



In the Court of District Judge, Mathura

Present- Shri Rajeev Bharti (H.J.S.)

Civil Revision No. 02/2021

1. Bhagwan Shrikrishna Virajman, at Katra Keshav Dev Khewat No. 255, in Maujja Mathura Bazaar city and District Mathura, through Next friend Ms. Ranjana Agnihotri D/o Late Rajendra Kant Agnihotri, aged about 51 years, R/o. 512/695 Balda Road, Nishatganj, Near Nishantganj Police Chowki, Lucknow, New Hyderabad Uttar Pradesh-226007
2. Asthan Shrikrishna Janam Bhoomi, Katra Keshav Dev Khewat No. 255, in Maujja Mathura Bazaar city and District Mathura, through Next friend Ms. Ranjana Agnihotri D/o Late Rajendra Kant Agnihotri, aged about 51 years, R/o. 512/695 Balda Road, Nishatganj, Near Nishantganj Police Chowki, Lucknow, New Hyderabad Uttar Pradesh-226007
3. Ms. Ranjan Agnihotri D/o Late Rajendra Kant Agnihotri, aged about 51 years, R/o. 512/695 Balda Road, Nishatganj, Near Nishantganj Police Chowki, Lucknow, New Hyderabad Uttar Pradesh-226007
4. Pravesh Kumar S/o Sri Rishi Pal Singh, aged about 44 years, R/o F-1/B, Jagat Puri Parwana Road, Krishna Nagar, East Delhi , Delhi-110051
5. Rajesh Mani Tripathi S/o Sri Chandra Bhushan Mani Tripathi, aged about 53 years, R/o Sainuwa, Sainua, Siddharthnagar, Uttar Pradesh 272206
6. Karunesh Kumar Shukla S/o Sri Ram Narayan Shukla, aged about 29 years, R/o Village- Pakri Bhikhi, Post- Belhra, Pakri Bhikhi, District-Basti U.P. 272182
7. Shivaji Singh S/o Late Ram Narayan Singh, aged about 60 years, R/o 45-A, Gahmar Kunj Colony Matiyari Chinhat, Lucknow. U.P.-226028
8. Tripurari Tiwari, S/o Shri Rajeshwar Tiwari , aged about 25 years, R/o

Civil Revision No. 02/2021
Bhagwan Shrikrishna Virajman etc. Vs.
U.P. Sunni Central Waqf Board etc.

67/99, Ram Narayan Joshi Lane Lalkuan Lucknow, U.P.-226001

..Revisionists/Plaintiffs

VERSUS

1. U.P. Sunni Central Waqf Board, through Chairman, 3 - A Mall Avenue Lucknow -226001
2. Committee of Management, Trust Alleged Shahi Masjid Idgah, Through Secretary, Deeg Darwaza, District Mathura, Uttar Pradesh-281001
3. Shree Krishna Janambhoomi Trust, Mathura, through managing trustee, near Deeg Gate Chouraha, Katra Keshavdev, Janam Bhumi Temple, Mathura, Uttar Pradesh-281001
4. Shree Krishna Janm Sthan Sewa Sansthan, through Secretary, Katra Keshav Dev, Deeg Gate, Mathura Bazaar city and District Mathura, Uttar Pradesh-281001

--Respondents/Defendants

Date of hearing Argument:05/05/2022

Date of Judgement: 19/05/2022

Ld. Counsel for Revisionist(s):

1. **Shri Hari Shankar Jain**
2. **Shri Brijesh Kumar**
3. **Shri Vishnu Shankar Jain**
4. **Shri Gopal Khandelwal**
5. **Shri Pankaj Kumar Verma**

Ld. Counsel for Respondent(s):

1. **Shri G. P. Nigam**
2. **Mohd. Tanvir Ahmad**
3. **Shri Neeraj Sharma**
4. **Shri Mukesh Kumar Khandelwal**

JUDGEMENT

The revisionists filed a regular civil suit in the court of Civil Judge Senior Division, Mathura which was registered as Misc. Case No. 176 of 2020 on the question of maintainability of the suit and dismissed the aforesaid case by the impugned order dated 30/9/2020 passed by In-Charge Civil Judge, Senior Division, Mathura. Being aggrieved with the impugned order, the Revisionists /Plaintiffs preferred regular civil appeal 17 of 2020. The appeal was admitted vide order dated 16.10.2020. The Respondent no. 2 filed application no. 68-Ga, objecting to the maintainability of the appeal. The, then District Judge, vide order dated 18.01.2021, allowed the application no. 68-Ga and withdrew the order dated 16.10.2020 and further directed to register the appeal as Revision. Thereafter, the same has been registered as Revision No. 2 of 2021.

GROUND OF REVISION

1. Because the judgement passed by the Ld. Court below is erroneous and against the facts and law applicable to the case.
2. Because the Ld. Court below has rejected the plaint under Order VII Rule 11 of CPC on the ground that Plaintiffs, being the devotees/worshippers of Lord Krishna, have no right to file the suit, whereas the Plaintiffs in the plaint have asserted their right to religion guaranteed under Article 25 of the Constitution of India.
3. Because the Plaintiffs No. 1 is deity, Bhagwan Shri Krishna Virajman and Plaintiff No. 2 is deity as Asthan Shri Krishna Janmbhoomi through next friend Plaintiff No. 3 Revisionist No. 3 herein and Plaintiffs No. 3 to 8 are worshippers/devotees of Lord Shri Krishna.
4. Because in the suit, the following reliefs have been prayed for:-
"(a) Decree the suit in favour of Plaintiffs and against the Defendants, cancelling the judgement and decree dated 20.07.1973 and Judgement and decree dated 07.11.1974 and passed in Civil Suit No. 43 of 1967 by Ld. Civil Judge, Mathura;

(b) Declare that the judgement and decree dated 20.07.1973 and the judgement and decree dated 07.11.1974 and passed in Civil Suit No. 43 of 1967 by Ld. Civil Judge, Mathura is not binding on the Plaintiffs;

(c) Decree the suit for declaration declaring that land measuring 13.37 acres of Katra Keshav Dev shown by letters No. A,B,C,D and the site plan vest in the deity Lord Shree Krishna Virajman;

(d) Decree the suit for mandatory injunction in favour of the Plaintiffs and against the Defendants No. 1 and 2 directing them to remove the construction raised by them encroaching upon the land shown by Letters No. E,B,G & F in the site plan within the area of Katra Keshav Dev City Mathura and to handover vacant possession to Shree Krishna Janmbhoomi Trust within the time provided by the Hon'ble Court;

(e) Decree the suit for prohibitory injunction restraining Defendants No. 1 and 2, their workers, supporters, men, attorneys and every person acting under them from entering into premises of 13.37 Acres land at Katra Keshav Dev, City and District Mathura;

(f) The Hon'ble Court may pass any other decree for which Plaintiffs are found entitled to or which may be necessary to be passed in the interest of justice;

(g) Award the costs of the suit."

5. Because the Revisionists have filed a suit for the removal of encroachment raised by Defendant No. 2 on the land Katra Keshav Dev belonging to the deity and Shri Krishna Janmbhoomi Trust registered on 09.03.1951. The trust is not functioning and it has taken no action to recover the property belonging to the deity.

6. Because it is undisputed that Seth Jugal Kishore Birla on 08.02.1944 had purchased land of 13.37 acres situated in Katra Keshav Dev from the legal heirs of Raja Patnimal through a registered sale deed in the name of Mahamana Pt.Madan Mohan Malviya, Goswami Ganesh Dutt and Professor Bhikanlal

Attrey.

7. Because Shri Jugal Kishore Birla created a public trust in the name of Shri Krishna Janmbhoomi Trust on 21.02.1951 which was registered on 09.03.1951 and the entire property of 13.37 acres situated in Katra Keshav Dev was dedicated to the deity and given to the trust.

8. Because a society, namely Shri Krishna Janmasthan Seva Sansthan, established on 01.05.1958 had overpowered Shri Krishna Janmbhoomi Trust.

9. Because the society Shri Krishna Janmasthan Seva Sansthan filed Regular Civil Suit No. 43 of 1967 in the Court of Civil Judge, Mathura with the cause title 'Shri Krishna Janamasthan Sewasangh, Mathura, also known as Shri Krishna Janmbhumi Trust, Mathura,' whereas society and trust are two different entities.

10. Because the society entered into a compromise with Trust Masjid Idgah on 12/17.10.1968 and the agreement was registered in the Office of Sub-Registrar on 22.11.1968 and the society conceded valuable property of Deity/Trust in favour of Trust Masjid Idgah, even though it was not the owner and the property had already vested in Shri Krishna Janmbhoomi Trust and it had no right to file the suit and to enter into compromise in respect of the land belonging to the Trust.

11. Because the Plaintiffs have prayed that the fraudulent and collusive decree dated 07.11.1974 passed in Civil Suit No. 43 of 1967 be cancelled and it be declared that the same is not binding on the Plaintiffs.

12. Because the Plaintiffs have prayed for a declaration that the entire land of 13.37 acres vests in the deity Lord Shrikrishna Virajman.

13. Because the Plaintiffs have prayed that the Defendants. No. 1 and 2 be directed to remove the construction raised by them encroaching upon the land shown by letters No. E,B,G, & F on the site plan within the area of Katra Keshav Deo, city of Mathura and to handover vacant possession to the Shri Krishna Janmbhoomi Trust.

14. Because the Plaintiffs have not prayed for the handing over

management of property to them but have prayed that encroachment be removed and property be handed over to Shri Krishna Janambhoomi Trust.

15. Because the Plaintiffs have filed the suit for the welfare and benefit of the deity and the devotees at large.

16. Because the Plaintiffs No. 3 to 8 are worshippers of Lord Shri Krishna, they have the right to assert their right to religion guaranteed by Article 25 of the Constitution to have darshan and perform puja at the actual birth place of Lord Krishna, which is at present beneath the structure illegally raised by Muslims.

17. Because the suit has been filed by the deity through next friend and the deity has the right to be represented through next friend in case the Manager, shebait, or persons in-charge of affairs are negligent in performance of their duty or in case when their action is hostile to the interest of deity and devotees.

18. Because it is the right and duty of the worshippers to make every endeavour to bring back the lost property of the deity and to take every step for the safety and proper management of the temple and the deity's property.

19. Because in this case, it is apparent on record that the decree passed in Civil Suit No.43 of 1967 is based on a fraudulent compromise entered into between Shri Krishna Janmsthan Sewa Sangh and Trust Masjid Idgah. As mentioned above, Shri Krishna Janmasthan Seva Sangh had no right, power, interest or authority in the property of the deity/trust and had no locus to file the suit and enter into compromise against the interest of the deity. Therefore, the devotees who came to know about the fraudulent act have every right to file a suit.

20. Because the Ld. Court below in para 6 of the judgement has mentioned that compromise had been entered into between Trust Masjid Idgah and Krishna Janamasthan Trust whereas the Plaintiffs have clearly stated in the plaint that the compromise was made between Shri Krishna Janmsthan Sewa Sangh and Trust Masjid Idgah and Shri Krishna Janmasthan Trust was not party to the compromise and it had not filed the suit. Therefore, the impugned judgement is

based upon a wrong assumption of facts and non application of mind.

21. Because the Ld. Court below has rejected the suit filed by the Revisionists in limine on the ground that if a suit is registered, a large number of worshippers may come to the court. A suit cannot be rejected on the ground that several others may also approach the court.

22. Because the Ld. Court below has failed to take notice of the provisio of Order 1 Rule 8 CPC, the Court in the appropriate case has power to treat any suit as a representative suit when the interests of numerous persons are involved.

23. Because the Revisionists have filed the suit also for exercising their right to have Dharshan and Puja at the actual birth place of Lord Shree Krishna in the exercise of their right to religion guaranteed by Article 25 of the Constitution of India.

24. Because in view of the averments made in the plaint, triable issues arise for adjudication in the case and the Ld. Court below failed to appreciate the facts and pleas mentioned in the suit. The Ld. Court below is working in the capacity of an In-charge Civil Judge, Senior Division. In-charge Civil Judge can decide only urgent matters and it has no power to decide any case on merits.

25. Because the Ld. Court below passed an order on 25.09.2020 that it will hear the case on the maintainability of the suit as all the Plaintiffs are not residents of Mathura. On this point the counsel for the Appellants demonstrated that most of the trustees of Shri Krishna Janmabhoomi Trust and most of the members of society Shri Krishna Janmasthan Sevasansthan were outsiders. The attention of the court is also drawn towards Sections 16 and 20 of the CPC, according to which suit can be filed where the property is situated and the defendants reside.

26. Because the attention of the court below was drawn to the fact that the Plaintiffs' right to religion, guaranteed under Article 25 of the Constitution of

India, is involved in the matter, as they have the right to have puja and darshan of the actual birth place of Lord Krishna, which has been usurped by Trust Masjid Idgah.

27. Because the attention of the Court was also drawn to the fact that in the Ayoydhya case decided on 09.11.2019, the Hon'ble Apex Court has held that the worshipper has the right to file the suit and in that case the next friend, a resident of Allahabad, namely Shri Devkinandan Agarwal, had filed Suit No. 236 of 1989, renumbered as O.O.S. No. 5 of 1989 in the Hon'ble High Court. In view of the facts and ratio of law stated herein above, the judgement passed by the court below suffers from manifest error of law and the same is liable to be set-aside.

Brief Facts of the plaint pleaded :

1. In para 4, it says that the deity has the right to protect its property and to recover its lost property through shebait, and in the absence of shebait, through next friend.
2. In para 33, Jugal Kishore Birla created a trust in the name of Shri Krishna Janmabhoomi Trust on 21.02.1951 and the Trust Deed was registered on 09.03.1951.
3. In para 35, The trust failed to perform its duty to secure, preserve, and protect the trust property. The Trust has been defunct since 1958.
4. In para 36, On 01.05.1958 a society was formed in the name and style of Shri Janmasthan Seva Sangh.
5. In para 37, The society was a different entity from the trust. The Society had no power or jurisdiction to act on behalf of the Trust. The trust has no authority or power to transfer, delegate or entrust any work to the Society to perform.
6. In para 43, Shri Krishna Janmasthan Seva Sangh has no proprietary or ownership rights in the property of Katra Keshav Dev, which stood vested in the deity and the Trust. The Suit No. 43 of 1967 had not been filed by the Shri Krishna Janmabhoomi Trust. The Trust was not a party to the compromise.
7. In para 72, In previous suits relating to land and property of Katra Keshav Dev, the deity was not a party and no one has been appointed to protect and save the interest of the deity. As such finding, if any, recorded in previous

suits affecting the interest of deity is not applicable in the present suit.

8. In para 79, The deity Plaintiffs no. 1 and 2 are minors, and since 1958, the trust which was responsible to look after the interests of the deity has been non-functional. Therefore, cause of action is accruing every day for the relief prayed for in this suit.

9. It is further submitted that along with the documents in the Trial Court, the judgement rendered in Case No. 74 - Misc. Case No. 234 of 1993 (Annexure No.6) passed by the Then District Judge vide order dated 06.05.1994 has been placed on record. The aforesaid judgement was affirmed by the Hon'ble Allahabad High Court vide judgement dated 23.09.1997, reported in 1997 SC Online All Pg.690.

10. It has been held in Rule 4 that all the properties belonging to Shri Krishna Janam Sthan Sewa Sangh, shall vest in the Shri Krishna Janam Bhumi Trust. On the contrary, the trust became owner of all the properties belonging to Sewa Sangh and it continued to be owner of its own property. From the bye-laws of the Sewa Sangh, there is no doubt that the members of the Sewa Sangh were appointed by the Trust. It is incorrect to say that Trust itself merged into the Sewa Sangh and, therefore, lost its entity.

11. Per contra, Ld. Counsels for Respondents argued that the impugned order is just and proper. The Ld. Lower Court was fully competent to pass the impugned order. Ld. Lower court has not committed any error or material irregularity or illegality. The impugned order requires no interference from this Court. The Revision has no force and is liable to be dismissed.

12. As in **Saleem Bhai & Ors. vs. State of Maharashtra and Others. (2003) 1 SCC 557** it has been held that the trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. It is the duty of the Court to scrutinize the averments/pleas in the plaint.

13. In **Kanhiya Lal (Dead) By LRs. Vs. Rajnarain Sarin and others, ALR 2000 (40) 130 (Allahabad)** it has been held that frivolous and vexatious suit can be thrown out- If the court is active and resorts to Order 10 for such purpose -pleadings has to be understood in its proper perspective as a whole

14. Ld. Counsel for Respondents contended on Revisional jurisdiction, and adduced **Bishun Lal vs. Addl. District & Session Judge (LB) 2012 (30) LCD 1941 Allahabad** wherein it has been held that even an erroneous decision cannot be corrected in the exercise of powers conferred upon this Court under Section 115 of the C.P.C. The Revisional Court can not function as an Appellate Court so as to travel beyond the scope of Section 115 of the Code of Civil Procedure.

15. Heard Ld. Counsels for both the parties and perused the record.

16. A perusal of Section 115 CPC, which provides that:

Section 115 (1) A superior Court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate Court where no appeal lies against the order and where the subordinate Court has,-

- (a) exercised a jurisdiction not vested in it by law; or
- (b) failed to exercise a jurisdiction so vested; or
- (c) acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A revision application under sub-section (1), when filed in the High Court, shall contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the District Court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the District Court.

(3) The superior Court shall not, under this section, vary or reverse any order made except when--

- (i) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or
- (ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.

(4) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the superior Court.

17. Thus it is clear from the above definition that under the Revision, facts and evidences are not to be thoroughly analysed by the Revisional Court , only the court has to give its opinion regarding the illegality, jurisdictional error and irregularities passed by the Ld. Lower Court.

18. In the present matter, the only question before this Court is whether the Ld. Trial Court should have admitted or registered the plaint of the revisionists/ plaintiffs, for this it is necessary to consider the following points:

19. **The pivotal questions that arise for consideration in this Revision:**

1- Whether the Revision is maintainable or not against the impugned order dated 30-09-2020 ?

2- Whether a Worshipper as the next friend of deity can file suit for the restoration and re-establishment of religious rights of the deity?

3- Whether the plaintiffs are entitled to maintain the suit challenging the compromise judgement and decree dated 20.07.1973 and 07.11.1973 passed in Civil Suit No. 43 of 1967 by Ld. Civil Judge, Mathura, on the ground of fraud, misrepresentation, and collusion ?

4- Whether the provisions of The Places of Worships (Special Provisions) Act 1991 will be applicable or not?

5- Whether the impugned order suffers from manifest error of law and the court below has failed to exercise the jurisdiction vested in it by law?

20. **Findings on Question No.1**

1- Whether the Revision is maintainable or not against the impugned order dated 30-09-2020 ?

20 (i). On behalf of Respondent no. 1 and 2, the maintainability of the Revision had also been questioned. In support of their contention they relied on **Shamsher Singh vs. Rajinder Prashad & Ors, 1974 SCR (1) 322** it has been held that where the plaint was rejected under Order 7 Rule 11 of the C.P.C., such an order amounts to a decree under Sec.2 (ii) and there is a right to appeal

open to the plaintiff.

20(ii). In **M/s Hotel Shiv Shakti through Partner Sri Narain Tiwari and others vs. U.P. Finance Corp. through Regional Manager and others, 2021 (145) ALR 376** it has been observed that the order impugned was passed under Order VII Rule 11 C.P.C. The effect of the order was the rejection of the plaint itself. Against the order impugned, appeal was maintainable as the plaint was rejected in terms of section 2(2) C.P.C. -Revision dismissed.

20(iii). **Further, objecting to the Revision memo and plaint by the Respondent No. 1 & 2, it was stated that the Revision memo and Plaint filed by the revisionists /plaintiffs are liable to be returned for violation of Rule 28 of G.R.Civil, which is as follows-**

20(iv). **General Rule (Civil) 28 : Application containing argumentative matters to be returned.** --No application containing argumentative matter, e.g. quotations and discussions of the effect of certain sections of Acts or of certain rulings of the High Court, shall be placed on record. They shall be returned to applicants without any order, except an endorsement that the application is returned under this rule.

20(v). Ld. Counsels for Revisionists/ Plaintiffs have relied upon **Sudershan Chopra(Smt.)Vs.The New Okhla Industrial Development Authority,Noida and others ALR2000(40)743** where in it has been held that General Rule (Civil) 28 applies only to the applications and not to memorandum of appeals.Thus submission made by Ld. Counsels for the respondent No. 1 & 2 is misconceived and untenable in law.

20(vi). Revisionists/ Plaintiffs vehemently opposed the argument of Respondents/ Defendants and argued that the present Revisionists had initially filed Civil Appeal which was registered as C.A. No. 17 of 2020 by the then Ld. District Judge vide an order dated 13.10.2020 as it was felt that suit had been dismissed by the court below under Order 7 Rule 11 of the C.P.C. and a decree would be prepared.

20(vii). It is relevant to point out that the suit filed by the Revisionists was

registered as Misc. Case No. 176 of 2020 by the Ld. Trial Court.

20(viii). The Revisionists submitted application No. 33-Ga before the Ld. Trial Court (Civil Judge S.D.) on 05.10.2020 in Misc. Case No. 176 of 2020, praying that a decree of order dated 30.09.2020 be prepared and a copy of the same be supplied to the applicant. The Ld. Court below vide order dated 07.10.2020 passed the following order:-

20(ix). "The suit is dismissed as Misc. Case. No order has been passed under Order 7 Rule 11 of the C.P.C. Hence, the application is rejected. The clerk is directed to do the needful as per rule."

20(x). Thereafter Respondent No. 2 filed application No. 68-Ga before the then Ld. District Judge in which the Court passed the order dated 18.01.2021 whereby the said appeal was directed to be registered as Revision.

20(xi). The Revisionist, in view of the legal position, agreed that the appeal could be converted into the revision because the impugned order had been passed in Misc. Case and therefore, the same would not come within the ambit of Order 7 Rule 11 of the CPC and therefore, the appeal was not maintainable.

20(xii). The then Ld. District Judge, vide order dated 18.01.2021, held that the impugned order had not been passed in any suit as the order was passed in a Misc. Case and therefore, no decree had been drawn and further that appeal could be filed only against the decree.

20(xiii). So far as the ruling cited on the question that an appeal lies against the 'decree', This court agrees with the above noted case laws cited by the Ld. Counsel for the respondents/defendants that an appeal would lie if the decree has been drawn by the Court. In the instant case, as evident from the impugned order passed by Ld. Civil Judge, it is clear that no decree has been drawn, as according to the Court itself, the order was passed in a Misc. Case and no decree has been drawn. In these circumstances, Then Ld. District Judge vide order dated 18.01.2021 held that revision would lie and was pleased to accept the request of the revisionists to convert the appeal into revision. Therefore, in

view of the facts of the instant case, revision is maintainable.

20(xiv). Moreover as the Hon'ble Allahabad High Court in the case of **Mudit Verma vs. Cooperative Tribunal, 2006 (63) ALR 208** has observed that “It is settled law that no person should suffer for inaction or fault on the part of the Court.”

20(xv). In **Shaikh Salim Haji Abdul Khayumsab vs. Kumar & ors., 2006 (1) ARC 334 (SC) and Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three Judge Bench)** Hon'ble Apex Court has observed that “Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substitution, or other relief should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates— Procedural defects or irregularities, which are curable, should not be allowed to defeat the substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. Procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistance in the administration of justice.

- (a) The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.
- (b) The object is to expedite the hearing and not to scuttle the same.
- (c) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.”

It would also be appropriate to clarify here that, against the institution of appeal, Ld. Counsel for Respondent no.2 had adduced paper no.68-Ga before the Appellate Court with the prayer that revision is maintainable against the impugned order passed by the Trial Court. The Revisionist, in view of the legal position, agreed that the Appeal could be converted into the Revision because the impugned order has been passed in Misc. Case. After converting the appeal into revision, neither the respondents challenged nor made any objection against converting the appeal into revision, before the competent authority/ Court. In view of the facts above

mentioned, the objection raised on behalf of the respondents against the maintainability of Revision is not tenable.

This Court honours the case laws of the Hon'ble Supreme Court and Hon'ble High Court filed by the respondents, but the above case laws do not apply to the facts of the case.

21. **Findings on Question No.2 :**

2- Whether a worshipper as the next friend of the deity can file suit for the restoration and re-establishment of religious rights of the deity?

21(i). **Respondent No.1 & 2 also argued that** the Revisionists/ Plaintiffs have no right to sue as the Trial Court by the impugned order refused to entertain the Suit. If the court is active and resorts to Order 10 for such purpose, pleadings have to be understood in their proper perspective as a whole.

21(ii). As referred by the Id.Counsel of Respondents, **Bloom Dekor Ltd. vs. Subhash Himatlal Desai & Ors. (1994) 6 SCC 322**, wherein a Three Judge Bench of Hon'ble Apex Court held "By 'cause of action' it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgement of the Court, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.

21(iii). Ld. Counsel for the Revisionists/Plaintiffs relying upon the findings of Hon'ble Apex Court in the famous Ayodhya case, **M.Siddiq vs. Mahant Suresh Das & Ors. 2020(1) SCC 1 (the paragraphs 443 to 458)** wherein it has been held that the worshipper has the right to file the suit.

21(iv). In the case of **Bishwanth and Anr Vs. Sri Thakur Radha Ballabhji and Ors. AIR 1967 SC 1044**, the Hon'ble Apex Court has held that a suit can be filed by a deity through the next friend/ worshipper for declaration of title and possession and he can represent an idol when a shebait or manager of the temple is acting adversely to the interest of the deity.

21(v). In the case of **Vemareddi Ramanraghava Reddy and others Vs Koduru Seshu Reddy and others AIR 1967 SC 436**, it has been held that a worshipper of the Hindu Temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the de jure Shebait is invalid and not binding on the temple. Reliance being paid on Paragraphs 9 to 13 of the above judgement.

21(vi). In light of the law cited and discussed above, this court is of the view that a worshipper as the next friend of the deity can file suit for the restoration and re-establishment of religious rights of the deity.

22. **Findings on Question No.3:**

3. Whether the provisions of The Places of Worships (Special Provisions) Act 1991 will be applicable or not?

22(i). Ld. Counsels for Respondents/defendants have argued that the present suit is not maintainable as it is barred by The Places of Worship (Special Provision) Act 1991.

22(ii). In the case of **Committee of Management Surjo Bai Balika Inter College Hathras Through Its Manager and another vs. Director of Education , U.P. Lucknow and others 2007 (67) ALR 344 Allahabad** it has been held that the in practice and Procedure, Courts of law are meant for imparting justice between the parties - One who comes to the Court, must come with clean hands - A person whose case is based on falsehood, has no right to approach the court- He can be summarily thrown out at any stage of the litigation.

22(iii). Clearly the courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come with clean hands. A person, whose case is based on a falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

22(iv). The attention of the Court was drawn by the respondents to Section 56

& 57 of the Indian Evidence Act, which provides that:

Sec.56- Fact judicially noticeable need not be proved.- No fact of which the Court will take judicial notice need to be proved.

Sec.57- Facts of which Court must take judicial notice.- The Court shall take judicial notice of the following facts:- All laws in force in the territory of India.

22(v). Ld. Counsels for Revisionists/Plaintiffs have argued that the relief claimed in the suit is not barred by the above provisions. They further argued that the provisions of the Places of Worship (Special Provisions) Act 1991 are being misconstrued and it is being stated that this suit is not maintainable in view of the provisions contained in section 4 of the said act. In paragraph 71 of the plaint, it has been mentioned that the provisions of the Places of Worship (Special Provisions) Act 1991 are not applicable in this case because of Section 4 (3)(b) of 1991 Act.

22(vi). It is relevant to mention Section 4 of the Places of Worship (Special Provisions) Act 1991.

Sec.4- Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc.

(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority.

Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall be disposed of in

accordance with the provisions of sub-section (1).

- (3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,-
- (a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;
- (b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2) finally decide, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;**
- (c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;
- (d) any conversion of any such place effected before such commencement by acquiescence;
- (e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.

22(vii). Hon'ble Supreme Court in the case of **Most Rev. P.M.A. Metropolitan and Others. Vs. Moran Mar Marthoma and Another 1995 Supp (4) Supreme Court Cases 286 (Para 44)** has held that suit for declaration will be maintainable.

22(viii). With regard to the entire property of Katra Keshav Deo, whether Shri Krishna Janma Bhoomi Seva Sangh had the power to enter into compromise with Trust Masjid Eidgah is a matter of evidence which can be determined only on the basis of the evidence adduced by both the parties during the trial.

22(ix). Hence, in light of the discussions made above and the legal tenets on the mentioned question, this Court is of the considered view that the provisions of The Places of Worship (Special Provisions) Act 1991 are not applicable by virtue of section 4 (3)(b) of the Places of Worship (Special Provisions) Act 1991.

23. **Findings on Question No.4 :**

4- Whether the plaintiffs are entitled to maintain the suit challenging the compromise Judgement and decree dated 20.07.1973 and 07.11.1973

passed in Civil Suit No. 43 of 1967 by Ld. Civil Judge, Mathura, on the ground of fraud, misrepresentation and collusion ?

23(i). Ld. Counsel for Respondent No.2 argued that the pathology of litigative addiction ruins the poor of this country and that the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases. Reference was made to the judgement **T.Arivandandam vs. T.V. Styapal 1977 AIR (SC) 2421**, in which Hon'ble Apex Court has observed that the learned Munsif must remember that if on a meaningful- not formal- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C, and if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.

23(ii). Ld. Counsel for Respondent No.2 further argued that while scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for the cause of action. The cause of action is a bundle of facts which, taken with the law applicable to them, give the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant, since in the absence of such an act, no cause of action can possibly accrue.

23(iii). Ld. Counsel for Respondent No. 1 has relied on case law

Relying on Para 5 of **S.P. Chengalvaraya Naidu vs. Jagannath 1994(1) SCC 1**, the relevant part is extracted below :-

The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, the process of the court is being abused.

Property-grabbers, tax-evaders, bank-loan-dodgers, and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on a falsehood has no right to approach the court. He can be summarily thrown out at any stage of the litigation.'

23(iv). Ld. Counsels for revisionists argued that commission of fraud on court and the suppression of material facts are the core issues involved in these matters. Fraud, as is well known, vitiates every solemn act. Fraud and justice never dwell together. It is also well established that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

23(v). Ld. Counsels for the Revisionists also argued and filed photocopies of the order passed by the court below along with an affidavit to demonstrate that the suit was filed by a society who was not the owner and had no power to enter into compromise with Trust Masjid Idgah. The parties to Civil Suit No. 43 of 1967, by playing fraud, obtained a decree on the basis of collusive and illegal compromise. Therefore, there is a cause of action to file the suit, and devotees have the right to file the suit. The attention of the Ld.Court below was drawn towards the trust deed and the fact that property in question had vested in the trust and society had no power to file the suit and to enter into compromise, and therefore, the collusive decree is liable to be set aside.

23(vi). It is further submitted that along with the documents in the Ld. Trial Court, the Judgement rendered in Case No. 74- **Misc. Case No. 234 of 1993 passed by the Then District Judge vide order dated 06.05.1994 has been placed on record. The aforesaid judgement was affirmed by the Hon'ble Allahabad High Court vide order dated 23.09.1997 reported in 1997 SC Online All pg. 690.**

23(vii).The Hon'ble Supreme Court in catena of decisions has interpreted the power of the court under Order VII Rule 11 of the C.P.C.

23(viii). Ld. Counsels for the revisionists/ plaintiffs have relied **on Kuldeep**

Singh Pathania vs. Bikram Singh Jaryal 2017 (5) SCC 345 (paras 5 to 10) and Shaukanthussain Mohammed Patel vs. Khatunben Mohammedbhai Polara 2019 (10) SCC 226 (para 6) and Saleem Bhai & Ors. vs. State of Maharashtra 2003(1) SCC 557 (para 9).

23(ix). It is further argued that in view of the averments made in the plaints, trivial issues arise which are required to be adjudicated. It is further submitted that there is a cause of action for filing the suit, and revisionists/plaintiffs have the right to file the suit for cancellation of the decree based on fraudulent and collusive agreements and by virtue of the provisions contained in section 44 of the Indian Evidence Act.

23(x). I have gone through the case law of **Chandro Devi And Others Vs. Union of India and others (2017) 9 Supreme Court Cases 469** wherein it has been held that fraud vitiates all actions taken consequent thereto and, as such, judgement based on fraud is liable to be set aside.

23(xi). In **Indian Bank vs. Satyam Fibres (India) Pvt. Ltd. 1996(5) SCC 550**, it has been held that the Judiciary in India also possesses an inherent power, especially under Section 151 CPC, to recall its judgement or order if it is obtained by fraud on the court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud.

23(xii). As far as the limitation period for the institution of said suit is concerned, it is pertinent to mention the principle laid down by the Hon'ble Supreme Court in **MD. Noorul Hoda vs. BB Rafunnisa 1996 (7) SCC 767** wherein it has been held that **Article 59 of the Limitation Act-** To cancel or set aside an instrument or decree or for the rescission of the contract- 3 years, when the facts entitling the Plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. On suit to set aside or cancel an instrument, a contract or decree on the ground of fraud, Article 59 is attracted.

23(xiii). Thus, from the discussions of the case laws propounded by the Hon'ble

Apex Court, it is clear that the judgement, decree, or order obtained by playing fraud on a court, tribunal, or authority is nullity and non-est in the eye of law and such judgement has to be treated as a nullity by every court.

23(xiv). As per plaint, the plaintiff's case is that the decree passed in Civil Suit No. 43 of 1967 by the Ld. Civil Judge, Mathura is liable to be cancelled because the same has been obtained by playing fraud and more so, Society Shri Krishna Janmasthan Seva Sangh was not the owner of the property as the property vested in the deity/Trust and therefore, said Society had no authority under law to file the Suit and enter into compromise with Trust Masjid Idgah. In substance, the relief prayed for is to cancel the decree on the ground that the decree is obtained by playing fraud and so it is a nullity in law.

23(xv). It is noteworthy to mention that the determination of these facts are possible only during the trial on the basis of the evidence adduced by both the parties to the suit.

24. **Findings on Question No.5 :**

5- Whether the impugned order suffers from manifest error of law and the Court below has failed to exercise the jurisdiction vested in it by law?

24 (i). Respondents 1 & 2 relied on **T. Arivandandam Vs. T.V. Satyapal, 1977 AIR (SC) 2421** where it has been held that the Ld. Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11 C.P.C. taking care to see that the ground cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 C.P.C.

24 (ii). In **Sri Hanumandas Totala Vs. Hemant Vithal Kamat Civil Appeal No. 4665/ 2021 Judgement Dated 9 August, 2021**, it has been held that the trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.

24 (iii). It has also been argued that the Court, while exercising powers under

Order 7 Rule 11 of the CPC, can not go into the allegations/pleadings raised by the defendants; only the pleas raised in the suit alone can be taken into consideration invoking the powers under Order 7 Rule 11 of the CPC.

24 (iv). On the other hand the Revisionists/Plaintiffs argued that in the plaint every fact has been clearly mentioned and all those can be proved by leading ocular and documentary evidence. The Ld. Court below was working in the capacity of an In-charge Civil Judge, Senior Division. In-charge Civil Judge can decide only urgent matters and it has no power to decide any case on merits.

24 (v). As in **Shaukathussain Mohammed Patel Vs. Khatunben Mohmmmedbhai Polara 2019 (10) SCC 226** it has been held that the entirety of the averments in the plaint has to be taken into account.

24 (vi). In support of their argument, Revisionists relied on **Mayar (H.K.) Ltd. and Others Vs. Owners & Parties, Vessel M.V. Fortune Express and Others. 2006(3) SCC 100** where it has been held that, the mere fact that in the opinion of the judge, the plaintiff may not succeed cannot be a ground for rejection of the plaint.

24 (vii). In **Kamal and Others Vs. K.T. Eshwara Sa and others 2021 SCC OnLine SC 565** it has been held that whether a plaint discloses a cause of action or not is essentially a question of fact.

24 (viii). Ld. Counsel for revisionists/plaintiffs also submitted that under the provisions of the CPC, plaintiff have the right to file documents on or before the framing the issues or at any stage under the orders of the Court. There is a provision under Order 26 Rule 10A of the CPC for making scientific investigations. A court trying a civil suit at the time of deciding a suit can visualise as to whether the plaintiffs had been able to prove their case or not, but at the initial stage, no presumption can be drawn against the plaintiffs regarding their capability to prove the case.

24 (ix). It is further submitted by Ld. Counsel for the Revisionists that The Ld. Court below, in para 6 of the judgement has mentioned that a compromise has

been entered into between Trust Masjid Idgah and Shree Krishna Janamasthan Trust, whereas the Plaintiffs have stated in the plaint that the compromise was made between Shri Krishna Janmsthan Sewa Sangh and Trust Masjid Idgah and Shri Krishna Janmasthan Trust, which was not party to the compromise and had not filed the suit.

24 (x). Ld. Counsel for Revisionists/Plaintiffs argued that the court below failed to appreciate the facts and pleas mentioned in the suit.

24 (xi). In light of the above contentions of Ld. Counsels, I perused Articles 25 and 26 of the Constitution and Order 7 Rule 11 of the CPC.

Article 25 : Right to Freedom of Religion :

Freedom of conscience and free profession, practice and propagation of religion.- Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Article 26 : Freedom to manage religious affairs:-

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right.

Order 7 Rule 11 of the CPC, prescribes the condition for rejecting the plaint at the threshold in the following conditions.

- (a) where it does not disclose a cause of actions;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule.

24 (xi). Provided that the time fixed by the court for correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

24 (xii). **In view of the proposition of law rendered by the Hon'ble Apex Court in the above cited cases, it is clear that at the admission stage and in exercising powers under Order VII Rule 11 of the CPC, Court can not look into the merits of the case.**

24 (xiii). The Hon'ble Supreme Court in **Most Rev. P.M.A. Metropolitan & Ors. vs. Moran Marthoma & Anr. 1995, Suppl (4) SCC 286.** (Reliance paid on paragraphs 28,29,33,36,38,43 and 44) has held that suit for declaration will be maintainable.

24 (xiv). In **Mayuram vs. CBI (2006) 5 SCC 752**, the Hon'ble Supreme Court has held that "To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience".

24 (xv). The Ld. Court below has erred in holding that plaintiffs have no 'Right to sue' without going into the averments made in the plaint and the principles laid down by the Hon'ble Apex Court in catena of decisions and also in the famous Ayodhya case titled as **M.Siddiq vs. Mahant Suresh Das & Ors. 2020(1) SCC 1 (reliance on paragraphs 443 to 458)**. The Ld. Court below has failed to take into consideration the scope of Section 9 of the CPC under which the dispute relating to the right to religion is included. A suit can be filed by the deity through the next friend/ worshipper for declaration of title and possession, and he can represent an idol when a shebait or manager of the temple is acting adversely to the interest of the deity.

24 (xvi). In **Alka Gupta vs. Narendra Kumar Gupta, AIR 2011 S.C. 10**

Hon'ble Supreme Court has held that the civil suit is to be decided in accordance with the law and provisions of the C.P.C. and not on the whims of the Court.

24 (xvii). After going through the case laws adduced by both the parties, in the opinion of this court, the plaint is to be read as a whole to find out, whether it discloses a cause of action or not. In other words, the entirety of the averments in the plaint has to be taken into account.

24 (xviii). In light of aforementioned discussion and in view of the facts and proposition of law referred above, it is apparent that the impugned judgement is based upon a wrong assumption of facts and non application of mind by the Ld. Lower Court. This Court is of the view that The Ld. Lower Court has committed illegality and manifest error in passing the impugned order.

24 (xix). Hence, the impugned order is liable to be set aside. Revision has substance and is liable to be allowed.

ORDER

Civil Revision No. 02/ 2021 is allowed.

The impugned order dated 30.9.2020 passed in Misc Case No. 176/ 2020 is hereby set aside.

Ld. Trial court is directed to hear both the parties and to pass appropriate order in light of the observation made by this Court in the instant Revision.

Let record be sent to Ld. trial court for further proceedings/ disposal according to law. Both the parties shall appear before Ld. trial court on 26.5.2022.

Date: 19.05.2022

(Rajeev Bharti)

District Judge,
Mathura.

ID: UP-6547

Judgement signed, dated and its operative portion pronounced by me in the open court today.

Date: 19.05.2022

(Rajeev Bharti)

District Judge,
Mathura.

ID: UP-6547