

(2010) 09 DEL CK 0266

Delhi High Court

Case No: Regular Second Appeal No. 49 of 1991

Ram Dass Chela of Late Mahant
Net Ram

APPELLANT

Vs

The Thakurdwara Radha Krishan
(Regd. Soc.)

RESPONDENT

Date of Decision: Sept. 9, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 100, 145, 299
- Evidence Act, 1872 - Section 145, 33, 35, 36, 37
- Police Act, 1861 - Section 25
- Succession Act, 1925 - Section 263

Citation: (2010) 173 DLT 549 : (2010) 7 RCR(Criminal) 1473

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: J.K. Seth, Shalini Kapoor, Promil Seth and Kriti Arora, for the Appellant; Ashwini Mata and Sunil Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This second appeal has impugned the judgment dated 4.1.1991 passed by the court of Additional District Judge whereby the judgment and decree of the trial judge dated 5.4.1983 was set aside. The Civil Judge vide judgment and decree dated 5.4.1983 had decreed the suit of the plaintiff. This was a suit for declaration and injunction against the defendant society seeking a prayer that the order of the Additional District Magistrate dated 16.12.1969 delivering articles of the Radha Krishan Bhagwan Mandir, Najafgarh, Delhi to the defendant society be declared null and void with a further prayer that the defendant society be directed to hand over the management of the Mandir to the plaintiff.

2. Briefly stated the factual matrix of the case is as follows:

(i) Late Mahant Manohar Dass a renowned practitioner in the Ayurvedic system of medicine had out of his professional income built various temples, acquired agricultural land, religious places such as piyao and dispensaries.

(ii) Late Mahant Manohar Dass had executed his last will and testament dated 1.11.1953 by virtue of which he had bequeathed his Ayurvedic Dawakhana to Ram Chander and Pooja Path sewa to Net Ram. As per this will the Mahant had authorized one Jai Ram Dassji to give Ram Dass (plaintiff) in adoption to Net Ram.

(iii) This will of late Mahant Manohar Dass had been probated in a probate petition filed on 10.5.1957. The order of the Additional District Judge dated 10.5.1957 was confirmed by the Division Bench of High Court of Punjab and Haryana on 6.8.1965.

(iv) By virtue of this will the Pooja Path Sewa dwelt upon Net Ram and the right to look after the Dawakhana fell to the share of Ram Chander.

(v) Net Ram died on 18.12.1966. On the same day, the temple was sealed.

(vi) In early 1967 u/s 25 of the Police Act the temple property being unclaimed was sealed by the police.

(vii) On 25.8.1967 the seal of the temple was opened.

(viii) In proceedings before the ADM vide order dated 16.12.1969 he delivered the movable properties of temple which included ornaments of the mandir and cash to the defendant society. This was subsequent to the inter se objections filed by the plaintiff and the defendant society before the ADM.

(ix) Present suit has been filed by the plaintiff seeking a declaration that this act of the ADM dated 16.12.1969 is illegal, void and ultra vires. A further direction has been sought that the management of the temple and the properties of the temple be handed over to the plaintiff as he is the successor-in-interest of Net Ram in terms of the probated will dated 1.11.1953 of late Mahant Manohar Dass.

(x) The defendant had contested the suit. It was denied that the plaintiff was entitled to inherit the property after Net Ram. By virtue of the order dated 16.12.1969 of the ADM the properties and the management of temple had been handed over to the defendant society which was a legal order and called for no interference.

(xi) The trial judge had framed seven issues. 15 witnesses had been examined on behalf of the plaintiff while seven witnesses had come into the witness box on behalf of the defendant. The trial judge decided all the issues in favour of the plaintiff. It was held that Net Ram and after him the plaintiff namely Chela Ram Dass was entitled to the management and the properties of the Radha Krishanji Maharaj Mandir, Najafgargh, Delhi in terms of last will of late Mahant Manohar Dass dated 1.11.1953 which had been probated and had conclusively decided the rights of the

parties.

(xii) Suit of the plaintiff was decreed; the defendant society was directed to hand over the possession and management of the temple and its properties to the plaintiff.

(xiii) In appeal, the Additional District Judge vide judgment and decree dated 4.1.1991 reversed the finding of the trial judge. The appeal was allowed. Suit was dismissed. The first appellate court read into evidence the versions of PW-5 Jai Ram Dass Ji and PW-8 Ram Chander whose testimonies had been recorded in the probate petition.

3. This is a second appeal. On 8.3.1995 the appeal was admitted and following three substantial questions of law have been formulated which inter alia read as follows:

1. Whether the judgment of probate case is judgment-in-rem and if it is so, can the civil court (not the probate court) again probe into the matter and give its finding contrary to the judgment of probate case?

2. When the judgment of probate case is judgment-in-rem will that be not resjudicate for all subsequent suits of title in respect of same property?

3. Whether the police can put seal over the Immovable properties u/s 25 of Police Act, 1861 as unclaimed as was done in the present case particularly when the word "property" in this section is defined as moveable property only?

4. On behalf of the appellant, it has been urged that the impugned judgment is illegal and arbitrary; it has taken into account the versions of PW5 Sh. Jai Ram Das and PW8 Sh. Ram Chander without following the due procedure; their testimonies do not qualify as a public document u/s 74 of the Indian Evidence Act. They could not have been read in evidence without certified copies of the same having been proved on record after summoning of the concerned file with a chance of cross examination by the appellant in order that PW 5 and PW 8 could have been confronted with such a previous statement u/s 145 of the Indian Evidence Act. It has been pointed that u/s 33 of the said Act, statements made by a witness in a previous judicial proceeding can be proved in evidence only if the said person is either dead or is not found. There is no finding to the effect that PW 5 was either dead or could not be found. This evidence recorded in the probate petition was even otherwise not an inter se litigation between the parties; the appellant before this Court was admittedly not a party in the probate petition; on this ground also such statements could not be read. For this proposition, reliance has been placed upon a judgment of the Apex Court reported in AIR 2000 SC 1416 Nirmal Singh v. State of Haryana. It is submitted that in this case Supreme Court had held that Section 299 of the Cr. P.C. is the only exception to the principle embodied in Section 33 of the Indian Evidence Act which necessarily enjoins that only if a person is either dead or not capable of being found that his testimony recorded in a previous judicial proceeding can be

read in evidence. At the cost of repetition, it is pointed out that there was no evidence before the first appellate court to hold that PW 5 was either dead or not found. For the same proposition, reliance has also been placed upon 2000 (55) DRJ Om Prakash v. Union of India. The Supreme Court in this case had cautioned the courts that a statement received u/s 33 of the Indian Evidence Act should be received with due care and caution and only when the said witnesses are not available. For the same proposition, reliance has also been placed upon [Mitthulal and Another Vs. The State of Madhya Pradesh](#), In this case the Supreme Court had held that the evidence recorded in the previous case could not have been read in the subsequent case; this was a cross case in criminal proceedings. The Learned Counsel for the appellant has urged that the version of Ram Chander (examined as PW 8 in the probate petition) also cannot be read as he was examined as PW-9 in the instant case but his entire cross examination shows that the defendant had not confronted him with the earlier version of Ram Chander recorded as PW 8 in the Probate Petition. In the absence of the witness having been confronted with his earlier statement under the provisions of Section 145 of the Evidence Act, this statement of Ram Chander recorded as PW-8 in the Probate Petition also cannot be read. For this proposition reliance is placed upon a judgment reported in [Kali Pada Das and Others Vs. State](#), It is submitted that in this case it has been held that unless the previous statement of the witness is put to the witness with the intention to contradict him as per the procedure contained in Section 145 of the Evidence Act, such a statement cannot be used against the party.

5. Attention has been drawn to the statements of PW-3, PW-9, PW-10, PW-11 and PW-12; of whom PW 5, PW 6 and PW 11 were also the attesting witnesses to the will dated 1.11.1953 of late Mahant Manohar Dass. It is pointed out that all the aforementioned witnesses have testified on the adoption ceremony i.e. putting of the "chadar" over Ram Das and putting him into the lap of Net Ram. None of these witnesses have been suggested by the Learned Counsel for the defendants that no such adoption ceremony had taken place. The adoption of Ram Das by Net Ram stood proved. The will Ex.PB dated 1.11.1953 which is an admitted document clearly spells out the intention of the testator; the intention being that after the "chadar ceremony" and the adoption of Ram Das by Net Ram, Ram Das would inherit the "gaddi" from Net Ram; that is also the reason that why Ram Das has performed last rites of Net Ram. To establish this argument, attention has been drawn to the cross examination of PW-9 wherein he has stated that the last rites of Net Ram had been performed by the plaintiff Ram Das. It is submitted that the concept of "Mahant" and "gaddi" has been recognized over the generations; attention has been drawn to exhibit PW-9/1 which is a book publication of Mahant Manohar Dass evidencing this fact. Attention has also been drawn to the testimony of DW 4 wherein he has stated that Mahant Manohar Das was looking after the affairs of the temple; it is submitted that this role attributed to him qualifies him as a shebait and not as a pujari. Attention has also been drawn to the version of DW-5 wherein he has stated that the

mahant was not receiving any salary but the offerings of the temple were shared amongst them substantiating the argument that the mahant was not a mere pujari but was looking after the administration of the temple. Attention has been drawn to the version of DW-2 Tota Ram who has stated that the Mahant was looking after the repairs of the temple and was organizing Ram Lilas. DW-3 has also used the words "mahant" and "gaddi" in his version. It is submitted that it was the witnesses of the defendant himself who had acknowledged this system of the "mahants" which is analogous to "shebait". The properties of a shebait can be transferred by inheritance i.e. his "gaddi" being succeeded by one successor and thereafter another. Learned Counsel for the appellant has placed reliance upon [Shambhu Charan Shukla Vs. Shri Thakur Ladli Radha Chandra Madan Gopalji Maharaj and Another,](#) to substantiate his submission that the office of a shebait is in the nature of an immovable property; the word "muhtamim" is analogous to the use of the word "shebait". It is submitted that in the will Ex.PB dated 1.11.1953 of late Mahant Manohar Dass, he had used the word "muhtamim" in the context of a "shebait" and "muntazim" as an administrator and incharge of the affairs of the temple. The use of this terminology had made Net Ram the shebait, the incharge of the affairs of the Radha Krishan Bhagwan Mandir at Najafgarh. This was after the adoption by Net Ram of Ram Das by performing the "chadar" ceremony. Ram Dass in terms of Ex.PB had thus become entitled to inherit this shebaitship from Net Ram. The judgment of the trial court did not call for any interference by the first appellate court; the findings of the first appellate court are perverse.

6. It is submitted that the substantial questions of law as formulated in question No. 1 and question No. 2 are admitted inasmuch as it is settled position of law that the judgment in a probate case is a judgment in rem; nevertheless the question of title which is a subject matter of a will can be gone into by a Civil court; title of the suit property can be questioned by a civil court. This is not disputed by the Learned Counsel for the respondent. Counsel for the appellant has urged that the title in the suit property has vested in the appellant/plaintiff.

7. It is further submitted that the action of the police u/s 25 of the Police Act 1861 is illegal and arbitrary; the use of the word in the said provision of law is "property" which denotes movable property only; the act of the police in sealing the temple which is an immovable property by the order of the ADM and the handing over of the same to the society was an illegal act which again raises a substantial question of law as there has been an incorrect interpretation of the said provision.

8. Arguments have been countered by the Learned Counsel for the respondents. It is submitted that the appellant is not permitted to set up a new case in a second appeal. He has to abide by the averments as made by him in his plaint. Attention has been drawn to paras 6,7,9 and 11 of the plaint. It is submitted that the case of the plaintiff all along in his pleadings has been that Mahant Manohar Dass had acquired these properties by himself; the question of inheritance of gaddi and the

shebaitship passing from one successor to another is not a part of his pleadings. There could not be any inheritance of the gaddi from Nand Kishore and Mohan Dass. Mahant Manohar Dass was himself a pujari, he could not pass a better right to Net Ram. This is a new case set up by the appellant which is a distinct deviation from the averments in the plaint. In para 9 of the plaint, it has been stated that the plaintiff succeeded to the gaddi of Net Ram who himself was only managing the mandir; since Net Ram himself had management rights only the question of the plaintiff succeeding to the gaddi could not arise.

9. There is no infirmity in the impugned order. It is submitted that the first Appellate Court had rightly considered the testimonies of Jai Ram Dass examined as PW-5 and Ram Chander PW-8 in the probate case. Certified copies of the statements of the said witnesses had been permitted to be taken on record vide order of the Trial Judge dated 6.7.1979, wherein it had been ordered that the said documents including certified copies of the statements of Jai Ram Dass and Ram Chander are taken on record but whether judicial notice can be taken of these documents will be considered at the time of final disposal of the case. It is submitted that the Trial Court had wrongly rejected these documents; being certified copies and a public document in view of Section 74 of the Indian Evidence Act they could be read in evidence. For this proposition, Learned Counsel for the respondent has placed reliance upon a judgment of the Supreme Court [Damu Ganu Bendale Vs. Arvinda Dhondur Talekar and Others](#). It is submitted that where certified copies of the statements had been placed on record and the plaintiff was put to notice of this; it was then for the plaintiff to defy their veracity; he has chosen not to do so. Attention has been drawn to the versions of these witnesses who had been examined in the probate petition. PW-5 Jai Ram Dass, in his cross-examination, had inter alia stated: At that time I said to Net Ram that he should adopt Ram Chander's son and we would tie a paggri on his (Net Ram's) head. Net Ram, however, did not take Ram Chander's son in his lap. At that time Ram Chander's son was four or five years" old.

PW-8 Ram Chander had deposed as follows:

There was no dastar-bandi ceremony after the death of Bawa Manohar Dass as a dispute had arisen between us.

10. It is submitted that the First Appellate Court had correctly read these versions of PW-5 and PW-8 and appreciated that there having been no adoption ceremony of the plaintiff by Net Ram the question of the plaintiff Ram Dass succeeding to the gaddi of Net Ram did not arise.

11. Learned Counsel for the respondent has drawn the attention of this Court to the provisions of Section 33 of the Evidence Act. It is submitted that for the applicability of this section, it is mandatory that the issues in the former proceedings and the subsequent proceedings are between the same parties and are substantially the

same. This is not so; it is submitted that probate petition was a petition interse between Ram Chander and Net Ram. The present suit was a suit between Ram Dass and the Thakurdwara Radha Krishan Society. Section 33 is not attracted.

12. Attention has also been drawn to the version of PW-5 and PW-6 to substantiate the averment that this mandir was the self acquired property of Mahant Manohar Dass and that is why the municipal records have also recorded ownership in his name; the mandir is 200-300 years old and this has come in the version of PW-9. The defendant society although registered in the year 1969 was functioning as a panchayat and was a conglomeration of persons much prior in time and this found mention in the versions of the witnesses of the plaintiff himself; attention has been drawn to the version of PW-9 and PW-11 who have all spoken of the panchayat; submission being that this panchayat had later on formalized itself into a registered society. Attention has also been drawn to the testimony of plaintiff Ram Dass who had been examined as PW-10 wherein he has stated that he has no concern or connection with the affairs of the temple. Reliance has been placed upon [Controller of Estate Duty, Bihar Vs. Mahant Umesh Narain Puri \(Dead\) Represented by Mahant Sher Nandan Puri](#), to substantiate his submission that when a mahant dies the properties do not pass by inheritance but a mahant has to be elected. Reliance has also been placed upon AIR 1920 Privy Council 123 Vidya Varuthi Thirtha v. Baluswami Ayyar and Ors. to substantiate his submission that a mahant is only a trustee and by whatever name he may be called he is only the manager and custodian of the institution and nothing more.

13. Attention has been drawn to Ex.PC, the order dated 16.12.1969, passed by the court of Sh. B.R. Basu, Magistrate First Class in proceedings u/s 25 of the Police Act. It is stated that vide this order it was only the articles required for the day to day running of the temple which had been handed over to the defendant society; the question of the handing over of any immovable property i.e. the possession of temple to the management did not arise, this is clear from the said order. It is submitted that on 25.8.1967 the SDM u/s 145 of the Cr.P.C. had de-sealed the temple and handed over its management and control to the defendant society; that order dated 25.8.1967 is not the subject matter of challenge in the present suit proceedings. Attention has been drawn to the prayer made in the plaint wherein, it has been prayed that the order dated 16.2.1969 of the ADM be declared illegal. Section 25 of the Police Act has not been violated as no immovable property has been handed over in terms of this order dated 16.12.1969; there is no illegality in the said order.

14. It is submitted that findings of fact cannot be interfered at the second appellate level. For this proposition reliance has been placed upon [Smt. Satya Gupta Alias Madhu Gupta Vs. Brijesh Kumar](#), as also another judgment of Supreme Court reported in [Pakeerappa Rai Vs. Seethamma \(Dead\) by LRs and Others](#), It is submitted that finding of facts, even if, erroneous and grave in nature cannot be

interfered with in second appeal.

15. This Court is sitting in second appeal. Jurisdiction is vested with this Court in terms of Section 100 of the Code. After the amendment of 1976 this provision of law stands further curtailed; it is only on substantial questions of law that interference is called for by the High Court. In *Neelu Narayani V/s. Lakshmanan*, (1999) 9 SCC 237 the Supreme Court had held that a question of title arising on the basis of the interpretation of proved document is a question of law and can be examined in a second appeal. In [Surendra Kumar Vs. Nathulal and Another](#), the Apex Court had held that where a document has been duly proved, the impugned judgment would be vitiated by an error of law calling for interference at the second appellate level. This position has been reiterated in [Kashmir Singh Vs. Harnam Singh and Another](#). The well recognized exceptions to the general rule that the High Court will not interfere with concurrent finding of fact have been culled out in para 17 which inter alia reads as follows:

The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to decision based on no evidence. It not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

16. It is in this backdrop that the arguments addressed by the respective parties have to be adjudged. The subject matter of dispute is the will dated 1.11.1953 of Mahant Manohar Dass. Its construction and interpretation by the first Appellate Court has been challenged before this Court. It is not in dispute that this will had been probated in probate petition by the District Judge on 10.5.1957 and had been confirmed by the Division Bench of the High Court of Punjab and Haryana on 6.8.1965. It is also an undisputed proposition of law that the decision of a Probate Court is a judgment in rem. A probate granted by the competent Court is conclusive of the validity of such a will until it is revoked; no evidence can be admitted to impeach it except the proceedings demanding revocation of the will. This principle has been reiterated by the Supreme Court in [Smt. Rukmani Devi and Others Vs. Narendra Lal Gupta](#). It is also not in dispute that although a probate being a judgment in rem binds not only the parties to the case but all other persons in all proceedings arising out of the will, yet it is not decisive about the title of the properties of the testator which are the subject matter of the will; such title can only be decided by a Civil Court. This has been held by the Supreme Court in [Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon and Others](#), In [Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others](#), the Supreme Court had reiterated this principle. It had been reiterated that the questions of title and the construction of the will

relating to the right, title and interest of any person are beyond the jurisdiction of the probate Court; remedy of such a person being the remedy of filing a separate suit or an application u/s 263 of the Indian Succession Act for the revocation of the probate.

17. These propositions of law have not been disputed before this Court.

18. It is thus clear that although the will of late Mahant Manohar Dass had been probated yet the construction and the interpretation of the title of the subject matter of the properties contained in the will could have been raised and decided by the Civil Court.

19. This document i.e. the will dated 11.9.53 Ex.PB is in the urdu and hindi translation of the said document of the said document has been placed on the record. The parties have exchanged copies of the said document. Except on two places on page one and one place at page two where the word "muharar" finds mention, it is stated that it has to be substituted by the word "muntazim". There is otherwise no dispute to this translated version.

20. The executant has described himself as a "muntazim" and "muhtamim" of the properties which are subject of the will. As per this will he had revoked his earlier wills which have been made by him in 1947 and 1952. On the second page of the document (hindi translation) he has stated that he is the owner/muntazim of his entire property. In the first sub para (internal page 3 of the hindi translation) he has stated that Net Ram his Chela would be the muntazim and muhtamim of the Radhakrishna Maharaj Mandir at Najafgarh; further he would do the path-puja. However, Mahant Jai Ram Dass Ji would put Ram Dass S/o Ram Chander in the lap of Net Ram, wrap a Chadar around him; thereafter Net Ram would perform his last rites. This is the only reference made to the plaintiff Ram Dass in the will. Name of Net Ram as muntazim and muhtamim find mention in this sub para 1 and also in sub para 5 of the will wherein Net Ram has been described as a muntazim of the piayo and the bagicha. In the other sub paras of the will which are eight in number he has bequeathed his other properties to other chelas who have all also been described as "muntazims" and "muhtamims".

21. The present suit was a suit for declaration and injunction. The plaint has to be read as a whole. It states that late Mahant Manohar Dass was a practitioner in Ayurvedic system medicines. He had succeeded to the gaddi of Nand Kishore Mahant. By his personal efforts, he had established the dispensary, constructed rooms and made improvements for the benefit of the temple. He had got valuable silver and gold ornaments in the temple which were his self acquired properties. Para 3 and 4 also recite the efforts of Mahant Manohar Dass relating to acquisition of agricultural land at village Karala and building of a temple Daryaopur Kalan. In para 11, it is categorically stated that all these properties which were the subject matter of the bequest of Mahant Manohar Dass were the properties which were self

acquired by the mahant. This has also been endorsed as a finding of the Trial Court.

22. Being the self acquired properties of the mahant, the question of succession from one to the other did not arise. As rightly pointed out by the Learned Counsel for the respondent as these properties were the self acquisitions of Manohar Dass himself there can be no contrary plea that he had inherited them from any successor; title of these properties also did not have to pass by succession.

23. The word "shebait" does not find mention anywhere in the pleadings of the plaintiff either at the stage of Trial Court or at the stage of first Appellate court yet the word "mahant" and "gaddi" does find mention. The testator in Ex.PB has often used the expression "muntazim" and "muhtamim". He had described himself as "muhtamim"; Net Ram has also been referred to as a "muhtamim". Muhtamim has been defined in the Persian dictionary (supra) as a trustee, manager or a superintendent. In the case of Shambhu (supra) the Supreme Court has used the words "muhtamim" and "shebait" as interchangeable of one another; one is analogous to the other. In JT 2003 (3) SCC Kacha Kanti Seva Samity and Anr. v. Shri Kacha Kanti Devi and Ors. the Supreme Court had even recognized a de facto shebaitship. Mulla in his book Principles of Hindu Law (supra) has defined the role of a "mahant" as a "shebait". Maynes in his "Commentary on Hindu Law and Usages" 12th Edition had defined the concept of "Shebait" as inclusive of duties and personal interest blended together and being inheritable. As aforementioned both the executant Mahant Manohar Dass and the beneficiary Net Ram has been referred to as a "muhtamim" which is equivalent to shebait. The testator in the will has ascribed ownership of all properties to himself in his capacity as an owner and a "muhtamim"; these same rights devolved upon Net Ram who was thus not a mere pujari. It is also not in dispute that shebaitship is in the nature of immovable property which is inheritable. This has been reaffirmed by Supreme Court in the case of Shambhu (supra). It is thus clear that the properties of Mahant Manohar Dass could have been inherited by Net Ram and Ex.PB which has been duly proved thus stated that these properties would devolve upon Net Ram. However, the role of the appellant/plaintiff as an inheritor of these properties from Net Ram is clearly negated. Ex.PB categorically recites that only after the "chadar" ceremony had been performed and Ram Dass (appellant/plaintiff) is put in the lap of Net Ram, will Net Ram perform the last rites of Mahant Manohar Dass in accordance with custom and as per the desires of Mahant Manohar Dass. In this will the intention of the testator was implicit. The implicit intent being that only after the adoption ceremony by way of putting the "chadar" on Ram Dass is completed and he is made to sit in the lap of Net Ram, Net Ram will be permitted to perform his last rites.

24. The next question posed before this Court is as to whether this "chadar" ceremony had taken place or not. In this context the crucial point is as to whether the impugned judgment dated 5.4.1983 could have relied upon the statements of PW-5 Pt. Jai Ram Dass and PW-8 Ram Chander who were both witnesses examined

in the probate court. Admittedly, PW-5 Pt. Jai Ram Dass and PW-8 Ram Chander were not parties in the instant suit; they had appeared as witnesses in the probate petition wherein certified copies of their depositions had been taken into account by the first Appellate Court to non-suit the plaintiff.

25. PW-5 Pt. Jai Ram Dass had made an unequivocal admission in his cross-examination which has been reproduced hereinabove. This statement categorically recites that Jai Ram Dass had told Net Ram to adopt Ram Dass; Net Ram, however, did not take Ram Chander's son (plaintiff) in his lap; at that time Ram Chander's son was four to five year of age.

26. Version of PW-8 Ram Chander (examined as PW-8 in the present proceedings) was also a clear and unambiguous statement. It has been reproduced hereinabove. This statement also categorically recited that there was no dastar bandi after the death of Baba Manohar Dass as disputes had arisen between the parties. The will Ex.PB had recited that after pagari ceremony (dastar bandi), Net Ram would be permitted to perform last rites of Baba Manohar Dass.

27. An application under Order XIII Rule 2 had been filed by the defendant on 28.3.1979 seeking permission of the court to place certain documents on record which included certified copies of the statements of PW-5 and PW-8. This has been contended in para 5 and para 6 of the application. The reply filed to the corresponding paras of the plaint has not disputed the veracity of the genuineness of these documents. It states that the defendant should have been vigilant to inspect the file in time; filing of these documents at this stage is only a delaying tactic. On 6.7.1979 this application had been disposed of. Para 2 of the order clearly states that by way of this application, the defendant seeks permission to place certified copies of eight documents on record which included statements of Jai Ram Dass and Ram Chander. Application was allowed. The relevant extract of the aforementioned order reads as follows:

All these documents are certified copies and in my opinion there can be no objection from the side of the plaintiff to bring these documents on record as these documents were very much relied upon by the plaintiff himself in his plaint, so I allow the application of the defendant and all these documents referred to above are allowed to be filed on the record with cost of Rs. 20/-. With regard to the request of the defendant that judicial notice be taken of these documents, this request can be considered only at the stage of final disposal of the case.

28. Section 74 of the Evidence Act defines public documents; it is not in dispute that a certified copy of a deposition of a witness made in the course of judicial proceedings is a public document. u/s 77 of the said Act certified copies may be produced in proof of the contents of public documents. u/s 79 of the said Act there is a presumption about the genuineness of such certified copies. This section is couched in the mandatory language; the word "shall" has been used; the Court shall

presume that all documents purporting to be certified copies to be a genuine documents; this is a rebuttal presumption. In the judgment of Damu Ganu Bendale (supra) while dealing with the certified copy of the statement which had been sought to be placed on record. The Supreme Court held inter alia as follows:

The appellant having filed certified copy of the statement, it was for the respondents to explain it and the adverse inference drawn by the revising authority against the appellant due to failure of filing any application for summoning the deponent does not appear to be well founded in law. The appellant had done what was possible for him to do by producing a certified copy of the statement of the respondents wherein he had admitted that the appellant was a cultivating tenant. It was for the respondent to explain the deposition either by examining himself or producing any material to nullify the effect of admission contained in the deposition.

29. The ratio on the aforementioned judgment is fully applicable. The defendant on coming to know of the proceedings in the probate petition had filed certified copies of the statements of two witnesses namely Pt. Jai Ram Dass examined as PW-5 and Ram Chander examined as PW-8. plaintiff was put to the notice of the evidence which the defendant had sought to adduce by filing these certified copies; he had done all that was within his power at that stage i.e. filing certified copies of the statements of the said witnesses; this was by virtue of an application under Order XIII Rule 2 of the Code which was allowed on 6.7.1979. It is relevant to state that in the reply filed by the plaintiff, the veracity and the genuineness of these statements was not under challenge; it was not the case of the plaintiff that these statements were false or incorrect and for that reason same should not be taken on record. The only objection taken by the plaintiff/appellant in the reply was that this was a delaying tactic. This application was allowed on 6.7.1979 with a rider as aforementioned. This rider has been answered by the provisions of law as discussed supra i.e. the provisions of Section 74 read with Section 79 of the Evidence Act. The certified copies of these documents i.e. statements of witnesses recorded in the course of judicial proceedings being a public document; their genuineness shall be presumed unless rebutted. It was not rebutted. The ratio of the aforementioned judgment would clearly be applicable to the instant situation by virtue of which this Court is of the view that the first Appellate Court had rightly read into evidence these versions of PW-5 and PW-8.

30. The judgment relied upon by the Learned Counsel for the ppellant in rebuttal reported in AIR 1977 SC Sita Ram Bhau Patil v. Ramchandra Nago Patil is in applicable. In that case the evidentiary value of an admission was under question; the said admission was held to be ambiguous and as such was not accepted. In this case statements of PW-5 and PW-8 are clear, categorical, cogent and unambiguous. Even in the reply filed to the application under Order XIII Rule 2 Cr.P.C., the plaintiff had taken no such objection to their authenticity or veracity. The second judgment relied upon by the Counsel for the appellant in rebuttal reported in [Parkash Rai Vs.](#)

[J.N. Dhar](#), is also inapplicable. In this case the Court had held that mere production of a certified copy of a public document does not prove the same as the question of its admissibility involves that the contents must relate to a fact in issue or a fact relevant under the various sections of the Evidence Act; it was the relevancy of the evidence under Sections 35 - 38 of the Evidence Act which was in question. In this case, it was not in dispute that statements of PW-5 Jai Ram Dass and Ram Chander PW-8 in the probate petition are relevant to the matter in issue before this Court. It was these versions which have in fact established that no adoption ceremony of the plaintiff had taken place by Net Ram.

31. The will Ex.PB had cast a heavy responsibility upon Pt. Jai Ram Ji Dass; the word "Ji" used in the testament has a special connotation; as its usage had cast a burden on Pt. Jai Ram Dass; he being a senior had been coupled with the responsibility of performing the "chadar" ceremony and of putting the plaintiff Ram Dass, son of Ram Chander, in the lap of Net Ram. Who could have been a better witness than Pt. Jai Ram Dass himself who had been examined PW-5 in the probate petition and had unambiguously and in clear language stated that in spite of his request to Net Ram to take Ram Dass in his lap, Net Ram had refused. This version of PW-5 clearly established that the adoption ceremony did not take place. This version of PW-5 read along with the version of PW-8 further shows that the dastar bandi i.e. pagari ceremony of Net Ram had also not taken place. The necessary corollary being that the request of the testator not having been complied with by Net Ram i.e. he having refused to adopt Ram Dass, the question of the interest of Net Ram devolving on Ram Dass the plaintiff did not arise. The judgments relied upon by the Learned Counsel for the appellant reported in Nirmal Singh (supra), Amarjeet Kaur (supra) and Om Prakash Jain (supra) are inapplicable; they relate to the applicability of the Section 33 of the Evidence Act; which is not applicable. Testimony of PW-5 and PW-8 recorded in the probate case are not relevant facts u/s 33 of the Evidence Act. The certified copy of their statements being public document on which a presumption arises in their favour u/s 79 of the said Act have to be read under that provision of law.

32. In the written statement, the defendant has described himself as a registered society and an administrative body of the temple properties, maintaining the accounts of the mandir. It is stated to be a registered society having an elected body and constituted under the bye-laws and provisions of the Societies Registration Act. In the preliminary objection, it is stated that this temple has been described as Thakurdwara Radhkrishna Mandir at Najafgarh in the Bandobast Report of 1864. It is not in dispute that this society was registered as a society on 9.12.1969. It is also not in dispute that this mandir is about 200 years old; this finds mention in the version of PW-9. DW-5 has also admitted that the mandir is about 200 years old. DW-5 being a secretary of the defendant society has deposed that the election of this society takes place in due course. PW-9 Ram Chander is the father of the plaintiff. He admitted that the plaintiff is living with him. He has deposed that a

panchayat took place in 1954 after the death of Mahant Manohar Dass and it was agreed that the properties of Mahant Manohar Dass would be jointly occupied by Net Ram and Ram Chander. PW-10 Ram Dass has deposed that he does not know about the affairs of the mandir and his father is looking after the management. PW-11 Mahant Jag Ram Dass was an attesting witness to the will Ex.PB. He had deposed that this temple was constructed by Mahant Mohan Dass but the remaining property was developed by Mahant Manohar Dass; the management of the temple and the property did not remain with the panchayat. PW-12 is also a Mahant in Village Tikri, Delhi. In his cross-examination he has admitted that there is a committee in which Pt. Ram Dhan Sharma is a secretary and Vaid Krishan Lal is the president who were managing the affairs of the temple.

33. Although there is no specific averments in the written statement that the panchayat which had been formulated in 1954 is the same panchayat which had later on transformed into the defendant society; yet the witnesses of the plaintiff himself had spoken about this Panchayat which is none other than a committee of persons representing the village i.e. the defendant society.

34. It is also not in dispute that after the death of Net Ram on 28.12.1966, the temple was sealed on the same date. This was under the action of the police. The contention of the defendant was that this order was passed by SDM u/s 145 of the Cr.P.C.; there is no such order on the court record. The order dated 16.12.1969 Ex.PC was passed by Sh. B.R. Basu, Magistrate First Class, u/s 25 of the Police Act. The second page of the order recites that on 25.8.1967 the SDM visited Najafgarh and in the presence of large number of people the locks of the temple were opened and most of the articles which have been taken into possession were handed over to Shri Kishan Lal Vaid, president Thakurdwara Radha Krishan Temple, Najafgarh on superdari with the consent of the people collected there; the said president was asked to maintain his account. Last page of this order reads as follows:

The possession of the temple was handed over to the managing committee mentioned above in August, 1967. Kishan Lal has claimed that the managing committee is representative of the local population and as answerable to the latter for the account. The committee has also been managing the affairs of the temple on proper lines since it took over management of the temple. Considering all these facts and also that these articles are required for day-to-day running of the temple. I am of the opinion that these articles should be handed over to the president of the Managing Committee of the temple. These articles are at present in the custody of the police who may be advised to hand over the same to the President of the temple committee.

35. Perusal of this order clearly shows that these were such articles which are required for the day to day running of the temple which had been handed over to the president of the managing committee. The temple had already been locked and sealed on 28.12.1966 and was de-sealed on 25.8.1967 as is revealed from this order.

The contention of the Learned Counsel for the appellant that the order u/s 25 of the Police Act had vested the possession of the temple in the defendant society is not borne out from this order Ex.PC. It is clear that after the death of Net Ram on 28.12.1966 the temple had been locked by the police; thereafter on an application made on 27.1.1967 by the Secretary of the defendant society in the presence of several persons of the village, the SDM on 25.8.1967 had de-sealed the temple and handed it over to the President. The order dated 16.12.1969 passed u/s 25 of the Police Act only related to articles which are a movable property of the temple and had been handed over for the day today working of the temple. There is no infirmity in the order as it did deal with any immovable property. The judgment of Chhutan Lal relied upon by the Learned Counsel for the appellant has no application.

36. The substantial questions of law as formulated above have been answered. There is no merit in the appeal. It is dismissed.