

**(2006) 03 MP CK 0103**  
**In the Madhya Pradesh High Court**  
**Case No : Second Appeal No. 550 of 2005**

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| Mahant Shri Trilokdas Guru | Vs | APPELLANT  |
| Sita Bai and others        |    | RESPONDENT |

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**Date of Decision :** 29-03-2006

**Acts Referred:**

Madhya Pradesh Land Revenue Code, 1959 — Section 158

**Citation :** (2006) 3 MPLJ 87

**Hon'ble Judges :** S.K. Gangele, J

**Bench :** Single Bench

**Advocate :** T.N. Singh, with Ku. H. Gupta, for the Appellant; D.S. Kale, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.K. Gangele, J.

The defendant No. 4 has filed this appeal against the judgment and decree passed in Civil Appeal No. 20-A/2004 reversing the judgment and decree passed in Civil Suit No. 61-A/03. The appeal was admitted for hearing vide order dated 3-2-2006 on the following substantial question of law :

Whether lower appellate Court was right in holding that plaintiffs became Bhumiswami of the suit land on the strength of Ex.P-17 or u/s 158 of the M.P. Land Revenue Code, 1959?

The plaintiffs/respondents No. 1 and 2 filed a suit for declaration and permanent injunction. They pleaded that their forefathers were working in the temple named as Shri Ram Mandir situated at Mandow and they used to clean the temple and performed other duties at the temple. A land of 5 bighas hereinafter called as suit land was granted to them as lease by Ramnarayan Dasji Mahant through Bhudan Yag Samiti. The lease was granted to the father of the plaintiff No. 1 since, then the plaintiffs have been in possession over the suit land. The defendants No. 1, 2 and 3 issued a notification with regard to auction of the land

and the name of the defendant No. 1 has been recorded as the owner of the land.

The defendants No. 1, 2 and 3 who are the officers of the Government denied the claim of the plaintiffs. They pleaded that the suit land was recorded in the name of Shri Ram Mandir, the idol of the temple is the owner of the land. Hence, Ram Narayan Dasji Mahant had no right to grant a lease of the land and subsequently the Collector became the Manager of the temple. So, the land has been recorded in the name of the Collector as Manager. The defendant No. 4 Mahant filed a separate written statement and stated that the land has been of the ownership of the temple and Goshala and it has been registered as such in the revenue records. Hence, a lease cannot be granted of the aforesaid land in favour of the plaintiffs. Subsequently, a trust has been constituted with regard to the property of the temple and because the trust has not been made a party in the suit. Hence, the suit is not maintainable.

The trial Court after appreciation of evidence has held that Mahant Shri Ram Narayan Dasji was the Pujari of the temple and the land was recorded in the name of the temple. Hence, he had no right to grant lease or consent for grant of lease in favour of the plaintiffs. Consequently, the plaintiffs did not get any ownership right on the basis of the lease which was void-ab-initio and dismissed the suit.

The First Appellate Court after re-appreciation of evidence has held that the land was of the ownership of the then Mahant Ram Narayan Dasji and with his consent it was granted to the plaintiffs by the Bhudan Yag Samiti. Hence, the plaintiffs cannot be evicted from the land because they got the possession of the land on the basis of a valid lease and the First Appellate Court granted a decree of permanent injunction in favour of the plaintiffs.

Learned Senior Counsel for the appellant has submitted that the First Appellate Court has committed an error of law by holding that plaintiffs have got limited ownership right or legal possession on the basis of a valid lease deed. They are encroachers over the land which is of the ownership of the temple and trust. Hence, no decree of permanent injunction can be passed in their favour. Contrary to this, the learned counsel for the respondents No. 1 and 2 has submitted that the plaintiffs/respondents have got the possession of the suit land in pursuance to the lease deed and they have been in possession over the suit land for the last 50 years. Hence, their possession cannot be disturbed, except by the due process of law. He further submitted that the plaintiffs got the ownership right on the basis of the lease. In support of his contentions learned counsel relied on the judgment of this Court reported in Afjal Mohd. Khan (since deceased) through his Lrs. vs. State of M.P. reported in 2004 (5) MPLJ 1 : 2004 (1) MPJR 71. and judgment of the Hon'ble Supreme Court reported in Rome Gowda (D) by Lrs. vs. M. Varadappa Naidu (D) by Lrs. reported in 2004 (1) MPJR 366 (SC).

From the facts stated above, it is clear that the plaintiffs have claimed their right of possession and ownership on the basis of the lease Ex.P-17. The aforesaid

lease has been issued by the Bhudan Yag Samiti. In the column of the name of the donor in the lease deed, it is mentioned as "Goshala Ramji Mandir through Mahant Shri Ram Narayan Dasji". The plaintiffs also filed the Khasra entries of the suit land as Ex.P-5 to P-16. In Ex.P-5 and P-6 the name of the owner of the land has been recorded as Goshala Shri Ram Mandir Manager, Jila Adhyaksh. These Khasras are of the year of 1999-2000 and khasra entries from Ex.P-7 to P-16 are of various dates in the aforesaid entries the name of the owner has been recorded as Goshala Ram Mandir and Shri Ram Narayan Dasji Mahant. From the bare reading of the aforesaid documents it is clear that the name of the owner has been recorded as Goshala Shri Ram Mandir and the name of the Mahant Shri RamNarayan Dasji has been recorded because he was the Pujari of the temple. From the aforesaid documents it cannot be said that Mahant Shri Ram Narayan Dasji was the owner of the land. Hence, certainly he had no right to consent or grant a Patta in favour of the plaintiffs Ex.P-17 because a Mahant or a priest of a temple has no ownership right over the property of the temple.

The Hon"ble Supreme Court in Shri Kalanka Devi Sansthan Vs. The Maharashtra Revenue Tribunal, Nagpur and Others, has held as under with regard to rights of a Pujari of a temple :

Now it is well known that when property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. As pointed out in Mukherjea's Hindu Law of Religious and Charitable Trust at Pages 142-143 this view is in accordance with the Hindu ideas and has been uniformly accepted in a long series of judicial decisions. The idol is capable of holding property in the same way as a natural person. "It has a juridical status with the power of suing and being sued. Its interest are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir.

Further in Para 5 of the judgment the Hon"ble Court held as under :

The distinction between a manager of a shebait of an idol and a trustee where a trust has been created is well recognised. The properties of the trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager.

The Hon"ble Supreme Court further in Thayarammal (Dead) by Lr. Vs. Kanakammal and Others, has held as under with regard to the property dedicated to deity or religious institution :

The contents of the stone inscription clearly indicate that the owner has dedicated the property for use as "Dharamchatra" meaning a resting place for the travellers and pilgrims visiting the Thyagaraja Temple. Such a dedication in the strict legal sense is neither a "gift" as understood in the Transfer of Property

Act which requires an acceptance by the donee of the property donated nor is it a "trust". The Indian Trusts Act as clear by its preamble and contents is applicable only to private trusts and not to public trusts. A dedication by a Hindu for religious or charitable purposes is neither a "gift" nor a "trust" in the strict legal sense. (See B. K. Mukherjea on Hindu Law of Religious and Charitable Trusts, 5th Edn. by A. C. Sen. pp. 102-03)

A religious endowment does not create title in respect of the property dedicated in anybody's favour. A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no administrator or manager becomes *res nullius* which the learned author in the book (*supra*) explains as property belonging to nobody. Such a property dedicated for general public use is itself raised to the category of a juristic person. Learned author at p.35 of his commentary explains how such a property vests in the property itself as a juristic person. In *Manohar Ganesh Tambekar vs. Lakhmiram Govindram* it is held that : (ILR p.263)

The Hindu law, like the Roman law and those derived from it recognises, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations." (emphasis supplied ) The religious institutions like mutts and other establishments obviously answer to the description of foundations in Roman law. The idea is the same, namely, when property is dedicated for a particular purpose, the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created. And so it has been held in *Krishna Singh vs. Mathura Ahir* that a mutt is under the Hindu law a juristic person in the same manner as a temple where an idol is installed.

In my opinion, the Lower Appellate Court has committed an error of law in holding that the plaintiffs got the right on the basis of the Patta Ex.P-17, the aforesaid lease was with regard to a land which was of the ownership of the temple. Hence, Pujari of the temple Ram Narayan Dasji had no right to grant a lease of the aforesaid land or consent for the lease, it was null and void, I answer the substantial question of law that plaintiffs have not got any right on the basis of lease Ex.P-17 or u/s 158 of the M.P. Land Revenue Code.

I found substance in the argument of the learned counsel for the respondents No. 1 and 2 that the respondents got the possession of the land by a lease. Hence, they cannot be evicted without any due process of law.

Consequently, the appeal of the appellant is hereby allowed. The judgment and decree passed by the first Appellate Court is hereby set aside and the judgment and decree passed by the trial Court is affirmed with the modification that the respondents No. 1 and 2 be not evicted from the possession of the land without due process of law. No order as to cost.