

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2501 of 1989 (O&M)
Reserved on :05.02.2024
Date of Order:05.04.2024

Dharam Pal Dhiman (Deceased) through LRs and another

.Appellants

Versus

Haridwar Giri (Deceased) through LRs and others

..Respondents

C.R.No.3324 of 1989 (O&M)

Dharam Pal Dhiman (Deceased) through LRs and another

.Appellants

Versus

Haridwar Giri (Deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwal Goel, Advocate
Mr. R.Kartikeya, Advocate
Mr. Govind Tanwar, Advocate
and Ms. Sheena Dahiya, Advocate
for the appellants.

Mr. Hemant Sarin, Advocate
for respondent no.1.

ANIL KSHETARPAL, J

BRIEF FACTS OF THE CASE:-

1.1 With the consent of the learned counsel representing the parties,
two connected cases namely, RSA No.2501 of 1989 and Civil Revision
No.3324 of 1989, shall stand disposed of by a common order.

1.2 The Regular Second Appeal has been filed by the defendants to
challenge the correctness of first appellate court's judgment which in turn
has reversed that of the trial court.

1.3 The dispute in the present case is with regard to possession, management and control of Mandir Shivala Damodar Dass, located in Phagwara and its properties.

1.4 In order to comprehend the issues involved in these two cases, the relevant facts, in brief, are required to be noticed.

1.5 The plaintiff late Sh. Om Giri filed a suit for declaration that he is in possession, control and management of Mandir Shivala Damodar Dass as its Mahant on the ground that the previous Mahant Sarwan Puri had executed a Will dated 04.02.1977, in his favour and subsequently in a congregation (bekh) held on 16.10.1977, he was installed as Mahant of the religious institution.

1.6. Per contra, it is the case of defendants no.1 and 2 that aforesaid religious institution is being managed by a Society which was formed in the year 1963-64 and registered in the year 1973. Mr. Sarwan Puri was only a paid employee and he was never appointed as a Mahant. He neither had jurisdiction nor appointed the plaintiff as Mahant. In fact, it was claimed that the plaintiff is not in possession of the property.

1.7. The trial court dismissed the plaintiff's suit which in turn has been reversed by the First Appellate Court.

ARGUMENTS ADDUCED:-

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the lower court's requisitioned record. The learned counsel representing the parties have also filed synopsis containing the gist of their arguments.

2.2 In the written arguments, the learned counsel representing the

appellants has made the following submissions:-

1. ONUS UPON THE PLAINTIFF TO PROVE THAT THERE WAS A CUSTOM/ USAGE TO APPOINT MAHANT:

a) Since it is the plaintiff who has claimed that there is mahantship established in the temple and it goes from guru to chela and/or through will, then the onus was upon the plaintiff to prove such custom. However, there is no such proof coming from the record;

b) A person who alleges a particular custom or usage would be required to prove such a custom or usage, as a question of fact. Reference in this regard may be made to judgments of Hon'ble Supreme Court reported as Mahant Bhagwan Bhagat v. Girija Nandan Bhagat, AIR 1972 SC 814, Amar Parkash and others v. Parkasha Nand and others. AIR 1979, SC 845, and Brahma Nand Puri v. Neki Puri since deceased represented by Mathra Puri and another, AIR 1965 SC 1506. AIR 1975 (Supreme Court) 199

c) The Jamabandi relied upon is absolutely un-reliable because it is a stray entry and also it describes Sarwan Puri as Mahant being chela of one Kirpa Nath, whereas, Sarwan Puri as well as plaintiff had claimed Sarwan Puri to be chela of Dukhharan Puri;

d) Similarly, the fleeting observations made in the order passed by the revenue authority does not carry any weightage in light of findings recorded by the Ld. Civil Court.

e) Plaintiff- Om Giri was Mahant of another Dera at Village Nadalon, District Hoshiarpur (Pg 4 para 5 of written statement. Admitted by plaintiff in replication to this paragraph)

f) It is admitted by PW-1 that a GIRI makes ONLY GIRI as chela and PURI makes only PURI as CHELA. Here

Sarwan Puri allegedly appointed, his "chela" Om Giri, which is improbable as per this PW-1

g) Even Om Giri PW-4 admits that he was chela of Atma Giri of Dera Nadalon; He names many persons as his Gurus but not Sarwan Puri. Says met Sarwan Puri in 1955-56 for the first time; Admits he is Mahant of Nadalon Village Dera;

h) Best piece of evidence to prove custom has not been produced. PW-1 says the entire record in the register maintained by Punjab Mandal, but not produced;

1) PW-5 Rajender Prasad Misra (pandit/ pujari of mandir) also supports the case of defendant

BHEKH of no consequence because:

a) Concededly, the case of plaintiff-Om Giri is that Bhekh made him mahant on basis of Will executed by Sarwan Puri, which is in Urdu and is not known to any of the witnesses;

b) No independent application of mind of Bhekh while appointing Om Giri as Mahant

c) No person able to prove the custom of appointing a Mahant of this temple;

d) No person knew the Chelas of Sarwan Puri;

e) Attesting witness PW-7 states that Sarwan Puri was the pujari of temple

II. MANAGEMENT AND POSSESSION OF DEFENDANT-COMMITTEE:

a) Civil Revision filed by Managing Committee before this Hon'ble Court and got the petitions allowed against tenants- finding that the civil suit has no bearing.

b) The plaintiff claims that he was in possession uptill 17.08.1983. However, he alleges that Managing Committee took possession 6 months back from filing of suit (DOI-7.2.1984) but in Civil Revision No.150 to 154 of 1987 (DOD-17.08.1987), it has come that tenants

inducted by committee in the year 1977.

c) In an interpleader suit filed by all tenants, a finding by civil court that the tenants inducted by committee since 1963.

d) Numerous orders and statements of tenant (Ex.DA to DT) placed on record whereby tenants admit and tender rent to the managing committee since prior to filing of the civil suit;

III. WILL NOT PROVED:

a) Will is an unregistered document on a plain paper written in URDU language;

b) (Prithvi Singh) Scribe of Will PW-3 is a chance witness who says he doesn't know Savran Puri and had gone with one Dr. Komal to temple (who in turn had gone to meet some patient). Doesn't know both attesting witnesses. He is running a factory otherwise. But a known acquaintance of attesting witness PW-7 Satish Kumar (who is a friend of Madan Lal Bhalla-tenant);

c) (Dharam Singh) PW-6-Scribe of Bhekh Says knew Sarvan Puri Sarvan Puri used to sign in Hindi and write letters to him in Hindi as well. He saw a paper in Urdu but doesn't know whether it is a will or not. Therefore, if Sarvan Puri knew Urdu language, then he must know that document is a Will. Secondly, if Sarwan Puri is not knowing Urdu language, then why he said to write a will in any other language like Urdu which is not even known to him properly

d) Prithvi Singh who is a Scribe of Will came first time in the Dera alongwith one of his friend and how can Savran Puri trust him the very first time and asked him to write a will in Urdu. Why Savran Puri asked an unknown person to write a will and not to the persons of the Dera and to those who are well-known to him? Infact attesting witness-Satish Kumar also admits that he was not known

to Sarwan Puri

e) PW-7-A/W-Satish Kumar-Knows nothing about Savran Puri-deceased testator. He is friend of Madan Lal Bhalla S/O Kundan Lal Bhalla tenant in the Temple property. Says does not know Urdu and not sure whether Sarwan Puri knew Urdu. P-1918

IV. SUIT COLLUSIVE BETWEEN THE APPELLANT AND TENANTS:

a) The tenants have been time and again projecting one person after another as the Mahant and all times, they have failed. First; Niranjana Nand was alleged to be chela of Sarwan Puri- filed interpleader suit- failed (Ex DR); second: Shiv Puri was projected- failed- he made a statement that suit filed at behest of tenants; Sarwan Puri claimed a) right- failed in temporary injunction suit, then suit Dismissed in Default; Third: Om Giri projected as Chela and Mahant, although he admits in cross and pleadings that he is Mahant of Dera at Village Nadalon and that Sarwan Puri was never his Guru;

b) The tenants admit the case of plaintiffs in toto by filing an admitted written statement

V. Non compliance of Order 41 Rule 31 of CPC by Appellate Court:

a) No arguments of defendant noted. It is clear case, whereby the counsel representing defendant/appellant namely Sh. S.N Aggarwal had given an affidavit (Annexure 'A') before Ld. Lower Appellate Court that entire file with High Court counsel as the client intended to prefer an appeal against the order impleading Hardwar Giri as a party;

b) No reversal of finding by saying how Trial court erred. Infact no evidence discussed upon which Trial Court relied upon;

c) The findings of Trial Court are reqd. to be considered

and then dealt with. However not done.

d) Reliance is placed upon H. Siddiqui (D) by LR. v. A. Ramalingam, 2011(4) SCC 240 (provision mandatory in nature)

e) Nazir Singh Va Mukhtiar Singh 1993(2) PLR 701

VI. SUIT/APPEAL HAD ABATED BEFORE APPELLATE COURT

a) The first appeal had abated because Om Giri died on 12/10/1988 i.e during pendency of appeal and one Hardwar Giri (Mahant of Nadalon) claimed himself to be Mahant on the basis of Bheikh-but Bheikh appoints him mahant by saying that since he is Mahant of Dera Nadalon.

b) Application for impleadment allowed on 29/9/89- appellant wanted to file Civil Revision against the order and affidavit dated 17/10/89 also given by Sh. S.N. Aggarwal Adv. that entire file with H.C. Lawyer. Still Dist. Judge allowed the appeal without hearing appellants' counsel as the file was not with him. [Annexure 'A' attested affidavit with appeal]

c) Appeal decided in absence of lawyer.

d) That is why no arguments of appellant noted in the ADJ Judgement.

e) A stranger to the Mandir who was not even Chela of Om Giri impleaded. But Appellate Court did not give opportunity to challenge this as well. Thus, this is being put to challenge before this Hon'ble Court Under Order 43 Rule 1-A of CPC.”

2.3 Per contra, the learned counsel representing the respondents has submitted a list of dates and events which read as under:-

28.02.1984 Mahant Om Giri filed present suit for declaration

that he was in possession of management and

control of Mandir Shivala Damodar Dass,

Phagwara and the land attached to it (35K-11M) and 11 shops and for permanent injunction restraining defendant nos.1 and 2 from interfering in the plaintiff's possession and management. The other defendants were tenants in the shops.

Defendant nos.1 and 2 contested the suit claiming that the management and control of the Mandir and its properties was with the Managing Committee since 1963-64 and that the plaintiff was only an employee. The tenants supported the plaintiff.

22.9.1987 Trial court dismissed the suit. Plaintiff filed an appeal.

12.10.1988 During the pendency of the appeal the plaintiff (Mahant Om Giri) died.

Application filed for impleading Mahant Haridwar Giri as LR of Mahant Om Giri.

The defendant nos.1 and 2 contested the application.

29.9.1989 Lower Appellate Court allowed the application.

16.10.1989 Defendant nos.1 and 2 filed CR-3324-1989 against order dated 29.09.1989.

17.10.1989 Lower Appellate Court accepted the appeal of the plaintiff and decreed the suit. Counsel for defendant nos.1 and 2 refused to address arguments.

2.11.1989 Present RSA filed.

9.11.1989 Both CR-3324-1989 and present RSA admitted.

Notice re. Stay.

11.12.1989 S.N.Chopra, Advocate appointed Receiver. He was directed to submit quarterly statements to this Court.

1995 The Receiver filed CM-1200-1995 for appointing some other person as Receiver.

15.9.1995 It was ordered that instead of deciding the application the main appeal itself be heard.

15.10.2014 Mahant Haridwar Giri died.

2015 Receiver filed CM-5864-2015 for his dues and for appointing another person as Receiver. This application is pending.

11.5.2018 Vide order passed in CM-15286-2015 Mahant Radha Giri impleaded as LR of Mahant Haridwar Giri.”

3. DISCUSSION AND ANALYSIS:-

3.1 In this case, the relevant facts in chronological order are required to be noticed before examining the arguments of the learned counsel representing the parties.

3.2 In January, 1977, the Managing Committee filed various petitions against the tenants seeking their eviction (Ex.DM, Ex.DN, Ex.DO, Ex.DP and Ex.DQ). In the aforesaid proceedings the respective tenants tendered the rent and the petitions were disposed of. On 17.11.1977, Mr. Sarwan Puri filed a suit for declaration that Mandir Shivala Damodar Dass is owner in possession and he is Mohatmim or Mahant. Along with the suit application under Order 39 Rule 1 and 2 was filed which was dismissed with the observations that the possession of the property is under the control and management of the Managing Committee. Ultimately, the suit was dismissed in default on 16.01.1978. In this suit, Mr. Sarwan Puri also made a prayer that the Managing Committee should be restrained from collecting

the rent. On 13.01.1978, Shiv Puri (Ex.DG) filed suit against the Managing Committee. In this suit, he also claimed to be Manaht of the religious property. This suit was also dismissed as withdrawn on 25.05.1978 (Ex.DG and Ex.DH). While withdrawing the suit, he stated that he has entered into a settlement. The statement of Shiv Puri while withdrawing the suit is Ex.DK which is extracted as under:-

“It is submitted that this case as entered above is filed in the Court. I am _____ unintelligible--- in this case that I was never the disciple of Sarwan Puri. The tenants of this temple brought me at this place. I have no concern with this temple. I never served Sarwan Puri nor I served/performed sewa in this temple. I have no concern and right with this temple. Sarwan Puri was the employee of the Mandir committee, which I have properly come to know about by coming here. I do not want to pursue this case,-----unintelligible----, voluntarily said, I withdraw myself from the case. The case shall be dismissed. Neither I want to keep the rent of the temple. I have been forcibly taken to this place. The tenants on the property of the temple are greedy and their claim that the property of the plaintiff is in their possession, is wrong. I withdraw myself from the case and have scribed the writing of withdrawal from the suit. The missal/file be filed in the office. Date: 25/05/78.

*Sh. Avadh Bihari Shiv Puri Abovesaid Ram Lubhaya
s/o Tehla Ram*

*S/o Faquir Chand, Phagwara Sd/- Hindi Sd/- Hindi
Sd/- Hindi”*

3.3 On 16.08.1978, the various tenants of the shops owned by the religious institution filed interpleader suit by impleading Mahant Niranjana Nand Giri and Shivala Damodar Dass Managing Committee as defendants.

The aforesaid suit was decided by the Court on 22.09.1981. The relevant findings are as under:-

“The Managing Committee has placed on the record rent notes executed by 7 or 8 plaintiffs in favour of the Shivala through Managing Committee as far back as 1963-64. The Managing Committee has also produced on the record certified copies of the statements of the plaintiffs made in the ejectment application while tendering the arrears of rent in 1977 without any objection. All this would show that the plaintiffs had been inducted into the premises in dispute as tenants by the Managing Committee defendant no.2 and they had been paying the rent to the said Managing Committee and obviously they are now estopped to dispute the authority of the Managing Committee to induct the tenants and to realise the rent from them. Incidentally, the execution of the rent notes in favour of Shivala through the Managing Committee in 1963-64 and thereafter tender of the rent by the plaintiffs in court to the Managing Committee in 1977, further shows that the shops in dispute were never let out to the tenants by any Mahant nor was the rent realised by any Mahant and that it is the Managing Committee alone who had inducted the tenants and has been realising the rent from them. For this reason alone the plaintiffs would be estopped from filing the interpleader suit. If Mahant Niranjana Nand feels that he is the person entitled to manage the affairs and property of the Shivala he may, if he so desires, file a civil suit himself against the Managing Committee in which this matter can be settled but the tenants who had voluntarily attorned to the Managing Committee long time back cannot now be allowed to file the interpleader suit. Obviously therefore there is no case made out for stay of the ejectment applications filed by the Managing

*Committee on behalf of the Shivala against the plaintiffs.
The application of the plaintiffs is accordingly
dismissed.”*

3.4 Thereafter, in the year 1983-84, the Managing Committee again filed various petitions/suits against the tenants who tendered the rent to the Managing Committee. The Managing Committee also produced a certificate dated 23.05.1975, registering the Managing Society. On 28.02.1984, Sh. Om Giri filed this suit.

3.5 The following reasons can be culled out from the reading of the judgment passed by the First Appellate Court:-

- (1) From the oral depositions of PW1-Mahant Balram Puri, PW1, PW2-Mahant Natha Nand Giri, PW3-Prithvi Singh, PW4-Om Giri, PW5-Rajinder Parshad Mishra, PW6-Dharamvir, PW7-Satish Kumar and the written statements filed by defendants no.4 to 14, it is proved that the plaintiff is in possession of the property and is managing the same.
- (2) The suit is not bad for non-joinder of parties because there is no dispute about this fact that there is no Mandir and idol is not installed therein.
- (3) There is no evidence that the suit is collusive between the plaintiff and defendant no.4 to 14.
- (4) No independent witness has been produced by the defendants.
- (5) If whole public agreed to form the society in order to manage the Mandir Shivala Damodar Dass then the meeting would have been held in the Mandir.

- (6) If society was managing the affairs since 1963-64, then it would have got the society registered at that time, whereas the society was registered in the year 1973.

3.6 This court has considered the arguments of the learned counsel representing the parties.

3.7 It may be noted here that in these cases the Court is required to draw distinction between temple with deity and the Deras. In case of existence of temple with deity, which is a juristic person, the property vests in the deity and not in favour of Mahant or Manager unless there is evidence to the contrary. Moreover, the court is required to examine whether there is any custom of bequeathing the office of Mahant or not?

3.8 The next question which required to be answered is “whether Mahant Sarwan Puri had any authority to appoint/nominate/designate the plaintiff to the office of Mahant after his death?”

3.9 In *Mahant Bhagwan Bhagat vs. G.N.Bhugat and others, (1972) 1 SCC 486*, the Supreme Court held that the documentary evidence ante litem motam is liable to be preferred as compared to the oral evidence.

3.10 The plaintiff and the defendants have produced jamabandi for the year 1978-79 (Ex.P3) which shows that in the ownership column the entry is provincial government, whereas in the cultivation column, it is recorded as Shivala Damodar Dass. It has also come in evidence that this property was donated by the then King and a temple of Lord Shiva was constructed. He is the Chief Deity. Thus, the property vests in the deity and not in favour of individual. There is no material to prove that the property belongs to a Dera which is managed by Mahants who have some right in the property.

3.11 In this case, the plaintiff has led no documentary evidence to prove that Mahant Sarwan Puri had any authority to bequeath the property in favour of the plaintiff Om Giri. The plaintiff for the first time filed a suit on 28.02.1984, whereas Mahant Sarwan Puri died on 01.10.1977. Sh. Sarwan Puri during his life time filed Civil Suit No.472 of 17.10.1977 (Ex.DF) claiming that the Managing Committee has no right to collect the rent from the tenants. The application under Order 39 Rule 1&2 CPC was dismissed and ultimately the suit was dismissed in default. The plaintiff is claiming his right only from late Sh. Sarwan Puri.

3.12 Secondly Sh. Shiv Puri also filed Civil Suit No.48 of 30.08.1978, claiming to be the Mahant and Chela of Sh. Sarwan Puri. Subsequently, he withdrew his suit by giving detailed statement to the effect that Sh. Sarwani Puri was only an employee of the registered society and Sh. Sarwani Puri had no right to bequeath the office. There is another round of litigation in the form of interpleader suit filed by the tenants of various shop. Civil Suit No.330 of 16.10.1978 was filed by the tenants against Mahant Niranjan Dass as well as the Society. In this suit, the court held that the society is managing the affairs which is entitled to recover the rent. As already noticed, the plaintiff came in the picture for the first time in 1984 i.e. after a period of nearly 7 years.

3.13 The plaintiff no doubt has produced copy of the Will as well as proceedings of Bekh when he claims to have been appointed as Mahant. However, no documentary evidence has been produced to prove that there was any custom of appointment of Mahant either by bequest or by congregation of Mahants.

3.14 At this stage, it becomes important to analyse the reasons

recorded by the First Appellate Court.

3.15 Moreover, it is evident that the oral evidence led by the plaintiff is not reliable. PW1-Mahant Balram Puri has admitted that the Giri makes Chela only of Giris and Puri only of Puris. In this case, the plaintiff Om Giri is only Chela of Sh. Sarwan Puri. However, when he appeared in evidence as PW4, he admitted that he is Mahant of a Dera located in village Nadallon. He failed to produce any evidence of recovery of rent. He failed to disclose that who was the Guru of Sh. Dokharan Puri, who was Guru of Sh. Sarwan Puri. The deposition of Sh. Om Giri is not worth reliance. He claims that Sh. Rajinder Parshad Pujari has been appointed by him, however, when Sh. Rajinder Parshad appeared as PW5, he admitted in the cross-examination that the Society is managing the affairs of the temple.

3.16 Sh. Om Giri also admits that he was Chela of Sh. Atma Giri of Dera Nadallon. The plaintiff has also not produced the best evidence to prove the same. PW1-Sh. Balram Puri as well as PW-4 Sh. Om Giri plaintiff have claimed that they have been appointed by Punjab Mandal, however, no proceedings of Punjab Mandal have been produced.

3.17 Though, the learned counsel representing the appellant has also projected that the First Appellate Court has failed to give opportunity to the appellant to argue the case, however, at this stage after a period of 35 years, it could not be appropriate to remit the case to the First Appellate Court particularly when their appeal is being accepted.

3.18 Reason no.1 is without substance. It is evident that during cross-examination, PW5-Rajinder Singh has stated that the Management of the property attached to the Mandir is in the hands of the Managing Committee of the Mandir which is run by the society and the rent of the

shops attached to the Mandir has been recovered by the Managing Committee and not by him or Sh. Om Giri. Similarly, the statement of Sh. Shiv Puri, certified copy of which is Ex.DK, it is evident that Sh. Sarwan Puri was not a Mahant of the Mandir but was paid employee. Moreover, there is overwhelming evidence to prove that it is the Society which is in possession of the property and is managing the same. There is overwhelming evidence in the form of Civil suit No.48 of 13.01.1978, Civil suit No.472 of 17.11.1976, Rent Case No.8 of 05.01.1977, Rent Case No.18 of 10.01.1977, Rent Case No.90 of 10.01.1977, Rent Case No.11 of 01.05.1977 and Rent Case No.1 of 04.01.1977, which proves that the rent from the tenants is being recovered by the Society. Moreover, Sh. Sarwan Puri also filed previous suit which was dismissed in default. The court has also overlooked that PW3-Prithvi Singh is the scribe, PW1-Mahant Balram Puri and PW7-Satish Kumar are the attesting witnesses of the Will. Sh. Dharam Pal, PW7, who has scribed the writing Ex.P2 has in cross examination supported the case of defendant no.1 and 2. Defendants no.1 and 2 had examined Sh. Dharampal Dhiman, DW4, who claims to be President of the Managing Committee after the death of Sh. Bachan Singh.

3.19 He has proved the receipts dated 11.09.1982 issued by late Sh. B.D.Sardana, the President of the Society evidencing receipt of the rent. Sh. Hotu Ram-DW1, a Secretary of the Managing Society has produced and proved the proceedings in the register of the Committee and the agenda dated 04.06.1972. He also deposed that Sh. Sarwan Puri was being paid salary of Rs.40/- per month by the Committee till June, 1972 and from July, 1975 he was being paid Rs.75/- per month. Sh. Ram Lal-DW2, a part time accountant of the Mandir has proved ledger Ex.D2/1 with respect to period

from 1971 to 1975-76. In view of the aforesaid overwhelming evidence, the First Appellate Court has erred in recording finding that the plaintiff is proved to be in possession.

3.20 The second reason is factually incorrect. It is the admitted case of the parties that there is a temple of Lord Shiva in the premises. Thus, the First Appellate Court has erred in concluding that there is no Mandir.

3.21 The reason no.3 is also wrong particularly when defendants no.4 to 14, the tenants, have not stepped into the witness box. They have supported the case of the plaintiff. It has come on record that previously petitions were filed against the tenants by the Society and the tenants were forced to pay the amount under protest. Thereafter, first suit was filed by Sh. Sarwan Puri claiming that the Society should be restrained from recovering the amount which was dismissed in default. Subsequently, Sh. Shiv Puri filed similar suit which was again dismissed as withdrawn. Thereafter, the tenants filed interpleader suit in which the court held that the Managing Committee has the right to recover the rent. Thus, it is evident that the plaintiff was prompted by the tenants to file the present suit so that they can continue to be in possession of the property without paying any rent. They have been successful in their design as the appeal in this court has remained pending for nearly 35 years.

3.22 The next reason assigned by the court is erroneous. The defendants have examined DW1-Hotu Ram, Secretary, the President of the Society Sh. Dharam Pal Dhiman, the Accountant and an independent witness.

3.23 The 5th reason is also lacks substance because it depends upon the facts and circumstances of the case as to whether the meeting of the

Society was to be held in Mandir or somewhere else. The First Appellate Court has drawn conclusion without any material on the record.

3.24 The 6th reason is also erroneous. Originally the Society was managing the affairs from 1963-64. It subsequently got registered in the year 1973. In any case, the registration of the Society took place more than 11 years prior to the filing of the suit. Hence, the First Appellate Court has erred on this score.

4. **DECISION:-**

4.1 Keeping in view the aforesaid overwhelming evidence, it was not appropriate for the First Appellate Court to hold that no independent witness has been examined by the defendants particularly when the overwhelming evidence have been produced.

4.2 The regular second appeal is allowed.

4.3 In Civil Revision No.3324 of 1989, the defendants have assailed the correctness of order passed by the First Appellate Court on an application under Order 22 Rule 4 for permission to bring on record Lrs of Mahant Sh. Om Giri.

4.4 In the considered opinion of this court, the aforesaid revision is rendered infructuous because the claim of original plaintiff Mahant Giri has been found to be without merit.

4.5 All the pending miscellaneous applications, if any, are also disposed of.

5th April, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO