



**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 1245 OF 2011**

**KISHAN CHAND (DEAD)  
THROUGH LRS.**

**...APPELLANT(S)**

**VERSUS**

**GAUTAM GAUR HITKARAK SABHA,  
KOTA & ORS.**

**...RESPONDENT(S)**

**J U D G M E N T**

**VIKRAM NATH, J.**

1. Heard Shri Sushil Kumar Jain, learned senior counsel for the appellant, and Shri Ajay Choudhary, learned counsel for the respondents.
2. The present appeal has been preferred by the appellant- defendant<sup>1</sup> against the final judgment dated 28<sup>th</sup> September, 2007, passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur<sup>2</sup>, in S.B. Civil First Appeal No. 36 of 1988, whereby the High Court dismissed the appeal filed by the appellant-defendant and affirmed the judgment and decree dated 6<sup>th</sup> January, 1988, passed by the Additional District and Sessions Judge No. 1, Kota<sup>3</sup>,

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<sup>1</sup> Hereinafter, being referred to as “appellant-defendant”.

<sup>2</sup> Hereinafter, being referred to as “High Court”.

<sup>3</sup> Hereinafter, being referred to as “Trial Court”.

in Civil Suit No. 36 of 1978, decreeing the suit for injunction and possession filed by the respondents<sup>4</sup>.

3. Brief facts, essential for the disposal of the present appeal, are as follows: -

3.1. The suit was instituted by the respondent-plaintiffs, comprising a registered society and its members. According to the plaint, an ancient temple, namely “Moorti Swarup Shri Govardhan Nath Ji”, situated at Rampura Bazar in Kota town, is the property of the Gurjar Goud Brahmin Rampura Society, Kota, and forms the subject matter of the present suit. It is further averred that the respondent-plaintiffs are entrusted with the management and administration of the temple, including the idols installed therein, along with their ornaments, articles, and other appurtenant properties. For this purpose, the society appoints an individual<sup>5</sup> to act as a custodian or caretaker, who manages the affairs of the temple on its behalf.

3.2. On 28<sup>th</sup> October, 1926, a meeting of the respondent-plaintiffs was held, wherein it was resolved to appoint one Gordhan Ji as the caretaker of the suit property in place of the previous caretaker, Ganga Bishan Ji, who had expressed his desire to relinquish the

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<sup>4</sup> Hereinafter, being referred to as “respondent-plaintiffs”.

<sup>5</sup> While the term “Priest” is used in the plaint, it is also interchangeably referred to as “*pujar*”, “custodian”, “manager” and “caretaker”.

position. Pursuant thereto, possession and control of the temple articles were handed over to Gordhan Ji.

3.3. Subsequently, on 20<sup>th</sup> June, 1951, Gordhan Ji expressed his inability to continue as caretaker on account of his circumstances, and proposed that the responsibility be entrusted to the present appellant-defendant. Accordingly, on 24<sup>th</sup> June, 1951, the respondent-plaintiffs resolved to appoint the appellant-defendant as the caretaker and handed over the management of the suit property to him. The appellant-defendant was also paid remuneration from the income generated by the shops situated on the suit property.

3.4. Thereafter, on 3<sup>rd</sup> May, 1963, respondent No. 1 came to be registered as a trust with the Devasthan Department, State of Rajasthan, Udaipur.

3.5. In or about November, 1976, the appellant-defendant asserted ownership over the suit property. In response, respondent No. 1 issued a legal notice calling upon the appellant-defendant to cease acting as the *pujari* and relinquish control over the temple.

3.6. Ultimately, on 3<sup>rd</sup> October, 1977, a civil suit<sup>6</sup> was instituted seeking the removal of the appellant-defendant from the position of “*pujari*” and for restoration of possession and control of the suit

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<sup>6</sup> Civil Suit No. 36 of 1978.

property, including the idols, ornaments, agricultural land, and shops of the temple, to the respondent-plaintiffs.

4. The appellant-defendant contested the suit by filing a written statement, wherein he denied the claim of title asserted by the respondent-plaintiffs over the suit property. It was, *inter alia*, contended that the suit property was his private property, which had devolved upon him through a line of succession by way of successive adoptions. The averments that the ownership of the property vested in the respondent-plaintiffs and that the appellant-defendant or his predecessors were appointed as “*pujaris*” by the respondent-society were specifically denied.

- 4.1. It was further contended that the suit property had originally been constructed by one Bhagirath Bohra Bamhoria, who subsequently donated the same to his son-in-law, Vallabh Ji Mukhiya. Upon the latter dying issueless, he is stated to have adopted one Ganga Bishan Ji, who thereafter inherited the suit property and performed the duties of a “*pujar*”. Ganga Bishan Ji, in turn, having no issue, is stated to have adopted Gordhan Lal, who assumed the said responsibilities and subsequently adopted the present appellant-defendant, the son of Bhanwar Lal Brahmin. On this basis, the appellant-defendant claimed a continuous line of succession and asserted

that he had been performing seva-pooja of the temple over the years. It was also contended that during the years 1939-40, he had raised additional construction on the suit property after obtaining due permission from the District Magistrate.

- 4.2. The appellant-defendant further asserted that his predecessor, Gordhan Lal, had executed a Will in his favour, bequeathing the suit property to him upon his death.
5. Upon trial, the respondent-plaintiffs examined nine witnesses, whereas the appellant-defendant examined eight witnesses. By judgment dated 6<sup>th</sup> January, 1988, the Trial Court decided all the issues in favour of the respondent-plaintiffs, decreed the suit, and directed the appellant-defendant to hand over possession of the suit property to the respondent-plaintiffs.
  - 5.1. Being aggrieved by the said judgment, the appellant-defendant preferred a first appeal<sup>7</sup> before the High Court.
  - 5.2. By judgment dated 28<sup>th</sup> September, 2007, the High Court dismissed the first appeal preferred by the appellant-defendant with costs of Rs. 2,000/-, and affirmed the judgment and decree of the Trial Court in favour of the respondent-plaintiffs.

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<sup>7</sup> S.B. Civil First Appeal No. 36 of 1988.

6. The appellant-defendant is, thus, before us.
7. At the outset, it must be noted that the present appeal assails concurrent findings recorded in favour of the respondent-plaintiffs, whereby the Trial Court decreed the suit for ejectment and possession, and the High Court, in appeal, affirmed the said decree.
8. The core issue, therefore, arises for determination is whether the respondent-plaintiffs have successfully established their title to the suit property so as to justify the decree for declaration and removal of the appellant-defendant.
9. Before proceeding further, it is necessary to advert to the reasoning recorded by the courts below while decreeing the suit of the respondent-plaintiffs, which may be summarised as follows: -
  - a. That the predecessors through whom the appellant-defendant claims rights over the suit property were appointed merely as "*pujaris*" by the respondent-plaintiffs for the purpose of performing *seva-pooja*, and did not possess any independent proprietary interest therein.
  - b. That although the suit property was initially constructed by Bhagirath Ji Bohra Bamboriya, there is no evidence on record to establish that it was subsequently transferred by way of donation

by the appellant's predecessor, Vallabh Ji Mukhiya, to his son-in-law.

- c. That the appellant-defendant has failed to establish any hereditary right over the management of the suit property, including the alleged chain of successive adoptions, no cogent evidence having been adduced in that regard.
- d. That the document<sup>8</sup> dated 26<sup>th</sup> October, 1926, bearing the signature of the appellant-defendant's predecessor, Gordhan Ji, indicates that he was appointed as a manager by the representatives of respondent No. 1-society and had acknowledged receipt of the jewellery belonging to the temple deity entrusted to him. Further, a subsequent document<sup>9</sup> of the year 1938, also bearing his signature, records the handing over of 16 items of jewellery belonging to the deity by the representatives of respondent No. 1-society.
- e. That the document<sup>10</sup> dated 20<sup>th</sup> June, 1951, being minutes of a meeting, records that Gordhan Ji expressed his inability to continue managing the suit property on account of old age and ill-health, and that the arrangement be

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<sup>8</sup> Exhibit 5.

<sup>9</sup> Exhibit 6.

<sup>10</sup> Exhibit 8.

entrusted to the appellant-defendant on a fixed monthly remuneration.

10. From the aforesaid material, the courts below concluded that the suit property belongs to respondent No. 1-society and does not constitute the private property of the appellant-defendant, who was merely appointed as a custodian or “*pujar*” for the purposes of management and performance of religious duties. The documents were also relied upon to indicate that the respondent-plaintiffs exercised periodic control over the appointment of such “*pujaris*”.
11. It is on the basis of the aforesaid reasoning that the courts below decreed the suit and directed the appellant-defendant to hand over possession of the suit property to the respondent-plaintiffs.
12. Before adverting to the rival contentions, it would be apposite to reiterate the settled principles governing suits for declaration of title. It is trite that in a suit for declaration and consequential relief, the burden lies squarely upon the plaintiff to establish a clear and cogent title to the suit property. The plaintiff must succeed on the strength of his own case and not on the weakness of the defence.
13. This principle has been consistently reiterated by this Court in ***Union of India v. Vasavi Co-op. Housing***

**Society Ltd.**,<sup>11</sup> wherein it was held that “in a suit for declaration of title, the burden is always on the plaintiff to establish his title and he cannot succeed on the weakness of the defendant’s case.”<sup>12</sup>

14. Applying the aforesaid principles to the facts of the present case, we find that the entire approach adopted by the courts below suffers from a fundamental infirmity. The courts below have proceeded primarily on the premise that the appellant-defendant and his predecessors were merely “*pujaris*” appointed by the respondent-society and, therefore, could not claim any independent proprietary interest. However, such a conclusion, by itself, does not discharge the burden cast upon the plaintiffs under Sections 101 and 102 read with Section 110 of Indian Evidence Act, 1872 to affirmatively establish their own title.
15. A careful examination of the material on record would indicate that the respondent-plaintiffs have failed to produce any document of title evidencing ownership of the suit property in their favour. There is no deed of dedication, no document of endowment, nor any legally admissible evidence to show that the property stood vested in the respondent-society. The mere fact that the society exercised certain supervisory or

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<sup>11</sup> (2014) 2 SCC 269

<sup>12</sup> Para 15.

managerial functions over the temple or participated in the appointment of “*pujaris*” would not *ipso facto* confer title upon it.

16. Equally, the reliance placed by the courts below on the documents dated 26<sup>th</sup> October, 1926 and 20<sup>th</sup> June, 1951, whereby the appellant-defendant’s predecessor Gordhan Ji and appellant-defendant were appointed as the “*pujari*”, respectively, in our view, is misplaced. These documents, at best, indicate the nature of management or arrangement pertaining to the temple and its properties. They do not constitute documents of title, nor do they establish vesting of ownership in favour of the respondent-plaintiffs. The distinction between management of a religious institution and ownership of its properties is well recognised in law, and the two cannot be conflated.
17. The courts below have also rejected the appellant-defendant’s claim of succession through adoption on the ground that the same has not been satisfactorily proved. Even assuming that the defendant has failed to conclusively establish his title, the same would not enure to the benefit of the plaintiffs. As noticed hereinabove, the plaintiffs must independently establish their title, failing which the suit must necessarily fail.

18. In the present case, the respondent-plaintiffs have not discharged this burden. Their case rests largely on inferences drawn from management practices and appointment of “*pujaris*”, which, in law, are insufficient to establish proprietary rights over immovable property.
19. We are, therefore, of the considered view that the courts below have misdirected themselves in law by shifting the focus from the requirement of proof of title to the alleged infirmities in the defendant’s case. Such an approach is contrary to the settled principles governing adjudication of title suits and cannot be sustained.
20. In view of the aforesaid, the judgment dated 28<sup>th</sup> September, 2007, passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Civil First Appeal No. 36 of 1988, is hereby set aside.
21. Consequently, the present appeal stands allowed and the suit is dismissed.
22. Pending application(s), if any, are disposed of.

.....**J.**  
**[VIKRAM NATH]**

.....**J.**  
**[SANDEEP MEHTA]**

**NEW DELHI;**  
**APRIL 09, 2026**