

Court No. - 6

Case :- CIVIL REVISION No. - 114 of 2022

Revisionist :- Smt. Laxmi Devi And 3 Otrs.

Opposite Party :- State Of U.P Thru Principal Sec.(Civil Sec.)
Lko. Nd 5 Otrs.

Counsel for Revisionist :- Prabhash Pandey

Counsel for Opposite Party :- C.S.C.

Hon'ble J.J. Munir,J.

The revisionists' who are plaintiffs of Original Suit No.18 of 2022, instituted for the purposes of enforcing the right to Darshan, Pooja, and all rituals of Maa Shringar Gauri, Lord Ganesha, Lord Hanuman and other visible and invisible deities situate at Settlement Plot No.9130, area and ward of Police Station Dashashwamedh Ghat, District Varanasi, have come up against the order of the learned District Judge, Varanasi dated 14.10.2022, rejecting their application Paper No.25 Ga. By the said application made under Order XXVI Rule 10(a) read with Section 151 CPC, the plaintiff-revisionists have sought the following material reliefs:-

"A). To make appropriate survey or undertake Ground Penetrating Radar (GPR) and/or excavation associating the petitioners to find out the nature of construction beneath the Shivlingam discovered on 16.05.2022 in the proceeding held by Advocate Commissioner at Settlement Plot No.9130 within the area of Ward and P.S. Chowk, District Varanasi.

B) To make scientific investigation by carbon dating or otherwise to determine the age, nature and other constituents of the Shivlingam as discovered on 16.05.2022 in the proceedings held by the Advocate Commissioner at Settlement Plot No.9130 within the area of Ward and P.S. Chowk, District Varanasi in accordance with the provisions of The Ancient Monuments and Archaeological Sites and Remains Act, 1958 and submit report in Court within the time provided by the Hon'ble Court."

This prayer came to be made as a sequel to the find by the Advocate Commissioner, who had earlier been appointed where

the Commissioner reported that a black stone structure was discovered submerged under water, which the plaintiffs said was a Shivlingam. The Advocate Commissioner opined that the find looks the way generally a big Shivlingam does. The applicant further seeks opinion of the Archaeological Survey of India through the issue of a Commission for scientific investigation to determine the age, nature and other constituents of the Shivlingam, employing methods such as Carbon Dating, Ground Penetrating Radar (GPR) and Excavation. The learned District Judge, Varanasi has rejected the aforesaid application primarily on the ground that the find by the Advocate Commissioner, which the plaintiffs claim to be a Shivlingam is required to be protected in terms of the Supreme Court's order dated 20.05.2022. The scientific examination sought may damage it.

Mr. Hari Shankar Jain, Advocate along with Mr. Vishnu Shankar Jain, learned Counsel appearing for the Revisionists submits that the order impugned is bad in law because it is based on *a priori* reasoning that a scientific investigation of the Shivlingam, claimed by the plaintiffs would lead to its damage and that would violate the Supreme Court's order. They urged that there is no basis to this apprehension because whether the Carbon Dating, Ground Penetrating Radar (GPR) and Excavation would indeed damage it can only be judged, based upon the opinion by the Archaeological Survey of India and not by assumption or conjecture.

Admit.

Issue notice to the respondents returnable on 21.11.2022.

Steps be taken by RPAD and Dasti to serve all the respondents.

Necessary notices shall be handed over by the office to the learned Counsel for the Revisionists indicating that the Revision shall be listed on 21.11.2022.

List for orders on **21.11.2022** along with a report regarding service and the postal track attached.

Learned Counsel for the Revisionists shall file an affidavit of service by the next date.

Order on Civil Misc. Stay Application No.1 of 2022

Issue notice.

In the meantime, let the Director General, Archaeological Survey of India, New Delhi, submit his opinion whether investigation of the structure found at site, subject matter of Original Suit No.18 of 2022 if examined through the methods of Carbon Dating, Ground Penetrating Radar (GPR), Excavation and other methods adopted to determine its age, nature and other relevant information is likely to damage it or a safe evaluation about its age can be done.

Let the said report be submitted by the Director General, Archaeological Survey of India, New Delhi by the next date fixed through the Registry.

In view of the assertion made by Mr. Hari Shankar Jain, Advocate at the Bar that the learned District Judge, Varanasi is proceeding with the suit and that may affect adversely the outcome of any possible scientific investigation by the Archaeological Survey of India, it is directed that the learned District Judge, Varanasi will fix a date in the suit **in the first week of December, 2022.**

Let this order be communicated to the Director General,

Archaeological Survey of India, New Delhi by the Registrar
(Compliance) **within 24 hours.**

Order Date :- 4.11.2022/NSC