



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

FIRST APPEAL No. 59 of 1968

RATANDAS S/O MURLIDAS (DECD.) LRS MAHESHDAS

THROUGH LRS MAHESHDAS S/O RATANDAS BAIRAGI

Versus

***THE STATE OF MADHYA PRADESH THROUGH THE COLLECTOR
AND OTHERS***

Appearance:

Shri Rishiraj Trivedi - Advocate for the appellant.

*Shri Anshul Rajpurohit – Government Advocate for the respondent
no. 1 /State.*

*Shri Veer Kumar Jain, learned Senior Advocate with Shri Makbool
Ahmad Mansoori - Advocate for the respondent [LRs of Res. No.7]*

Judgment reserved on : 21.08.2026

Judgment pronounced on : 25.08.2026

JUDGMENT

1. This First Appeal has been filed by the original plaintiff on 03.10.1968 impugning the judgment and decree dated 28.06.1968 passed by Additional Judge to the Court of District Judge, Ujjain in Civil Original suit No. 22/1954 (New No. 11A/1968), whereby the suit filed by the appellant on 24.12.1954 for the relief of declaration and perpetual injunction was dismissed.

PLAINT AVERMENTS (in short) :

2. The original plaintiff Ratandas S/o Murlidas Bairagi filed the suit on 24.12.1954, seeking the decree of declaration and perpetual



injunction against the State of Madhya Pradesh through Collector and the private respondents in their personal capacity and as representatives of Maheshwari Community (Samaj) stating that a temple known as Shree Ram Mandir having the idol of Shreeramji and other Gods has been established by Baba Mayaramdasji in Samvad 1584, which is situated in town Khachrod, District Ujjain and as per the lineage customs, grandfather of the plaintiff Mahant Shri Gopaldasji was managing the temple and the attached movable and immovable properties of the temple and performing the duties of a priest (pujari).

3. After the death of Mahant Shri Gopaldasji his disciple Shri Murlidasji, the father of the plaintiff had taken over the charge of seat of Mahant of Shreeram Temple, Rammohalla, Khachrod and started managing the temple and its movable and immovable properties attached to the temple and was performing the duties of priest (pujari). As per the plaintiff Shri Mayaramdas established the temple Shree Ram Mandir, who was the ancestor of the plaintiff.
4. It is alleged that some members of the Maheshwari community were the devotees of the temple and used to visit at the temple frequently. By taking undue advantage of the old age of the Mahant Gopaldasji, the devotees of Maheshwari community (Samaj) by practicing fraud and under active confidence of Mahant Gopaldasji, got executed a will by Mahant Gopaldasji in favour of the Panchans of Maheshwari Samaj, which is illegal and invalid. Mahant Gopaldasji was not competent to transfer the management of the temple by way of execution of a will and therefore the alleged will is null and *void ab-initio* and was never acted upon.
5. After the death of Mahant Gopaldasji, Mahant Murlidas being the disciple of Mahant Gopaldas and son, became the successor of



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the Gaadi and started managing the temple and the properties attached to the temple, however, during the life time of Mahant Murlidasji some influential persons of Maheshwari Samaj especially original defendant No. 2 Onkarlal and defendant No. 3 Mishrilal started unnecessary interference in the possession and management of the temple and its properties. Facing day to day problem due to unwanted interference of the defendants No. 2 and 3, Mahant Murlidas applied to Auqaf Department with a prayer to take over the temple and the properties attached to the temple under the protection and management of the State and consequently by order dated 15.10.1930 passed by Home Member of the Auqaf Department, the management and control of Shreeram Temple and its properties were taken over by the Auqaf Department under the supervision of the State.

6. On 5.11.1930, the Tehsildar, Khachrod appointed Mahant Murlidas as Priest (pujari) in the said temple and authorized to manage the temple and the properties attached to the temple on behalf of Auqaf Department. Mahant Murlidas continued to perform the duties of priest in the temple and managing the properties attached to the temple during his life time till his death in the year 1937.
7. The plaintiff and his three brothers Narayandas, Ramdas and Kanhaiyalal were found eligible for performing the duties of the priest, however, two other brothers Dayaldas and Manohardas were not found fit, as they were convicted in criminal case earlier. The representatives of Ascetic (Sadhus) (Panchan Sadhwan) decided that the plaintiff Ratandas will be the successor of Mahant Murlidas and priest of the temple to perform the duties as pujari and manage the properties attached to the temple. Consequently, *Bhekh*



customary ceremony was performed and the plaintiff was appointed as Mahant of the *Gaadi*. Thereafter, the plaintiff applied to Auqaf Department of the Pargana Khachrod and Auqaf Department by order dated 06.02.1948 accepted the proposal and appointed the plaintiff as priest with an authority to manage the properties attached to the temple. Manohardas and Dayaldas, those who were not considered eligible due to their conviction, filed their objection upon the appointment of plaintiff before Standing Committee of erstwhile Gwalior State, which was rejected and the appointment of the plaintiff was maintained and since then the plaintiff started performing the duties of priest and managing the properties of the temple.

8. By way of amendment, it is incorporated by the plaintiff that the temple belongs to Ramanand Sect and attached with Shri Digambar Akhada and, therefore, as per the customs of Ramanand Sect, the Mahant or priest of the temple has no authority, right or power to transfer the management of the temple and its properties to someone else and, therefore, Mahant Gopaldas was not competent to transfer the management of the temple through will to the members of Maheshwari Community and the will executed by Mahant Gopaldas was invalid and *void ab initio* being contrary to Ramanand Sect.
9. The plaintiff further incorporated the averment that the priest of the Shreeram Temple of Khachrod considered as Mahant and belongs to Bairagi community and the ascetic of the Ramanand Sect collectively decided the successor of the sect Mahant and the Priest for the temple by performing the customs. Once the ascetic of Bairagi community of Ramanand Sect decides the successor, the State also issued the certificate accordingly. After the death of



Mahant Murlidas, ascetics (sadhus) collectively decided and appointed plaintiff as new priest of the temple for worship as well as maintaining the properties attached to the temple.

10. The plaintiff further pleaded that after the appointment of the plaintiff by the State, the Commissioner Jaagir by order dated 06.02.1948 permitted the plaintiff to manage the temple and the properties and handed over the possession of the temple and properties on 12.09.1948. After taking over the charge of priest on 12.09.1948 the plaintiff started performing the duties of priest. On 27.09.1948 President of Auqaf Committee further permitted the plaintiff to deal with the offerings.
11. After getting the knowledge of the appointment of the plaintiff, the defendants No. 2 and 3 and some other members of the Maheshwari Community started interference in the management of the temple and stopped the plaintiff from operating the bank account and thereafter on 28.11.1948, the plaintiff filed an application before President, Auqaf Committee cum Tehsildar, Paragana, Khachrod for payment of monthly honorarium. At the behest of the members of Maheshwari Community, one Ranchod complained to the President of Auqaf Department that plaintiff is not performing the puja and the charge of the temple be given to the priest appointed by defendant No. 3 Mishrilal and thereafter defendant No. 3 and the priest appointed by him with the help of police on the basis of an order passed by President Auqaf tried to take over the possession of the temple from the plaintiff on 07.12.1948, however, the plaintiff stopped them.
12. The plaintiff filed an appeal before the Collector, District Ujjain assailing the order dated 07.12.1948 passed by Tehsildar cum President, Auqaf Committee, Khachrod, whereby he permitted the



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priest appointed by respondent No. 3 to perform the duties of priest, however the Collector stayed the order on 13.12.1948. The stay order was duly served upon the President, Pargana Auqaf Committee, Khachrod. Thereafter, the defendants No. 2 and 3 along with some other persons of Maheshwari community challenged the order of Collector dated 13.12.1948 before the Commissioner and obtained ex-parte order from Commissioner, Jaagiri and Inaam on 24.12.1948, by which it was directed to the plaintiff to handover all the movable and immovable properties of the temple to the President of Auqaf Committee, Pargana, Khachrod.

13. In the year 1951 the President Pargana Committee, Auqaf cum Tehsildar started auctioning the rooms situated in the northern portion of the temple and south east portion of the temple for the purpose of letting out, whereas the Tehsildar had no authority to auction the rooms. The Tehsildar started accepting the rent and also had taken into custody a community hall named 'house for marriage purpose' in his custody. Rest of all movable and immovable properties continued in the possession of the plaintiff and plaintiff also continued to perform the duties of priest and managing the temple.
14. As per the plaintiff, Shriram Mandir, Kachrod is receiving annual grant ('Nemnuk') from the Auqaf department and the income from the rent of the rooms situated in the campus is also being used for the purpose of managing the temple. The plaintiff claimed that the possession of the President of Auqaf Committee over the community hall and rooms are constructive possession on behalf of the plaintiff. The plaintiff issued a notice through his lawyer on 11.04.1953 to the Collector and State, which was replied on behalf of North Central, Maal Vibhaag of Government of India



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on 27.11.1953 and it was informed to the plaintiff that the department is ready to handover the possession to the plaintiff, but the representatives of Maheshwari community and others have raised objection therefore, it was directed that the parties should approach to the competent court for deciding their rights.

15. Thereafter the plaintiff filed the subject suit seeking relief of declaration that the plaintiff is entitled to manage the Shreeram Mandir, Khachrod and the properties attached with the temple. The plaintiff is also entitled for taking the possession of all the properties of the temple and further declaration that Maheshwari community or defendant Nos. 2 and 3 have no right, title or interest in the management of the temple or over the properties of the temple. The plaintiff also sought for decree of declaration to declare that all the orders issued after 12.09.1948 are without jurisdiction, illegal and not binding on the plaintiff. The plaintiff prayed for perpetual injunction against the defendant Nos. 2 and 3 from interfering in the management of Shriram temple, Khachrod and the movable and immovable property attached to the temple.

PLEADINGS OF DEFENDANT NO. 1/ STATE:

16. Defendant No.1 i.e. State of M.P. through Collector filed the written statement and pleaded that the existence of Shree Ram Mandir in the town Khachrod is admitted, however it is not admitted that Baba Mayaramdas established the temple. As per the record this temple belongs to Maheshwari Community and the claim of the plaintiff that family of the plaintiff is performing the duties of priest as per the lineage tradition, is not acceptable. The State accepted that Late Gopaldas and Murlidas were priest of the temple, however it is denied in the absence of knowledge that Murlidas was the son of Gopaldas. It is stated that as per the



knowledge Mayaramdas and Gopaldas were ascetics and Nihang (*Nihang means a person who follows the discipline and remain unmarried for the purpose of religious services*), therefore, plaintiff cannot claim that he is the lineage of them.

17. It is stated that the members of the Maheshwari community are the devotees of the temple and participated in the management of the temple since long. The knowledge of the State that Gopaldas had executed a will bequeathing the authority to manage the temple to the Panch of Maheshwari community was also pleaded by the State. It is denied that the will was got executed by practicing fraud with Gopaldas and under active confidence and the will is illegal and void.
18. It is pleaded that Murlidas was appointed by the Auqaf Department on payment of annual grant (Nemnuk), however the said appointment had no effect on the validity of the will and he was appointed only on the post of priest. It is admitted that Murlidas during his lifetime approached to the Auqaf Department for taking the temple in their control and by order dated 15.10.1930 the management of the Shree Ram Mandir, Khachrod and the properties attached to the temple were taken in the supervision of Auqaf Department and after the death of Murlidas in the year 1937, the appointment of the plaintiff was recommended by the ascetics considering the plaintiff as *Nihang*, which was accepted and it is pleaded that the plaintiff was appointed on annual grant (*Nemnuk*) and a certificate was also issued in his favour. However, later on it came to the knowledge that plaintiff has performed the marriage and lost the status of *Nihang*. Consequently he lost the right to perform the Pooja at temple. The appointment of plaintiff as priest was admitted by the State, however it is submitted that the temple



and the properties attached to the temple were taken into control and supervision of the Auqaf Department.

19. The State further pleaded that upon the request of the representatives of Maheshwari community and upon receipt of the complaint against the plaintiff on 06.02.1948, the Auqaf Department had taken the possession of the temple under its control. However, it is accepted that on 12.09.1948 the possession of the temple and its properties were handed over to the plaintiff. It is stated that when the appointment of the plaintiff was set aside by Commissioner, Jagir, the possession of the temple was again taken into custody on 29.09.1948. All these proceedings were carried out at the behest of the representatives of Maheshwari community and in compliance of the order passed by the Collector, Ujjain, Commissioner, Jagir and Revenue Department of erstwhile Gwalior State.

20. The State pleaded that though the plaintiff is performing the duties of priest, however he is not having any title or interest in the temple and he is only a licensee of the Auqaf Department. The committee has already resumed the possession of the rooms and community hall and is managing the same for the purpose of letting out on rent. The State denied the other plaint allegations and submitted that the plaintiff has no right to manage the movable and immovable properties of the temple and he can only perform the Pooja as priest appointed by Auqaf Department on annual grant (*Nemnuk*). The State prays for dismissal of the suit and raised the objection that the reliefs have not been valued properly and proper court fee has not been paid by the plaintiff. The objection of the maintainability of the suit was raised on the ground that the properties are in possession of Auqaf Department and, therefore, the



suit for mere relief of declaration is not maintainable.

21. It is pleaded by the State that the members of the Maheshwari community have invested money in renovation of the temple, and the community hall and rooms were constructed by members of Maheshwari community from their funds, therefore, plaintiff has no right to manage those immovable properties and plaintiff can claim only the right to perform the duties of priest under the supervision of Auqaf Department. Prayer was made for dismissal of the suit.

PLEADINGS OF DEFENDANT No. 2 & 3:

22. The defendants No. 2 & 3 in their personal capacity and being representatives of Maheshwari community filed the written statement and denied the plaint allegations in toto. It is denied by them that the temple was established by Baba Mayaramdas. They claimed that this temple is an ancient temple of Maheshwari community, built and established by the community and Gopaldas and Murlidas were appointed as priest in the temple for the purpose of performing Pooja. Murlidas was not the son of Gopaldas and plaintiff is not the lineage of Mayaramdas. Mayaramdas and Gopaldas both were ascetics and Nihang.
23. The members of Maheshwari community are the devotees of the temple and used to visit to the temple daily. They denied that the will was got executed by the members of the community from Gopaldas by practicing fraud and under active confidence. It is pleaded that the will was a valid and genuine will and it was duly acted upon. Only by appointment of Murlidas as priest in the temple, the effect of the will cannot be disregarded. When the representatives of the Maheshwari community raised the objection towards the mismanagement of temple by Murlidas, he malafidely submitted an application before the Auqaf Department for taking



the temple in their control.

24. As per the defendant Nos. 2 & 3, the ascetics of Ramanand recommended the plaintiff for appointment as priest, as the plaintiff was *Nihang* at that time. Murlidas executed an agreement in favour of the defendant Nos. 2 & 3 and as per the terms of the agreement, the plaintiff is not entitled for appointment on the post of priest of the temple and his conduct was not in conformity with the act of the priest, therefore, after the death of Murlidas in the year 1937 and considering the misconduct of the plaintiff, the Maheshwari community applied to the Auqaf Department to permit the priest appointed by Maheshwari community to perform the Pooja. If any order is passed by the Commissioner, Jagir, the same was *ultra vires* and without jurisdiction as the Commissioner, Jagir had no right to appoint the priest of subject temple, without deciding the application submitted by them and by order dated 12.09.1948 the plaintiff was permitted to manage the temple, which was opposed by the defendants.

25. The plaintiff had no authority to operate the bank account and deal with the amount already deposited in the bank and if any permission was granted by the President, Auqaf committee, the same was without jurisdiction. The plaintiff had no authority to operate bank account and, therefore, around 29.09.1948 the defendant No. 2 and 3 made a request to the bank to stop the operation of the bank account by the plaintiff. As the plaintiff was not performing the duties properly, the members of the Maheshwari community opposed the same and made the complaints to the Auqaf Department. After considering all the complaints, on 07.12.1948 the President of Auqaf Committee permitted the priest appointed by defendant No. 3 to perform the Pooja and plaintiff illegally tried to



interfere in the order passed by the Auqaf committee and without any knowledge of the defendants obtained the stay order. However, no right, title or interest accrued to the plaintiff on the strength of the stay order and the plaintiff is not in possession of any of the properties of the temple. He is only performing the duties of a priest and residing in the residential premises attached to the temple, wherein the priest is permitted to reside. He is a servant or licensee.

26. The rooms and the community hall for marriage functions were since beginning in the possession of the Auqaf Committee and are managed by Tehsildar. Plaintiff is getting Rs. 270/- per year as annual grant (*Nemnuk*) and he is a servant of Auqaf Committee. The possession of the Tehsildar is not constructive possession and he is not *custodia legis*. The members of the Maheshwari community have invested huge amounts in the temple and developed the temple campus and they are entitled to remove the priest from his post and as the plaintiff has challenged the rights of defendant Nos. 2 & 3, he is not entitled to continue as priest. The plaint is completely vague and is not maintainable. The suit has been filed against the defendant Nos. 2 and 3 in their representative capacity, which is also not maintainable. The plaintiff has not paid the *advalorem* court fee as per the valuation of the rooms and community hall and consequently the suit is liable to be dismissed due to improper valuation and nonpayment of proper court fee.

27. The defendant Nos. 2 and 3 pleaded that earlier also the plaintiff filed a suit for declaration in respect of the same temple and made the similar allegations in the suit, which was filed in the Court of Civil Judge, Khachrod registered as COS No. 261-A/1951, which ultimately dismissed due to the absence of plaintiff and his pleader. Thereafter the plaintiff filed an application for restoration



of the suit, which was also dismissed and plaintiff has not challenged the said order before any higher court, therefore, the same has attained finality and thus the suit filed by the plaintiff is not maintainable.

28. It is submitted that the plaintiff is claiming the rights through Gopaldas and Murlidas, whereas Gopaldas and Murlidas during their lifetime on 19.12.1907 and on 28.04.1919 respectively accepted that the temple belongs to the Maheshwari community and, therefore, the plaintiff has no right. The appointment of plaintiff as priest was accepted by the Maheshwari community, subject to the condition that they may appoint any other priest, if occasion arises. The declaration of Gopaldas and Murlidas are binding on the plaintiff and on the basis of the declaration of Gopaldas and Murlidas, the Maheshwari community has spent approx. Rs.70,000/- for raising construction in the temple compound.

29. In alternate, it is pleaded that if any lineage customs are proved, even then the plaintiff will not get any benefit of it, as the Gopaldas and Murlidas have already waived their rights and now the plaintiff cannot assert the same. Both of them have already accepted the rights of the Maheshwari community. If the plaintiff is appointed as Manager of the temple, the properties of the temple will be misappropriated by the plaintiff, as he is incompetent to perform the duties of manager and priest. He cannot be appointed against the orders of Auqaf committee. He is not a *Nihang*. The authority to appoint the priest is with the Maheshwari community and they do not want to appoint the plaintiff as priest of the temple. Therefore, no relief can be granted to the plaintiff.

30. The mother of the plaintiff was not the legally wedded wife of



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Mahant Murlidas and, therefore, plaintiff has no authority to claim the rights on the basis of alleged lineage custom. The defendant pleaded that as the plaintiff has not impleaded his brothers as party in the suit, the suit is liable to be dismissed due to non-joinder of the necessary parties. It is stated that the Maheshwari community wants that the temple be remained under the supervision of Auqaf committee and earlier Murlidas had also applied for the same. Therefore, the plaintiff cannot claim any independent rights. The simplicitor suit for mere declaration is not maintainable. The possession of Maheshwari community is since 1907 and, therefore, the suit is time barred.

31. During the pendency of the suit, the defendant Nos. 2 and 3 died and were substituted by their legal representatives. After coming on record, the legal representatives of deceased-defendant Nos. 2 & 3 filed separate written statements and denied the plaint allegation in toto. Some additional objections were raised in respect of the maintainability of the suit on the ground that the subject temple is an open temple for all the persons and, therefore, amounts to a public trust and as per Section 32 of M.P. Public Trust Act, the suit is not maintainable.

ISSUES SETTLED BY THE TRIAL COURT :

32. On the basis of the averments of the parties, the Trial Court framed the following issues:

1. *Whether the temple was originally established by Baba Mayaramdas and belongs to Romanandi sect of Bairagis?*
2. (a) *Whether there is a Gadi of Mahant associated with this temple?*
(b) *Whether it is the seat of Nihangas only?*
(c) *Whether the plaintiff is the son of Murlidas?*



- (d) Whether the plaintiff is entitled to continue on the seat even after his marriage?*
3. *(a) Whether the plaintiff is simply a Pujari and lives in the temple as licensee and employee of the trust?*
(b) Whether the plaintiff has forfeited his right to continue as Pujari due to his misconduct?
(c) Whether Maheshwari Samaj has a right to terminate his services?
4. *(a) Whether the succession to the office of Mahant is customarily recognized by a Bhekh Ceremony?*
(b) Whether such Bhekh ceremony was actually performed?
(c) If so, how far did it confer the rights of Mahantship upon the plaintiff?
5. *(a) Whether the execution of the Will was obtained from Gopaldas:*
(i) by fraud
(ii) by undue influence after taking him in active confidence.
(b) Whether the Will was bad because it was never acted upon?
6. *(a) Whether Gopaldas transferred the trust property by Will?*
(b) If so, whether he was competent to do so?
(c) Whether the Will can be challenged even after the lapse of such a long period?
7. *(a) Whether Maheshwari Samaj endowed the property to the temple with the condition that it will be managed by Okaf department?*
(b) Whether Murlidas consented to that arrangement?
(c) Whether the plaintiff is now stopped from challenging the rights of Maheshwari Samaj?
(d) Whether Maheshwari Samaj has a right to appoint or



- remove the Pujari of the temple?*
8. *Whether the defendants No.2 to 4 have been sued in representative capacity?*
9. (a) *What is the effect of release of the property in favour of the plaintiff by the Okaf department?*
(b) *Whether the officer concerned had jurisdiction to rescind that ex parte order?*
10. *Whether the suit is bad for non-joinder of the other brothers of the plaintiff?*
11. (a) *Whether the suit is properly valued?*
(b) *Whether the plaintiff has paid proper Court fee?*
12. *Whether the suit for mere declaration is maintainable without a prayer for consequential relief?*
13. *Whether the suit is barred by limitation?*
14. *Whether the suit is barred by Section 32 of M.P. Public Trust Act?*
15. *Whether suit is barred by res-judicata or u/O2 Rule2 of CPC?*
16. *Relief and costs?*
33. The plaintiff examined Jankidas (PW/1), Raghuwardas (PW/2), Sawai Singh (PW/3), Narayandas (PW/4), Keshar Singh (PW/5), Rajaram (PW/6), Komal Singh (PW/7), Nathulal (PW/8), Shivnarayan (PW/9), Rameshwardas (PW/10), Santdas (PW/11), Ratandas (PW/12), Narsinghadas (PW/13), Kanhaiyadas (PW/14), Ghanshyamdas (PW/15) and Narottamdas (PW/16) in support of his case, whereas the defendant examined Ratanlal (DW/1), Ramdas (DW/2), Nandlal (DW/3), Thawarji (DW/4), Chandmal (DW/5), Chunnilal (DW/6), Haridas (DW/7), Tulsiram (DW/8), Manaklal (DW/9), Sagarmal (DW/10), Ranchhodlal (DW/11) and Kamaldas (DW/12) in support of their case.



FINDINGS OF THE TRIAL COURT :

34. The learned Trial Court by judgment and decree dated 26.06.1968, dismissed the suit with cost by holding that the plaintiff has failed to prove that the temple was originally established by Baba Mayaramdas and belongs Ramanand Sect of Bairagis. There is no Gadi of Mahant attached with this temple and this seat of Priest of the temple is of *Nihangs* only. The Trial Court held that the plaintiff is the son of Murlidas, however, not entitled to continue on the seat after his marriage. The Trial Court further held that the plaintiff is a Pujari and lives in the residential part of the temple as licensee and is employee of the Pargana Auqaf Committee and not having any right, title or interest in the temple and its properties.
35. The Trial Court further held that the plaintiff misconducted and failed to fulfill the duties of the Priest and, therefore, has forfeited his rights to continue as Priest and the Maheshwari Samaaj has a right to terminate his services, as he was appointed by Auqaf Committee as Priest upon the recommendation of the Maheshwari Samaj. The Trial Court held that there is evidence of performance of *Bhekh* Ceremony, and generally speaking, such ceremony is performed for recognizing the succession of Mahant of a *Math*, but by mere performance of such ceremony and in the absence of any conclusive proof of the fact that the temple is *Math*, the ceremony, which was performed in favour of the plaintiff has no significance in the case in hand.
36. As per Trial Court the plaintiff has failed to prove that the Maheshwari Community got executed the Will from Gopaldas by committing fraud or under influence after taking him in active confidence. The Will is genuine, effective and valid. Gopaldas did not transfer the Trust property by the Will and he was not competent



to transfer the Trust property as he was not the title holder of the temple and the properties attached thereto and the Will cannot be challenged after the lapse of long period.

37. It is also held by the Trial Court that though the Maheshwari Community endowed the property to the temple with the condition that it will be managed by Auqaf Department, but such endowment was not permanent in nature and the Maheshwari Community is entitled to manage the temple and appoint the Priest. The Trial Court further held that the arrangement made by the Maheshwari Community was duly consented by Mahant Murlidas and now the plaintiff being a son of Mahant Murlidas and claiming the right through Mahant Murlidas is stopped from challenging the rights of Maheshwari Community and the Maheshwari Community has a right to appoint or remove the Priest of the temple.

38. The Trial Court further held that such property was released by the Auqaf Department in compliance of the order of Commissioner, but the same has no effect to the merits of the case and the Officer concerned had the jurisdiction to rescind that *ex parte* order. The Trial Court held that the brothers of the plaintiff are not proper and necessary party in the suit and as the suit for possession has not been filed by the plaintiff, the plaintiff has valued the suit properly and paid the proper Court fees.

39. As per the Trial Court, in the absence of seeking the relief of possession, the suit for mere declaration is not maintainable and the plaintiff was under obligation to seek the consequential relief. The Trial Court further held that the suit was barred by limitation, because the cause of action for the suit was accrued to the plaintiff for the first time on 12.09.1948 and the suit has been filed on 25.12.1954. In view of the Trial Court, the suit is not barred by



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Section 32 of M.P. Public Trust Act as well as by the doctrine of *res judicata* or under the provisions of Order II Rule 2 of CPC. After considering the pleadings of the parties, evidence and arguments of the parties, the learned Trial Court by a detailed judgment, dismissed the suit filed by the plaintiff.

40. Hence, the present appeal has been preferred by the plaintiff with a prayer for setting aside the decree passed by the Trial Court and decreeing the suit filed by the plaintiff.
41. Earlier this appeal was decided by learned Single Judge of this Court vide judgment and decree dated 10.07.1993 and the appeal was allowed after setting aside the judgment and decree passed by the trial court.
42. Judgment dated 10.07.1993 was assailed by the respondent Nos. 2 and 3 before the Supreme Court of India in Civil Appeal No. 157/2016, which was decided by order dated 26.02.2020 and the appeal was allowed by setting aside the judgment and decree passed by the learned Single Judge of this Court in this appeal on 10.07.1993 with an order of remand to this Court to decide the First Appeal afresh on merits specifically dealing with all the issues and contentions in accordance with law. All the contentions of the parties are left open. As it was informed to the Supreme Court that the appellant is in possession of the suit property pursuant to the judgment and decree passed by learned Single Judge of this Court on 10.07.1993, the Supreme Court ordered that the possession would not be disturbed, but would be subject to the outcome of the First Appeal and in case the appeal is dismissed, appropriate orders and directions in exercise of the power of restitution and u/S.144 of the Code of Civil Procedure would be issued and applied with.
43. In compliance of the directions issued by the Supreme Court



of India in Civil Appeal No. 157/2016 by order dated 26.02.2020, with the consent of the parties, arguments heard for the purpose of final disposal of this First Appeal afresh on merits dealing with all the issues and contentions raised by the parties.

DISCUSSION:

44. For the purpose of deciding this first appeal, the following question arises in this appeal for consideration:

“Whether the Trial Court has committed an error of facts or law in passing the impugned judgment and decree dated 26.06.1968 dismissing the suit filed by the appellant / plaintiff ?”

45. It is also essential to examine the pleadings of the parties, oral and documentary evidence adduced by the parties and relevant provisions of law, judgments relied by the parties and the arguments advanced by the learned counsels for the parties. In view of this Court, for deciding the aforesaid question, first it is essential to answer some other questions involved in the case *inter alia*: who built or established the Shree Ram Mandir, Khachrod, whether any Will was executed by Mahant Gopaldas on 19.12.1907 under influence and active confidence of the members of Maheshwari Community, whether the members of Maheshwari Community borne thousands of rupees for development of the campus of Shree Ram Temple under the impression that Mahant Gopaldas has authorized Maheshwari Community to manage the temple, whether Mahant Murlidas executed an agreement in favour of Maheshwari Samaaj on 28.04.1919 and acknowledged the authority of the Maheshwari Samaaj to manage the temple, whether Mahant Murlidas applied to the Auqaf Department for taking the temple and the properties under their supervision, whether the lineage of Mahant Murlidas has lost all the alleged rights in the temple and the properties due to execution of Will by Gopaldas and agreement by



Murlidas, whether after the death of Murlidas, the plaintiff was recommended by Ascetics of Ramanand Sect and appointed plaintiff as Mahant of the temple by performing the *Bhekh* Ceremony, whether upon the recommendation of the Ascetics of Ramanand Sect, Auqaf Committee appointed plaintiff as Priest of the temple and authorized to manage the properties of the temple, whether the plaintiff is entitled to perform the duties of Priest and manage the temple and the properties attached to the temple as per the alleged lineage tradition or customs, whether the plaintiff was not competent to continue as Priest after performing the marriage, whether the possession of the temple and the properties were taken over by the Auqaf Committee and whether plaintiff was performing the duties of Priest on the date of filing of the suit and during the pendency of this appeal.

46. Learned Senior Advocate appearing on behalf of the respondent no. 2 submits that as per the provisions of Order 41 Rule 22 of CPC, the respondents can challenge the finding of any issue without filing the cross objection in the case, if the respondent is not seeking any relief on the basis of challenging the finding. He relied on the judgment delivered by the Supreme Court in the matter of ***Banarsi & Ors. Vs. Ram Phal***¹, wherein the Supreme Court has held that if the decree is entirely in favour of the respondents though an issue has been decided against the respondents or the decree is entirely in favour of the respondents and all the issues have also been answered in favour of the respondents, but there is a finding in the judgment which goes against the respondents, the respondents may support the decree without filing cross objection and challenge the finding on any issue in the appeal. The relevant

¹ Banarsi & Ors. Vs. Ram Phal, (2003) 9 SCC 606.



paragraphs reads as under:-

“10. The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying



challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.”

47. The learned Senior Advocate further relied on the judgment delivered by the Supreme Court in the matter of **Saurav Jain & Ors. Vs. ABP Design & another**², wherein the Supreme Court has held that there is no need to challenge the adverse finding of the lower appellate court by filing a formal memorandum of cross objection and it can be challenged without filing the memorandum of cross objection. The relevant paragraphs reads as under:-

“27. The effect of the amendment was considered in Banarsi v. Ram Phal [Banarsi v. Ram Phal, (2003) 9 SCC 606] , where this Court held that after the 1976 Amendment, the respondent could file cross-objections against the “findings” of the lower court, while previously cross-objections could only be filed when the decree of the lower court was partly against the respondent. R.C. Lahoti, J. (as the learned Chief Justice then was), speaking for the two-Judge Bench observed :

² Saurav Jain & Ors. Vs. ABP Design & another, (2022) 18 SCC 633



(SCC pp. 616-17, paras 10-11)

“10. ... There may be three situations:

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.*
- (ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.*
- (iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.*

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any [Ed. : The words between two asterisks has been emphasised in original as well.] finding [Ed. : The words between two asterisks has been emphasised in original as well.] adverse to him as the decree is [Ed. : The words between two asterisks has been emphasised in original as well.] entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a [Ed. : The words between two asterisks has been emphasised in original as well.] finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or



dismissed for default the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.”

(emphasis supplied)

28. Order 41 Rule 22(2)CPC states that a “cross-objection shall be filed in the form of a memorandum, and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto”. This Court in *S. Nazeer Ahmed v. State Bank of Mysore* [*S. Nazeer Ahmed v. State Bank of Mysore*, (2007) 11 SCC 75] elaborated on the form of objections made under Order 41 Rule 22CPC. In *Nazeer Ahmed* [*S. Nazeer Ahmed v. State Bank of Mysore*, (2007) 11 SCC 75], the respondent had filed a suit for enforcement of an equitable mortgage. In deciding the suit, the trial court rejected the argument of the appellant-defendant and held that the suit was not barred by Order 2 Rule 2CPC. However, the court dismissed the suit on grounds of limitation. On an appeal filed by the respondent before the High Court, the High Court observed [*State Bank of Mysore v. S. Nazeer Ahmed*, 2003 SCC OnLine Kar 928] that although the suit was barred by Order 2 Rule 2CPC, the appellant had not challenged this finding of the trial court by filing a memorandum of cross-objection. Thus, the High Court granted the respondent a decree against the appellant. When this finding of the High Court was assailed before this Court, *P.K. Balasubramanyam, J.* held that a memorandum of cross-objection needs to be filed while taking recourse to Order 41 Rule 22 only when the respondent claims a relief that had been rejected by the trial court or seeks an additional relief apart from that provided by the trial court. The Court held that a memorandum of objection need not be filed when the appellant only assailed a “finding”



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of the lower court : (Nazeer Ahmed case [S. Nazeer Ahmed v. State Bank of Mysore, (2007) 11 SCC 75], SCC p. 80, para 7)

“7. The High Court, in our view, was clearly in error in holding that the appellant not having filed a memorandum of cross-objections in terms of Order 41 Rule 22 of the Code, could not challenge the finding of the trial court that the suit was not barred by Order 2 Rule 2 of the Code. The respondent in an appeal is entitled to support the decree of the trial court even by challenging any of the findings that might have been rendered by the trial court against himself. For supporting the decree passed by the trial court, it is not necessary for a respondent in the appeal, to file a memorandum of cross-objections challenging a particular finding that is rendered by the trial court against him when the ultimate decree itself is in his favour. A memorandum of cross-objections is needed only if the respondent claims any relief which had been negatived to him by the trial court and in addition to what he has already been given by the decree under challenge. We have therefore no hesitation in accepting the submission of the learned counsel for the appellant that the High Court was in error in proceeding on the basis that the appellant not having filed a memorandum of cross-objections, was not entitled to canvas the correctness of the finding on the bar of Order 2 Rule 2 rendered by the trial court.”

(emphasis supplied)

29. It is apparent from the amended provisions of Order 41 Rule 22CPC and the above authorities that there are two changes that were brought by the 1976 Amendment. First, the scope of filing of a cross-objection was enhanced substantively to include objections against “findings” of the lower court; second, different forms of raising cross-objections were recognised. The amendment sought to introduce different forms of cross-objection for assailing the findings and decrees since the amendment separates the phrase “but may also



state that the finding against him in the court below in respect of any issue ought to have been in his favour” from “may also take any cross-objection to the decree” with a semi colon. Therefore, the two parts of the sentence must be read disjunctively. Only when a part of the decree has been assailed by the respondent, should a memorandum of cross-objection be filed. Otherwise, it is sufficient to raise a challenge to an adverse finding of the court of first instance before the appellate court without a cross-objection.

30. The applicability of the principle in Order 41 Rule 22CPC to proceedings before this Court under Article 136 of the Constitution was considered by a Constitution Bench in the decision in Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji [Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, 1964 SCC OnLine SC 29 : AIR 1965 SC 669] . J.R. Mudholkar, J. overruled the judgment of the three-Judge Bench in Vashist Narain Sharma v. Dev Chandra [Vashist Narain Sharma v. Dev Chandra, (1954) 2 SCC 32 : AIR 1954 SC 513] which had rejected the argument of the respondent that a party could raise arguments on the “findings” that were against him, while supporting the judgment. It was held that Order 41 Rule 22CPC does not have application to an appeal under Article 136. In Ramanbhai Ashabhai Patel [Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, 1964 SCC OnLine SC 29 : AIR 1965 SC 669] , this Court held that the provisions of Order 41 Rule 22CPC are not applicable to the Supreme Court and the rules of the Supreme Court do not provide for any analogous provisions. However, it was held that this deficiency must be supplemented by drawing from CPC : (Ramanbhai Ashabhai Patel case [Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, 1964 SCC OnLine SC 29 : AIR 1965 SC 669] , SCC OnLine SC para 18)

“18. ... Apart from that we think that while dealing with the appeal before it this Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like Order 41



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Rule 22 of the Code of Civil Procedure it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Considerations of justice, therefore, require that this Court should in appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment.”

(emphasis supplied)

31. Expanding on this further, a two-Judge Bench (R.C. Lahoti, J. speaking for himself and Brijesh Kumar, J.) of this Court in Jamshed Hormusji Wadia v. Port of Mumbai [Jamshed Hormusji Wadia v. Port of Mumbai, (2004) 3 SCC 214] , observed : (SCC pp. 245-46, para 35)

“35. A few decisions were brought to the notice of this Court by the learned Additional Solicitor General wherein this Court has made a reference to Order 41 Rule 22CPC and permitted the respondent to support the decree or decision under appeal by laying challenge to a finding recorded or issue decided against him though the order, judgment or decree was in the end in his favour. Illustratively, see Ramanbhai Ashabhai Patel [Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, 1964 SCC OnLine SC 29 : AIR 1965 SC 669] , Northern Railway Coop. Credit Society Ltd. [Northern Railway Coop. Credit Society Ltd. v. Industrial Tribunal, 1967 SCC OnLine SC 73 : AIR 1967 SC 1182] and Bharat Kala Bhandar (P) Ltd. [Bharat Kala Bhandar (P) Ltd. v. Municipal Committee, Dhamangaon, (1966) 59 ITR 73 : 1965 SCC OnLine SC 170 : AIR 1966 SC 249] The learned Additional Solicitor General is right. But we would like to clarify that this is done not because



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*Order 41 Rule 22CPC is applicable to appeals preferred under Article 136 of the Constitution; it is because of a basic principle of justice applicable to courts of superior jurisdiction. A person who has entirely succeeded before a court or tribunal below cannot file an appeal solely for the sake of clearing himself from the effect of an adverse finding or an adverse decision on one of the issues as he would not be a person falling within the meaning of the words “person aggrieved”. In an appeal or revision, as a matter of general principle, the party who has an order in his favour, is entitled to show that even if the order was liable to be set aside on the grounds decided in his favour, yet the order could be sustained by reversing the finding on some other ground which was decided against him in the court below. This position of law is supportable on general principles without having recourse to Order 41 Rule 22 of the Code of Civil Procedure. Reference may be had to a recent decision of this Court in *Nalakath Sainuddin v. Koorikadan Sulaiman* [*Nalakath Sainuddin v. Koorikadan Sulaiman*, (2002) 6 SCC 1] and also *Banarsi v. Ram Phal* [*Banarsi v. Ram Phal*, (2003) 9 SCC 606] . This Court being a court of plenary jurisdiction, once the matter has come to it in appeal, shall have power to pass any decree and make any order which ought to have been passed or made as the facts of the case and law applicable thereto call for. Such a power is exercised by this Court by virtue of its own jurisdiction and not by having recourse to Order 41 Rule 33CPC though in some of the cases observations are available to the effect that this Court can act on the principles deducible from Order 41 Rule 33CPC. It may be added that this Court has jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Such jurisdiction is conferred on this Court by Article 142 of the Constitution and this Court is not required to have recourse to any provision of the Code of Civil Procedure or any*



principle deducible therefrom. However, still, in spite of the wide jurisdiction being available, this Court would not ordinarily make an order, direction or decree placing the party appealing to it in a position more disadvantageous than in what it would have been had it not appealed.”

(emphasis supplied)

32. On a perusal of the above authorities, it is evident that the principle stipulated in Order 41 Rule 22CPC can be applied to petitions under Article 136 of the Constitution because of this Court's wide powers to do justice under Article 142 of the Constitution. Since the principle in Order 41 Rule 22CPC furthers the cause of justice by providing the party other than the “aggrieved party” to raise any adverse findings against them, this Court can draw colour from Order 41 Rule 22CPC and permit objections to findings.

48. Considering the above legal position, the private respondents were permitted to challenge the finding in recorded by the trial Court on any issue in favour of the plaintiff.

Issue No. 1, 2 (a), (b), (c), (d), 3 (a), (b), (c), 4 (a), (b), (c), 5 (a) (i), (ii), (b), 6 (a), (b), (c), 7 (a), (b), (c) (d):

49. Shri Rishiraj Trivedi, learned counsel appearing behalf of the appellant opened his arguments stating that the appellant is not claiming any title over the temple and the properties attached to the temple. Shri Veer Kumar Jain, learned senior counsel with Shri Maqbool Mansoori, Advocate appearing on behalf of the private respondents submits that the private respondents are also not claiming any title over the temple or the properties attached to the temple. As per the counsel for the appellant and counsel for the private respondents, the dispute is in respect of management of the temple and the properties attached to it.

50. It is not in dispute that the subject temple of Shree Ram Chandra is an ancient temple and established several generations



ago having the deity of God Shree Ram, Janki Ji, Laxman Ji, Hanuman Ji, Laxminarayan Ji and Gopal Ji. The plaintiff claimed that the temple was built and the deity was installed there by the ancestral of the plaintiff Baba Mayaramdas Ji in Samvat 1584 and as per the lineage custom, the disciple of the Mahant succeeded the seat of Mahant after the death of earlier Mahant and the grand-guru-father of the plaintiff, Mahant Gopaldas Ji was the Mahant of this Shrine in the year 1907.

51. In support of the pleadings of the plaintiff that Baba Mayaramdas Ji built the temple and installed the deity of Lord Shree Ram in Samvat 1584, the plaintiff has examined Narayandas (PW/4), who stated that he is the *Bhat* of Bairagi Community and his ancestors used to maintain the record of the lineage of the temple and the *Gadi* attached to the temple and as per the record maintained by his ancestors, the temple was built in Samvat 1584. Mahant Gopaldas Ji was the lineage of Baba Mayaramdas Ji as per the guru-disciple customs. He produced the book maintained by his ancestors Exhibit P/4 and the lineage record Exhibit P/2 & Exhibit P/3, wherein it is mentioned that the temple was established by Mahant Mayaramdas Ji. The plaintiff (PW/12) also stated in his statement that this temple was established by Mahant Mayaramdas Ji in Samvat 1584, however, accepted in the cross-examination that his information is solely based on the information supplied by Narayandas (PW/4), who is the *Bhat* of the Bairagi Community.

52. The plaintiff has examined some other witnesses also who simply stated in their oral statement that the temple was built up by Mahant Mayaramdas Ji, but there is no documentary evidence available on record that the temple was built by Mahant Mayaramdas Ji in Samvat 1584. The statement of the plaintiff is



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based on information supplied by Narayandas, however, the copy of the book produced by Narayandas does not appear to be a credible document and only on the basis of the said book, it cannot be accepted that the temple was built in 1584 by Mahant Mayaramdas. The trial court has not committed any error in deciding the issue No. 1 that there is no evidence that the Shrine was built up by Bairagis of Ramanand Sect in Samvat 1584 by Mahant Mayaramdas Ji by installing the deity of Lord Shree Ram.

53. So far as the contention of private respondents that the subject temple is an ancient temple of Maheswari Community, there is no evidence on record to support the contention that the temple was built up by Maheswari Community and whatever record has been produced in the court are in relation with the period of Mahant Gopaldas Ji, Mahant Murlidas ji and plaintiff Ratanlal. Therefore, the Shrine cannot be considered as an ancient temple of Maheswari Community, though it is proved by the private respondents and duly accepted by the plaintiffs that members of Maheswari Community are the devotees of the Shrine and spent huge amount for development and maintenance of the Shrine and campus. DW-1 Ratanlal s/o Hukmichand, DW-3 Nanalal, DW-4 Thawarji, DW-5 Chandmal, DW-7 Haridas and DW-10 Sagarmal duly proved by oral and documentary evidence that the Panchaas of Maheshwari Samaj spent huge amount for renovation, maintenance and new construction in the temple. It is also proved that they were having active participation in the management of temple even during the lifetime of Mahant Murlidas. **In view of the above facts, it can be safely held that the Deity is the owner of the Shrine including other movable and immovable properties and members of Maheshwari Samaj are the devotees of the temple and spent**



huge amount for betterment and maintenance of the temple.

54. Insofar as the management of temple by Mahant Gopaldas Ji is concerned, the plaintiff has produced several documentary evidences and even the private respondents as well as the State have not denied this fact.
55. The plaintiff (PW/12) in his statement has produced the certified copies of *Mafi* register obtained from the office of *Mafi* Officer, wherein the subject Shrine and the lands attached to the Shrine were recorded as *Mafi* land and the name of Mahant Gopaldas Ji was duly recorded in the register. Annexure P/9 is the certified copy of the register of Samvat 1958 and thereafter, continuously, the same were recorded in the name of Mahant Gopaldas Ji as a *Mafi* land.
56. In the erstwhile, Gwalior State, the State established a *Mafi* and Jageer department and the properties those were used for religious, educational and charitable purposes were exempted from the land revenue and other taxes and the power to grant the exemption was with the *Mafi* Officer and the department of *Mafi* and Jageer used to maintain register of the properties in respect of which the exemption of land revenue and / or tax has been granted. The plaintiff obtained the certified copies of *Mafi* register and produced the same, which proved that the subject Shrine and the properties attached to the Shrine were duly recorded in the name of Mahant Gopaldas Ji S/o Mahant Govinddas Bairagi and were exempted (*Mafi*) lands and properties, therefore, the fact that Mahant Gopaldas Ji was managing the property is duly proved by producing these documents. Even otherwise, the defendants have not challenged the fact that Mahant Gopaldas Ji was managing the properties and on the contrary, the private respondents are claiming



their right of management on the basis of the alleged Will executed by Mahant Gopaldas Ji on 19.12.1907, wherein Mahant Gopaldas Ji allegedly bequeathed the *Shebait* rights in favour of the Panchas of Maheshwari Community. The fact that Mahant Gopaldas Ji was managing the Shrine and the properties has not been disputed by the State also. **Therefore, it is held that the plaintiff is able to prove that Mahant Gopaldas Ji was managing the properties.**

57. As per the plaintiff, the subject Shrine is a *Math* and, therefore, the Ascetics of the Ramanand Sect have authority to decide that who will be the next Mahant of the Seat (*Gadi*). The plaintiff has come with a case that the villagers of 175 villages of Bairagi Community are main devotees of the temple and the temple has been recognized as *Math*, therefore, after the death of Mahant Gopaldas Ji, Mahant Murlidas Ji, the father of the plaintiff was holding the seat of Mahant as per the decision taken by the Ascetics of Ramanand Sect and *Bhekh* Ceremony was also performed, which is essential for appointment of Mahant. In the *Bhekh* Ceremony, the Ascetics used to offer *Kanthi* and *Chaddar* to the newly appointed Mahant in a *Bhandara* to be organized by the *Math*.

58. Normally, the Shrine wherein the idols or deity are available is called a temple where the dedicated devotees frequently visit for worship and offer their prayers. However, a *Math* is a spiritual institute, which serves as a residence for disciples of the *Math* and ordinarily, it is a centre for teaching religious philosophy and traditions. The *Math* focuses on the theoretical and monastic side of a spiritual tradition. It serves as a home and training ground for Ascetics led by senior ascetic (*Guruji*), whereas the temple is usually managed for the community and focuses on the practical and devotional worship of holy icons (*Murtis*). Temple is ordinarily



open to the general public for daily rituals, festivals and offerings, whereas *Math* may have restricted entries.

59. Though, the several witnesses of the plaintiff have stated that this Shrine is a *Math* and is recognized by the Ramanand Sect and is a branch of Shri Digamber Akhada of Ayodhya, however, no such evidence could be brought on record by the plaintiff that in the subject premises, any religious educational activities were organized and the young Ascetics used to reside there for the purpose of getting religious education.
60. For the purpose of deciding the issue that whether the Priest of a temple should be *Nihang* (Bachelor) or even a married household person can perform the duties of Priest, it is essential to understand the nature of the Shrine, because if the subject Shrine is a *Math*, then this restriction is applicable that only a *Nihang* can perform the Puja in the temple of a *Math*, but if the subject Shrine is only a temple, then no such restriction can be imposed on the Priest as per the Hindu customs and the statements of the plaintiff witnesses PW-10, PW-13, PW-14 and PW-16.
61. To understand the meaning of a *Math*, the definition of a *Math* provided in Section 2(2) of the M.P. Public Trust Act, 1951 is helpful, which provides that *Math* means an institution for the promotion of Hindu religion presided over by a person, whose duty is to engage himself in imparting religious institutions or rendering spiritual service to a body of disciples or who exercises or claims to exercise hardship over such a body and includes places of religious worship or institution, which are appurtenant to the institution. As per this definition, for the purpose of considering a Shrine as a *Math*, the existence of religious and spiritual institution is essential. As there is no evidence available in the case at hand that any



religious or spiritual institution is established in the campus of Shree Ram temple, Rammohalla, Khachrod, the temple cannot be treated as *Math*. **In the absence of religious or spiritual institution, the subject Shrine cannot be treated as a *Math* and therefore it is not essential that only a *Nihang* can be appointed as Priest of the Temple.**

62. The case of the private respondents are mainly based on the Will allegedly executed by the Mahant Gopaldas Ji on 19.12.1907, whereby Mahant Gopaldas Ji reduced that he has attained the age of 60 years and there is no certainty of his life. He has only one disciple, who is not residing there, therefore, till his lifetime, he will continue to manage and worship the temple and in future, if he accepts anyone else as his disciple during his lifetime, the disciple will be his successor of seat, however, the Panchas will ensure that he works punctually, properly and maintains the temple. He reduced his wish that disciple will remain Naga (Bachelor) and in case he performs the marriage, he will continue to manage the temple with the consent of the Panchas and the Panchas will have right to take a decision in this respect. He appointed Mr. Jawaharchand Kakani, Rupaji, Dhulji, Gulabchand Nawaal and Ghisaji Rathi as Panchas.
63. From bare reading of the Will, it appears that Mahant Gopaldas Ji recorded that his disciple is not available in the temple and he will continue to manage the temple during his lifetime and if during this period, any new disciple joins him, the disciple will be his successor, who will perform the duties promptly with all the dignities and customs as followed by the Mahant Gopaldas Ji. He recorded his wish that his successor remain Naga (Bachelor) and in case he performs the marriage, the Panchas appointed by the testator will take decision for his continuation. Meaning thereby, the



Shebait rights were not completely bequeathed to the Panchas of Maheswari Community by Mahant Gopaldas Ji as claimed by them. The Will is a registered Will and produced by the defendant Nos. 2 and 3 in the Court.

64. *Shebait* is the human custodian and manager of a Hindu deity and its temple property. Because an idol is treated as juristic person, but cannot manage physical or financial affairs on its own, the *Shebait* acts as its legal guardian, earthly representative and servant.
65. The plaintiff has raised the objection that the Will has not been duly proved by the defendants as per the provisions of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act.
66. Learned counsel for the appellant raised the objection that the right of management cannot be bequeathed by a will and the alleged will was neither properly proved as per the provisions of Section 68 of the Evidence Act, nor as per the provisions of Section 63 of the Indian Succession Act. No witness was examined by the private defendant to prove the will. He further submits that the provisions of Section 90 of the Evidence Act do not apply to a will and the will is always required to be proved as per the provisions of Section 68 of the Evidence Act. He relied on the judgment delivered by the Supreme Court in the matter of ***Kavita Kanwar Vs. Pamela Mehta and others***³, wherein the Supreme Court has laid down the principles governing the adjudicatory process concerning proof of will, which reads as under:-

“(i) Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind and proof of



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mathematical accuracy is not to be insisted upon.

(ii) Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

(iii) The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

(iv) However, presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

(v) If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion, etc. in regard to the execution of the will, such pleas have to be proved, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

(vi) A circumstance is "suspicious" when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. The suspicious features must be 'real, germane and valid and not merely the 'fantasy of the doubting mind'.

(vii) As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder etc. are some of the



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circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

(viii) The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?

(ix) In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will."

67. Learned counsel for the appellant submits that as the burden to prove the will was on the private respondents, but they failed to prove the will. He further relied upon the judgment delivered by the Supreme Court in the matter of ***Ashutosh Samanta and others Vs. Ranjan Bala Dasi and others***⁴, wherein the Supreme Court has held that in case both the witnesses have died, the will is required to be proved by any person, who can identify the signatures of testators and/or witnesses. He submits that only on the ground that will is more than 30 years old and registered, it cannot be presumed that the will was executed and the execution of will and contents of the will cannot be admitted, which have to be proved in terms of Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. The relevant paragraphs of the

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Ashutosh Samanta and others Vs. Ranjan Bala Dasi and others, (2023) 19 SCC 448.



judgment reads as under:-

"11. The main argument of the appellant is that the application for letters of administration was made after a considerable delay, and that the courts below should not have relied on Section 90 of the Evidence Act, 1872, which reads as follows:

"90. Presumption as to documents thirty years old.

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation. Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to Section 81."

12. This Court, in M.B. Ramesh v. K.M. Veeraje Urs while dealing with a similar argument regarding applicability of Section 90 in the case of proof of will, held as follows: (SCC p. 499, paras 17-18)

*"17. At the same time we cannot accept the submission on behalf of the Respondents as well that merely because the will was more than 30 years old, a presumption under Section 90 of the Evidence Act, 1872 ("the Evidence Act" for short) ought to be drawn that the document has been duly executed and attested by the persons by whom it purports to have been executed and attested. As held by this Court in *Bharpur Singh v. Shamsheer Singh*, a presumption regarding documents 30 years old does not apply to a will. A will has to be proved in terms of Section 63(c) of the Succession Act read with Section 68 of the Evidence Act.*

18. That takes us to the crucial issue involved in the present case viz. with respect to the validity and proving of the will concerned. A will has to be executed in the manner required by Section 63 of the



Succession Act. Section 68 of the Evidence Act requires the will to be proved by examining at least one attesting witness. Section 71 of the Evidence Act is another connected section 'which is permissive and an enabling section permitting a party to lead other evidence in certain circumstances', as observed by this Court in para 11 of Janki Narayan Bhoir v. Narayan Namdeo Kadam and in a way reduces the rigour of the mandatory provision of Section 68. As held in that judgment Section 71 is meant to lend assistance and come to the rescue of a party who had done his best, but would otherwise be let down if other means of proving due execution by other evidence are not permitted."

13. In view of the above decision, wills cannot be proved only on the basis of their age the presumption under Section 90 as to the regularity of documents more than 30 years of age is inapplicable when it comes to proof of wills, which have to be proved in terms of Section 63(c) of the Succession Act, 1925, and Section 68 of the Evidence Act, 1872."

68. In reply to the objection raised by counsel for the appellant, the learned Senior Advocate appearing on behalf of the private respondents submits that in the case in hand the plaintiff himself has pleaded that the Panchas of Maheshwari community got executed a will from Mahant Gopaldas by practicing fraud and under influence, therefore, so far as the execution of will is concerned, the execution is admitted and admission is the best evidence as per Section 58 of the Evidence Act. He relied on the judgment delivered by the Supreme Court in the matter of ***Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar Vs. Chandran and others***⁵, wherein the Supreme Court has held that admission is the best evidence and if any fact is admitted by a party to the case, the opposite party is not required to prove the same fact.

69. The learned Senior Advocate further submits that as the execution of the will is admitted, the onus of proving the will was

⁵ Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar Vs. Chandran and others (2017) 3 SCC 702.



not on the defendant, whereas the onus was on the plaintiff to prove that the will was got executed by practicing fraud and under undue influence and active confidence. He submits that the plaintiff is miserably failed to prove that the will was got executed by practicing fraud or under undue influence.

70. So far as the objection raised by counsel for the appellant that the right of management cannot be bequeathed by will is concerned, learned Senior Advocate relied on the judgment delivered by the Supreme Court in the matter of *Ram Rattan Vs. Bajrang Lal*⁶, wherein the Supreme Court has held that Shebaitship is like immovable property. It is hereditary and heritable office and at the same time Shebaitship is not having any right to sale the office, nor it can be mortgaged or leased, but a will can be executed to bequeath the Shebaitship right. Shebaitship being a property, it devolves like any other hereditary property, therefore, Mahant Gopaldas was competent to execute the will in respect of the right of management of the subject temple.

71. It is also not in dispute that in the case in hand after the death of Mahant Gopaldas, Mahant Murlidas who was his disciple, was declared as Mahant and Murlidas was started worshiping and managing the temple and its properties. The name of Murlidas was duly mutated in the revenue records, municipality and Mafi register. The plaintiff has filed the certified copies of the documents of municipality, Mafi register and revenue records, wherein the name of Murlidas was duly recorded. Even it is not the case of private defendants that Murlidas had not taken over the charge of Mahantship after the death of Mahant Gopaldas, though it is an admitted position on record that Murlidas was not the son of

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Ram Rattan Vs. Bajrang Lal, AIR 1978 SC 1393.



Gopaldas, as Gopaldas was Nihang.

72. Since the appointment of Murlidas the dispute arose between Maheshwari panchas and Murlidas and Maheshwari Panchas were raising objections in respect of the management of the temple. However, during this period one agreement was allegedly executed between Maheshwari panchas and Murlidas with an object to settle the dispute, which is produced by the defendants and exhibited as Ex. D/2, wherein on 28.4.1919 Murlidas, Guru Gopaldas Bairagi acknowledged the execution of will by his Guru Gopaldas on 19.11.1907 and also acknowledged that the testator had given the authority to the Panchas. Murlidas was managing the shrine and performing the duties of priest with the consent of the Panchas, however Murlidas reduced that he was not able to manage the temple and, therefore, by the agreement handed over the properties of the temple to the Panchas with a condition that the Panchas will permit him to collect the rent and offerings and from the receipt of the amount of rent and offerings, he will manage his family, as he was a married person and he was continued to perform the duties of the priest. In the agreement the details of the movable properties were also mentioned along with the details of immovable properties. The agreement was registered and on the basis of that agreement also, the Panchas of Maheshwari community claimed that they were entitled to manage the temple and appoint the priest there. The whole dispute is in respect of management that who is having the authority to act as Shebait.

73. Mahant Murlidas in his statement recorded before the Tehsildar dated 23.7.1927 (Ex.D/18) accepted that he executed an agreement in favour of Maheshwari panchas. Maheshwari panchas also spent huge money for development of the campus and



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constructed some rooms, community hall and renovated the temple. However, from the record it appears that the dispute between the Maheshwari panchas and Mahant Murlidas was continued, which was originally started even from the date of taking charge by Murlidas as Mahant. Several documents have been filed and exhibited in respect of various disputes, which reached up to the Court of Tehsildar and Tehsildar passed various orders time to time. As it is not essential to refer those orders, applications, replies here, therefore they are not described in this order.

74. In the State of Gwalior has established an Auqaf Department, which worked for the Mafi and management of religious and charitable properties. It was a unique administrative legacy in the erstwhile Gwalior State and mainly the department was working under the control of Commissioner, Mafi and Jagir. It was a dedicated wing under the State's revenue administration to manage public religious land grants. The Tehsildar was the head of the Auqaf Department of Pargana, Khachrod.

75. From the statements of the witnesses and the documents exhibited by the parties, it is evident that when the dispute between the Mahant Murlidas and Maheshwari panchas continued, Murlidas applied to the Tehsildar, Khachrod, who was working as President of Auqaf Department, Pargana, Khachrod for taking over the control and management of Shrine and the properties attached to the Shrine on 14.9.1927. The Tehsildar immediately considered the application and issued a direction to Mahant Murlidas to discharge the duties of the priest properly and continue the services of the deity and not to stop any devotee to offer the prayer and avoid the disputes. The Tehsildar forwarded the request of Mahant Murlidas to the President, Central Auqaf Committee passed the resolution on



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18.10.1927 for making special arrangement in respect of the Shree Ram Mandir. On 17.2.1928 the Auqaf Committee, Pargana, Khachrod recommended for formation of a sub-committee for the purpose of management of the temple and appoint Murlidas as Pujari. On 11.6.1930, the Central Committee accepted the recommendation of Auqaf Committee, Pargana, Khachrod. Once again Mahant Murlidas applied to the State for taking control of the management of the temple and make arrangements for his children. Ultimately on 23.9.1930 the home member of the Auqaf Department passed the order that Mahant Murlidas will punctually perform the duties of the priest and will not create any hindrance in the worship of the idol by public or members of Maheshwari community and on 15.10.1930 an order was passed by home member to take Shree Ram Mandir and its properties under the supervision and control of the State.

76. The control and supervision of the temple was taken over by the Auqaf Department of State upon the request of the Mahant Murlidas and the said action has attained finality and the State duly acknowledged the title of the deity over the entire shrine and its movable and immovable properties and the State through Auqaf Department (now it is merged in revenue department) is the manager of the entire shrine and its properties.

77. Thereafter Mahant Murlidas continued to worship and perform the duties of priest in the temple. The devotees of Maheshwari community gifted the constructed rooms and community hall and other structures to the deity by executing a gift deed on 18.6.1930. Even after the management of the temple was taken under the supervision of the Auqaf Department, the disputes



between the Maheshwari community and Mahant Murlidas continued and they used to file complaints and take actions against each other. However, Mahant Murlidas continued to perform the duties of the priest till his death in the year 1937 and during this period he was managing the properties of the shrine also under the supervision of Auqaf Department.

78. From the statements of the witnesses and the documents produced in evidence, it is established that Mahant Gopaldas was the undisputed Mahant of the seat Shree Ram Mandir, Khachrod and was enjoying the rights of Shebait. After his death, Mahant Murlidas had taken over the seat of Mahant, however there were serious disputes between Mahant Murlidas and the devotees of Maheshwari community and ultimately upon the application of Mahant Murlidas the supervision of the management of temple was taken over by the Auqaf Department and in this way the temple was being managed by the State since 1930. The Auqaf Department was paying the salary to Murlidas @ Rs.10/- per month in addition to the annual offerings (Nemnook).

79. After the death of Mahant Murlidas, the Panchas of Maheshwari community did not agree on the name of the plaintiff Ratandas for his appointment as priest in place of Murlidas. Plaintiff witness Narsinghdas (PW-13), Kanhaiyadas (PW-14), Ghanshyamdas (PW-15) and Narottamdas (PW-16) have stated in their statements that the ascetics of Ramanand sect gathered at the temple and unanimously decided to nominate the plaintiff Ratandas as new Mahant and the Bhekh ceremony was performed and a *Kanthi and Chaddar* were given by the ascetic Manohardas to Ratandas and all of them enjoyed *Bhandara* and in this way Ratandas became the Mahant of Shree Ram Mandir, Khachrod.



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These witnesses were cross-examined at length, however nothing could be brought in their cross-examination to disbelieve the statement of these witnesses.

80. Ratandas started working as priest, however at the same time the defendant No. 2 Mishrilal also appointed someone else to perform the duties of the priest. Ratandas applied to Auqaf Department for permitting him to continue as priest and name of Ratandas was mutated in the record of the municipality also. By Ex. P/29 the Auqaf committee Pargana, Khachrod passed the resolution No. 16 dated 01.06.1944, whereby it was agreed that Ratandas be appointed as priest of the temple as he has been certified by the ascetics of the Ramanand sect. His name was recommended for appointment by the President, Auqaf Committee to the Central Committee and the charge of the priest was handed over to the plaintiff by the receiver duly appointed by Auqaf committee on 12.09.1948 to Ratandas and the document of handing over the charge has been proved and exhibited as Ex. P/7 in the evidence. Before that by Ex. P/6 dated 30.08.1948 Auqaf Department appointed Ratandas as priest of the temple for performing the Pooja and managing the temple and its properties. After the order of the Commissioner, Mafi and Jagir, the charge was taken back from plaintiff Ratandas on 29.09.1949, however Ratandas continued to perform the worship to the deity and act as priest, even without receiving any monthly salary from the Auqaf Department.

81. The private respondents examined several witnesses to prove that Ratanlal was never approved by ascetics of Ramanand Sect as Mahant and he could not continue as priest after performing the marriage. DW-2 Ramdas, DW-7 Haridas, DW-8 Tulsidas and DW-12 Kamaldas were examined by the defendant nos. 2 and 3 to



support their contention that Ratanlal was never approved by ascetics and he cannot continue after marriage. These all witnesses belongs to Ramanand Sect, however their statements do not appear to be credible and based of personal inferences only and on the basis of these statements only, it cannot be accepted that no *Bhekh* ceremony was held and the plaintiff was not approved as Mahant and not entitled to continue after marriage as priest of the Shree Ram and Ramolla Temple.

82. When Ratandas was appointed, he was bachelor, however later on he performed the marriage and the Maheshwari Panchas started raising objection that a married person cannot act as priest in the temple, as this is a seat of Nihang. Ratandas opposed this contention of the Maheshwari Panchas and the matter once again went to the Court of Tehsildar. As per the Ratandas, it was not essential that only Nihang (bachelor) can work as priest. His father Murlidas was also a married person having household and wherever the seat is attached with the temple of Ramanand sect, a married priest may work. The plaintiff examined Rameshwardas (PW-10), Santdas (PW-11) and Narottamdas (PW-16) in support of his contention before the trial Court that the married person may also act as Mahant. Several examples were given by these witnesses and even after detailed cross-examinations they remained constant on this issue.

83. The only basis of taking objection by the private respondents that the priest of the temple should be Nihang is the will executed by Mahant Gopaldas, except that there is no evidence to prove this contention. Upon examining the will executed by Mahant Gopaldas (Ex.A), it appears that Mahant Gopaldas had shown his wish that his disciple, who will succeed the seat of temple be continued as



Naga (bachelor) and if he performs the marriage and becomes household, the Maheshwari panchas will decide that whether he should continue or not, meaning thereby though it was mentioned in the will that this is a seat of Nihangs, but it was not essential to appoint ascetic only and a married person may also work as a priest.

84. As discussed hereinabove, as this shrine is only a temple and no religious institute is attached with this shrine, this temple cannot be considered as *Math* and as per the Hindu customs the requirement of remaining Naga is only for the *Math*, wherein the religious and spiritual education is given to the young ascetics residing in the *Math* itself. No such *Math* is attached with the temple and it is a temple of Ramanand sect and several other Mahant or priest appeared in the evidence and have stated that a married person may also perform the duties of a priest, **the plaintiff able to prove that a married person can perform the duties of Mahant/priest in Shree Ram Mandir, Khachrod.**

85. When the plaintiff was repairing his residential portion, the Maheshwari panchas raised objection and, therefore, the plaintiff filed Suit No. 261/1951 on 20.11.1951 in the Court of Civil Judge, Khachrod seeking the relief of injunction against the Maheshwari panchas, which was dismissed in default. Copy of the plaint is exhibited as D/3. Thereafter the plaintiff issued a notice through counsel to the Chief Secretary, Madhya Bharat Government, Gwalior and Collector, Ujjain (Ex.P/32) on 11.4.1953 to prevent the Maheshwari panchas from interfering in the peaceful enjoyment of the properties of the temple and management of the temple. Reply (Ex.P/33) was received from the Office of Under Secretary, wherein it was advised to both the parties to approach to the competent Court for obtaining decision on their rights. Thereafter, the suit was



filed by the plaintiff.

86. The trial Court has not committed any error in deciding the Issue No.2(a) that there is no seat attached to the temple, however the trial Court committed error in deciding the Issue No.2(b) by holding that the office of the priest of this temple was customarily always occupied by Nihang. When the trial Court was of the view that the subject temple is not a *Math* and no seat is attached with the temple, the trial Court committed an error in holding that there is a custom that only Nihang can perform the Pooja. This requirement is attached only with the *Math*. As there is no seat, therefore, it is not essential that the priest should be Nihang. The Issue No.2(c) has rightly been decided by the trial Court that the plaintiff is the son of Murlidas, however Issue No.2(d) has been erroneously decided by the trial Court based on the finding of Issue No.2(b) that the plaintiff is not entitled to continue as priest after performing the marriage. The trial Court has considered the Maheshwari panchas as Trustee of the temple, whereas the existence of Trust was proved. So far as the Shebait or Pujari is concerned, it is not essential that he should be Nihang. Issue No.2(d) has been wrongly decided by the trial Court.

87. Issue No. 3(a) has been correctly decided by the trial Court by holding that the plaintiff is simply a Pujari and lives in the temple as licensee and employee, however he is not the employee of the Trust, he is employee of Auqaf Department (Revenue Department). Issue No. 3(b) has been wrongly decided that the plaintiff has forfeited his right to continue as Pujari due to his misconduct. The defendants and their witnesses could not bring any material on record that the plaintiff committed misconduct of such a nature, which may be resulted in forfeiture of his rights to work as Pujari.



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This issue has been wrongly decided. Issue No.3(C) has also been wrongly decided by the trial Court by holding that Panchas of Maheshwari community are having right to terminate the services of the plaintiff. The plaintiff has been appointed as priest by the Auqaf Department and his appointment can be cancelled only by the Auqaf Department. The panchas of Maheshwari community have no right to terminate the services of the plaintiff.

88. Issue No. 4(a) has been correctly decided by the trial Court that for appointment of the Mahant as per the customs of Ramanand sect, Bhekh ceremony is essential. However, in the case in hand it has been held that the subject temple is not a *Math*, therefore, performance of Bhekh ceremony is not having any relevance to the case in hand. Issue No. 4(b) has rightly been decided by the trial Court that Bhekh ceremony was actually performed. Similarly Issue No. 4(c) has also been correctly decided that by Bhekh ceremony the rights of the Mahantship has not been conferred upon the plaintiff as the plaintiff has been appointed by the Auqaf Department.

89. The Issue No. 5(a)(i) & (ii) have been correctly decided by the trial Court. The plaintiff has failed to prove that the will was obtained from Gopaldas by practicing fraud or under any undue influence after taking the testator in active confidence.

90. Issue No. 6(a) has also been correctly decided by the trial Court by holding that by the will dated 19.12.1907 Mahant Gopaldas has not transferred any property of the deity in favour of the beneficiaries of the will. Issue No. 6(b) has also been decided correctly, however Issue No. 6(c) has not been decided properly by holding that after the lapse of such a long period Will cannot be challenged. As per the law, Will is always required to be proved by



the propounder of the Will.

91. Issue No. 7(a) has not been dealt with by the trial Court properly. The endowment of the property to the temple by the Maheshwari community was not conditional and there cannot be a conditional endowment and thus the issue should be decided in a manner that Maheshwari community gifted the property to the deity of the temple without any condition. It is proved that Murlidas executed the agreement (Ex.D/2) on 28.4.1919 and he consented to the arrangement. Consequently Issue No. 7(b) has been decided correctly. Issue No. 7(c) has not been decided correctly, because neither Mahant Gopaldas nor Mahant Murlidas could transfer the Shebait right to the Panchas of Maheshwari community, either by Will or under any agreement. The right of management of the property is with the Auqaf Department (Revenue Department). The property belongs to the deity and, therefore, the Panchas of Maheshwari community have no independent right. The issue is decided accordingly. Similarly the Issue No. 7(d) has also been decided wrongly by the trial Court by giving right to the Maheshwari community to appoint or remove the priest of the temple. Only Auqaf Department, which is now Revenue Department work under the control of the Collector can appoint or remove the Pujari.

ISSUE NO. 8,10,11(a),(b),14

92. These issues have been correctly decided by the trial court by holding that the defendants No. 2 to 4 have been sued in the representative capacity. The suit is properly valued. Proper court fee has been paid and suit is not barred by the provisions of Section 32 of M.P. Public Trust Act. The Trial Court has correctly decided that the brothers of the plaintiff are not necessary party in the case.



ISSUE NO. 9(a), (b)

93. These issues have been framed to consider the effect of the release of the properties by Auqaf Department in favour of the plaintiff. The trial court has held that the ex-parte order passed by the Auqaf Department for releasing the subject Shrine from the supervision and management was not in accordance with law. Once a Shrine is taken under the supervision of the Auqaf Department, thereafter the same cannot be released and the trial court has correctly decided that the release order has no effect and the concerned officer has no jurisdiction to rescind the ex-parte order.

ISSUE NO. 12

94. The plaintiff has filed the suit for declaration and injunction and the defendant has raised the objection that a suit merely seeking declaration and injunction without seeking consequential relief of possession is not maintainable.
95. Learned Senior Advocate appearing on behalf of the respondents No. 1 and 2 submits that the plaintiff has not prayed for the relief of possession and in the absence of the relief of possession the simplicitor suit for grant of declaration was not maintainable according to the proviso to Section 34 of the Specific Relief Act. He relied on the judgment delivered by Supreme Court in *Vasantha Vs. Rajalakshmi*⁷ and in *Saurav Jain & Ors. Vs. ABP Design & another*². In the matter of *Vasantha*⁷, the Supreme Court has held that the suit for declaration of title without seeking recovery of possession is not maintainable when the plaintiff is not in possession. The relevant part of the judgment reads as under:-

“49. We now proceed to examine the law on this issue. As submitted by the learned Senior Counsel for the appellant, in Vinay Krishna v. Keshav Chandra [Vinay

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Vasantha Vs. Rajalakshmi, (2024) 5 SCC 282.



Krishna v. Keshav Chandra, 1993 Supp (3) SCC 129] (two-Judge Bench), this Court while considering Section 42 of the erstwhile Specific Relief Act, 1877 to be pari materia with Section 34 of SRA, 1963 observed that the plaintiff's not being in possession of the property in that case ought to have amended the plaint for the relief of recovery of possession in view of the bar included by the proviso.

50. This position has been followed by this Court in Union of India v. Ibrahim Uddin (two-Judge Bench), elaborated the position of a suit filed without the consequential relief. It was observed : (SCC p. 173, paras 55-58)

"55. The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.

56. In Ram Saran v. Ganga Devi [Ram Saran v. Ganga Devi, (1973) 2 SCC 60] this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso to Section 34 of the Specific Relief Act, 1963 and, thus, not maintainable. In Vinay Krishna v. Keshav Chandra [Vinay Krishna v. Keshav Chandra, 1993 Supp (3) SCC 129] this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. (See also Gian Kaur v. Raghubir Singh [Gian Kaur v. Raghubir Singh, (2011) 4 SCC 567 : (2011) 2 SCC (Civ) 366] .)

57. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.

58. In the instant case, the suit for declaration of title of ownership had been filed, though Respondent 1-plaintiff was admittedly not in possession of the suit property. Thus, the suit was



barred by the provisions of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same.”

51. In Venkataraja v. Vidyane Doureradjaperumal [Venkataraja v. Vidyane Doureradjaperumal, (2014) 14 SCC 502 : (2015) 1 SCC (Civ) 360] (two-Judge Bench), the purpose behind Section 34 was elucidated by this Court. It was observed that the purpose behind the inclusion of the proviso is to prevent multiplicity of proceedings. It was further expounded that a mere declaratory decree remains non-executable in most cases. This Court noted that the suit was never amended, even at a later stage to seek the consequential relief and therefore, it was held to be not maintainable. This position of law has been reiterated recently in Akkamma v. Vemavathi [Akkamma v. Vemavathi, (2021) 18 SCC 371] (two-Judge Bench).

52. This Court in Arulmigu Chokkanatha Swamy Koil Trust v. Chandran [Arulmigu Chokkanatha Swamy Koil Trust v. Chandran, (2017) 3 SCC 702 : (2017) 2 SCC (Civ) 334] (two-Judge Bench), while reversing the High Court decree, observed that because of Section 34 of the SRA, 1963, the plaintiff not being in possession and claiming only declaratory relief, ought to have claimed the relief of recovery of possession. It was held that the trial court rightly dismissed the suit on the basis that the plaintiff has filed a suit for a mere declaration without relief for recovery, which is clearly not maintainable.”

96. In **Saurav Jain**⁶ the Supreme Court has held that a simplicitor suit for declaration without seeking the consequential relief is not maintainable. He submits that the trial court has correctly decided the Issue No. 12 that without seeking the relief of possession, the simplicitor suit for declaration and injunction was not maintainable and thus no relief can be granted to the plaintiff in this appeal also. He prays for dismissal of appeal on this ground.

97. Learned Government Advocate appearing on behalf of the



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State supported the arguments of the learned Senior Advocate and submits that the shrine and the properties attached to the temple was in possession of Auqaf Department and the plaintiff filed the simplicitor suit for declaration without seeking the relief of possession and, therefore, the suit of the plaintiff was not maintainable and was liable to be dismissed. The learned Government Advocate also brought a letter of SDM on record, whereby the SDM has informed to the learned Government Advocate that as on 19.08.2026 the Shreeram Temple and Ramolla Temple, Khachrod are under the control of the State and registered as *Devsthan* and Collector is the manager of the temple. No land is attached with the temple and Shri Maheshdas Bairagi, one of the Legal Heirs of the appellant is appointed as Pujari by the State. List of the government temples registered as *Devsthan* has also been placed, which reflects that the subject temple is registered as government temple. He submits that as the revenue department of the State is managing the temple, without seeking the relief of possession, the suit was not maintainable. Hence, the appeal is also liable to be dismissed.

98. Learned counsel for appellant submits that the suit filed by the plaintiff was maintainable as the plaintiff has not sought the relief of declaration of title over the subject temple and its properties and the plaintiff has just sought the right of *Shebait* and priest, therefore, there was no occasion for the plaintiff to seek the relief of possession. The possession of the temple is with the plaintiff and the possession of some of the rooms and community hall are with the Tehsildar and his possession is a constructive possession and he is *custodia legis*, therefore, the suit without seeking the relief of possession was maintainable.



99. After considering the arguments advanced by learned counsel for parties, in the case in hand the plaintiff has not sought the declaration of title of the temple and the deity is the owner of the temple and the properties are attached to the temple. The plaintiff was seeking the *Shebait* right to perform the duties of priest as Mahant of Ramanand Sect and the plaintiff has been appointed by the Auqaf Department, Pargana, Khachrod as priest of the temple, therefore, there was no need to seek the relief of possession. The property belongs to deity and managed by Collector and the possession was with the Collector through Tehsildar, therefore, the plaintiff, who was seeking right of management and worship was not under obligation to seek any consequential relief and in fact no consequential relief could be granted to the plaintiff. Consequently, the objection raised by learned Senior Advocate on behalf of the respondents is not acceptable. The trial court has wrongly decided the issue No. 12 and the suit was maintainable without seeking the relief of possession.

ISSUE NO. 13

100. This issue was framed upon the plea of the defendant that the charge from the plaintiff was taken back on 12.09.1948; therefore, the cause of action accrued to the plaintiff on 12.09.1948 for a suit for declaration, however, the present suit has been filed on 25.05.1954, which is barred by limitation.

101. Learned Senior Advocate on behalf of the respondents submits that the suit for declaration should be filed within a period of three years from the date of accruing the cause of action, whereas the present suit has been filed after a period of five years and the same cannot be treated in limitation. He submits that the charge was given to the plaintiff by the Auqaf Committee on 12.09.1948 and



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thereafter the charge was taken back from the plaintiff on 29.09.1949, therefore, the cause of action accrued to the plaintiff on 29.09.1949 to seek declaration in respect of the rights of the plaintiff to manage the temple and thus the trial court has not committed any error in deciding the issue against the plaintiff.

102. Counsel for appellant submits that the present suit has been filed by the plaintiff seeking declaration in respect of the management rights and performing the duties of the priest. As per the plaint allegations even after taking back the charge of the temple, the plaintiff continued to worship there and therefore, there was no cause of action to file a suit for declaration and the suit was within limitation.

103. After perusal of the record, it appears that the plaintiff was appointed on 30.08.1948 as Pujari by the State government and thereafter he had taken over the charge on 12.09.1948 from official Manager appointed by Auqaf Department, thereafter an order was passed and plaintiff was directed to handover the charge back to the receiver, which was immediately complied with and plaintiff returned the charge along with all the belongings to the government receiver on 29.09.1949, however, the plaintiff continued to discharge his duties as priest. No adverse order was passed against the plaintiff. Even otherwise the right of worship is a continuous right and thus the cause of action accrued continuously. Notice Ex. P.32 was issued by the plaintiff through the Lawyer on 11.04.1953, which was replied by the Under Secretary on behalf of the Madhya Bharat State, Maal Department, Gwalior, whereby the plaintiff was advised to approach to the competent court for decision of the dispute and in furtherance of that the plaintiff has filed the present suit within a period of three years from that day. For the purpose of



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filing a suit for declaration the cause of action would arise to the plaintiff on 27.11.1953, when the reply was issued by the State to the notice of the plaintiff and consequently the suit filed by the plaintiff was within limitation.

ISSUE NO. 15

104. The Senior Advocate on behalf of the respondents submits that earlier the plaintiff filed a suit Ex. D/3 for permanent injunction against the respondents in respect of the same property on the basis of some allegations, which was dismissed in default on 27.03.1952, thereafter it was not restored and plaintiff filed the second suit in respect of the same property, therefore, the second suit is not maintainable in view of the provisions of Order 9 Rule 9 of CPC, because the earlier suit was not restored. He submits that if some reliefs were not sought in the earlier suit, the plaintiff was precluded from claiming those reliefs in the subsequent suit as the provisions of Order 2 Rule 2 of CPC mandates that every suit shall include the whole of the claim for which the plaintiff is entitled to seek in respect of the cause of action and where plaintiff omits to sue or intentionally relinquishes any portion of his claim, he would not afterwards sue in respect of the portion omitted in relief. If a person entitled for more than one relief in respect of the same cause of action and omits to claim any of such relief, afterwards he cannot sue for any such relief. He submits that considering the provisions of Order 9 Rule 9 of CPC and Order 2 Rule 2 of CPC, the suit filed by the plaintiff was not maintainable.

105. Counsel for appellant submits that the present suit was in respect of different cause of action and the dismissal of earlier suit had no bearing on the present suit. The trial court has already considered this issue and decided that the suit has been filed against



the defendants in representative capacity after obtaining the permission under Order 1 Rule 8 of CPC and in the earlier suit no such permission was sought, therefore, both the suits cannot be considered for the same relief in respect of same property by the same parties in the same capacity, thus, the suit was maintainable.

106. After hearing learned counsel for parties and in view of the observations made by this Court in respect of Issue No. 13 that the present suit is filed in respect of a different cause of action accrued to the plaintiff on 27.11.1953, when the reply was issued by Under Secretary of the Madhya Bharat State that the plaintiff should approach to the Civil Court for decision on the alleged rights or authority to manage the temple. Earlier the Auqaf Department had no objection in continuing the plaintiff and plaintiff continued to perform the duties of the priest, however possession of the rooms and community hall were taken by the Tehsildar, but the plaintiff has been seeking only *Shebait* rights. The present suit is based on different cause of action and earlier suit was based on different cause of action, therefore, neither the provisions of Order 2 Rule 2 of CPC are applicable nor the provisions of Order 9 Rule 9 of CPC bars the suit and the suit was maintainable.

CONCLUSIONS :

107. In view of the above discussion, this Court is of the view that it is proved in the case that the Shreeram temple Khachrod is an ancient temple having the idol of Lord Shreeram, Jankiji, Laxmanji, Hanumanji, Laxminarayanji and Gopalji and deity is the owner of the entire shrine and the properties attached to the temple. Mahant Gopaldas was managing the temple and after his death his disciple Mahant Murlidas was managing the temple, who requested to Auqaf Department of Gwalior State to take over the charge of the



temple, which was accepted and the temple was registered as government temple in the records and Mahant Murlidas was appointed as priest on monthly salary by Auqaf Department, however, after the death of Mahant Murlidas the Maheshwari panchas raised the objection on the claim of the plaintiff in respect of the succession of the seat.

108. The ascetics of Ramanand Sect performed the *Bhekh* ceremony and nominated the plaintiff as Mahant of the seat by handing over him the *kanthi* and *chaddar* and thereafter the name of the plaintiff was duly mutated in the record as Mahant of the seat. Auqaf Department also appointed plaintiff as priest by order dated 30.08.1948 and handed over the charge on 12.09.1948, however, upon the complaint of Maheshwari Panchaas the charge was taken back on 29.09.1949.

109. Thereafter when the plaintiff issued a notice to the government and Collector, it was replied that the plaintiff should approach to the court to seek redress of his rights and the plaintiff has filed the present suit.

110. It is also proved by the respondent nos. 2 and 3 that the Maheshwari Panchaas and members of Maheshwari Community are the devotees of the temple and had gifted / donated huge amount for the purpose of development of the temple campus and maintenance of the temple.

111. In the opinion of this court, the trial court has committed an error in dismissing the suit, whereas the plaintiff has proved his status of priest (Pujari) by oral and documentary evidence. Consequently the appeal is partly allowed to the following extent :-

[a] The judgment and decree dated 28.06.1968 passed by



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Additional Judge to the Court of District Judge, Ujjain in Civil
Original suit No. 22/54 (New No. 11A/68) is hereby set aside.

[b] It is declared that deity of Shriram is the absolute owner
of Sheeram temple, Ramolla, Khachrod and all the movable
and immovable properties attached to that temple.

[c] It is declared that Sheeram temple, Ramolla, Khachrod
is being managed by State under the Revenue Department.

[d] It is also declared that the Auqaf Department had
authority to appoint the Pujari and the plaintiff Ratandas was
duly appointed as Pujari of the temple on 30.04.1948 and had
rights to perform the duties of Pujari in the temple.

[e] The members of Maheshwari Samaj are the devotees of
the temple, and decree of perpetual injunction for restraining
them is declined.

[f] No order as to costs.

Accordingly, the appeal is partly allowed. Decree be drawn up.
Record of the trial court be returned along with the copy of this
judgment and decree.

(VINAY SARAF)
JUDGE