

(1985) 03 AHC CK 0004

In the Allahabad High Court

Case No : First Appeal No's. 52 and 53 of 1978

Bhagauti Prasad Khetan

APPELLANT

Vs

Laxminathji Maharaj

RESPONDENT

Date of Decision : 13-03-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 1, 92
Specific Relief Act, 1963 — Section 34
Uttar Pradesh Hindu Public Religious Institutions (Prevention of Dissipation of Properties) (Temporary Powers) Act, 1962 — Section 7

Citation : AIR 1985 All 228

Hon'ble Judges : K.C. Agarwal, J;G.B. Singh, J

Bench : Division Bench

Advocate : Shashi Nandan, for the Appellant;

Final Decision : Dismissed

Judgement

G.B. Singh, J.—These two connected appeals are against the judgment and decree dt. 25-10-77 passed in O.S.No. 27 of 1964 by Civil Judge, Deoria.

2. The deity Laxminathji Maharaj, plaintiff No. 1 was enshrined in a temple of Ram Karan Das situated at Kasalu Jhunjhunu, district Jhunjhumi, State Rajasthan. Ram Bilas was son of Ram Karan Das. Ram Bilas and his five sons Liladhar, Basant Lal, Munna Lal, Chiranji Lal and Madan Lal and three minor grandsons Radha Ballabh, Bhagauti Prasad (deft. 1 and appellant of F. A. No. 52 of 1978) and Chandi Prasad through their guardians dedicated to the deity considerable properties situated at Deoria Uttar Pradesh and various other places, detailed in schedule A at the foot of the plaint by executing a deed of endowment on 1-2-1919. Ram Bilas managed the dedicated properties and affairs of the temple till his death in the year 1936. The following pedigree discloses relationship of Ram Bilas with" the defendants first and fifth sets:

Ram Bilas | _____
| | | | | Liladhar

Basant Lal Munna Lal Shiranji Lal Madan Lal | | | =Smt. ram | Radha Ballabh
 Bhawani Pd. | Devi(Deft. 17) | | | | Deokinandan |
 _____ (Deft. 8) | | | |
 _____ | | | |
 Nath Mal Kisan Swa- | (Deft. 5) roop(Deft. 6) _____

_____ | | | | | Bhagauti Chandi Prameshwari Smt. Sushila Smt. Satya
 Smt. Ratna prasad PrasadPrasad Prasad Bai Bhama Bai Devi (Deft. 1) (Deft. 2)
 (Deft. 3) (Deft. 4) (Deft. 15) (Deft. 16)

3. There are five sets of defendants. Bhagauti Prasad Khetan and 7 others constitute first set of the defendants. They along with defendants 13 to 17 are the descendants of Ram Bilas. Purshottam Das, defendant 9, Radhey ahyam, defendant No. 10 and Chandi Prasad Rao defendant 10A are defendants 2nd set. Purshottam Das and Radhey Shyam defendants 9 and 10 purchased one dedicated house at Deoria for Rs. 10,000/- and obtained a sale deed dt. 1-9-64/18-9-64. The suit was originally filed in connection with that sale deed. During pendency of the suit Chandi Prasad purchased another dedicated house situated at Deoria by obtaining sale deed dt. 21-6-65 for Rs. 5,500/-. He was therefore, subsequently impleaded as defendant 10A. These two houses are given in Schedule B annexed to the plaint. The two sale deeds were challenged in the suit on various grounds. The defendants Gajanand and 3 others constitute 3rd set. They are tenants of the house transferred to the defendants 2nd set. Narain Das defendant 13 has been described as defendant 4th set. He has been impleaded in the suit on the allegation that he is general attorney of Bhagauti Prasad Khetan defendant 1 and he is assisting Bhagauti Prasad Khetan in transferring endowed properties. The defendants 14 to 20 constitute 5th set. Smt. Sushila Bai, Smt. Satya Bhama Bai and Smt. Ratna Devi defendants 14 to 16 are grand daughters of Ram Bitas and Smt. Ram Devi defendant 17 is widow of Chiranji Lal, one of the sons of Ram Bilas, It appears that they have been impleaded because they were parties to the litigation which went up to Rajasthan High Court and was finally decided by compromise dt. 31-3-1961. Ram Niwas Sultaniwala, Bhagirath Mal Banka and Beni Prasad defendants 18 to 20 were connected with the management of the endowment for some time.

4. Atma Ram plaintiff 2 is a resident of Deoria Uttar Pradesh. He filed the suit as next friend of the deity plaintiff 1 and on his own behalf on the allegation that he is an original resident of Jhunjhunu and has been worshipping the idol and is a worshipper.

5. The deed of endowment dt. 1-2-1919 provided among other things that L. Ram Bilas would be manager of the endowed property for his lifetime and the executants of the deed of endowment would with a reasonable time executed another deed providing for the future management of the endowed properties. It was also provided in the deed that in case the creators did not execute any such deed Ram Bilas will appoint a manager to look after the properties of the deity.

The creators of the endowment did riot execute any such deed nor Ram Bilas could appoint any manager" to look after the properties of the deity after his death.

6. The suit was filed on the allegations that after the death of Ram Bilas some of the creators and their heirs unlawfully assumed management of the endowed properties and thus dispute about the management arose between them with the result Seth Manna Lal and Seth Chandi Prasad filed Suit No. 1 of 1957 in the Court of District Judge, Jhunjhunu against Smt. Ram Devi and others heirs of Ram Bilas for declaration that the plaintiffs and defendants 1 to 5 of that suit were entitled to joint management of the deity and his properties. That suit was partly decreed on 17-10-58 by the District Judge and a Scheme for future management of the affairs of the deity and his properties was laid down. Against that decree appeal No. 29 of 1959 was preferred in the High Court of Rajasthan and the parties to the appeal entered into a compromise on 31-1-61 and the High Court passed the decree in accordance with the terms of that compromise. Some of the main terms of the compromise were that from the date of the compromise the properties shall vest in a trust known as Thakur Laxminathji Trust and the defendants first set will be the trustees of the said trust. It was further provided in the decree that Bhagauti Prasad Khetan defendant 1 would be managing trustee for 5 years and he would have a right to transfer the properties of the plaintiff 1. It was also laid down in the compromise decree that on the expiry of the period of 5 years or on the earlier resignation or death of Bhagauti Prasad Khetan all rights conferred on him would revert to the trustees and they would manage the trust properties as decided by the majority. The plaintiffs alleged that the compromise decree was absolutely void, illegal and not binding on the plaintiffs because plaintiff 1 was not a party to that suit or appeal and the compromise which varied the terms of the original deed of endowment. Bhagauti Prasad Khetan, defendant 1 on the basis of that compromise sold the properties mentioned in schedule "B" to the defendants 2nd set by executing two sale deeds dt. 1-9-64 and 21-6-65 which are void and not binding on the plaintiffs because they were executed on behalf of the idol, plaintiff No. 1 without any authority, consideration and necessity. Moreover these alienations were not made for benefit of the estate and no permission as required under U. P. Act No. 22 of 1962 was obtained. On the basis of the aforesaid sale deeds the defendants second set. are threatening to realise rent from the defendants third set and thus intend to dispossess the plaintiff 1 from the properties of the schedule "B" without any right. The plaintiff, therefore, claimed declaration to the effect that the deity plaintiff 1 is owner in possession of the properties and the sale deeds dt. 1-9-64 and 21-6-65 are ineffective and not binding on the plaintiffs and prayed for permanent injunction restraining the defendants first and fourth sets not to transfer by means of sale, gift etc. any of the properties of the schedule "A".

7. The suit was contested by Bhagauti Prasad Khetan, Purshottan Das, Radhey Shyam and Chandi Prasad Rao defendants. The other defendants did not contest

the suit. Bhagauti Prasad Khetan and Chandi Prasad Rao filed separate written statement whereas Purshottam Das and Radhey Shyam filed one joint written statement. Though there were three written statements but the pleas taken by them in defence were almost the same. The defence was that Atma Ram plaintiff 2 never worshipped the deity and has no right of suit. The plaintiff 2 has no beneficial interest in endowed properties or its management and he cannot represent the deity. After the death of Seth Ram Bilas the surviving donors managed the trust properties as the trustees for three years and thereafter appointed Ram Niwas Sultani Wala and Bhagirath Mal Banka as their attorneys to look after the affairs. After some time the said attorneys resigned and the trustees entrusted the management of the trust affairs to Chiranji Lal Khetan who managed the trust up to the time of his death which occurred somewhere in the year 1956. After his death dispute arose amongst the surviving donors and the heirs of the founders about the management of the trust properties and the litigation started in the Courts in Rajasthan. That litigation came to an end when the High Court of Rajasthan passed a compromise decree dt. 31-1-1961. After the said decree the management of the trust was entrusted to Bhagauti Prasad Khetan as the managing trustee for a period of five years and in terms of the said decree he managed the trust. It was contended by them that the compromise decree of Rajasthan was void, illegal and not binding on the plaintiffs. The impugned sale deeds are not void and Bhagauti Prasad Khetan had every right to sell the properties for benefit of the trust. The sale deeds are not without consideration and they are in the best interest of the trust. The U. P. Act No. 22 of 1962 is applicable to the Hindu Public Religious Institutions functioning in Uttar Pradesh whereas the temple of Sri Laxminathji is situated at Jhunjhunu (Rajasthan) i.e. beyond the territorial jurisdiction of Uttar Pradesh. No permission under the said Act for transfer of the properties was, therefore, necessary. After the sale of the houses mentioned in schedule "B" the defendants second set are the owners thereof and are entitled to realise rent from defendants third set who are occupying them as tenants. The impugned transfers were necessary for the benefit of the estate because the houses were constructed with mud walls about 50 years ago and were in highly dilapidated condition. Moreover they were at a sufficient distance from the place where the deity is installed and the trustees live and the rent received from them was negligible. The trustees who reside at Jhunjhunu and Bombay had no financial resources and means to renovate the buildings and if the same state of affairs continued the corpus of the trust was to fritter away. It was also pleaded by them that the suit was barred by Section 92, C.P.C., Section 34, Specific Relief Act, estoppel and time. It was also pleaded by the defendants second set that they were bona fide purchasers for value and the suit was barred u/s 41 T. P. Act.

8. Learned Civil Judge held that Atma Ram, plaintiff 2, being a worshipper had right of suit and he could represent the deity as its next friend and the suit was maintainable. He further held that the suit was not barred by Section 34, Specific Relief Act, Section 92, C.P.C. estoppel and time. It was also held by him that the

compromise decree passed by the Rajasthan High Court on 31-1-61 did not confer any power on Bhagauti Prasad Khetan to alienate the properties of the deity and he had no right to alienate the properties in suit. It was also held by him that the impugned sale deeds were not made for legal necessity or for benefit of the estate and as such they were invalid and ineffective. The learned Civil Judge further came to the conclusion that the permission under U. P. Act No. 22 of 1962 to transfer the properties in suit was necessary and the defendants second set are not bona fide purchasers for value and as such the suit is not barred by Section 41, T. P. Act with these observations he decreed the suit for declaration that the deity plaintiff 1 is in possession of the properties specified in the schedule "A" and the sale deeds dt. 1-9-64 and 21-6-65 are ineffective and not binding on the plaintiffs and for permanent injunction restraining the defendants first and fourth sets from transferring the endowed properties belonging to the plaintiff 1 by sale, mortgage etc.

9. Feeling dissatisfied with this decision Bhagauti Prasad Khetan, defendant 1 filed appeal No. 52 of 1978 and Purshottam Das, Radhey Shyam and Chandi Prasad Rao defendants second set filed appeal No. 53 of 1978. Both the appeals are disposed of by this common judgment.

10. The first point argued by the learned counsel for the appellants is that Atma Ram plaintiff 2 respondent 2 had no right to represent the deity and the suit filed was not maintainable. We do not find any force in this argument.

11. Learned counsel for the appellants in connection with the above contention pressed four points. One of them is that Atma Ram, plaintiff 2 is not a worshipper and as such he could not bring the suit claiming himself to be so. The worshipper is a person who has a right of worship or to otherwise offer his reverence to an idol or shrine. It is undisputed that a public endowment was created for the worship of the deity Sri Laxminathji Maharaj installed in the temple at Jhunjhunu. From the evidence led in the case it appears established that the public was entitled to free access for worship. Thus it was a public religious endowment and the persons having faith in the Hindu religion were the worshippers. Atma Ram plaintiff 2 is undisputedly a Hindu. He has, therefore, right to worship the deity installed in the temple. He is, therefore a worshipper.

12. The appellants in order to show that Atma Ram plaintiff 2 cannot be a worshipper suggested that he is residing at Deoria, Uttar Pradesh whereas the deity is in Jhunjhunu Rajasthan which is at a distance of 800 miles from his place of residence. It is undisputed that his ancestors were residents of Jhunjhunu and in connection with their business they came to Deoria a few years back and settled there. Atma Ram plaintiff 2 (P. W. 1) has stated that he goes to Jhunjhunu 4 or 5 times a year and worships deity there. It is also been added by him that his ancestral house is still there and some of his family members still live at Jhunjhunu. In cross-examination he further added that in connection with the marriages and other functions he goes to Jhunjhunu. Bhagauti Prasad defendant 1 who examined himself as D. W. 1 could not deny that the ancestral

house of Atma Ram is in Jhunjhunu and some of his family members still-reside there. He simply stated that he did not see Atma Ram at Jhunjhunu and worshipping the deity in the temple. This statement is quite insufficient to make the statement of Atma Ram (P. W. 1) unworthy of reliance, Madan Lal Joshi (D. W. 3 Examined on Commission) who is a resident of Jhunjhunu stated in cross-examination that all the original residents of Jhunjhunu who migrated elsewhere come to Jhunjhunu for mundan, piercing of nostrils and ears ceremonies and after marriage to offer pooja path. This statement clearly supports the deposition of Atma Ram (P. W. 1). It, therefore, appears established that Atma Ram, plaintiff 2 is not only entitled to worship the deity but actually worships it off and on. It cannot, therefore, be held that Atma Ram is not a worshipper and cannot bring the suit in such a capacity.

13. "It was next argued by the learned counsel for the appellants in connection with maintainability of the suit that Atma Ram being a worshipper has no beneficiary interest in the property and he having benevolent interest cannot sue as next friend of the deity. In support of this argument he relied upon Sri Thakur Krishna Chandramajiu Vs. Kanhayalal and Others, . It was observed in this case that where the acts of the alleged shebait are being impugned, the idol may sue through a next friend who has a beneficial interest in the property and a person having only benevolent interest cannot sue. In this reported case mortgage of debutter property was challenged by the deity through its next friend Swami Satyananda Tirtha who died during the pendency of the appeal and then an application for substitution by his Chela Swami Shivanand Tirtha was made. While disposing of that application for substitution the aforesaid observations were made. It is significant to mention that in connection with that application Swami Shivanand Tirtha could not prove that he actually worships the temple but only asserted the right to worship and on the basis of this assertion it was held that he had only benevolent interest and as such not entitled to represent the deity. The observations made in this case do not appear applicable to the present case because Atma Ram has not only proved that he has right to worship but also that he actually worships the idol.

14. In Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others, following relevant observations were made:

"The legal position is also well-established that the worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the de jure Shebait is invalid and not binding upon the temple. If a Shebait has improperly alienated trust property a suit can be brought by any person interested for a declaration that such alienation is not binding upon the deity but no decree for recovery of possession can be made in such a suit unless the plaintiff in the suit has the present right to the possession. Worshippers of temples are in the position of cestui que trustent (Sic) or beneficiaries in a spiritual sense.

.....

The possession and management of the property with the right to sue in respect thereof are, in the normal course, vested in the Shebait, but where, however, the Shebait is negligent or where the Shebait himself is the guilty party against whom the deity needs relief it is open to the worshippers or other persons interested in the religious endowment to file suits for the protection of the trust properties. It is open, in such a case, to the deity to file a suit through some person as next friend for recovery of possession of the property improperly alienated or for other relief. Such a next friend may be a person who is a worshipper of the deity or as a prospective Shebait is legally interested in the endowment."

15. In that case the suit had been filed by worshippers on behalf of the idol challenging the validity of the compromise decree and praying for declaratory decree only. It was also observed in the case that: suit for mere -declaration that the compromise decree was not binding on the idol was maintainable and it was not barred by Section 42, Specific Relief Act which is not exhaustive.

16. In *Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others*, , the suit for declaration of title and possession of property from a person who was in possession of the property of idol under an alienation was filed by the idol through a devotee and worshipper. It was held that when an unauthorised alienation has been effected by the Shebait acting adversely to the interests of the idol, even a worshipper can file the suit, the reason being that the idol is in the position of a minor and when the person-interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It was further held that the suit filed by idol represented by a worshipper in the circumstances was maintainable.

17. In view of these observations of the Supreme Court it cannot be accepted that the worshipper in a suit in which an alienation by Shebait has been challenged, cannot represent the deity.

18. The third point argued by the learned counsel for the appellants in connection with the maintainability of the suit is that in the present case *Atma Ram* did not apply for leave of the Court to sue as a next friend of the idol and as such the suit filed by him was not maintainable. In support of this argument he placed reliance upon *Sushama Roy Vs. Atul Krishna Roy and Another*, and *Sri Iswar Radha Kanta Jew Thakur and Others Vs. Gopinath Das and Others*, . It was held in these cases that anybody other than Shebait suing on behalf of the idol must be appointed as next friend by the Court on application by him to that effect. After having carefully gone through these cases we find ourselves unable to agree with these observations. A glance on the judgment reported in *Sushama Roy Vs. Atul Krishna Roy and Another*, , shows that the decisions of Calcutta High Court are not uniform on the appointment of the next friend by the Court. It has been held in *Thakurani Sri Sri Annapurna Debi Vs. Sm. Shiva Sundari Dassi and Another*, that appointment of the next friend by the Court is not necessary. Moreover in *Sri Iswar Radha Kanta Jew Thakur and Others Vs. Gopinath Das and*

Others, it was observed at page 748 that:

"A worshipper or a member of the family has no doubt his own right to institute a suit to protect his right to worship and for that purpose to protect the debutter property. That is, however, a suit by the member of the family or worshipper in his personal capacity and not a suit by the deity. The deity has also a right of its own to have a suit instituted by a next friend.....Anybody can act as such next friend, but the law requires that anybody other than Shebait instituting the suit in the name of deity must be appointed as such by an order of the Court."

19. It indicates that no appointment is necessary, if the suit is filed by a worshipper. Here Atma Ram has joined the suit as worshipper also. Thus the maintainability of the suit remains unaffected. Apart from this, in *Ram Ratan Lal Vs. Kashinath Tewari and Others*, and *Angoubi Kabuini v. Imjao Lairema* AIR 1959 Mani 42 it was held that such an appointment is not necessary. The Supreme Court has clearly held in *Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others*, that the worshipper has an ad hoc power of representation of the deity when the Shebait acts adversely. It follows from this the worshipper having right to represent the deity can represent the deity without any specific order from the Court about his appointment. There is no definite procedure laid down in the Civil P.C. relating to suits on behalf of idol. The provisions of order 32 C.P.C. which relate to minor do not specifically provide for the appointment of the next friend. It may also be added in this connection that the defendants, appellants did not raise any objection before the trial Court that Atma Ram should first make an application for his appointment as next friend of the deity and then the suit can proceed. Atma Ram clearly alleged in para 1 of the plaint that he is representing the" deity as its next friend. The manner in which he was allowed to continue the suit indicates that he should be deemed to have been accepted as next friend of the deity. Thus the suit cannot be held not maintainable because Atma Ram did not make an application and was not appointed as next friend of the idol plaintiff 1 in the trial Court.

20. The evidence on record does not show that he has any interest adverse to the interest of the idol. There is nothing on record indicating that Atma Ram is going to gain something by instituting the suit and it has been filed with an ulterior motive. He has incurred expenses and undertook the trouble of the litigation only to show that an idol was going to be deprived of its properties in an unauthorised and illegal manner. He, therefore, brought the suit in the name of the deity as its next friend and joined in the suit as a worshipper also. The suit does not, therefore, appear defective as argued by the learned counsel for the appellants.

21. It was lastly argued in connection with the maintainability of the suit that it is barred by Section 34, Specific Relief Act and Section 92 Civil P.C. We do not find any force in this argument also. The suit is for declaration and permanent injunction about alienation of debutter properties. It has been held in *Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others*, that

worshipper can file a suit for declaration without claiming relief for possession. It is undisputed that the property alienated is in possession of the tenants and as such in the present case the relief for actual possession could not be claimed. At the most the deity could claim constructive possession, where the plaintiff is entitled to constructive possession by receipt of rent from the defendant, a declaration of title is all he needs, because under such circumstances even if he asks for possession it; can only be delivered by notifying the declaration of the plaintiff's title which has already been prayed for. The plaintiffs could claim further relief for perpetual injunction and that has been claimed. Thus Section 34, Specific Relief Act does not affect maintainability of the suit in any way.

22. The present suit is only in respect of unauthorised alienation of debutter properties. It is, for enforcement of a private right of property of the deity. In *Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others*, the observations are to the effect that suit by the deity for declaration and possession challenging the alienation is for the enforcement of a private right by the idol and not being for any one of the reliefs found in Section 92 C.P. Code. The suit therefore falls outside its purview and is not barred. Thus the suit does not appear not maintainable in view of Section 92 Civil P.C. also.

23. The first argument of the learned counsel for the appellants, therefore, falls to the ground.

24. The second point pressed by the learned counsel for the appellants is that Bhagauti Prasad, defendant 1 was authorised to alienate the endowed properties and the transfers made in favour of Purshottam Das Radhey Shyam and Chandi Prasad being for benefit of the estate cannot be set aside. In this connection it was further argued on their behalf that by virtue of the compromise decree passed by Rajasthan High Court the position of Bhagauti Prasad was that of a managing trustee and since he was given right to manage the properties of the temple for a period of 5 years by that compromise decree, he could alienate as Shebait or manager, the properties in dispute to Purshottam Das, Radhey Shyam and Chandi Prasad. It was also argued by the learned counsel for the appellants that the decree passed by Rajasthan High Court could not be held invalid and the transfers were valid because the properties at Deoria could not be properly managed and they were yielding no profits whereas the property purchased at Bombay and then at Jaipur out of the sale consideration is yielding good profits and are beneficial to the interest of the deity. After having carefully considered the argument advanced by the parties counsel on the aforesaid points and gone through the record we are of the considered opinion that the appellants failed to prove that the transfers were for the benefit of the idol and it is not necessary to go into the validity of the decree passed by Rajasthan High Court.

25. It is undisputed that L. Ram Bilas and his five sons Lila Dhar, Basant Lal, Munna Lal, Chiranjilal and Madan Lal and three minor grandsons Radha Ballabh, Bhagauti Prasad and Chandi Prasad through their guardians dedicated the properties in suit along with other properties by executing a deed of endowment

dt. 1-2-1919. It is also undisputed that it was a public religious endowment created in favour of Sri Laxminathji Maharaj installed in the temple of Ram Karan Das father of L Ram Bilas at Jhunjhunu. By that deed L. Ram Bilas was appointed Dharmakarta of the endowment for his lifetime. It was also provided in the deed that the executants would execute some other document laying down future line of succession but unfortunately no such deed could be executed by them. It was further provided in the deed that in case of non-execution of such a deed L. Ram Bilas could appoint the future Dharmkarta and give necessary instructions to him in that connection. It is also undisputed that L. Ram Bilas could not appoint such a Shebait or Dharmkarta by making any declaration or executing a separate deed.

26. It is well settled rule of Hindu Law that when there is no provision in the deed of endowment about the succession of office of Shebait or the succession provided therein comes to an end the management and control of the property follows the ordinary rule of inheritance, in other words it follows the line of inheritance from the founder and passes to his heirs. In this connection following observations in *Profulla Chorone Requitte v. Satya Choron Requitte* can be referred to :

"Property dedicated to an idol vests in it in an ideal sense only; ex necessities, the possession and management has to be entrusted to some human agent. Such an agent of the idol is known as Shebait in Northern India. The legal character of a Shebait cannot be defined with precision and exactitude. Broadly described, he is the human ministrant and custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property.

.....

Shebaitship being property, it devolves like any other species of heritable property. It follows that, where the founder does not dispose of the Shebaiti rights in the endowment created by him, the Shebaitship devolves on the heirs of the founder according to Hindu Law. if no usage or custom of a different nature is shown to exist."

27. It is not the case of any party that there was any usage or custom laying down different line of succession. It follows from this that upon the death of L. Ram Bilas which undisputedly took place in the year 1936 the management and control of the property passed to his heirs. Thus his sons and grandsons who were alive at the time of his death became joint Shebaiti of the endowed property.

28. Where the office of Shebait has become vested by descent in more than one person, it is lawful for them to arrange among themselves for the due execution of the functions belonging to the office entered or in some settled order and sequence. In this connection the following passage from B. K. Mukherjea's *The Hindu Law of Religious and Charitable Trusts* 1979 Edition page 251 appears relevant:

"When there are more Shebaites than one, they constitute one body in the eyes of law, and all of them must act together. The management may be for practical purposes in the hands of one of the Shebaites who is called the managing Shebait or the Shebaites themselves may exercise their right of management by turns; but in neither case it is competent for one of the Shebaites to do anything in relation to the Debutter estate without the concurrence either express or implied of his co-Shebaites. This is of course, subject to any express direction given by the grantor."

29. The Supreme Court in *Profulla Chorone Requitte v. Satya Chorone Requitte* has made following observations about transfer of Shebaitship :

Although, Shebaitship is heritable property, yet, it cannot be freely transferred by the Shebait. But there are exceptions to this general rule. Some of such exceptions recognised in several decisions, are : alienation in favour of next Shebait, or one in favour of the heir of the transferor, or in his line of succession, or in favour of a co-Shebait, particularly when it is not against the presumed intention of the founder."

30. In AIR 1945 23 (Privy Council) it was observed that where the mortgage is executed by one of the Shebaites as such it would not pass a valid title unless the act was done with the sanction and approval of his co-trustee.

31. Bhagauti Prasad, defendant 1, who was examined on commission has made it clear in his statement that upon the death of L. Ram Bilas in the year 1936 the heirs of L. Ram Bilas continued to manage the trust property for a period of 3 years and thereafter they appointed Ram Niwas Sultaniwala, defendant 18, and Bhagirath Mal Banka, defendant 19, to manage the properties. It has also been added by him that they continued to manage the defaulter properties for a period of 3 years and thereafter Lal Chiranji Lal one of the sons of L. Ram Bilas managed the trust properties with the consent of all the heirs till he died in the year 1956. Soon after his death dispute arose amongst the heirs of L. Ram Bilas about the management of the endowed properties, with the result suit No. 1 of 1957 was filed by Chandi Prasad, Bhawani Prasad and some other heirs of Munna Lal in the court of District Judge, Jhunjhunu, Rajasthan. That suit was partly decreed and thereafter some of the heirs filed First Appeal No. 119 of 1958 and others filed First Appeal No. 28 of 1959 in the High Court of Judicature Rajasthan. In those appeals a compromise was filed by the heirs of L. Ram Bilas and the appeals were decided in terms of that compromise on 31-1-1961. A copy of the decree passed in the two appeals is Ex. 2. It shows that the heirs of L. Ram Bilas in order to settle the dispute relating to management of the trust property amicably and for smooth and efficient management of those properties, entered into the compromise. One of the clauses of that compromise was that Bhagauti Prasad was appointed managing Dharmakarta for a term of 5 years from the date of the consent decree to manage the trust property with a power to sell, transfer, alienate or convert any one or more of the properties and to convert the proceeds thereof in properties, securities and other investments. On the basis of

this compromise it can be safely held that the heirs of L. Ram Bilas being Shebaites of the endowed properties authorised Bhagauti Prasad, defendant 1 to act as managing Dharmkarta with a power to alienate them. Since such an authorisation could be made in the eye of law, this part of the compromise can be taken into account, even if the validity of other terms of the compromise, for example, varying the name of the trust with a different scheme of management may be questioned on the ground that the heirs could not change the terms and conditions of the main deed of the endowment.

32. Even if Bhagauti Prasad had been given power to alienate the property on behalf of all the Shebaites, he could alienate defaulter property only for legal necessity or benefit of the estate. The power of Shebait to alienate debutter property is analogous to that of a manager for an infant heir. He has no power to alienate debutter property except in a case of need or for the benefit of the estate. He cannot sell the property even for the purpose of investing the price of it so as to bring in an income larger than that derived from the property itself. In this connection reference may be made to the decision of the Supreme Court in *Sridhar Suar and Another Vs. Jagannath Temple and Others*, .

33. In the present case the contention of the learned counsel for the appellants is that the properties in dispute were alienated by Bhagauti Prasad for benefit of the estate. The statement of Bhagauti Prasad in this connection is to the effect that the properties at Deoria were sufficiently old and some of them were in a dilapidated condition. They were in possession of tenants and their annual income could not be increased so they were sold to acquire more income yielding property at Bombay. It has also been added that these properties were not situated at a convenient place. On the basis of this statement learned counsel for the appellants contended that it was a prudent act of the Shebait and the alienation was beneficial to the estate and as such the alienation cannot be set aside. In support of this argument he relied upon *Jagat Narain and Another Vs. Mathura Das and Others* and *Ramchandraj Maharaj and Others Vs. Lalji Singh and Another*, . It was held in *Jagat Narain and Another Vs. Mathura Das and Others* that in case the transaction was to the benefit of the estate and was such as a prudent owner would have carried out with the knowledge that was available to him at the time, it cannot be set aside. It was further observed in the case that the degree of prudence would be the prudence which an ordinary man would exercise with the knowledge available to him and the transaction would have to be judged not by the result, but by what might have been expected to be its results at the time it was entered into. In *Ramchandraj Maharaj and Others Vs. Lalji Singh and Another*, it was laid down that in the case of alienation by Shebait, to see it is for legal necessity, it will be necessary to determine on the facts of each case whether any alienation was beneficial to the estate or not. If the property was inconveniently situated, heavily encumbered and unproductive and if by the alienation an annual income of a definite sum which was more than what was received in the previous years was assured, the alienation may be regarded as benefit to the estate. The test in each case is whether it was a

transaction into which a prudent owner would enter in the ordinary course of management in order to benefit the estate. In our opinion the rule of law laid down in these cases is not available to the appellants in view of the evidence on record.

34. Bhagauti Prasad defendant 1 stated that annual income of Deoria Trust properties was Rs. 6,000/- and annual expenditure was Rs. 3,000/-. It cannot, therefore, be said that these properties were causing loss to the endowment or were unproductive. He has further stated that these properties were sold to purchase more profit yielding property at Bombay. His statement, however, reveals that the property at Bombay was purchased in his personal name and not in the name of the deity or the trust. No sale deed has been produced to show that such a property was acquired after the impugned sale deeds. He has added that the property at Bombay was sold within 2 or 3 years of its purchase and the sale proceeds were credited to the account of the trust and some time thereafter a property at Jaipur has been constructed out of the sale proceeds. Neither any account book nor any document of title, possession etc. has been produced to show that the property at Jaipur has been acquired out of the sale proceeds. In cross-examination Bhagauti Prasad defendant 1 stated that he did not remember from whom and in whose name the property at Jaipur has been acquired. The other witnesses examined on behalf of defendants also could not throw any light on this subject. All this shows that the properties at Deoria were not sold to bring in some other more profit yielding property as pleaded by the appellants.

35. In Behari Lal Vs. Thakur Radha Ballabh Ji and Another, , the sale of an old house by the manager of a temple which was not in a dilapidated condition but which required extensive repairs was held neither a prudent transaction nor for the benefit of the estate. There is no reliable evidence on behalf of the defendants that the houses alienated were in a dilapidated condition. The sale deeds executed in favour of the defendants are silent in this regard. Undisputedly they were in possession of the tenants at the time of sale. The statement of Purshottam Das (D. W. 2) and Chandi Prasad Rao (D.W. 4) who purchased them show that they were in fact not in dilapidated condition. These circumstances coupled with plaintiffs' evidence show on the other hand that these houses though old were not in a dilapidated condition. Thus the transfer by sale of these houses cannot be held to be for the benefit of the idol and a prudent transaction. In K.P.L.S. Palaniappa Chetty v. Shreenath Devasikamony Pandara Sannadhi AIR 1917 PC 33 , it was laid down that a Shebait would not be justified in selling debutter land solely for the purpose of getting capital to embark in the money lending business. Apart from this, the following passage from Mulla's Hindu Law 1982 edition page 530 quoted with approval in Sridhar Suar and Another Vs. Jagannath Temple and Others, also appears relevant in this connection;

"He (Shebait) is not entitled to sell the property for the purpose of investing the price of it so as to bring in an income larger than that derived from the property itself."

36. The observations show that the houses at Deoria could not be sold for better investment of the sale consideration to obtain more income as stated by Bhagauti Prasad defendant 1. So far as the case of inconvenient situation of property sold is concerned, the deed of endowment shows that most of the properties dedicated were situated at different places in Uttar Pradesh and no difficulty before the impugned alienations was felt in their management and maintenance. Some agent of the idol used to reside at Deoria and he used to collect rent of the properties situated there. The income of Deoria properties was much more than the expenditure used to be incurred in connection with their management and maintenance. Thus the alienation does not appear to be made on the ground of inconvenient situation. The statement of Bhagauti Prasad defendant I on the other hand indicates that he was given power of alienation for a period of five years by the compromise decree dt. 31-1-1961 to transfer the properties of idol and he using that power alienated most of them within that period with an ulterior motive without any justification and giving any proper account as to what happened of the safe consideration.

37. It is, therefore, clear that the evidence led on behalf of the defendants-appellants does not establish that the alienations of the properties in dispute were made by Bhagauti Prasad, defendant 1 for the benefit of the estate. It is not clearly pleaded by the defendants-appellants that the sale deeds were executed for legal necessity. There is no evidence on record that there was any pressing necessity for transfer of these properties. It is therefore evident that the two sale deeds in dispute were executed without any legal necessity and they were not beneficial to the idol.

38. The defendants second set who purchased these properties failed to adduce any convincing evidence that they made any reasonable enquiry to ascertain that the property was being sold for necessity or for benefit of the estate. On their behalf Purshottam Das (D.W. 2) and Chandi Prasad Rao (D.W. 4) were examined. Purshottam Das (D.W. 2) stated that he purchased the property knowing that it was debutter. He does not state that he made any enquiry about necessity or benefit of the idol. His statement that he purchased it bona fide for consideration is quite insufficient to hold that he is a bona fide purchaser and made reasonable enquiries to ascertain necessity and benefit. Chandi Prasad Rao (D. W. 4) purchased the property after institution of the suit. His statement also does not show that he entered into the transaction after making bona fide enquiries for necessity of the sale. Their admissions in cross-examination indicate that they hurriedly purchased the property in suit without taking any reasonable care to make enquiry and entered into the transaction not in good faith.

39. Learned Civil Judge, therefore, rightly held that the alienations by Bhagauti Prasad in favour of defendants second set were not made for legal necessity or benefit of the estate and in view of this the alienations made by Bhagauti Prasad could be held invalid and ineffective.

40. The next point argued by the learned counsel for the appellants is that the

alienations in dispute were at the most valid for lifetime of the transferor.

41. Learned counsel for the appellants in support of the above argument relied upon Sri Iswar Radha Kanta Jew Thakur and Others Vs. Gopinath Das and Others, . It was held in this case that the mortgage effected by the Shebait without legal necessity and not for the benefit of the deity is not void and the mortgagor acquires some interest in the mortgaged property, that is, the interest of the Shebait which ensures only during the incumbency of the Shebait. It was further held that the Shebait may alienate by way of lease, mortgage or sale the debutter property even without legal necessity and not for the benefit of the deity but in such a case the purchaser would not acquire title in the debutter property beyond the period during which the Shebait continues in office. In our opinion this argument is of no help to the appellants. The reason is that by the compromise dt. 31-1-61 Bhagauti Prasad was made managing trustee for a period of 5 years and this period expired in the year 1966. Thus the sale deeds executed by Bhagauti Prasad as managing trustee became void after the expiry of his tenure of Shebaitship in the year 1966. It may be mentioned that the point if the sale of debutter property by Shebait in absence of legal necessity or benefit of the estate is void altogether or is good and effective so long as the Shebait continues to be the manager has been discussed in B. K. Mukherjea's "The Hindu Law of Religious and Charitable Trusts" 1979 Edition 292 as given below :

"The sale of a Debutter property by a Shebait is prima facie an act amounting to a breach of trust, and to make it binding on the endowment, imperative necessity must be proved, or else it must be established that the purchaser did make enquiries and satisfy himself in good faith that such necessity existed. When there is no justifying necessity for a sale of Debutter property, is the transaction void altogether and the purchaser acquires no interest in the purchased property. The answer is the same as has been given already in the case of alienation by way of permanent lease. The transfer is valid during the lifetime or the (enure of office of the alienating manager, and the possession of the alienee becomes adverse to the endowment when the alienating Shebait ceases to be manager by reason of death, retirement or otherwise."

42. Similarly in H.S. Gour's Hindu Code 1980 Edition IV 346 the legal position has been explained in the following words :

"An alienation of such property, made by its manager for a purpose other than legal necessity or benefit is not valid beyond the term of the manager's office, or his death, nor can such alienation, if consented to by his successor, inure beyond his own term."

43. Thus the two sale deeds, even if voidable at the time of execution, became void and ineffective after the expiry of the tenure of managing Shebaitship of Bhagauti Prasad. appellant.

44. It was lastly argued by the learned counsel for the appellants that the two sale deeds were not invalid for want of sanction of the Commissioner u/s 7 of the

U. P. Hindu Public Religious Institutions (Prevention of Dissipation of Properties) Act, 1962 (hereinafter referred to as the Act) because the temple and the deity in favour of which the properties were dedicated are at Jhunjhunu in Rajasthan State and the Uttar Pradesh State Legislature was not competent to legislate in respect of the properties of such temple. We do not find any force in this argument. There is no doubt that the Uttar Pradesh State Legislature can legislate about the properties situate within its territorial limits. There is no provision in the Act indicating that it would not apply to the properties lying inside the State but of the temple situated outside the territorial limits of the States. The preamble of the Act on the other hand shows that it has been enacted to prevent dissipation and of regulating transfer of the properties of Hindu public religious institutions in Uttar Pradesh. The temple of which properties are involved in the present case is undoubtedly a Hindu public religious institution and the properties alienated are situated in Uttar Pradesh. Thus the Act applies to the properties in dispute.

45. Section 7 of the Act lays down that no valid transfer of a property of Hindu public religious institution can be made without prior written sanction of the Commissioner. In the present case no such permission was obtained. Thus the sale deeds are invalid on this ground also. Learned Civil Judge has discussed this point at length and his finding that the sale deeds are not valid and effective for want of such a previous approval cannot therefore, be assailed. Thus the last argument of appellant's counsel also falls to the ground.

46. No other point was pressed by the learned counsel for the appellants.

47. In our opinion the appeals have no force. They are, therefore, dismissed with costs to the contesting respondents 1 and 2 and the decree appealed from is confirmed.