

SUPREME COURT OF INDIA

Vijay Pullarwar

Vs.

Shri Hanuman Deostan, a Public Trust through its Trustees

C.A.No.7789 of 2011

(A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

16.11.2018

JUDGMENT

A.M. Khanwilkar,J.,

1. This appeal is filed by the original defendants against the judgment and order of the High Court of Judicature at Bombay, Nagpur Bench in Second Appeal No.364 of 1990 decided on 24th October, 2008, whereby the High Court, in the second appeal, restored the decree of possession of the suit property passed by the trial court against the appellants, by setting aside the judgment and decree passed by the District Court, Nagpur in Regular Civil Appeal No.564 of 1983 dated 21st January, 1989.

2. The respondent No.1, Shri Hanuman Deosthan, is a public trust duly registered under the provisions of the Bombay Public Trusts Act, 1950 (presently known as Maharashtra Public Trusts Act, 1950) (for short "1950 Act"). The respondents filed Special Civil Suit No.1127 of 1978 in the Civil Court, Senior Division, Nagpur, for possession on the basis of title. It was asserted that one Bansilal S/o Gangadin Perdeshi Teli, R/o Circle No.3 of Nagpur was the disciple of a Hindu saint by the name of Haridas Baba Vishv. The said saint took Samadhi about 70 years back before the institution of the suit. He had a "Math" situated in Circle No.3 in house bearing No.878, where his (Haridas Baba) Padukas came to be installed. It is stated that the said Bansilal was the Chief Wahiwatdar of the said Math and was looking after the pujas and utsavas performed in the Math. Before his death, which occurred in 1944, he had asked his wife, Yashodabai, to look after and manage the Math and conduct puja and utsavas from time to time in his absence and keep the Math property in good condition from the income of the Math. He had also told his wife Yashodabai that after his death, she may appoint a panch committee in the event she was not in a position to look after the affairs of the Math herself. After 1946, Yashodabai executed a document and appointed a panch committee for the proper management of the Math whilst she remained one of the trustees. That document was registered on 23rd May, 1946 (Exh.41). She had nominated five persons as panchas in the panch committee namely, Shri Badal S/o Giridharilal, Mohanlal Hanuman, Ramjiwan Kaluram, Nandideep Bhangavandin and Onkar Gandelal Pardeshi. Amongst them,

Badal was to remain as sarpanch. After his demise, one Chotelal Bhikaji Pardeshi assumed the office of Sarpanch.

3. It was further stated that except Ramjiwan Kaluram, all the trustees/panchas had expired by the time the suit was filed. Further, Chotelal Bhikaji Pardeshi, after taking over as sarpanch, made an application on 31st August, 1953 (Ex.63) to the appropriate authority for registration as a public trust under the provisions of the Madhya Pradesh Public Trust Act. In that application, the description of the property of the trust was given as per the schedule to the plaint, which property was amongst other properties registered as the property of the public trust. After the provisions of the Bombay Public Trust Act, 1950 (Exh.64 dated 13th September, 1961) became applicable to the Vidarbha region of the State of Maharashtra, Chotelal got the trust registered under the 1950 Act, bearing P.T.R. No.A-50(N).

4. It is then stated that after the death of Chotelal Bhikaji Pardeshi, a change report was submitted to the local office of the public trust at Nagpur which came to be rejected as no proper succession was documented. Resultantly, the local persons having interest in the affairs of the Math preferred an application for framing of a scheme and appointment of trustees, being application No.71 of 1971. The Deputy Charity Commissioner, in exercise of powers under Section 50-A of the 1950 Act framed a scheme and appointed four persons as trustees of Shri Hanuman Deosthan, namely, Bhayyalal Giridharilal, Kashiram Fakiraji Potbhare, Laxman Zingaraji Sapate, Navi Shukravari and Narayan Tanbaji Kurkute vide order dated 4th April, 1975 (Exh.46). In short, the respondent asserted that the suit property occupied by the predecessor of the appellants, namely Wasudeo Pullarwar, was the property of the presiding deity Shri Hanuman Deosthan and was managed by the trustees in whom it vested for management. The occupant, Vasant Pullarwar, had no right, title or interest in the said house.

5. It is then stated that a notice was issued to defendant No.2/appellant No.1 (son of defendant No.1, the said Wasudeo Pullarwar), dated 4th November, 1977, calling upon him to pay the rent for the last three years ending October 1977 @ Rs.110/- per month, which rent was recovered by the previous trustees from the occupants of the suit house. Appellant No.1 sent a reply on 14th November, 1977, disputing that he was a tenant or that he was liable to pay the rent to the respondent trust. He stated that he was living with his father who was paying the taxes of the suit house. It appears that the plaintiffs/respondents then caused to send another notice to defendant No.1 Wasudeo Pullarwar dated 12th December, 1977, making a similar demand of rent from him, to which even he denied his liability to pay and also denied the title of the plaintiffs/respondents in respect of the suit house occupied by him. In this backdrop, the respondents filed a suit on 17th October, 1978 for possession of the suit house from the defendants/appellants and for recovery of charges for occupation of the suit house during the relevant period. The suit for possession is thus based on title.

6. The appellants contested the suit by filing their written statement asserting that the plaintiffs/respondents have no locus to institute the suit; and the suit was not maintainable due to absence of permission of the Charity Commissioner for filing suit for possession of immoveable property allegedly belonging to a public trust. It was denied that Bansilal was

the Wahiwatdar and was looking after the pujas and utsavas performed in the Math. It was then contended that the document allegedly executed by Smt. Yashodabai on 23rd May, 1946 (Exh.41) was a sham and bogus document; and that one of the panchas - Ramjiwan Kaluram, was still alive, for which reason Chotelal could not claim to be an elected or nominated Sarpanch. Pertinently, it has been plainly stated in the written statement that the suit house occupied by the defendants was not the property shown at the time of registration of Shri Hanuman Deosthan, a public trust, and also, the same was not registered as the property of the said trust. The said trust was registered as a public trust with only two properties mentioned in schedule I thereof. One of the house properties in Circle No.3 was House No.55, which has had no causal connection with the suit house occupied by the defendants/appellants, bearing House No.878.

7. It is thus denied that the suit house is the property of the presiding deity of Shri Hanuman Deosthan. It is plainly asserted by the defendants/appellants that the suit house has been continuously and uninterruptedly occupied by them for over 30 years and the defendant No.1 was looking after and managing the same, including carrying out repairs and renovation, performing pujas and utasavas in the suit house as Wahiwatdar of the property and paying municipal taxes. It is the case of the appellants that the suit house was the property of a private trust and it originally belonged to saint Haridas Baba. Defendant No.1 was in possession of and had been the occupant of the property for over 30 years before the institution of the suit, as the Wahiwatdar. The appellants asserted that the respondent Trust was not the owner of the suit house and it had no causal connection therewith and in any case, could not oust the appellants/defendants from the suit house under the garb of a scheme framed on 4th April, 1975 by the Deputy Commissioner (Exh.46). Accordingly, the appellants prayed that the suit ought to be dismissed with costs.

8. We may usefully reproduce paragraph 11 of the written statement which succinctly unveil the case of the appellants about their right to occupy the "suit house" (i.e. H.No.878 in Circle No.3) and to reject the claim of the plaintiffs/respondents concerning the suit house or having any causal connection therewith leave apart having acquired any title in terms of the scheme framed for the public trust.

9. We deem it necessary to reproduce the whole of paragraph 11 of the written statement. For, the High Court has decided the matters in issue against the defendants/appellants only by referring to sub-paras (b), (c) and (d) thereof, as reproduced in paragraph 9 of the impugned judgment. Paragraph 11 reads thus:

"11. Paragraph

(b) Haridas was a great saint of his times. He died about 55 years ago. He took Samadhi. The suit house (Kuti) belonged to Haridas which was not a Math, Padukas of Haridas were not installed by Bansilal.

(c) The suit house was bearing House No.143 and then it was changed as House No.492 and again this was changed as House No.104 in Cir. No.3, Nagpur. Owner of the suit house was Haridas Bairagi, the saint.

(d) In this suit house Padukas of Haridas are installed. The plaintiff's allegation that Bansilal was the Chief Wahiwatdar are denied. The puja and uttaav of the Padukas of Haridas used to be done by some disciples.

(e) It is emphatically denied that the suit house was or is a Math. It is denied that Bansilal, yashodabai, Chhotelal, alleged Sarpanch or the alleged Panch names in the alleged Deed dated 3.5.1946 or the plaintiffs 1 to 5 were or are trustees. These above persons had or have no connection with the suit house or Padukas. The alleged Deed, if any, dated 3.5.1946 is null, void, illegal and invalid.

(f) The suit house in circle No.3 at Nagpur and after it touching to it, is a public tar-road passing north-south and its breadth is about 50 feet east-west, from the suit house. There are many houses to the north of the suit house upto Fuwara Chowk, From Chowk, another tar-road which is in east-west direction passes to the west and after about 500 feet distance in separate locality of Cir. No.2 is a Hanuman Temple which has no connection to the suit house in Cir.

No.3 Nagpur. Both are different localities.

(g) It is denied that the defendants occupied the suit house about 12 years back as tenants from former trustees or paid rent, as alleged. It is denied that the defendant occupied the suit house with any alleged permission of any alleged former trustee on rent of Rs.110/- per month. The defendants are occupying the suit house as of right and are in continuous possession for more than 30 years as stated earlier openly, exclusively, peacefully, without interruption or disturbance from any one or from any alleged trustees and none of them have been in possession during such period. The defendant No.1 is about 83 years old. Defendants are 'Pullarwar'. The suit house is not property of the plaintiff nor a public Trust property as is alleged. All the alleged Public Trust proceedings of whatever nature were without jurisdiction, null and void, under which the plaintiffs are trying to lay a claim to the suit house. There was no house No.55 alleged to the suit house; nor this was changed as House No.878. the plaintiffs' alleged claim for the suit house does not stand in fact or law as contended. In none of the alleged proceedings the defendants were made parties, nor noticed."

In view of the rival pleadings, the Trial Court framed in all 11 issues, which read thus:

"1) Do the plaintiffs prove the title of plaintiff No.1 to the suit house?

2) Do they prove that the deft. No.2 was occupying the same as a tenant?

- 3) Are the plffs. entitled to the occupation charges at the rate of Rs.110/-p.m.?
- 4) Whether the Charity Commissioner has declared that the suit house is trust property?
- 5) Does the deft. No.1 prove that he is occupying the suit house for more than 30 years and perfect his title by adverse Possession?
- 6) Do the defts. Prove that the house belongs to Mahadeo Domaji Kuthe?
- 7) Are the plffs. entitled to the possession?
- 8) What order and decree?
Additional Issues:
- 9) Whether the house in suit was a Math?
- 10) Whether the document dated 3.5.46 is null and void
- 11) Whether the proceedings under the Bombay Public trust Act are without jurisdiction?"

10. Both sides produced documentary as well as oral evidence in support of their respective stands, which was duly considered by the Trial Court vide judgment and order dated 16th November, 1983. The Trial Court accepted the claim of the plaintiffs/respondents that the "suit house" (i.e. H.No.878) was the property of the public trust, namely, Shri Hanuman Deosthan and the management of the property vested in the said trust. Further, the defendants/appellants had no right to occupy the suit house despite the Trial Court having found that they were occupying the same for over 30 years before the institution of the suit. On this finding, the Trial Court partly decreed the suit by directing the defendants/appellants to hand over vacant possession of the suit house to the plaintiffs/respondents, while rejecting their claim for occupation charges. The operative order passed by the Trial Court reads thus:

“ORDER

The Plaintiff's suit is decreed partly with proportionate costs.
The defendants shall deliver vacant possession of the suit premises to the plaintiff.
The Plaintiffs claim for occupation charges is dismissed.

An inquiry for future mesne profits under order 20, rule 12 Civil Procedure Code shall be carried separately.

Decree be drawn accordingly in terms of the above order.”

11. The appellants being aggrieved, filed Regular Civil Appeal No.564 of 1983 before the District Court at Nagpur. The District Court, after re-appreciating the oral and documentary evidence, was pleased to reverse the finding of facts recorded by the Trial Court and instead, concluded that the “suit house” (i.e. H.No.878) was not the registered property of Shri Hanuman Deosthan, a public trust duly registered under the 1950 Act.

12. The First Appellate Court considered the efficacy of the oral evidence adduced by the plaintiffs/respondents to establish its title in the suit house as also the documentary evidence. As regards the oral evidence, it found that the same was hopelessly poor and of persons who had no knowledge as to how Shri Hanuman Deosthan trust was constituted. Similarly, these persons had no knowledge whatsoever about saint Haridas Baba whose Padukas had been installed in the suit house. The person who could have spoken about those matters, namely Ramjiwan Kaluram, though available at the relevant time, was not examined as a witness, for reasons best known to the plaintiffs/respondents. While dissecting the documentary evidence relied upon by the parties in support of their claim, the appellate court in paragraphs 10 to 12 observed thus:

"10. Even if for the sake of argument, Exh.41 is admitted in evidence and presumed that such a document was executed by Yashodabai, this document does not support the Plaintiffs. I will point out the help of other documents to show that this particular document Exh.41 pertains to the suit property but this suit property was never treated as property of the Plaintiff Trust since 1953 till this litigation started.

11. Exh.63 is the certified copy of the application, dated 31st August, 1953 filed by Chhotelal before the Registrar of the Public Trusts for registration as per order below Exh.42. In this application Chhotelal had shown two temple and a house No.374 and a house No.369 of Circle No.2 and one house No.55 of Circle No.3 as the property of the said trust and this property was recorded in the register of the property of the Public Trust maintained under the M.P. Public Trust Act. Exh.64 is application dated 13th September, 1961 filed by Chhotelal for change report. In this also the same property has been shown as property of the said trust. After death of Chhotelal an application was made to the Deputy Charity Commissioner for framing a scheme for the management of the trust. After holding enquiry the learned Deputy Charity Commissioner passed an order, dated 4th April, 1975 framing a scheme Exh.46 is a certified copy of that order. Annexure A to this order shows the property of the trust in the register of the Deputy Charity Commissioner. It means the two houses in Circle No.2 and a house No.55 of Circle No.3 were the only properties of the trust even in 1975 when the scheme for management of the trust was framed and when the present trustees were appointed.

12. The Defendants have throughout maintained that the plaintiff Trust has nothing to do with a suit house bearing Municipal No.152 situated in Circle No.3. In support of this, they have produced documents Exhs.56, 57 and 58 which are the certified copies of the relevant entries in the assessment register of the Municipal Corporation. I am told that the document Exh.56 was in more than one page but in the original record

there appears only one page of the Assessment Register and it is incomplete. Therefore, today the Defendants have produced another certified copy of the same record and it is Exh.20. This record goes back to 1910-11. It appears that originally the house of Haridas Bairagi was given Municipal No.443. It was situated in Circle No.3 In 1914-15 house number was changed to 492. In 1922-23 it was given house No.104. In 1947 to 1950 its house number was 878. In 1957-58 it was house No.598 and it continued to be house No.598 till it was changed to 521 in 1973-74 and it continued to be house No.152 till the institution of the present suit. From this record it would be clear that during 1947 to 1950 its house number was 878. Exh.41 the document purporting to have been executed by Yashodabai also shows that the document was executed pertaining the house No.878 belonging to Haridas Baba. As per this record, number of this house continued to be 878 till 1957-58 when the number was changed to 598, while in 1953 and again in 1961. Chhotelal had shown house No.55 of Circle No.3 as a property of Hanuman Deosthan. In this suit we are not concerned with the other properties of Hanuman Deosthan situated in Circle No.2 Exh.57 and 58 is the record pertaining house No.55 of Circle No.3. this record shows that house No.55 of Circle No.3 was the property of temple of Radhakishna and Ganpati and on behalf of that Temple one Ramlal Munnalal Halwai was shown to be proprietor. This record is available from 1947 onwards. This particular property bears house No.55 from 1947 till 1961-62. From this it is clear that the house No.55 of Circle No.3 is totally different from the suit house which was the property of Haridas Bairagi. It is fairly conceded before me by Mr. Ghatpnde that temple of Radhakrishna and Ganpati may be different institution than the property of Haridas Baba. In 1952 when for the first time Hanuman Deosthan was registered as trust on application of Chhotelal, house No.55 was different from the suit house which was bearing No.878 at that time. It is conceded that there is no documentary evidence to establish that the suit house was the property of the Plaintiff Trust.”

(emphasis supplied)

13. The aforesaid view taken by the First Appellate Court and, in particular, the findings of fact recorded on material issues came to be reversed by the High Court in the second appeal, filed by the respondents. Initially, the said Second Appeal No.364 of 1990, was allowed by the High Court of Judicature at Bombay at Nagpur, without framing any substantial question of law, vide judgment and order dated 29th March, 2004. That judgment was set aside by this Court on 17th December, 2004 in SLP (C) No.10181/2004, at the instance of the defendants/appellants. The parties were relegated to the High Court for fresh consideration of the second appeal. The learned Single Judge of the High Court hearing the remanded appeal adverted to two substantial questions of law as formulated in paragraph 7 of the impugned judgment, which read as follows:

"1. Whether the findings recorded by the authorities under the Bombay Public Trusts Act about the existence of the trust and the trust property were final and conclusive and/or whether the appellate Court had justification to hold that the suit property did not belong to the trust?"

2. Whether the admission of the defendants that the suit property was originally owned by Haridad Baba and that they had entered in possession thereof in the capacity of caretaker of the suit property were binding on the defendants so as to establish that the property in question was part of the property originally owned by Haridas Baba with respect to which the public trust was created?"

14. By the impugned judgment and order dated 24th October, 2008, the High Court allowed the second appeal preferred by the plaintiffs/respondents and restored the decree of possession passed by the Trial Court. The High Court first analysed the pleadings and noted that the defendants/appellants in no uncertain terms admitted that saint Haridas Baba is the owner of the suit house and that his Padukas were installed in the suit house and were worshiped by his disciples. It then found that it was common ground that Haridas Baba was the original owner of the suit house and his disciples were taking care of the Math after his death. The High Court further noted that Bansilal never claimed to be the owner of the suit house but only a trustee, who directed Smt. Yashodabai to appoint a panch committee to look after the affairs of the Math if need be. The panch committee appointed by Smt. Yashodabai was nothing but a board of trustees, as was evident from the document creating the panch committee dated 23rd May, 1946 (Exh.41).

15. The High Court then noted that the defendants' witness DW-1 Vijay in his evidence admitted that the ownership of the suit house was of Haridas Baba and that the defendants/appellants, along with other family members, were living therein as disciples of Haridas Baba and did not set up title in themselves at all. It appears that Haridas Baba, who was the owner of the suit house, dedicated the property and created a private trust, which fact has been admitted by the defendants/appellants in the written statement. On that basis, the High Court went on to conclude that the defendants/appellants admitted that the suit house was a trust property and therefore, it must be assumed to have been dedicated by Haridas Baba. After having said this, the High Court then went on to examine the question as to whether the suit house was a property belonging to Shri Hanuman Deosthan, a public trust. While considering this issue, the High Court took note of the fact that the registered property of the Hanuman Deosthan public trust did not include the description of the suit house namely House No.878 in Circle No.3. The suit house belonging to the public trust was registered as House No.55 in Circle No.3. The High Court "assumed" this to be a case of mis-description of the trust property in the register of the public trust. Accordingly, the finding of fact recorded by the First Appellate Court on material issues came to be reversed by the High Court on the following reasoning:

"13. We have already seen that defendants do not deny the description of the suit property. They do not say that they are in possession of any other property than the suit property. They admit that suit property was owned by Haridas. I have already quoted the evidence of D.W.1 Vijay in verbatim in which he admits that the assessment list Exh.56 is in respect of the suit house. Exh.56 shows that house was recorded in the name of Haridas. In examination-in-chief Vijay admits that the house number of the suit property is 492. Defendant No.1 had made an application to the

Municipal Council vide Exh.75. He raised an objection to recording the name of Hanuman Deosthan as owner in the Municipal records. He claimed that he was the Wahiwatdar and was paying taxes and also brought to the notice of the Municipal Council that this house is not entered in the register of public trust. He also alleges that name of the trust is changed from Haridas to Hanuman Deosthan and that the old name be retained. This clearly goes to show that defendants in fact knew that the suit house belongs to Hanuman Deosthan Trust. It is registered in the Municipal Record as such and he wanted that name of the Hanuman Deosthan be removed and that he was ready to pay the taxes. All this evidence clearly goes to show that the defendants know that the suit property is entered in the name of plaintiff trust and they are claiming possession of that property alone. With this document there is no manner of doubt that the suit property is owned by the plaintiff public trust. Defendants admission must bind them. The learned Judge of the first appellate Court did not consider the evidence in proper perspective. He erred in negating the claim of plaintiff because the correct description of the suit property is not given in the trust register. He should have independently considered if the suit property is owned by plaintiffs.”

16. The High Court then negated the preliminary objection that the entire appeal had abated as the legal representatives of legal representative Nos. 1 and 2 of the deceased defendant No. 1 were not brought on record. The High Court took the view that since the stand of the defendant No.1 was that he was occupying the suit house only as Wahiwatdar, his rights as Wahiwatdar ended upon his death. For, the right of Wahiwatdar could not be claimed as hereditary. The High Court thus concluded that the appeal filed by the plaintiffs/respondents could still proceed on the aforesaid basis. Accordingly, the High Court reversed the decision of the First Appellate Court and restored the decree passed by the Trial Court for delivery of possession of the suit house by the defendants/appellants to the plaintiffs/respondents. This decision is the subject matter of the challenge in the present appeal.

17. We have heard Mr. Gagan Sanghi, learned counsel appearing for the appellants and Mr. D.K. Sinha, learned counsel appearing for the respondents.

18. The moot question is: whether the High Court exceeded its jurisdiction under Section 100 of the Code of Civil Procedure in reversing the judgment and decree passed by the First Appellate Court on the basis of independent findings and reasons recorded by it, and moreso, not specifically answering the substantial questions of law formulated for its consideration. If it were to answer the substantial questions of law in seriatim, perhaps the conclusion would have been completely different.

19. Reverting to the first substantial question of law, the factum of existence of the trust and the trust property is a matter of enquiry for registration envisaged under Section 19 of the 1950 Act, which reads thus:

"19. Inquiry for registration :

On the receipt of an application under section 18, or upon on application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining:

- (i) whether a trust exists and whether such trust is a public trust,
- (ii) whether any property is the property of such trust,
- (iii) whether the whole or any substantial portion of the subject matter of the trust is situate within his jurisdiction,
- (iv) the names and addresses of the trustees and manager of such trust,
- (v) the mode of succession to the office of the trustee of such trust,
- (vi) the origin, nature and object of such trust,
- (vii) the amount of gross average annual income and expenditure of such trust, and
- (viii) any other particulars as may be prescribed under sub-section 5 of section 18.”

(emphasis supplied)

20. Clause (i) of Section 19 is about an enquiry of a fact as to whether a trust exists and whether such trust is a public trust. Clause (ii) is an enquiry about whether any (stated) property is the property of such trust. On completion of such enquiry, the competent authority is required to record its findings with the reasons therefor, in terms of Section 20 of the 1950 Act. After complying with the prescribed formalities by the applicant and upon the findings so recorded during the enquiry becoming final, the said authority is obliged to make entries in the register kept for that purpose as per Section 21(1) of the 1950 Act. Such entries become final and conclusive, subject to any change to be recorded. This is predicated under Section 21(2) of the 1950 Act. Further, Section 79 of the same Act may be of some relevance. The same reads thus:-

"79. Decision of property as Public trust property

(1) Any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner on the Charity Commissioner in appeal as provided by this Act.

(2) The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall, unless set aside by the decision of the Court on application or of the High Court in appeal be final and conclusive.”

(emphasis supplied)

This Court in *Church of North India Vs. Lavajibhai Ratanjibhai and Others*¹ has noted that the 1950 Act provides for finality and conclusiveness of the order passed by the Charity Commissioner in Sections 21(2), 22(3), 26, 36, 41(2), 51(4) and 79(2). The Court relying on *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*² expounded that such finality clause would lead to a conclusion that the civil court's jurisdiction is excluded if there is adequate remedy to do what the civil courts would normally do in a civil suit. The Court also held that the question as regards existence of a trust is a matter which squarely falls within the purview of the Act.

21. Furthermore, Section 80 of the 1950 Act posits a bar of jurisdiction of the civil court to decide or deal with any question which by or under the Act is to be decided or dealt with under the said Act. Section 80 of 1950 Act, reads thus: "80. Bar of jurisdiction :

Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive."

22. Even for filing a suit concerning the public trust, Section 50 of the Act provides as under:

"50. Suit by or against or relating to public trusts or trustees or others
In any case, -

(i) where is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees,

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee,

(iii) Where the direction of the Court is deemed necessary for the administration of any public trust, or 53

(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub clauses (i) to (iii) , or one or more such persons in case the suit is under sub clause

(iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentious or not in the Court within the

local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate, to obtain a decree for any of the following relief's :

- (a) an order for the recovery of the possession of such property or proceeds thereof;
- (b) the removal of any trustee or manager; I the appointment of a new trustee or manager;
- (d) vesting any property in a trustee;
- (e) a direction for taking accounts and making certain enquiries;
- (f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or willful default;
- (g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (h) a direction to apply the trust property or its income cy pres on the lines of section 56 if this relief is 54 claimed along with any other relief mentioned in this section;
- (I) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem necessary;
- (j) the settlement of scheme, or variation or alteration in a scheme already settled,
- (k) an order for amalgamation of two or more trusts by framing a common scheme for the same;
- (l) an order for winding up of any trust and applying the funds for other charitable purposes;
- (m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust;
- (n) an order exonerating the trustees from technical breaches, etc;
- (o) an order varying , altering, amending or superseding any instrument of trust;
- (p) declaring or denying any right in favour of or against, a public trust or trustee or trustees or beneficiary thereof an issuing injunctions in appropriate cases; or

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief's or is necessary in the interest of the trust:

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof; Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled : Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under subsection (4) of section 1.”

(emphasis supplied)

And again Section 51 provides as under:

“51. Consent of Charity Commissioner for institution of suit (1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks fit is satisfied that there is a prima facie case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1) the persons applying for such consent may file an appeal to the Division Commissioner in the manner provided by this Act.

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.

(4) Subject to the decision of the Divisional Commissioner in appeal under section 71, the decision of the Charity Commissioner under sub section (1) shall be final and conclusive.”

(emphasis supplied)

Indubitably, the present suit is a suit for recovery of possession of the subject property on the basis of title claimed therein by the plaintiffs/respondents and being a property of the trust. However, the procedure envisaged under Sections 50 and 51, obviously, has not been complied with. For, such permission has not been produced nor adverted to by the courts below.

23. Be that as it may, as the plaintiffs/respondents have claimed title in the suit property, that claim could be answered on the basis of the registration application of the trust, and schedule I regarding the registered properties of the trust. Whether the property is a property of the

trust and including the question as to whether it should be so recorded as the property of the trust, is a matter exclusively within the domain of the Charity Commissioner.

24. In the present case, the registration application preferred by Chotelal unambiguously records House No.55 in Circle No.3 as being used for performing pujas in the temple. The temple name is mentioned as Shri Hanuman Deosthan. There is no reference in the application or in schedule I recording the properties of the stated public trust to include the "Padukas of Haridas Baba" installed in House No.878 in Circle No.3. Concededly, no evidence is forthcoming to show that Hanuman Temple exists in House No.878 in Circle No.3 which is in possession of the defendants/appellants.

25. Suffice it to observe that the application for registration of the public trust submitted by Chotelal on 31st August, 1953 (Exh.63), the subsequent application for registration submitted by him under the provisions of the 1950 Act dated 13th September, 1961 (Exh.64), the schedule I recording properties of the plaintiff public trust (Exh.43), the enquiry report dated 13th October, 1954 (Exh.42), and the application for framing of the scheme and the order passed by the Charity Commissioner dated 4th April, 1975 (Exh.46), none of these document mention about "Padukas of Haridas Baba" installed in House No.878 or refer to House No.878 in Circle No.3 being the trust property; but instead, make specific reference to House No.55 in Circle No.3, which is a completely different property. Notably, these documents also do not advert to the document dated 23rd May, 1946 (Exh.41), purportedly executed by Smt. Yashodabai allegedly creating a Panch Committee in respect of the suit House No.878 in Circle No.3. The finding of fact recorded by the First Appellate Court regarding the two properties and, more particularly, analysis in paragraphs 11 & 12 of its judgment (reproduced in paragraph No. 12 herein above), have been brushed aside by the High Court on the specious assumption that it is a case of mis-description of the property in the official register of public trust. That, however, was not the case pleaded much less proved by the plaintiffs/respondents. Such finding recorded by the High Court is a case of manifest error or error apparent, if not perverse. The High Court could not have disregarded the registration application and the description of the house number given in schedule I as the registered property of the public trust, which is House No.55 in Circle No.3. It was for the plaintiffs/respondents to plead and prove that House No.55 shown in schedule I as property of the plaintiff trust is the same as House No.878 in Circle No.3, which description has been given in the plaint as the suit house. Having failed to establish that fact, no fault can be found with the finding recorded by the First Appellate Court, that Shri Hanuman Deosthan, a public trust, had no causal connection with House No.878 in Circle No.3 occupied by the defendants/appellants. Thus, it must necessarily follow that the suit for possession (of House No.878 in Circle No.3) instituted by the plaintiffs/respondents on the basis of title, was devoid of merits.

26. We have no hesitation in upholding the finding of fact recorded by the First Appellate Court that the suit house occupied by the defendants/appellants was recorded in the Municipal records during 1947 to 1950 as House No.878 belonging to Haridas Baba and that number was changed to House No.521 in 1973-74 and converted to House No.152 till the institution of the present suit. Further, it is clear that House No.55 in Circle No.3 is entirely a

different property. That has been registered as the trust property of Shri Hanuman Deosthan public trust, initially at the instance of Chotelal and then continued to be shown as a registered property of the plaintiff trust until the institution of the suit. Such registration by the authorities under the 1950 Act would bind the plaintiffs/respondents. The plaintiffs/respondents have not been able to produce any documentary evidence to establish the fact that the suit house (bearing House No.878 in Circle No.3, which later on became House No.152 in Circle No.3 by the time the suit was instituted), was the property of the plaintiff trust. The concomitant of such a conclusion is to dismiss the suit.

27. It is not necessary for us to dilate on every aspect dealt with by the First Appellate Court or for that matter, the High Court, for answering the substantial question of law under consideration. We affirm the conclusion reached by the First Appellate Court that the plaintiff trust had failed to produce any documentary evidence to substantiate the fact that suit House No.878 in Circle No.3 was the registered property of the plaintiff trust and that the registered property of the plaintiff trust bearing House No.55 in Circle No.3, is the same house in possession of the defendants/appellants. Pertinently, the latter property was not owned by Haridas Baba but belonged to one Ramlal Munnalal Halwai, having a temple of Radhakrishna and Ganpati. Further, the documentary evidence produced by the plaintiffs/respondents would, at best, establish the fact that Shri Hanuman Deosthan has been registered as a public trust and owns the property referred to in schedule I against its name (i.e. House No.55 in Circle No.3). Thus, the property registered as belonging to the plaintiff trust was other than suit house bearing No.878 in Circle No.3. For all these reasons, the First Appellate Court was justified in answering the principal issue against the plaintiff trust.

28. That takes us to the second substantial question of law formulated by the High Court for its consideration. The High Court has adverted to the relevant portion of the written statement to conclude that the defendants/appellants had admitted that the suit property was originally owned by Haridas Baba and that they were in possession in the capacity of caretakers only. Indeed, that admission can be discerned from the written statement of the defendants as well as the oral evidence of DW-1. But that admission does not take the matter any further. It is not possible to assume on the basis of that admission that the “suit house” (i.e. House No.878 in Circle No.3) is the property of the plaintiff trust. No documentary evidence has been produced by the plaintiffs/respondents to establish the fact that the suit house bearing House No.878 in Circle No.3 originally owned by Haridas Baba was recorded as the property of the plaintiff trust in the official records. The plea taken by the defendants in the written statement, however, is indicative of the fact that they (defendants/appellants) were occupying House No.878 in Circle No.3, which was originally owned by Haridas Baba and where his Padukas had been installed. The written statement as well as the oral evidence of defendants/appellants clearly refute the claim of the plaintiffs/respondents. In that, the trust named as Shri Hanuman Deosthan has been registered in reference to some other properties and for performing puja with the object of maintaining Hanuman Deosthan temple in House No.55 in Circle No.3. We also find that the High Court has selectively adverted to portion of the written statement [sub-paras (b) to (d) of paragraph 11 thereof] and not to the other portion of the same paragraph, namely sub-paras (e) to (g) (reproduced in paragraph 9

hereinabove) which put across the stand of the defendants/appellants including that the plaintiff trust has no causal connection with the suit house bearing No.878 in Circle No.3.

29. Needless to observe that the plaintiffs/respondents were primarily obliged to establish their title in the suit house bearing No.878 in Circle No.3 where the Padukas of Saint Haridas Baba have been installed, as being the property of the plaintiff trust. The plaintiffs must succeed or fail on the title they establish; and if they fail to do so, they must fail to get the relief of possession irrespective of title of the defendant in the suit property (See *Brahma Nand Puri Vs. Naki Puri*³ and *Bajaranglal Shivchandrai Ruia Vs. Shashikant N. Ruia and Ors*⁴). In the present case, no tangible evidence regarding title of plaintiff trust in the suit house (House No.878 in Circle No.3) is forthcoming.

30. The High Court has also adverted to the so-called admission given by DW-1 Vijay, noted in paragraph No.12 of the impugned judgment. In our opinion, the High Court has completely misread the said admission. Inasmuch as, all it says is that the house number had changed every four years after revaluation. Further, the suit house is in Circle No.3. This is spoken by the witness (DW1), in response to the question posed to him about the change of Circle. He then admits that since 1910, the suit house was owned by Haridas Bairagi. We fail to understand as to how this admission can be of any avail to the plaintiffs much less to hold that the plaintiff trust has title in the suit house bearing House No.878 in Circle No.3.

31. Much ado was made about the contents of a communication sent by defendant No.1 to the Mayor of Nagpur Municipal Corporation (Exh.75). The same reads thus:

“Exhibit-75

To,

The Mayor, Nagpur Municipal Corporation Wasudeorao Maniramji Pullarwar,
Occupier Baba Haridasji Math,

House No.152, Ward No.6 New Ward No.16, S. No.03, New Shukrawari,

Fawara Chowk, Medical Road, Nagpur. Applicant

Subject: Objection to mutation on house No.152, Ward No.16 circle No.03, New SShukrawari, Fawara Chowk, Medical Road, Nagpur.

Sir,

With respect, it submitted that house no.152, Ward No.16 New Shukrawari Nagpur is recorded in the name of Baba Haridas Math in the Nagpur Municipal Corporation assessment register for the last 70 years. The applicant is the disciple of Baba Haridas for the last 60 years and is in possession and occupation of it for last 30 years. He is looking after the Math and performing pooja/utsav on yearly basis (yearly Utsav). I

am paying the taxes of the said math for the last 30 years as occupier and user. The receipts to that effect are with me. The demand bill for the year 1978-79 for taxes is given to the applicant. From that it has come to the knowledge of the applicant that the said house is recorded in the name of "Shri Hanuman Deosthan Trust". Then it is mentioned that the said change is as per the decision of Learned Charity Commissioner, Mumbai dated 4.4.1975 and the same is recorded on 15.7.1976 in the name of Hanuman Deosthan Trust. However, in the office or register of Charity Commissioner, Mumbai or Deputy Charity Commissioner, Nagpur dated 4.4.1975, there is no reference/mention about Shri Haridas Baba Math, House No.152, Ward No.16, Circle No.3, New Shukrawari, Nagpur nor there is any reference in the copy received by me.

Hence, the Hanuman Deosthan Trust has got the name changed from Haridas Baba Math to Hanuman Deosthan Trust by keeping the tax department in the dark, fraudulently. The change is recorded by the assessment department of the Nagpur Municipal Corporation without consulting or asking the applicant. The said change is not acceptable to the applicant.

Hence, the original name of Baba Haridas Math should be maintained. Accordingly, the applicant is ready to pay the taxes as earlier. Also the Hanuman Deosthan Trust has got the change done by keeping the Corporation in the dark. It has no relation with the math.

Hence, the name of the said Trust be removed and original name of Baba Haridas Math be maintained. The applicant be given opportunity to produce his documents and say before yourself.

Nagpur

Dated: 17.3.1980
Sd/-Wasudeo Pullarwar
Applicant"

We fail to understand as to how this communication can be used as an admission of the defendants much less of having accepted the title of the plaintiff trust in the suit House No.878 (renumbered as House No.152), in Circle No.3. On the other hand, it is a representation made to assail the unilateral alteration of mutation entry in favour of Shri Hanuman Deosthan Trust in violation of principles natural justice.

32. Suffice it to observe that even the second substantial question of law must be answered against the plaintiffs and in favour of the defendants/appellants.

33. Taking any view of the matter, we have no hesitation in upholding the conclusion recorded by the First Appellate Court that the suit filed by the plaintiffs/respondents for possession of the suit house is devoid of merits and deserves to be dismissed.

34. Accordingly, this appeal succeeds. The impugned judgment and order passed by the High Court dated 24th October, 2008 in Second Appeal No.364 of 1990 is set aside and the judgment and decree passed by the District Court Nagpur dated 21st January, 1989 in Regular Civil Appeal No.564 of 1983, is restored. Thereby, the suit filed by the plaintiffs/respondents bearing Special Civil Suit No.1127 of 1978 before the Court of Civil Judge, Senior Division, Nagpur stands dismissed. No order as to costs. Ordered accordingly.

Judgment Referred.

¹(2005) 10 SCC 0760

²(1968) 3 SCR 0662

³(1965) 2 SCR 0233

⁴(2004) 5 SCC 0272