

(1983) 01 AHC CK 0008
In the Allahabad High Court

Sri. Thakur Radha Krishna Ji Birajman Mandir

APPELLANT

Vs

Ram Prasad

RESPONDENT

Date of Decision : 25-01-1983

Acts Referred:

Citation : (1983) 01 AHC CK 0008

Hon'ble Judges : D.N. Jha, J

Bench : Single Bench

Advocate : H.N. Tilhari and R.S. Tripathi, for the Appellant; S.P. Misra, for the Respondent

Judgement

D.N. Jha, J.—This second appeal has been preferred against the judgment and decree passed by the IVth Additional District Judge, Unnao whereby he confirmed the decree of dismissal of suit passed by the III Additional Munsif, Unnao.

2. The short question involved in this appeal is whether the suit was maintainable by the Plaintiff for injunction. Shri Thakur Radha Krishna Ji Birajman Mandir had filed the suit through Babu Vishwanath Kapoor, Advocate as receiver of the property of Sri. Thakurji Maharaj and Ramgopal son of Raja Ram. This suit was for permanent injunction restraining the Defendant from constructing latrine or other construction at point "Ta" shown in the plaint map. Both the Courts below held that the suit was not maintainable by the receiver as well as Ram Gopal. The appellate Court observed that in paragraph 5 of the plaint Ram Gopal has alleged himself to be the muntazirn of the property. He could not show any such right in himself. The Court further observed that in view of the decision of this Court in original suit No. 7 of 1965 Sri. Vishwanath Kapoor ceased to be the receiver of the property and the suit could not be instituted through him. In my opinion, the Court fell into error both on facts as well as on law and the judgment under appeal cannot sustain. The second appeal arises out of original suit No. 7 of 1965 decided by this Court vide judgment and decree dated 22nd January, 1975. The suit was filed on 19th January, 1972. The receiver continued

to function during the pendency of the second appeal in this Court to manage the affairs of the temple, therefore, on the date of filing of the suit he was a receiver duly appointed by this Court and, therefore, he had a right to maintain the suit. So far as right of Ram Gopal for maintaining the suit is concerned, in my opinion, he could also maintain the suit in view of observations made by Supreme Court in Vikrama Das Mahant Vs. Daulat Ram Asthana and Others, wherein it has been observed:

...the question before us is whether a person who has been in defacto possession and management of the Asthan and its properties....claiming to be its trustee under the decree of a Court, valid or invalid has got sufficient interest to maintain proceedings for the warding off of a cloud cast by the Defendants action against the interest of the Asthan.

3. In the light of observations made above the appeal succeeds and is allowed. The judgment and decree passed by the appellate Court is set aside and in the interest of justice I direct that the case will go back to the Court of the Additional Munsif who will dispose of the suit on merits as expeditiously as possible. In special circumstances I direct the parties to bear their own costs.