured into ownership rights on account of coming into being of Punjab Occupancy (Tenants and Vesting of Proprietary) Rights Act, 1952 and Mandir Hanumanji have become full-fledged owner in place of occupancy tenant and recorded as owner in possession of Khasra No.627. In that way, both the khasra numbers were owned and possessed by Murti Hanumanji. Jugal Kishore was not owner of the temple and it was not a private endowment. Rather he was looking after the temple as a Mohatmim. Kewal Dass and his predecessor in interest had no ownership rights in the property except that they were recorded in possession of Mandir whereas khasra No.1468 now 626 was owned by proprietor of shamlat-deh and since the deity was to be managed by Pujari or Manager, therefore land of khasra number so purchased by Murti Mandir Hanumanji was assigned by residents of Sohna to them.

In addition to referring to the revenue record, learned
Additional District Judge, Gurugram has taken into consideration the

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judgment and decree Ex.D28/1 and Ex.29/1 passed by the then Sub Judge, Gurugram in suit titled 'Mandir Murti Hanumanji through Jugal Dass Versus Hukam Chand and others', wherein defendant No.1 had admitted that Murti Hanumanji was owner of the suit property and he was its manager. It was also taken note of that general public had been performing Puja in the temple from the very beginning and predecessor in interest of Jugal Kishore have been taking the offerings made by general public in the temple. The travellers have been drawing water from the well. Some shops were constructed in the premises of Mandir with which Mandir was the landlord thereby showing the nature of the property as public property. Learned Additional District Judge, Gurugram has made observations in para No.20, which for ready reference are being reproduced as under:

20. *Thus, from the above discussed evidence led by both the parties it is evident that suit property was owned by shamlat patti of Kayasthan and Mandir Hanumanji existed prior to consolidation of holdings and at the time of consolidation of holdings Makan Hanuman having area of 13 biswas in occupation of Sunder Dass son of Mangal Dass existing on shamlat-deh and here was one kuan yakchah Pukhta Sunder Dass was existed and thereafter the entry for the year 1885-86 was blank and now khasra number of Mandir Hanumanji was 626 and same was managed by Mahant Jugal Kishore. Whereas in the column of ownership the*

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name of the co-sharers of shamlat patti were mentioned. The plea of the defendants that Mandir Hanumanji was owned by predecessors-in-interest of Kewal Dass son of Ram Saran Dass, who had been its owner and Mohatamim is not established as no revenue record showing the pedigree table and connecting the predecessor-in-interest of Kewal Dass with Sundr Dass son of Mangal Dass and Har Saran Dass son of Salag Ram who had been managing the Mandir has been filed. In the absence of pedigree table no relationship could be assumed between the defendant No.1 Jugal Kishore and his predecessors-in-interest from whom he drives the title as adopted son. Regarding adoption also there is a controversy as adoption has taken place prior to 1947 by way of adoption deed and at the time of adoption neither father of Jugal Kishore was present who had offered him in adoption to Kewal Dass nor his mother was present. So, although there was registered adoption deed in favour of Jugal Kishore but it is yet to be seen whether same has been acted upon by the parties by their conduct. At one time in one place Jugal Kishore, defendant No.1 claims himself to be the adopted son of Kewal Dass and on the other hand he had been fighting litigation with his brother Chhote Lal as son of Sadhu Ram for his rights to manage the property of Hanuman Mandir, Baba Kharak Singh Marg, Connaught Place, New Delhi. So, he had been sailing in two boats.

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XOBJC-21-C-2012(O&M);

COCp-3436-2017(O&M); and
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22. In para Nos.21, 22 and 23 giving detailed reasons, learned Additional District Judge, Gurugram has observed that origin of the property was not traceable and same was old Mandir Hanumanji and Hanumanji being its deity and juristic persons were of its owner, therefore Jugal Kishore or Kewal Dass, who had been Pujari in the said Mandir cannot be said to be owner of the property in any respect. It was not a private endowment of Jugal Kishore or his predecessor-in-interest.

23. In para No.25 of the judgment while holding that the suit property was a public temple and not a private endowment as has been held by the trial Court while deciding issue No.3, it had been observed that overwhelming evidence has been led by the plaintiffs to prove that public at large had been contributing in construction of the suit property and defendant No.1 is not shown to have spent a single penny in that regard. Since Murti Hanumanji, Chhoti Bageechi, Ramlila stage, shops etc. in khasra Nos.626 and 627 of Patti Kayasthan were not a registered trust, the plaintiffs were entitled to get the scheme framed as envisaged under Section 92 of CPC for management of the property in view of the law laid down by the Supreme Court in case 'Jagdish Prasad Versus Mahant Tribhuwan Puri', AIR 1988 Supreme Court, 323 and while framing scheme, there should be provisions for providing sufficient amount of offerings for the decent living for the respondent No.1 Mahant Jugal Kishore and his family.

24. In para No.26, the aspect of adoption of Jugal Kishore by

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Kewal Dass has been discussed in detail affirming the findings recorded by the trial Court with regard to issue No.6B that Jugal Kishore is validly adopted son of Kewal Dass as claimed by defendant No.1.

25. Issues No.1 to 4 were decided in favour of the appellants, whereas issued No.5 and 6 against the defendants.

26. Resultantly, the appeal was allowed partly. The cross-objections filed by defendant No.2 Gian Chand Jogi against the impugned judgment and decree were dismissed being not maintainable.

27. After hearing learned counsel for the parties and going through the record, I find that though the trial Court was justified in returning a finding that suit property belongs to a juristic person i.e. deity of Hanumanji Maharaj and Jugal Kishore defendant No.1 was its manager but it clearly fell in error in observing that it was a private endowment when there was overwhelming evidence both oral as well as documentary to show otherwise. Once the trial Court had come to the conclusion that the property belongs to a juristic person and defendant No.1 Jugal Kishore was its manager only, it should have been held to be a public religious and charitable trust and not as a private religious endowment. It being so, the plaintiffs, who belong to Hindu community and claim themselves to be worshippers at the temple, had every right to approach the Court by way of filing the suit complaining against alleged mismanagement and mis-administration of affairs of the temple and its properties praying for drawing a scheme for its better management. They had locus standi to

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bring the suit and the trial Court had allowed the plaintiffs to file the suit in representative capacity in terms of Section 92 CPC. The trial Court was not justified in dismissing the suit discarding sufficient oral as well as documentary evidence available on the record led by by the plaintiffs to prove their case and rather it misappraised the evidence and wrongly interpreted the law.

28. Learned Additional District Judge, Gurugram was justified in decreeing the suit of the plaintiffs partly inasmuch as agreeing with the trial Court with regard to the suit property belonging to the deity of Hanumanji, a juristic person being managed by defendant No.1 Jugal Kishore as its manager and further Jugal Kishore having been found to be duly adopted son of Kewal Dass but learned Additional District Judge, Gurugram by giving valid, cogent and convincing reasons referring to the evidence on record and law on the subject has rightly concluded that it is a public endowment and not a private endowment as had been held by the trial Court. The framing of the scheme has rightly been ordered.

29. Though learned Senior Counsel for the appellants has vehemently argued that the First Appellate Court fell in error in holding the suit property to be a public religious endowment upsetting the correct finding recorded by the trial Court that it was a private religious endowment and it was rather a Shebait, which was heritable inasmuch as defendant No.1 Jugal Kishore, an adopted son of Kewal Dass had inherited it. In support of his arguments, he has referred to judgments

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XOBJC-21-C-2012(O&M);

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Profulla Chorone Requitte and others Versus Satya Chorone Requitte, (1979)3 Supreme Court Cases 409, Yogendra Nath Naskar Versus Commissioner of Income Tax, Calcutta, 1969(1) Supreme Court Cases 555, Sri Radhakanta Deb and another Versus Commissioner of Hindu Religious Endowments, Orissa, (1981) 2 Supreme Court Cases 226, Hari Bhanu Maharaj of Baroda Versus Charity Commissioner, Ahmedabad, (1986) 4 Supreme Court Cases 162, Sri Marthanda Varma (Dead) through legal representatives and another Versus State of Kerala and others, (2021) 1 Supreme Court Cases 225 and M.Siddiq(D) Thr.LRs Versus Mahant Suresh Dass & Ors (Ram Janmabhumi Temple Case) Versus Mahant Suresh Das and others, 2020(1) Supreme Court Cases 1.

30. On the other hand, learned Senior counsel for respondent No.6 has countered these arguments contending that the judgment passed by the First Appellate Court does not call for any interference by this Court with regard to the observation of the suit property being a public religious trust and defendant No.1 being its manager only having no title to the suit property since predecessor-in-interest of the defendant No.1 had no title as such defendant No.1 could not acquired the same by way of inheritance. In support of his arguments, he has referred to judgment *State of Madhya Pradesh and others Versus Pujari Utthan Avam Kalywn Samiti and another, 2021(10) Supreme Court Cases 222.*

31. After hearing the rival contentions and going through the

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COCp-3436-2017(O&M); and
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judgments pressed into service by learned counsel for the parties, I find that there is no illegality or infirmity in the impugned judgment, rather the findings recorded are based on proper appraisal of evidence and correct interpretation of law. The judgment passed by Additional District Judge, Gurugram is quite detailed and well reasoned. I do not see any reason to interfere with the same in any manner particularly with regard to nature of the suit property being a public endowment and the property belonging to a juristic person deity i.e. Hanumanji and Jugal Kishore being its manager only. Since Jugal Kishore has expired and his two sons had been brought on record as legal representatives, in view of the discussion above, wherein it was found that Jugal Kishore had been managing the affairs of the temple and its properties, he having expired on 8.9.2012 and more than 10 years having elapsed from that date from the applications moved by respondent No.6 for appointment of receiver and for initiating contempt proceedings against Bhagwant Kishore and Nawal Kishore said sons of Jugal Kishore, it comes out that those two are managing the affairs of the temple.

32. Under the circumstances, it would not be proper and appropriate to upset the arrangement suddenly. Therefore, while **dismissing the RSA-2503-2011** and taking note of the fact that the First Appellate Court has observed that plaintiffs can approach the District Judge, Gurugram for framing scheme to effectively manage and administer the affairs of temple and other properties situated in khasra

RSA-2503-2011(O&M) and
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No.626 and 627, the plaintiffs may do so and in the event of plaintiffs approaching District Judge, Gurugram for framing of scheme, it is hoped and expected that learned District Judge, Gurugram disposed of that matter expeditiously. In the meanwhile, Bhagwant Kishore and Nawal Kishore are to keep proper accounts of the income and expenditure of the temple, which may be furnished before learned District Judge, Gurugram as and when required. Bhagwant Kishore and Nawal Kishore may retain a reasonable amount for their livelihood till scheme is framed by learned District Judge, Gurugram.

33. Under the circumstances, there is nothing to show that respondents Bhagwant Kishore and Nawal Kishore in both the contempt petitions have deliberately and intentionally violated any order passed by this Court or Courts below and considering the fact that Bhagwant Kishore and Nawal Kishore being sons of late manager Jugal Kishore, have been managing the affairs of the temple and suit property after death of their father, they are allowed to continue doing so till scheme is framed by learned District Judge, Gurugram. No action against respondents Bhagwant Kishore and Nawal Kishore for contempt of the Court is required to be taken.

34. Therefore, COCP-3436-2017 and COCP-1773-2022 stand dismissed. The cross-objections filed by respondent No.6 are disposed of accordingly.

Since the main RSA-2503-2011, COCP-3436-2017 and

RSA-2503-2011(O&M) and
XOBJC-21-C-2012(O&M);

COCp-3436-2017(O&M); and
COCp-1773-2022(O&M) -29-

COCp-1773-2022 stand dismissed and XOBJC-21-C-2012 stand disposed
of, the miscellaneous application(s), if any, stand disposed of accordingly.

07.07.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No