

(2011) 07 PAT CK 0158
In the Patna High Court
Case No : First Appeal No. 515 of 1975

Brijnandan Mahaseth

APPELLANT

Vs

Thakur Ramchandra Ji Maharaj, Sri Janki Maharani Deity and
Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : (2011) 07 PAT CK 0158

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The Defendant No. 2 has filed this appeal against the judgment and decree dated 17th July 1975 passed by Sri Dawarika Nath Singh, the learned Subordinate Judge, Sitamarhi in Title Suit No. 81 of 1966 / 56 of 1971 decreeing the Plaintiffs-Respondents' suit.

2. The Plaintiff-Respondent Nos. 1 to 3 filed aforesaid title suit for declaration of title with respect to the suit property mentioned in Schedule 1 and for declaration that Plaintiff No. 2 is the Shebait and also for setting aside the sale deeds dated 6.8.1963, 12.2.1964, 13.8.1964 and 14.7.1965 executed by Ratan Dai to Defendant Nos. 2 to 9 and by Radhakrishna Agarwal, Defendant No. 11 in favour of Defendant No. 1 and also sale deeds executed by Ram Pukar Rai in favour of Ram Autar Rout, the Defendant No. 10. The Plaintiff also prayed for recovery of possession and mesne profit from 17.12.1965 till recovery of possession.

3. Plaintiff No. 1 is the deity. The Plaintiff No. 2 is the Sibata of Plaintiff No. 1 appointed by Bihar Religious Trust Board, the Plaintiff No. 3. The Plaintiffs filed the aforesaid suit alleging that one Gugal Ram resident of Sri Laxmi Bazar, Sitamarhi installed Plaintiff No. 1 in his residential house and he himself was performing Pooja. He had no issue. Therefore, he along with his wife Ratan Dai dedicated his entire properties detailed in Schedule 1 of the plaint to the Plaintiff No. 1 for the purpose of Pooja, Ragbhog and Samaiya and also for the purpose of service to Sadhu, Fakir and feeding and helping the poor. A deed of

Samarpannama was executed by them on 11.6.1944 and the Plaintiff No. 1 was put in possession of the entire properties. By the said Samarpannama dated 11.6.1944 Ext.7 a public trust was created by Gugal Ram and his wife Dulhin Ratan Dai with respect to their entire properties. Five persons were named as trustees to manage the properties after death of Gugal Ram. The trustees were not given any right to transfer the dedicated properties. Gugal Ram acted as Shebait till his death in 1953 and thereafter Ratan Dai acted as Shebait, after her death Radhakrishna Agarwal began to work as Shebait. Thereafter the Plaintiff No. 3 i.e. the Board issued notice to the trustees but they replied that they are not in possession of the property. Thereafter the Board ascertaining the wish of the public and appointed the Plaintiff No. 2 as Shebait.

4. The further case is that just before her death dulhin Ratan Dai executed some sale deeds in the name of Defendant Nos. 2 to 9 and/or their predecessor in interest. Radhakrishna Agarwal son of one of the trustees Lakhichand temporarily assumed charge as trustee and executed sale deed in favour of Defendant No. 1. It is stated that dulhin Ratan Dai and Radhakrishna Agarwal had no right, title or interest and as such they had no right to execute sale deed with respect to the trust properties. Therefore, the sale deeds executed by them are illegal, void and in-operative. Because of some trouble arose between the parties a proceeding u/s 145 Code of Criminal Procedure was initiated wherein the Defendants claimed that the dedication was not public trust but private trust and the deities were installed in residential houses for the purpose of personal worship. The possession of the Defendants was declared. Therefore, the Plaintiffs filed suit claiming aforesaid reliefs .

5. The Defendant No. 2 filed separate written statement. Besides taking various ornamental and legal pleas mainly the case of the Defendant No. 2 is that Bihar Religious Trust Board had no concern with the trust properties as Gugal Ram and his wife had crated private trust. The Plaintiff No. 3 had no right to appoint Plaintiff No. 2 as Shebait. The Public had no right to access to worship. Although samarpannama was executed on 11.6.1944 but it was never acted upon and the deities never came in possession of the properties. The executants themselves continued in possession in their own rights and utilized the usufruct. Gugal Ram never acted as Shebait. After his death in 1953 his wife Ratan Dai succeeded to his properties and became the absolute owner thereof. After execution of Samarpannama Ratan Dai continued in possession for more than 12 years and as such she acquired title by adverse possession. The further defence is that the deed of dedication was not absolute because substantial income of the property was used for expenses of Gugal Ram and his wife. Due to paucity of income from agricultural land Ratan Dai required money for Ragbhog and repair of the temple so she sold some of the properties to Defendant No. 2. The Defendant No. 11 also transferred some properties to Defendant No. 1 and again the Defendant No. 1 transferred back to Defendant No. 11. The Plaintiffs have wrongly included plot Nos. 627, 403, 402, 380 and 423 which belonged to Defendant Nos. 2 to 4 and new survey plot No. 425 exclusively belong to Chuman Raut. Plot No. 627

was included in Samarpannama but the Plaintiffs have wrongly included those plots.

6. The Defendant No. 12 also filed contesting written statement. More or less he has also taken same plea as that of Defendant No. 2. The Defendant No. 11 Radhakrishna Agarwal also filed contesting written statement taking the plea in the same line but he did not contest the suit. Defendant No. 1 also filed written statement alleging the same facts.

7. On the basis of the aforesaid pleadings of the parties, the learned court below framed the following issues.

1. Is the suit as framed maintainable ?
2. Have the Plaintiffs any cause of action or right to sue ?
3. Whether the court fee paid is sufficient ?
4. Is the trust a private or public trust ?
5. Are the kewalas executed by Ratan Dai to Defendant No. 2 to 9 and kewala executed by Radhakrishna Agrawal to Ram Saran Sah or the sale deed executed by Defendant No. 10 is legal, void, inoperative and not binding against the Plaintiffs ?
6. Whether Radhakrishna Agrawal had right to transfer seabaitship in favour of Defendant No. 12 Pandit Bishwanath Missir ?
7. Whether the Plaintiffs are entitled to get decree for declaration of title and recovery of possession along with mesne profits as prayed for ?
8. Whether the Plaintiffs are entitled to a decree for setting aside the sale deeds as prayed for ?

9. To what other relief or reliefs, if any, are the Plaintiffs entitled ?

8. After trial the learned court below while deciding issue No. 4 i.e. "is the trust a private or public trust" came to the conclusion that Gugal Ram and his wife Ratan Dai had created a public trust by virtue of the registered samarpannama dated 11.6.1944 Ext. 7 vide paragraph 31. while deciding issue No. 5 the learned court below found that the sale deed executed by Mostt. Ratan Dai to Defendant No. 2 to 9 as well as the sale deed executed by Defendant No. 11 to Defendant No. 1, the sale deed executed by Ram Pukar Rai to Defendant No. 10 are illegal without consideration and not binding on the Plaintiffs. The learned court below also found that the Defendants fails to prove adverse possession. Theretofore, on the basis of the above findings the learned court below held that the Plaintiffs are entitled for decree for declaration of title and recovery of possession and decreed the suit.

9. The learned Counsel Mr. Srivastava appearing on behalf of the Appellant submitted that the dedication was not absolute dedication and Gugal Ram and

Ratan Dai were the absolute owner till their life time. Defendants have adduced reliable evidences in support of the fact that the dedication was not absolute dedication. Moreover, the Appellant also pleaded and adduced evidences in support of the fact that Ratan Dai sold the properties for legal necessity and, therefore, learned court below has wrongly held that the executants of the sale deed had no right, title and interest to transfer the property. According to the learned Counsel from perusal of the Samarpannama i.e. Ext.7 it will clear that the substantial part of the income from the properties were to be spent for maintenance of the executant and only thereafter whatever was left was utilized for the purpose of Pooja ragbhog and samaiya. In such circumstances, it cannot be said that the dedication was complete dedicated but the learned court below has wrongly held that it was complete dedication. The deities were admittedly private deities installed in the residential house of Gugal Ram and it is also admitted fact that Gugal Ram and Ratan Dai were performing Pooja and offering Ragbhog and public had no right to enter and offer Pooja. Therefore, in fact it was a private trust. In such circumstances, the religious board had no authority to appoint the Plaintiff No. 2 as the Shebait of the deities since the substantial part of the income was utilized by the executants for themselves the trust was created by them as private trust and it was the executants who were the beneficiary. So by no stretch of imagination it cannot be said that it was a public trust. The learned court below has therefore, wrongly, come to the conclusion that it is a public trust.

10. the learned Counsel for the Appellant further submitted that even though the Samarpannama was executed in the year 1944 but the said Samarpannama remained a dead letter and it was never acted upon and the executants i.e. Gugal Ram and his wife Ratan Dai continued in possession of the properties as owner thereof till their death and on their death the Defendant No. 11 succeeded to the properties. The Appellant adduced overwhelming evidence to prove this fact but the learned court below wrongly disbelieved the case of the Appellant and decreed the Plaintiffs' suit. During the life time of the Ratan Dai the religious board never interfered and as soon as she died the religious board interfered and appointed the Plaintiff No. 2 as Shebait. The learned Counsel further submitted that even if it is held that it was a public trust then also the public trust will be from the date of death of Ratan Dai and not prior to that because prior to her death she was the beneficiary and prior to that both of them were beneficiary. In any case, it cannot be said that on 11.6.1944 public trust was created. The learned court below has wrongly appreciated and misconstrued the evidence and also misconstrued Ext.7. therefore, the judgment and decree are liable to be set aside.

11. Mr. Ganpati Trivedi, the learned Counsel appearing on behalf of the Plaintiffs-Respondents submitted that there is no illegality in the impugned judgment and decree. Oral evidences adduced by the parties are not relevant for the purpose of construction of document i.e. registered deed of Samarpannama i.e. Ext.7. The learned court below has rightly considered the contents of Samarpannama and

has given categorical finding that it was a public trust. Whether it is a public trust or a private trust will depend on the date of the execution of the Samarpannama and it will not change on the date of death of either of the executant. It is wrong to say that substantial part of the income of the trust properties were utilized by the executant. While construing a document the intention of the executant is most relevant to be considered and in this case since the executants had no issue and for their spiritual benefit they executed and registered a Samarpannama on 11.6.1944 whereby their entire properties was dedicated to the Plaintiff No. 1. Since the date of execution the trust properties becoming the Debottar properties and there is specific clause in the Samarpannama itself that no one including the executants had the right to transfer the Debottar properties. In the Samarpannama the outsiders were the trustees and it is mentioned that after death of Gugal Ram trustees will help Ratan Dai in managing the trust properties and it is also mentioned that on the death or otherwise of a trustee it will be filled up by the other trustee and if the trustee will not work according to the Samarpannama the Sub Divisional Officer, Sitamarhi shall appoint a trustee. During the life time of Ratan Dai she was entitled to maintenance only and, therefore, it is wrong to say that substantial part was being utilized by her. The learned Counsel further submitted that it is wrong to say that the Samarpannama was never acted upon because after 1944 Plaintiff No. 1 was mutated everywhere and in the recent survey also the name of deities is mutated and moreover the sale deed executed by Ratan Dai in favour of Defendant No. 2 and others clearly speaks that she sold the properties as Shebait of Plaintiff No. 1. The Appellant derives his title through Ratan Dai, the Shebait of Plaintiff No. 1 and, therefore, now he cannot say that she was absolute owner and not Shebait and that she executed the sale deed as owner of the property. The learned court below considering all these aspects of the matter decreed the Plaintiffs' suit. So far the inclusion of some of the properties outside Samarpannama in the suit is concerned, it may be excluded. On these grounds, the learned Counsel submitted that this first appeal may be dismissed with costs.

12. Mr. Maitin, the learned senior counsel appearing on behalf of the Defendant No. 14 submitted in support of the Appellants' case and further said that the learned court below has wrongly found that it is a public trust. He has rightly been appointed by the Defendant No. 11 as Shebait and is in possession of the private trust property and is performing Pooja, Ragbhog of the private deities and, therefore, he prayed that the appeal be allowed and the finding recorded by the court below against this Respondent No. 14 be set aside. A cross objection has been filed to this effect by him.

13. In view of the above contentions of the parties, the most important point that arises for consideration in this appeal is, whether the trust created by Gugal Ram and Ratan Devi by executing registered deed of Samarpannama dated 11.6.1944 Ext.7 is private trust or public trust and whether it was acted upon or remained a dead letter and whether it was partial dedication or complete dedication.

14. For deciding this point it will be relevant hear first to go through the registered deed of Samarpannama Ext.7 to ascertain the intention of the executants. The executants are Gugal Ram and Ratan Dai in favour of Plaintiff No. 1. The entire properties including their residential house have been given to the Plaintiff No. 1. It is mentioned that they have no issue and for the purpose of performance of Ragbhog and Samaiya of Plaintiff No. 1 and for service to Sadhu, fakir and fooding to poors after their death is necessary. It is their intention to arrange for the same out of the income of the properties and the remaining income after Ragbhog and Samaiya shall be utilized for service to Sadhu, Fakir and fooding to poors.

In clause No. I it is mentioned that none including the executants will have the right to transfer the trust properties and if it is transferred against the condition of Samarpannama the same will be void. Clause II says that after death of executant No. 1 the executant No. 2 will be Shebait and she will utilized the usufruct as directed in the Smarpannama in favour of Takhur Ji.

Clause No. III says that after death of executant No. 1 Babu Lakhim Chandra, Mahabir Babu of Sitamarhi, Babu Kishori Lal Sahu of Pargana 63, Babu Deep Chand and Basant Lal of Muzaffarpur shall act as trustees and will assess the Shebait in view of the fact that she was lady. Executant No. 2 will be entitled for maintenance and Tirthyatra etc. to be given by the trustees. The remaining income shall be utilized for Plaintiff No. 1. Clause No. IV says that after death of executant anyone may be appointed as Shebait to manage the properties. Clause No. V says that if any trustee dies after death of executant the vacancy shall be filled up by the trustee by appointing any person. Out of the income of the trust properties the income shall be utilized for Ragbhog, Samaiya etc. and thereafter 1/4th of the remaining income shall be kept for the purpose of repairing etc. of the property of Thakur Ji and the remaining 3/4th shall be utilized in constructing a new building for Sadhu, Fakir and poors and for their fooding and residence. If any trustee will not act according to the Samarpannama the residence of Sitamarhi shall have the right to file an application before S.D.O. who will appoint trustee.

Clause No. VIII clearly says that none of the trustee shall have the right to transfer the trust property. From a bare reading of the Samarpannama Ext.7 it is clear that the intention of the executant was to dedicate the properties in the name of deities. Since they had no issue they executed this document in favour of the deities and the trustees were appointed for management of the properties. In the Samarpannama it is clearly mentioned that how the income from the trust properties will be utilized. After performing Ragbhog and Samaiya whatever income will be left the same shall be utilized for maintenance/repairing of the properties of Thakur Ji to the extent of 1/4th out of remaining income the remaining 3/4th will utilized in constructing building.

15. The learned Counsel for the Appellant submitted that since it is mentioned in the Samarpannama that Ratan Dai will be maintained and will be given amount

for Tirthyatra etc. and, therefore, it was not a complete dedication. The learned Counsel relied upon 1980 Calcutta 255. From perusal of the said decision it appears that the High Court of Calcutta found that the evidence in the case also disclosed that only a portion of the income of the property was spent for the sewa pooja of the deity. It further appears that in that case there was no document creating the dedication in favour of the deities. According to the Defendants' case the dedication was made in favour of Sri Sri Sant Goswami Thakur who was a living being and not a deity. Under the Hindu law it is not possible to make any dedication in favour of human being. Therefore, the decision cited by the learned Counsel for the Appellant is not applicable in this case.

16. The learned Counsel next relied upon in *Ram Rattan (Dead) by Lrs. Vs. Bajrang Lal and Others*, From perusal of the said decision it appears that in the said case the issue involved in the present case is not at all involved. In the said case it is held that Shebait is an administrator of the property attached to the temple of which he is Shebait. It is also held that the office of Shebait is hereditary unless contrary provision is made in the deed of endowment. Therefore, this decision is not helpful to the Appellant.

17. The learned Counsel next relied upon *S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others*, on the question of partial dedication. The Hon'ble Supreme Court in that case held at paragraph 32 that "whether or not a dedication is complete is a question of fact to be determined in each case on the terms of the relevant document if the dedication was made under a document. In such a case it is always a matter of ascertaining the true intention of the parties. Such an intention must be gathered on a fair and reasonable construction of the document considered as a whole. If the income of the property is substantially intended to be used for the purpose of a charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If on the other hand, for the maintenance of charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purpose it would be difficult to accept the theory of complete dedication".

18. At paragraph 31 of the said judgment the Hon'ble Apex Court found that the evidence on record in that case was not satisfactory enough to reach a firm conclusion as to the nature of the dedication. The Apex Court also found that the Plaintiffs have failed to adduce acceptable evidence as regards the income of the properties set apart for charity. From perusal of paragraph 29 of the said judgment it appears that in that case by Ext.A-2 Ramalingam Pillai had made a complete dedication of the properties for charities and the management of the charities had been left to V. Rm. Shanmugam Pillai and after him to his successors. In view of the above facts of that case, it appears that in that case the dedication was in favour of charity but the management was given to a

particular person and after him to his successor and moreover there was no evidence adduced by the Plaintiff in that case regarding what was the income from the properties and what portion of the same were utilized for Puja etc. and what income was utilized by the Pujari. In the present case also the Defendants Appellants have failed to adduce any reliable evidence or acceptable evidence to show that this amount was the income out of the Devottar properties and this much amount was being spent by either Gugal Ram or his wife Ratan Dai and only in small portion of the same was being utilized for Ragbhog, Sewa Pooja, Samaiya etc. On the contrary, from perusal of the Samarpannama as stated above the intention of the executant is clear and it is specifically mentioned as to how the income of the properties will be utilized. It is only stated that Ratan Dai will have the right to maintenance. In my opinion, therefore, this decision instead of helping the Appellant directly helping the Plaintiffs-Respondents.

19. The learned Counsel next relied upon Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, According to the learned Counsel the public had no right to enter and, therefore, it cannot be termed as public trust. From perusal of the judgment it appears that in that case the Hon? ble Supreme Court was considering regarding the Tirupati temple. It appears that in that case also one Ganpati Maharaj had installed the god Sri Venkatesh Balaji. On considering the evidences both the courts below concurrently found that public trust was created in that case. Therefore, the appeal was dismissed by the Apex Court. In the present case, it appears from Ext.7 that the properties have been dedicated in the name of Plaintiff No. 1. The right to appoint a trustee was given to S.D.O. The residence of the locality was given the right to move S.D.O. for appointment of trustee. The right to transfer by even the executants and the trustees were prohibited clearly.

20. In Deoki Nandan Vs. Murlidhar, and othersthe Apex Court has held that the word "family? in its popular sense means children and when the settler recites that he has no children that is an indication that the dedication is not for the benefit of the family but for the public vide paragraph 11. In the present case, in the Samarpannama it is clearly mentioned that the executants have no issue. Therefore there is no question of dedicating the properties to the family and they remained the beneficiary or that the family members remained as beneficiary.

21. The learned Counsel for the Appellant next relied upon Sarat Chandra Bhattacharjee Vs. Rabindra Nath Ghosh and Others, A Division Bench of the Calcutta High Court held that the fact that the image was originally the family idol of Dinbandhu or that the Seba Puja was carried on by him and his successor do not really militate against the conclusion of a public trust. This decision is in favour of Respondent-Plaintiff.

22. It is well settled principle of law that whether there has been any complete dedication or not must be ascertained with reference to circumstances of each individual case.

23. In *Sree Sree Ishwar Sridhar Jew Vs. Sushila Bala Dasi and Others*, the apex Court has held that a dedication may be either absolute or partial. The property may be given out and out to the idol or it may be subjected to a charge in favour of the idol. The question whether the idol itself shall be considered the true beneficiary subject to charge in favour of the heirs or specified relatives of the testators for their upkeep or that on the other hand, these heirs shall be considered the true beneficiaries of the properties, subject to a charge for the upkeep, worship and expenses of the idol, is a question which can only be settled by a conspectus of the entire provisions of the will. Therefore, merely because the Defendant Appellant pleaded that the dedication was not complete and that the executant remained beneficiary is not sufficient. As stated above the matter has to be considered in each case considering the relevant document and in cases where there is unambiguous document the same has to be ascertained from the other evidences and circumstances. We have quoted above the condition embodied in the Ext.7 and only because it is mentioned that the Shebait Ratan Dai will have right to maintenance it cannot be said that it was partial dedication.

24. In *The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das*, is relied upon by the learned Counsel for the Appellant on this point. From perusal of the said decision it appears that in that case the Apex Court at paragraph 9 found the facts that Gaibi Ramdasji who constructed temple was succeeded to Mahanthship by his chela and thereafter the succession to the Mahanthship had been from Guru to Chela. The appointment of a successor has been throughout from Guru to Chela. The public had at no time any voice in the selection or nomination. The properties have always been recorded in the names of the Mahants and not in the name of the deities and the properties were acquired by the Mahanth from time to time in their own names. In the present case, at our hand the facts is just otherwise. The properties are standing in the name of deity. The succession of Shebaitship is neither from Guru to Chela nor from Ratan Dai to her legal heirs and in view of the conditions mentioned in the Ext.7 the public had the right to appoint trustees.

25. In *Ramkishore Lal Vs. Kamal Narain*, the Hon^{ble} Apex Court regarding consideration and ascertainment of intention of the parties has given a golden rule which may be reproduced hereinbelow:

The golden rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has to a trained conveyancer a clear and definite

significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of conveyancing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens ? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See Sahebzada Mohammad Kamgar Shah Vs. Jagdish Chandra Deo Dhabal Deo and Others, . It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible; it is only when this is not possible, e.g., where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void.

26. In the said decision the Apex Court has held that the course of conduct of the parties is of no relevance for the construction of a document which is itself unambiguous. As stated above in the present case Ext.7 appears to be unambiguous and, therefore, the intention of the parties can very well be gathered from the same. The course of conduct and/or evidences adduced by the Appellants are not relevant for consideration of the document Ext.7.

27. In this case, it will not be out of place to mention here that the witnesses examined on behalf of the Plaintiffs as well as on behalf of the Defendants have admitted the fact that the house in which the Plaintiff No. 1 is installed is in the shape of temple. In this regard the evidence of PW 1, PW 5 to 7, PW 9, PW 10 is clear. Likewise the existence of Gumbad i.e. the shape of temple is admitted by DW 15, DW 13 and DW 86. The learned Counsel for the Appellant gave much emphasis that the Plaintiff was private idol and was installed in the house and, therefore, it cannot be said that it was a public trust. No doubt, as stated above, the idol was installed in the house but the shape of the house appears to be in the shape of temple and the executor of Ext.7 never intended that after their death any of their relation will reside in the said house.

28. It further appears from the documentary evidences that till the execution of Ext.7 the properties were standing in the name of Gugal Ram and since the Samarpannama Ext.7 was executed on 11.6.1944 the name of the Plaintiff No. 1 is mutated with respect to the properties dedicated by the executors. Ext. 15 to 15-B are the certified copies of Recent Survey Khatian which clearly proves that the properties stand in the name of Plaintiff No. 1 wherein it is mentioned that Ratan Dai is a Shebait. The Plaintiffs have also proved Ext. 1 to 1-Z/9 to prove

that prior to 1944 the holding was standing in the name of Gugal Ram and after 1944 name of Plaintiff No. 1 was mutated. Ext.16 is certified copy of the municipal khasra which indicated that the name of Plaintiff No. 1 was mutated under the Shebaitship of Gugal Ram on the house in question. Ext.20 is the certified copy of registered "D? it also indicates that the name of Plaintiff No. 1 has been mutated under the Shebaitship of Gugal Ram and thereafter under the Shebaitship of Ratan Dai. Ext.10 shows that the chaukidari receipt is in the name Plaintiff No. 1 whereas prior to 1944 the chaukidari receipts Ext.10(a) to 10(n) are in the name of Gugal Ram. Ext.12 series are the bound volumes of counter foil rent receipts. From perusal of which it appears that prior to 1345 fasli the rent receipts were granted by Gugal Ram whereas after 1355 fasli the same were granted in the name of Plaintiff No. 1 under the Shebaitship of Gugal Ram. The Jamabandi which are Ext.14 series also stands in the name of Plaintiff No. 1. Over and above these documentary evidences, the sale deeds executed by Ratan Dai in favour of the Defendants i.e. Ext.2 to 2(J) shows that Ratan Dai executed these sale deeds as Shebait of Plaintiff No. 1 and Defendant No. 11 also executed sale deed as Shebait of Plaintiff No. 1.

29. In view of the above evidences, it is clear that the Samarpannama was acted upon. The Defendants are deriving title through the sale deeds executed by Shebait, therefore, now they cannot turn round and say that the Samarpannama was not acted upon particularly, when their sale deeds itself shows that they got the sale deed from Shebait of Plaintiff No. 1. In such circumstances the Defendants cannot be allowed to aprobate and reprobate. They got benefit through Ext.2 series and as stated above they claimed their title through Ext.2 series, therefore, they are estopped from challenging the contents of the sale deed by saying that wrongly it has been mentioned that Ratan Dai was Shebait and in fact she was the owner.

30. From perusal of the oral evidences PW 1 to 8, PW 12 to 15, 17, 19 and various other witnesses including the Plaintiff No. 1 who was examined as PW 104, all have stated that general public used to have Darshan and were performing pooja in the temple without any interference from anyone. All these witnesses are not only of the same village but are also of different villages. This fact is further admitted by DW 13, DW14 examined on behalf of the Defendants who have stated that they usually take part in Arti in the temple and there was no hindrances caused by anyone. Further PW 2 as well as the Defendant No. 12 who is Respondent No. 14 claimed to have been worshiping the idol and are residing in the house of the testator. Admittedly they are strangers to the family. Had it been the fact that the idol is family idol then no stranger could have been allowed to reside in the house. It may be mentioned here that since the properties were dedicated to the idol, the property became the Debottar property and likewise the house became temple. As stated above the public had free excess for performing pujapath without any hindrances. There are evidences of the Plaintiffs? witnesses to the effect that regular uttasav and samaiya were performed in the temple and this fact is admitted by the Defendants? witnesses

such as the DW 6, DW 14, DW 22 and DW 26. Further the Plaintiffs' witnesses have stated that regularly the Sadhus were entertained in the temple and this fact is also admitted by the Defendants' witnesses DW 6 and others.

31. The learned Counsel for the Appellant submitted that there was legal necessity i.e. for repairing of the temple and performing Ragbhog the Shebait had sold the property. So far this submission is concerned it may be mentioned here that we have already seen the condition in Ext.7. The Executors themselves also divested their title from the property dedicated to the idol and there is clear restriction that nobody including the executors are entitled to transfer the property. Further Section 44 of the Religious Trust Act clearly bars transfer. So far legal necessity is concerned it may be mentioned here that by endowment Ext.7, 22 bigha of land was dedicated. The witnesses PW 42, 43, 45, 46, 48, 49 and many others including the Plaintiff No. 2 PW 104 have stated that these 22 bigha land are fertile lands. Further this fact is supported by Samarpannama deed and the Khatiyani Ext.15 to 15 (b). These witnesses have further stated that there was sufficient income from endowed properties for the performance of Ragbhog and expenses of the deities. It further appears that DW 16 and 17 have stated that the temple is in same condition since last 15 years and there was no necessity to repair and no repairing work has been done. Further the important fact may be noticed here that after death of Gugal Ram, his widow Ratan Dai became the Shebait and she continued as such till his life time i.e. for more than 14, 15 years. During this long period there was no necessity for selling the properties. However, at the fag end of her life i.e. just one year from her death legal necessity arose according to the Appellant and she sold the properties by executing series of sale deeds. In view of the evidences of the Plaintiffs' witnesses to the effect that there was sufficient income from endowed property which was sufficient to meet the expenses for the idol and the effect that no repairing work has been done since 15 years, the submission of the learned Counsel for the Appellant is not acceptable. It is clear that there was no legal necessity. Only mentioning in the deed is not sufficient. It has to be proved by evidence.

32. In view of the above discussion of the facts and circumstances coupled with evidences available on record, I find that by Ext.7 a public trust was created by the executors and the said Samarpannama was acted upon. I further find that the said dedication is complete dedication and not partial. Since it is a public trust the Shebait had no right, title and interest to execute transfer deed in favour of the Defendants without legal necessity. Likewise, Defendant No. 11 was also not entitled to transfer the public trust property. I therefore, find that the transfer are illegal without title and title was never conveyed to the transferees.

33. The learned Counsel for the Appellant submitted that some of the properties which are not included in the Samarpannama have been included in the schedule of the plaint. The learned Counsel further submitted that the said properties were not the properties of executors but because of mistake in survey the same has

been included in the name of Plaintiff No. 1. Subsequently, the correction has been made therefore, the said properties may be excluded. According to the learned Counsel plot No. 626 corresponding to survey plot No. 348, plot No. 119 of Khata No. 1 Ext. 2 (C), plot No. 471 of khata No. B1, plot No. 147/355 of khata No. 41, Ext.2 (q) and some other plots which were not included in the Samarpannama have wrongly been included in the plaint and have been decreed. So far this question is concerned if that be the position the said properties which are not included in the Samarpannama cannot be said to be the property of Plaintiff No. 1. Therefore, those properties are liable to be excluded.

34. In view of the above findings, I find no reason to interfere with the finding of the learned court below. Therefore, the finding of the learned court below is hereby confirmed. The properties which are not the properties of the executors and not mentioned in the Samarpannama Ext.7 are excluded.

35. In the result, I find no merit in this first appeal and accordingly, this first appeal as well as cross objection is dismissed with cost of Rs. 10,000/- to be realized by the Plaintiffs from the Appellant.