

(2011) 05 DEL CK 0321

Delhi High Court

Case No: C.S. (OS) No. 439 of 1986, CCP (O) No. 119 of 1995 and I.A. No. 2486 of 2011

B.K. Goel and Others

APPELLANT

Vs

Manohar Lal and Others

RESPONDENT

Date of Decision: May 23, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 92
- Constitution of India, 1950 - Article 17

Citation: (2011) 124 DRJ 426

Hon'ble Judges: Sunil Gaur, J

Bench: Single Bench

Advocate: Anil Kr. Gupta and Manju Goel, for the Appellant; R.P. Bansal Ramesh Mahajan, Sheetesh Khanna, Pramod Tyagi and Gautam Anand for Defendant No. 2(A), 4 and 5, for the Respondent

Final Decision: Disposed Off

Judgement

Sunil Gaur, J.

In this representative suit u/s 92 of the Code of Civil Procedure, removal of Defendant No. 1 to 4 from the Trustee-ship from "Mandir Madana and Sawan Das Dharmarth Trust" with directions to render accounts and to deliver the possession of the trust properties, as disclosed in paragraph no: 2 of the plaint, to the new Trustees is claimed on the plea that the aforesaid Trust is being mismanaged.

2. Aforesaid Trust is stated to be registered and one of the Trust property is said to be located in Delhi and the Temple and Dharamshala of the Trust in Madana was purportedly meant for the use and enjoyment of the residents of Delhi and the legal representatives of the Settler of Trust are said to be residents of Delhi. The cause of action to institute this suit purportedly arose in August, 1980, when the Statutes of Lord Radhakrishna and other articles were removed from the Temple known as Mandi Radhakrishna, situated in Village Madana, Distt. Rohtak, Haryana; and again,

when the said Piao/Piggi and agricultural land attached thereto was allowed to be illegally occupied by unauthorized occupants and the irregularities as to creating a new tenancy and sell out of the properties belonging to Trust, came to light. Lastly, it arose in first week of February, 1984, when the Defendants had finally refused to render the accounts of the Trust.

3. On 7th February, 1986, leave was granted to the Plaintiffs to institute this suit and thereafter, written statement was filed by the Defendants, but it would be worthwhile to refer to the written statement filed by the surviving Trustee/Defendant No. 4, who has taken number of preliminary objections and has raised a challenge to the maintain (sic) of this suit and has denied that the residential property No. 4116-18, at Naya Bazar, Delhi, which is under tenancy, is not a trust property but is the exclusive property of the descendants of Late Shri Sawan Das. However, it is not disputed that the Temple in Village Madana was constructed in somewhere in the year 1908 by forefathers of Late Shri Sawan Das and Shri Dewat Ram and the same was maintained with the aid of donations and contribution made by descendants of Late Shri Sawan Das and some funds contributed by the society known as "Mandir Madana and Sawan Das Dharmarth Trust".

4. It is pointed out that the property mentioned at S. Nos. (i) to (vi) in paragraph no: 2 of the plaint, nowhere exists and though some articles were stolen from the Temple in Village Madana and with a view to save the idols installed in the Temple, the Pujari had brought them to Rohtak and later on, they were reinstalled in the Village Temple. It is categorically denied that any Trust property had situated in Delhi or that any Trust was ever created. The written statement originally filed by Defendant No. 2 and on behalf of Defendant No. 5 - Society is on the similar lines as filed by Defendant No. 4. In the replication filed by the Plaintiffs, the stand taken in the plaint is reiterated.

5. On the pleadings of the parties, the following Issues were framed:

(i) Whether the suit, as framed, is maintainable within the scope and purview of Section 92 of the Code of Civil Procedure?

(ii) Whether the Plaintiffs or any of them have locus standi to institute the suit?

(iii) Whether this Court has jurisdiction to entertain and dispose of the present suit?

(iv) Whether proper and sufficient Court fee has been paid on the plaint?

(v) Whether the suit is not bad for misjoinder of Defendant No. 6 and 7 who have been or are the employees in the Temple?

(vi) Whether any Trust known as "Mandir Radha Krishan Madana Kala Trust, as paragraph no: 1 of the plaint, and in respect of which reliefs have been claimed in the suit, was ever formed in 1931-1932? If so, what was its constitution and which

was the Trust Deed evidencing the formation of the said Trust? OPP (vii) If Issue No. 6 is in the negative whether "Mandir Madana Sanwal Dharmarth Trust" is the same as Mandir Radha Krishan Madana Kala Trust? OPP

(viii) What were the properties dedicated and belonging to the Trust mentioned in the preceding paragraph?

(ix) To what directions the Plaintiffs are entitled?

(x) Relief.

6. The first three and the fifth witness of the Plaintiffs are of formal nature, as they have not produced the summoned records. The fourth witness is a Revenue Official - Amar Singh (Patwari) - (PW-4), who had brought the jamabandi of Village Dujana Distt. to indicate that Dharamshala is located in the said agricultural land and as per records, Mr. Balwant is the sevadar of that Dharamshala. Again, the sixth witness is the Revenue Official - Sewa Ram (Patwari) - (PW-6), who had produced the revenue record, i.e., jamabandi of the suit land of the year 1979-1980 to indicate that the suit land is "Dohli", as the same was given in gift by the village people and Radhakrishna Temple is located therein in Village Madana Kalan in Distt. Rohtak, Haryana. However, he has stated that the ownership of the suit land is with the Panchayat.

7. The deposition of official witnesses - Hari Singh (PW-7), Zile Singh (PW-8), Chhiddha Singh (PW-9) is again of formal nature, and it does not advance the case of the Plaintiffs. So far as Revenue Official - Ram Kishan (PW-10) from the Kanungo Office, Delhi is concerned, he has produced the certified copy of the mutation, etc., Ex. PW-10/1 to Ex. PW-10/3, relating to the suit property at Delhi.

8. Shri B.K. Goel, Plaintiff No. 1, has stepped into witness box as PW-11. His deposition is crucial. Apart from the evidence of eleven witnesses of the Plaintiffs, there is solitary deposition of Defendant No. 4 - Shri Nirmal Goel, who has stepped into witness box as DW-1. No other witness has deposed in this case.

9. At the final hearing, submissions and counter submissions were advance by Learned Counsel for the parties, who had meticulously taken this Court to evidence on record and had referred to the decisions reported in Manmohan Singh Chawla and Ors. v. Rajesh Berry and Anr. 2009 III AD (Delhi) 259; [Seth Hiralal Patni Vs. Sri Kali Nath](#), [Sudhir G. Angur and Others Vs. M. Sanjeev and Others](#), ; Beli Ram and Ors. v. Ishar Dass AIR 1928 Lahore 113; [Ramesh Chandra Vs. Gulab Rai and Others](#), [Sukumaran and Others Vs. Akamala Sree Dharma Sastha Idol and Others](#), [Raghunathi and another Vs. Raju Ramappa Shetty](#), ; [Kundan Lal Rallaram Vs. Custodian, Evacuee Property, Bombay](#), [R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another](#), [Smt. Dayamathi Bai Vs. Sri K.M. Shaffi](#), ; [Niranjan Kaur Vs. New Delhi Hotels Ltd. and Others](#), [Vidhyadhar Vs. Manikrao and Another](#), ; Menakuru Dasaratharami Reddi and Anr. v. Duddukuru Subba Rao and Ors. AIR 1957 SC 797; [Suraj Bhan \(Died\) and Others Vs. Bodha Nand](#)

[and Others,](#); Munshi Abdul Rahim Khan and Ors. v. Fakir Mohammad Shah and Anr. AIR (33) 1946 Nag 401; [R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others,](#) Kailash Chand v. Ganpat Rai 1989 RLR 274; Joginder Singh v. Sardar Singh 1985 RLR (Note) 11; Paras Mal and Anr. v. Sobhag Devi and Ors AIR 2007 Raj 72; [Thakur Pandey Vs. Bundi Ojha and Others,](#); [Pannala Renuka and Another Vs. Kavali \(Rajumouni\) Venkataiah and Others,](#) [Sanjay Verma Vs. Manik Roy and Others,](#); Narain Singh v. Mahinder Singh etc. 1992 RLR 52 [Smt. Sawarni Vs. Smt. Inder Kaur and Others,](#) Babulal and Anr. v. Municipal Corporation, Ratlam and Ors. (2005) 13 SCC 101 ; and [Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and another,](#); [Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another,](#) [Deoki Nandan Vs. Murlidhar,](#) Advocate General to Government of HP, Simla v. Smt. Leela Devi and Ors. AIR 1984 NOC 273 (Him. Pra); West's Patent Press Company Ltd. and Anr. v. Govindnaik Gurunathnaik Kalghatgi and Ors. AIR 1984 NOC 274 (KANT), Kuldip Chand and Anr. v. Advocate General to Government of Himachal Pradesh and Ors. AIR 2003 SCC 1685; ABHAYA," A Society Registered under the [Abhaya Vs. Raheem,](#); [K. Rajamanickam \(D\) and Another Vs. Periyar Self Respect Propaganda Institution and Others,](#), and [Shri Venkatesh, Mandir Trust Committee of Ayodhya, Faizabad and Others Vs. Janki Prasad Choudha and Others,](#)

10. After deliberating upon the submissions advanced by both the sides, and upon careful perusal of the evidence on record and the decisions cited, the findings returned on the Issues framed are as follows:

Issue No.: (i) & (ii)

11. These two basic issues are being dealt with together. This suit u/s 92 of CPC proceeds on the basis that "Mandir Radha Krishan Madana Kalan Trust" was created by the forefathers of the Plaintiffs in the year 1931-32 with Lala Devak Ram as its sole Trustee and after his death, the first three Defendants in this suit had started managing the said Trust. The first requirement of maintaining a claim u/s 92 of the CPC is to establish the existence of the said Trust. Plaintiffs have not placed on record the Trust Deed or its copy, but have given oral evidence regarding the existence of the said Trust. Since it was averred in the plaint that the first three Defendants are in possession of the Trust Deed, therefore the opposite side was put to notice and the stand taken by Defendant No. 2 on behalf of Defendant No. 5-Society was that Lala Sawal Dass Dharmarth Trust was created by Defendant No. 2 in the year 1948 in the memory of Late Lala Sawal Dass and what was placed on record was a copy of document of 23rd April, 1950 of a society "The Mandir Madana and Sawal Dass Dharmarth Trust" (Ex. PW-11/D1). In the plaint, it is asserted by the Plaintiff that the aforesaid Trust was being managed by the first three Defendants and the Plaintiffs are legally entitled to know as to whether the Trust is being properly managed by the Defendants or not.

12. In view of the stand taken by the Plaintiffs as aforesaid, what falls for consideration is whether a Society known by the name of "The Mandir Madana and

Sawal Dass Dharmarth Trust" (Ex. PW-11/D1) would come within the definition of Public Charity u/s 92 of Code of Civil Procedure. For this purpose, the aforesaid document (Ex. PW-11/D1) has to be read as it is and upon doing so, I find that the aim and objectives of the aforesaid Society, as disclosed in the document (Ex. PW-11/D1) were charitable as well as religious. So far as the question of Plaintiffs having interest in the proper management of the Society/Trust properties is concerned, there cannot be any dispute about it, as the Temple in Village Madana, as well as the suit property in Naya Bazar, Delhi, of which there is a reference in document (Ex. PW-11/D1), belonged to forefathers of Lala Devak Ram, and Lala Sawal Dass, whose descendants are the Plaintiffs and first three Defendants.

13. There is no worthwhile evidence on record to indicate that the Plaintiffs have instituted this suit to vindicate their individual rights and merely because they are concerned in effective management of the properties in question, it cannot be said that the present suit is outside the scope of Section 92 of Code of Civil Procedure. Reliance placed upon decision in [Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another](#), by the Defendants is of no avail, because the Plaintiffs are not asserting their rights to office of a Trustee nor are seeking any such relief, which falls outside the scope of Section 92 of Code of Civil Procedure. Though it is said that the affairs of the Society/Trust (Ex. PW-11/D1) were being managed by first three Defendants, but certainly the Plaintiffs had the interest to ensure that the Management of the Society/Trust (Ex. PW-11/D1) is in furtherance of its aims and objects. In this view of the matter, I find that the reliance placed by the Defendants upon the decision in [K. Rajamanickam \(D\) and Another Vs. Periyar Self Respect Propaganda Institution and Others](#), is misplaced, as in the said case, the properties of a Society were shown in the name of the President and the Secretary, who have the powers to sell them. Here, in the instant case, it is not so. Similarly, reliance placed by the Defendants upon decision in "ABHAYA," A Society Registered under the [Abhaya Vs. Raheem](#), is of no avail as in the said case, there was no material to show that the Trust was of public nature, which subsequently got registered under the Societies Registration Act. On the basis of the evidence led in this case, I am of the considered view that this suit u/s 92 of the CPC is maintainable, and the Plaintiffs have the locus standi to institute this suit. Both these Issues are answered accordingly. Issue No.: (iii)

14. As regards the territorial jurisdiction to entertain this suit is concerned, I do find that the Society/Trust document (Ex. PW-11/D1) is of Muktsar in Punjab, but as per Section 92 of the CPC such a suit can be instituted in whose jurisdiction the whole or any part of the subject matter of the Trust is situated. It emerges from the Society/Trust document (Ex. PW-11/D1) that one of its properties at Burn Bastion Road, Delhi, i.e., property No. 4116-18, at Naya Bazar, Delhi, falls within the territorial jurisdiction of this Court. Therefore, Defendants cannot be heard to say that the main subject matter of this suit is located at Madana in Haryana, to oust the jurisdiction of this Court. It is futile for the Defendants to contend that there is no

link between the property at Burn Bastion Road, Delhi, (as shown at Sl. No. 3 in Ex. PW.11/D-1) and the property at 4116-18, at Naya Bazar, Delhi, because what the Defendants' solitary witness Mr. Nirmal Goel (DW-1) had to say in this regard is as under:

Ques. Is it correct that the property No. 4116-18, Naya Bazar, Delhi, is the same property which is mentioned at si. No. 3 in Clause 15 of the Memorandum/Rules, Ex. PW-11/DI.

Ans. Yes. It is correct.

Ques. Is it correct that property No. 4116-18, at Naya Bazar, is mutated since 1926 in the Revenue Record, in the record of Delhi Improvement Trust, and in the Property Tax Department and the said record is available with the DDA, who is successor of Delhi Improvement Trust, MCD and Revenue Department?

Ans. Yes, it is corrects.

Ques. See the certified copy of demand No. 175 issued by MCD relating to property No. 4116-18, at Naya Bazar, Delhi - is it correct that the name and address of Tax Payer recorded is Secretary, Mandir Madana and Sanwal Dass Trust, 4116-18, at Naya Bazar, Delhi and not of any Society of descendants of Shri Sanwal Dass. (Objected to).

Ans. I cannot say. The document is marked as DW-1/A.❖

15. Since there remains no controversy that one of the suit property is located within the jurisdiction of this Court, therefore, reliance placed by the Defendants upon decision in [Shri Venkatesh, Mandir Trust Committee of Ayodhya, Faizabad and Others Vs. Janki Prasad Choudha and Others](#), is of no assistance, as in the said decision it was found that no part of the subject matter of the Trust was "situated within the territorial jurisdiction of the Court. Merely because Defendant No. 5 - Trust is proceeded against through its Secretary, the Plaintiffs" suit cannot lose the locus, even if it is taken that Defendant No. 5 is a Society because its General Secretary, i.e., Defendant No. 4 is a party to these proceedings. As already observed above, so long as there is a charitable or religious purpose, a Society or a Trust will certainly come within the ambit of Section 92 of the Code of Civil Procedure, subject to the fulfillment of the other requirements, as stipulated u/s 92 of Code of Civil Procedure. In the face of the evidence on record, it is held that part of the subject matter of the Trust property is within the jurisdiction of this Court and there is a serious dispute about its management, therefore this Court possess territorial jurisdiction to entertain this suit. This Issue is accordingly answered.

Issue No.: (iv)

16. According to the Defendants, ad-valorem Court fees of Rs. 51,144/- is payable, whereas the Plaintiff has paid the fixed Court fee. This suit u/s 92 of CPC is of a

special nature for protection of public rights in the public trusts and charities. It is for vindication of public rights. In AIR 1928 113 (Lahore) the relief sought was of removal of a Mahant and appointment of a new Mahant in relation to the Trust property and it was held that there was nothing in the aforesaid relief claimed, which would take out the case from the purview of Article 17, Clause (vi) and so, fixed Court fee was payable. In the instant suit, fixed Court fee has been paid and there are serious allegations of mismanagement of the Trust property. The decision in [Chaudhari Kanhaiyalal Keshrimalji and Another Vs. Shankarprasadji Babu Ramprasad Bhargava and Others](#), is distinguishable as in the said case, there were no allegations of dishonesty and malversation and so, ad-valorem Court fee was held to be payable. Reliance placed upon decision in [Bakshi Lochan Singh and Others Vs. Jathedar Santokh Singh and Others](#), is misplaced, as the question of payment of Court fee was not an Issue therein. In view of the afore-noted settled legal position in *Beli Ram* (supra), it is held that affixed Court fee is payable and not ad-valorem Court fee and there is no deficiency in the Court fee affixed on the plaint in this suit. This Issue is accordingly answered.

Issue No.: (v)

17. Defendant No. 6 and 7 have not come forward to contest this suit but an objection was taken by Defendant No. 4 in the written statement that they are neither necessary nor proper parties. In view thereof, Plaintiffs had claimed this Issue. The averments made in the plaint are qua Defendant No. 7 only, to the effect that the first four Defendants had removed the pujari - Defendant No. 7 of the Temple in question and the said Temple remained neglected and uncared for. It is in the prayer clause of the plaint, a direction is sought to Defendant No. 6 and 7 and all other persons who are in unauthorized possession of any Trust property to vacate it and handover to the newly appointed Trustees. All that has been said by the Plaintiffs" witness PW-11 in evidence is as under:

Deceased Defendant No. 6 was employee of the Trust and the Pujari at Piao/Diggi/Temple at Dujana Bus stand and now Defendant No. 6(i) and 6(h) are claiming to be his successors. Deceased Defendant No. 7 was the employee of the Trust and the Pujari at the Radha Krishan Temple at Madana Kalan, who had taken the statue of Lord Radha and Krishan to the resident of Defendant No. 3 and 4.

18. The relief sought in this suit is essentially for removal of the Trustees, i.e., Defendant No. 1 to 4 and of appointment of new Trustees and the direction sought in generalized terms against the unauthorized occupants of the Trust property including Defendant No. 6 and 7 is not in consonance with the evidence led by the Plaintiffs as afore-noted. In such a situation, it has to be held that this suit is not maintainable against Defendant No. 6 and 7, who are otherwise no longer in this world. This Issue is accordingly answered by holding that this suit against Defendant Nos. 6 and 7 fails.

19. These three issues being inter-related, are taken up together. Plaintiff No. 1 - Shri B.K. Goel is the grandson of Lala Devak Ram, who has deposed as PW-11 to the effect that Public Trust - "Mandir Radha Krishna Madana Kalan Trust" was created by his grandfather for management of Mandir Radha Krishna at Madana and Piao/Dharamshala at Dujana and had gifted 1050 bighas of land at Madana to the said Trust and the office of the Trust was at Property No. 4116-18, Naya Bazar, Delhi. Though, oral evidence has been led in respect of aforesaid Trust created in the year 1931-32 but no formal Trust Deed has been placed on record. However, there is documentary evidence on record i.e., Jamabandi/mutation, etc. Ex. PW-11/30 to Ex. PW-11/43, (with translation), to indicate that the Trust property at Delhi as per record of the year 1949-50 was in the name of "Mandir Radha Krishna Madana". It is so reflected in the translated Revenue Record. Ex. PW-11/30C. The primary document in relation to the Delhi Trust property is the Mutation record Ex. PW-10/2 of the year 1937-38, which indicates the recorded owner of the Trust property at Delhi is "Mandir Radha Krishna" under the management of Trustee Lala Devak Ram.

20. It is undisputed that a Declaratory suit was decreed in favour of the present Defendant No. 2 - Shri Baij Nath Goel, way back on 2nd October, 1934, wherein it was acknowledged that the suit property in question at Naya Bazar Delhi has been already dedicated to "Mandir Radha Krishna" situated at Madana Kalan. Pertinently, what is recorded in the certified copies of the Court proceedings of Suit No. 514/1934 titled Manohar Lal and Ors. v. Lala Devak Ram decided on 2nd October, 1934, as reflected in the documents Ex. PW-11/17 to Ex. PW-11/21 (with translation) is as under:

One pair of House situated at Naya Bazar, Delhi has already been dedicated vide Trust Deed to Mandir Shri Radha Krishna situated at Madana Kalan. Agricultural land Harnath Wali and Nathu wali situated at Madana Khurd and Agricultural land Jaimal Brahaman wali at Madana Kalan and Agricultural land which has been given by Madana Kalan as Dholi have been given on Trust for pukhta Temple.

21. It is settled legal position that dedication of properties to charity need not necessarily be, by instrument or grant. It can be established by cogent and satisfactory evidence. Apex Court in Menakuru Dasaratharami Reddi and Anr. v. Duddukuru Subba Rao and Ors. AIR 1957 SC 797 has so ruled. After having scanned through the evidence on record, I find that the aforesaid documentary evidence remains unassailable and so it is held that Trust "Mandir Radha Krishna" was in existence since the year 1937-38, as per Revenue Record, Ex. PW-10/2. However, a change had occurred in the nature and constitution of the aforesaid Trust. This is evident from the Revenue Record of February, 1953 (Ex. PW-10/3), which indicates that the management of the Trust property at Delhi stood transferred to "Mandir Madana and Sawan Das" Dharmarth Trust". Even this documentary evidence remains unassailable. There is correspondence of September, 1952 (Ex. PW-11/30A)

by Defendant No. 2 -Shri Baij Nath Goel as Office bearer of "Mandir Madana and Sawan Das Dharmarth Trust" (Regd) with the Delhi Improvement Trust, regarding the mutation of the Trust property at Delhi and again of January, 1953 (Ex. PW-11/30A) seeking substitution of the Trustee Lala Devak Ram, who had died and this correspondence was by Defendant No. 2 - Shri Baij Nath Goel, as Vice President of "Mandir Madana and Sawan Das Dharmarth Trust", Muktsar.

22. From the aforesaid documentary evidence, which remains unassailable, it stands proved that there was change in the constitution of "Mandir Radha Krishna" Trust and it can be said with certainty that the Trust property at Delhi, which were earlier under the management of "Mandir Radha. Krishna" Trust, subsequently came under the management of Mandir Madana and Sawan Das Dharmarth Trust".

23. The existence of Mandir Madana and Sawan Das Dharmarth Trust" is undisputed and is clearly evidenced by documentary evidence Ex. PW-11/D1, which is a detailed and comprehensive document about the assets and activities of the said Trust and the erstwhile Trust properties including the Delhi Trust Property in question prominently finds mention therein.

24. Relevantly, the question put to the Plaintiff's witness itself indicates that even the Defendants are not disputing that the Trust" property at 4116-18, Naya Bazar, Delhi was formerly known as the property at Burn Bastion Road, Delhi. This question reads as under.

Q. Is it correct that the property No. 4116/4117 in Naya Bazar Delhi formerly known Burn Bastion Road, was purchased in 1926?

A. The property was purchased in 1926 vide Sale Deed filed by the Defendants on record.

25. In the light of the aforesaid narration, it stands firmly established from the evidence on record that the previous address of Trust property at, 4116-18, Naya Bazar, Delhi was Plot No. 1931 at Burn Bastion Road, Delhi. From this documentary evidence Ex. PW-11/DI, it also stands established that the family members of Lala Devak Ram and Late Sawal Dass were entitled to become members of this Trust - "Mandir Madana and Sawan Das Dharmarth Trust", either as life members, ordinary members or honorary members, to promote the aims and objectives of this Trust. The governing body of this Trust as per aforesaid document Ex. PW-11/D1 was to be elected with exception of first governing body continuing to function for twenty years.

26. It has come in Defendants" evidence, i.e., of the solitary witness -. Shri Nirmal Goel, (DW-1) that there are two tenancies in the name of Ram Kishan and another in the name of Shyam Sunder in the Delhi Trust property in question, i.e., " at 4116-18, Naya Bazar, Delhi. What this witness has said in this regard, deserves notice and is as under:

Q. Is it correct that the following name boards are seen in the photographs Ex. DW-1/4 to Ex. DW-1/11 on the said property:

(i) Mewar Leasing Ltd.

(ii) Pyare Lal & Sons,

(iii) Kedar Nath Sanjay Kumar

(iv) Om Prakash Dinesh Kumar

(v) Shri Kishan Shyam Sunder.

(vi) Sandeep Trading Company

(vii) M/s. Rahul Traders

(viii) Devi Dayal Prem Chand & Company

(ix) The express Goods Service.

A. It is correct.

27. The documentary evidence Ex. PW-7/1 to Ex. PW-7/4 of the year 1959-60 to 1975-76, i.e., the certified record of the Municipal Authorities, clearly indicates that the Delhi Trust property, i.e., 4116-18, Naya Bazar, Delhi was the property of "Mandir Madana and Sawan Das Dharmarth Trust". When confronted with the documentary evidence, Defendant's solitary witness Shri Nirmal Goel (DW-1) gave an evasive answer which does not in any way advance the case of the Defendants as the aforesaid documentary evidence (Ex PW-1/1 to Ex. PW-1/4) remains unassailable. What this witness (DW-1) had said in evidence, is as under:

Q. See the certified copy of demand No. 175 issued by MCD relating to property No. 4116-18, Naya Bazar, Delhi - Is it correct that the name and address of Tax Payer recorded is Secretary, Mandir Madana & Sanwal Dass Trust, 4116-18, Naya Bazar, Delhi and not of any Society or descendents of Shri Sanwal Dass. (Objected to).

A. I cannot say. The document is marked as DW-1/A.

28. Another evasive reply given by this witness (DW-1) which calls for drawing of adverse inference against the Defendants, is as under:

Q. Have you filed or brought the copies of revenue records and other records of the Government since 1890 (sic) of which you are aware as stated by you in para 29 of your affidavit.

A. I have not filed nor brought the aforesaid record.

29. This witness (DW-1) in evidence has admitted that he has remained the General Secretary of the Society - "Mandir Madana and Sawan Das Dharmarth Trust" for about 15-20 years but on the question of management of the Society/Trust, he has

evaded the answers by simply stating that the record of this society/Trust is with Defendant No. 2 - Shri Baij Nath Goel. Unfortunately, Defendant No. 2 - Shri Baij Nath Goel had left this world in December, 2009, but this would not in any way absolve the Defendants from producing the records of the Defendant No. 5 Society/Trust to disclose as to how the Society/Trust has been managed. It is so said, as it is a matter of record that the Defendants had chosen to commence their evidence in the year 2005, but for the reasons best known to them, had not produced Defendant No. 2 - Shri Baij Nath Goel in evidence, though he was alive then. If the entire records of the Society/Trust were maintained by Defendant No. 2 - Shri Baij Nath Goel then it was incumbent for the Defendants to have got him examined first in evidence.

30. The contesting Defendants in their solitary evidence of Defendant No. 4 - Shri Nirmal Goel (DW-1) have reiterated their stand taken in response to the application for appointment of Receiver, i.e., "the Defendants have already submitted that they will have no objection if the Plaintiffs or any one of them takes over and manages the property at serial number (ii) to (vi) of para 2 of the plaint", by merely stating that it is a matter of record. The property at Serial no: (i) in paragraph No. 2 of the plaint, is the Delhi Trust property, i.e., 4116-18, Naya Bazar, Delhi, and its recorded owner is "Mandir Madana and Sawan Das Dharmarth Trust".

31. Relating to Issue No. (viii), the controversy raised in these proceedings is sought to be confined to the Society/Trust property at Delhi and regarding its management. What the Defendant's solitary witness -DW-1 had to depose in this regard is as under:

Q. Do you have any document of mutation in revenue record, MCD record and record of Delhi Improvement Trust (DDA) showing the mutation of Naya Bazar property in the name of descendants of Lala Sanwal Dass at any time.

A. I do not have.

Q. You say in para 39 of your affidavit that in 1950 it was further decided that the income of the property situated at Naya Bazar, belonging jointly, to all the brother, i.e. the three sons of Late Lala Sanwal Dass, be utilized for charitable purposes. Please tell whether this decision was oral or in writing.

A. It was oral.

Q. Are the rent Agreement/Lease Deed executed with all the tenants from time to time in property No. 4116-18, Naya Bazar, Delhi.

A. I don't know.

Q. Is it correct that rent receipts are issued to all tenants in property No. 4116-18, Naya Bazar, Delhi from the very beginning.

A. It is correct.

Q. In whose possession the original rent Agreement/Lease Deed and counter-foil of rent receipts are.

A. The counter-foil of rent receipts are with Shri Baij Nath.

Q. Is it correct that on all the rent receipts issued to the tenants in property No. 4116-18, Naya Bazar, Delhi the name of owner, the name of tenant, the rate of rent, the extent of accommodation and purpose of letting is mentioned.

A. It is a printed receipt book in the name of Sanwal Dass Dharmarth Trust containing name of the tenant and rate of the rent only.

32. In the face of the aforesaid evidence, Defendants cannot be heard to say that the Plaintiffs have not filed the Trust Deed or its copy or that the decree obtained from the District Court at Rohtak, in the year 1934, does not disclose charitable character of the Delhi Trust property in question because Defendants' document i.e. Ex. PW-11/D1 clearly evidences the charitable/religious activities intended to be carried out by Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust". Defendants have failed to establish that Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" had become defunct at any point of time. Rather, the stand of Defendant No. 4 - Shri Nirmal Goel (DW-1) is that he remained the Secretary of Defendant No. 5 - Society for the last 15-20 years. In this background, the onus shifts upon Defendant No. 4 - Shri Nirmal Goel (DW-1) to prove that Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" is being managed properly.

33. Upon in depth scrutiny of the testimony of Defendant No. 4 - Shri Nirmal Goel (DW-1), I have no hesitation in holding that Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" is being grossly mismanaged. It is so said, because Defendant No. 4 - Shri Nirmal Goel (DW-1) has failed to establish that the rent proceeds of the Trust properties including one at 4116-18, Naya Bazar, Delhi are being utilized for charitable/religious purpose. Since Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" is the recorded owner of the aforesaid Trust property at 4116-18, Naya Bazar, Delhi, so Defendant No. 4 - Shri Nirmal Goel (DW-1) is not at all justified in asserting adverse possession in the Trust property at 4116-18, Naya Bazar, Delhi. Precisely what this witness has said in this regard is as under:

Q. How and on what basis it was well known that property No. 4116-18, Naya Bazar, Delhi came to the share of sons of Lala Sanwal Dass as mentioned in para 42 of your affidavit.

A. Because nobody interfered for the last 50 years and even before that. There was no other basis.

34. It was incumbent upon the Defendants to have disclosed that the status of the Trust property at Delhi, i.e., 4116-18, Naya Bazar, Delhi, had undergone any change. It can be said unhesitatingly that since the contesting Defendants were managing

Defendant No. 5, they were duty bound to disclose about the present status of the aforesaid Trust property, but they have failed to disclose, as to whether there was any change in the ownership of the aforesaid Trust property at 4116-18, Naya Bazar, Delhi.

35. At the fag end of the trial, Plaintiffs have come up with an application being I.A: No. 2486/2011 u/s 151 of CPC to bring on record the subsequent events regarding the other properties of Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust". Since the contesting Defendants were under legal obligation to maintain the properties, as referred to in paragraph no: 2(h) to 2(vi) of the plaint, in view of the fact that these properties were subject matter of the Trust/Society document Ex. PW.11/D-1, therefore, this application is not being entertained in the present proceedings, firstly on the ground of being belated and secondly, because the contesting Defendants have defaulted in maintaining the Trust/Society properties, as shown in registered Society/Trust document Ex. PW.11/D-1. Therefore, this application is rendered superfluous and is disposed of, as such.

36. During the course of hearing, the endeavour of the Defendants was to non-suit the Plaintiffs on the plea that Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" is a registered society and so, is beyond the purview of Section 92 of Code of Civil Procedure. Such like plea was repelled in [Sukumaran and Others Vs. Akamala Sree Dharma Sastha Idol and Others](#), , while holding as under:

The plea of the Appellant's counsel that registration of the Trust under the Societies Act will alter the nature and character of the property cannot be accepted.

37. The cumulative effect of the evidence on record persuades this Court to hold that the property No. 4116-18, at Naya Bazar, Delhi was originally of "Mandir Radha Krishna" Trust which stood converted into Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" and the aforesaid property No. 4116-18, Naya Bazar, Delhi, in the name of Defendant No. 5 -"Mandir Madana and Sawan Das Dharmarth Trust", continues to be so and Defendant No. 4 - Shri Nirmal Goel (DW-1) cannot claim to be in adverse possession of this property." I hold so. These three Issues are accordingly answered.

Issue No. (ix)

38. The Apex Court in [R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others](#), has reiterated that the property of the religious and charitable endowments or institutions must be jealously protected, because last segment of the community has beneficial interest therein.

39. Since the Plaintiffs herein have also proceeded to rely upon the "The Mandir Madana & Sawal Das Dharmarth Trust", Ex. PW-11/D1), registered under The Societies Registration Act, 1860, the document placed on record by the Defendants, therefore, the directions to which the Plaintiffs are entitled in this suit, have to be

within the parameters of the aforesaid basic document (Ex. PW-11/D1). The Trust properties including one at 4116-18, Nava Bazar, Delhi of Defendant No. 5 - "Mandir Madana and Sawan Das _ Dharmarth Trust" have to be utilized for the charitable purposes, as disclosed in the basic document (Ex. PW-11/D1). The original composition of the governing body is disclosed in this basic document (Ex. PW-11/D1) but the Defendants have failed to disclose the present composition of the governing body of Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust". All that has come in evidence of Defendant No. 4 Shri Nirmal Goel. (DW-1) is that he has been the secretary of Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust", but he fails to disclose about the present composition of Defendant No. 5. It is nobody's case that there has been any amendment in the basic document (Ex. PW-11/D1). The first three Defendants were originally the members of the governing body of Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" but they are no longer in this world and it is not the case of the Defendants that in their place, new members have been substituted. Defendant No. 4 - Shri Nirmal Goel (DW-1) happens to be the son of Defendant No. 3. It is not established on record, as to what was the income and expenses of Defendant No. 5, so direction to render accounts would be futile.

40. The mandate contained in the basic document (Ex. PW-11/D1) is that after the initial period of twenty years, the governing body has to be elected by voting. Regulation No. 9 of this document (Ex:PW-11/D1) prescribes the mode of election and Regulation No. 7 thereof clearly stipulates that the officers of the Trust shall become President, Vice President, General Secretary, Financial Secretary, Treasurer, all of whom shall be honorary officers and as per Regulation No. 8 of this document, life members and ordinary members only shall be eligible for such honorary post. It is nobody's case that this basic document (Ex. PW-11/D-1) was ever amended or superseded by any subsequent document. Though, this document (Ex. PW-11/D-1) is a photocopy but it is an admitted document and it bears the certification from Registrar of Firms and Societies, Punjab of 13th June, 1972. Therefore, implicit reliance can be safely placed upon this document to confine the directions which have to be strictly within the parameters of this document.

41. Accordingly, Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" through its Secretary - Defendant No. 4 - Shri Nirmal Goel (DW-1) is directed to reconstitute Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" by enrolling members of the Trust in consonance with Rules and Regulations No. 3 of the basic document (Ex. PW-11/D1) and thereafter to reconstitute the governing body of Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" and to hold fresh elections in terms of Rules and Regulations No. 7 to 9 of the basic document (Ex. PW-11/D1) and to formulate a scheme for effective management of Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" in terms of Rules and Regulations No. 3 as contained in the basic document (Ex. PW-11/D1). The family members of Late Lala Devak Ram are entitled to become the members of

Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" upon payment of the prescribed subscription and to participate in the Annual General Body Meeting of Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust"

Defendant No. 4 - Shri Nirmal Goel (DW-1) is further directed to draw a scheme for administration/management of the Trust within twelve weeks and thereafter to hold the elections in terms of mandate as contained in basic document (Ex. PW-11/D1) within three months. Defendant No. 5 - "Mandir Madana and Sawan Das Dharmarth Trust" upon reconstitution, in terms of the basic document (Ex. PW-11/D1) is also directed to get its properties including one at 4116-18, Naya Bazar, Delhi vacated, in order to put the properties referred to in (Ex. PW.11/D-1) to use for charitable/religious purpose or in the alternative, to obtain the market rental value of these properties from the existing occupants/tenants or as the case may be, which has to be for the charitable purpose, as declared in the basic document (Ex. PW-11/D1). This Issue is accordingly decided.

Issue No. (x)

42. This suit is decreed in terms of the directions issued while deciding Issue No. (ix). In the facts and circumstances of this case, parties are left to bear their own costs. Decree sheet be drawn forthwith.

43. Before parting with this judgment, I am constrained to observe that the spread of this litigation is nearly for a quarter of a Century, which comes as a rude shock to the system of administration of justice and must be an eye-opener to all concerned i.e. the Law Commission, National Judicial Academy, Delhi Judicial Academy and the like. Strong remedial measures needs to be suggested and implemented on urgent basis so that the faith of the common man, particularly public spirited persons like the Plaintiffs in the justice dispensation system does not get eroded. Subject to orders from Hon"ble the Judge Incharge (Original Side), let the record of this case be made available to Delhi Judicial Academy to treat this case as a Test case, and to enable it, to formulate practice guidelines for speedy decision in matters on the Original Side in this Court. It is expected that this exercise will be taken earnestly in its right perspective, with expedition and preferably in consultation with the President of Bar Association of this Court, as it is the solemn duty of the Bench and the Bar alike, to ensure speedy resolution of disputes through judicial process.

44. Since the CCP was not pressed, so it is rendered infructuous. This suit, the CCP and the application are disposed of accordingly.