
(1998) 09 CAL CK 0059

Calcutta High Court

Case No: Civil Order No. 2036 of 1998

Radha Kunja Kishore Jew

APPELLANT

Vs

Om Prokash Dhawan

RESPONDENT

Date of Decision: Sept. 11, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, 115, 151

Citation: (1999) 2 ILR (Cal) 303

Hon'ble Judges: Dibyendu Bhusan Dutta, J

Bench: Single Bench

Advocate: S.P. Roychowdhury, S.K. Mukherjee and Gurudas Mitra, for the Appellant; D.K. Miter and Nirmal Banerjee, for the Respondent

Judgement

Dibyendu Bhusan Dutta, J.

The present revisional application u/s 151 CPC is directed against the order dated July 31, 1998 passed by the learned Additional District Judge, Second Court, Howrah in Misc. Appeal No. 78 of 1997 arising out of order No. 3 dated July 14, 1997 passed by the learned "Civil Judge, Senior Division, Second Court at Howrah in the Title Suit No. 225 of 1997.

2. From the cause title of the copies of the plaint as well as the application for temporary injunction placed at the time of hering of this revisional application, it will appear that the suit was filed by and in the names of two Plaintiffs against three Defendants. The Plaintiffs No. 1 is a Deity Sri Radha Kunja Kishore Jew said to be represented by Sri Sri Radha Kunja Kishore Jew Trust and the Plaintiff No. 2 is said to be a trustee of the said Radha Kunja Kishore Jew Trust and is also said to represent the Deity, Sri Sri Radha Kunja Kishore Jew. The Defendants Nos. 1 and 2 are said to be the trustees of Sri Sri Radha Kunja Kishore Jew Trust while the Defendant No. 3 is a person impleaded in his personal capacity.

3. The case sought to be made out in the plaint may, in substance, be stated as follows. Her Holiness Sri Sri Sadhumata Devi was the propounder and founder of a Baishnava sect having disciples from different states of India. Her Holiness with the help of her disciples, amongst whom there are sanyasis as well as grihis, founded and established the temple and ashrama known as Sri Sri Sadhumata Devi Ashrarm at Belur within the jurisdiction of the trial court. She also founded several other ashramas and temples at other places such as Puri, Bhubaneswar, Mathura and Brindavan. Different Deities were installed in different temples/ashramas. The Puri Ashrama is reputed as Sonar Gouranga and the Deity installed is Sri Sri Gour Kishore Jew. At Bhubaneswar Ashrama, the Deity is Sri Sri Jagannath Balaram Subhadra and Sudarshan Jew. At Math"ura the Deity is Sri Sri Giri Raj and the relevant ashrama is at Gobardhan. The Brindavan Ashrama is commonly known as Sadhumata ki Ashrama and the Deities installed therein are Sri Sri Radha Kunja Kishore Jew and Radha Jugal Kishore Jew and other Deities. For the purpose of maintenance of seva puja of the Deities, Her Holiness Sri Sri Sadhumata Devi founded trust for each temple and ashrama in the names of the above-named deities at different times. In the Brindavan Ashrama, the trust is known as Sri Sri Radha Kunja Kishore Jew Trust created by a Registered Deed of Trust on April 10, 1930. According to the Deed of Trust, the temple buildings and the land thereunder are the properties of the deities and the trustees have no right, title and interest therein. It is also one of the terms of the deed that none but the ascetic (Sanyasi Bramachari) could be appointed as daily manager for performance of daily seva puja of Deities and it"was the intention of Her Holiness of daily seva puja of Deities and that an ascetic will be given preference to a grihi trustee to act as such manager. Such-manager will be responsible for the performance of the seva puja of the Deities and also for looking after the temple and properties and its fund. He will also be bound to submit his monthly report of management to the trustees, keep daily accounts of receipts and disbursement and submit the same to the trustees. The Defendants 1-3, for some time past, have colluded with each other in indulging in anti-trust activities in relation to Srihari Radha Kunja Kishore Jew Trust of Brindavan. One Gouranga Das Bramachari, an ascetic, used to act as a manger for the seva puja of the Deities. He used to send monthly accounts to the Plaintiff and other trustees in terms of the Deed of Trust. The Defendants motivatedly brought one Amiya Ghosh, a grihi with partial initiation (punnyaviseikh) to act as manager in place of the said Goiirangadas Bramachari whom they began to dislike for no.reasonable cause. The Plaintiff No. 2 requested the Defendants to place the said Amiya Ghosh as an Ashrama Sevaka along with Gourangadas who has been acting as manger for the last five years as appointed by all the trustees. Some time in the month of October, 1996, the Plaintiff No. 2 had been to Brindavan Ashrama along with his brother K.M. Sinha who happens to be a trustee"of the trusts of both Puri and Bhubaneswar. The Defendants Nos. 2 and 3 also happened to be present there. The Plaintiff No. 2 and the said Defendants 2 and 3, in presence of the Plaintiff No. 2"s said brother, settled the respective duties to be carried out by Gourangadas Bramachari and Amiya

Ghosh. Amiya Ghosh was entrusted with the receipt and disbursement of the cash out of trust fund and he was to render monthly accounts with the help of Gourangadas and the remaining other sundry duties like marketing, maintenance, gardening etc. were allotted to each of them, these arrangements were not to the liking of the defendanes Nos. 1 to 3 who were keen to take over the charges from Gourangads Bramachari by creating pressure on him and exercising under influence. Against the Brindavan trust, a suit being No. 1 of 1996 was instituted in Mathura Court by some designing persons and it is apprehended by the Plaintiff No. 2 that those persons are in league with the Defendants and also one Kumar Dutta, who was expelled from the trust board for commission of criminal breach of trust in respect of the trust fund, gold and jewelleries belonging to the Deities of Puri Ashrama for which a criminal case being G.R No. 2672 of 1978 is pending in the Metropolitan Magistrate's court, Calcutta. This Kumar Dutta, however, according to para. 3 of the revisional application, is alreddy dead. The trustees of Brindaban trust held a meeting on December 15, 1996 at Sri Sri Sadhumata Ashrama, Belur in presence of the trustees of Puri trust namely the Defendants Nos. 1 and 2 and also one Chaitannadas Bramachari, a trustee (since deceased) to consider the affirs of the Brindavan trust. The meeting was presided over by the Plaintiff No. 2. It was resolved in that meeting that one Gour Das Bramachari, who is a trustee of Sri Sri Gour Kishore Jew trust of Puri and who is now posted as manager of Bhubaneswar trust and who is also an ascetic, would be sent to Brindaban to look after the suit as and when necessary. The Defendants proposed for transfer of Gourangadas Bramachari from Brindavan on some complaints against him and it was resolved that during the pendency of the Mathura suit against the Brindaban trust, the complaints and the proposal for transfer against Gourangadas would be taken up only after the " hearing of the Mathura suit which was fixed for hearing on January 15, 1997. The said suit is still pending. In terms of that resolution, Gourdas Bramachari, the trustee of Bhubaneswar and Puri trusts, had been to Brindaban in connexion with Mathura suit several times but he was asked by Defendant No. 2 not come to Brindaban as it would not be necessary for him for looking after the suit. The Plaintiff No. 2 being a retired Judge of High Court drafted and prepared the written statements, objections and all necessary papers in connexion with Mathura suit and also gave instruction to the advocates before Mathura court. As Sri Gourdas was asked by the Defendant No. 2 not to come to Brindaban in connexion with Mathura suit, the Plaintiff No. 2 could not get information about the case from Defendant No. 2 and he had to contact the advocate over phone from Calcutta and send his son, an advocate of Calcutta High Court, to instruct the advocate at Mathura. It is apprehended that Kumar Dutta who was facing the criminal trial in the Metropolitan Court, Calcutta in which evidence is going on has opened a new front against the Brindaban trust by bringing the Mathura suit. The said Kumar Dutta brought a suit being Original Suit No. 150 of 1976 against the Puri trust. The said suit was ultimately dismissed. Kumar Dutta brought another suit in the Original Side of the Calcutta High Court against the Puri trust and also all other trusts and

got a Receiver appointed in respect of the properties and monies of the trusts and it was at the instance of the Plaintiff No. 2 who got that order of appointment of receiver stated in an appeal. The purport of all the suits referred to above is to show as if the trustees are driving out the sanyasis from the ashrama and converting the same as Grihi Ashrama. The Defendants Nos. 1 to 3 are determined to drive out Gourangadas Bramachari from the Brindaban Ashrama in violation of the resolution of the meeting held at Belur on December 15, 1996. The Plaintiff No. 2's request not to relief Gourangadas Bramachari of all the charges entrusted to him till the disposal of Mathura suit yielded no result. The Plaintiff No. 2 was informed over phone and telegram by Gourangadas Bramachari that on March 21, 1997 he was abused by Amiya Ghosh and assaulted by one Pabitra, a salaried cook, who was later dismissed on the basis of a telephonic order issued by the Plaintiff No. 2. The Plaintiff No. 2 was informed by the Defendant No. 2 during the Dot festival at Puri that he took over all the charges from Gourangadas Bramachari and entrusted him only to do the seva puja at the samadhi mandir of Her Holiness Sri Sri Sadhumata. The Plaintiff No. 2 was also informed that Gourangadas Bramachari made over the charges voluntarily in writing. But it is alleged by the Plaintiff No. 2 that the said writing was obtained under duress and coercion exercised by Defendant No. 2 and other upon Gourangadas Bramachari. The Plaintiff No. 2 wrote letters on April 24, 1997 and May 7, 1997 requesting the Defendant No. 2 to bring back Gourangadas Bramachari to Brindaban Ashrama after impressing upon him the necessity[^] of retaining the sanyasies in ashramas in view of the strict law of religious endowment. As no reply came to those letters, the Plaintiff ng.2 sent his son, an advocate, to Brindaban who traced out Gourangadas and brought him into ashrama. But he again left the ashrama as he was afraid of staying there. After much persuasion Gourangdas was brought back again to the ashrama and Amiya Ghash refused to open the door of the room of Gourangadas Bramachari which was kept under lock and key under the order of the Defendant No. 2. The Plaintiff No. 2 over phone gave order to Amiya Ghosh to open the door of Gourangadas Bramachari. The Plaintiff No. 2 addressed another letter on June 23, 1997 to the, Defendant No. 2 and Amiya Ghosh asking them not to indulge in anti-trust activities during the pendency of the litigations, but the Defendant No. 2 paid no heed. The Defendants real, object is to get rid of Gourangadas Bramachari and to replace him by Amiya Ghosh, a grihi as manager of Brindaban ashrama, in violation of the terms of the Deed of Trust. They were also trying to give him sannyas in order to legalise his managership and also to strengthen his position by appointing him a trustee in place of Chaitannya Das Bramachari one of the trustees, since deceased. According to the commandments of Sri Sri Sadhumata Devi, it is a rule that only the Brahmins and Sanyasis should be appointed by the trustees of all the trusts for the purpose of giving initiation (Diksha, Purvisekh and Sanhyas). In order to be eligible, such person must not only be a devout Vaisnava but also be proficient in Vaishnava Shastras and a man of pure charactor. Amiya Ghosh gave out to the Plaintiff No. 2 that he wanted to be a sanyasi and that Sankarskan the pujari of Brindaban temple, has been asked to give

him sanyas and punnyabisekh. Amiya wrote to other trustees seeking their permission in this regard. Such a grave and sacred task of giving initiation cannot be given to an ordinary sanyasi or a disciple and such entrustment has got to be made, according to the rules of the trusts by convening meetings of all the trusts after prior notification. It is also the rule laid down in the trust deed that Sri Sri Gour Kunj Kishore Jew trust is the principle trust and all trusts are subsidiary to it and that any problem or any question of doubt and even the act of filling up of avacancy in the post of trustees in any1 of the subsidiary trusts has got to-be referred to Sri Sri Gour Kishore Jew trust for decision and that any such decision taken by that body of trusts shall be final in this regard. In violation of these rules, the Defendants are preparing themselves to convene a meeting of Sri Sri Radha Kunja Kishore Jew Trust at Brindaban without due prior notice for filling up the post of trustee in place of late Chaltannya Das Bramachari and also for giving sanhyas to Amiya Ghosh through unauthorised person and it is apprehended that the Defendants will illegally hold the meetings of the trust and do illegal acts such as appointment of a trustee and authorisation of incompetent person for giving initiation and driving out Gourangadas Bramachari from Brindaban Ashrama. The said Gourangadas Bramachari has since been appointed as trustee of the Trust of Bhubaneswar ashrama in a duly convened meeting at Puri on March 28, 1997 by a majority resolution. According to the rule of trust, a sanyasi cannot be driven out except on specific charges to be inquired into in a regular proceeding after giving the sanyasi an opportunity of being heard.

4. Basing the cause of action on the resolution dated Decembor 15, 1996 adopted in the meeting of Brindaban trust held at Belur within the jurisdiction of Howrah Court, the suit was filed for permanent and mandatory injunctions. The PERMANENT INJUNCTION was for restraining the Defendants Nos. 1, 2 and 3 and their men and associates from

(i) violating the said resolution dated 15.12.96 of the trust meeting,

(ii) holding a meeting of Sri Sri Radha Kunja Kishore Jew Trust at Brindaban or at any place on 20.7.97 or any day thereafter, for (a) authorising any person to give inflation or sannyas except by convening the meeting of all the trusts with prior notification and on. due compliance of all the formalities and (b) filling up the vacant post of trustee in place of Chaitannadas Bramachari, without referring the matter to Sri Sri Gour Kishore Jew Trust, the principal trust, and

(iii) driving out and/or transferring Gourangadas Bramachari, now staying at Brindaban ashrama, in terms of the resolution dated 15.12.96.

The Mandatory Injunction was for commanding the trustee of Radha Kunja Kishore Jew trust to appoint Gourangadas Bramachari a manager/daily manager for the seva puja of the deity Sri Sri Radha Kunja Kishore Jew and other Deities, in terms of the trust deed in place of and in stead of Amiya Ghosh, then acting as manager.

5. On the date of filing of the suit, the Plaintiffs filed a petition supported by affidavit for temporary/ad-interim injunction under. Order 39 Rules 1 and 2 read with Section 151 of CPC The case sought to be made out in that application appears virtually to be a shorter reproduction of the plaint case with little variations here and there. The Plaintiffs case has been dealt with in greater details in the" plaint than in the petition for temporary injunction wherein has been made clear that the plaint case is also, relied upon and the plaint itself is sought to be treated as a part of the petition.

6. In the petition the Plaintiffs prayed for a temporary injunction restraining the Defendants, their men, agents and associates from doing certain acts on the same lines on which the permanent injunction has been prayed for subject, however, to the fact that such temporary injunction was to that last till the disposal of the Mathura suit and it is on the lines of such temporary injunction that ad-interim injunction was asked for by the Plaintiffs in the petition for injunction.

7. Along with the aforesaid petition for temporary ad-interim injunction,certain documents were annexed and were marked Annexures A, B, C, C1 and 0 respectively.

8. Annexure "A" purports to contain the resolutions adopted at the meeting held on December 15, 1996 at Sadhumata Ashrama at Belur in connexion with the Radha Kunja Kishore Jew Trust of Brindaban. It shows that the Plaintiff No. 2, the Defendants Nos. 1 and 2 and Chattannya Das Bramachari were present in that meeting as trustees. The first resolution was to the effect that Gourdas Bramachari of Gour Kishore Jew Trust would be requested to go to Brindaban to look after the Mathura suit as and when neccessary. The second resolution suggests that there was a complaint against Gourangadas Bramachari of. Brindaban Ashrama and there was a move for his transfer to some other ashrama and it was resolved that the said complaint and the issue of his transfer be taken up after January 15, 1997, the date on which the Mathura suit was then fixed for hearing.

9. Annexure "B" is said to be a xerox copy of a telegram in"Hindi together with its English translation as.well as a letter dated July 9, 1997 in Bengali addressed by Gourangadas Bramachari to the Plaintiff No. 2.

10. Annexure "C said to be a copy of the resolution of a meeting held on August 4, 1981. But on perusal of this Annexure it appears that it contains the minutes of a meeting of the board of trustees of Sri Sri Gour Kishore Jew that was held at Puri in pursuance of an earlier notice dated August 4, 1981 and not on August 4, 1981. It also contains another notice dated November 15, 1981 of a meeting to be held on December 16, 1981. The aforesaid notice dated November 15, 1981 contains a recital to the effect that the trust of Sri Sri Gour Kishore Jew at Puri has been considered by Sri Sri Mataji Maharaj as a parent trust governing and controlling all other trusts at Brindaban, Belur and Bhubaneswar. From the minutes of the meeting held in

pursuance of the notice dated August 4, 1981, it appears that against the first agenda of that notice it was resolved that notice with, agenda would be circulated amongst the trustees at least 15 days before the date of any meeting and all such notices would be despatched within two days of the date of notice under certificate of posting. The second agenda of the notice dated August 4, 1981 reads as under:

In case of meeting of Shree Shree Radha Kunja Kishore Jew Trust at Vrindaban cannot be held" for want of Quorum, provisions have been made in such scheme deed and for reference the matter to Shree Shree Gour Kishore Trust at Puri and Board of Trust at Puri can take requisite resolution for a remedy of such unfortunate eventualities.

11. The recitals in Para, No. 3 of the minutes of the meeting held at Puri in pursuance of notice dated August 4, 1981 also suggest that the Vrinddaban trust is a subsidiary trust of Sree Sree Gour Kishore Jew Trust of Puri.

12. Annexure "C1" consists of the xerox copies of the letters that are alleged to have been addressed by the Plaintiff No. 2 to the Defendant No. 2 on April 24, 1997, May 7, 1997 and June 23, 1997.

13 Annexure "D" purports to be a resolution taken at the meeting of Bhubaneswar trust held on March 28, 1997 whereby Gourangadas Bramachari, who was said to be then working as sevak of Sri Sri Ma Samadhi Mandir at Brindaban, was to be appointed as trustee of the Jagannath Balaram Subhadra and Sudharshan Jew Trust of Bhubaneswar. A report addressed by one Tri-pathy, a trustee and a legal advisor of the Bhubaneswar and Puri Trusts also forms part of Annex. D.

14. On art ex parte hearing of the application for temporary injunction and upon perusal and consideration of the plaint, the application, affidavit and the documents filled by the Plaintiffs, it appeared before the trial court that the Plaintiffs made out a prima facie case and that the balance of convenience and inconvenience also lay in their favour. It was contended on behalf of the Plaintiffs before the trial court that if the proposed meeting of the trust is allowed to be held at Brindaban on July 20, 1997 without giving any notice to all concerned one month ahead, the Defendants would be successful in their attempt to appoint a man of their own choice as a Trustee to remove Gourangadas Bramachari from the post of manager and to appoint their own man in his place and the trial court was of the opinion that the very object of the junction would be defeated by delay and that unless some sort of ad interim injunction was granted at that stage, the Plaintiffs would suffer serious mischief and loss. In such view of the matter, the trial court granted an ex parte ad interim injunction in terms of the prayer made in the petition for injunction so that the said injunction could operate till the disposal of the Mathura suit and also till the disposal of the application for temporary injunction.

15. The Defendant No. 1 preferred" the Misc. Appeal against the said ex parte order of ad interim injunction and the Appellate court took up for consideration the point

whether the impugned order should be sustained or set aside. On scrutiny of the impugned order of injunction, the appellate court found the order to be self-contradictory inasmuch as the said order was directed to be operative till the disposal of the injunction petition and at the same time till the disposal of the Mathura suit which in view of the appellate court, would lead to an absurdity because it was not known as to how long the Mathura suit would take to be disposed of. The appellate court was of the view that the trial court virtually granted an ad interim injunction for an indefinite period of time and in such view of the matter the appellate court set aside the ex parte order of injunction without, however, deciding the question as to whether or not the Plaintiff has been able to make out a prima facie case or as to whether or not the balance of convenience and inconvenience lay in favour of the Plaintiffs or the question whether or not the Plaintiffs would suffer an irreparable loss if such an ad interim injunction were not granted. While allowing the Misc appeal and setting aside the ex parte ad interim order of injunction granted by the trial court, the appellate court, of course the trial court to dispose of the injunction petition in presence of both the parties as early as possible,

16. The present revisional application has been preferred by the Plaintiffs against this order of the appellate court.

17. While challenging the legality of the impugned order of the appellate court, the Plaintiffs have made certain allegations in this revisional application about some developments which are said to have occurred subsequent to the passing of the ad interim order of injunction by the trial court. It is alleged that after the injunction order, the Defendants began to exercise duress and coercion upon Gourangadas Bramachari and forced him to leave the Brindaban ashrama. It is further alleged that the Defendant No. 2 tendered his resignation from the post of a trustee of Sri Radha Kunja Kishore Jew Trust by addressing a letter of resignation to the Plaintiff No. 2 and that the Plaintiff No. 2 kept the letter in abeyance and requested the Defendant No. 2 to continue with his charge as before but the Defendants went on conspiring with each other to defy the resolution dated December 15, 1996 taken at Sadhumata Asbrama at Belur which has already been referred to above. It is also alleged that the Plaintiff No. 2 called a meeting on August 15, 1997, of Sri Sri Gour Kishore Jew Trust at Puri and caused an unanimous resolution to be adopted for compromise and/or withdrawal of the present suit on condition of Gourangadas Bramachari being placed in full charge of seva puja of the Sadhumata Devi Samadhi Mandir at Brindaban. But the Defendants did not honour such resolution and went on contesting the suit by filing the Misc. Appeal against the ad interim order of injunction. It is also alleged that in spite of the order of injunction, the Defendants held a show of trust meeting without giving any notice to the Plaintiff No. 2 and appointed" Amiya Ghosh as manager and that by flouting the order of injunction they drove out Gourangadas Bramachari and involved him in criminal cases. It is also alleged that they created a situation as a result of which Gourangadas

Bramachari was compelled to leave the ashrama. The Plaintiff-petitioners claim to have already filled a separate petition under Order 39 Rule 2A read with Section 151 CPC against the Defendants for contempt which is pending. It is the further allegation of the Plaintiff Petitioners that on November 11, 1997, a date just preceding the date of hearing of the Misc. Appeal before the lower Appellate court, the Defendants sent a letter by sped post addressed to the Plaintiff No. 2 disclosing the fact that they held a meeting on July 20, 1997 at Brindaban. The Plaintiff No. 2's advocate son was present at Brindaban on that day and it was reported by him that no such meeting was held on that day. No notice of such meeting was given to the Plaintiff No. 2 and the minutes of the meeting will reveal that they appointed Amiya Ghosh a manager and that their men wasted no time in driving out Qourangodas Bramachari in violation of the resolution dated December 15, 1996. It is also alleged that the Plaintiffs by filling a written application in the misc. appeal before the lower Appellate Court Against the Defendants' application for stay of the operation or the ad interim injunction dated July 14, 1997 disclosed everything in details about all these subsequent developments which followed the order of ad interim injunction.

18. Besides the documents which were annexed with the application for temporary injunction filled before the trial court, a xerox copy of the certified copy of the aforesaid Deed of Trust of the year 1930 in relation to Sri Sri Radha Kunja Kishore Jew Trust of Brindaban appears to have been annexed with the revisional application. The said deed of trust purports to contain a scheme of management of seva puja at Brindaban ashrama. Clause (a) of that scheme provides that there shall be a managing committee of five person including the two settlers who will be the trustees. It further provides that in case of future vacancy the remaining members of the managing committee will fill up the vacancy in a meeting. It also provides that the trustees would be selected preferably from disciples of Sri Sadhumata Davi and their disciples who will be devout Vaishnavas and who strictly follow the commands of Sri Sri Sadhumata Davi and that in case such disciples are not available, devout Vaishnavas of good moral character, who take interest in the seva puja of the said ashrama, can be chosen. This clause also empowers the managing committee to remove disqualified members in a meeting and to fill up the vacancies as aforesaid. Clause (b) provides that the managing committee shall hold its meeting and record their resolutions in minute book to be kept in the custody of the daily manager who will act as its Secretary. It also provides that the committee shall consist of at least three members to form a quorum. Clause (c) provides that the managing committee shall select the person who will perform the daily seva puja of the Thakur. it also empowers the managing committee to select the daily manager of the temple, properties and fund who will submit monthly reports of its management to the managing committee. Clause (d) provides that the daily manager would be unmarried and strictly he will look to the puja and seva of the Thakur regularly. It is also provided that he will be preferably an ascetic.

19. During the hearing of the revisional application, it was virtually conceded on behalf of the Plaintiff Petitioner that the ex parte order of ad interim injunction which formed the subject matter of Misc. Appeal before the lower appellate court was self-contradictory by reason of the fact that it was directed to remain operative till the disposal of the Mathura suit and yet, at the same time, till the disposal of the injunction petition. But then it was contended on behalf of the Petitioners that on that ground alone the lower appellate court should not have set aside that order without adverting to the merits. It was submitted that an ex parte ad interim injunction was supposed to be in operation at best till the disposal of the application for temporary injunction and as such, the court below should have so modified the order of the trial court as to render it operative only till the disposal of the injunction matter and not till the disposal of the Mathura suit, even though the Plaintiff Petitioners had prayed for such an ad interim injunction till the disposal of the Mathura suit. It was further contended that as observed by the Division Bench of this Court in the case of [Sm. Muktakesi Dawn and Others Vs. Haripada Mazumdar and Another](#), the lower appellate court should have gone into the question as to whether the trial Judge was justified on merits in making the impugned order of injunction on the basis of the statements made in the application which at that stage, would have to be accepted as true *modo et forma*. Reference has also been made to the decision reported in [Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another](#), wherein it has been observed:

While it is true that the relief of declaration is discretionary, it is well settled that it is only if the discretion is not exercised by the lower court in the spirit of the statute or fairly or honestly or according to the rules of reasons and justice, that the order passed by the lower court can be reversed by the superior court.

20. Reference has also been made to an unreported decision of this Court In Re.: Gautam Kumar Hada In re.: Gautam Kumar Hada wherein it has been observed that the scope of a Misc. Appeal arising out of the order granting or refusing an ad interim injunction in the suit is limited and it is only to be seen whether the order granting or refusing ad interim injunction by the trial court is legal or not. It is also observed in the said unreported decision that deeper examination of the merits of the suit at the injunction stage is not permissible because it would amount to prejudging the suit. It was submitted on behalf of the Plaintiff Petitioners that if we go by the statement made in the application for injunction and the materials placed before the trial court, we would definitely come to a finding that a case for ad interim injunction has been made out at least till the disposal of the injunction - matter. Finally, in view of the subsequent developments about which reference has already been made above, it was submitted on behalf of the Plaintiff Petitioners that till the disposal of the injunction petition by the trial court, the ad interim injunction granted by the trial court should have been allowed to continue so far as it is directed against authorisation of any person from giving initiation and appointment of a trustee in place of late Chaitannyadas. Bramachari.

21. On behalf of the Respondent Defendant, on the other hand, the following points were urged. It was contended that the Plaintiff No. 1 Deity Sri Sri Radha Kunja Kishore Jew being a perpetual minor has to sue through a next friend and cannot be represented by Sri Sri Radha Kunja Kishore Jew Trust and that the very frame of the suit is bad being hit by the mischief of the provisions of Order 32 Code of Civil Procedure. It was urged that in view of the pendency of the Mathura suit the trial court has really no territorial jurisdiction to try the suit and that such jurisdiction has been virtually sought to be created on the basis of a resolution taken at Belur Ashrama. It was also contended that the lower appellate court was quite justified in setting aside the ex parte ad interim order of injunction and directing early disposal of the temporary injunction matter without itself going into the merits in view of the contradictions which are apparent on the face of the injunction order of the trial court. It was also strenuously contended on behalf of the Respondent that even on merits, the materials placed before the trial court on behalf of the Plaintiffs themselves did not go to make out a prima facie case for an ex parte ad interim injunction. It was also contended that in view of the materials that were placed on behalf of the Plaintiff before the lower appellate court, there was no scope for sustaining any part of the ad interim injunction till the contested hearing and disposal of the temporary injunction matter by the trial court and that the lower appellate court cannot be said to have committed any jurisdictional error in vacating the ad interim injunction till the hearing of the temporary injunction matter. It was further contended that the revisional power of this Court u/s 115 CPC is a discretionary power which should not be exercised in favour of someone who has not been fully candid with this Court. Reliance has been placed on the decision in [Jitendra Nath Basu Vs. Tarak Chandra Roy Choudhury and Others](#), It was contended that even a superficial scrutiny of the materials which have been placed and made available before this Court at the instance of the Petitioners would expose the hollowness of the case that is sought to have been made out for grant of a limited ad interim injunction by this Court at this stage till the hearing and disposal of the injunction matter by the trial court. Finally, it was contended that in view of the facts and circumstances revealed from the Plaintiff Petitioners' own materials, it would not at all be fit and proper to exercise the discretionary jurisdiction of this Court u/s 115 CPC so as to interfere with the impugned order of the lower appellate court.

22. Thus, the point for my consideration at this stage would be as to whether it would be fit and proper for this Court to interfere with the lower appellate court's order in exercise of revisional jurisdiction so as to revive the ad interim injunction of the trial court only in relation to authorisation for giving initiation and filling up of the vacancy in the post of trustee in place of late Chaitanniyadas Bramachari and to make that injunction operative till the disposal of the injunction matter.

23. If we go by the plaint, we will find that the permanent injunction that was prayed for on the lines suggested above, are contained in the prayers (b) and (c) of the plaint and related to holding of a meeting for (i) authorising any person for giving

initiation or sannyas except by convening all the meeting of all the trusts with prior notification and on due compliance with all the formalities and (ii) filling up of vacant post of trustee in place of late Chaitannyadas Bramachari without referring the matter to Sri Sri Gour Kishore Jew Trust.

24. According to para 11 of the plaint, Sri Sri Gour Kishore Jew Trust is alleged to be the principal trust while according to para. 8 of the injunction petition, Sri Sri Jugal Kishore Jew Trust is said to be the principal trust. Now, from the plaint it would appear that at Brindaban ashrama, the Deities installed is not only Sri Sri Radha Kunja Kishore Jew but also Sri Sri Jugal Kishore Jew (vide para. 2 of the plaint). In course of hearing, there was even a faint suggestion on behalf of the Plaintiff Petitioner that the Belur trust is the principal trust. Assuming that the Sri Sri Gour Kishore Jew Trust of Puri is the parent or the principal trust and the Brindaban trust with which we are concerned here was its subsidiary, there is nothing on record for the present to indicate that for authorisation of a person for giving initiation as suggested in prayer (b) of the plaint, meetings of all the trusts are required to be convened or that for filling up the vacant post of trustee in place of late Chaitannyadas Bramachari, the matter is required to be referred to the principal trust as suggested in prayer (c) of the plaint. In para. 8 of the petition for injunction, it has been alleged that it is the rule of the trust that in case of appointment of a trustee, where there is a problem, the matter should be referred to the principal trust and that the decision of the principal trust shall be binding. It has also been alleged in the said paragraph that a copy of the resolution of the meeting held on August 8, 1981 will lend support to this assertion, but it will appear from the relevant resolution marked Annex. "C to the injunction petition that the question of making any reference to Sri Sri Gour Kishore Jew Trust of Puri will arise only when the meeting of Brindaban Trust cannot be held for want of quorum.,

25. Incidentally, it may be pointed out that the trial court while granting the ad interim injunction did not advert to the purport of the Mathura suit in the body of its judgment and it is not clear whether any copy- of the plaint of Mathura suit was placed before the trial court at the time of ex parte hearing of the injunction matter. An unauthenticated plain copy of the plaint of the relevant suit was placed before this Court at the time of hearing on behalf of the Plaintiff Petitioners. The suit appears to be one u/s 92 of the CPC for framing of a scheme in relation to the seva puja of the Deities and management of properties held by the Deities installed at the Brindaban temple. Curiously enough, the body of the said plaint clearly suggests that the suit was filled against at least 14 Defendants but the cause title discloses the name of only the Defendant No. 1 and does not even indicate how many Defendants are there and who the other Defendants were in the suit. Undisputedly, the Plaintiff Petitioner is contesting the Mathura suit and suit is still pending.

26. Incidentally, it may also be pointed out that in prayer "C of the plaint the mandatory injunction were prayed for so that Gourangadas Bramachari could be

appointed as manager of seva puja of the Deities of Brindaban temple in place of Amiya Ghosh who was then stated to be acting as manager. The letters of the Plaintiff No. 2 annexed to the injunction application would also suggest that Gourangadas Bramachari had already left the ashrama and ceased to perform the seva puja of the Deities even before the filing of the suit. It is true that according to the Plaintiff's allegation, Gourangadas Bramachari was coerced to leave the ashrama. But the fact remains that at the material point of time when the ad interim injunction was granted, Gourangadas Bramachari was not actually acting as the manager for performing the seva puja of the Deities.

27. It is also not clear from the materials placed on behalf of the Plaintiff Petitioner as to what nexus the Mathura suit had with all the facets of the temporary and ad interim injunction which were asked for till the disposal of the Mathura suit.

28. As regards the question of maintainability raised on behalf of the Defendant Respondent this much can be said for the present that at least from the cause title of the plaint, it would appear that the Plaintiff No. 2 in his capacity as trustee of the Plaintiff No. 1 claims to be representing the Deity, the Plaintiff No. 1 and as such the defect pointed out on behalf of the Defendant Respondent in this regard is of no merit at this stage.

29. Regarding the question of jurisdiction raised on behalf of the Defendant Respondent, this is not the stage for effective adjudication of the matter.

30. Thus having given my anxious consideration to the facts and circumstances as revealed from the materials placed on behalf of the Plaintiff Petitioners and the respective contentions of the Teamed counsel of the parties, I am of the view that it will not be fit and proper for this Court at this stage to grant a limited ad interim injunction as suggested above on behalf of the Petitioner till the hearing and disposal of the injunction matter by the trial court. There is thus no good and sufficient ground for interference with the order of the lower appellate court. It is not known whether show cause has already been filed or not by the Defendant Respondent. If show cause has not yet been filed, the Defendant respondents shall file the show cause within a time fixed by the trial court. After the show cause is filed by the Defendants, the Plaintiff's application for temporary injunction would be taken up for final hearing and the Id. trial Judge would obviously consider the show cause and all such materials as would then be made available to him and would come to his own finding as to whether a case for temporary injunction till the disposal of the suit has or has not been made out. It is also made clear that in doing so, the Id. trial Judge shall remain wholly uninfluenced by any observation made by this Court herein as to the merits. The findings and/or observations made by this Court in disposing of the revision against the impugned order of the lower appellate court, cannot, in any way, take the place of the finding to be arrived at in disposing of the application for temporary injunction now pending before the learned trial Judge. The findings and observations which I have made above are meant only for

the purpose of deciding the question whether any interim injunction should be granted at this stage till the disposal of the injunction matter by the trial court and are not be construed as prejudging the merits of the injunction matter or the suit. At the risk of repetition again it is being made clear that only on the materials now on record, this Court has expressed its opinion that the lower appellate court was not in ultimate analysis wrong in making the impugned order and that no interim injunction need be granted in the peculiar facts and circumstances of this case, till the hearing and disposal of the injunction matter by the trial court. All questions are left open to be agitated by the parties and decided by the trial court freely without in the least being swayed by the observations/findings tentatively made by this court for the purpose of disposal of this revisional application. The trial court is, however, directed to decide and dispose of the temporary injunction matter in accordance with law as early as possible as directed by the lower appellate court. The revisional application is, thus, disposed of without any order as to costs.