

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.156 of 2021

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1. Sri Vishnupad Bhagwan through his next friend Sri Kanhaiya Lal Gurda, Son of Late Radha Krishna Gurda @ Bachalal Gurda, Resident of Mohalla 12, Deoghat, P.S.-Civil Lines, Town and District Gaya.
 2. Sri Kanhaiya Lal Gurda, Son of Late Radha Krishna Gurda @ Bachalal Gurda, Resident of Mohalla-Deoghat, P.S. Vishnupad, Town and District-Gaya.
 3. Ram Nath Gurda, Son of Late Ganga Vishnu Gurda @ Bachali babu, Resident of Mohalla-Deoghat, P.S. Vishnupad, Town and District-Gaya.
 4. Som Nath Gurda, Son of Late Ganga Vishnu Gurda @ Bachali babu, Resident of Mohalla-Deoghat, P.S. Vishnupad, Town and District-Gaya.
 5. Raju Lal Gurda, Son of Late Krishna Lal Gurda @ Guggu Lal, Resident of Mohalla-Deoghat, P.S. Vishnupad, Town and District-Gaya.
 6. Ashok Lal Gurda, Son of Late Krishna Lal Gurda @ Guggu Lal, Resident of Mohalla-Deoghat, P.S. Vishnupad, Town and District-Gaya.
 7. Sri Ram Gurda, Son of Late Krishna Lal Gurda @ Guggu Lal, Resident of Mohalla-Deoghat, P.S. Vishnupad, Town and District-Gaya.
 8. Rajesh Katariar, @ Rajesh Lal Katariar Son of Late Narayan Lal Katariar, Resident of Mohalla-Deoghat, P.S. Vishnupad, Town and District-Gaya.

... .. Appellant/s

Versus

1. The Bihar State Board of Religious Trust through its Special Officer, Vidya Pati Marg, Patna.
2. District Magistrate, Gaya.
3. Superintendent of Police, Gaya.
4. Sub Divisional Magistrate, Gaya.
5. Additional Collector, Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kamal Nayan Chaubey, Sr. Advocate
Mr. Ambuj Nayan Chaubey, Advocate
Mr. Ray Saurabh Nath, Advocate
Ms. Shalini Sinha, Advocate
Ms. Manjari Nath, Advocate
Ms. Ritu Priyadarshini, Advocate
Mr. Dineshwar Pandey, Advocate
Mr. Prashant Kumar, Advocate
Mr. Shashank Shekhar Dubey, Advocate
Mr. Kumar Kartikeyan, Advocate
Mr. Anil Singh, Advocate



For the Respondent/s : Mr. Ganpati Trivedi, Sr.Advocate
Mr. Mohit Kumar, Advocate
Ms. Aishwariya Shree, Advocate
Mr. Shekhar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 19-01-2024

This Second Appeal has been filed against the judgment and decree dated 14.12.2020 and 22.12.2020 respectively passed by learned Additional District Judge 1, Gaya in Title Appeal No.45 of 1993 whereby the said title appeal was allowed on contest and thereby set aside the ex-parte order dated 11.06.1993 and decree dated 15.06.1993 passed by learned Subordinate Judge IV, Gaya in Title Suit No.38 of 1977 (60 of 1992) decreeing the suit of the plaintiffs/appellants.

2. The plaintiffs/appellants filed Title Suit No. 38 of 1977 for declaration that the Vishnupad temple is a private temple of Gayawal Brahmin having right to manage the affairs of the temple and worship in accordance with the right of Vaishnav of Madhawa Sampradaya and it is not a public temple to be governed by the provisions of Bihar Hindu Religious Trust Act, 1950 and as such the defendants have no right to interfere or bring change in the mode of doing worship. It is also prayed that the defendants be restrained permanently from interfering with the right and possession of the plaintiffs in any manner



whatsoever even by formation of any committee.

3. As per the plaint, the original plaintiff nos. 1 to 4 i.e. Sripati Lal Gurda, Govind Lal Gurda, Narayan Lal Katariar and Sadanand Gurda are Gayawal Pandas administering sufals and acting as priest to the Hindu Pilgrim visiting Gaya for the purpose of performing *shraadh* and *pind dan* to their deceased ancestors. They are numerous and cannot be conveniently named as parties in this suit and as such the plaintiff nos. 1 to 4 are instituting this suit in representative capacity under the provisions of Order 1 Rule 8 C.P.C. At Gaya, there is an ancient sacred place known as Sri Vishnupad Bhagwan joining as plaintiff no. 5 which, according to Puran and various Hindu religious text as also Gaya Mahatmya, portion of the famous and sacred Vayu Puran, had been handed over to the Gayawal Brahmins i.e. priest incarnated by Sri Brahma, the creator. Since the said pre-historic days, the said sacred place all along belonged to and still belongs to the said Gayawal Pandas or Gayawal Brahmins exclusively and as of right to the knowledge of the entire Hindu Community and there has or had been no interference in their right at any time by anybody. The Gayawal Brahmins are the exclusive *Tirth Gurus* for the Hindus of the entire country and amongst themselves, they have divided their



zones.

4. Further case of the plaintiffs/appellants is that according to the *Sastra* as to be found in sacred Agni Puran and Vayu Puran, this Gaya *Tirth* was handed over by Sri Lord Brahma to the Gayawal Brahmins and they are enjoined that they will get their livelihood from this *Tirth*. This sacred foot mark of Lord Vishnu was subsequently encircled by a temple got constructed of stones by Rani Ahilya Bai in place of the old temple which had been built by the Gayawal Brahmins. This Rani Ahilya Bai was jajman of Sri Bihari Lal Maharwal and at his instance and for the benefit of her Tirth Guru and other Gayawal Brahmins, who all are known as Chaudah Saiya, inasmuch as Lord Brahma had incarnated the Gayawal Brahmins in 14 *Gotras* to assist the great sacrifice performed by him at Gaya.

5. The plaintiffs/appellants claimed that plaintiff nos. 1 to 4 collect the income from the properties of the temple to meet the expenses of *Raj Bhog* and *puja* and customary festivities and preservation and maintenance of the temple building of the plaintiff no. 5 and any deficit is met by contribution from the families of the Gayawal Brahmins commonly called Gayawal Pandas or priests. The offerings made at the Vishnupad are to be and have been always maintained and appropriated by the



Gayawal Brahmins also known as Gayawal Pandas. The said 'Asthan' is a private one belonging to the plaintiffs and their ancestors since time immemorial and they are the ultimate beneficiaries.

6. The grievance of the plaintiffs/appellants is that since last several years, the local authorities as also defendant no. 1 have been unsuccessfully trying to interfere with management and affairs of the plaintiffs in connection with the said Vishnupad temple.

7. As per the written statement filed on behalf of the contesting defendant no.1 (The Bihar State Board of Religious Trust, respondent no.1 herein) Vishnupad temple is a public religious trust within the meaning of Section 2(1) and Section 3 of the Bihar Hindu Religious Trust Board Act, 1950 on the grounds that (i) The Vishnupad temple is one of the most sacred of all the Vaishnava temples in India. There is a sacred imprint of Sri Vishnu's foot in this temple. Hindus in lacs visit the temple from all corners of India for offering *pindas* to their ancestors. In fact, this is the main importance of the temple. Hindus of India, wherever they reside, have an unrestricted right to access to the temple and worship the foot of lord Vishnu and offer *pindas* in the Vishnu temple. There has not been any



restriction to any of the visitors for entering to the temple and having a *darshan*, for the said foot print; (ii) The Gayawal themselves rarely perform *shraadh* in the temple and the same are performed through Brahmin priests engaged for the purpose. *Artis* are performed in evening and night by the Bhaia Gayawal priests and the *bhog* is offered in the noon by a paid Maharastrian Brahmin and another paid Brahmin offers the *bhog* in the night. The said system has been functioning since time immemorial; (iii) The earning of the Gayawals as a community depends on SUFALS paid to them at the “ACHHAIYA BAT” after worship of their feet.

8. It is further stated that the admitted construction of the temple by Rani Ahilya Bai was not for Gayawal Brahmins but in her own right as one of the devotees and for general Hindu, conclusively proves that the Vishnupad temple is a public property and not exclusive property of Gayawal Brahmins. Vishnupad temple and allied *vedis* are part and parcel of each other. Every Hindu has his/her birth right to visit the temple and the same is not at the grace of the Gayawal. There has been conflicting theories and opinion of the temple. The origin of the temple and opinion regarding the antiquity of Gayawal's reference to mythological origin has only an academic



importance and wholly irrelevant. Till 8th Century, Gaya did not acquire any pan-India celebrity as it was not mentioned among the great places of pilgrimage when the following pamphlet was composed.

*“Ayodhya, Mathura, Maya Kashi Kanchi
Awantika puri, Dwaravati chaiva Sapt its
Mokshdayikah”*

9. It is claimed that the defendant no. 1 is perfectly entitled to take action under the provision of the Act for better management of the Vishnupad temple having regard to its importance and mismanagement by the plaintiffs and hence defendant no. 1 can never be restricted from doing so.

10. It is further stated that the committee was formed by defendant no.1 and defendant nos. 2 to 5 were legally made members of the committee by defendant no. 1. The District Judge never functioned as the member of the committee, accordingly, modified by the defendant no. 1. The committee had functioned and issued notice dated 01.02.1977 against which Misc. Case No. 28 of 1977 was filed by the plaintiffs before the District Judge, Gaya which was dismissed against which the plaintiffs preferred Misc. Appeal No. 261 of 1977 before this Court which was allowed with direction to defendant no.1 to follow the provision of Section 29 (2) of the Hindu Trust



Act against which defendant no. 1 filed Review petition, which is pending.

11. It appears from the order sheet of the trial Court that defendant no. 1 filed written statement on 30.03.1987. The suit was fixed for acceptance of Written Statement and determination of issue but due to non-appearance on behalf of defendant no. 1, it was fixed for ex-parte hearing and three witnesses were examined on behalf of the plaintiffs and vide order dated 16.01.1982 the suit was dismissed as not maintainable in absence of notices under Section 78 of the Bihar Religious Trust Board Act, 1950 and under Section 80 of C.P.C. It was also directed to struck off the name of defendant no. 6, District Judge, Gaya. Defendant no. 1 filed a petition on 26.07.1988 praying therein to implead the Union of India through Chief Secretary Home as defendant in the suit on the ground that Vishnupad temple and *Vedis* were built by Rani Ahilya Bai and it was on the list of the temple of Holkar Estate. Hence, the local *pandas* of Gaya could not and cannot have ownership right over the same. It was built by her for the convenience of public at large and not for the *pandas*. The Holkar Estate is merged with the Union of India.

12. Learned trial Court vide ex-parte order and decree dated



16.01.1982 dismissed the suit as not maintainable. It appears that vide judgment dated 27.03.1987 passed by 1st Additional District Judge, Gaya, T.A. No. 11 of 1982 (4 of 1984) was allowed with direction for fresh trial in accordance with Law. It was further directed to the trial Court to give notice of the institution of suit to all the persons inserted in the subject matter of the suit by public advertisement in newspapers and other directions. In trial, 15 witnesses were examined on behalf of the plaintiffs. No documents had been produced on behalf of the plaintiffs/appellants. No oral or documentary evidence was adduced on behalf of the defendants/respondents.

13. Although issues were not framed in the suit. However, the trial Court in the impugned order in para 7 observed:

The only issue involved in this suit is as to whether the Vishnupad temple is a private or a public trust.

14. The main issue in the suit was whether Vishnupad Temple is a private trust or public trust and other issues with respect to applicability of the Bihar Hindu Religious Trust Act, 1950, right to manage the affairs of Vishnupad temple without any hindrance, the legality of formation of committee by defendant no. 1 were depended upon the adjudication of the main issue with respect to the nature of trust of Vishnupad



temple i.e. public trust or private trust and it appears that the trial Court held that Vishnupad temple is not a public trust but it is a private trust of Gayawal Pandas and decided the suit accordingly.

15. The trial Court has given following findings:

“The witnesses have fully supported the case of the plaintiffs. They have stated in their evidence that public in general can take part in worship and other parts of ceremony of Lord Vishnu. They have also stated that only Gayawal Pandas are entitled to give permission to the pilgrim for the performance of Gaya Shraadh or offering of Pinda at the foot of Lord Vishnu. They have also stated that only Gayawal Pandas are entitled to the income which is offered at the foot of Lord Bishnu, they are further entitled to make arrangement of opening and closing the door of Lord Vishnu. They have also stated that Gayawal Pandas offer Raj Bhog and other ceremonies to Lord Vishnu, from the evidence of the Pws., it is clear that the temple of Lord Vishnu at Gaya is not a public trust but it is a private trust of Gayawal Pandas.”

16. In appeal also, the point for adjudication was whether the Vishnupad temple is a religious trust and whether the plaintiffs have been able to prove that the Vishnupad temple is a private temple of Gayawal Brahmins.

17. At the stage of appeal, extracts of many religious and historical books as well as Exts. 1, 2, 2/A and 2/B, 3 and 4 have been filed on behalf of the defendants. The learned first appellate Court observed that those documents are most relevant



and important documents for the proper adjudication of the subject matter of this suit as well as are public documents and admitted documents of the parties to the suit. Thus, the first appellate Court has taken the same in evidence considering its relevancy and importance for proper adjudication of the subject matter of the suit.

18. The Second Appeal was admitted by this Court on 16.12.2021 and following substantial questions of law were formulated:-

(i) Whether there is a manifest perversity in the judgment of the court of appeal below which has failed to follow the procedure of Order XLI, Rule 31 of the Code of Civil Procedure in deciding an appeal i.e. by failure to state (a) the points for the determination (b) the decision thereon and (c) the reasons for the decision?

(ii) Whether the order of this Court in M.A. No.261 of 1977 the question of order of District Judge, Gaya operating as *res judicata* did not arise, rather the order of the District Judge, Gaya would be deemed to have been merged in the order of this Court under the theory of merger of the order?

(iii) Whether the appellate court below erred in finding that Sri Vishnupad Temple was a public trust rather than holding that it was a private temple of Gayawal Brahmins?

19. Heard learned senior counsel for both parties at length and perused the record.



Substantial Question of Law No.(i)

20. Learned senior counsel for the appellants has submitted that while deciding the appeal, it is mandatory to the first appellate Court to ensure compliance of the requirement of Order 41 Rule 31 C.P.C. It is further submitted that it is the duty of the first appellate Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 C.P.C. but in the instant case, it is not done, thereby, causing great prejudice to the appellants. He has further submitted that the first appellate Court neither formulated the points for determination nor gave decision thereon and it has not assigned the valid reason for the same.

21. On the other hand, learned senior counsel for the respondents has submitted that the first appellate Court fully complied with the mandatory requirement of the provision stated in Order 41 Rule 31 C.P.C. He has further submitted that the first appellate Court while deciding the appeal, formulated the point for determination in the impugned judgment that whether the Vishnupad temple is a religious trust or a private temple of Gayawal Brahmins and vide the reasoned order held that Vishnupad temple is a public trust and in the facts and



circumstances, this second appeal has no merit and is liable to be dismissed.

22. It is well settled that the first appeal is a continuation of the proceedings of original Court in which all questions of fact and law, decided by the trial Court, are open for consideration and the first appellate Court recorded its finding after dealing with all issues of law as well as the facts and the evidences, led by the parties. The first appellate Court is required to apply the judicial mind and record the findings stating the reason of the same. The first appellate Court is supposed to pass a reasoned judgment keeping the mandatory requirement of Order 41 Rule 31 C.P.C.

23. Order 41 Rule 31 of the C.P.C. provides the requirement of judgment of appellate Court, which reads as under:

“31. Contents, date and signature of judgment.-

The judgment of the Appellate Court shall be in writing and shall state-

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the judge or by the judges concurring therein”.

24. It is clear from the above provisions that the judgment of the first appellate Court has to set out points for



determination, record the decision thereon and given its own reasons and non-observance of this requirement leads to infirmity in the judgment of first appellate Court.

25. The Hon'ble Supreme Court in **Vinod Kumar vs. Gangadhar**, reported in **(2015) 1 SCC 391** has reiterated the principles to be borne in mind while disposing the first appeal stated in paragraph 15 and the same is reproduced as under:-

*“15. Again in **B.V. Nagesh vs. H.V. Sreenivasa Murthy [(2010) 13 SCC 530 : (2010) 4 SCC (Civ) 808]** this court taking note of all the earlier judgments of this court reiterated the aforementioned principle with these words:*

“3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this court in various decisions. Order 41 C.P.C. deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;*
- (b) the decision thereon;*
- (c) the reasons for the decision; and*
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing on both the question of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decisions of the appellate court. Sitting as a court of first appeal, it was the



duty of the High Court to deal with all the issues and evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings”.

26. The reasoned order in a case must contain the narration of the bare facts of the case of the parties to the *lis*, the issues arising the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons in support of its conclusion. Cryptic and unreasoned order undoubtedly caused prejudice to the parties because it deprived them to know the reasons as to why one party has won and the other has lost. Reasons introduce clarity in an order.

27. The Hon’ble Supreme Court has observed in **Union of India & Ors. vs. Jai Prakash Singh & Ors., (2007) 10 SCC 712** in paragraph 7 and quoted the judgment of **Alexander Machinery (Dudley) Ltd. v. Crabtree (1974) 1 ICR 120 : 1974 IRLR 56**, which reads as under:

“7... “12. Reasons are live links between the minds of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjecting by objectivity. The emphasis on recording reasons is that if the decision reveals the inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the



decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rational is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance.”

28. It appears from perusal of the impugned judgment that the first appellate Court has narrated the facts and issues arising in the case, the decision given by the trial Court, analyzed the same and thereafter formulated the points for determination in the first appeal and given decision on the same by discussing the admitted facts, evidence, provisions of law and arguments on behalf of the parties. It is noted in the impugned judgment that the plaintiffs have claimed their right, title and exclusive possession over Vishnupad temple on the basis of Vayu Puran and Agni Puran that it is a private property of Gayawal Brahmin Community given to them by Lord Brahma and also claimed title on the basis that Vishnupad temple was constructed and handed over to them by Rani Ahilya Bai and they are in exclusive possession of the temple without any interference by any body.

29. The first appellate Court held that the plaintiffs have miserably failed to prove their exclusive right, title and



possession over the Vishnupad temple through cogent and reliable evidence.

30. It was further noted that as per the provision of Bihar Hindu Religious Trust Act, 1950 all legal rights to property of religious trust are statutorily vested in the Board by legal fiction, accordingly, it is the important issue for applicability of the Bihar Hindu Religious Trust Act, 1950 on the Vishnupad temple and its property as to whether the Vishnupad temple is a religious trust or not.

31. In the case on hand, it further appears that the first appellate Court noted in paragraph 18 of the impugned judgment that “now this court has to adjudicate whether the Vishnupad temple is a religious trust and whether the plaintiffs have been able to prove that the Vishnupad temple is a private temple of Gayawal Brahman.”

32. The first appellate Court on the aforesaid points for determination, has given decision in paragraph 42 of the impugned judgment, which reads as under:

“The Vishnupad temple is a religious public trust and not a private property of Gayawal Brahmins and they have no exclusive right to obtain offerings made by the pilgrims at the temple and to appropriate the same as per their convenience without any interference by the Religious Board, various provisions of the Bihar Hindu Religious Trust Act, 1950 are also applicable to Vishnupad temple as well



as its emoluments and the Bihar Religious Board has ample powers to interfere in the management of the temple, superintendence and suppression of the committee of the temple in accordance with the provision of the Bihar Hindu Religious Trust Act, 1950.

33. It appears from perusal of the impugned judgment that the first appellate Court assigned the reasons for its decision. The Court has referred and discussed various books viz. "Hindu Law and Religious Charitable Trust" 5th edition written by B.K. Mukherji, Balmiki Ramayan, Lok Mata Ahilya Bai written by Arbind Jawelkar, Bihar Gazetteer, Gaya, History of Dharmasastra, Volume 4 written by Dr. Pandurang Vaman Kane, Agni Puran, Vayu Puran, Mahabharat and other materials on record in deciding the points for determination. It is not required herein to reproduce the reasons discussed in the impugned judgment.

34. In view of the aforesaid discussions, this Court does not find any perversity in the impugned judgment and the first appellate Court has followed the procedure of Order 41 Rule 31 of the Code of Civil Procedure in deciding the appeal. Thus, substantial question of law no.(i) stands decided, accordingly, and is held against the appellants.



Substantial Question of Law No.(ii)

35. In Misc. Case No.28 of 1977, the act of supersession of Trust and Committee by the Board was challenged in the Court of the learned District Judge, Gaya on two grounds; firstly, that no notice as required under Section 29(2) of the Bihar Religious Trust Board Act was given. Secondly, that Vishnupad temple is a private trust not a public trust. After hearing the parties, the learned District Judge, Gaya dismissed the said miscellaneous case, vide order dated 19.07.1977 and held that Vishnupad temple is a public trust and the Board has every jurisdiction to supersede the Committee. In appeal, vide M.A. No.261 of 1977, the Division Bench of this Court in its order dated 08.08.1978 observed that “*we are not deciding the question as to whether the Trust is public or private trust*”.

36. Learned senior counsel for the appellants has submitted that in Misc. Case No.28 of 1977, the Court had to decide the legality of supersession of Managing Committee of the Vishnupad temple under Section 29(2) of the Act and the issue whether Vishnupad temple is a public trust or not, was not directly and substantially in issue or the principal issue and the adjudication by the learned District Judge, Gaya that Vishnupad temple is a public trust shall not operate as *res judicata*. It is



further submitted that the finding of the learned District Judge, Gaya merged with the order passed in M.A. No.261 of 1977 wherein the order of the learned District Judge, Gaya was set aside for not following the procedure prescribed under the Act and directed the Board to follow the proviso to Section 29(2) of the Act before taking possession of the Vishnupad temple. It was also observed that *“we are not deciding the issue as to whether Trust is a private trust or public trust”*.

37. On the other hand, learned senior counsel for the respondents has submitted that the finding of the learned District Judge, Gaya that Vishnupad temple is a public trust has not been set aside by this Court and this Court declined to give its own finding over the finding of the learned District Judge, Gaya with regard to nature of Vishnupad temple and only dealt with the supersession part of the order of the learned District Judge, Gaya. It is further submitted by learned senior counsel for the respondents that to decide the principal issue with respect to legality of supersession of Committee by the Board, it was necessary to be decided as to whether the Vishnupad temple is a public trust or not. Hence, adjudication by the learned District Judge, Gaya that Vishnupad temple is a public trust is to be treated as directly and substantially in issue in Misc. Case



No.28 of 1977 and since the order has been passed by the learned District Judge, Gaya being competent Court having jurisdiction on the subject-matter, parties also being the same, the finding of the learned District Judge, Gaya in Misc. Case No.28 of 1977 would operate as *res judicata*. He has further submitted that the finding of the learned District Judge, Gaya regarding nature of Vishnupad temple as public trust was deemed to have been affirmed in its judgment otherwise, there would not be any direction by this Court to follow the procedure under Section 29(2) of the Act. Unless, the temple trust in question is a public trust, the Board cannot exercise its power under Section 29(2) of the Act as the Act is only applicable over the religious trust within the meaning of Section 2(1) of the Act in terms of Section 3 of the Act.

38. The general principle of *res judicata* has been incorporated in Sections 10, 11, 47, Order 2 Rule 2 and further Order 23 of the Code of Civil Procedure which has been made applicable in different situations. None of the aforesaid provisions are applicable to debar a person from getting his claim adjudicated on merit.

39. In the instant case, the judgment passed in Misc. Case No.28 of 1977 was set aside by this Court in Misc. Appeal



No.261 of 1977, accordingly, the decision on the issues was also set aside and the finding given in the judgment in Misc. Case No.28 of 1977 was merged with the judgment of this Court in Misc. Appeal No.261 of 1977 and this Court categorically observed that the Court is not deciding the question as to whether the trust is a public trust or a private trust and it cannot be said that this Court had approved the finding of the learned District Judge, Gaya as to Vishnupad temple is a public trust. The appeal is continuation of original proceedings before the superior Court. This question was categorically left open to be decided by the competent court then any other inference from the direction given in the judgment/order cannot be drawn, particularly for applying principle of *res judicata* in the instant case.

40. The Hon'ble Supreme Court in **Sajjadanashin Sayed Md. B.E. Edr.(D) by Lrs. vs. Musa Dadabhai Ummer & Ors.** reported in **(2000) 3 SCC 350**, observed in paragraph nos. 12, 14, 18 and 19 as under:-

12. "It will be noticed that the words used in Section 11 C.P.C. are directly and substantially in issue." If the matter was in issue directly and substantially in a prior litigation and decided against a party then the decision would be res judicata in a subsequent proceeding. Judicial decisions have however held that if a matter was only "collaterally or incidentally" in issue and decided in an earlier



proceeding, the finding therein would not ordinarily be res judicata in a latter proceeding where the matter is directly and substantially in issue.

14. A collateral or incidental issue is one that is ancillary to a direct and substantive issue; the former is an auxiliary issue and the latter the principal issue. The expression "collaterally or incidentally" in issue implies that there is another matter which is "directly and substantially" in issue (Mulla's Civil Procedure Code, 15th Edn., p. 104).

*18. In India, Mulla has referred to similar test (Mulla, 15th Edn., p. 104). The learned author says: a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter "directly and substantially" in issue but it does not mean that if the matter is one in respect which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was "directly and substantially" in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was "necessary" to be decided for adjudicating on the principal issue and was decided, it would have to be treated as "directly and substantially" in issue and if it is clear that judgment was in fact based upon the decision then it would be res judicata in a latter case (Mulla, p. 104). One has to examine the plaint, the written statement, the issues and the judgment to find out if a matter was "directly and substantially" in issue (**Ishwer Singh vs. Sarwan Singh AIR 1965 SC 948 and Syed Mohd. Salie Labbai vs. Mohd. Hanifa (1976) 4 SCC 780: AIR 1976 SC 1569**). We are of the view that the above summary in Mulla is a correct statement of the Law.*

19. We have here to advert to another principle of caution referred to by Mulla (p.105)

"It is not to be assumed that matters in respect of



which issues have been framed are all of them directly and substantially in issue. Nor is there any special significance to be attached to the fact that a particular issue is the first in the list of issues. Which of the matters are directly in issue and which collaterally or incidentally, must be determined on the facts of each case. A material test to be applied is whether the court considers the adjudication of the issue material and essential for its decision."

41. In view of the aforesaid discussions, it is clear that the trial Court and the first appellate Court in this case were competent having jurisdiction to decide the issue whether Vishnupad temple trust is a private trust or public trust. The said issue was not decided and kept open by the Division Bench of the High Court in the final order dated 08.08.1978 passed in M.A. No.261 of 1977.

42. The issue with respect to requirement to follow procedure under Section 29(2) of the Bihar Hindu Religious Trust Act, 1950 in supersession of Managing Committee of Vishnupad temple is concern, the Division Bench of this Court has decided and directed the Board (respondent no.1) to follow the provisions of Section 29(2) of the said Act which is a final order and the said issue cannot be decided again in subsequent suit and the same be operate as *res judicata*. Thus, substantial question of of law no.(ii) stands decided, accordingly.



Substantial Question of Law No.(iii)

43. This was the core issue in suit and also point for determination in the first appeal. The trial Court held that temple of Lord Vishnu at Gaya is not a public trust but it is a private trust of Gayawal Pandas. However, the first appellate Court has recorded the conclusion that Sri Vishnupad temple is a public trust and not a private trust of Gayawal Brahmins. This Court in the present second appeal is required to consider as to whether the said finding of the first appellate Court is sustainable in the facts and circumstances of the case.

44. Learned senior counsel for the appellants has submitted that the first appellate Court observed that whatsoever was given by Lord Brahma to Gayawal Brahmans as a gift was taken away by Lord Brahma when Gayawal Brahmans breached the condition given to them and due to their greedy nature taken huge amount of fees from the pilgrims at a ceremony at Dharmaranya and they were left only with right to *purohit* but the first appellate Court failed to appreciate that even after curse by Lord Brahma, the Lord had blessed the Brahmins of Gayawal to live on charity of pilgrims to Gaya and those who would honour them would be honouring Lord Brahma, hence, the curse was stood nullified.



45. He has next submitted that Rani Ahilya Bai had admittedly constructed the Vishnupad temple with permission of Gayawal Panda Sri Bihari Lal Meharwal and after construction, it was handed over to them but learned first appellate Court erred in observing that Rani Ahilya Bai had constructed the Vishnupad temple as per her 'SANKALP' and dedicated the same for public for religious purpose without retaining any interest in the temple and thus, religious trust came into existence. He has contended that the first appellate Court erred in observing that the Gayawal Brahmins could not be held as title holder of the Vishnupad temple rather at best could be manager of the said temple. Agni Puran and Vayu Puran also do not confer any title of the Gayawal Brahmins of Vishnupad temple on the basis of which the plaintiffs have claimed the title over the same.

46. On the other hand, learned senior counsel for the respondent Board has submitted that it is apparent from Vayu Puran and Agni Puran that Gayasura dedicated his body for Yagna to be performed by Lord Brahma and on Yagna being successful, Gayasura requested Lord Vishnu and other deities to remain over his body for all time to come. He sought a boon from Lord Vishnu that whoever visit the place i.e. his body



which was later recognized as Gaya Kshetra and perform *shraadh* there, his *pitris* (ancestors) would attain *moksha*. *Shraadh* has been accepted as a religious and pious purpose for Hindus. Vishnupad itself is a self-revealed deity. Thus, a trust itself has been created by Lord Brahma with a pious wish that Hindus would come to the Gaya Kshetra for performance of the *shraadh*, their ancestors would get ride of all sins and attain *moksha*. The very dedication of the body of Gayasura is not for his own benefit but for the benefit of his worshipper, who performs *shraadh* over his body in form of Gaya Kshetra. Thus, the beneficiary is the worshipper for the purpose of salvation of his *pitris* (ancestors).

47. In the present case, it is not in dispute that :

(i) Hindus have belief in Purans including Vayu Puran, Agni Puran, Gaya Mahatmya, Vedas and the religious rituals including to perform *shraadh* at Gaya Kshetra.

(ii) As per Vayu Puran and Agni Puran in which Hindus have faith and belief, lord Vishnu granted boon to Gayasur who dedicated his body for Yagna that whosoever visit Gaya Kshetra and perform *shraadh* there, his ancestors would attain *moksha*.

(iii) Gayawal Brahmans have been blessed with right to *purohit* by Lord Brahma.

(iv) Rani Ahilya Bai had constructed the Vishnupad temple without retaining any interest in the temple after its construction.



(v) Public in general can take part in worship and other form of ceremonies of Lord Vishnupad.

48. It can be concluded from the aforesaid facts that beneficiaries of Vishnupad temple are general public. It is settled law that if public at large exercise their right of worship as a matter of right in a temple or over a deity and they are the beneficiaries, it would be a public trust.

49. In **Deoki Nandan vs Murlidhar and Ors. (AIR 1957 SC 133)** the Hon'ble Supreme Court distinguished private and public trust in these words:-

“The distinction between a private and public trust is that where as in the former the beneficiaries are specific individuals in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which must, therefore, be held to be private or public accordingly as the beneficiaries thereunder are specific persons or the general public or sections thereof.”

50. In **Mahanth Ram Swarup Dasji vs. S.P. Sahi, Special Officer–In-Charge of Hindu Religious Trusts and Others (AIR 1959 SC 951)** it was held that definition of Religious Trusts in Section 2(1) does not include private trusts. The Supreme Court distinguished between public and private religious endowment in these words:-

“The essential distinction in Hindu Law between religious endowment which are public and those



which are private is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons either the public at large or some considerable portion of it answering a particular description in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of religious faith or is only a sect of persons of a certain religious persuasion would not make the trust a private trust.”

51. In the **Bihar Board of Hindu Religious Trust vs. Madanlal Joshi (AIR 1977 Patna 23)** this Court stated factors determining whether endowment is a private or public in these words:

“The origin of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, the right exercised by the devotee in regard to worship therein and contributions made by the public are factors which determine whether an endowment is public or private.”

52. On faith and belief, the landmark judgment by five-judge bench of the Hon’ble Supreme Court in the case of **M. Siddiq (Dead) Through Legal Representatives vs. Mahant Suresh Das and Others** (popularly known as **Ayodhya Verdict**) decided on 09.11.2019 reported in **A.I.R. 2019 SC (Supp) 1761 Para 555: (2020) 1 SCC 1 Para 809** observed as follows:-

“.....The Hindu witnesses to whom a reference has been made earlier have furnished statements of their faith and belief in the place under the central



dome being the birthplace of Lord Ram. The witnesses explained the basis of their belief by interpreting the texts of the scriptures : the Ayodhya Mahatmya, Valmiki Ramayan and Ramacharitmanas. The cross-examination of the witnesses has not established any basis for the Court to be led to the conclusion that the faith and belief of the Hindus, as portrayed through these witnesses is not genuine or that it is a mere pretence. Matters of faith and belief lie in the personal realm of the believer. That which sustains solace to the soul is inscrutable. Whether a belief is justified lies beyond ken of judicial inquiry. This is not a case where the witness statements indicate that the belief or faith is a veneer or that it is being put forth merely as a strategy in a litigation. Once the witnesses have deposed to the basis of the belief and there is nothing to doubt its genuineness, it is not open to the court to question the basis of the belief. Scriptural interpretations are susceptible to a multitude of inferences. The court would do well not to step into the pulpit by adjudging which, if any, of competing interpretations should be accepted. Faith is a matter for the individual believer. Once the court has intrinsic material to accept that the faith or the belief is genuine and not a pretence, it must defer to the belief of the worshipper. This, we must do well to recognise, applies across the spectrum of religions and their texts, Hinduism and Islam being among them.

53. In the present case, the first appellate Court in deciding the nature of trust placed reliance on the Book (1) Hindu Law and Religious Charitable Trust 5th Edition, authored by Justice B.K. Mukherjea, (2) Gaya Mahatmya Chapter 106 (a part of Vayu Puran) and Chapter 114 of Agni Purana, (3) Lok Mata Ahilya Bai written by Arvind Javelkar. (4) History of



Antiquities, Topography and Statistics of Eastern India by Buchanon, (5) History of Dharmasastra Vol.4 by Late Dr. Pandurang Vaman Kane, (6) Balmiki Ramayan, (7) Bihar District Gazetteer, Gaya etc. The first appellate Court also considered the material on record and held that the plaintiffs have miserably failed to prove their exclusive right, title and possession over the Vishnupad temple through cogent and reliable sources.

54. The first appellate Court also discussed the relevant provisions of the Bihar Hindu Religious Trust Act, 1950 and its applicability with respect to Vishnupad temple and concluded that the Vishnupad temple is a public trust and provision of the Bihar Hindu Religious Trust Act, 1950 would automatically applicable and there is no valid reason to disagree with the conclusion in this second appeal.

55. Considering the aforesaid facts and circumstances particularly the origin of temple, the right exercised by the devotee with regard to worship, nature and extent of gift/contribution made by the public and the dictum laid down in the aforesaid decisions, there is hardly any room for doubt that Vishnupad temple is a religious public trust and not a private property of the Gayawals Brahmins. The first appellate Court



rightly held that Sri Vishnupad temple is a public trust and not a private temple of Gayawal Brahmins. Thus, substantial question of law no.(iii) stands decided, accordingly, and is held against the appellants.

56. Thus, as a final result, the instant second appeal fails and, the impugned judgment and decree passed by the first appellate Court is **confirmed**. This second appeal stands **dismissed**.

57. Parties shall bear their litigation cost to their own.

58.The Interlocutory Application, if any, stands closed/disposed of.

59. The order to maintain *status quo* by the parties in this case stands vacated.

60. The lower court records be sent back forthwith.

(Sunil Dutta Mishra, J)

Harish/-

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