
(2010) 11 AHC CK 0309

In the Allahabad High Court

Case No : Civil Revision No. 341 and 342 of 2008

Roshan Freight Carrier and Others

APPELLANT

Vs

Trilok Chand Jain and Others

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Evidence Act, 1872 — Section 116
Land Acquisition Act, 1894 — Section 16, 17(2)
Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 111

Citation : (2011) 1 ADJ 212 : (2011) 3 AWC 2581

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—These two revisions preferred u/s 25 of the Provincial Small Causes Court Act, 1887 were heard together and are being disposed of by a common judgment as was jointly prayed by the learned Counsel for the parties. They have stated at Bar that the controversy involved in the a foretasted two revisions is identical. Relevant record of revision No. 341 of 2008 were referred during the course of arguments and as such the, facts from the said revision are noticed herein.

2. Whether the tenanted building is exempt from operation of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as Act No. 13 of 1972) in view of Section 2(1)(bb) of the Act and whether the trial Court was justified in granting the pendent lite and future damages at higher rate than the agreed rate of rent, are the questions involved in these revisions.

3. SCC suit No. 18 of 2003 was instituted by Sri Parasnath Digamber Jain Mandir and Dharmshala through its Committee of Management and principal trustees

and other trustees being Plaintiff Nos. 1 to 5 against the present applicants who are four in numbers on the allegations that Shri Parasnathji Maharaj Virajman Digamber Jain Mandir is the owner of the property No. 6/93, Kachora Bazar, Belanganj, Agra and also the property No. 20/110 situate at Yamuna bank, Agra. The said Mandir and Dharmshala have been in existence since long and are interconnected with each other internally. The opening of property No. 6/93 is towards Belanganj, Agra. While the opening of property No. 20/110 is towards the Yamuna Bank. The said Mandir and Dharmshala are popularly known as Khandelwal Digambar Jain Dharmshala. The Plaintiff Nos. 2 to 5 are running and managing the said property belonging to the temple and Dharmshala being trustees. The properties have been dedicated for public religious and charitable purposes. The public has a right to have Darshan in the temple and the Dharmshala is being used for the benefit of public at large. It was stated that in view of Section 2(1)(bb) of the U.P. Act No. 13 of 1972 the property in dispute is exempt from the operation of the said Act. The Defendant Nos. 1 and 2 are tenants of the part of property No. 6/93 measuring 3500 Sq. Ft. on a monthly rent of Rs. 600/- in addition to water tax and sewerage tax at the rate of 16 per cent per annum, under a rent note. The property was let out to the Defendant No. 1 through Defendant No. 2 in whose names rent receipts were issued but now, the Defendant Nos. 3 and 4 are claiming themselves as tenants of the property on the allegations that they are the partners of the Defendant No. 1, although no such document even on demand, was shown to the Plaintiffs. The Defendants are in arrears of rent since November 1, 1996. The tenancy has been terminated by means of a notice. The Defendants have unauthorized made material alterations and structural changes, without permission of the landlords in tenanted building and thus, damaged the temple's roof. The particulars of alterations made by the Defendants have been detailed in the plaint.

4. The suit was contested on the pleas inter alia that the provisions of U.P Act No. 13 of 1972 are applicable as the Plaintiff is not entitled to claim exemption under the aforesaid Section 2(1)(bb). It is neither a public religious nor a charitable institution. The other allegations with regard to the material alterations etc. were also disputed and denied. But the relationship of landlord and tenant between the parties was not disputed.

5. The parties led evidence oral and documentary in support of their respective cases

6. The trial Court framed six points for determination in the suit. It, after consideration of the evidence led by the parties, has decreed the suit principally on the findings recorded by it under issue No. 1. It has been held that the disputed property belongs to the temple and Dharmshala which are public religious and charitable institution and thus, it is exempt u/s 2(1)(bb) of the Act, from the operation of the said Act. It has been also held that the Defendants tenants are liable to pay damages at the rate of Rs. 500/- per " day.

7. Shri Ramendra Asthana, learned Counsel for the tenants, submits that the

Court below has erred in law in holding that the property in dispute is exempt u/s 2(1)(bb) of the Act. He submits that the pleadings in this regard are deficient and that the Plaintiffs have failed to prove the four essential requirements to establish creation of trust. There is neither pleading nor proof with regard to its dedication and ceremonies related to and connected with creation of a public religious trust. He further submits that in view of the fact that the property was let out on monthly rent of Rs 600/-, the trial Court should have awarded the damages at that rate but it has exceeded in its jurisdiction in awarding the damages at the rate of Rs. 500/- per day.

8. In contra, Sri PC. Jain, learned Counsel for the landlord, submits that no such objection was pleaded by the Defendant tenant before the trial Court or in his pleading that the Plaintiff No 1 is not a public religious and charitable institution. The Defendant tenant has admitted the existence of religious and charitable trust in the rent note executed by him. He has admitted that the property in dispute belongs to Shri Parasnath Digambar Jain Mandir in the said rent note. The endowment is many centuries" years old and there being evidence on record that the public has a right to enter into the temple and the Dharmshala is being used for the purposes of staying of saints, Sadhus and religious leaders, it is nothing but public religious and charitable institution. Strong reliance was placed on the report of the Commissioner who found that number of rooms were constructed out of the public donations and on those rooms names of the donors with year of construction and other particulars are mentioned.

9. With regard to the second point he submits that there is uncontroverted evidence of the Plaintiffs that the disputed property can easily fetch Rs. 500/- per day as rent and as such, the Court below was justified in awarding the damages at that rate.

10. Considered the respective submissions of the learned Counsel for the parties and perused the record.

11. Taking the first point first, with regard to the applicability of Section 2(1)(bb) of the Act, the pleadings in this regard may be noticed first.

12. The Court was taken through paragraph Nos. 1, 2 and 3 of the plaint wherein it has been stated that Sri Parasnathji Maharaj Virajman Digambar Jain Mandir is owner of the property Nos. 6/93, Kachora Bazar, Belanganj, Agra and 20/110, Yamuna Bank, Agra. A temple and Dharmshala exist over these properties and they are adjacent and interlinked with each other. The temple and Dharmshala are known as Khandelwal Digambar Jain Dharmshala and are managed by the Plaintiff Nos. 2 to 5 who are the trustees of the said temple and Dharmshala. The aforesaid building belongs to and is vested in a public charitable or religious institution. They are used for religious charitable purposes by public and by Digambar Jain community of Agra in particular. The property was originally let out to Defendant No. 1 through Defendant No. 2. The Defendants illegally and unauthorized without consent and permission of the Plaintiffs made structural

changes. On 28th of December, 2008 the Plaintiffs and other persons of the community came to know about the said fact and when they objected, the Defendants did not allow the Plaintiffs to enter into the tenements and misbehaved with them.

13. The Defendants in their written statement have denied that the property in dispute is owned and held by the deity Sri Paranathji Maharaj. The fact that the Plaintiff Nos. 2 to 5 are the trustees of temple and Dharmshala was also disputed. It was further disputed that the building belongs to or vested in public charitable or religious institution. The very existence of temple and Dharmshala and use of building for religious charitable purposes by public or by Digambar Jain community of Agra was disputed in the written statement.

14. Significantly, it may be noted that in para 17 of the written statement the Defendants have stated in so many words that they are not disputing that the Plaintiff Sri Parasanath Digambar Jain Mandir and Dharmshala Prabandhak Samiti have been realizing rent from Defendants and the rent has been payable to them by the Defendants.

15. The trial Court took into consideration the rent agreement, the payment of rent made through cheques by the Defendants drawn in favour of the Plaintiff No. 1 and the rent receipts, and came to conclusion that the property in dispute belongs to deity namely Sri Parasnathji Maharaj Virajman Digambar Jain Mandir. The execution of rent note by the Defendant tenant is not in dispute. The fact that the property in dispute belongs to Sri Digambar Jain Mandir, Kachora Bazar Belanganj, Agra finds mention in the rent note itself. It was let out through its manager Sri Rajmal Jain on the terms and conditions stipulated therein. A copy of the cheque dated 8.4.2003 given on behalf of the Defendant tenant towards the rent has also been filed which shows the payment of rent to Sri Parasnathji Digambar Jain Mandir Dharmshala Prabandhak Samiti. The rent receipt was also issued showing name of the owner of the property as Sri Parasnath Digambar Jain Mandir. These documentary evidences undoubtedly leads to the conclusion that the property in dispute which was let out to the Defendants belongs to Sri Parasnath Digambar Jain Mandir. In other words, the deity is the owner of the property in dispute. The Defendants in their written statement also stated in so many words that they are not disputing that the Plaintiffs Samiti is realizing the rent from them and they are making payment to them. It is true that the Defendants in their written statement ventured to challenge the title of their landlord but except making a bald denial no evidence was led by them to show to whom else the property in dispute belongs. There being no contrary evidence and the evidence referred to above in the form of rent note, payment of rent and the rent receipts which are in the nature of admission of the Defendants, are sufficient to establish that the property in dispute belongs to Sri Parasnathji Maharaj Virajman Digambar Jain Mandir. It will not be out of place to mention that before this Court the learned Counsel for the tenant did not dispute the documents referred to above or the conclusion drawn there from. No attempt

was made by him to show that the said finding of trial Court is in any manner incorrect. As a matter of fact, any argument disputing the said finding was not even whispered.

16. Admittedly, the Defendants being tenant cannot challenge the title of their landlord and they are estopped u/s 116 of the Evidence Act from doing so. It is not necessary to dwell upon this point any further.

17. Now, the submission of the tenant that there being no material on record to show as to when the trust was created or with regard to the performance of ceremonies for creation of trust, it is not a public charitable or public religious trust, requires consideration. No such case was put before the trial Court either in the pleading of the Defendants or in the arguments. This new line of argument has been advanced here for the first time in the revision.

18. The decisions relied upon by the learned Counsel for the tenant may be noticed to appreciate his view point.

19. Reliance was placed on Deoki Nandan Vs. Murlidhar, The Supreme Court in this case has pointed out the distinction between a private and a public trust. It has been laid down that certain ceremonies are required to be performed for creation of a trust. They are (1) Sankalpa, (2) Uthsarga and (3) Prathista. Sankalpa means determination and is really a formal declaration by the settler of his intention to dedicate the property. Uthsarga is the formal renunciation by the founder of his ownership on the property, the result whereof being that it becomes impressed with the trust for which he dedicates it.

20. The aforesaid decision has been followed by this Court in Dhirendra Singh v. Dhanai and Ors. AIR 1983 All 216, in relation to a suit u/s 92 Code of Civil Procedure.

21. Then, reliance was placed on Sri Satnarayan Ji Maharaj Virajman Mandir Sat Narayan Dharamshala and others Vs. Rajendra Prasad Aggarwal and others, , wherein it has been held that there being no evidence indicating creation of endowment either religious or charitable, it cannot be held to be a public trust merely because of existence of temple and Dharmshala and the members of the public are allowed to stay in Dharmshala or sing Bhajan in temple.

22. In Kuldeep Chand v. Advocate General to Government of Himachal Pradesh and Ors. AIR 2003 SC 1689, it has been laid down by the Apex Court that a Hindu is entitled to dedicate his property for religious charitable purposes. No instrument in writing is required. The requirement is that a Hindu should wish to establish a charitable institution and must express his purpose and endow it. The purpose must be clear and specific. What is necessary is a clear unequivocal manifestation of intention to create a trust and vesting thereof in the donor and another as trustees. In this very case it has been held that if the owners were maintaining the complete control over the premises, it will not make it a public trust by mere long user as Dharmshala.

23. On the basis of the above judicial pronouncements, the submission of the learned Counsel for the tenant is that there being no specific date of dedication and evidence relating to Sankalpa etc., the creation and existence of public charitable or public religious trust is not established.

24. The Plaintiffs have examined two witnesses namely Trilok Chand Jain PW/1 and Rajendra Kumar Jain PW/2. Sri Trilok Chand Jain is the managing trustee who deposed that he is looking after the property in dispute which belongs to Sri Parasnathji Maharaj Virajman Digambar Jain Mandir. The properties are looked after by a Samiti and the Plaintiff Nos. 2 to 5 are the trustees of the Managing Committee. The Prabandhak Samiti by its resolution dated 28th of December, 2002 authorised them to take legal proceedings against the Defendants. He proved a copy of the said resolution. The property Nos. 6/93, Kachora Bazar and 20/110, Yamuna Kinara are the properties of public and religious institution. The temple and Dharmshala were established for charitable and religious purposes for Digambar Jain community of Agra in particular. In para 11 he has stated that in Janism base of Lord should be solid. To make the base solid, solid pillar was raised after laying the foundation from the earth to the base of the Vedi as the idols of all the five Lords are on the first floor of the building. In other words, the base of five Lords has been erected from the ground to the first floor in solid form. The Defendant tenant surreptitiously by breaking the solid walls of the base has carved out Almirah therein. Further, he has stated that the disputed property is needed for the benefit of public at large to expand the Dharmshala and the prayer hall.

25. The PW/2 Rajendra Kumar Jain also deposed on the similar lines. In para 13 of his examination in chief he has stated that the rooms in the Dharmshala were got constructed by different persons. In the rooms, name of the persons who got constructed them is inscribed on a stone affixed in the rooms. He has proved the writings on the stones affixed in the various rooms. He also filed and proved photographs of the main gate of Dharmshala being paper No. 70C/C.

26. In the cross examination he has stated that the first floor is meant for staying of Sadhus and saints and also for the purposes of storing the materials used in the Seva Pooja of the Lords. He has stated that the property No. 20/110 is public property from the time immemorial and he does not know the source of the property whether it was purchased or otherwise. The temple and the Dharmshala is in existence from more than 80 years and denied the suggestion of non-existence of Mandir and Dharmshala. The outgoings and incomings of the income are accounted for. The donations received from the public are also accounted in the ledger known as Dharam Ka Khata.

27. No suggestion was given to any of the witnesses nor any question was put that the temple in question is not a public temple. As a matter of fact, the Defendant tenant could not dare to cross examine the Plaintiffs' witnesses on material point which is being raised here for the first time that the temple and Dharmshala are not public charitable and religious institution. Even there is no

suggestion that the temple and the Dharmshala belong to a particular individual and not to public at large.

28. The Defendant tenant, on the other hand, has examined only one witness namely Shri Krishna Kant Kalra, DW/1 who claims himself partner in the Defendant No. 1, and states that the property in dispute was taken on rent by his father's brother (Tauji-Sri Roshan Lal) and after his death his father Sukhdev became the tenant. It was taken on rent from Rajmal Jain. A perusal of his statement would show that he has no personal or direct knowledge of anything and his deposition is of no value. He states that he got information from his father Sri Sukhdev Kalra. But Sukhdev Kalra was not produced in the witness box. He states that he was told that Rajmal Jain was the owner from whom it was taken on rent and after Rajmal Jain, Sri Trilok Chand is realising rent. He pleads ignorance that cheques for payment of rent were drawn in the name of Sri Parasnathji Maharaj Virajman Digambar Jain Mandir and Dharmshala,

29. On a close reading of the deposition of Krishna Kant Kalra DW/1 leads to one and only one conclusion that the said witness has no knowledge about the facts of the case. He has been produced only for the sake of name. Purposely, the Defendant did not produce Shri Sukhdev Kalra, father of DW/1.

30. It follows that the Defendants could lead no evidence worth the name to show that Dharmshala and the temple is a private property. Except making a bald denial in the cross examination that too in reply to the suggest that the temple and Dharmshala is a public property, the witness does not say even a word to whom the said temple and Dharmshala belong.

31. Having noticed the oral evidence led by the parties, now the documentary evidence may be considered. Shri Ramendra Asthana, the learned Counsel for the Defendants, during the arguments did not refer any documentary evidence. The Defendants did not file any documentary evidence to show that it is not a public charitable or public endowment. The Plaintiffs' evidence may be considered.

32. The temple in itself is an ancient temple having ancient idols of Jain Tirthankars worshipped by Jain community. A notice dated 13th December, 1977 was issued by the registering officer being paper No. 68/C under Antiquities and Treasurers Act, 1972 asking the Manager (Mantri) of Sri Digambar Jain Mandir to get the idols, paintings and manuscripts registered under the said Act. The registration was applied for and was granted in respect of idol. The details as mentioned in the registration certificate are as follows:

The image of Jain Tirthanker Parshwanath sitting in lotus form (Padmasan)" being registration No. AGR/U.P/1958.

In column No. 4 its approximate period has been mentioned as Sambat 1548 which leads us to English Calendar year 1490

Paper No. 63 C is a news item published in daily newspaper "Amar Ujala" dated

21st September, 1994 in respect of a theft occurred in Jain Temple. The news item says that persons belonging to Jain community have shown their displeasure and anguish against the police officials for their failure in apprehending the culprit. A silent procession as a mark of protest was also taken out by the public in respect of the a foretasted theft as reported in the news item vide paper No. 64C.

The trial Court had appointed an Advocate Commissioner to visit the disputed property and submit his report. The report of Advocate Commissioner runs in twenty pages. He carried on inspection in the presence of the parties. He inspected the a foretasted two disputed properties and reported that they are interlinked. The salient feature of the said report may be noticed in brief. They are as follows:

1. On the second floor of property No. 20/110 he has found existence of a temple. At various places raised sitting platforms (Bendias) were found. Some marble statues were found. He also found a small statue of Ashtadhatu.
2. On the main door, he has found the writing that the Bada Mandir and Temple were renovated on Vikrami Sambat 1994 after performing religious rites.
3. The office of the temple was found just after entrance to the main road. He found ten-rooms having stone tablets wherein the names of donors, year of construction and in whose memories they were constructed find mention therein. For example; room No. 1 contains a stone tablet with writing that it was constructed in Veer Sambat 2462 year 1936 by Lala Maga Lal Ji Delhi wale in memory of his mother Chamelibai. Similarly, in room No. 2 the writing inscribed in the stone is that it was constructed in Sambat 1993 Vaisakh Sudi 3. Similarly, on other rooms except room No. 3 similar kinds of tablets which were permanently inserted and affixed in the walls were found.

The Commission has also noticed that a number of images and idols were got established by the devotees and their years of installation have been found mentioned.

An idol of Naik was also found alongwith Singhasan and Vedi etc.

Besides above, three other idols of metal relating to period Sambat 1861, 1826 and Veer Sambat 2463 and Vikrami Sambat 1993 were found at the time of the Commission.

From the reading of report submitted by Advocate Commissioner, it can easily be inferred that the temple and Dharmshala are very ancient and are in existence from the time immemorial. The report leads us to the conclusion that the settlor had donated the property to the temple long ago for the benefit of public and for the benefit of Digambar Jain community in particular. There is not even suggestion nor there is any mention that the members of Jain community or public were not permitted to enter and worship in the temple.

33. In this connection, the relevant observations made by the Apex Court in the case of *Kuldip Chand v. Advocate General* (supra) are relevant. Para 21 is reproduced below .

It is beyond any dispute that a Hindu is entitled to dedicate his property for religious and charitable purposes where for even no Instrument in writing is necessary. A Hindu, however, in the event, wishes to establish a charitable institution must express his purpose and endows it. Such purpose must clearly be specified. For the purpose of creating an endowment, what is necessary is a clear and unequivocal manifestation of intention to create a trust and vesting thereof in the donor and another as trustees. Subject of endowment, however, must be certain. Dedication of property either may be complete or partial. When such dedication is complete, a public trust is created in contradistinction to a partial dedication which would only create a charity. Although the dedication to charity need not necessarily be by instrument or grant, there must exist cogent and satisfactory evidence of conduct of the parties and user of the property, which show the extinction of the private secular character of the property and its complete dedication to charity (See *Menakuru Dasartharami Reddi v. Duddukuru Subba Rao*).

34. In *Kamaraju Venkata Krishna Rao Vs. Sub-Collector, Ongole and Another*, the Apex Court has held that a tank can be an object of charity and when a dedication is made in favour of a tank, the same is considered as a charitable institution. In this very case, the Apex Court explained the meaning of "institution" and held that the word "institution" will cover every use of it. In para 5 it has noted its dictionary meaning which means "a body or organization of a association brought into being for the purpose of achieving some object." The dictionary meaning as given in the Oxford Dictionary was noticed and thereafter it noticed the judgment of Privy Council in the case of *Minister of National Revenue v. Trusts and Guarantee Co. Ltd.* 1940 AC 138 wherein the Privy Council has observed as follows:

It is by no means easy to give a definition of the word "institution" that will cover every use of it. Its meaning must always depend upon the context in which it is found.

It has quoted the following passage from the Tagore Law Lectures:

It has been held that though Mutts and temples are the most common forms of Hindu religious institutions, dedication for religious or charitable purposes need not necessarily take one of these forms and that the maintenance of Sadabartas, tanks, seats of learning and homes for the disabled or the destitute and similar institutions are recognized by and well known to Hindu Law and when maintained as public institutions, they must be taken to have a legal personality as a Matha or the deity of the management would occupy a position of trust.

35. In *Shri Kalanka Devi Sansthan Vs. The Maharashtra Revenue Tribunal, Nagpur and Others*, it has been held that 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 interests 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.

36. There is distinction between a Manager or a Shebait. The distinction between a manager or a shebait of an idol and a trustee where a trust has been created is well recognized. 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.

37. The argument of the tenant's counsel proceeds on the basis that it is a case of Trust while it is not so. From the very beginning the case of the Plaintiff is that it is Sri Parasnathji Maharaj Virajman Digambar Jain Mandir is the owner of the properties and the Plaintiff Nos. 2 to 5 are managing them. Therefore, the argument of the tenant is on wrong footing.

38. In *Thayarammal (Dead) by Lr. Vs. Kanakammal and Others*, the Apex Court has held that 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*. In this case also, it has been noticed that there is a distinction between a "trust" in strict legal sense and a religious charitable endowment as understood in customary Hindu Law.

A dedication of property to an idol in strict legal sense is neither a gift as understood in the Transfer of Property Act which requires acceptance by the donee of the property donated nor it is a "trust". Reference has been made to - *BK Mukherjee on Hindu Law of Religious and Charitable Trusts*, fifth Edition by AC Sen pages 102, 103.

39. In *Ram Jankijee Deities and Ors. v. State of Bihar and Ors.* AIR 1993 SC 2131, the Apex Court has held that idol unknown to Hindu Shastra, to establish in temple upon performance of ceremonies as per Hindu Shastra cannot be termed as fake deity. Deity is to be treated as jurisdictional person for the purposes of fixing ceiling unit. A simple piece of wood or stone may become the image or the idol and divinity is attributed to the same. It is formless, shapeless but it is the human concept of a particular divine existence which gives it the shape, the size and the colors.

It is a case where there is ample evidence to show that the temple is an ancient one having very old idols and images of Lords of Jain community. As against the evidence of the Plaintiffs that the temple is public temple, there is no evidence to show otherwise. The Defendants could not dare to say even a single sentence in the evidence that public at large is not permitted to enter into the temple as a matter of right or the property in dispute belongs to someone else. The contents

of the report of Commissioner have been noted with some detail in the earlier part of this judgment. The existence of various idols and images of centuries old is proved and is almost undisputed. There is no otherwise evidence. In the written argument given by the learned Counsel for the Plaintiff opposite party, it has been mentioned that the English Calendar year 2010 corresponds to Vikrami Sambat 2067 and Veer Sambat 2536. By subtracting 526 from Veer Sambat, English year can be found out. Veer Sambat is followed by Jain Community treating the Nirvan Year of Lord Mahaveer as the basic year and it is advanced by 526 years.

The idol is registered with Registration Officer under the Antiquities and Treasurers Act, 1972 with approximate period Sambat 1548 which corresponds to English Calendar year 1491. Therefore, there is no difficulty in holding that the temple is very old and whose origin is not known. It was dedicated to the public from the time immemorial. The evidence shows that Sri Parasnathji Maharaj is the owner of the properties in question. The properties are being looked after by Samiti (Committee) and the said Samiti is not claiming any ownership or right therein except to manage the properties on behalf of Sri Parasnath Ji Maharaj.

40. The above conclusion is further fortified by the fact that existence of other ancient idols and images of Veer Sambat 250, Vikrami Veer Sambat, 1993 etc. is proved. There is ample evidence in the form of rooms of Dharmshala to show that those rooms were raised out of the funds contributed by public. Stones affixed at various places as also on the main gate of the temple indicate that owner has dedicated the property to the public at large. In the case of *Thayarammal (dead) by Lr. (supra)*, the stone inscription was of the year 1805 and it was held by the Apex Court that "it has a presumptive evidentiary value under the Evidence Act." The various stone inscriptions found at the time of spot inspection showing that public contributed in the raising of the Dharmshala and the stone inscriptions attached to the various idols and images, specially when there is no evidence otherwise, leads us to only one conclusion that the Plaintiff No. 1 is a public religious and charitable institution. The finding recorded by the trial Court in this regard is perfectly justified and calls for no interference in the present revision.

The argument of the learned Counsel for the Defendant tenant that there being no evidence with regard to the date of dedication and performance of ceremonies regarding creation of trust is baseless. The said argument proceeds on the presumption that it is a case of trust while it is not so. Here it is a case of public charitable and religious institution and not of a trust. As noticed herein above, there exists a distinction between "trust" in strict legal sense and "religious and charitable endowment" as understood in customary Hindu Law.

41. Section 2(1)(bb) of the UP. Act No. 13 of 1972 reads as follows:

2. Exemptions from Operation of Act.--(1) Nothing in this Act shall apply to the following namely--

xx xx xx xx (bb) -- any building belonging to or vested in a public charitable or public religious institutions.

xx xx xx xx The meanings of words "belonging to" or "vested in" have been considered by the Courts time and again. The words "belonging to", though capable of denoting an absolute title, can also signify of even possession of an interest less than that of full ownership.

Charitable institution has been defined u/s 3(r) of the Act in the following manner:

Charitable institution" means any establishment, undertaking organization or association formed for a charitable purpose and includes a specific endowment;

Explanation.--For the purposes of this clause, the words "charitable purpose" includes relief of poverty, education, medical relief and advancement of any other object of utility or welfare to the general public or any Section thereof, not being an object of an exclusively religious nature.

42. In Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Another, the Apex Court has held that the words "belonging to" is capable of denoting an absolute title, is nevertheless not confined to connoting that sense. Even possession of an interest less than that of full ownership could be signified by that word. In Webster Dictionary "belong to" is explained as meaning inter alia "to be owned by, by the possession of. The precise sense, which the word was meant to convey, can therefore be gathered only by reading the document as a whole and advertent to the context in which it occurs.

43. In the case of Commissioner of Wealth Tax, W. Bengal Vs. Bishwanath Chatterjee and Others, the Apex Court has noted the definition of "belong" as contained in the Oxford Dictionary to be the property or rightful possession of it. So it is the property of a person, or that, which is in his possession as of right, which is liable to wealth-tax arises out of ownership of the asset, and not other wise. Mere possession, or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of "net-wealth" for it would not then be an asset "belonging" to the Assessee.

44. From the above, it follows that the words "belonging to" do not necessarily refer to the ownership of a person to a property but if a person is in possession of a property under some legal title, it can be said that the property belongs to him.

45. The other phrase which has been used in the above definition is "vested in". The meaning of the word "vest" as held by the supreme Court in the case of Dr M. Ismail Fraugui and Others Vs. Union of India (UOI) and Others, has different shades taking colors from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, in title as well as duration.

46. The word "vest" clothes varied colours from the context and situation in which the word came to be used in a statute or rule. Chamber's Mid-Century Dictionary at p. 1230 defines "vesting" in the legal sense "to settle, secure, or put in fixed right or possession, to endow, to descend, devolve or to take effect, as a right". In Black's Law Dictionary, (5th Edn. At p. 1401) the meaning of the word "vest" is given as: "to give an immediate, fixed right of present or future enjoyment; to accrue to; to be fixed, to take effect; to clothe with possession; to deliver full possession of land or of an estate; to give seizing; to one-off". In Stroud's Judicial Dictionary, (4th Edn. Vol. 5 at page 2938), the word "vested" was defined in several senses. At p. 2940 in item 12 it is stated thus "as to the interest acquired by public bodies, created for a particular purpose in works such as embankments which are "vested" in them by statute". Thus the word "vest" bears variable colour taking its content from context in which it came to be used. Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu and Others, (See also Municipal Corporation of Hyderabad Vs. P.N. Murthy and Others,

47. The word "vest" in common English acceptation means and implies conferment of ownership of properties upon a person and in the similar vein it gives immediate and fixed right of present and future enjoyment. Significantly, however, the expression "vest" is a word of variable import since it has to be understood in different contexts under different set of circumstances. Bharat Coking Coal Ltd. Vs. Karam Chand Thapar and Bros. Pvt. Ltd. and Others, (See also Dr M. Ismail Fraugui and Others Vs. Union of India (UOI) and Others,

48. The word "vest" is a word, at least of ambiguous import. Prima facie "vesting" in possession is the more natural meaning. The word "vest" is a word of variable import is shown by provisions of Indian statutes also. The word "Vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust,

49. The word "vest" takes varied colours from the context and situation in which the word came to be used in the statute. It is common knowledge that under the Land Acquisition Act, 1894 the acquired lands vest in the State from the date of taking possession u/s 16 or 17(2). Under the land reforms like abolition of estate and taking over thereof, the vesting takes effect from the date of publication of the notification in the Government of Andhra Pradesh Vs. H.E.H., The Nizam, Hyderabad,

50. Looking to the fact that the exemption has been granted to a public charitable or public religious institution, the words "belonging to" or "vested in" should be interpreted in a wider sense and not in the sense of ownership. These words, as have been interpreted from time to time referred to above, have been used in the above provision to indicate that public charitable or public religious institution should have a legal right or interest in the tenanted property, not

necessarily as owner. The reason is obvious. Property of public charitable or public religious institution do not belong to any person but to public at large for its benefit wherein the individual interest of tenant will have to give way to the interest of public at large.

Section 2(1)(bb) of the Act does not talk about any trust. It grants exemption to a building belonging to or vested in a public charitable or religious institution. The word "institution" has already been explained above and it is very wide term, wider than trust [(See Kamaraju Venkata Krishna Rao Vs. Sub-Collector, Ongole and Another,

51. The learned Counsel for the landlord opposite party is right in making his submission that intention of legislature is very clear to grant exemption not only to such buildings which vest in public or religious institution but also to grant exemption to any building belonging to such public charitable or religious institution. The legislatures have purposely used the words "belonging" also. A property need not necessarily vests in a public or charitable religious institution. In the case on hand, by no stretch of imagination it can be said that the property in dispute does not belong to a public charitable or religious institution even if the date of actual vesting is not known. It is a simple case where the Defendant tenant took the property on rent under a rent agreement through the Manager of the property with clear stipulation in the rent deed that the property belongs to Sri Parasnathji Digambar Jain Mandir or Dharmshala. Now, he cannot take a turn around and say otherwise when it comes claiming of exemption u/s 2(1)(bb) of the Act.

52. In nutshell, the conclusion is that it is not known as to who established the temple or who made the dedication in favour of the deity. The grant is lost in antiquity. The evidence establishes the existence of public temple, beyond doubt.

In view of the above discussion, there is no merit in the first submission of the learned Counsel for the applicant and same is hereby rejected.

53. The second point is with regard to the grant of damages at the rate of Rs. 500/- per month. The attention of the Court was invited by the learned Counsel for the Plaintiffs that in the plaint as well as in oral depositions of PW/1 and PW/2 it was pleaded and proved that the tenanted property can be let out on Rs. 500/- per day. On scanning of the pleadings of the Plaintiffs and the evidence led by them it is crystal clear that the evidence led by the Plaintiff is uncontroverted. The DW/1, the sole witness examined by the Defendant has not said anything to be contrary. Nor there is any denial that the tenanted property could not fetch Rs. 500/- per day as its rent. The Apex Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., has held that after termination of tenancy the tenant is liable to pay damages for his continued possession at the rate at which the landlord could have let out the premises on being vacated by the tenant. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of decree. Paragraph 11 is relevant which is

reproduced below:

Under the general law, and in cases where the tenancy is governed only by the provisions of Transfer of Property Act, 1882, once the tenancy comes to an end by determination of lease u/s 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. In the case of Chander Kali Bai and Ors. (supra) the tenancy premises were situated in the State of Madhya Pradesh and the provisions of the M.P. Accommodation Control Act, 1961 applied. The suit for eviction was filed on 8th March 1973 after serving a notice on the tenant terminating the contractual tenancy w.e.f. 31st December 1972. The suit came to be dismissed by the trial Court but decreed in first appeal decided on 11th August, 1975. One of the submissions made in this Court on behalf of the tenant-Appellant was that no damages from the date of termination of the contractual tenancy could be awarded; the damages could be awarded only from the date when an eviction decree was passed. This Court took into consideration the definition of tenant as contained in Section 2(i) of the M.P. Act which included "any person continuing in possession after the termination of his tenancy" but did not include "any person against whom any order or decree for eviction has been made". The Court, persuaded by the said definition, held that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the M.P. Act and on such termination his possession does not become wrongful until and unless a decree for eviction is passed. However, the Court specifically ruled that the tenant continuing in possession even after the passing of the decree became a wrongful occupant of the accommodation. In conclusion the Court held that the tenant was not liable to pay any damages or mesne profits for the period commencing from 1st January 1973 and ending on 10th August 1975 but he remained liable to pay damages or mesne profits from 11th August 1975 until the delivery of the vacant possession of the accommodation. During the course of its decision this Court referred to a decision of Madhya Pradesh High Court in Kikabhai Abdul Hussain v. Kamlakar 1974 MPLJ 485, wherein the High Court had held that if a person continues to be in occupation after the termination of the contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination. This Court opined that what was held by the Madhya Pradesh High Court seemed to be a theory akin to the theory of "relation back" on the reasoning that on the passing of a decree for possession, the tenant's possession would become unlawful not from the date of the decree but from the date of the termination of the contractual tenancy itself. It is noteworthy that this Court has not disapproved the decision of the Madhya Pradesh High Court in Kikabhai Abdul Hussain's case (1974 MPLJ 485) but distinguished it by observing that the law laid down in Kikabhai Abdul Hussain's case (1974 MPLJ 485) was not applicable to the case before it in view

of the definition of "tenant" as contained in the MP Act and the provisions which came up for consideration of the High Court in Kikabhai Abdul Hussain's case 1974 MPLJ 485, were different.

54. As against above, no material was placed to take a different view of the matter either on fact or on law.

55. Viewed as above, there is no merit in the revision. The judgment and decree passed by the trial Court is perfectly just and legal and does not call for any interference u/s 25 of the Provincial Small Cause Courts Act.

56. Both the revisions are, therefore, dismissed with costs.

Time up to 28th of February, 2011 to vacate the disputed premises is granted subject to the fulfilment of the following conditions:

1. The Defendant tenant shall deposit the entire arrears of rent, damages at the decreed rate for the period up to 28th of February, 2011 within a period of one month with the trial Court.

2. The Defendant tenant shall file an undertaking on affidavit before the trial Court within the aforesaid period that he will hand over the peaceful vacant possession to the Plaintiffs on or before 28th of February, 2011 without creating any third party interest or causing any damage to the building.

If the tenant fails to vacate the disputed premises on or before 28th of February, 2011, he shall be liable to pay the damages for the use and occupation of the properties in dispute at twice the rate as awarded by the trial Court w.e.f. 1st of March, 2011 till the date of delivery of actual possession.