

**(2010) 01 DEL CK 0267**

**In the Delhi High Court**

**Case No :** Regular Second Appeal 3 of 2010

Moorti Shri Lakshmi Narain Ji Mandir and Another

APPELLANT

Vs

Smt. Sheela Devi and Others

RESPONDENT

**Date of Decision :** 12-01-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100

**Citation :** (2010) 01 DEL CK 0267

**Hon'ble Judges :** Aruna Suresh, J

**Bench :** Single Bench

**Advocate :** Anil Sharma, for the Appellant; Nemo, for the Respondent

**Final Decision :** Dismissed

## Judgement

Aruna Suresh, J.—Appellant filed a suit for mandatory injunction seeking directions against the Respondents to remove their belongings and material from the hall and courtyard on the First Floor and Piau on the Ground Floor in property bearing No. 4664-4669, Ward No. II in 21, Darya Ganj, Ansari Road, Delhi with further directions to deliver possession of the said property to the Appellants as the suit property belongs to Appellant No. 1 "Moorti of Shri Lakshmi Narainji", which is installed in a room on the first floor for a long period.

2. Pandit Manak Dutt and Pandit Kishan Dutt are sons of Pandit Gopal Dutt. Pandit Gopal Dutt had reconstructed/renovated the property about 40 years before the filing of the suit in 1980. After the death of Pandit Gopal Dutt, Manak Chand acted as Manager being one of the Shaibat of the temple and looked after the property till his death on 8.8.1961. After the death of Manak Chand, appellant No. 2 Pandit Narain Dutt, being his elder son has been acting as Manager and Shaibat of the temple and its property. Respondents No. 1 and 2 happen to be his sister and sister's husband.

3. As per the case of the appellant, he had permitted the Respondents in February, 1971 to use the hall on the first floor temporarily for 4-5 months for

sitting of their customers for discussion purposes as a special consideration, being sister. However, Respondents failed to vacate the premises and also started using the same and court-yard on the Ist floor and Piau on the ground floor as a factory for garments since for more than six months prior to the filing of the suit. Therefore, he filed the suit for permanent as well as mandatory injunction and possession against the Respondents. The suit of the appellant was dismissed by the trial court vide judgment and decree dated 24.12.1982. The Appellate Court upheld the findings of the trial court and dismissed the appeal.

4. This second appeal has been filed by the appellants invoking provisions of Section 100 of the Civil Procedure Code.

5. Mr. Anil Sharma, learned Counsel for the Appellant has submitted that by virtue of an Agreement executed inter se sons of Pandit Manak Chand on 30.05.1965, temple is being managed by Appellant No. 2 and the Respondents have no right, title or interest in the same. Other legal heirs of Manak Chand also have no right in the suit property of the temple. Therefore, Respondents being unauthorized occupants and were inducted as tenant by Brahm Dutt, one of the brothers of Appellant No. 2, are not entitled to occupy the same as tenants as Brahm Dutt had no right to let out the property to Respondents No. 1 and 2.

6. It is further argued that since Respondents claimed themselves to be in possession of property as tenants, they are not entitled to claim themselves co-Shaibat being family legal heirs of Manak Chand. He has submitted that therefore substantial questions of law are required to be formulated in this appeal as suggested by him in the appeal.

7. It is admitted by the appellant that this property belonged to Pandit Gopal Dutt. Manak Chand, his father and Manak Chand's brother Kishan Chand succeeded to Shaibat rights in the temple after the death of Gopal Dutt in equal shares. Manak Chand continued to manage the property as Co-Shaibat being the eldest son of Gopal Dutt. Manak Chand left behind five sons and five daughters, namely, Vishnu Dutt, Brahm Dutt, Ganesh Dutt, Mahesh Dutt, Narain Dutt, Smt. Rajwati, Shanti Devi, Vidya Devi, Devki Devi and Smt. Sheela Devi.

8. Admittedly, since Manak Chand did not appoint any successor, all his children succeeded to the property as co-Shaibat in equal share. An agreement was executed between Appellant No. 2 and other sons of Manak Chand. Relevant clause of this Agreement reads:

1. That if there is any debt till 02.02.1965 and any loan which the father of the parties has advanced the second party will be responsible for that. That the management of the property and of manak engineering and metal works and the management of the Mandir who is called in the name of Laxmi Narayan near masjid 21, Darya Ganj, New Delhi will be performed by the party No. 2. The second party will be responsible for any recovery and dues.

2. That no other person except the Party No. 2 shall be responsible for any type

of loan, if any person except the Party No. 2 performed any act for the recovery of the loan that will be against the agreement and that will be taken as null and void. All the acts of recovery of dues and payment of loan shall be performed by the second party.

3. That the residence of all the parties will be joint in Property No. 3495. The Ground Floor is in possession of Pandit Brahm Dutt. The Second Floor is the possession of the First Party and Pandit Narayan Dutt is in possession of upper story of the said building.

9. This Agreement has been rightly interpreted by the trial court as well as by the Appellate Court while deciding the rights of Appellant No. 2 viz-viz Respondent No. 1 and other legal heirs of deceased Manak Chand. It is clear that Appellant No. 2 was only appointed as a Manager of Laxmi Narain Mandir.

10. True that, he was authorized to perform puja etc. of the temple and manage it and for that purpose, he was permitted to collect rent and discharge debts. The parties continued to retain joint residence in property No. 3495, Kucha Lal Man, Darya Ganj, Delhi. Therefore, all the legal heirs of Manak Chand continued to enjoy co- Shaibat right in the temple. This agreement in no manner can be construed as relinquishment of their rights by the sons of Manak Chand in favour of Appellant No. 2. It is pertinent that none of the daughters of Manak Chand are the parties to this agreement and therefore, they continued to exercise their Shaibat right in the property irrespective of the agreement dated 30.05.1965.

11. Undisputedly, it is a private property, though the temple is being visited by other persons of the society and public at large. Under these circumstances, the trial court as well as the appellate court were right when they held that the widow daughters also have a right and share as co- Shaibat of the temple, inherited by them. There is no law that Shaibat can be inherited only by the sons.

12. Under these circumstances, Respondent No. 1 continued to be in possession of the suit property not only as a tenant of Gopal Dutt but also in her own right as co- Shaibat. Gopal Dutt in his own right as co- Shaibat could have let out a part of the impugned property which he did in favour of his own sister another co- Shaibat. Findings of the trial court as well as of the appellate Court are concurrent findings of facts.

13. Therefore, no substantial question of law is required to be formulated in this case as none is made out. In fact, suggested substantial questions of law are only questions of fact which, as discussed above have been rightly considered and adjudicated upon by the courts below.

14. Finding no merits in this appeal, the same is accordingly dismissed.