

Ugamsingh and Mishrimal

Vs

Kesrimal and Others

Civil Appeal No. 158 of 1967

(J. M. Shelat, C. A. Vaidialingam, P. Jagmohan Reddy JJ)

26.11.1970

JUDGMENT

P. JAGANMOHAN REDDY, J. -

1. This appeal by Special Leave of this Court is against the Judgment of a Single Judge of the Rajasthan High Court affirming the Judgment and decree of the District Court with certain variations.
2. Respondents 1 to 9 filed a suit against the appellants and Respondents 10 and 11 and 2 others for a declaration that they have been carrying on and are entitled to carry on Darshan, Prakshal and Poojan etc., of the idol of Adeshwarji, the first Tirthankar in the Temple named after him at Paroli without interference according to the tenets observed by the Digambari sect of the Jain religion. The said temple of Shri Adeshwarji is said to have been in existence for 200 years while the respondents aver that the inscription on its bear Vikram Samvat, 1510 (1454 AD)
3. The plaintiffs further alleged that the Temple was constructed and the idol was consecrated according to any be the followers of the tenets of the Digambar sect; that the plaintiffs and the other followers of the Digambar sect have been performing Darshan, Prakshal and Poojan of the said idol according to there tenets ever since the Temple was founded; that on the 23rd of December, 1949 the defendants attempted to convert the said idol into the idol Swetambari sect by putting Chakshus (artificial eyes) thereon, but were prevented from doing so by a strong opposition of the followed of the Digambar sect; that thereafter some temporary arrangements were made between the followed of the 2 sects who agreed to maintain the status quo until a decision of the Civil Court on the rival claim of the parties were given; that is disregard of the temporary settlement and without getting the rights in the Temple adjudicated upon by the Civil Court, the defendants made arrangements to put Dhwajadand and Kalash on the said Temple according to their tenets; and that they also further learned that the defendants were intending to enclose the said idol by putting up doors and locks with the object in interfering with the obstructing the free exercise by the Digambaries of their unfettered rights to perform Poojan, Prakshal and worship of the said idol according to their tenets. On these allegations it was prayed that the defendants be restrained by a permanent injunction form (i) erecting the Dhwajadand and putting up Kalash; (ii) enclosing the idols by putting up doors and locks; or in any manner altering the nature and shape and appearance of the idols installed in the said Temple; of directly or indirectly doing any act or thing which may have the effect of wounding the religious susceptibilities and sentiments of the followers of the Digambari Jain sect; and (iii) form interfering with the free and unfettered rights of the plaintiffs of performing Darshan, Prakshal and Poojan and other rites according to the tenets of Digambar Jain sect.

4. The defendants did not deny that they intended to put the 'Netras' but sad that they did so because the Netras which the idol had even before the said date having been damaged and fallen out new Netras were put up. They further claimed that since its existence the Temple of Adeshwarji had been in the possession of the defendants who have been in exclusive management of the Temple and its property; that the plaintiffs never used to do Poojan or Prakshal in the Temple nor had they any right thereto; and that when in 1949 there was a dispute between the parties a temporary arrangement was made by the defendants did not admit any right of plaintiffs to Poojan. it was further averred that the said idol and the Temple is in all respects jain Swetambari sect; that it has been so used and described in all the historical records from time to time and that the Civil Court had no jurisdiction to decide the religious rights of the parties nor is it a dispute of the civil nature.

5. On these pleadings issues were framed on 3-12-1955 but subsequently after the evidence in the case was recorded and having regard thereto fresh issues were framed in substitution of the former ones on 4-6-1955 but thereafter no evidence was led by either party. The controversy between the parties as is evidence from these issued was, as to which sect of the Jains the main idol of Adeshwarji belongs; which sect has constructed the upper portion of the idol referred to and the nearby portion of the Temple; under what tenets have the followers of the sects, Digambar and Swetambar, performed Darshan, Prakshal and Poojan of the idol of the Temple referred to and can only sect charge these previous tenets; whether the Netras (artificial eyes) of the idol, Bhujband and Dhvajadand over the Temple existed before and if not, can they be places and inserted now; and whether the Temple is in possession and under the management of the defendants alone from the time it came into existence.

6. The Civil Judge of Bhilwara decreased the suit of the plaintiffs, against which the defendants appealed. The District Judge, however, allowed the appeal and dismissed the suit on the ground that in his opinion no question of any right to property of office was involved in the suit and consequently the plaintiff's suit was dismissed with costs.

7. On an appeal from this judgment the High Court allowed the appeal holding that inasmuch as the allegations in the plaint relate to an assertion of a right of worship and an interference with that right, a dispute of civil nature arise which is clearly cognisable by a Civil Court. In this view the case was remanded to the District Judge for determining the appeal on merits. Leave to appeal was also refused.

8. After remand the District Judge confirmed the judgment and decree of the Trial Court with certain variations. Against this Judgment the appellants filed an appeal to the High Court and the respondents filed cross-objection. The High Court affirmed the judgment of the District Judge except for hart part of the decree direction the appellants to keep open the doors of the Temple between 8.30 and 9.30 each morning to enable the respondent to worship without interference, which, however, was modified to enable respondents to worship at the Temple between 6 a.m. to 9 a.m. every morning, during which time the Temple was not to be locked. It further directed that if the Swetambaries wanted also to worship during this period without disturbing Digambaries they had the liberty to do so.

9. The learned advocate for the appellant Shri S. T. Desai urged several contention before us namely : (i) the High Court was in error in not deciding the ownership of the Temple or of the idol; (ii) that it should have held that a presumption of ownership would arise having regard to the concurrent findings that the Swetambaries were in management and possession of the Temple; (iii) that the reliefs claimed make it clear that the dispute is not of civil nature for in any view of the matter the

Courts were in error that placing of the Dhvajadand and Kalash on the Temple changes the nature of the Temple; (iv) that the High Court should not have accepted the cross-appeal fixing 3 hours' time for the worship of the Digambaries sect; (v) that the judgment of the Trial Court is wholly vitiated because the Trial Judge not having accepted the evidence based his findings on his own inspection.

10. Before we deal with these contentions, it is necessary to detail the finding of the Courts below :

The Trial Court while decreeing the plaintiff's suit held that though it was not proved as to who built the Temple of Adeshwarji initially, both Digambaries and Swetambaries worshipped in the said Temple; that the management and the possession of the Temple was with the defendants Swetambaries for a long time; that the Swetambaries were entitled to put artificial eyes or put Dhvajadand and Kalash on the Temple; and that the defendants were trying to interfere with the rights of the plaintiffs and were making alterations to transform the character of the Temple. In this view the Trial Judge gave a declaration in favour of the plaintiffs against defendants in their personal capacity as well as representatives of the Jain Swetambaries sect that the plaintiffs or the followers of the Digambari sect have been performing Prakshal, Poojan and Darshan and are also entitled to do so in future. He also issued a permanent injunction against the defendants in their personal capacity as well as representatives of the Jain Swetambari sect restraining them from changing the shape and appearance of the idol by putting Netras (artificial eyes), Armlets, and Mukat, from erecting Dhvajadand and putting Kalash on the Temple and putting locks on the shutters of the Temple. The appellants were further directed not to restrain the followers of the Jain Digambar sect from performing Darshan, Poojan and Prakshal according to their tenets. After the remand appellant urged before the District Judge the following contentions :

(1) That the Temple belongs to Swetambar sect the plaintiffs are entitled to have Darshan only of the idol, otherwise they have got no right to worship it according to their tenets;

(2) that the idol being Swetambari, the defendants are entitled to put artificial eyes in the idol, Dhvajadand and Kalash on the Temple;

(3) that the defendants having been managing the Temple for the last so many years, their management cannot be interfered with and if for the betterment of the idol, it is kept under lock, it cannot be said to wound the sentiments and religious feelings of the plaintiffs.

11. The District Judge held on the first contention that though the Temple is admittedly an old one, there is not an iota of evidence as to who constructed the Temple originally; that the appellants have been in management and possession of the Temple which fact was not really challenged by the respondent, though this by itself does not imply that the Temple is a Swetambari temple. It was also contended that the respondents had no right to worship the idol but can only have Darshan. The contention was also rejected on a review of the evidence led by both parties and also by relying on Ex. 1 which embodied a compromise between the two sects under which the right of the respondents to worship the idol was specifically admitted.

12. On the second point urged before him the District Judge held that the appellants' case that there were eyes already in the idol, but as they got damaged the wanted to replace them is not substantiated by the evidence led on behalf of the appellants themselves. It also held that an attempt was made by the Swetambaries in 1949 to instal the eyes in the idol and that as most of the appellants' witnesses admitted that though Dhvajadand was offered on certain occasions which were

retained by the Oswals (Swetambaries) there was no Dhvajadand and Kalash on the Temple itself.

13. On the third point it was held that the appellants, who were in management and possession of the Temple for the last so many years, have a right to lock the main temple, to prevent it from being defiled, which does not in any way interfere with the right of worship of the respondents or any other person on their behalf. This being so the Trial Court's subject to the further direction as already noticed for keeping the temple open for worship of the respondents and the Digambaries sects between 8-30 and 9-30 a.m.

14. When the appeal and Cross-objection were pending before the High Court the appellants filed an application under Order XLI, Rule 27 of the Civil procedure Code for recording the evidence of Shri Prakash Srivastava, Director of Archaeology and museum, Rajasthan to establish the denominational identity of the idol in the Temple. It was stated in that application that since the District Judge had remarked that the parties had not produced sufficient evidence and it was not possible to come to any conclusion regarding the nature of the idol as to whether it is Swetambari or Digambari, the petitioner had moved the Director of Archaeology who after a thorough examination came to the conclusion that the idol was Swetambari. In view of the report it was prayed that the said Director be called in evidence and be examined. In the alternative it was prayed that the case be remanded to the Trial Court for allowing the parties to lead additional evidence so that effective adjudication can be made. The High Court, however, did not feel the need for any additional evidence as the case could be disposed of on the material on record. In this view it dismissed the application. Even before us the learned Advocate for the appellant tried to persuade us to look into that report and urged that the evidence of the Director was necessary and ought to have been allowed to be adduced. In view of the concurrent findings of all the courts on certain material aspects of the case to which we shall presently refer, it is possible to determine the controversy between the parties, as such we agree with the High Court that no additional evidence is required at this stage, though the parties could have led better evidence in the initial stage itself.

15. It was further contended on behalf of the appellants that the respondent's suit was not maintainable because it did not involve a dispute of a civil nature. Respondent's learned Advocate though the first indicated that he would raise a preliminary objection to the contention being urged because when the High Court set aside the judgment of the District Judge and remanded the case to be decided on merits holding that the suit was maintainable as it raised a dispute of a civil nature, the appellants ought to have appealed to the Supreme Court. The learned Advocate for the appellants however contends that the remand order of the High Court did not finally dispose of the right of maintainability on the ground that it does not raise any dispute of a civil nature. Though the preliminary objection was not subsequently pressed even on the merits, the learned Advocate for the appellants is unable to satisfy us that the suit is not a civil nature. From the pleadings and the controversy between the parties it is clear that the issue is to one which is confined merely to rites and rituals but one which affects the rights of worship namely whether the Swetambaries by placing Chakshus, Dhvajadand and Kalash according to their tenets or by locking the Temple could preclude the Digambaries from worshipping in accordance with their tenets. It is admitted that Digambaries will not worship the idol which is not 'Nirakar' or which has Chakshus. If the Digambaries have a right to worship at the Temple the attempt of the Swetambaries to put Chakshus or to place Dhvajadand and Kalash in accordance with their tenets and to claim that the idol is a Swetambari idol was to preclude the Digambaries from exercising their right to worship at the Temple. These findings clearly establish that the appellants interfered with the rights of Digambaries to worship with respect to which a civil suit is maintainable under Section 9 of the Civil Procedure Code. This portion is well established. If authority was needed we may refer only to two cases. The

Privy Council in *Sir Seth Hukam Chand and Others v. Maharaj Bahadur Singh and Other* (60 IA 313) had to deal with the practices observed by Digambaries and Swetambaries on the Parasnath High which is considered to be sacred by the sects but in respect of which the Digambaries objected to the continuous employment of human beings on the hill and against building thereon of dwellings necessarily involving according to their tenets of a sacrilegious pollution and desecration of the sacred hill, while the Swetambaries had no such belief. Sir John Wallace delivering the opinion of the Board observed : "These are matters for the Jain themselves and the Civil Court are only concerned with them in so far as they are relevant to questions of civil right such as an alleged interference with the plaintiffs rights to worship on the hill, and in that case the issue must be not whether the acts complained of are in accordance with orthodoxy or with precious practice, but whether they do in fact interfere with plaintiffs' rights of worship."

16. Again this Court in *Nar Hari Sastri and Others v. Shri Badrinath Temple Committee* (1952 SCR 849) was concerned with the rights of the Deoprayagi Pandas to enter the Badrinath Temple along with their Yajmans of clients. Which is was claimed the Rawal or the Trustee denied and threaten to obstruct the said Deoprayagi Pandas from entering the precincts of the Temple along with their Yajmana or from assisting the pilgrims in the matter of Darshan etc. inside the Temple. The defendant, however, asserted that is was neither necessary not desirable that the plaintiffs should be allowed to accompany their Yajmana of clients into the temple, as he had himself made adequate arrangements for the Darshan and worship of the pilgrims and that as the sole Trustee and manager of the temple he had the right to regulate entry into the temple so that over-crowding might be avoided and order maintained inside it. Mukerjea, J., (as he then was) speaking for the Court dealt with this contention in the following passage :

"The true portion therefore is that the plaintiffs' right of entering the temple along with their Yajmana is not a precarious or a permissive right depending for its existence upon the arbitrary discretion of the Temple authorities; it is a legal right in the true sense of the expression but is can be exercised subject to the restrictions which the Temple Committee may impose in good faith for maintenance of order and decorum within the Temple and for ensuring proper performance of customary worship. In our opinion, the plaintiffs are entitled to a declaration in this form."

It is clear therefore that a right to worship is a civil right, interference with which raises a dispute of a civil nature though as noticed earlier disputes which are in respect of rituals or ceremonies alone cannot be adjudicated by Civil Courts if they are not essentially connected with civil rights of an individual or a sect on behalf of whom a suit it filed. In our view the contention of the learned Advocate for the appellants to the maintainability of the suit is not well-founded.

17. One other objection which the learned Advocate for the appellants urged at the outset is that the findings of the Trial Judge are vitiated because he did not rely on the evidence on record but decided to which sect the idol in dispute belongs, only on what he found on his inspection of the idol and the Temple which cannot be evidence in the case, without his being subjected to cross-examination. It is further contended that even if what has been stated in the judgment is what the Trial Judge and observed in his inspection there is nothing to show that he had drawn up inspection notes and made them part of the record as required under the law. The contention that the Trial Judge had given his finding mainly on the observation made during his inspection in the first place is based on insufficient appreciation of what was really observed when dealing with the question as to which sect the idol in dispute belongs. It was observed in the Judgment that most of the witnesses produced were non-Jains and therefore, their evidence statements in favour of their party the Trial

Judge and that there statements also cannot be much relied upon. The decision of this case is based mostly on the site inspection and the evidence on record. Even while giving the findings the Trial Judge remarked that evidence led by the plaintiff appears to be correct. These observations themselves show that the evidence on record was an element in the formulation of the Trial Court's judgment buttressed by the observations of the learned Judge during the site inspection. There is therefore, no validity in the contention that the finding of the Trial Judge was based entirely, on the result of his inspection. It is also evidence from a narrative given in the judgment of what was noticed during the inspection that the Judge has inspected the site on two occasions once on 24-3-1956 and again a years and two months thereafter on 23-5-1957 The details given by him could not have been given if he had not made some inspection notes It would also appear that at the time of the inspection counsel for the plaintiffs and defendants were present because when giving a description of the idol of Neminathji in the Swetambari Jain Temple when it was notices that some portion of the idol under the waist and naval is raised and is like a line, the Counsel for the plaintiffs pointed out to him that mark denoted the wearing of a loin cloth while the Counsel for the defendants said it was the mark of an artist. Against in respect of the observation that on the back-side and at the lower portion of the naval some portion is raised, the Counsel for the plaintiffs had pointed out to be loin cloth, While the Counsel for the defendants said that it has been engraved by an artist without any sense We are satisfied that the description given by the learned Judge of the idols in the Adeshwarji Temple and the Temple of the Swetambaries were observation made during an inspection at which both the plaintiffs' and defendants' Advocates were present and that there must have been notes also in respect of the inspection made on both the occasions. The appellants had at no time made a grievance either to the District Judge or to the High Court or even before this Court except during the stage of arguments that there were no inspections notes nor that the inspection was made by the Judge behind the back of the parties. It these objections had been raised earlier the respondents would have an opportunity of showing that there were inspection notes The judgment in out view is not based solely on the result of personal inspection made by the Trial Judge, which inspection was for the purposes of understanding the evidence in the case and has been so used by the Trial Judge. We must therefore, reject the contention of the learned Advocate for the appellants that the finding in respect of the idol is vitiated. In this view it is not necessary to deal with any of the decisions referred to before us.

18. It was contended by Shri Desai that unless the ownership of the Temple is established or that the idol belongs to the Digambaries no injunction can be given not the plaintiffs permitted to worship. It is argued that in the plaint the respondent averred that the idol is a Digambari idol and if they have failed to prove it them their right to worship fails. At any rate the argument process that the High Court was in error in not deciding the owner-ship of the Temple or of the idol. We have earlier indicated the plain averments in which there is no mention of the ownership of the Temple or the idol but that Paragraphs 2 and 3 of the plaint merely gave a description of the Temple and the idol when it is averred that the idol was constructed and consecrated according to any by the followers of the Digambari sect and that the plaintiffs and the other followers of the Digambari sect have been performing Darshan, Prakshal and Poojan of the said deity in the said Temple for a considerable number of years past and really ever since the Temple was founded. There is therefore, force in the contention of Shri Gupta, learned Advocate for the respondent that having regard to the concurrent findings of the Courts below that the idol was 'Nirakar' (naked), that there were no Chakshus, no Mukat, no Armllet, no Dhwadand or no Kalash, would show that the idol was consecrated by the Digambaries. It was also held as had already been noticed that though it is not possible to say when the Temple was constructed and the idol consecrated it was an ancient Temple and that both the Digambaries and the Swetambaries worship the idol. It is net denied that while the Digambaries will

not worship an idol which has Chakshus or which has clothes or Mukat, the Swetambaries would worship a Digambari idol without these and hence the right to worship a Digambari idol by both the sects is possible and indeed had been so held by all the Courts. Even the defendants' witnesses substantiate these finding. We tough he says that the Temple belonged to the Oswals in which he and his father has been performing Sewa for the last 30 or 35 years on behalf of the Oswals (Swetambaries) admitted that since he attained the age of discretion and up to the time of giving evidence he had never seen Adinathji wearing clothes, never saw the idol with eyes and had never seen Dhwadand or Kalash on the Temple and does not know whether the idol belongs to Oswals or Saravagis (Digambaries). D.W. 3, Shri Pokhar a barber of Oswals also supports this witness, that the Digambaries had a right to worship is also borne out by Ex. 1, dated 23-12-1949 which was a compromise entered into between Swetambaries and Digambaries at the time when the Swetambaries attempted to put Chakshus in the idol. No doubt this was an interim arrangement till the decision of a Civil Court adjudicating the respective rights, but there was never any question of wither sect not having the right to worship the idol by both the sects. The dispute had arisen only as to whether Swetambaries can fix Chakshus in the idol. Ex. 1 states as follows :

"We Panchas give this award that a dispute had arisen between the Swetambaries and Digambaries as Swetambaries recently fixed eyes not the idol. This new thing should not continue. These eyes should be removed. Digambaries have a right to perform Poojan so they can mark saffron 'Tiki' and have Darshan and come back. Digambaries will not perform Prakshal, Poojan. Swetambaries will continue incurring expenses as usual. The idol shall remain naked (Nirakar)."

The representatives of both sects have signed this award, as a temporary measure agreeable to both the sects, who indicated that they would press their rights in a Civil Court. Once the right of worship of the Digambaries is established there is little doubt that they are entitled to the injunction sought for by them against the defendants-appellants from preventing them from worshipping or from interfering with that right by placing Chakshus in the idol, Dhwadand, Kalash on the Temple. In view of these findings the further question that when once it has been found that the Swetambaries have the right of management and possession of the Temple there is a presumption of ownership under Section 110 of the Evidence Act does not arise not is it relevant. It is no doubt contended by the respondents' Advocate that when consecration of an idol takes place the ownership of the temple is in the idol and therefore, the question of presumption under Section 110 does not arise. It is not possible to come to a conclusion as to which sect the idol belongs, as has been held by the Court below, the respondent cannot be allowed to object to the appellants' worshipping the idol according to their tenets. This contention, however, in our view ignores the rights of the Digambaries to worship in accordance with their tenets. If the contention of the learned Advocate for the appellants is accepted it will be tantamount to holding that Digambaries have no right to worship as there would be denominational change in the idol if the Swetambaries are held to have the rights to worship it according to their tenets if the Swetambaries are held to have the right to worship it according to their tenets by placing Chakshus in the idol or by erecting their Dhwadand and Kalash over the Temple.

19. Lastly it is urged that the High Court ought not to have entertained the cross-objection by extending the time for worship from 1 hour to 3 hour. In our view the directions of the High Court are not unreasonable not do they in any way affect the right of the respondent to worship because the direction clearly enable the Swetambaries who wish to worship the deity within that period without disturbing the Digambaries to be at liberty to do so and likewise it will be open to Digambaries to go and worship in the temple during the period it is kept open. In view of the acute controversy between these two sects and their reluctance to arrive at an amicable settlement the

direction given by the High Court are manifestly reasonable, just and proper. In this view the appeal fails and is dismissed with costs.

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