

(1986) 08 PAT CK 0011

In the Patna High Court

Case No : Appeal from Original Decree No. 803 of 1971

Lakshmi Prasad Sharma and Others

APPELLANT

Vs

Bihar State Board of Religious Trusts

RESPONDENT

Date of Decision : 28-08-1986

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 28, 43

Citation : (1988) PLJR 176

Hon'ble Judges : Uday Sinha, J;U.C. Sharma, J;B.P. Jha, J

Bench : Full Bench

Advocate : Angad Ojha and Brajesh Chandra Verma, for the Appellant; Daman Kant Jha (G.A.) and Uday Shankar Sharma (J.C. to G.A.), for the Respondent

Judgement

Uday Sinha, J.—This is a plaintiff's first appeal against the judgment and decree passed in Title Suit No. 72 of 1967. The appeal had been originally heard by B.P. Jha and U.C. Sharma, JJ. The two Hon'ble Judges having differed in their view, it has been placed before me for final disposal. The file was accordingly placed before me on 30.11.1981. On that date the case was adjourned for two weeks. Somehow the matter was not listed on the expiry of two weeks, but was listed on 7.1.1982. It was again adjourned for being placed on 25.1.1982. Thereafter, the case disappeared from the horizon to be listed again on 15.7.1985. The case was adjourned repeatedly on the prayer of Mr. J.P. Shukla. The hearing of the case was chequered sometimes on account of non-availability of the Bench and sometimes on account of prayer for adjournment by Mr. Shukla. The hearing was ultimately concluded on 12.3.1986. In the district of Begusarai in village Jaimangalpur within Cheria Bariarpur Police Station there is a temple of Jaimangala Devi. This temple is believed to be several centuries old. This is on a high ground with a moat around it. Possibly, this temple was inside a fort because the area is known as Jaimangal Garh . In 1967 the Bihar State Board of Religious Trust (hereinafter called "the Board") treating the temple and its properties as public religious trust took action in terms of section 28 of the Bihar Hindu Religious Trust Act (hereinafter called "the Act"). Notice was issued in

terms thereof to the plaintiffs. In reply thereto the plaintiffs refuted the stand of the Board that the temple was a public religious trust and the lauds were trust properties. The matter was agitated in a proceeding u/s 43 of the Act. After hearing the parties, the Authority u/s 43 of the Act declared, that the properties in question were trust properties, by order dated 12.6.1987. They were held to be trust properties on the footing that the trust was a public trust; thus rejecting the stand of the plaintiffs that the trust was a private trust and, therefore, the properties were not trust properties. The order of the Authority became the cause of action for institution of the present suit which was filed on 9.11.1967. The plaintiffs have prayed for a declaration that the suit lands were private properties of the plaintiffs and that they had a right to use them for their maintenance and necessities. The plaintiffs also prayed for a declaration that the order of the Authority u/s 43 of the Act was erroneous, unscientific and of no effect so far as the plaintiffs were concerned. The plaintiffs also prayed that the Board be restrained from asking for accounts from them pursuant to the judgment of Shri S.K. Pandey, the Authority under the Act.

2. The case of the plaintiffs was that the lands mentioned in Schedule to the plaint, in time immemorial, were given to the ancestors of the plaintiffs. On an area measuring 6 Kathas 4 dhurs (later recorded in Khata No. 1, Khesara No. 7 in survey khatian). The ancestors of the plaintiffs erected a temple of Jaimanagala Devi. The temple in course of time became famous. The structure of the temple was improved from time to time by the ancestors of the plaintiffs. The land, originally a waste land and full of jungle, continued to be personal properties of the ancestors of the plaintiffs and their usufruct was utilised by their ancestors. The plaintiffs have also averred that the British Government had granted payment of a sum of Rs. 40/- per annum for Puja and upkeep of the temple and for praying for the prosperity of the British Raj in India till eternity. The lands were rent free. The suit lands measured "8" Bighas 5 Kathas 2 Dhurs. The temple proper stands only on 6 Kathas 4 Dhurs. The rest are either culturable or waste.

In short the case; of the plaintiffs is that the temple is a private trust and the properties are private properties of the plaintiffs. Although it has not been clearly spelt out in the plaint, learned counsel for the appellants Mr. Angad Ojha took up the stand that there is no connection between the properties and the temple. Thus even if the temple was public trust, in the absence of any nexus between the temple and the properties, the properties were not properties of the Religious Trust.

3. The suit was contested by the lone defendant the Bihar State Board of Religious Trust (hereinafter called "the Board"). The case of the defendant as spelt out in the written statement is that the temple was not constructed by the plaintiffs or their ancestors nor was the deity installed by them nor any improvement in the structure was effected by them from their own funds. The lands which are the subject matter of the suit were never given or granted to the

plaintiffs or their ancestors. In short, the temple was part of a public religious trust and the lands in suit appertained to that trust. The defendant stoutly refuted the assertions of the plaintiffs in paragraph 4 wherein it was asserted that the ancient rulers of the country gave a grant of Rs. 40/- per annum for the Puja and upkeep of the temple and the same was continued by the British Government and was being continued till the institution of the suit. According to the defendant, the sum of Rs. 40/- was being paid by the British Government for the purpose of performing Puja for the continuance of the British Raj over India till the Universe lasted. According to the defendant, the ancestors of the plaintiffs were mere Pandas. They were not Shebait or Mahanth of the deity and the Estate. There was no grant of the land to the plaintiffs much less free grant. According to the defendant, the temple of Jaimangala Devi was a public trust and the properties in suit are properties of the Hindu Public Religious Trusts.

4. According to the defendant, the temple is in existence from time immemorial, the deity is ancient and renowned and people from different parts of the country visited and still visit the temple for worship and Darshan. The temple was built by the public. For that reason no rent was charged for the lands. During survey operations the lands were recorded as temple and "Kaisre Hind Bahadur". In regard to the status of the plaintiffs, the stand of the defendant is that they were mere Pandas receiving worshippers and getting Puja performed by them. As they were Pandas, the lands were shown in the records of right in their possession because there was no Shebait and they were the persons present on the spot. The fruit, flower and funds were utilised for upkeep and Rag Bhog of the deity. The income from the Melas was utilised for offerings to the deity and for upkeep, Puja-Path and Rag Bhog of the temple. According to the defendant, the plaintiffs or their ancestors have never spent anything over the construction or maintenance of the temple or the buildings in its precincts. The stand of the Board is that the suit is barred by limitation, as it was instituted beyond the statutory period of three months from the passing of the order by the Authority u/s 43 of the Act.

5. Upon the above rival contentions, the following issues were framed:

- (1) Have the plaintiffs any cause of action for the suit?
- (2) Is the suit as framed maintainable?
- (3) Has the suit been properly valued and is the Court Fee on the plaint sufficient?
- (4) Is the suit barred by limitation?
- (5) Whether the temple of Shri Jaimangala Devi was constructed by the ancestors of the plaintiffs and whether it is a private temple of the plaintiffs or a public place of workshop?
- (6) Whether the disputed lands are the private properties of the plaintiffs or public trust properties?

(7) To what reliefs, if any are the plaintiffs entitled?

Issues 1, 2, 3 and 7 were merely ornamental or incidental. The real issues were issue Nos. 4, 5 and 6 which are quoted above.

6. The trial court found as follows:

(i) The plaintiffs were mere Pandas at the temple of Jaimangala Devi.

(ii) The properties in dispute were not independent of the temple.

(iii) The temple of Jaimangala Devi was not the private temple of the plaintiffs and that it was a public trust.

Upon these findings the learned Subordinate Judge dismissed the suit with costs. In regard to the suit being barred by limitation in term? of section 43(5) of the Act, the trial court held that although the order of the Authority was not without jurisdiction, yet by the force of section 78 thereof the suit had been filed within time.

7. At the outset I must observe that the Board has taken no interest in prosecuting this appeal before me. On several occasions the hearing of the appeal was adjourned on the prayer of Mr. J.P. Shukla that the Board would engage Senior Counsel. In the end, however the Board was represented by Mr. D.K. Jha, Government Advocate. After learned counsel for the appellants had argued for several days, learned Government Advocate stated that he had nothing to add to the findings and observations of U.C. Sharma, J. That is how argument on behalf of the respondent commenced and concluded in one sentence. I am thus, rather handicapped in the disposal of this appeal without proper assistance from the respondent.

8. The first question which need be considered in this appeal is whether the temple is public trust or a private trust. In this connection, the first step would be to consider whether the plaintiffs have title to the lands over which the temple stands. It stands on an area of 6 Kathas roughly. The plaintiffs have asserted in paragraph I of the plaint that the lands in dispute were given to their ancestors in time immemorial. No document worth the name has, however, been produced to evidence any grant of the lands in favour of the ancestors of the plaintiffs. The plaintiffs have certainly filed some documents wherein possession has been taken note of, but those can only be treated as documents of possession and not of title. That is way I have stated that the plaintiffs have not produced any document of title-evidencing any grant in favour of their ancestors. It is thus obvious that the plaintiffs have no title deed in respect of the land over which the temple is situated.

9. In paragraph 2 of the plaint it has been stated that improvement in the structures of the temple was made by the ancestors of the plaintiffs from time to time. No documentary evidence worth the name has been produced indicating that the ancestors of the plaintiffs ever constructed or effected improvement in

the building of the temple. Nor is there any oral evidence to that effect except the Ipse Dixit of the plaintiffs. This is the state of documents I am, therefore, unable to hold that the ancestors of the plaintiffs had constructed this temple.

10. The plaintiffs have examined several witnesses in support of their case. The substance of their evidence is that any person going to the temple has to take the permission of the plaintiffs. The plaintiffs are mere Pandas, not Shebait or Mahanth, On the other hand, the substance of the oral evidence led on behalf of the defendant is that any body can perform Puja in the temple and no permission is required for that purpose. The evidence led by the parties shows that--

- (i) The plaintiffs are Bhumihar by caste. (See evidence of P.W.6 at paragraph 2).
- (ii) The plaintiffs are Pandas-not Shebait or Mahanth.
- (iii) Sacrifice of goats is performed in the temple
- (iv) People at large make offerings before the deity.
- (v) Tonsure ceremony is performed in the temple.
- (vi) In the temple besides the idol of Bhagwati, there are idols of Vishnu Narain, Jagdam Bhagwan and Mahadeo Ji.
- (vii) No one knows when the temple was constructed. Parts of the temple have been constructed by outsiders. The verandah was got constructed by Kharag Babu.
- (viii) The Government pays Rs. 40/- per annum as compensation for upkeep and maintenance of the temple.

The above circumstances show that people at large visit the temple without any let or hindrance. The plaintiff's oral evidence that no one can enter the temple without permission of the plaintiffs is untenable. The evidence of defendant in this behalf is more credible. The plaintiffs have no right to exclude outsiders from worshipping in the temple. It is true that the mere fact that the outsiders worship in the temple does not necessarily lead to the inference that a temple is a public religious trust, but if there is nothing to show that there is any right to exclude anyone from entering the temple, the inference must follow that it is a public trust. No doubt the plaintiffs adduced oral evidence to show that no body can enter the temple without the permission of the plaintiffs. The evidence of the plaintiffs in this behalf does not inspire confidence. My reasons for this conclusion are that outsiders have been taking part in the repairs of the temple. P.W.6 deposed in paragraph 4 that the walls of Jaimangala temple were repaired by Government. I have already noticed above that Kharag Babu got the verandah constructed. If the temple was a private trust for the worship of family idol, the public would not have got repairs carried out. Charhauwa would not have been offered. People would not have flocked to the temple in large number on every Tuesday and Saturday. P.W.11, the plaintiff, has not stated that the expenses of Rag Bhog and upkeep of the temple are carried on by him from his private funds.

In fact, P.W.7 Lakhan Poddar has deposed that the Charhawa of the temple is utilised for functioning of the temple. Thus the Puja is performed by a Pujari. The upkeep of the temple is effected only by the offerings of the people at large. The public has been taking part in the construction or repairing of the temple. The plaintiffs have not taken any part in the construction. Apart from the said statement of P.W.11, there is no evidence whatsoever to show that the temple was constructed by the ancestors of the plaintiffs. I have great difficulty in accepting the claim of the plaintiffs that the temple was got constructed by the ancestors of the plaintiffs. The temple being a mile away from the residence of the plaintiffs, it cannot be a family idol. If it were a private trust for worship of family idol, no Government would have made a grant for its upkeep. The totality of circumstances show unmistakably that the temple is a public trust. Even assuming for the sake of arguments that the temple was constructed by the forbears of the plaintiffs, there is unimpeachable evidence to show that it was never treated as private trust for the worship of family idol. It appears to be open to public as of right. It is thus, in my concluded opinion, a public trust. The evidence shows that the temple is on high ground. There is a moat around it. In ancient times the area was full of jungle. The name Jaimangala Garh suggests that there was a fort in ancient times. The temple thus may have been part of a fort. It could not, therefore, be a private trust for worship of a family idol. It is not the plaintiffs' case that they were Rajas of any estate. This circumstance also reinforces my conclusion recorded above.

11. I shall now consider the claim of the plaintiffs to the suit lands. The claim of the plaintiffs in this behalf is to be found in paragraph I of the plaint wherein it has been stated that the lands in village Jaimangalpur measuring 181 Bighas and odd were given in time immemorial to the ancestors of the plaintiffs. The temple of Jaimangala Devi stands on a part of these lands. It is therefore, not a far cry to assume that the temple and the lands are inextricably interlinked. I have already held that the claim of the plaintiffs to the land over which the temple stands is a tall claim. The plaintiffs have no special right. They are mere Pandas, i.e. agents who bring worshippers and help in worshipping a deity. The case of the plaintiffs in regard to the lands is that they were given in time immemorial to their ancestors. This is rather too tall a claim. At the same time, it is absolutely vague. It does not spell out whether the grant was made in 18th Century or 8th Century A.D. or be 8th Century B.C. If such a tall claim were to be accepted by Court of Law, any body could claim any land on the assertion that it was gifted to his ancestors by the Sultan or Raja in the hoary past. That sort of claim does not need any serious consideration in any Court of Law. Neither it has been said who made the grant nor has it been said to whom was the grant made or what was the occasion for the grant. At this point I would only like to repeat what I have said earlier that the plaintiffs are Bhumi-hars (as admitted by the plaintiffs' witnesses and not Brahmins. The title "Jha" is a misnomer.).

12. I must now consider the documents on which the plaintiffs have relied in support of their claim of title over the lands. Reliance has been placed by the

plaintiffs On some documents to show that the plaintiffs have title to the lands in question. They are the following:

13. The oldest document is Ext. 3 in which it has been recited that the rent of the land of mouza Jaimangala Garh Jaimangalpur Asthan had been attached. Ranjit Mahto, a Gumasta was informed or ordered that he should refrain from putting interference. The order was, that the land should be released and it should be put in the possession of the Pandas. The difficulty in paying any value on this document is firstly it is not known who wrote this document. Secondly, it does not show who was the person passing the order. Thirdly, it is difficult to say whether the person who passed the order had any authority to pass such an order. Whether it had been ordered by a lawfully constituted authority or it was the order of a mere brigand. Fourthly, even if the whole document is accepted as valid and genuine, it only shows that the lards should be released and put in possession of the Pandas as usual. It does not show that Deoki Panda was the person in possession and was entitled to possession. Fifthly, the document recites that the Darwar had come to know about the attachment through one Deoki Panda. It does not show that Deoki Panda had any interest in the land. The information about the attachment should be given to the Darwar/Sultan by the person in possession or by any body else and last but not the least there is little evidence to show the connection between Deoki Panda and the plaintiffs. It is true that the plaintiffs have averred that they are descendants of Deoki Panda. No documentary evidence has been produced before the court to show that the plaintiffs are descendants of Deoki panda. It is true that things not denied need not be proved, but the Religious Trust Board could have no material to know about ancestry of the plaintiffs. This was a matter within special knowledge of the plaintiffs. A court would, therefore, expect some documentary evidence to be adduced by the plaintiffs to show that they are the descendants of Deoki. In the absence of such document, it will be difficult to accept their claim. If a court were to go merely upon a claim by a party, it would be passing decree in favour of any person claiming that he was descendant of Harshvardhan or Chandragupta Maurya. Ext. 3, therefore, is of no avail to the plaintiffs.

14. The next document, in order of age, is a map (Ext. 10). This, it is claimed, is of the year 1846. A map can only indicate the physical features. It can be no evidence of title or possession. There is nothing on the record to indicate, who prepared this map and under what authority. Without knowing the authority under which this document was prepared, it is difficult to attach any value to it. Unless a court knows the system of land tenure and the system of preparation of maps, it is difficult to make any head or tail of the map. It can be of use only as a rough sketch map. No sanctity can be attached to a map without knowing the authority of the person preparing the map. Ext. 10, therefore, also can be of no help to the plaintiffs.

15. The next document relied upon by the plaintiffs is a Kanoongo's report dated 21.1.20 which is Ext. 2 in the case. Ext. 11(a) is a certified copy of an order

dated 2.1.20. On that date Brij Bala Prashad Kanoongo was asked to submit a report by 15.1.20. Brij Bala Prashad Kanoongo reported as follows:--

T. No. 2658

Miscellaneous case No. 15 of 1919-20 regarding resettlement of certain unassessed area in mouza Jaimangalagarh, Thana Begusarai.

I went to the spot and compared the map and the spot. Also looked into the old papers which the party (Baldeo Jha and others) has. I beg to report the facts as follows:--

During the Moghul Emperors one Ranjit Jha the ancestors of Baldeo Jha and others-held Jaimangalpore for worshipping Sree Jaimangala Devi.

The estate was attached during the E.I. Co.'s time by one Shaikh Mohamad Rafee but under the orders of the then Collector of Tirhut District-of which Monghyr was a part-----) it was again returned back to the worshippers of Sree Jaimangala Devi on 16th March 1797 corresponding to 4th Chait 1204 with a further grant of Rs. 40/-, annually, in perpetuity for worshipping Shree Jaimangala Devi and for paying Her for invoking blessings for the existence of the British" Raj in India--throughout till the existence of this Universe. The heirs of Ranjit Jha are still holding the land in question and are enjoying possession which were then granted.

The estate is now considered of 2 cadastral villages-Jaimangalpur and Jaimangalgarh. At Jaimangalpore the heirs of Ranjit Jha still hold some share in it although the other proprietors of Jaimangalpore have alienated portion of it to which they were legally not entitled.

Jaimangalgarh is a high land similar to a fort, with temple of Sree Jaimangala Devi over it and Jungle around with water outsider it but surrounded by a broken wall and again fenced by a water forming into a river all around the wall.

Jaimangalgarh now forms an entire village within Thana Begusarai and holding No. 189 of the jurisdiction list and measuring 134.76 Acres. It is entirely in possession of the worshippers of Sree Jaimangala Devi who are heirs of Ranjit Jha. In the proprietary records of Rights. I find an entry to the effect that the worshippers have entire possession of this and are free from every payment (i.e. Belagan). It is a rent free land granted to them by the Government under a Sanad.

Submitted.

Sd. Brij Bala Prasad,

Kanoongo. 21.1.20.

16. The report appears to be an inspired document. The Kanoongo has mentioned in his report that he had looked into old papers. He has not mentioned what papers were there in possession of Baldeo Jha, the plaintiff. The

only papers produced in this Court prior to 1920 are entry in cadastral Survey Khatian of 1902, a map (Ext. 10) and a Parwana (Ext. 3) of 1202 Fs. which is equivalent to 10.2.1795. The Khatians (Exts. 12 and 13), I shall consider later, but Exts. 3 and 10 could not show in any manner the title or possession of Baldeo Jha or his ancestors. If these documents were the basis of the report of the Kanoongo, his conclusion was ill-founded. From what documents the Kanoongo Birij Bala Prasad inferred that ancestors of Baldeo Jha held Jaimangalpur during Mughal emperors, no evidence whatsoever has been adduced. No such document has been produced. The inference is inescapable that there was no such document or else the plaintiffs could have produced it in Court. Baldeo Jha who produced papers before the Kanoongo was alive even in 1970 to give evidence in the suit. There was no excuse for Baldeo Jha, therefore, for not producing any other documents showing that he was a descendant of Deokinandan Jha or had any Sanad from Mughal emperors. Further, the Kanoongo has reported that the plaintiffs were proprietors of Jaimangalpur. Ext. 12 seems to support it, but when did they acquire this proprietary interest. After the permanent settlement the acquisition of an estate could have taken place only by a Sanad of the East India Company or the Government. None whatsoever has been produced. Undoubtedly there is a Khewat (Ext. 12). The proprietor is shown as Kaisar Hind Bahadur. In the remarks column it is mentioned that the Garb was in rent free possession of Canotey Lal Jha, Jagdip Jha and Kuldip Jha. This certainly goes to show that the Jhas were exercising some act of possession. But what is surprising is that in Ext. 13 which is Khatian the fathers of the plaintiffs are shown in possession of only mango trees.

If Nathuni Jha, Kuldip Jha etc. were in possession of the entire lands, it is difficult to appreciate why their possession was recorded only in regard to trees. The only inference is that, being jungle, the Government did not bother about it and the Pandas or the persons associated with the temple being in the vicinity were exploiting the fruits and flowers for the temple and the deity. The only sensible reconciliation between Exts. 12 and 13, to my mind, is that the Pandas, namely, the fathers of the plaintiffs were in possession of the temple (Garh Haja) for which no rent was being paid. A rather side issue crops up how was the tenancy rent free? Surely after the permanent settlement there must have been some order of the State releasing the deity and the Pandas from paying rent. No such order has been produced. Exts. 12 and 13, therefore, do not indicate that the plaintiffs were in possession of 181 Bighas and odd lands.

17. The report (Ext. 11/a), if it is of any value really goes against the case of the plaintiffs. It has been recited therein that the estate had been granted in perpetuity by Collector, Tirhut District. The case of immemorial grant since Moghal days thus evaporates in this air. The grant had been made by Collector, Tirhut District. Where is the document evidencing the grant or any order of Collector, Tirhut District showing that a lease in perpetuity had been granted to Ranjit Jha. What is there to show that the plaintiffs are descendants of Ranjit Jha. None whatsoever. The order or lease evidencing the grant by Collector,

Tirhut District has been withheld from the Court. Inference adverse to the plaintiffs must, therefore, be drawn. The Kanoongo purports to have seen some Sanads and records. Where are those Sanads and records? They must have been in possession of the plaintiffs. They not having been produced in Court, I have to find that they have been withheld. Inference adverse to the plaintiffs must, therefore, be drawn. Further there is no recital in the report that the plaintiffs or Chhotelal Jha, Nato Jha or Kuldip Jha were the descendants of Ranjit Jha. The report of Brij Bala Prashad, Kanoongo (Ext. 11/a) is only a report. It is not the conclusive order of any judicial authority. The report thus is not an evidence of possession nor is it an evidence of title. It refers to some title deed executed in favour of Ranjit Jha. That has not been produced. I am unable to appreciate the significance of Ext. 11(a) so far as the claim of the plaintiffs of title over the suit lands is concerned. Ext. 11(a) also, therefore, is of no significance and must be rejected.

18. Ext. 11 is certified copy of two orders of E.H. Johnston, District Magistrate, Monghyr. The parties to this motion were Moso Sahai and others versus Kuldip Jha and others. Kuldip Jha is father of plaintiffs 3 and 4. The order dated 1.9.21 appears to be an order in revision. It appears that there was a motion against an order passed by the S.D.O. u/s 144 Cr.P.C. The order does not recite why the District Magistrate did not consider it appropriate to interfere. He may not have thought it apt to interfere because sixty days life of the proceeding was close to 1-9-21 when the District Magistrate passed the order. There may be innumerable reasons for not interfering with an order u/s 144 Cr.P.C. Further It is well known that an order u/s 144 Cr.P.C. is no evidence of possession and none at all of title. Ext. 11 can, therefore, be of no help to the plaintiffs. In any case, it being sot Inter parties, it is inadmissible in evidence. Learned counsel for the appellants vehemently submitted that whatever may be the reason, the suggestion of the appellants had been upheld in a proceeding u/s 144 Cr.P.C. and the attempt to nullify the effect of the order in revision before the District Magistrate failed. It was submitted that although an order u/s 144 is no evidence of possession, yet it is indicative of the fact that the appellants were on the land, This submission is fallacious. The only inference from the order of Mr. Johnston, District Magistrate which can be drawn is that breach of the peace was averted by an order u/s 144 Cr.P.C. The initiation of proceeding u/s 144 implies that there were persons claiming possession over the land. That would be obvious from the fact that the lands were recorded in the Cadastral Entry II as jungle and ditch. No body could, therefore, have had settled possession, but claimants thereto may have been several. Whatever order was passed by the Magistrate after hearing the proceeding u/s 144 Cr.P.C, it was not upset by the Collector possibly because that was a matter eminently fit for decision by a Civil Court and not by a Criminal Court. Even if it is assumed for the time being that the order of the District Magistrate in revision amounts to upholding the possession of the appellants and even if it is assumed in law that the parties whose possession was declared will be presumed to have continued in possession, the big question still remains

whether it was possession of the appellants or it was possession of the temple and the deity. To this aspect, I shall advert later, but for the present, Ext. 11(a) cannot be read as indicating title in the plaintiffs.

19. Admittedly and obviously the lands were jungle and ditch at the time of Cadastral Survey in 1902. In the case of jungle the settled law is that possession follows title whosoever be entitled to the lands and jungle will be deemed to be in possession thereof (See Raja Shiva Prasad Singh Vs. Hira Singh and Others,). Thus Kaiser Hind Bahadur being the proprietor, it being Khas Mahal, State must be deemed to be in possession of the lands. The interest of the plaintiffs was nothing but that of interlopers appropriating fruits and flowers about which the State not too much bothered.

20. Ext. 11(b) is a certified copy of orders dated 20.2.20 and 1.3.1920 passed by Deputy Collector Ramu Lall Verma. The order sheet is undoubtedly a public document and is admissible in evidence. It appears that in 1919-20 one Pratap Narayan Choudhry of Srimatpora had applied for settlement of Jaimangala Garh, situated in thana Begusarai for an area of 134.76 acres which was equivalent to 181B. 5K. 2 dhurs. Settlement was claimed by him on the averment that it was in no body's possession and was lying unsettled. Ramu Lall Verma recommended to the Collector that it could not be settled with anyone, as it was being enjoyed rent free. The Collector agreed with the recommendation of Ramu Lall Verma. There were, however, some aspects which are very illuminating. In this report it has been stated as follows:

The (Nathuni Jha and others) also and that they enjoy an annual pension of Rs. 40/- in addition from Government for worshipping Jaimangala Devi and for the upkeep of the temple there.

Later in the same report it has been mentioned as follows:

In the Survey and Settlement of 1902 it was recorded as property of Kaiser Hind but it was shown in the possession of objectors as rent free (Vide Khewat Flag B, map Flag C). "The estate" was once previously attached by one Mohammed Rafi on behalf of Government but it was released in March 1797 by Collector (Vide flag II) for the worship of Jaimangala Devi and for invoking Her blessings for the continuance of British Raj in India till the existence of universe.

The above show clearly that the whole estate was for the worship of Jaimangala Devi. It will not be an unfair inference that the whole estate belonged to the deity, otherwise the purpose of the grant would have been frustrated. If it had been a grant to Nathuni Jha and others, or any of his forbears, they could have as well ignored the deity and enjoyed the usufructs to themselves. This shows that the land and the deity are interlinked. It would be idle to suggest that there was no connection between 181 Bighas and odd lands and the temple. The temple stood on Part of the 181 Bighas. The whole lands were thus one bundle. The lands and the temple cannot be separated.

21. I have discussed earlier the value of the order u/s 144 Cr.P.C. deducible from the order of Mr. Johnston. The fallacy of the inference to be deduced from that order of Mr. Johnston (Ext. 11/a) will be obvious from an observation in the report of Ramu Lall Verma (See Ext. 11/b). Therein it has been stated as follows:

I have made further enquiry and have gone through the papers on the subject and I agree with the Kanungo that the estate is held rent free by the objectors. The estate consists of a high piece of land, similar to a Fort and contains the temple of Jaimangala Devi in it with jungle all round and surrounded by water. The area is all unculturable and it is in the midst of jhil (laka).

In the Revenue survey of 1846 it was recorded in possession of Ranjit Jha, an ancestor of the objector (vide map flag A) and the area was all noted as unfit for cultivation.

22. Ext. 11(b) thus clearly shows that till 1920 there was no question of the plaintiffs being in possession of the lands now said to be 181 Bighas and odd. The whole area around the temple was jungle and was surrounded by water. It was a vast lake. I shall have occasion to consider the implication of the existence of jungle and lake later when I consider the value and relevancy of Ext. 12.

23. Let us now consider how far Ext. 13 advances the case of the plaintiffs. Ext. 13 shows that there were innumerable trees on the land. Mela was being held in honour of Deviji, i.e. Jaimangala Devi every Tuesday and Friday. The trees were in possession of Chhotey Lall Jha and others. This survey entry shows that only trees were in possession of Chhotey Lall Jha and others. By implication it will mean that Chhotey Lall Jha and his family members were not possessed of lands, but they had interest only in the fruits and flowers. It appears that there were large number of mango trees. These were in possession of Chhotey Lall Jha. The entry in Ext. 13 really gives a severe jolt to the plaintiffs case and almost amounts to negation of the right claimed by them.

24. Ext. 12 is a certified copy of the Khewat. The Mahal was described as "Kaiser Hind" and the name of the Malik or Proprietor was also "Kaiser Hind". In the remarks column it is mentioned:

The entry in the remarks column does show that the fathers of the plaintiffs were recorded as being in possession of the entire Mahal. The plaintiffs have failed to prove title but they are entitled to succeed on the basis of possessory title if they show that since long the plaintiffs have been in possession of the lands. There is presumption of correctness of the survey entry. It may, therefore, be presumed unless rebutted that the fathers of the plaintiffs were in possession of the lands in suit. I must observe here that Exts. 12 and 13 create some confusion. Ext. 13 clearly shows that the plaintiffs had interest only in trees and fruits. If the plaintiffs were in possession of the entire land, there was no necessity of recording that the plaintiffs were in possession of trees and fruits. Be that as it may, there are two entries of the two varieties. We have, therefore, got to consider how they can be read together. In my view, the presumption of

correctness attaching to Ext. 12 has been rebutted in this case by the plaintiffs' own document (Ext. 11/b), extract from which I have quoted earlier Ext. 11/b shows that the entire lands were uncultivated. They were full of lake and forests. Therefore, there can be no question of plaintiffs being in possession of the suit land. If they were full of water, no act of possession could be exercised. Ext. 12 does not speak about fishing or allied activities. Therefore, the plaintiffs who were Pandas of the deity were merely utilising the fruits and flowers in the jungle. The entry in Ext. 12 in regard to Chhotey Lall Jha, Nathuni Jha and Kuldip Jha being in possession of the lands was obviously wrong. It appears that the whole area was full of jungle and water. The State did not bother about what was being recorded. The plaintiffs being at the spot got their names recorded. In my view, the presumption attaching to the correctness to the entry in the record of rights has been fully rebutted by Ext. 11/b. The plaintiffs were not in possession of the suit lands at all.

25. Assuming that the entry in the record of rights in Exts. 12 and 13 in regard to possession of the plaintiffs is correct, why do the entries always referred to Jaimangala Devi? The plaintiffs claim these lands as their own "De Hors" the deity. There would be no occasion to refer to the plaintiffs as Panda of Jaimangala Devi. Their description as Pandas" obviously shows that the deity and the lands cannot be delinked. The relationship between the panda and the deity is closely interwoven.

26. In my concluded opinion, the plaintiffs never had any title to the lands. They were never in possession of the lands in their own rights. The possession was that of the deity. The plaintiffs who were merely charged with the duty of attending on pilgrims dealt with the suit lands on behalf of the deity. That is why the lands were rent free. The fact that Mela is held twice a week on the lands in the vicinity of the temple, the fact that the public at large have free access to the temple, the fact that the plaintiffs had never taken any part in the construction of the temple and the fact that outsiders have been getting construction done in the temple clearly show that the whole trust is a Public Trust. The Deity, i.e. Jaimangala Devi was not a private family idol of the plaintiffs. That being so, the trust being a Public trust come within the purview of the Bihar Hindu Religious Trust Act.

27. It is possible that the lands may be having ownership entirely apart from the deity, I have discussed earlier and have found that the deity and the lands are closely interwoven. The plaintiffs are mere Pandas for attracting pilgrims and attending upon them. Pandas have nothing to do with worship of the idol. I am confirmed in this view by the fact that the plaintiffs are Bhumihars and not Brahmins. There is no legal bar to Bhumihars being Pujaris, but as things go in this State rarely do such state of affairs exist. The plaintiffs could have been Shebaites, but that is not their claim nor is it borne out by evidence. They are merely Pandas and no more. The lands, therefore, cannot be delinked from the deity. They are therefore, lands belonging to the public trust.

28. Learned Counsel for the appellants with some vehemence relied upon the case of AIR 1940 7 (Privy Council) wherein it was held that where the grant is in favour of a person, the Mahanth or Shebait it cannot be treated as grant to the idol or endowment to a temple or a gift made by way of trust for public religious purpose. I regret the Privy Council decision can be of no help to the appellants. That was a case where there was a deed in favour of the Shebait. The intention of the donor, therefore was explicit that the donation had been made to a person and not to a deity. It could not, thereafter, be treated as a trust for public religious purposes. If there had been a deed in the instant case in favour of the plaintiffs or their forbears, there could not have been any difficulty in accepting the lands were gift to individuals and not to a deity. But in the absence of a deed of gift, the Privy Council decision has no application to the present case. The decisions of the Supreme Court in *The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das*, is also of no avail to the appellants. In that case their Lordships laid down that merely because members of the Hindus public resorted to temple for worship and Darshan without any obstruction and that Mela was held on the grounds of the temple was not enough to show that it was public trust. There can be no quarrel with the decision of the Supreme Court, but it was given on the special facts of that case. The present case stands on a different footing. I have spelt out the salient aspects earlier. Those are my reasons for holding that the temple is a public trust and the lands are of the deity. In this case there is no evidence worth the name except the Ipso Dicit of Baldeo Jha (P.W.11) that the plaintiffs or their ancestors were treating the temple and the properties in suit as private properties.

29. I have held earlier that the evidence adduced on behalf of the plaintiffs that pilgrims went to worship with the permission of the Panda is not acceptable. P.W.11 Baldeo Jha deposed that the plaintiffs first offered Puja and while they were offering Pujas, outsiders cannot enter the temple. This circumstance, is not inconsistent with a public temple. Rules can certainly be framed or a pattern chalked out by those incharge of the public temple to ensure good order and decent worship and to prevent over-crowding at the temple, but subject to those systems, the right of entrance into a public temple for the purpose of worship is a free right. Thus the fact that the Pandas used to worship before others does not militate against the temple being a public trust. In this regard I am supported by the view of Dr. Bijon Kumar Mukherjee in his treatise *Hindu Law of Religious and Charitable Trusts*, Third Edition. This view also finds support in the decision of the Supreme Court in *Nar Hari Sastri and Others Vs. Shri Badrinath Temple Committee*, and *Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others*, . For all These reasons, I am of the view that the temple is a public trust. The plaintiffs were mere Pandas. Their names were recorded in the record of rights only in the capacity of Pandas, which would mean possession of the deity.

30. My concluded finding on questions of fact are as follows:

(i) The Trust is a Public Trust.

(ii) The deity is not a family idol of the plaintiffs.

(iii) The temple of Jaimangala Devi and the lands in dispute are interlinked. The entry in regard to possession of the Pandas is possession of the deity.

(iv) Public at large are entitled to visit the temple and offer prayers as of right. The oral evidence in this behalf adduced on behalf of the defendant is superior to that of the plaintiffs.

(v) The plaintiffs' claim that no outsider can worship in the temple without the permission of the plaintiffs has no substance. The oral evidence on behalf of the plaintiffs in this behalf is not worthy of reliance.

(vi) There is nothing to show that the ancestors of the plaintiffs had established/constructed this temple.

(vii) The plaintiffs have no evidence of title.

(viii) The temple being very ancient running down through centuries, there is a presumption of its being a Public Trust.

31. There is yet another question which was hotly contested before the Division Bench. The question has now become academic in the view that I have taken in regard to the temple being a public trust. The question was whether the suit is barred by limitation. The plaintiffs filed the present suit because the decision of the Authority appointed u/s 43 of the "Bihar Hindu Religious Trusts Act" went against them. Section 43(1) so far as is relevant reads as follows:

48. Decision of disputes as to whether any immovable property is a trust property.--(1) All disputes as to whether any immovable property or is not a trust property shall be inquired into either on its own motion or on application, by authority appointed in this behalf by the State Government by notification in the Official Gazette.

XX XX XX

Sub-sections (5) and (6) read as follows:

(5) The Board or any other person, aggrieved by the order of such authority, may within ninety days of such order, institute a suit in a Court of competent jurisdiction to have the order set aside or modified.

(6) Subject to the final result of any suit instituted under sub-section (5), the order of such authority shall be final and conclusive, and the Court trying the suit shall have no power to stay the enforcement of the order pending the disposal of the suit.

The conjoint effect of sub-sections (5) and (6) is that if any person is aggrieved by the order of the Authority, he may institute a suit within ninety days of the

order, but subject to the result of such a suit, the order of the Authority would be final and conclusive. The stand of the plaintiffs was that the Authority had no jurisdiction to decide whether the trust was a public trust or a private trust. Reliance was placed upon a Division Bench decision of this Court in Bihar State Board of Religious Trusts Vs. Raj Ratan Gir and Others, . The Division Bench held that an order passed by Authority appointed u/s 43 declaring that a Math, its temple and the deity and the properties attached thereto were in the nature of public religious trust property was without jurisdiction. The Division Bench decision is binding upon me. I have, however, some reservations about the correctness of this decision, but since it is a Division Bench decision, I am bound to follow it. My reservation stems from the situation that an Authority is entitled to enquire whether any immovable property is or is not a trust property. The jurisdiction to enquire whether any immovable property is trust property or not can be considered only if the property is of a public trust. It will have no jurisdiction to enquire if it is a private trust. The decision in regard to the nature of trust thus is a necessary corollary of the power to enquire into a property being trust property. The Authority must necessarily be considered to have that jurisdiction. If this were not the situation, any person may claim a property of a public trust and oust the jurisdiction of the Authority by asserting that the trust was not a public trust. This could not have been the intention of any enactment. I am, however bound by the Division Bench decision. I do not consider it apt for referring the matter to a larger Bench for decision I, therefore, hold in agreement with the view of the trial Court and B.P. Jha, J. that the suit was not barred by limitation in terms of section 43 of the Act. The sum total is that the trust is a Public trust. The plaintiffs have no case to agitate. In agreement with the views of U.C. Sharma, J., I am of the view that the appeal lacks substance and must be dismissed with costs.