
(1980) 03 AHC CK 0024
In the Allahabad High Court
Case No : First Appeal No. 410 of 1977

Ramesh Chandra

APPELLANT

Vs

Gulab Rai and Others

RESPONDENT

Date of Decision : 11-03-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, 92, 92(1)

Citation : AIR 1980 All 283

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : K.M. Sinha, for the Appellant; P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

1. The plaintiff-respondents (hereinafter referred to as the "respondents") are Hindus and they applied to the Advocate General, Uttar Pradesh, for permission to institute a suit u/s 92, C.P.C., against the defendant-appellant (hereinafter referred to as the "appellant"). The Advocate General by his order dated February 25, 1971, granted the permission. The Advocate General in his order observed as follows:--

"This is an application for permission to file a suit u/s 92 C.P.C. It appears that a Hindu temple was constructed about a hundred years back on nazul land and, thereafter, from time to time, several members of the public have donated properties for this temple and other buildings, like Dharamshala etc. have also been constructed with such donations which are, at present, appurtenant to the temple. All these properties are being managed by the proposed defendants."

Thereafter the Advocate General referred to the presumption in regard to Hindu temples and held that the presumption is that they are public temples unless the contrary is shown. The Advocate General noticed that the Collector's report was also to the effect that there was a public temple and the properties, were donated by the public for religious purposes. In the operative order the Advocate

General observed:--

"I am satisfied that a prima facie case has been made out and I accordingly grant permission, u/s 92, C.P.C. for the filing of a suit by the applicant for the reliefs mentioned in the draft plaint."

In the draft plaint the reliefs sought were:--

(a) An injunction should be issued restraining the defendant from realising any income from the property in suit and further restraining the defendant from acting as Pujari in the temple.

(b) The defendant be directed to account for moneys received by 1967-68 and 1969.

(c) Any other relief that the court found that the plaintiffs were entitled.

2. The allegations in the plaint were that the plaintiffs were Hindus and were interested in public temples and the properties attached thereto and were filing the suit for themselves and as also representatives of the entire Hindu community at Haldwani. It was stated that there was a famous temple popularly known as "Mandir Ram Chander", which has existed from times immemorial and the Hindu public of Haldwani and other places had been regularly going there to worship and offer prayers every day and particularly on festivals. The plaint went on to add that Immovable properties belong to the temple, which had been donated and constructed by the Hindu devotees from time to time. There followed the description of the properties. The plaint case was that the father and grandfather of the defendant had remained as Pujaris of the temple for puja, Bhog and Arti and added that the defendant was working as pujari on behalf of the Hindu public.

It was asserted that for the last four or five years the defendant had been causing loss to the properties attached to the temple and had been appropriating the income and had started claiming the properties as his own. It was asserted that the defendant had neglected the work connected with Puja, Bhog and Arti in the temple. The instances of the alleged misconduct on the part of the Pujari were given. It was asserted that the defendant being only the Pujari of the temple, he could exercise no rights of management in respect of the properties belonging to the temple and his conduct disentitled him from continuing as pujari. The plaintiffs sought the following reliefs in the plaint:--

"(a) That by removing the defendant from the management of the temple and its properties as detailed below the defendant be restrained from managing the immovable properties of the temple described and detailed in the schedule annexed hereto by realising or appropriating the income therefrom or from acting as Poojari or in any other manner whatsoever.

(b) That a Scheme of Management for managing the temple and its properties detailed below be ordered to be framed providing inter alia the appointment of

Committee of Management.

(c) That the defendant be directed to render a true and faithful account in respect of the income realised by him from the immovable properties belonging to the temple and a decree for such amount as may on accounting be found to be due against the defendant be passed against him.

(d) That the costs of the suit be awarded to the plaintiffs.

(e) That such other relief to which the plaintiffs be found entitled be awarded to the plaintiffs."

3. In the written statement filed by the defendant the existence of the temple known as "Mandir Sri Ram Chandra Ji" situate at Haldwani, district Nainital, was admitted. It was asserted that it had been founded by defendant's great grandfather, Pt. Gopalji Pujari, in the year 1832 as a private temple meant for his own use and that of the members of his family. It was, however, not admitted that the Hindu public of Haldwani and other places regularly went to the temple for worship and offer prayers every day and particularly on festivals. It was asserted that since the time of his great grandfather the members of the family were looking after the temple and the idols were installed by his great grandfather.

It was claimed that the defendant and his ancestors were Shebait and Pujari of the temple and it was further asserted that they did not own their appointment to any one. It was asserted that since the temple was a private temple, the defendant or his ancestors were not required to keep any account or to give account to any one else of the income and expenditure of the temple. It was asserted that as the defendant was both Shebait and Pujari, the defendant had every right of management. It was then asserted that the suit u/s 92, C.P.C. was not maintainable. In this connection it was pointed out:--

(a) That the plaint contained no allegation that there is any express or constructive trust created for public purposes of charitable and religious nature.

(b) That it was not alleged in the plaint that any trustee has committed any breach of trust or that the directions of the court were necessary for the administration of the trust,

(c) that it was not alleged that the plaintiffs were in any way interested in the temple's properties, and

(d) that all the reliefs claimed in the plaint except relief (b) could not be claimed in a suit u/s 92, C.P.C. It was then asserted that according to the plaintiffs, the defendant was a Pujari only and Section 92, C.P.C. did not contemplate a suit against a mere pujari. The Advocate General's permission was said to be illegal, null and void.

4. In paragraph 6 of the written statement it was asserted that Pt. Gopalji pujari, great grandfather of the defendant, had taken land from the Nazul Department

of the Government and built the temple. It was stated that Pt. Gopalji pujari had a great reputation for his Bhakti, devotion and godliness and so one of his devotees, Sri Bachi Gaur, in the year 1851 helped him in constructing a parikrama around the rooms in which the idols of Shri Ram, Lakshman, Janki and Sri Krishan Ji were installed. This parikrama formed part of the temple. It was asserted that there was a sort of Verandah, which was built in the year 1958 by the defendant with the help of Sri Jahar Mal Vaish. It was asserted that it was used at the time of Utsavas and festivals for Kirtan purposes. The names of the defendant's ancestors, who had been Shebait, have been given.

It was asserted that during the period when Sri Ram Chander, father of the defendant, was Shebait some rooms were constructed and that in this construction he was helped by an admirer of his, Sri "Jyoti Prasad, owner of firm Jyoti Prasad Kishan Lal of Dehradun. It was then asserted that in the year 1954 when the defendant himself was Shebait and Pujari of the temple, Sri Raman Lal of the firm M/s. Kishan Lal Ratan Lal of Haldwani requested the defendant to permit him to build some rooms on the northern part of the temple for the purposes of constructing a Dharamshala.

The defendant asserted that he had given the permission on the express condition and understanding that the construction would be handed over to the defendant and the management of Dharamshala would vest in the defendant and his descendants, who would be entitled to use the income and would not be accountable to any person. It was also asserted that Sri Ratan Lal had agreed to it. It was then asserted that another building was built in the northern portion of the temple. It was asserted that this building was constructed by the defendant's father with his own money. It was specifically pleaded that the Dharamshala did not belong to the temple.

5. The defendant asserted that he was not a servant of any one else, but was a Shebait and Pujari of the temple in his own right. It was then contended that the suit was not bona fide and was filed out of enmity.

6. The trial court framed the following issues:--

"1. Whether the property in suit belongs to Ram Mandir temple?

2. Whether Ram Mandir temple is public religious endowment?

3. Whether the defendant is Shebait of Ram Mandir temple? If so, its effect?

4. To what relief are the plaintiffs entitled?

5- Whether the suit as framed is not maintainable u/s 92, C.P.C.

6. Whether the defendant was liable to render accounts as claimed by the plaintiffs?

7. Whether a scheme of management can be framed in view of the allegations in paras 16 and 17 of the written statement?

8. Whether the defendant has been mismanaging the trust property?"

7. The plaintiffs produced four witnesses, namely, P. W. 1 Rewa Dhar, P. W. 2 Dilbagh Rai, P. W. 3 Ram Raksh-pal and P. W. 4 Gulab Rai. They also filed documentary evidence. On behalf of the defence only one witness, namely, the defendant Ramesh Chandra himself appeared as D. W. 1.

8. The trial court on a consideration of evidence came to the conclusion under issues 1 and 2 that the temple was a public temple and under issue No. 3 it held that the defendant was not a She-bait. It further held under issue No. 5 that the suit was maintainable u/s 92, C.P.C. On taking up issue No. 6 it held that the defendant was liable to render accounts for three years prior to the date of the institution of the suit, namely, 1-7-1971. It held under issue No. 7 that no scheme of management could be framed. It further held on issue No. 8 that since the defendant claimed that the temple properties were his own, this amounted to an act of misconduct. It, however, held that the defendant should not be restrained from managing the temple in the absence of any alternative arrangement, though it directed that the Receiver, who had been appointed during the pendency of the suit, should continue for the present.

9. In its operative order it observed as follows:--

"The suit of the plaintiffs is decreed for a direction to the defendant that he shall, within three months, render a true and faithful account in respect of the income realised by him from the immovable properties belonging to the temple. No order is made as to costs. The receiver will continue till further orders."

10. Aggrieved by the order of the trial court, the defendant has filed the instant appeal. While the plaintiffs have filed a cross-objection against the decision of the trial court refusing to frame a scheme of management.

11. In this case there is no documentary evidence on record to show how the temple came to be founded. The defendant's assertion that it was founded by his great grandfather about the year 1832 is also not established directly from any evidence. The defendant himself, obviously, had no personal knowledge about the foundation of the temple. The plaintiffs also have been unable to produce any such evidence pertaining to the period when the temple was constructed and the idols were installed. In order to determine whether the temple is a public temple, as asserted by the plaintiffs, or a private temple, as asserted by the defendant, other evidence will have to be looked into.

12. P. W. 1 Rewa Dhar stated that the temple was a public temple and not a private one. He asserted that the public of Haldwani made offerings to Ram Chandra Mandir and that two or three Dharamshalas had been built in the name of Ram Chandra Mandir. In cross-examination this witness admitted that he had no knowledge when the temple was built. It was elicited from his cross-examination that one Dharamshala was built by M/s. Ratan Lal Kishan Lal and the other was built by Sohan Lal while the third one was built by a Thekedar

whom he did not know. This witness further stated in cross-examination that the public made offerings at the temple and in addition to the offering, donations were made by the public.

13. Next witness for the plaintiffs was Dilbagh Rai (P. W. 2). He stated that the temple was a public temple and it was financed by the public. He asserted that it was not a private temple. This witness admitted that he did not know how the money of the temple was spent and also admitted that he did not know the accounts of the temple and as to who spent the money,

14. The third witness of the plaintiffs was Ram Rakshpal, son of Ratan Lal. He stated that his father had got a Dharamshala built for the temple about 25 years earlier and a stone inscription is fixed bearing his father's name on the Dharamshala. This witness also stated that another Dharamshala bore the inscription of the name Sohan Lal on a stone, This witness further stated that a Verandah had been built by Lal Baharmal, proprietor of the firm M/s. Goverdhan Das Sheo Narain. In cross-examination, it was elicited from him that till five or six years prior to the institution of the suit he used to get all the repairs of Dharamshala done. This witness admitted that Sohan Lal's Dharamshala had been built before his memory. This witness however, denied that his father had got the Dharamshala constructed at the request of the pujari.

15. The last witness for the plaintiffs was Gulab Rai, son of Sohan Lal. This witness stated that his father Sohan Lal had got one Dharamshala constructed 40-42 years earlier. This witness stated that the defendant had been utilising the offerings at the temple for his own use, though his father used to utilise a portion for his own use and the balance for temple purposes. In cross-examination, this witness admitted that there was never a Committee of Management for the temple. This witness further admitted that after the death of defendant's father no one appointed the defendant as pujari, but he started acting as pujari.

16. The documentary evidence produced by the plaintiffs consists of Ext. 1, a lease-deed dated 28-11-1970 in favour of Abdul Razzaq, in which Ramesh Chandra, defendant, described himself as manager of Ram Chandra Mandir. There is another lease-deed dated 8-12-1969 (Ext. 23), executed by the defendant, in which the defendant is described as having executed the lease-deed on behalf of Ram Chandra Mandir as its Manager and Mahant. This lease is in favour of the U. P. Co-operative Federation Ltd., a Society registered under the Co-operative Societies Registration Act.

17. Ext, 4 is an application dated 5-11-1954 by Ratan Lal, proprietor of firm M/s. Kishan Lal Ratan Lal, addressed to the Chairman, Municipal Board, Haldwani, in which it is stated that he wanted to get a shop constructed for Dharamshala on land belonging to Sri Ram Chandra Mandir. It appears that on this application a resolution dated 24-12-1955 was passed by the Municipal Board, Haldwani, in which it was stated that the map of the shop was not being sanctioned, but permission was being sanctioned for constructing a room on the condition that

construction should not be considered the property of another person but it should be considered as the property of Kanhaiya Lal Dharamshala and the temple.

18. There is on record Ext. ,17, Khasra of Municipal Board, Haldwani, of the year 1940, which records that one Same Mistri had donated a garden of 28 Bighas in favour of Sri Ram Chandra Ji.

19. There are also on record the revenue entries. The first entry that is noticed is the Khasra of 1314F equivalent to 1907, which records one house belonging to Thakurdwara and two Dharam-shalas. The next is the extract from the Register of Nazul dated 17-5-1907 which shows Thakurdwara temple-- rental free. Ext. 9 is the Khasra Khatauni of 1333 F. Which shows the garden of Ram Chandra Ji Thakurdwara two houses and a garden. Ext. 11 is another extract from the Register of Nazul showing Thakurdwara temple--rental free. Ext. 12 is the extract from the Register of Nazul. It shows the property of Sri Ram Chandra Ji. Then Ext. 13 is another extract of the register of Nazul, which shows Thakurdwara temple--rental free. Ext. 14 is the Khatauni of 1374F equivalent to 1968, which shows the entry of Sri Ram Chandra Ji temple. Ext. 15 is also the Khasra of 1374 F. It shows the name of Ram Chandra Ji Mandir Badastoor. Ext. 16 is the settlement entry of 1367F, 28 Bighas 12 Biswas of land, obviously garden, donated by Same Mistri is shown as belonging to Ram Chandra Ji temple. It must be added here that there is a presumption of correctness of settlement entries.

20. The defendant has only examined himself as a witness. He stated that the temple is a private one built by his great grandfather. He stated that he was not appointed by any one and there was no Committee for the management of the temple. He stated that the temple's income was spent on Puja, Bhog and Arti etc, He further stated that if any income remains, he spent that on his own purpose. This witness admitted that he never gave account of the income and expenditure of the temple to any one. This witness stated that the garden attached to the temple is his.

21. In cross-examination this witness stated that Same Mistri had given the garden to his grandfather Chheda Lal in gift. This witness further stated that one house had been given to his ancestors by Smt. Bachni and the same was entered in the name of the temple. This witness admitted that the papers relating to this gift-deed were with him, but he had not produced it. He denied that he had withheld the papers, because it would have been shown from the paper that the gift was to the temple. This witness admitted in cross-examination that there were two Dharamshalas belonging to the temple. He stated that one Dharamshala was built by Kishan Lal Ratan Lal and that the other was built with the funds of M/s. Jyoti Prasad and Kishan Lal by his father. No documentary evidence was adduced in defence.

22. The learned counsel for the appellant has urged that on the allegations made in the plaint no suit is maintainable u/s 92, C.P.C. He submits that the facts

alleged in the plaint were not sufficient to show that the temple is a public temple. In particular he argues:

(i) That there is no allegation that the temple is a public temple or that the dedication was for public use,

(ii) that there was no allegation of a trust express or implied for the benefit of temple,

(iii) that there was no assertion in the plaint that the public at large had as a matter of right access to the temple;

(iv) that there was no assertion that the public had a hand in the management of the temple; and lastly,

(v) that there is no allegation in the plaint that the defendant or his ancestors were appointed as Pujaris by any person or authority.

23. In paragraph 1 of the plaint it is recited that the plaintiffs are interested in public temples and properties attached thereto and were suing on behalf of themselves and as representative of the entire Hindu community. In paragraph 2 of the plaint it is recited that at Haldwani there is a famous temple popularly known as Mandir Ram Chandra, which has existed from time immemorial and the Hindu public of Haldwani and other places had been regularly going there to worship and offer prayers every day and particularly on festivals. Reading these two paragraphs together it is clear that what is meant was that Mandir Ram Chandra is a public temple. Thus, the argument of the learned counsel for the appellant that there is no assertion in the plaint that Mandir Ram Chandra is a public temple cannot be accepted.

24. It is true that there is no assertion in paragraphs 1 and 2 of the plaint that the Hindu public of Haldwani and other places have access to the temple as of right, but it is implicit in the said paragraphs of the plaint that the public visits the temple every day and particularly on festivals as of right, for it has been asserted that the temple is a public temple and consequently the visits of the public to the temple must be considered as of right,

25. The learned counsel for the appellant argued that it was not stated in the plaint that the public had any hand in the management of the temple. It is correct that there is no such assertion in the plaint, However, Section 92, C.P.C., does not in so many words require such an assertion, The effect of such an assertion in the plaint will be considered while deciding whether the temple is a public temple. It will have no effect on the maintainability of the suit as such u/s 92, C.P.C. The same will be the position in regard to the argument that the suit is not maintainable because of the absence of an allegation that there is trust express or implied for the benefit of the temple and the absence of such an allegation that the defendant or his ancestors were appointed as Pujaries by any person or authority,

26. In view of the foregoing discussion, the argument that the suit u/s 92, C.P.C., was not maintainable must be rejected.

27. The question as to whether the temple is a public temple or a private temple is now being taken up. Before dealing with the evidence it is necessary to refer to the decision of Supreme Court in the case of *Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others*, . There the Supreme Court observed as follows :

"If a temple is proved to have originated as a public temple, nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple, In such cases the true character of the particular temple is decided on the basis of various circumstances, In those cases the courts have to address themselves to various questions such as-

(1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple?

(2) Are the members of the public entitled to worship in that temple as of right?

(3) Are the temple expenses met from the contributions made by the public?

(4) Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples?

(5) Have the management as well as the devotees been treating that temple as a public temple?"

28. Before proceeding further it is necessary to notice immediately that the questions formulated by the Supreme Court are only illustrative and not exhaustive. Out of five questions formulated by the Supreme Court, it is clear from the record that there is no evidence regarding the appearance of the temple,

29. The evidence in this case is that the public has been visiting the temple daily and that the puja and sewa are done daily, Festivals or utsavas are also celebrated. It has come in evidence and is indeed admitted by the defendant-appellant that offerings are made at the temple.

30. It was also admitted by the defendant that two Dharamshalas were constructed on the temple land, though his case is that the donors agreed to construct the Dharamshalas on the understanding that the Dharamshalas would be his personal property. This is difficult to believe. The descendants of the donors have appeared in the witness box and deposed that the Dharamshalas were constructed not for the benefit of the defendant or his ancestors, but for public purposes, namely, the accommodation for pilgrims,

31. Then again we have evidence that Same Mistri gave 28 Bighas and odd garden land for the temple. The revenue entries including the settlement entries

show that the land was given to the temple. The case of the appellant that the garden was given for the personal benefit of the defendant's ancestors cannot be accepted. In the first place the defendant could not have any knowledge of the circumstances leading to the gift, The garden is recorded as in the ownership of the temple. It was quite natural for the donors to have made such a large and valuable gift to the temple, but it is difficult to believe that it would have been gifted to an individual,

32. In the two lease-deeds to which reference has earlier been made in this judgment, the defendant has described himself as the Manager of the temple. This is an admission which can be used against the defendant. It is well-known that an admission is best piece of evidence as against the maker of the admission. The admission will indicate that the defendant not only admitted that he was the Manager or Shebait of the temple, but in fact acted as such. Even though there is no evidence on record, apart from the statement in the two lease-deeds, that the public had a hand in the management of the temple, it must be held that the defendant acted as Manager of the temple.

33. It is settled law that word "trust" in Section 92, C.P.C., is not used in the sense that word is used in English law. In Mukherjee's "The Hindu Law of Religious and Charitable Trust", it is observed as follows:--

"The word "trust" has been used in the section in a general and not technical sense, and "public" means and includes a section of the public. In *Vidya Varulhi v. Baluswami* (48 I.A. 302 : AIR 1922 PC 123) the (Judicial) Committee after reviewing the Hindu and Mo-hammadan Law as to the legal position of a mahunt, shebait or mutawali laid it down that none of them are trustees in the strict sense, no property being conveyed to them in trust as happens in English law; but it was held at the same time that they were answerable as trustees in the general sense for mal-administration. In *Ram Prakash v. Anand* (43 I.A. 73: AIR 1916 PC 256) the Privy Council expressly held in regard to the head of a Mutt that although large administrative powers are undoubtedly vested in the reigning mahunt, the trust did exist and must be respected. This decision was followed by the Privy Council in the subsequent case of *Basudeo Roy v. Jugal Kishwar Das* (AIR 1918 PC 37: 22 CWN 841) where it was held that though the property of the Asthal was granted to an individual it was burdened with an explicit and unambiguous trust and that all acquisitions with the income thereof are subject to the same trust. The head of a Mutt would certainly answer to the description of a trustee in the sense in which it is used u/s 92 of the CPC and so also would the shebait of a temple, provided the public or a portion thereof are interested in the performance of those duties and obligations which are imposed on them in connection with the endowment properties (vide *Nelliappa Achari and Others Vs. Punnaivanam Achari and Others*, *Manohar Ganesh v. Lakshmiram* ILR 1888 12 Bom 247). Thus to attract the operation of Section 92 of the CPC it is not necessary that trust should exist in the English sense of the word or that there should be two estates or two ownerships, it is enough that there is obligation

annexed to the property in favour of religious or charitable objects of a public nature and the person having the custody or management of the property is legally and not merely morally bound to carry on certain duties for which he is answerable in law. (Laxman Rao v. Gobind Rao AIR 1950 Nag 217)."

34. It has been argued that the allegation in the plaint is that the defendant is a pujari. It is submitted on behalf of the appellant that a pujari is an employee in contradiction to a shebait in whom the powers of management vest. The argument of the learned counsel for the appellant is that no suit u/s 92, C.P.C. is maintainable for the removal of a servant like a pujari. It is, therefore, argued that the suit is not maintainable. In the plaint it has been recited that not only the appellant is claiming ownership right over the property, but it is stated that he has committed various acts of misconduct which have been recited in the plaint itself. The word "pujari" in the plaint should be read in the context of facts given in the plaint as assertion that the defendant is in the position of a shebait who also does puja in the temple.

It was for this reason that the plaintiffs sought and obtained permission of the Advocate General to institute a suit u/s 92, C.P.C. and the reliefs claimed in the plaint, particularly, reliefs (a) and (b) indicate that the plaintiffs sought the removal of the defendant appellant from the management of the temple and its properties. Though there is well known distinction between the office of Shebait and the position of a pujari, yet in the facts of this case it must be held that the plaintiffs when they used the term "pujari" in the plaint meant "shebait". In any case both a trustee de jure and trustee de facto can be removed u/s 92, C.P.C. See in this connection Mukherjee's "The Hindu Law of Religious and Charitable Trust" II Edition page 405, where the learned author writes as follows:--

"An allegation of breach of trust can be made only against person who, according to the plaintiff occupies the position of a trustee either de jure or de facto and is answerable as such," See also the decision of the Supreme Court in the case of Syed Mohd. Salie Labbai (Dead) by L.Rs. and Others Vs. Mohd. Hanifa (Dead) by L. Rs. and Others, . In para 62 it has been observed as follows:--

"62, Lastly it was contended that even assuming everything against the appellants the conditions of Section 92 of the CPC were not at all fulfilled in this case, because the defendants could not be called the trustees within the meaning of Section 92 of the CPC and the Advocate General committed an error of law in granting the sanction to file the present suit, It is true that the defendants have only been de facto managers of the properties in suit either as pesh Imams or otherwise but that does not make any difference so far as application of Section 92 of the CPC is concerned. It is true that Section 92 of the Code applies only when there is any alleged breach of any express or constructive trust created for a public, charitable or religious purpose. It also applies where the direction of the Court is necessary for the administration of any such public trust. In the instant case the defendants have no doubt been looking after the properties in one capacity or the other and had been enjoying the usufruct thereof. They are,

therefore, trustees de son tort and the mere fact that they put forward their own title to the properties would not make them trespassers. In Abdul Rahim Khan's case (AIR 1946 Nag 401) a Division Bench of the Nagpur High Court observed thus:

"The defendant's predecessors who were parties to that suit as defendants were in law not trespassers but trustees."

"They claimed to be so. They acted as such but had wrongly begun to assert title to which they were not entitled to and therefore the suit against them. A suit u/s 539 (equivalent to the present Section 92) of the CPC does lie for removal of such de facto or constructive trustees, as has been laid down in Haji Mahammad Nabi Shirazi and Others Vs. Province of Bengal and Others, and Ramdas Bhagat Vs. Krishna Prasad Tewari and Others, . The plaintiffs in their plaint never stated that the defendants were trespassers, and it is the allegations in the plaint that determine the nature of the suit and the jurisdiction. The defendant's denial in the pleadings will not in any way affect the nature of the suit u/s 92, as held in ILR 11 Pat 288 : (AIR 1922 Pat 33) and Abdul Majid and Others Vs. Akhtar Nabi and Another, ,

To the same effect are the decisions in Haji Mahammad Nabi Shirazi and Others Vs. Province of Bengal and Others, and Ramdas Bhagat Vs. Krishna Prasad Tewari and Others, In our opinion these decisions lay down the correct law on the subject. We, therefore, hold that Section 92 of the CPC is clearly applicable to the case."

35. I am, therefore, satisfied that the temple is a public temple and the appellant was in the position of a shebait, who also used to conduct puja. The appellant has claimed that the temple properties are his personal property. He has also stated that he has never accounted for the money of the temple, of course, on the plea that the temple and its properties were his personal properties. Once the finding is recorded that the temple is a public temple, it necessarily follows that the appellant was guilty of such misconduct as could entail his removal from the office of shebait. The appeal, therefore, has to be dismissed.

36. There is a cross-objection against the decision of the trial court refusing to frame a scheme of settlement u/s 92(1)(g), C.P.C. The trial court refused to frame the scheme on the ground that in the order granting sanction the Advocate General had not permitted the filing of the suit for such a relief.

37. The learned counsel for the respondents, who has filed the cross-objection urged that the sanction, of which the relevant part has been quoted earlier, permitted the filing of a suit in which such a relief could be granted as noticed earlier, the plaintiffs had in the draft plaint asked in relief (c) for the grant of such further or other relief as the nature of the case may require and the Advocate General had granted permission to file the suit for reliefs claimed in the draft plaint. It is true that there was no specific prayer in the draft plaint for the settlement of a schema u/s 92(1)(g), C.P.C. In the case of Charan Singh and

Another Vs. Darshan Singh and Others, it was observed as follows:--.

"Lord Sinha delivering the judgment of the judicial committee of the Privy Council in Abdul Rahim v. Abu Mahomed Barkat Ali Shah 55 Ind App 96 : (AIR 1928 PC 16) rejected the arguments that the words "such further or other relief as the nature of the case may require" occurring in Clause (h) must be taken, not in connection with the privet as Clauses (a) to (g) but in connection with the nature of the suit, The argument was that any relief other than (a) to (g) in the case of an alleged breach of an express or constructive trust as may be required in the circumstances of any particular case was covered by Clause (h). It was repelled on the ground that the words "further or other relief" must on general principles of construction be taken to mean relief of the same nature as Clauses (a) to (g). It would be noticed that the word used after Clause (g) and before Clause (h) is "or", It may mean "and" in the context, or remain "or" in the disjunctive sense in a given case. If any further relief is asked for in addition to any of the reliefs mentioned in Clauses (a) to (g) as the nature of the case may require then the word "or" would mean "and". But if the relief asked for is other relief which is not by way of a consequential or additional relief to any of the reliefs in terms of Clauses (a) to (g), then the word "or" will mean "or". The other relief, however, cannot be of a nature which is not akin to or of the same nature as of the reliefs mentioned in Clauses (a) to (g)."

The relief for the settlement of Scheme can be given under Clause (h), as it is akin to the relief under Clause (g) to Section 92(1), C.P.C. The absence of a specific clause in the relief prayed for in the draft plaint would, not, in view of the nature of the sanction of the Advocate General granted in the instant case, prevent the plaintiffs asking in the plaint filed in court praying for the settlement of scheme, as provided for in Section 92(1)(g)". The trial court was, therefore, in error in refusing to frame a scheme. The cross-objection has to be allowed.

38. In the result, the appeal is dismissed with costs, while the cross-objection is allowed with costs,

39. During the pendency of the appeal the appellant has been in possession and managing the property under an interim order of this Court. He has been filing accounts, as directed. While the trial court is conducting an enquiry into the accounts, it will take into consideration the developments since the institution of the suit and during the pendency of the appeal. The Scheme of administration will now be settled by the trial court, The appointment of the Receiver, which was stayed by the orders of this Court, will not (sic) revive as a result of the dismissal of the appeal.