



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 357 OF 2025

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| 1) Kamlakar s/o. Bhaskar Baitule
Age : 55 Years, Occupation : Private
Resident of : Plot No.165,
'Omkrushnarpan', Sewadalnagar,
Manewada-Besa Road, Tata Chowk, Nagpur | } | .. Appellants |
| 2) Yogesh s/o. Bhaskar Baitule,
Age : 47 Years, Occupation : Private
Resident of : Bazar Chowk, Dhapewada,
Tahsil Kalmeshwar, District – Nagpur | } | |

Versus

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| 1) Ashok s/o. Kashirao Jawale
Age : 57 Years, Occupation : Agriculturist,
2) Manish s/o. Ganpatrao Chauhan,
Age : 40 Years, Occupation : Agriculturist
3) Yogeshwar s/o. Sonbaji Ghaywat,
Age : 37 Years, Occupation : Agriculturist
4) Barsu s/o. Ramaji Mohankar,
Age : 59 Years, Occupation : Agriculturist
5) Vilas s/o. Dattopant Nerkar,
Age : 45 Years, Occupation : Agriculturist
6) Pramod s/o. Madhukarrao Guhe,
Age : 42 Years, Occupation : Business
7) Suresh s/o. Narayan Barapatre,
Age : 46 Years, Occupation : Nil
8) Praful s/o. Bhojraj Rajurkar,
Age : 31 Years, Occupation : Agriculturist
All 1 to 8 Resident of : Dhapewada (Bu.),
Tahsil – Kalmeshwar, District – Nagpur
9) Ghanshyam s/o. Pandurang Nandanwar,
Age : 53 Years, Occupation : Private
Resident of Balabhaupeth, Nagpur – 17 | } | .. Respondents |
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*Office Notes, Office Memorandum of Coram,
 appearances, Court's orders or the directions,
 and Registrar's orders.*

Court's or Judge's order

Mr. N.S.Khubalkar, Advocate for appellants.
 Mr. Onkar Ghare h/f Mr. A.M.Ghare, Advocate for respondent No.1.

CORAM : ROHIT W. JOSHI, J.
DATED : MARCH 30, 2026

ORAL JUDGMENT

- 1) The present appeal is preferred in order to challenge judgment and decree dated 19/09/2025, passed by the learned District Judge-17, Nagpur in R.C.A. No.97/2019, whereby the learned first appellate Court has reversed judgment and decree dated 31/03/2018, passed by the learned 8th Joint Civil Judge Senior Division, Nagpur in Spl.C.S.No.13/2018 (old R.C.S.No. 03/2016). The appellants in the present appeal are the original plaintiffs and respondents are original defendants.
- 2) The plaintiffs had filed the aforesaid civil suit seeking a declaration of ownership with respect to suit property, which is an immovable property comprising of land and structures bearing Grampanchayat House Nos.335, 336 and 337 situated in Ward No.5 at village Dhapewada, Tahsil Kalmeshwar, District Nagpur. It is the case of the plaintiffs that the suit property belonged to their grandfather late Ramkrishna Baitule, who expired sometime in the year 1953 and that after his demise, the suit property devolved upon his widow Radhabai, who died on 22/03/1979. The plaintiffs contend that their father, late Bhaskar Baitule, acquired the rights over the suit property after demise of Radhabai. The plaintiffs further claim that, after demise of their father on 29/12/2015, they have become the owners of the suit property.
- 3) The structure on the suit property is bearing Grampanchayat House Nos.335, 336 and 337. There is a temple in Grampanchayat House No.336. It is the case of the plaintiffs that their grandfather had constructed the said temple for the family. It is the case of the plaintiffs that House Nos.335 and 337 are portions of residential house. The grievance of the plaintiffs is that the defendants, who are strangers are claiming right over

the suit property and trying to disturb their possession over the same.

4) The case of the defendants is that the temple in the suit property has character of a place of public worship. The defendants opposed the contention of the plaintiffs that they are owners of the suit property. The case of the defendants is that the father of plaintiffs was looking after the temple property as 'Vahivatdar' (Manager) and that he was not able to maintain the temple, as a consequence of which, the same was completely in ruins. The defendants contended that the defendant No.1 took the keys of the temple from father of plaintiffs and renovated the temple by expending amount from donations. It is the case of defendants that public at large visits the temple for worship freely without any restriction, important festivals are celebrated in the temple all throughout the year and that maintenance of the temple is also done from public funds.

5) The learned trial Court decreed the suit in favour of the plaintiffs holding that all three structures, including the temple bearing House No. 336, were private properties of the plaintiffs. It will be pertinent to state that the original owner Ramkrishna Baitule and his wife died issueless. The plaintiffs' father is nephew of said Ramkrishna Baitule. The suit properties bearing House Nos. 335 and 337 were mutated in the name of the plaintiffs' father after demise of Radhabai. As regards the temple, i.e. House No. 336, the same was also mutated in the name of 'Gopalkrishna Devasthan' as owner and plaintiffs' father as 'Vahivatdar' (Manager). This is the position in the Grampanchayat records as also in the city survey records.

6) After recording evidence of rival parties the learned trial Court held that the property belonged to Ramkrishna

Baitule, paternal uncle of plaintiffs' father who died issueless and accordingly the property devolved on plaintiffs' father. The learned trial Court held that the residential houses were properties of the plaintiffs and the temple was also property of the plaintiffs over which the defendants have no independent right. In arriving at such conclusion the learned trial Court has referred to evidence of defendant No.1 where he stated that he had taken keys of the temple from father of the plaintiffs, the name of plaintiffs' father alone was recorded as 'Vahivatdar' (Manager), name of no other person was recorded as 'Vahivatdar' (Manager), and the defendants have failed to lead cogent evidence to establish that the temple was a public place of worship.

7) Being aggrieved by the said judgment and decree, the defendants preferred first appeal, which came to be registered as R.C.A.No.97/2019. The learned first appellate Court has allowed the appeal in part. It is held that suit property bearing House No.336 is not owned by the plaintiffs. However, as regards the residential portions of the suit property bearing House Nos.335 and 337, the decree passed by the learned trial Court is maintained.

8) While arriving at such conclusion, the learned first appellate Court has held that the temple was recorded in the Grampanchayat record and also city survey record in the name of 'Gopalkrishna Devasthan' with name of plaintiffs' father as 'Vahivatdar' (Manager) and not in his individual name. The learned first appellate Court found that the Grampanchayat had granted exemption from payment of tax since it was a temple property. The tax assessment record is at Exh.46.

9) The learned first appellate Court also referred to the evidence indicating admissions by plaintiff No.2 that pilgrims, villagers, and members of the public had unrestricted access to the temple; the management of the temple by plaintiffs' father as 'Vahivatdar' (Manager); exemption from payment of Grampanchayat taxes; temple had a separate access different from the residential house, and documentary evidence on record, in the form of photographs in relation to religious functions performed on 'Janmashtami' and other festivals. The learned first appellate Court has also referred to a photograph of plaque in the name of one Guhe Guruji, who had donated some money for maintenance of the temple. In the light of such evidence, the learned first appellate Court reversed the decree passed by the learned trial Court with respect to the temple i.e. House No.336.

10) Mr. N. S. Khubalkar, learned counsel for the appellant contends that the learned first appellate Court has erred in reversing a well reasoned judgment passed by the learned trial Court. He argues that it is duly established that the suit property including the temple belonged to late Ramkrishna and thereafter his widow Radhabai. Mr. Khubalkar further argues that relationship of plaintiffs' father with Ramkrishna is also duly established and as such right of plaintiffs' father over the suit property including the temple cannot be disputed. He further contends that the burden of proving that the temple was a public place of worship was on the defendants which they failed to discharge. He further contends that the fact that the temple property bearing House No. 336 was mutated in the name of the plaintiffs' father, and that defendant No. 1 had obtained the keys of the temple from the plaintiffs' father, demonstrates that the plaintiffs' father was recognised as the owner of the suit property, and that the villagers worshipped the idol in the temple and used

to hold religious functions with the permission of the plaintiffs' father.

11) Mr.Khubalkar, learned counsel for the appellants places reliance on judgment of the Hon'ble Supreme Court in the case of Kuldip Chand and another vs. Advocate General to Government of H.P and others reported in (2003) 5 SCC 46 in order to contend that in the absence of cogent and reliable evidence, inference of a private property assuming character of a public place of worship should not be drawn.

12) Per contra, Mr. Onkar Ghare, learned counsel for the respondents/original defendants argues that as against House Nos.335 and 337 which were mutated in the name of plaintiffs' father, House No.336 i.e. the temple was mutated in the name of 'Gopalkrishna Devasthan' and that the name of plaintiffs' father was merely recorded as 'Vahivatdar' (Manager). The learned counsel draws attention to the fact that in the city survey records as also in the records of Grampanchayat, the temple property was recorded in the name of idol and that the Grampanchayat had also granted property tax exemption for the temple property, since it was a public place of worship.

13) Mr.Ghare, also refers to exhibited documents on record, to contend that the villagers used to offer prayers and worship the idol, religious functions were regularly conducted in the temple as a matter of right, the temple was renovated by the villagers which according to him are sufficient to draw inference with respect to the temple being a public place of worship.

14) It is apparent that although House Nos.335 and 337 were mutated in the name of plaintiffs' father, the temple i.e. House No.336 was mutated in the name of idol. The defendants

have produced documents on record indicating user of the temple as a place of public worship. The documents include a photograph regarding installation of plaque regarding donations made by one Guhe Guruji. The temple premises have independent access for entry and exit. Similarly, the house properties bearing Nos.335 and 337 have independent gates for entry. The temple is given a different house number, which is mutated in the name of the idol. The Grampanchayat had granted exemption from payment of property tax to the temple. The plaintiff No.2 who entered the witness box admitted that pilgrims used to visit the temple and reside in the temple premises every year. All these facts considered cumulatively will demonstrate that the learned first appellate Court has rightly dealt with the issue involved in the appeal to hold that the suit property bearing House No.336 i.e. temple is not private property of the plaintiffs and has accordingly dismissed the suit with respect to the said property only, while maintaining the decree granting declaration of ownership in favour of the plaintiffs with respect to House property Nos.335 and 337.

- 15) The learned trial Court did not properly appreciate the fact that the property was mutated in the name of 'Gopalkrishna Devasthan' and that name of plaintiffs' father was recorded as 'Vahivatdar' (Manager). This fact was required to be appreciated in the light of the fact that the other two houses which are part of the suit property were recorded in the name of father in his individual name. Likewise, the learned trial Court also did not take into consideration that the Grampanchayat had granted exemption to the temple from payment of property tax. The learned trial Court also did not properly consider the evidence with respect to religious functions conducted in the temple premises routinely. The learned trial Court was swayed by

admission of defendant No.1 that he had obtained permission from plaintiffs' father for maintaining the temple. This circumstance was required to be considered in the light of the fact that the plaintiffs' father was 'Vahivatdar' (Manager) of the temple. It is obvious that the defendant No.1 deemed it appropriate to seek permission of plaintiffs' father before starting work of renovation of the temple since his name was recorded as 'Vahivatdar' (Manager) in the Revenue and Grampanchayat records. The fact that plaintiffs' father consented for renovation and maintenance of temple from public funds is also a strong indication to hold that the temple was not treated or dealt with by plaintiffs father as his personal property.

16) The learned first appellate Court as a final Court of facts, has appreciated the entire evidence on record in a proper manner and has arrived at proper findings of facts. The judgment delivered by the learned first appellate Court does not warrant any interference. The Second Appeal does not give rise to any substantial question of law and is dismissed accordingly with no order as to costs.

(ROHIT W. JOSHI, J.)