

(1966) 11 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Civil Suit No. 20 of 1958

Shamboo Nath and Others

APPELLANT

Vs

Sardar Kapoor Singh and Others

RESPONDENT

Date of Decision : 02-11-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Easements Act, 1882 — Section 52

Citation : (1966) 11 J&K CK 0002

Hon'ble Judges : S. Murtaza Fazl Ali, J

Bench : Single Bench

Advocate : C.B. Aggarwal, J.N. Bhan, T.R. Bhasla and Tassadque Hussain, for the Appellant; R.K. Garg, Charran Singh and S.P. Vohra, for the Respondent

Judgement

S. Murtaza Fazl Ali, J.—This is a Plaintiffs suit for a permanent injunction restraining the Defendants from interfering with the possession of

the Plaintiffs over the lands in suit bearing plot Nos. 1424/4, 1962/1424/4 and 2304/1143/1. The total area of these lands comes to 29 Ka-nals

and 10 Marias. This total area of Plot No. 1424/4 is 19 Kanals, 12 Marias and consists of the Dharamshalla which covers one Kanal and five

Marias, the springs which cover two kanals and the rest of the area is. a vacant land towards the Pahalgam road and is recorded as Banjar-i-

Qadeem. Similarly plot No. 2304/ 1143/1 consists of vacant land covering four Marias and lands where a number of houses are situated covering

9 Kanals and 14 Marias. I might state here that in the course of the arguments the learned Counsel for the Plaintiffs conceded that the Plaintiffs do

not press their claim with respect to 9 Kanals and 14 Marias which are recorded as Abad Deh and which contain houses of the Defendants and

some of the local Hindus. They confine their claim only to four Marias in this plot which is a vacant piece of land.

Some of the witnesses for the Plaintiffs have also admitted in their statements that the Plaintiffs do not claim this portion of the disputed land. Thus

the position is that the Plaintiffs' claim is now confined to 19 Kanals and 16 Marias out of the disputed lands. The Plaintiffs further prayed for a

permanent injunction restraining the Defendants from interfering with the performance of religious ceremonies by the Plaintiffs and Sanatani Hindus

on the three springs situated on the lands in suit which are known as Mach Bhawan. According to the Plaintiffs, the lands in the suit constituted

what is known as Mattan shrine which existed from times immemorial and has also been regarded as a sacred Asthan of the Sanatani Hindus. It is

further alleged that the Hindus of Kashmir as also from all other parts of India visit this shrine and perform the Shradh of their ancestors on

ceremonial occasions like Mai Mas, Vijay Saptami, Solar and Lunar eclipses and Balmas etc.

It is also alleged that some religious ceremonies like Narayan Bali, Dawadeshi and Suraj Bali are peculiar to this shrine. It is also stated by the

Plaintiffs that the shrine was founded by Kashyap Rishi during very ancient times and is ascribed to Sun God. It was in honour of this deity that

King Lalitditya constructed a temple at Mavtand about a mile away from the premises in dispute and dedicated this temple to Sun God. This

temple is now in ruins but Mattan Teerath is being regarded as a sacred place since times immemorial. According to the Plaintiffs, to the south of

the springs there is a pharamsala which consists of two parts divided by a gate. Three rooms in the Dharamsala are in possession of the Defendants

from the eastern side and the other rooms are in possession of the Plaintiffs on the western side which contained Ganesh Murtis. The land in

dispute also consists of three springs called Bimal Kund, Kamal and Gauri Kund. The central one which is called the Bimal Kund is the largest of

all these springs and will be referred to by me as the central spring. To the north of these springs there is a vacant piece of land towards Pahalgam

road, to the north of present Dharamsala towards Pahalgam side there is a two storeyed building which is used as Dharamshala.

There are two bath rooms in the third ring towards Pahalgam road which is called auri Kund. To the east of the small spring towards the hill side

there are three Hindu temples. This appears to be the topography of the land in dispute as described by the Plaintiffs and as proved by the sketch

map Ex. P 23/1. The Plaintiffs in their plaint have laid claim over the entire properties, the ownership of which vests in the Hindus as represented

by the Plaintiffs. The Plaintiffs have further prayed for an injunction restraining the Defendants from making any construction on the land in dispute.

Finally, the Plaintiffs have prayed that the Defendants be ejected from the three rooms which are in their illegal possession. The case of the Plaintiffs

so far as the possession of the Defendants over a portion of the Dharamshala is concerned is that the Defendants were pure licensees having been

put in possession of these rooms as a temporary measure with the permission of the Dharmarth department as an old Gurdwara belonging to Sikhs

which existed at Sangam had fallen down.

The Plaintiffs further alleged that the Defendants had been put in possession of these rooms on the condition that they would vacate the same after

they had constructed their, own DharamshaHa but the Defendants did not take any steps to do so and have in spite of repeated requests refused

to vacate possession of these rooms. Hence the prayer for ejectment of the Defendants from the three rooms of the DharamshaHa which are in

their possession. It is also alleged by the Plaintiffs that some time in the year 1954, there was a serious quarrel between the Hindus and the Sikhs

on the holding of Dewan on the vacant piece of land towards north of the spring. At that time the Defendants not only wanted to hold the Dewan

but they also wanted to lay a foundation of Gurdwara inside the Ahata of the shrine which was objected to by the Hindus and at the intervention of

the police and the Military, the Defendants were prevented from translating their designs into action. Dewan was thereafter held outside the

disputed premises in the camping ground. The case of license or permissive possession set up by the Plaintiffs was based on a compromise Ex.

PW 1/1 which is said to have been arrived at between the Dharmarth department (which was in charge of the administration of the shrine at that

time) and some of the leaders of the Sikh community who were also members of the then State Assembly.

This compromise was arrived at as far back as 4th Assuj 1999 equivalent to 20th September, 1935. under this compromise it was agreed that the

Defendants' possession over the Dharamshalla was purely permissive and they would be allowed to continue in possession until the government builds a Dharamshalla for the Sikhs at its own cost. According to the Plaintiffs, since then the Defendants have been in permissive possession of these rooms in the Dharamshalla and cannot acquire any tide to remain in possession after their license has been cancelled by the Plaintiffs who were the suc-cessors-in-interest of the Dharmarth department. It is also the case of the Plaintiffs that all the Hindu shrines were put under the administration of the Dharmarth department which was constituted by Aine Dharmarth and was for a long time a department of the government in charge of all public endowments. On 18-5-1948 under the orders of Maharaja Hari Singh the Dharmarth deptt. was directed to hand over possession of all the shrines to the original of under and in accordance with this order the disputed shrine was handed over to Purohit Sabha on whose behalf the present suit has been filed ,in a representative capacity.

It is also admitted by the Plaintiffs that in 1944, the Dharmarth Council had filed a suit against the Sikhs on practically the same ground as the present suit but the suit was dismissed on a preliminary objection having been taken by the Sikhs. In appeal a compromise was arrived at by virtue of which the Dharmarth department dissociated itself completely with the shrine and the suit was allowed to be with i drawn. It was vaguely' suggested in the plaint] that the present Dnarmshalla was reconstructed! by the Dharmarth-department- which was charge of the administration of the shrine under the Ain-e-Dharmarth. No date, howevei is mentioned as to when this Dharamshalla wa constructed and under what oircumstanc

Similarly it is. clearly mentioned in the that there used to be an old Gurdwara at a place far off from the disputed shrine which had fallen down.

Here also the Plaintiffs did not give any date as to when the said Gurdwara was constructed or even when it fell down. I might further state that the present suit has been brought not only on behalf of the Plaintiffs as being authorised by the Purohit Sabha but also in a representative capacity on behalf of the entire Hindu community and sanction of this Court was taken under Order 1, Rule 8 of the Code of Civil Procedure. On these allegations the Plaintiffs have brought the present suit for the relief's mentioned above.

2. The suit has been resisted by the Defendants who claim to be the representatives of the Sikh community and have denied all the allegations of the Plaintiffs. According to the Defendants, the disputed shrine is not exclusively a Hindu shrine but is regarded sacred by the Sikh community as well and is ascribed to the visit of the of under of Sikh religion Shri Guru Nanak Jee who had visited Kashmir and the present shrine where he had converted a Hindu Pandit called Braham Das. In commemoration of the visit of Shri Guru Nanak Jee seven Gurdwaras on three sides of the springs were constructed during the time of Maharaja Ranjeet Singh's rule in Kashmir and the Sikh rulers had granted several Tagirs and Pattas for the maintenance of the Gurdwaras as also for the fishes in the central spring. With the passage of time the purdwaras were found in a dilapidated condition"" and under the orders of the Maharaja Partap Singh they were demolished and the present Dharamshalla was constructed for the benefit of the Defendants who were given possession of all the seven rooms therein where seven Granth Sahibs were being kept. The Dharamshalla was run by the seven Granthis who were in charge of the old Sikh Gurdwaras. The Defendants have denied that they were given permissive possession either by Maharaja Partap Singh or by the Dharmarth department at any time. The Defendants have further averred that they are not at all bound by the compromise Ex. PW 1/1 which was not entered into by the Defendants with the Dharmarth department and the political leaders who are parties to this document did not belong to the locality where the shrine situated nor were they legal representatives of the Sikh community. The Defendants have, in the alternative, claimed that they have acquired title by prescription by being in adverse possession of the three rooms of the Dharamshalla for a period of more than 12 years before the suit. The Defendants have further categorically denied the existence of any Sikh Gurdwara at Sangam and have averred that the grants of Patta and Muafi were in fact for the maintenance of the Gurdwaras at Mattan Shrine and when these Gurdwaras fell down, the Gurdwara was transferred to the present Dharamshalla. The Defendants further disputed the title the Plaintiffs over the open space towards the north of the spring and claim to be in possession of this portion of the land because it was used by the Sikhs for holding Dewans on the

birthday of Shri Guru Nanak Jee and on other occasions. The

Defendants have also alleged that Hindus have got no connection with the disputed shrine and the real Mattan Shrine was at Martand where king

Lalitdittya had built a temple and which is lying in rains even now. The Defendants have further averred that all the ceremonies claimed by the

Plaintiffs were really performed at Chakka Nadi and not inside the shrine. The Defendants also denied that, the Hindus ever performed any ceremonies at the springs.

3. On the pleadings of the parties, the following issues were raised in this suit:

1/- Have the Plaintiffs title to the property in suit? O. P. P.

2/- Were the Plaintiffs in possession, constructive or otherwise of the three rooms as alleged? O. P. P.

3/- Is the suit not maintainable in its present form and have the Plaintiffs no locus standi to file the suit? O. P. D.

4/- Is the suit against the Defendants not competent? O. P. D.

5/- Is the suit barred by limitation ? O. P. D.

6/- Is the suit barred by res judicata ? O. P. D.

7/- Is the suit bad for misjoinder of the parties and the causes of action? O. P. D.

8/- Is the plaint defective in Law ? O. P. D.

9/- Have the Defendants any right in the suit property and if so to what extent ? O. P. D.

10/- To what relief, if any, are the Plaintiffs entitled ?

4. During the course of arguments Mr. Garg, learned Counsel for the Defendants has conceded certain important facts in favour of the Plaintiffs. In

the first place, Mr. Garg has categorically stated that the disputed shrine belongs both to Hindus and Sikhs and that the Defendants have no

intention of interfering with the ceremonies which are being performed at the springs by the Hindus excepting Mundan and dropping of Pindas in

the springs. In fact, the stand taken by the learned Counsel for the Defendants is fully supported by some of the witnesses for the Defendants who

have admitted that the disputed shrine belongs both to Hindus and Sikhs. Mr. Garg also conceded that the vacant space being a common village

land (Abadi Deh) is not in exclusive possession of Sikhs alone and that while the Sikhs have a right to hold their Dewan on special occasions, they

cannot prevent the Hindus also from using this place in accordance with their religious tenets. Mr. Garg also stated before me that the

Dharamshalla in question was built by Maharaja Partap Singh and not by the Sikhs as pleaded by the Defendants in their written statement. This

concession is also justified by the evidence of most of the witnesses for the Defendants who have clearly stated that the Dharamshalla was built by

Maharaja Partap Singh. The learned Counsel for the Defendants finally admitted the existence of the three temples above the spring as also the

existence of a temple in the central spring without any Murti. In view of the concessions made by the learned Counsel for the Defendants the scope

of the suit has been slightly narrowed down.

5. I would first take up the legal issues in the case relating to the maintainability of the suit, the competency of the Plaintiffs, the question of

misjoinder of the parties, the causes of action and the question of resjudicata. These issues are issue Nos. 3, 4, 6, 7 and 8.

6. Issue Nos, 3 and 4. As indicated above, the present suit has been filed by the Plaintiffs on behalf of the Purohit Sabha as also on behalf of the

Hindu community after taking sanction of this Court under Order 1, Rule 8 of the Code of Civil Procedure.

7. The learned Counsel for the Defendants attacked the maintainability of the suit on several grounds. In the first place, he contended that the

Plaintiffs have not shown that there was any valid or proper resolution empowering them to file the suit. In this connection, he drew my attention to

the fact that the Plaintiffs have not produced any resolution to show that they were authorised to file the suit. Nor was the Purohit Sabha a

registered body so as to be competent to get the suit filed through the Plaintiffs. It is true that no resolution has been produced by the Plaintiffs but

they have led sufficient evidence to show that the papers of the Sabha used to be kept in the house of P. W. Dina Nath who was the Secretary of

the Committee and where meetings were used to be held. During a fire which broke out in the house, the entire records including the resolution of

the Sabha were burnt. The Plaintiffs have produced oral evidence to prove the incident of arson and the fact that a resolution was in fact passed by

the members of the Purohit Sabha. This evidence consists of P. W. 18 Radha Krishen Vice President of the Sabha, P. W. 39 Shamboo Nath one

of the Plaintiffs and P. W. 40 Dina Nath in whose house the records were kept and were burnt during the fire which took place on the night of 19/20th March 1960.

8. After having perused the evidence of these witnesses, on this point, I do not see any reason to disbelieve them. Nor have the Defendants elicited

anything particular in their cross-examination to shake their evidence on this point. For these reasons, I hold that the Purohit Sabha had authorised

the Plaintiffs to file the present suit. Even apart from this, since the suit has been filed in a representative capacity, under Order 1, Rule 8 of the

Code of Civil Procedure, the objection raised by the learned Counsel for the Defendants is not tenable. Finally, it would appear from the evidence

produced by the Plaintiffs that the de facto management of the property had vested in the Dharmarth department since a very long time and the

Dharmarth department had under the orders of the Maharaja transferred the management to the Purohit Sabha on 18-5-1948 vide Ex. P. W. 3/2

after which the Plaintiffs became the de facto managers of the property in suit in the eye of law.

Mr. Garg submitted that if the Dharmarth (department was exercising the rights of a 'manager or a Shebait, such a right could not be alienated and,

- therefore, - the transfer by the Dharmarth department in favour of the Plaintiffs was illegal and could not be recognized by this Court, In my

opinion, the argument is based on some misconception. The present suit is not based on a religious Endowment having been founded by a certain

person under which a Shebait or a trustee was appointed. The suit has been filed by the Plaintiffs on the basis that as the members of the Hindu

community they had acquired the right to perform certain ceremonies at the spring and the entire disputed land was part of a religious Asthan

established from times immemorial. Furthermore, by virtue of Ex. P. W. 3/2 the Dharmarth department itself did not transfer its office but this was

done under the orders of the Maharaja who was a sovereign ruler at that time. Furthermore, on the allegations as they stand, in the plaint, the

Plaintiffs seek to restrain the Defendants from interfering with their rights and also seek the ejectment of the Defendants from a portion of the land

on the ground that they are trespassers. Liberally construing the plaint, therefore, the position is that the Plaintiffs are seeking to defend the property

of the Asthan as its Managers against its invasion by trespassers or persons who have no lawful right to interfere with the property. There is

abundant authority that in such cases, a de facto Manager has ample authority to file a suit, even though he may not be a legally constituted trustee

or a Shebait.

9. In AIR 1935 44 (Privy Council) , their Lordships of the Privy Council have held:-

There can be little doubt that Karia has been managing the affairs of the institution since 1904 and has since the death of Rajbans been treated as

its Mahant by all the persons interested therein. The property entered in the revenue records in the name of Raj Bans, was on his death, mutated to

Karia and it is not suggested that there is any person who disputes his title to the office of the Mahant. In these circumstances, their Lordships

agree with the, High Court that Karia was entitled to recover for the benefit of the Math the property which belonged to the Math and is now

wrongly held by the Appellants. They are in no better position than trespassers.

The observations of their Lordships of the Privy Council were relied upon by the Supreme Court in Vikrama Das Mahant Vs. Daulat Ram Asthana

and Others, , and their Lordships observed as follows:

In these circumstances, the question before us is whether a person who has been in de facto possession and management of the Asthan and its

properties from 1934 to 1941 (and thereafter up-to-date) claiming to be its trustee under the decree of a Court, valid or invalid has not sufficient

interest to maintain exceeding for the warding off a cloud cast- y the Defendants action against the interests of the Asthan.

Now the ordinary rule that persons without Me and who are mere intermeddlers sue as of right is clear. But where public trusts are concerned,

Courts have a duty to see that their interests and the interests of those for whose benefit they exist are safe-guarded. Therefore, Courts must

possess the power to sustain proper proceedings by them in ap-' propriate cases and grant relief in the interests of and for the express benefit of

the trust imposing such conditions as may be called for. In the present case, if Ram Sarup Das has no title and if he is an intermeddler - which is the

basis on which he has been brought on record so is the other side and obviously the Court cannot allow a public trust to be left to the mercy of

unauthorised persons who are scrambling for a position of advantage in its management.

The same view has been taken by a number of High Courts in India, to mention a few namely:

The Ongole Byragi Mutt, Ongole and Others Vs. Inala Kannayya and Others, . (Sic) and Sheotahal Dube Vs. Lal Narain Prasad Chand and Others, .

In this view of the matter, it is manifest that the Plaintiffs claiming as de facto managers of the present shrine were fully competent to Me the suit in

order to defend the property against the illegal acts of the Defendants- The question as to whether or not, the Defendants are trespassers would

have to be seen on merits and is not germane for the decision of the maintainability of the suit which has to be judged on the face of the allegations

made in the plaint. For these reasons, therefore, the objection raised by the learned Counsel for the Defendants on this score is overruled.

10. It was next contended by the learned Counsel for the Defendants that the Plaintiff being mere representatives of the Purohit Sabha cannot be

regarded to be a juristic person so as to maintain the present suit for injunction and possession. This objection can also be answered on the same

grounds which I have indicated above namely that the Plaintiffs as Managers are competent to file the present suit, to defend the property against

the acts of vandalism alleged to have been committed by the Defendants.

11. The last and the most important contention on this point raised by the learned Counsel for the Defendants was that the Plaintiffs have filed this

suit on the basis of proprietary title which had vested in them and in this form the suit is not maintainable. Analyzing the contention of the learned

Counsel for the Defendants, it comes to this that if the property in suit amounts to a Public Trust or a Religious Endowment then the conditions of

Religious Endowment must be satisfied before the Plaintiffs can claim any title to the property. It has been urged by the learned Counsel for the

Defendants that there is no evidence in this case to show that there was a founder who established the shrine, appointed any trustee or a Pujari or

dedicated any lands for the support and maintenance of the shrine. Thus according to the learned Counsel for the Defendants the essential

ingredient for the establishment of religious endowment not having been fulfilled

in this case, the Plaintiffs have no locus stand to bring this suit as no title vested in them. An alternative argument was advanced by the learned Counsel for the Defendants that even if, the title of the property vested in Hindus how the Plaintiffs could exclude the Defendants who being Sikhs are included within the Hindu Community.

I have given my anxious consideration to the serious argument raised by the counsel for the Defendants on this aspect of the case and I find that

the argument is without any substance. As I have indicated above, the Plaintiffs have not filed this suit alleging that there was any religious

endowment by virtue of a particular document or by a named founder but have based this suit on the basis that this shrine being a very ancient one,

and the various uses to which it has been put by the members of the Hindu community is sufficient to raise an inference of dedication. According to

the allegations made in the plaint, the Hindus have been regarding the disputed premises as a sacred place for more than 400 years and the shrine

actually owes its origin to Kashyap Rishi and to the birth of Sun God. In such a state of affairs, it was impossible for the Plaintiffs to have adduced

direct evidence of dedication which has to be presumed from long user. In *Sri Venkataramana Devaru and Others Vs. The State of Mysore and*

Others, their Lordships of the Supreme Court have clearly laid down that where a deed of endowment is not forthcoming, proof of long

uninterrupted user would be cogent evidence of dedication. In this connection, their Lordships have observed as follows:

The Law on the subject is well settled. When there is a question as to the nature and extent of a dedication of a temple that has to be determined

on the terms of the deed of endowment if that is available, and where it is not, on other materials legally admissible, and proof of long and

uninterrupted user would be cogent evidence of the terms thereof. Where, therefore the original deed of endowment is not available, and it is found

that all persons are freely worshipping in the temple without let or hinderance, it would be a proper inference to make that they do so as a matter of

right and that the original foundation was for their benefit as well.

12. AIR 1957 SC 797 is also to the same effect. Similar view has been taken by the Privy Council and a number of the other High Courts in India

and I think it is not necessary to multiply authorities on this point in view of the

clear decision of the Supreme Court. It is true that the Plaintiffs have based the suit on their proprietary title. But construing the plaint as a whole, it seems to me that what the Plaintiffs have asked for is that by long user of the right to regard the disputed premises as essentially a Hindu place of pilgrimage which has been carrying with it, the right to perform religious ceremonies at this place the Hindu community in general has acquired these rights which cannot be interfered with by the Defendants without any right or title. Mr. Aggarwal appearing for the Plaintiffs has drawn my attention to certain passages of the famous book entitled The Hindu Law of Religious and Charitable Trust by Mr. Justice Bijan Kumar Mukherjea the late Chief Justice of India, which consists of Tagore Law Lectures delivered by the Hon'ble Judge in 1951. At page 35 of the Book the learned author has observed as follows:

When a Mutt is dedicated for the use of ascetics in general or those who belong to a particular sect and there is no definite donee who accepts the gift, different considerations undoubtedly arise. The libation of water which is the indispensable ceremony in all gifts according to Hindu sages is in such cases poured over an earthen pot, or on the earth itself. This signifies that the gift or dedication is of a public character. Institutions like Choultris, Dha-ramsals, Sastras, etc. occupy a similar position. In all these cases the beneficiaries are an indefinite number of persons who constitute either the entire public or certain sections of it.

From the aforesaid observations, it would appear that in the instant case, the ownership if any vested in the general body of Hindus who as members of that general body had a right to perform religious ceremonies at that place. I will adumbrate this aspect of the matter when I deal with issue No. 1. At this stage it is sufficient to say that the Plaintiffs were fully competent to file this suit on the allegations made by them in the plaint, and the objection taken by the learned Counsel for the Defendants on this score cannot be accepted. Finally, it was argued by the learned Counsel for the Defendants that even if it be assumed that the disputed shrine was an ancient institution by an unknown founder, the performance of Shradh of persons other than the founder was a conception not known to Hindu Law. I am, however, unable to accept this contention. Indeed, if there was an identifiable person who had established a particular trust or a math he

could have mentioned as one of the religious objects of dedication

the performance of Shradh either of himself or his ancestors.

In the instant case, the Plaintiffs have not rested their case on religious endowment and all that they say is that as the institution itself was founded as

having been ascribed to the birth of the Sun God, the performance of Shradh of any ' person becomes art object of spiritual efficacy of soul of any

member who belonged to the Hindu community. The Plaintiffs have clearly alleged in their plaint that there are certain ceremonies like Dawadashi,

Narayan Bali etc. which are peculiar to this shrine and which cannot be performed anywhere else. Similarly, it is stated that the performance of

Shradh at this institution is regarded more sacred and more important than at other places of pilgrimage. In other words, the Plaintiffs have attached

a special religious significance to the institution by virtue of the fact that it gave birth to Sun God, after having been founded by Kashyap Rishi. In

this view of the matter, the contention raised by the learned Counsel for the Defendants does not appear to be tenable. For these reasons,

therefore, I hold that the suit is maintainable and competent against the Defendants.

13. Issue No. 6: It appears that a previous suit by the Dharmarth department was brought against some; of the Defendants in the year 1944 which

was ultimately withdrawn in appeal on a preliminary objection taken by the Defendants. It is, therefore, manifest that there was no formal

adjudication in the previous suit and therefore the judgment in the previous suit cannot operate as resjudicata in the present suit. The learned

Counsel for the Defendants did not press this issue also. For these reasons, therefore, Issue No. 6 is decided in favour of the Plaintiffs and against

the Defendants, and it is held that the suit is not barred by the principle of resjudicata.

14. Issue Nos. 7 and 8: These issues have not been pressed by the learned Counsel for the Defendants and are, therefore, decided against the

Defendants; arid in favour of the Plaintiffs.

15. Issue Nos. 1, 2, 5 and 9, being interlinked are taken up together: In order to decide these issues it will be necessary first to give a brief

description of the properties over which the Plaintiffs claim, title and possession. These roperties may be classified under the following eads:

1. Dharamshalla consisting of seven rooms occupying one kanal and five Marias. This building is included in Plot No. 1424/4.
2. The Springs which cover an area of two Kanals.
3. Open space to the north of the springs towards Pahalgam road which cover an area of 16 Kanals and 6 Marias.
4. Four marlas of vacant land in plot No. 2034/1134/1 which is to the north of the Dharamshalla and which contains the habitation of Sikhs and Hindus and which is recorded as Abadi Deh in the revenue papers.
5. The bath rooms and the building which according to the Plaintiffs are in their possession and portion of which has been used by them for Pathshalla purposes.
6. The three temples to the extreme west of the springs one of which is known as Suraj Mandir.

I might state here that the claim of the Plaintiffs regarding the three temples is not disputed by the Defendants. I would first take up item No. 1 i.e.

the Dharamshalla over which there appears to be a very serious divergence between the case of the Plaintiffs and that of the Defendants.

Regarding this property, the Plaintiffs' case is that the Dharamshalla forms part of the entire Mattan Asthan and during ancient times Dharamshallas

were constructed by the rulers from time to time for the purpose of Yatris and Hindus, who wanted to perform ceremonies at the springs or who

were on their way to Ammar Nath Yatra. The old Dharamshallas having fallen down the Dharmarth department which was in charge of the

administration of the public trusts constructed the present Dharamshalla in the year 1913 A. D. or some time thereafter and the Dharamshalla was

in constructive possession of the Dharmarth department until the entire shrine was transferred to the Plaintiffs under the orders of the Maharaja by

virtue of Ex. P. W. 8/1 and Ex. P. W. 3/2 dated 8-8-1948. Thereafter the Plaintiffs have been in exclusive possession of four rooms of the

Dharamshalla and the Defendants have been in permissive possession of the remaining rooms towards the eastern side of the Deohri. The

possession of the Defendants in the three rooms of the Dharamshalla is explained by the Plaintiffs in the following manner:

16. That an old Gurdwara of Sikhs was in existence at Chaka Nadi or Sangam about half a mile away from the Mattan Teerath in which Granth

Sahib used to be kept and were looked after by the Granthis. This Gurdwara fell down some time before the construction of the present

Dharamshalla. The Sikhs made a representation to the Dharmarth department for giving them shelter in the present Dharamshalla when it was

constructed and accordingly the Sikhs were allowed to keep their Granth Sahib in two rooms of the present Dharamshalla until they were able to

build a Gurdwara of their own at a suitable place. According to the allegations made in the plaint the Sikhs converted these two rooms into four

rooms and subsequently the four rooms into three rooms out of which two rooms were reserved for Gurdwara purposes and one room was being

used as Langer Khana. The Plaintiffs further averred that after taking possession of the two rooms the Defendants refused to vacate the Dharam

shalla and a dispute arose which, on the intervention of the leaders of both the communities, was settled by an agreement Ex. P. W. 1/1 dated 4th

Assuj 1991 corresponding to 20th September 1935. Under this agreement the Sikhs were allowed to continue in occupation of the rooms given to

them until a Gurdwara was constructed for them by the Government.

Thus according to the Plaintiffs, the permissive possession given to the Defendants by the Dharmarth department was confirmed by this document.

In other words the Dharmarth department who was the predecessor-in-interest of the Plaintiffs was the licensor and the Defendants were the

licensees. Some time in the year 1954, a serious dispute arose between the Sikhs and the Hindus resulting in a fracas in which members of the Sikh

community were arrested. The cause of the dispute was that the Sikhs wanted to hold Dewan in the open space to the north of the spring and

wanted to lay the foundation of a new Gurdwara which was seriously resisted by the Plaintiffs. Thereafter the Plaintiffs several times demanded the

Defendants to surrender possession of the Dharamshalla and thus cancelled the license of the Defendants. The Defendants, however, refused to

deliver possession and hence the present suit, for ejecting the Defendants from the three rooms of which they are in possession.

17. On the other hand, the Defendants have emphatically denied all the allegations of the Plaintiffs on this score and have clearly alleged that

during the Sikh rule in Kashmir, 'seven Gurdwaras on three sides of the springs had been constructed under the orders of Maha-Taja Ranjeet

Singh. When these Gurdwaras became in a dilapidated condition they were demolished under the orders of the then Maharaja who built the

present Dharamshalla in lieu of the seven Gurdwaras which had existed before and the Defendants, therefore were in possession of the

Dharamshalla not under any license granted by the Plaintiffs but in their own right. The Defendants further averred that since ancient times upto-

day there were several grants and Muafis of some lands in neighbouring villages to the Defendants for the support and maintenance of the

Gurdwaras and after the old Gurdwaras fell down, these grants continued for the maintenance of the present Dharamshalla. The Defendants

further denied that there was any Gurdwara at any time at Chaka Nadi or at Sangam. This is the case of the parties, with respect to the

Dharamshalla which I have classified as item No. 1 of the properties in suit.

18. It would appear from the pleadings of the Plaintiffs that possession of the Defendants in three rooms of the Dharamshalla is admitted and the

Plaintiffs have claimed constructive possession on the basis that the Defendants were given permissive possession because an old Sikh Gurdwara

which existed at Chaka Nadi had fallen down. It may be noted that the Plaintiffs have not mentioned in the plaint either the date when the Sikh

Gurdwara fell down or even the exact place where it was situated. All that they stated in Para No. 10 of the plaint is that an old Gurdwara of Sikhs

was situated at a great distance from the Mattan Teerath. The plaintiffs have also not mentioned the exact date or the year when the Defendants

were according to them allowed permissive possession of the rooms in the Dharamshalla, but have generally stated that this was done when the

Dharamshalla was constructed. The learned Counsel for the plaintiffs conceded before me that it should be taken to have been established that the

present Dharamshalla was constructed some time in the year 1913 as would appear from the documentary evidence which the Plaintiffs have

produced.

The counsel for the Defendants also conceded that the present Dharamshalla was constructed near about the year 1913 A. D. As, however, the

very foundation of the case of permissive possession pleaded by the Plaintiffs is the existence of the old Gurdwara of Sikhs at Sangam, I would

take up this aspect of the matter first. In the course of arguments, it was

conceded that the documentary evidence produced by the Defendants showing that there were a number of Jagirs, Muafis, and grants for the maintenance of Gurdwara at Mattan, were no doubt, there, but it was sought to be explained by the learned Counsel for the Plaintiffs on the ground that these grants referred to the old Sikh Gurdwara which existed at Chaka Nadi. In the plaint, there is absolutely no explanation given by the Plaintiffs regarding the grants mentioned above which is doubtless a significant factor for judging the validity of the case put forward by the Plaintiffs on this point.

19. I have already mentioned that the plaint does not indicate the date and time when the old Sikh Gurdwara at Sangam had fallen down, and this matter has come to light for the first time is the evidence which has been led by the Plaintiffs on this point. I might further state here that the evidence of the Plaintiffs regarding the date when the Gurdwara fell down is by no means consistent and the evidence suffers from discrepancies on the following points:

- a. The date when the Gurdwara fell down.
- b. The nature and the description of the Gurdwara.
- c. The manner in which it was destroyed. The witnesses examined by the Plaintiffs do not agree with one another on the date when the Gurdwara fell down, nor do they agree as to the nature and description of the Gurdwara, nor even with respect to the manner in which it ceased to exist.

According to some witnesses the Gurdwara had fallen down due to floods, according to some others it was burnt down and according to some it

had fallen down. I might also mention that if the Plaintiffs fail to establish the existence of the old Sikh Gurdwara, then the very basis of their case of

permissive possession of the Defendants over the present Dharamshala disappears. Furthermore, if it is found that there was no such Sikh

Gurdwara at Sangam, then the conclusion is inescapable that the various grants, and Muafis which have been proved by the Defendants would be

referable to Gurdwaras at Mattan and at Mattan alone, because it is not the case of the Plaintiffs that the grants could be referable to some other

Gurdwara at a different place. I would now discuss the evidence of the Plaintiff against the background of the facts and the circumstances

mentioned above.

After discussion of the documentary evidence in Paras 19, 20 the judgment proceeds:

Thus from the documents discussed above, the irresistible inference that can be drawn is that Dharamshalla at Sangam was a purely Government

building meant for tourists and Yatris and there is no indication that this Dha ramshalla was used as a Sikh Gurdwara; nor is there any mention of

the fact that the said Dharamshalla was run by Granthis. These documents therefore clearly establish that the Dha ramshalla at Sangam which is

referred to by the Plaintiffs as a Gurdwara was not a Gurdwara at all and that no such Gurdwara was ever situated at Sangam. This brings us to

the discussion of the oral evidence given by the plaintiffs on this point.

35. After discussion of the oral evidence in Paras 21 to 34, the judgment proceeds:] From the aforesaid discussion of the evidence, it transpires

that the witnesses have contradicted themselves on vital points regarding the date when the Dharamshalla fell down, the manner in which it ceased

to exist and the nature of the building that the Gurdwara was. Furthermore, the evidence of most of the Plaintiffs witnesses run counter to the

documentary evidence Ex. P-2/P.D and Ex. P-3/P-D produced by the Plaintiffs and in fact contrary to the recitals in the plaint vide Para 10 of the

plaint. The evidence of most of the witnesses, as has been seen is purely hearsay and therefore inadmissible in evidence. The other witnesses do

not appear to have any personal knowledge of the matter. It is, therefore, difficult to rely on such a discrepant and incredible set of P. W.'s

examined by the Plaintiffs. Apart from these intrinsic defects of the evidence of these witnesses, the existence of Sikh Gurdwara at Sangam is

falsified by the following circumstances:

36. a. Indeed if according to the learned Counsel for the Plaintiffs various grants and Muafis which have been proved by the defendants and

admitted by the Plaintiffs, related to the Gurdwara which had existed since a long time at Sangam, there was absolutely no reason why there

would have been no mention at all of this Gurdwara in any revenue records, or about the existence of such a Gurdwara.

37. b. A number of P. W.'s have admitted in their evidence that there was no Sikh habitation at or near Sangam where the old Gurdwara is

alleged to have existed but was near the springs, vide the statements of P. W. 7

page 28, P. W. 11 page 41, P. W. 21 page 66, P. W. 23 at page 73, P. W. 30 at page 88, and P. W. 9 at pages 34-35 and P. W. 22 at page 70. Some of these P. W.s state that the Sikh habitation was actually in Mattan opposite to the north of the present Dharamshalla and at Sangam there was purely Hindu population. Thus the evidence of the Plaintiffs and that of the defendants clearly shows that Sikh habitation lies to the north of the present Dharamshalla in plot No. 2304/1143. It is difficult to believe that if an ancient Sikh Gurdwara existed at Sangam which was run by several Granthis, there would have been no Sikh habitation at all near that place. The absence therefore, of any Sikh habitation at Sangam or at Chaka Nadi is in my opinion an important circumstance to show that no such Gurdwara ever existed at that place.

38. c. If there was any old Sikh Gurdwara at Sangam which fell down almost at the same time, when the present Dharamshalla in Mattan was constructed because the old buildings had fallen down, there would be no reason why the Maharaja of the State who knew full well the feelings of the Hindus and Sikhs would not have directed the construction of a separate Gurdwara of Sikhs at Sangam instead of allowing them to occupy a portion of the Dharamshalla which was meant for Hindus only. In fact, the Defendants' case is that because their old Sikh Gurdwara which stood in the Mattan shrine had fallen down that the present Dharamshalla was constructed and in lieu thereof, they were given possession of a portion of this Dharamshalla. The version given by the defendants appears to me to be more probable than that given by the Plaintiffs.

39. d. The definite case of Plaintiffs is that there was no Gurdwara of Sikhs inside Ahata Mattan. One of the ancient documents relied upon by the Defendants is Ex. DW/26/M which indicates that during the Sikh regime, certain grants were made for the maintenance of Gurdwara and fishes in the tanks at Mattan. If no Gurdwara at Sangam existed at that time, then this document completely fixes the situs of the Sikh Gurdwara at Mattan Asthan and not at Sangam as alleged by the Plaintiffs.

40. Having regard therefore to the evidence and circumstances discussed above, the inescapable conclusion that can be arrived at is that the Plaintiffs have miserably failed to prove the existence of any Sikh Gurdwara at Sangam at any time. With this finding, the very foundation of the

edifice of the case of permissive possession of the Sikhs over the present Dharamshalla put forward by the Plaintiffs falls to the ground.

Nevertheless, since evidence has been adduced on the point of permissive possession, I shall take up this evidence for whatever worth it is.

41. Coming now to this aspect of the case, the definite case set out by the Plaintiffs in their plaint is that after the alleged Sikh Gurdwara at Sangam

had fallen down, the Dharmarth department on the prayer of the Sikhs allowed them to occupy two rooms in the present Dha-ramsala in order to

keep their Granth Sahib there. Thus according to the Plaintiff the starting point of permissive possession given to the Defendants was 1913 when

the Dharamsala was constructed. Before going further, I would refer to the evidence adduced by the Defendants and the Plaintiffs on the actual

date of the construction of the present Dharamsala which would be very material for judging the truth or otherwise of the case set out by the

Plaintiffs on the point. To begin with, as indicated above, learned Counsel for both the parties conceded before me that it may be taken to have

been established that the present Dharamsala was constructed in the year 1913. This concession is actually based on the unimpeachable

documentary evidence produced by the Plaintiffs on this point. I would now proceed to analyse the oral and the documentary evidence which had

been produced by both the parties on the point, as to now, when and who constructed the present Dharamsala.

43. [After discussion of the documentary evidence, in Para 42 the judgment proceeds:] Thus from a bare perusal of these documents, the following

facts are established:

a. That prior to 1900 there were some buildings and Dharamsallas in the Mattan As than which had been constructed by previous rulers

particularly Maharaja Gulab Singh

b. That these buildings had started falling down, became dilapidated some time in the year 1900 and fell down completely by 1911- 12 (A. D.).

c. That orders for reconstruction of the new Dharamsala was given by the Maharaja and later by the then Chief Minister and before construction

of the present Dharamsala, the old buildings standing at the shrine premises had been demolished.

d. That the work of actual construction I started some time in 1912 when the

Chief Minister directed the Divisional Engineer to go ahead with construction of this Dharamsala.

e. That the Dharamsala was rebuilt under the original orders of the Government headed by Maharaja Pratap Singh.

44. Thus the only irresistible inference that can be drawn from these documents, whose authenticity is absolutely beyond question and which has

been in fact admitted by the learned Counsel for both the parties, is that the present Dharamsala was constructed by the Government under the

orders of Maharaja Pratap Singh, who was the owner of this building. The oral evidence on this point more or less leads to the same conclusion

and is analysed thus:

52. [After consideration of the oral evidence in Paras 45 to 51 the judgment proceeds:] Thus it would appear that P. Ws. 2, 14, 16, 27 and 28

categorically admitted that the present Dharamshalla was constructed by Maharaja Pratap Singh and P. Ws. 4, 35, 36 and 39 limitedly admit this

fact. The evidence of this P. W's is fully corroborated by the documentary evidence which has been discussed above. Apart from this D. W. 12 at

page 36, D. W. 14 at page 40, D. W. 18 at page 54, D. W. 22 at page 78, and D. W. 27 at page 107 have also admitted that the Dharamshalla

was built either by the Maharaja Pratap Singh or by the then Government. From an analysis of the oral and documentary evidence, therefore, it is

established beyond doubt that the present Dharamshalla was constructed by the Government under Maharaja Pratap Singh and, therefore, the

concession made by the learned Counsel for the parties before me was fully justified.

53. As regards the time, apart from the concession made by the learned Counsel for the parties that it was built in the year 1913, the oral evidence

of the parties also lead us to the same conclusion.

62. [After discussion of the oral evidence in paras 54 to 61 the judgment proceeds:] Given sufficient allowance for the lapse of memory in case of

these witnesses, we can safely conclude that the evidence of both the Plaintiffs and the Defendants' witnesses generally shows that the present

Dharamshalla was constructed near about 1913 which is fully corroborated by the ancient document Ex. P. W. 38/ 6 whose authenticity is beyond

question. From the evidence discussed above and the concession made by the

counsel for the parties, I would therefore, hold that the present

Dharamshalla was constructed some time in the year 1913 and according to the Plaintiffs' allegations in the plaint, the Sikhs were put into

permissive possession of the two rooms of the Dharamshalla in that year.

63. The Plaintiffs have positively stated in their plaint to begin with, that the Defendants were given two rooms in the present Dharamshalla and it is

further averred in Para No. 10 of the plaint that after a few years there was a dispute between the Dharmarth department and the Sikhs over the

possession of the rooms which was settled on the intervention of the leaders of the parties by virtue of Ex. P. W. 1/1 dated 4th Assuj 1992. At that

time the Defendants had converted the two rooms which had ' been given to them into four rooms and thereafter, they had converted these four

rooms into three rooms one of which was being used as Langar Khana. I might state here that there is no recital in the plaint, that after having been

given possession of the rooms by the Dharmarth department, the Defendants encroached upon any additional rooms in that building. The allegation

only is that the Defendants had been changing the shape of the rooms which had been given to them. I have mentioned this fact because the

evidence led by the Plaintiffs would show that some time later, the Defendants forcibly occupied two more rooms in the present Dharamshalla

which is obviously contrary to the case made out by the Plaintiffs in their plaint. Thus the case made out by the Plaintiffs on this part of the case is

that the Defendants were given permission to occupy two rooms in the Dharamshalla and this permissive possession was confirmed by Ex. P. W.

1/1, the settlement arrived at by virtue of this document between the Dharmarth department and the leaders of the Sikh community. The evidence

led by the Plaintiffs on the question of permissive possession suffers from some very serious infirmities which appear to me to be absolutely fatal to

the case set up by them.

64. a. A large part of the evidence of the Plaintiffs show that permission was granted to the Sikhs not by the Dharmarth department as alleged by

the Plaintiffs, but by Maharaja Par-tap Singh. In this connection P. Ws. 1, 4, 14, 16, 27, 28 and 36 have clearly deposed that the Dharamshalla

was built by the Maharaja Partap Singh or by the Government of that time. These witnesses do not say that the Dharamshalla was built by the

Dharmarth department. Similarly P. Ws. 2 (Page 9), 4 (Page 15), 35 (pp. 114, 116) P. W. 36 (Page 120) and P. W. 39, one of the Plaintiffs

(Page 129) have categorically stated that it was Maharaja Partap Singh who had allowed the Sikhs to occupy the two rooms in the Dharamshalla.

From the admission of these P. Ws. it would appear that permissive possession to the Defendants if any, was given not by the Dharmarth

department or by the Plaintiffs but by the Maharaja. In other words therefore, the licensor was Maharaja Partap Singh and after him, his

successor, namely the present Government and not the Plaintiffs. Thus the Plaintiffs have absolutely no locus standi to ask for the ejectment of the

Defendants. It is the admitted case of the Plaintiffs that the property in question along with other properties of the Asthan were transferred to the

Plaintiffs by the Dharmarth department under orders of the Maharaja. It is not the case of the Plaintiffs that the Dharamshalla after being built by

Maharaja Partap Singh was dedicated to the public or for that matter to the Hindus alone, nor is there any such evidence. In AIR 1933 Lah 189 it

was clearly held that in absence of any evidence of Sankalp or Samarpan, the mere fact that a Dharamshalla was being used for a particular

purpose, in the instant case, for the use of Yattris, cannot amount to a public trust. Their Lordships in that case observed as follows:

In Deo Saran Bharti and Another Vs. Deoki Bharti and Another, and Bhekdhari Singh and Others Vs. Sri Ramchanderji and Others, there is a

long discussion as to what is essential when dedicating to the public or to God such like property as a Dharamsala, etc. "creation of a trust for

religious purposes, it is said "no doubt finds favour in the Hindu Law just in the same way as it does in the other communities and the essential

ingredient which constitutes a gift whether of moveable or immovable property in

the Hindu Law is the Sankalp and the Samarpan whereby the property is completely given away and the owner completely divests himself of the

ownership in the property. In Hindu law there must be a true Sankalp and Samarpan. "Of this ceremony there is no evidence and as I have already

remarked in such a recent case of alleged dedication proof of user only would scarcely be sufficient, while such proof that there is of user is

consistent with the private ownership of Molar Mai.

To the same effect are the decisions reported in Deo Saran Bharti and Another

Vs. Deoki Bharthi and Another, and Bhekdhari Singh and Others

Vs. Sri Ramchanderji and Others, . As however, the Plaintiffs have not pleaded any case of dedication by the Maharaja to the public, we need not

go into this question any further. On this ground alone, therefore, the Plaintiffs plea of permissive possession must fail and the prayer for ejectment

sought for by them cannot be granted.

65. b. While the case made out in the plaint is that permissive possession was given to Sikhs at the time when Sikh Dharamsala had fallen down

and the present Dharamsala was constructed, the evidence led by them is in direct variance with the pleadings of the Plaintiffs on this point. This

takes us to the evidence led by the Plaintiffs on this part of their case.

80. [After discussion of the oral evidence, in Paras 66 to 79 the judgment proceeds:]

This is the all evidence produced by the Plaintiffs on the question of permissive possession. It would appear from the discussion of the evidence

that the P. Ws. do not agree as to when, how and who gave permissive possession to Sikhs and in this state of conflicting evidence the case of

permissive possession cannot be held to have been established by the Plaintiffs.

81. Before closing this aspect of the case, I would like to say a few words about Ex. P. W. 1/1 which is the sheet anchor of the case of the

Plaintiffs on this part of the case. It is common ground that the present Defendants were not parties or signatories to this document, nor was any

local Sikh of Mattan made a party to this document. It is also admitted that the Sikh leaders who appeared to have signed this document did not

hail from Anantnag and could not be said to be the legal agents of the Defendants. Finally, the Plaintiffs in the present case have sued for the

ejectment of the Defendants in a representative capacity. In order, therefore, that the document Ex. P. W. 1/1 can be held to be binding on the

defendants, it must be shown that either they or their legally constituted attorney's were parties to the document or had signed the same. This is

admittedly not the position in this case. In these circumstances, therefore, ex facie Ex. P. W 1/1 will not be binding on the Defendants., at all and

would not how that their, possession was, permissive; QI that the present defendants, accepted their status as pure licensees

[After discussion of oral evidence, in Paras 82 to 86, the judgment proceeds:] It

would] thus appear that none of the defendants or their legally constituted agents were parties to this agreement. Thus it is clear from the plaintiffs' evidence that Sikh leaders who signed the agreement neither belonged to Mattan nor did they have any connection with any organization of the local Sikhs who alone are in possession of the rooms in the Dharam-sala and are sought to be ejected there from. The defendants have emphatically denied that these leaders were authorized by them to enter into any agreement with the Dharmarth department. It is common ground that none of the defendants were signatories to the document Ex. P.

W. 1/1. Taking the plaintiffs' case at its highest, the position is that the Sikh signatories of this document were merely political representatives of Sikhs in the Assembly either by election or by nomination.

But could they be said to be legally constituted agents or attorneys of the Defendants or for that matter of the entire Sikh community (as Defendants have been sued by the Plaintiffs in a representative capacity) in absence of any power of attorney so as to bind the Defendants by their admission? In my opinion, the answer must be in the negative. In order to make the agreement or the admission contained therein binding on the Defendants, two conditions must be satisfied:

1. Either the Sikh signatories were appointed by a power of Attorney to represent the Defendants or empowered by a resolution by a fully representative organization of the entire Sikh community to conclude the agreement on their behalf.
2. Or the Defendants themselves signed this document. None of these conditions have been satisfied in this case and therefore, it is manifest that the agreement is not binding on the Defendants and cannot be taken into consideration against them as it was arrived at behind their back.

87. Moreover, the agreement at its face value cannot be regarded as a deed of license. u/s 52 of the Easement Act, a license can be granted only in favor of a definite number of persons and not in favor of fluctuating body of individuals. By virtue of this agreement permissive possession of the Sikhs as a community does not amount to a valid license nor is such a license known to Law. In these circumstances, therefore, in my opinion, this agreement even if binding on the Defendants, can be considered to be at best a bilateral agreement between the representatives of the two parties

and containing reciprocal conditions. One of the essential conditions, in the agreement is that the Sikhs would be allowed to continue in possession of the Dharamsala until a Dharamsala was built for them by the Government at their cost. If the Plaintiffs based their suit on this agreement, then they cannot seek the ejectment of the Defendants, unless and until the condition incorporated in the agreement, which also had been accepted by them, is fulfilled, namely the construction of a Dharamsala by the Government for the Defendants. At any the, the document Ex. PW 1/1 is at best a political settlement arrived at by the Dharmarth department with some political leaders of the Sikhs but it has no legal sanctity at all so as to bind the Defendants or to confer any title to) the Plaintiffs against the Defendants.

88. Before closing this chapter 1 might deal with an important argument advanced by the learned Counsel for the Defendants. It was argued that

the Plaintiffs claimed to be the successors in interest of the Dharmarth department by virtue of the documents Ex. PW 3/1 and Ex. PW 3/2 as

clearly alleged by them in Para 12. But this document clearly shows that the Dharamshala situated in Mattan was not transferred to the Plaintiffs at

all. In this connection my attention, was drawn to the list (B) appended to the order of the Maharaja. According to the list what was transferred to

the Plaintiffs was only ""Kund Suraj Khetar Martand"" and the temple Suraj Narayan. There is no mention of any Dharamsala in this list. In my

opinion, the contention of the learned Counsel for the Defendants is well founded. A perusal of the list would clearly show that whenever any

property was transferred, it was clearly described in the list. It would appear from Items 40 and 50 of List B of Ext PW 3/1 that where

Dharamshala was intended to be transferred it was specifically mentioned in the list. In the instant case, Dharamsala has been expressly omitted as

being one of the properties which has been transferred to the Plaintiffs.

89. In these circumstances, therefore, the. Plaintiffs did not derive any title with respect to the Dharamsala at all and therefore, they have no locus

standi to bring suit with respect to the Dharamsala. Even if it be assumed that the entire Asthan was transferred to the Plaintiffs, as indicated above,

the Plaintiffs have failed to prove that the possession of the Defendants over the Dharamsala was permissive. For these reasons, therefore, the plea

of permissive possession taken by the Plaintiffs must fail and their suit with

respect to the ejectment of the Defendants on this point must fail.

90. As against this the definite case of the Defendants is that prior to the construction of the Dharamsala, there existed seven old Gurdawaras

which had been constructed during the regime of Maharaja Ranjeet Singh and which stood on the three sides of the springs. One of these

Dharamsalas was two storeyed and contained 45 rooms. By passage of time, these buildings became dilapidated and ultimately some time in the

year 1912 A. D. they were demolished under the orders of the Maharaja and the present Dharamsala was built in lieu of the old Gurdawara and

since that time, the entire Dharamsala had been given to Sikhs, a portion of which was being used for the purpose of Granth Sahib and the other

portion for accommodating the guests and Yatris. The Defendants further averred in their written statement that since the time of the Maharaja

Ranjeet Singh, there have been several grants, Pattas and Muafis which were given to Sikhs for the maintenance of the Gurdawaras for the fish in

the tank and for feeding the Yatris who stayed in these Dharamsalas. After the end of the Sikh Rule, some of these grants still continued right upto

the year 2004 from which time the matter is still under the consideration of the Government, (91) In other words, the Defendants pleaded that they

were & possession of the Dharamsalla in their own right and not under a license from the Plaintiffs Furthermore, the Defendants pleaded that by

virtue of the fact of the construction of the old Gurdawara which was dedicated for religious purposes of Sikhs, the Granthis having been appointed

to run these Gurdawaras and certain lands having been set apart for their maintenance, a valid religious endowment was created which could not

disappear with the destruction of the Gurdawara but the lands set apart for the maintenance of the Gurdawara would now relate to the

maintenance of the Dharamsalla. It was, however, admitted by the Defendants that during all this period, the management of the entire shrine

including the Dharamsalla was under the Dhar-marth as a matter of convenience. In order to prove, their allegations, the Defendants have led, both

oral and documentary evidence. The documentary evidence consists of Pattas, grants, historical books, log book, register of the proceedings of the

Gurdawara Committee, pa-peHin the Dharmarth file Ex. PD and certain orders"" passed by the Tehsildar regarding the lands given to the Sikhs. I

have already indicated that the only explanation given by the learned Counsel for the Plaintiffs with respect to these documents was that it related to

the Gurdawara at Sangam which used to exist upto the year 1900 or so. In view, however, of my finding that no such Gurdawara ever existed at

Sangam, it is manifest that the explanation given by the Plaintiffs is wholly untenable.

[After discussion of extracts from books in paras 92 to 99, the judgment proceeds]:

From the books discussed above, it is there fore, clear that some Gurdawaras or at least one Gurdawara existed at Mattan having been

constructed during the regime of Maharaja Ranjeet Singh. As the case of the Plaintiffs that there was a Gurdwara at Sangam has been disbelieved,

therefore, these S assages must relate to a Gurdawara at the isputed shrine, because it is not the case of anybody that there was a third Gurdawara

at some other place in village Mattan.

100. Finally my attention was drawn to a Log Book Ex. D. W. 22/B which is in the nature of Visitors- Book to show impliedly the existence of the

Gurdawaras. There are a number of entries in this document and the most important is at page 2 which is of Lord Lans-Downe dated Oct, 30,

1891 which shows that he had visited Mattan and had signed on this book. As this book is coming from the custody of the Granthis, it shows that

the Granthis of those times must have taken the signatures of Lord Lans-Downe. A similar entry on the same page is of Neville Chamberlain and is

dated 30th October 1891 A. D. There is another entry regarding the visit of Col W. Mallbhoy which clearly mentions that he had met Sikh priest

at Bawan. I might state that Bawan is the name of the village where the present shrine is situated. The words ""Sikh priest"", clearly refers to Granthis

who were running the Gurdawaras and therefore impliedly proves the existence of the Gurdawaras at

that time. There is also another entry at page 4 written bV;Mr. Beli Anthony who has clearly mentioned that he visited.the Mattan shrine and saw a

Dharamsala' in a dilapidated state and found the Granthis in charge thereof and has complained that the State has not taken any steps for the

maintenance of the Dharamsala. The observations made by Mr. Anthony are as follows:

I in company with Rai Ram Bial Executive Engineer Panjab with Dogarmal his new-phew, Murlidar Pleader halted here for a day. The Dharamsala

is in dilapidated state and the Granthis in charge say that the State does not extend their hands to the maintenance of this Dharamsala. If it is so, it is

to be regretted that a place of so much religious importance and fine scenery shall be so neglected.' This entry is dated 2-7-1895 (A. D.).

101. There are also entries on the back of page No. 2 of one Parmanand, the then Governor of Kashmir, dated 8th Baisakh 1950 Bikarmi (1893

A. D.) wh⁶ was undoubtedly a Hindu and not a Sikh, and another entry by C. V. Molony of R. W. Kent regiment dated 7-7- 1894 A. D.

102. The other entries in the Log book relate to the present Dharamsala, a portion of which was admittedly in possession of Sikhs since 1913, and

therefore, these entries are not very relevant in order to show the existence of old Gurdawaras prior to 1905.

103. I would now proceed to consider the ancient Pattas produced by the Defendants to show that the grants were given by the previous rulers

for the maintenance of the Gurda waras.

110. [After discussion of the pattas in Paras 104 to 109, the judgment proceeds]i Ex. DW26/A is a certified copy from the Roznamcha entry

produced by D. W. 26 from the Archives of the Punjab Government. This document shows the grants of various amounts for the maintenance of

the Granthis and also for the feeding of the fish in central tank. This document which appears to be in continuation of the Pattas referred to above,

completely fixes the identity of the place to which the Patta relates namely the present shrine and establishes that the Gurdawaras which were run

by the Granthis named in the Pattas were situated in the present shrine.

111. I would now deal with various Mua-fis produced by the Defendants.

118. [After discussing Muafis in Paras 118 to 117, the judgment proceeds:] The only criticism levelled against these documents by the learned

Counsel for the Plaintiffs was that they would show that the Muafis did not relate to ; any Gurdawara in the shrine because they had fallen down

long before the year 1962 Bikrami (1905), and therefore, they must refer to the Gurdawara at Sangam. In my opinion, the contention of the

learned Counsel for the plain-tiffs is without any substance. I have already, pointed out while dealing with the document of the Dharmarth

department that although the old buildings which existed in Mattan Shrini had started decaying right from 1900 they had not completely fallen down

before 1910 or 1912 when order of the Chief Minister for building a new Dharamsala was passed vide Ex, P. W. 38/6. The Divisional Engineer

obtained the permission of the Dharmarth department for demolition of these buildings which was granted in the year 1912 as per document at

page 268 of the Dharmarth file Ex. P. D. In these circumstances, therefore, these buildings were very much there, in the year 1962 Bikrami i.e.

1905 when the said statements and reports mentioned in Ex. A-14 to Ex. A-18 had been given. Furthermore, in view of my findings that no

Gurdawara at Sangam ever existed, the question of these Maufis as being in respect of that Gurdawara does not arise at all.

119. Apart from these documents strong reliance was placed by the learned Counsel for Defendants on the inspection note of the Director of

Archaeology who had visited the spot some time in 14-8-1911 and which appears at page 245 of the Dharmarth file, Ex. P. D. In this report, the

Director has observed as follows:

The modern Kacha buildings which had been lately erected round the second i.e. the lower and larger of the two tanks and which are already

come down should be replaced by structures similar to the old original pavilions, which must have stood there in the days of the Moghuls.

120. It was contended by Mr. Garg that the old Gurdawaras which existed at the shrine must have been in the nature of Kacha buildings which is

fully in keeping with the tenets of the Sikh religion. It was contended by Mr. Garg that the Sikh religion stands for simplicity and austerity and

condemns pomp and splendour. Thus it is argued that the old Gurdawaras would have been in the nature of Kacha buildings and when the

Director refers to the fact that certain Kacha buildings had fallen down round the springs, he really meant the old Gurdawaras which had existed

at Mattan. In my opinion, the contention of the learned Counsel for the Defendants is not without force. There is nothing to show that the old

Gurdawaras which had been constructed during the time of the Maharaja Ranjeet Singh were Pacca buildings and being essentially built in

commemoration of the visit of Shri Guru Nanak Jee, care must have been taken by the builders to see that the buildings were in keeping with the

preachings of the great Sikh leader.

121. Apart from this, there are documents at pages 13 (Back), 20, 21, 18, 35, 43, 35, 36, '0, 149, 217, 288, 237, 245 and 261 of the Dharmarth

file Ex. P. D. which clearly show that previous to the construction of the present Dharamsala the Shrine did not contain only one Dharamsala but

there were quite a large number of buildings.

122. These facts coupled with the documents and the books discussed above, clearly prove that some Gurdawaras at Mattan must have existed

from the time of Maharaja Ranjeet Singh which by passage of time started falling down. On a consideration, therefore, of the aforesaid

documentary evidence it has been established that previous to the construction of the present: Dharamsala there used to exist old Gurdawaras

which were constructed during the time of Maharaja Ranjeet Singh and which were demolished in order to build the present Dharamsala. It has

also been established from the documentary evidence that there were a number of grants and Muafis granted by the rulers for the maintenance of

these Gurdawaras which were run by the Granthis. There is evidence to show that Maharaja Partap Singh was a very benevolent and tolerant

ruler and had great respect for all religions. In these circumstances, therefore, the case of the Defendants appears to me to be extremely probable

that after having built the present Dharamsala in lieu of the old Gurdawara, Maharaja Partap Singh granted a portion of the present Dharamsala

namely the two rooms to the Defendants for keeping their Granth Sahib and using the same as a Gurdawara. Thus possession of the Defendants

over the three rooms of the present Dharamsala was not a permissive possession but a possession in their own right as a substitute for the old

Gurdawara, the establishment of which doubtless fulfilled all the conditions of a Religious Endowment under the Hindu Law.

123. I would now proceed to consider the oral evidence regarding the existence of the old Gurdawaras. Before going to the oral evidence, I might

state that from the documentary evidence which I have discussed while dealing with the question of the construction of the present Dharamsala it

has been seen that the documents in the Dharmarth file Ex. P. D., particularly the application at page 85 of the file, (which is dated some time in the

year 1967 Bikrami corresponding to 1910 A. D.) and is Ex. P. 38/2, Ex. P. 38/3

and the document appearing at page 217, it appears that the old Gurdawara or building and the old Dharam sala which existed before had completely gone in ruins and had fallen down by the year 1910. Some of these buildings did exist from the year 1900-1909 but were in a very dilapidated condition. It is, therefore; manifest that the oral evidence of those witnesses for the Defendants who speak about the existence of old Gurdawara prior to 1910 A.D. alone would be of importance and the evidence of those witnesses who speak about the existence of these buildings after 1910 A. D. does not merit any consideration because the buildings having completely fallen down, could not have been seen by such witnesses as claim to have seen them. I would, therefore, consider the evidence of only those witnesses who depose about the existence of the old Gurdawara prior to 1910 and whose evidence is, therefore, corroborated by the documentary evidence referred to above.

138. (After discussion of oral evidence in Paras 124 to 137, the judgment proceeds:) From the evidence of D. Ws. 2, 7, 9, 12, 14, 15, 20 and 24, the existence of some old Gurdawaras near about the year 1900-1903 A.D. has been clearly established. On a discussion, therefore, of the oral and documentary evidence it is proved beyond doubt that there were several Gurdawaras before the construction of the one-seat Dharamsala in 1913, and, perhaps that was the reason why Maharaja Partap Singh thought it fit to allot a portion of the Dharara-sala to the Sikhs for being used as a Gurdawara as is the case of the Defendants. The Defendants have thus proved that their possession ever the two rooms in the Dharamsala was under legal title and not as a licensee. It has also been seen from the documentary evidence that there were a number of Pattas and Muafis for the maintenance of the old Gurdawaras which yielded 400 Khirwars of rice per year in various villages namely Puran Dag, Tat Pora, and Challar Bug. The Pattas have, however, become extinct but Naqdi of Rs. 120 and 64 Kauls of land in Halqa Bavigum continued as late as 2003. D. W. 22 Ishwer Singh at p. 73 and D. W. 25 Lochan Singh at page 113 had deposed to these facts and have thus corroborated the documentary evidence discussed above by me.

139. Before proceeding further, I would like to mention that the Defendants' case, has, been that they were in possession of the entire Dharamsala

consisting of seven rooms which had actually been built by the Maharaja for the Sikhs. 'The Plaintiffs do not admit this fact but they only admit

possession of the Defendants over two rooms of the Dharamsala which were converted into four rooms and then into three rooms. In my opinion,

the claim of the defendants that they were in possession of all the seven rooms of the Dharamsala which was used as Gurdawara has not been

proved at all. In fact some of the important and respectable witnesses for the Defendants have clearly admitted that the Defendants were in

possession of only two rooms in the Dharamsala and not of the entire Dharamsala itself. In this connection D. W. 6 at page 1.9 of his evidence

admits that only 4 out of seven rooms were used for Gurdawara purposes. D. W. 8 at page 25 admits that three rooms were used as Gurdawara,

out of which in one room Granth Sahib was placed and one room was used for Langer and the remaining room was used for stores. The other

rooms according to the witness, was meant for the visitors Thus from the evidence of this witness the allegation of the Plaintiffs that two rooms

were allotted to the Defendants at the time of the construction of the Dharamsala is categorically admitted.

145. (After discussion of oral evidence, in Paras 141 to 144, the judgment proceeds:) It is therefore, clear that Defendants have been able to prove

their exclusive possession of the Dharamsala for Gurdawara purposes only regarding the present three rooms which had been converted from two

rooms which were given to the Defendants at the time of the construction of the Dharamsala. For the reasons given above, I would therefore, hold

that the Defendants have proved that they were in legal and juridical possession of two rooms which were given to them by Maharaja Partap Singh

in the year 1913 when the Dharamsala was constructed and which have now been converted into three, rooms and are therefore not liable to

be ejected from these rooms of the Dharamsala at the instance of the Plaintiffs.

146. It is pertinent to note here that at demolished under orders of Maharaja Partap Singh, no serious protest was lodged with him nor any

objection taken by the Sikhs for demolishing these buildings. D.W. 26-27' at page 114 of his evidence admits that only oral protests were made

and a deputation was sent to the, Maharaja in this regard but there is no documentary proof to prove the deputation. In these circumstances I am

not in a position to believe the oral statement of the witness that any deputation was sent to the Maharaja or any protest made to him for demolition

of the Gurdawaras: Not a single person who had led the deputation has been examined and there is no documentary proof of this fact. In these

circumstances, it seems to me that the Sikhs were fully satisfied with the two rooms which were given to them -in the present Dharamsala. for

Gurdawara purr poses and therefore, by their conduct in trans; ferring their, Gurdawara portion to the two rooms of the Dharamsala, on a

permanent basis, they would be estopped from claiming a right to erect any Gurdawara, at the shrine. To this extent, therefore, the Defendants

have to be restrained from erecting any new Gurdawara in the shrine premises.

147. Before closing' this chapter I would now discuss the alternative plea of adverse-possession taken by the Defendants.

148. It was argued by the counsel for the Defendants that even assuming that the Defendants had no right or title; to be in possession of the rooms

of the Dharamsala they have by remaining in possession of these rooms for more than 12 years acquired title by prescription. In my opinion, the

contention of the learned Counsel for the Defendants is well founded and must prevail In the instant case, on the pleadings of the parties, the

possession of the Defendants could be either permissive, or referable to a lawful title or adverse.¹ No third alternative can| be considered in the

present case. I have already held that the Plaintiffs have failed to prove, that possession of the Defendants over the rooms in the Dharamsala was

permissive, the logical con-elusion of this would bye that possession of the Defendants would be¹ referable to a Jawful title or would-be prima facie

adverse because it is the admitted case for the Plaintiffs themselves that the Defendants have been in possession of these rooms for a period of

more than 12 years| prior to the institution of the suit. In fact as the suit is one for ejectment of the Defendant and the Plaintiffs have, not been able

to prove their actual or constructive possession, the Plaintiffs would fail on the ground that they hay not proved their possession within 12 years of

the suit. At any rate even on the question of adverse possession the, Defendants appear to have a strong case. .

166. (After discussion of oral evidence, Paras 149 to 165, the-judgment proceeds) would thus appear from the evidence by the Plaintiffs

themselves that they were in the Dharamsala for a period much longer than 12 years prior to the suit. Some of the witnesses as I have already

indicated have admitted that long before 12 years prior to the suit the Defendants had asserted adverse title over the rooms in question. Thus the

case of adverse possession as pleaded by the Defendants stands completely proved even by the evidence of the Plaintiffs.

167. Apart from this the Defendants have adduced overwhelming evidence to show their long possession.

189. (After discussion of oral evidence in Paras 168 to 188, the judgment proceeds:) The oral evidence of some of the witnesses for the Plaintiffs

regarding the adverse nature of the possession of the Defendants over the rooms is further fortified by an admission made by the Dharmarth

department. In the plaint of the suit filed in 1944 A.D., Ex. D.W. 27/B dated 25th Kalik 2002. In para No. 4 of this plaint the Dharmarth

department has clearly admitted that the Defendants had started asserting adverse title fifteen days before the date when the plaint was filed,

namely 25-7-2002 (1944 A. D.). It is common ground that possession of the Defendants in the rooms of the Dharamsala continued even upto the

date of the present suit which was instituted in 1958. Thus the Defendants were in continuous possession even after asserting a hostile title for 14

years before the suit. As this admission was made by the predecessor-in-interest of the Plaintiffs before the property was transferred to them, by the

Dharmarth department, it is binding on the Plaintiffs and conclusively proves that 'the Defendants have acquired title by adverse possession. There

is also an admission in this plaint, that the Dharamsala is a Government building and not one which was owned by the Dharmarth department.

190. Thus from the oral and documentary evidence led by the Plaintiffs and the Defendants it has been clearly established that even if possession

of the Defendants was unlawful to start with, their possession ripened into title after a lapse of more than 12 years prior to the suit. For these

reasons, therefore, I would hold that the Defendants have acquired title by prescription over three rooms of the Dharamsala in question and on

this ground also the Plaintiffs' suit must fail. Lastly from the evidence discussed above, it would at last appear that the Plaintiffs have failed to prove

that they had any title or ownership over the Dharamsala which vested either in Maharaja Partap Singh or the Government which succeeded him.

In these circumstances, therefore, the Defendants could not be ejected at the instance of the Plaintiffs because it is well settled that possession by itself is good title against everybody in the world except the true owner. This Issue is therefore, decided in favour of the Defendants and against the Plaintiffs.

191. Item No. 2. This item includes the vacant piece of land situated towards the north of the springs and which has been recorded as Baujar

Qadeem in possession of Hindus in the revenue records. According to the Plaintiffs, this land, being part of the Asthan was meant for the exclusive

use of the Plaintiffs and the Sikhs had no right to exercise any act of possession and in particular had no right to hold religious gatherings like

Dewan etc. The Plaintiffs further averred that for the first time the Sikhs attempted to hold Dewan on this land in the year 1954 which led to

serious * fracas between the Sikhs and Hindus as a result of which some of the Sikhs were arrested and the Dewan had to be held outside the

Ahata in the Camping Ground. Since then, the Plaintiffs have not allowed the Defendants to use this portion of the land. The case of the Defendants

on the other hand is that this piece of land was being used by them for holding Dewans or religious gatherings from time to time and was in fact the

site of the old Gurdwaras which were constructed during the time of Maharaja Ranjit Singh. The Defendants have examined a number of

witnesses in order to prove that the Dewans were held on this vacant piece of land from time to time. I would, however, proceed to consider the

evidence of those witnesses only who have deposed to the holding of Dewans before the year 1954 when the dispute arose.

203. (After discussion of oral evidence in paras 192 to 202, the judgment proceeds:) Thus on the evidence of the witnesses for the Defendants

some of whom are independent and very respectable witnesses, it has been established that even before 1954, Dewans were being held by the

Sikhs at the vacant space without any objection from the Hindus. The evidence, therefore, completely negatives the case of the Plaintiffs that no

Dewan was ever held on this vacant piece of land prior to 1954. Moreover, the evidence given by the witnesses for the Defendants discussed

above, is corroborated to some extent by some of the witnesses for the Plaintiffs.

211. (After discussion of oral evidence in paras 204 to 210, the judgment

proceeds:.) From a discussion of the evidence aforesaid, the Plaintiffs have failed to prove that they had exclusive right of user of the open space. But the evidence, discussed above, does not necessarily lead to the conclusion that the open space was used exclusively by Sikhs for holding Dewans because some of the witnesses for the Defendants have also admitted that this open space was used by the Hindus also particularly during Arrimar Nath Yatxa period. The question, however, is that before the Plaintiffs can be granted a permanent injunction restraining the Defendants from holding the Dewans on this land, or from interfering with the possession of the Plaintiffs they must show their exclusive possession or user, as the case may be, which the Plaintiffs have not been able to prove. On the other hand, it is equally clear to me that if the Plaintiffs prove that they have an indefeasible right to perform religious ceremonies at tie two springs on special occasions; then if the Dewans are allowed to be held at this space, on those particular dates, this will undoubtedly amount to direct interference with the performance of ceremonies claimed by the Hindus. To this limited extent, therefore, the Plaintiffs will be entitled to an injunction. I shall deal with this aspect after I have dealt with the Plaintiffs' case regarding the performance of ceremonies at the springs.

212. Item No. 5. Buildings and Bath rooms to the north of the Dharamsala towards the Pahalgam side: The Plaintiffs' case is that there is another building containing a number of rooms which are in possession of the Plaintiffs and are used partly as a Pathshalla and partly for the accommodation of the Yatris. The Defendants' case is that these buildings also belonged to the Sikhs and are in their possession. On going through the evidence of the parties I find that the Defendants have not been able to adduce any satisfactory evidence to prove that these rooms were also built by the Sikhs or were in their possession. It is common ground that the Dharmarth department has got no concern with any Sikh building and this is clearly admitted by D. W. 18 at p. 55 of his evidence.

(After discussion of oral evidence in paras 213 to 217, the judgment proceeds): In this state of evidence, I hold that the Plaintiffs have proved their possession over these buildings and the Defendants have no claim or right to interfere with the possession of Hindus over this building. The Plaintiffs are, therefore, entitled to an injunction restraining the Defendants from

interfering with the possession of the Plaintiffs so far as this building is concerned.

218. Item No. 4: The Plaintiffs have admitted the possession and title of the Defendants over the entire plot-excepting four Marlas of vacant land in front of the houses of Sikhs and Hindus.' No reliable evidence has been produced by the Plaintiffs to show their exclusive possession over this portion of the land. In these circumstances, therefore, the claim of the Plaintiffs with respect to this portion of the land does not incur any consideration.

219. Item No. 6: D. W. No. 18 one of the Defendants at page 51 has clearly admitted that:

that the Suraj Mandir is a very ancient temple which has been existing in the shrine since a very long time. The Plaintiffs' case was that this temple was constructed in commemoration of the Sun God which is the presiding deity of the springs, and the other two temples were constructed some time later. The counsel for the Defendants has conceded that the Sikhs have got no claim over these temples, and nor has there been any dispute over them. In these circumstances, therefore, the claim of the Plaintiffs over these temples has been fully established but no injunction is called for because there is no evidence that the Sikhs at any time interfered with the rights of the Plaintiffs over these temples.

220. Item No. 2: The Springs: The case of the parties is that there are two Springs in the shrine one of which is a large one and the other is substantially a big well which contains a lot of fishes. The larger known as Vimal Kund and the smaller known as Kamal Kund and they would be known by these names in my judgment there is a third Kund which is towards the rear by which the water of the two Springs outside the Ahata of the shrine in the chaka.

221. The Defendants on the other hand, pleaded that Guru Nanak Jee who was the founder of the Sikh religion had visited Mattan and had a religious discourse with one Braham Das Pandit and actually converted him to his own views.' The discussion, between Guru Nanak Jee and the said Braham Das Pandit took place at the central spring where a Thada (platform) was built during those days and in commemoration of the visit of Guru Nanak Jee several Gurdwaras. were built on all sides of the springs during

the time of Maharaja Ran jeet Singh and, since then the two springs have been regarded as a sacred place for the Sikhs, The Sikhs further objected to the performance of the' ceremonies by: the Hindus like throwing of the Pindas into the water and performing of Mundan, as they polluted the water and thereby injured the religious sentiments of' the Sikh community. The Defendants further plead ed that the area containing the two springs has never been the religious shrine of the Hindus and was not ascribed to the birth of the Sua God. The Defendants have further averred that there is another place called Martand ruins situated at a distance of about a mile ana a half from the disputed premises where King Lalitdittya had built a Suraj Mandir which alone is the holy place of Hindus.

222. The consideration of this point, embraces three aspects:

223. First, the legal position of the shrine containing the springs.

224. Second, the nature and the origin of the springs, and third, the performance of reliv gious ceremonies by the Hindus.

225. I would first take up the legal posi- tion regarding the shrine.

226. I have dealt with some aspects of this question while discussing issues relating Jo the maintainability of the suit. The funda-mental argument

advanced by the learned counsel for the Defendants regarding the shrine was that as the Plaintiffs have not based their suit on the existence of a

religious Endowment they cannot seek to restrain' the Defendants by an injunction merely by showing right of user by the Hindu community which

as a general class includes the Defendants also.

91. In other words, the contention was that if the ownership of the springs yested in the entire Hindu commu nity, then -the Sikhs who are as much

Hindu as the Plaintiffs-could not be excluded from participating in these ceremonies. The contention is doubtless a very attractive one and merits

serious consideration. It is true that the Plaintiffs have in para 4 of their plaint based their right on proprietary title and possession of the shrine. In a

case of Punjab Endowment there could be no question of proprietary title having been vested in a particular section or the people excluding others

belonging to the same community. Reading Paras 1, 2, 3 and .12 of the plaint together and on a liberal construction of the plaint, the inevitable

conclusion is that what the Plaintiffs have asked for that the Asthan being a very ancient one amounts to a Public Endowment which has to be

inferred from long and immemorial user. The Plaintiffs have not based their right on the performance of the ceremonies alone but seem to contend

that the sanctity of the institution is such that these ceremonies flow from the nature and the history of the institution itself and for acquisition of such

rights no custom or immemorial usage need be asserted or proved. In this connection the Plaintiffs have led evidence to show that there are certain

types of ceremonies like Suraj Bali, Naraya'n Bali and Divadshri which are peculiar to this institution alone. This in my opinion, affords a sufficient

answer to the contention raised by the learned Counsel for the Defendants. I am fortified in my view by the observations of the Supreme Court, in

Nar Hari Sastri and Others Vs. Shri Badrinath Temple Committee, , where their Lordships of the Supreme Court have observed as follows:

It seems to us that the approach of the court below to this aspect of the case has not been quite proper, and to avoid any possible misconception

we would desire to state succinctly what the correct legal position is. Once it is admitted as in fact has been admitted in the present case, that the

temple is a public place of worship of the Hindus, the right of entrance into the temple for purposes of ""Dar-shan"" or worship is a right which flows

from the nature of the institution itself and for the acquisition of such rights no custom or immemorial usage need be asserted or proved.

It was then argued by Mr. Garg that even if it be assumed that the Asthan springs amounted to a Religious the essential conditions for the

establishment of the religious endowment have not been fulfilled in this case. In this connection, it was argued that under the Hindu Law before

there can be a Religious Endowment, the following conditions must be satisfied:

1/ That the founder must have completely divested himself of the property dedicated.

2/ That the founder must have set apart some property for the support and maintenance of the Endowment. .

P. That the profits of the lands set apart for the maintenance of the institution should be applied to that institution.

4/ That a Manager or a priest for the Management of the dedicated property should be appointed.

227. It is argued, therefore, that in the instant case, there is neither any evidence nor any pleading that any land or village was set apart for the

maintenance of the Asthan, nor is there any indication to show how the Asthan was to be maintained and managed. Thus the two essential conditions of a Religious Endowment under the Hindu Law being wanting in this case, it cannot be held that the Asthan amounted to a Religious endowment under the Hindu Law. Reliance was also placed on the decision of the Privy Council in (1876-77) 4 Ind App 52 at p. 61 (PC). There can be no quarrel with the proposition that the conditions mentioned above are essential for the establishment of a religious endowment. Under the Hindu Law, however, endowment may be Private or Public. Where the dedication is to be a family idol the endowment is called private and where the dedication is to a temple meant for public worship the endowment is a public endowment. It is also well settled that in case of a public religious endowment, since the dedication is to the public the beneficial interest vests in the general public or in an uncertain fluctuating body of persons answering particular description. In the instant case, according to the Plaintiffs, beneficial interest vested in the entire Hindu community. It is true that there is no evidence that any land was set apart for the maintenance of the shrine, but that itself, in my opinion, will not show that the disputed springs were not a Religious Endowment. Where the founder of a public endowment is unknown and there is no document creating the endowment, long user is the material factor from which an inference of dedication would naturally arise. I have already referred to a number of authorities on this question while dealing with the issues regarding the maintainability of the suit. Apart from this, it is well settled that dedication under the Hindu Law can be for an object both of religious or public utility, 'even though the dedication may not be to a particular deity and in such a case, the dedication depends purely upon the history of the institution. I am fortified in my view by a decision of the Privy Council reported in AIR 1941 38 (Privy Council) , where their Lordships observed as follows:

A bathing Ghat on the bank of the Ganges at Benaras is a subject-matter to be considered upon 'the principle of Hindu Law If dedicated to such a purpose land or other property would be dedicated to an object both religious and of public utility, just as much as is a Dharamsala or a Math, notwithstanding that it be not dedicated to any particular deity The character of, the dedication can; only be determined on the basis of the

history of the institution and the conduct of the founder and his heirs.

In the instant case, looking to the history of the institution, as pleaded by the Plaintiffs, there can be no doubt' that the Asthan was dedicated

fourâ??s religious purpose namely that "'it is ascribed to the birth of Sun God which led to the performance of religious ceremonies for the spiritual

benefit of the Hindus. Thus the ceremonies'claimed by'the Plaintiffs which are particular to this institution are not being performed as a sort of right

of user but they flow from the existence of the institution itself. In other words, according to the Hindu belief, the performance of the ceremonies at

the disputed springs is by itself a great act of piety and an act which leads to the efficacy or the human soid. In the instant case, it is not possible for

any body to lay his hands on who the founder was, nor is there any document creating the endowment. In these circumstances, therefore, the

dedication will have to be presumed or established from the history of the institution itself. For these reasons, therefore, the contention of the

learned Counsel for the Defendants on this point is overruled. . . ., Lastly it was contended by the learned Counsel for the Defendants that the

object of the dedicated shrine appears to be not the performance of Shradh .of the founder or his ancestors but the Shradh of; all the deceased

Hindus by their, descendants; and such an object is unknown to Hindu Law. The contention was that it is understandable for a founder is establish

a Religious Endowment for a religious object namely for the performance of the Shradh of the founder's ancestors but to say that the ancestors of

the entire community should be performed at a particular place is a conception which is foreign to Hindu Law. In my opinion, the; contention is

based on a serious misconception of the nature and the history of the present institution The present is not a case where an individual has funded

this endowment for a religious object. As indicated above, the performance of the ceremonies are peculiar to this institution itself, that is to say, that

the institution is so sacred and holy that the Hindus consider the performance of Shradh at this particular place to be of a special spiritual

significance. There arc a rummer of such holy places all over India for instance Ilardawar, Gaya, Dwarika, Purl etc. For these reasons, therefore,

the contention of the learned Counsel for the Defendants does not appear to be tenable.

229. Lastly it was argued that the plain-tills wen; not entitled to exclude the Defendants from the ambit of the Hindu community. This proposition is undoubtedly true. The question in the present case is not that the Defendants are being excluded from the class of Hindus but the complaint made by the Plaintiffs is that the Defendants are interfering with the natural rights of Hindus to perform ceremonies which has arisen from the existence of the institutional dince times immemorial. Even if a member bolonging to a Hindu Community tries to obstruct the performance of the ceremonies, the Plaintiffs would certainly be entitled to pray for an injunction restraining him from interfering with the rights of the Hindu community. The Plaintiffs do not say that the Defendants should have no access to the shrine as a member of the Hindu community but what they do object is their act in preventing the Hindus from performing the ceremonies. In these circumstances therefore, the contention advanced by the learned Counsel for the Defendants does not take into consideration the real nature and the scope of the Plaintiffs' suit.

230. It was' further submitted by the learned Counsel for the Defendants that no endovy-ment could have taken place as there was no deity to which the property could be dedicated because it is the admitted case of the parties that when the institution came into existence there were neither any idols nor temples. This argument also appears to me'1 to be based on a misconception of the essential principles of Hindu Law relating to religious Endowment. Under the Hindu Law there can be a valid dedication without the existence of any idol or deity. The idol, or a deity can come into existence subsequent to the dedication. The Plaintiffs' case in the present suit is that it was in honors of the birth of the Sun God that the ancient Suraj Mandir was' constructed on the disputed premises and this fact as has been seen above, is admitted by one of the Defendants."" This being1'the position even if the dedication to begin with was' hot for the purpose of any particular deity since a temple was built subsequently in honour of this shrine, the dedication must be; presumed to have been dedjt Gated for the purpose of that deity namely the Sun God. ThisJ'answers the'!contention of the counsel for the Defendants on this point. The view taken by me is supported by (1910) ILR 37 Cal 128, (1910) ILR 32 All 337 and Bhupati Nath Chakravarty Vs. Basanta Kumari Devi, .

231. Lastly regarding the contention of the learned Counsel for the Defendants that there was no property for the maintenance of the shrine, the answer is to be found in the Plaintiffs' case that since the establishment of the Dogra rule the Maharaja founded the Dharmarth department which was in charge of the maintenance, management and the protection of all public religious institutions. It is admitted by the Defendants that the Dharmarth department was in charge of the maintenance, repairs, and protection of the shrine till it was transferred to the Plaintiffs. The Dharmarth department had sufficient properties and income to maintain the religious institutions which fell within its jurisdiction. In these circumstances, therefore, the Plaintiffs have undoubtedly proved that since a very long time, the present institution has been supported and maintained by the Dharmarth department and hereafter by the Plaintiffs.

232. In these circumstances, therefore, the Plaintiffs' suit cannot be thrown out on the ground that no property was set apart for the maintenance of this institution. Having discussed, therefore, the legal position of the institution, I would now proceed to other aspects.

233. The History, Nature and the Origin of the Springs: Learned Counsel for the Plaintiffs has drawn my attention to a large number of historical books: in order, to show the history and the origin of these springs.

244. [After discussion of extracts from books, in paras 234 to 243, the judgment proceeds]: Apart from these books P. W. 87 who is a Professor of Sanskrit produced two old manuscripts from his custody, one of them according to his evidence is more than 150 years older than these manuscripts were transcribed. S. N. Fotedar are very respectable witnesses and they have given graphic details of the nature of the ceremonies that are performed at the two springs. Furthermore, P. Ws. 26 and 29 are independent witnesses who have stated on oath that they had performed the ceremonies about their mother and the wife respectively. P. W. 29 according to him, had performed the Shradh and Narayan Bali of his wife as far back as 1919. The evidence of these two witnesses also fully supports the Plaintiffs' case about the performance of ceremonies. The evidence of these witnesses some of whom are over 60 years old also shows that the ceremonies have been performed continuously for a long time and is fully supported by the observations of the authors in the books quoted above.

The substance of these manuscripts where translated into Urdu for me by the Plaintiffs and the counsel for the Defendants did not dispute the validity of the translation which was made by Pandit S.N. Zadu, Librarian of this Court, who K a. Sanskrit Scholar. The manuscript as translated shows that it contained 41 pages and is written in Sharda script - the script which has been invented by Kashmiri Pundits - and the manuscript is written on pure Kashmiri paper which was being used for writing. The manuscript is accompanied by a Kashmiri translation which appears below the original writings in Sharda script. The entire manuscript is in the form of a poem with a preface attached to it. The name of the Manuscript is Martanda Maha-timim (hymns in praise of Martand) and has been borrowed from Barnagesh Sanhitya which is a pail of old Puranas.

246. (After discussion of extracts from manuscripts in para 245, the judgment proceeds:) These books and the Manuscripts, the authenti-rilv of which, as already been said, is beyond question, and has not been disputed by the learned Counsel for the Defendants, conclusively prove that ever since the time of Emperor Albar the present shrine was regarded as a holy place of Hindus. As has been seen from the observations in the book Tarikh Hasan the performance of Shradh and Mundan ceremonies at the springs dates back to more than 100 years from to-day. These books, therefore, in my opinion, fully prove the Plaintiffs' case on the history and origin of the present shrine. Apart from these books, the documents appearing in the Dharmarth file Ex. P D, referred to above, clearly show the religious sanctity of these springs and the necessity of constructing the buildings thereon.

247. Lastly I now come to the claims ol Hindus regarding the performance of ceremonies. In this connection, the Plaintiffs have led overwhelming evidence to show that for a lonjf time the Hindus from all parts of the country have been visiting the shrine and performing ceremonies like Shradh, Mundan, Suraj Bali and Narayan Bali etc., at the two springs without any hindrance from the Sikhs. The witnesses on this point are:
P. W. 2 at page 47, P. W. 7 at page 26, P. W. 4 at page 14,
P. W. 5 at page 20, P. W. 6 at page 22, P. W. 8 at page 32,
I'. W. 9 at page 34, P. W. 10 at page 38, P. W. 11 at page 40,

P. W. 12 at page 44, P. W. 13 at page 43, P. W. 14 at page 46,
P. W. 15 at page 48, P. W. 16 at page 50, P. W. 17 at page 56,
P. W. 19 at page 58, P. W. 20 at page 61, P. \V. 2.1. at page 64,
P. W. 26 at page 79, P. W. 27 at page 82, P. W. 29 at page 86,
P. W. 31 at page 91, P. W. 33 at page 96, P. W. 34 at page 98,
P. W. 35 at page 112, P.W. 36 at page 119, P. W. 37 at page 124,

248. Out of these witnesses P. W. 27 Thakur Kartar Singh, P. W. 34 Shri A.N. Kak,
P. W. 35 Shri S.I. Saraf, and P. W. 86 Shri S. N. Fotedar

are very respectable witnesses and they have given graphic details of the nature
of the ceremonies that are performed at the two springs.

Furthermore, P. Ws. 26 and 29 are independent witnesses who have stated on
oath that they had performed the ceremonies about their mother

and the wife respectively. P. W. 29 according to him, had, performed the Shradh
and Narayan Bali of his wife as far back as 1919. The evidence

of these two witnesses also fully supports the plaintiffs' case about the
performance of ceremonies. The evidence of these witnesses some of whom

are over 60 years old also shows that the ceremonies have been performed
continuously for a long time and is fully supported by the observations

of the authors in the books quoted above.

249. The Defendants' case during the course of argument was that the
ceremonies were only performed at Chaka Nadi and not at the springs. In

this connection reliance was placed on Narayan Prakash at page 108 wherein it is
mentioned that Shradh etc. were performed at Sangam Ghat

and that Narayan Bali was performed at Chaka Nadi. This recital in the book is
not in any way inconsistent with the Plaintiffs' case and does not

exclude the performance of ceremonies at the two springs. In fact the Plaintiffs'
evidence is that Shradh was performed right from the two springs

upto Chaka Nadi. Thus the mere fact that the afore said book mentions the
performance of Shradh at Sangam Ghat does not show that no Shradh

at all was performed at the two springs. But from the Plaintiffs' evidence it is
more than clear that the ceremonies are performed at both the springs.

In fact some of the witnesses for the Defendants clearly admitted that the
ceremonies were performed at the smaller spring.

255. (After discussion of the evidence in paras 250 to 254 the judgment

proceeds:) It would thus appear that the evidence of the Plaintiffs regarding the performance of the ceremonies at the two springs since times immemorial is substantially corroborated by the admissions made not only by one of the Defendants but also by some of the respectable witnesses for the Defendants. In the course of the arguments, Mr. Garg did not seriously dispute this fact but contended that there is no evidence to indicate that the Defendants ever interfered with the Plaintiffs in performing their ceremonies at the two springs.

256. In the written statement however, the Defendants have emphatically denied the right of the Hindus to perform the ceremonies and have in fact averred that the Hindus have absolutely no concern with the shrine. In the evidence led by the Defendants, the same stand, was taken by most of the witnesses examined on behalf of the Defendants. In these circumstances, apart from interfering, the Defendants have gone to the extent of denying the very existence of the right of the Plaintiffs to perform these ceremonies. Thus it cannot be argued with any show of force, that the Defendants have not interfered with the rights of the Plaintiffs to perform these ceremonies.

257. Another circumstantial evidence to show that the Hindus had the right to perform the ceremonies at the spring is that it is admitted on the part of the parties that a temple like building was constructed in the central spring about 25 years ago. Some of the witnesses for the Defendants have clearly stated that some protest against this was lodged with the Maharaja but they were assured that the building was constructed to beautify the springs.

I am not able to believe this explanation. No person who had made the protest had been examined and there is no document to show that any serious protest was made to Maharaja Hari Singh or to his wife who were responsible for building this temple. It may be that the Shiv-Ling was kept subsequent to the construction of the building as would appear from the document Ex.PW 3/2, the deed of transfer but the fact that the Defendants did not object to the construction of the temple at the central spring clearly shows that they held really no right at all to interfere with the religious sentiments of the Plaintiffs regarding the two springs.

258. Finally my attention was drawn by the learned Counsel for the Defendants to some historical books namely:

259. History of Sikh Religion by Macaulay. Volume 1. page 163, Chapter, XIV, Suraj Prakash Written by Bhai Santokh Singh p. 443-45 and

Guru Nanak Jee's Life by Kartar Singh, page, 1946 in support of the case that Shri Guru Nanak Jee had visited Mattan and is alleged to have

converted one Panda namely Braham Das. These books are no doubt very authentic and clearly establish the fact that Shri Guru Nanak Jee had

visited Mattan and delivered a sermon there and it was in commemoration of his visit that several Gurdawaras, as already held by me, had been

built at the shrine during the time of Maharaja Ranjit Singh. There can be no doubt that this part of the Defendants case has been established but

that would not justify the Defendants in interfering with the rights of the Hindus regarding the performance of religious ceremonies which had

existed even before the visit of Shri Guru Nanak Jee. Furthermore, if the two springs constituted a Hindu shrine at a time when the Sikh religion

was not even in existence the nature of the shrine could not be altered either by the visit of Shri Guru Nanak Jee or by the construction of

Gurdawaras at this shrine.

260. I have already held that the defendants remained satisfied with the two rooms which were allotted to them in the present Dhuunsala and since

the Sikh, religion does not recognize any particular form of ceremonies or festivities, there is no harm if the Sikhs regard this as a sacred place for

themselves also Learned Counsel for the Plaintiffs clearly conceded that he would have no objection if the Sikhs regard this as a sacred place in

view of the fact that Shri Guru Nanak Jee had visited, the shrine (261) For these reasons, therefore I hold that the two springs were essentially a

Hindu shrine and the Hindus had a natural right to perform - ceremonies which flowed from the nature of the institution itself The Defendants having

denied this right and having interfered with the performance of these ceremonies are entitled to be restrained from doing so.

262. Issues Nos. 1, 2, 5 and 9 are decided accordingly.

263. Relief: In view of my findings, it is manifest that the Plaintiffs are not entitled to 'the relief of ejectment of the Defendants from the three rooms

which are in their possession in the Dharamsala. Nor they are entitled to an injunction restraining the Defendants from holding Dewans in the open

space for all times to come.

264. I have already observed that if the Dewans are allowed to be performed by the Defendants, on such occasions when the Hindus also

perform their religious ceremonies namely Mai Mas, Bal Mas, Suraj Grahan, Chand Grahan, Soma Wati Amawas (Amawas falling, on Monday.)

Ammar Nath Jee Yatra period , arid Vijay Saptami. (7th day of Hindu month-I falling on Sunday) then the holding of Dewans would by itself

amount to interference with the performance, of the religious ceremonies by Hindus, because according to, the evidence of the Plaintiffs, Melas

are held on a large scale and huge crowd assembles there. To this extent, the Defendants shall be restrained from holding the Dewans. Such an

injunction can be granted to the Plaintiffs because I while holding that the Plaintiffs have not proved exclusive right, of user or possession over the

open space, it has been clearly proved from the evidence, that both the Hindus and the Sikhs have been using the open space from time to time.

About 15/20 years before, there appears, to have been a spirit of co-operation and co-ordination between the two communities, I belonging to

the same broader sect namely Hinduism,, but unfortunately due to rival claims having been put forward by the two parties over the Dharamsala

and other premises, a dispute has arisen, which appears to have spoiled the congenial atmosphere of the Shrine and led to the present suit to the

present suit.

265. Furthermore, in view of my finding that the old Gurdawaras; having been demolished by Maharaja Partap Singh and the defendants having

been satisfied by transferring their-Granth Sahib, to the rooms of the present Dharamsala in their possession, they have no right to erect any

additional Gurdawara in the disputed premises. The Defendants must therefore be restrained from doing so in future.

266. For the reasons, given above, the result is that the Plaintiffs'suit is decreed in part.

267. There will be a permanent injunction restraining the Defendants from interfering in any way with- the performance of ceremonies by the Hindus at

the three springs (Kamal Kund, Bimal Kund Taad and Gaori Kund)

268. There will also be a permanent injunction restraining the Defendants from holding towards pahalgam side only on the occasions of:

Mal Mas, Bal Mas, Suraj Grahan, Chand Grahan, Soma wati Amawas (Amawas

falling on Monday), Ammar Nath Jee Yatra period, and Vijay

Saptami (7th day of Hindu month falling on Sunday).

269. There will also be a permanent injunction restraining the Defendants from interfering with the possession of the Plaintiffs in the building situated

to the north of the present Dharamsala towards Pahalgam road. The Defendants are further restrained by a permanent injunction from creating

any Gurdawara at the disputed premises.

270. The prayer of the Plaintiffs regarding the ejectment of the Defendants from the rooms of the Dharamsala in their possession as also from four

Marlas of the land in suit bearing Plot No. 2304/1143/1 is rejected and the suit of the Plaintiffs with respect to these reliefs is dismissed.

271. In the special and peculiar circumstances of the case when both parties have succeeded in almost equal measure, I would make an order as

to costs.