THAKUR JANKI BALLABHJI MAHARAJ & ANR.

v.

THAKUR JANKI BALLABHJI MAHARAJ & ANR.

July 23, 1969

[J. C. SHAH, ACTING C.J. AND G. K. MITTER, J.]

Code of Civil Procedure, s. 92 and O. 41 R. 33—Temple—Private Trust—Suit by deity against person in management—No previous sanction under s. 92 necessary for bringing suit in respect of mismanagement and misappropriation of temple property—Under O. 41 r. 33 court has power to frame scheme for management of temple even though it was not public trust.

The deity Thakur Janki Ballabhji Maharaj installed in a temple at Brindaban brought in the court of Civil Judge Mathura a suit through its manager—an authorised agent of the erstwhile Bharatpur State—for a decree for possession of the temple and its properties as well as for accounts to be rendered by R the *pujari* of the temple. It was alleged in the plaint that the temple had been built by the Ruler of Bharatpur who had dedicated it to the deity. It was further alleged that R, the defendant who had succeeded the priest originally appointed by the Ruler of Bharatpur had mismanaged and misappropriated the temple properties and had failed to perform the *seva puja* of the deity. R in his written statement denied these allegations and contested the suit. After the merger of Bharatpur State in the State of Rajasthan the suit was prosecuted by the District Magistrate of Bharatpur. The trial court dismissed the suit but the High Court decreed it. By special leave the defendant came to this Court.

HELD : (i) The High Court rightly rejected the defendant's plea based on s. 92 of the Code of Civil Procedure. It was common ground before the High Court that the property of the temple was not property of a public trust of a religious or charitable nature. From the averments in the plaint it was clear that the suit was filed by the deity against the person in management and it was not a suit filed by the relators. Section 92 of the Code of Civil Procedure had no application to the suit and the sanction of the Advocate General was not a condition of the initiation of the suit. [636 F-G]

(ii) The evidence established that the defendant had committed several acts of mismanagement and misappropriation of the temple and its properties. He had set up a personal title to the temple properties and had converted the properties to his own use. He was therefore unfit to remain the *pujari* of the temple. [637 B-C]

Granting that it was not proved that the Ruler of Bharatpur established the temple and installed the deity, there was abundant evidence that the State of Bharatpur had made from time to time large donations for the maintenance of the temple. The Ruler of Bharatpur had therefore clearly a substantial interest to maintain the suit on behalf of the deity to protect the property. There was no merit in the defendant's appeal and it must fail. [637 C-D]

(iii) Since it would be difficult for the District Magistrate of Bharatpur or any other authority acting on behalf of the State of Rajasthan to look after the administration of the temple which was situate in the State of

A U.P. it was an appropriate case for the exercise of the Court's powers under O. 41 R. 33 of the Code of Civil Procedure. The Civil Courts have jurisdiction to frame a scheme for the management of a temple even though it is not a public trust. [637 H—638 B]

Pramatha Nath Mullick v. *Pradyumna Kumar Mullick* 52 I.A. 245, *Asha Bibi & Ors.* v. *Nabissa Sahib & Ors.* A.I.R. 1957 Mad. 583 and B *Shri Mahadeo Jew & Anr.* v. *Balkrishna Vyas & Anr.* A.I.R. 1952 Cal. 763, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 574 of 1966.

Appeal by special leave from the judgment and order dated September 22, 1964 of the Allahabad High Court in First Appeal C No. 39 of 1952.

J. P. Goyal and *Sobhag Mal Jain,* for the appellants.

K. B. Mehta, for respondent No. 2.

The Judgment of the Court was delivered by

Shah, Ag. C.J. Suit No. 41 of 1947 was filed in the Court D of the Civil Judge, Mathura by the deity Thakur Janki Ballabhji Maharaj, acting through its manager—L. Tulsiram, authorised agent of the Bharatpur State, for a decree for possession of the temple of the deity at Brindaban in U.P. and of the temple properties and for an order calling upon the defendant, Ramchand, to account for the realisations of the estate of the deity.

E The case of the plaintiffs was that the Ruler of the State of Bharatpur built the temple at Brindaban and installed the idol of Thakur Janki Ballabhji Maharaj and dedicated the temple to the deity; that the *shebait* of the deity who was a paid employee of the State was appointed by the Ruler of the State of Bharatpur; that one Chhotelal was appointed a priest to perform the worship in F the temple under a written agreement dated April 8, 1936; that after the death of Chhotelal on May 13, 1912 Ramchand was appointed the priest of the temple on condition that he shall execute the usual agreement in favour of the State; that Ramchand entered upon the duties as *pujari* but failed to execute the agreement, and in course of time raised various constructions of his own on the premises in dispute and converted them into private G residential buildings, and illegally used the temple as a lodging house for pilgrims "to the utter detriment, loss and desecration of the deity" and thereby acquired "illegal benefit to himself out of the temple properties"; and that Ramchand was not performing the *seva puja* of the deity.

The suit was resisted by Ramchand. He denied that the temple H was built at the expense of the Ruler of the State of Bharatpur or that he—Ramchand was appointed to be a priest of the temple by the Ruler of Bharatpur. He contended that one Ram Narain

Kedar Nath had taken a piece of land at Bindraban on rent from the temple of Govindji and after constructing a temple thereon and installing the Thakurji had given it as an offering to Sitaram, ancestor of Ramchand, and had appointed Sitaram as the Manager of the temple; that the temple had since then remained in the management of the descendants of Sitaram, and that he (Ramchand) was in possession of the temple and its properties as "Manager and proprietor". A B

The trial court dismissed the suit holding that the Ruler of Bharatpur was never the owner of the temple or of the articles mentioned in Schs. A and B of the plaint, that the Ruler was also not the founder of the temple nor its *shebait;* and that the Ruler had never appointed any *pujari* of this temple and was not authorised to appoint or dismiss such a *pujari.* C

In appeal against the decree passed by the Court of First instance it was urged before the High Court of Allahabad that the trial court erred in dismissing the suit merely on the finding that the Ruler of the State of Bharatpur "had no concern with the construction of the temple or with the installation of the idol in the temple", and that in the suit filed by the deity, having regard to the acts of mismanagement and misappropriation committed by the defendant Ramchand, a decree should have been made in favour of the deity. Counsel for Ramchand contended that the suit being of the nature of a suit under s. 92 of the Code of Civil Procedure could not be instituted without obtaining the sanction in writing of the Advocate-General and that in any event the second plaintiff, the State of Bharatpur, could not file the suit, since it was not a *shebait* or the settlor of the temple. D E

It was common ground before the High Court that the property of the temple was not property of a public trust of a religious or charitable nature. From the averments made in the plaint it is clear that the suit was filed by the deity against the person in management and it was not a suit filed by the relators. Section 92 of the Code of Civil Procedure had no application to the suit and the sanction of the Advocate-General was not a condition of the initiation of the suit. The High Court therefore rightly rejected the contention that the suit was not maintainable without the sanction of the Advocate-General. F G

The High Court held that it was open, even to a worshipper, if he possesses sufficient qualifying interest, to start a suit to protect the property of the deity. Observing that the defendant Ramchand had raised residential buildings of his own in the temple premises and that he was lodging pilgrims in a part of those buildings and was asserting a proprietary title to them and was on that account guilty of conduct detrimental to the interest of the deity H

A and had rendered himself liable to be ejected from the temple and its properties, and that he was unfit to act as *pujari*, the High Court reversed the decree passed by the trial court and decreed the plaintiffs' suit for possession of the temple and its properties and restrained the defendant Ramchand by an injunction from interfering with the management of the temple and performance of
B worship of the deity. With special leave, Ramchand has appealed to this Court.

Ramchand has committed several acts of mismanagement and misappropriation of the temple and its properties. He has set up a personal title to the temple properties and has converted the properties to his own use. Ramchand is therefore not fit to remain in possession as *pujari* or as manager of the temple. The suit is
C filed by the deity acting through the Manager. Granting that it is not proved that the Ruler of Bharatpur established the temple and installed the deity, there is abundant evidence that the State of Bharatpur had made from time to time large donations for the maintenance of the temple. The Ruler of Bharatpur had therefore clearly a substantial interest to maintain the suit on behalf of
D the deity to protect the property. There is no merit in the appeal and therefore it must fail.

It is, however, necessary to make an effective decree in this appeal. It may be noticed that even though the suit has been filed and prosecuted on behalf of the State of Bharatpur and later by
E the State of Rajasthan through its District Magistrate, the temple is situate within the State of U.P. and it would be difficult for the District Magistrate or any other authority acting on behalf of the State of Rajasthan to look after the administration of the temple and to protect its properties from misappropriation. This is undoubtedly a private trust but the civil courts have jurisdiction to frame a scheme for the management of the temple which is not a
F public trust. The Judicial Committee of the Privy Council in *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick*(1) directed that a scheme be framed for the regulation of the worship of the idol even though there was no public trust. In *Asha Bibi and Others* v. *Nabissa Sahib and Others*(2) the Madras High Court held that a suit for removing the trustees of a private trust and for
G framing a scheme was maintainable. A similar view was also taken by the Calcutta High Court in *Shri Mahadeo Jew and Another* v. *Balkrishna Vyas & Another*(3).

The civil court has therefore jurisdiction to frame a scheme for management of the temple and its properties. The present is, in our judgment, a case in which in exercise of the powers under
H Order 41 rule 33 of the Code of Civil Procedure we should direct

(1) 52 I.A. 245. (2) A.I.R. 1957 Mad. 583.
(3) A.I.R. 1952 Cal. 763.

that the court of first instance to frame a scheme of management of the temple collections and the income and disbursement of expenses, application of the surplus if any and for that purpose to appoint a manager of the property of the deity and its properties, with authority to take possession of the temple and the properties from the defendant Ramchand and to administer the property and its income under the directions of the court. We direct accordingly. The Court will also take an account of his dealings with the property of the deity from Ramchand and determine his liability and recover the amount found due from him on taking accounts. The Court will pass appropriate orders with regard to the constructions made by Ramchand and will prevent the property being used for the private benefit of Ramchand or any other person. The scheme to be framed will be consistent with the law relating to private religious endowments, if any, in force in the State of Uttar Pradesh.

A B C

Subject to this modification, the appeal is dismissed with costs.

G.C. *Appeal dismissed.*