

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil First Appeal No. 425/2014

1. Smt Indira Devi Wife of Late Shri Radhey Shyam (Since Deceased) through Legal Heir:-

1/1 Rajendra Kumar Sharma Son of Late Shri Radhey Shyam Sharma, Aged about 61 years, Resident of Arya Samaj Mandir Road, Devi Store ka Chauraha, Gangapur City, District Sawai Madhopur (Raj.)

-----Appellant

Versus

Deputy Collector, Gangapur City,

-----Respondent

Connected With

S.B. Civil Miscellaneous Appeal No. 399/1997

1. Hanuman S/o Baldevram, Since deceased through his legal representatives:

1/1. Madan Lal Son of Late Hanuman Prasad

1/2. Banwari Son of Late Hanuman Prasad

1/3. Rajendra Kumar S/o Late Hanuman Prasad

1/4. Rajesh Kumar S/o Late Hanuman Prasad

1/5. Vimla Devi daughter of Late Hanuman Prasad

1/6. Santra Devi daughter of Late Hanuman Prasad

2. Mohan Lal son of Baldevram since deceased through his legal representatives:

2/1. Satya Narayan s/o Late Shri Mohan Lal

2/2. Ratan Lal Son of Late Shri Mohan Lal

2/3. Sagar Mal s/o Late Shri Mohan Lal

2/4. Santosh S/o Late Shri Mohan Lal

All resident of Gangapur City, District Sawai Madhopur (Rajasthan)

-----Appellants

Versus

1. The Sub Divisional Officer, Gangapur City, District Sawai Madhopur (Rajasthan)

2. Mulchand S/o Sharvan Lal

3. Kamal Dass S/o Keshav Dass Brahmin

4. Ragahvdas S/o Shyam lal Mahajan

all Nos. 2 to 4 resident of Gangapur City, District Sawai Madhopur (Rajasthan)

5. Durga Devi w/o Ramjilal

6. Sarogini Devi W/o Suraj Narain Brahmin

7. Indra Devi W/o Radhey Shyam Brahmin

8. Girraj S/o Mishrilal Brahmin

9. Suraj Narain S/o Ramji Lal Brahmin

10. Radhey Shyam s/o Ramjilal

11. Jagdish s/o Ramjilal,

all r/o Ramgapur City, District Sawai Madhopur

12. Mst. Premdevi d/o Ramjilal w/o Kishan, presently R/o Mathura (UP)

-----Respondents

S.B. Civil Misc. Appeal No. 582/1997

1. Smt Sarojini Devi W/o Late Suraj Narayan (deceased) through LR's

1/1. Ashutosh Parashar S/o Late Sarojini Devi (deceased) through LR's

1/1/1. Savitiri Sharma W/o Late Ashutosh Parashar

1/1/2. Rekha Sharma D/o Late Ashutosh Parashar

1/1/3. Avinash Parashar S/o Late Ashutosh Parashar

1/1/4. Deepika Sharma D/o Late Ashutosh Parashar

1/1/5. Soniya Parashar D/o Late Ashutosh Parashar

1/2. Avdesh Kumar Parashar S/o Late Sarojini Devi

1/3. Hemlata Sharma D/o Late Sarojini Devi

1/4. Savitri Sharma D/o Late Sarojini Devi

1/5. Dinesh Parashar S/o Late Sarojini Devi (deceased) through Lr's

1/5/1. Dheeraj Parashar W/o Late Dinesh Parashar

1/5/2. Yoshiba Parashar D/o Late Dinesh Parashar

1/5/3. Somendra Parashar S/o Late Dinesh Parashar

-----Appellants

Versus

1. Raghav Das Goyal, Advocate, S/o Shri Shyam Lal

2. Kamal Das S/o Shri Keshav Das

3. Moolchand S/o Srawan Lal

All R/o Gangapur City

4. SDO- Sub Divisional Officer, Gangapur City,

5. Indira Devi W/o Radhey Shyam

6. Hanuman S/o Baldevram Khati

7. Mohan Lal S/o Baldevram Khati

8. Girraj S/o Shri Mishrilal

9. Surajnarayan S/o Shri Ramjilal (deceased)

10. Radhey Shyam S/o Ramjilal

11. Jagdish S/o Ramjilal

All R/o Gangapur City

-----Respondents

For Appellant(s)	:	Mr. S K Gupta, Sr. Advocate assisted by Ms. Surabhi Agarwal & Mr. Rahul Sharma (For appellant in CMA No.399/1997) Mr. Siddharth Bapna (For appellant in CFA No.425/2014) Mr. Harshad Kapoor (For appellant in Civil Misc. Appeal No.582/1997)
For Respondent(s)	:	Ms. Anita Agarwal with Mr. Laxmi Kant (For respondent In CFA No.425/2014, For respondent in CMA No.399/1997 & For respondent No.4 in Misc. Appeal No.582/1997)

HON'BLE MR. JUSTICE SUDESH BANSAL**Judgment****Judgment Reserved On****19.10.2022****Judgment Pronounced ON****December 22nd, 2022****BY THE COURT**

1. In all three appeals, order under challenge dated 05.04.1997 which came to be passed during execution proceedings of a common judgment and decree dated 16.12.1967 passed in S.B. Civil Regular First Appeal No.94 of 1960 titled Mangilal Vs. Smt. Druga Devi, whereby and wherunder a Civil Suit bearing No. 10/1953, instituted way back on 05.10.1953, which was decided on 04.03.1960, was decreed by High Court in civil regular first appeal.

2. All three appeals have been heard together and stand decided by this common judgment.

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

4. The relevant facts which are necessary to be noticed and as culled out from the available record are that the civil suit in respect of an immovable property, situated at Gangapur City District Swai Madhopur comprising a "bagichi", a "dharmshala", a "well" and a "Chatri" of idol Mahadev Ji etc. commonly known as Bhagat-Wali-Bagichi, was instituted way back on 05.10.1953 by three persons i.e. Mangilal, Ramprasad and Gopinath, in a representative capacity on behalf of general public of Gangapur City and after obtaining sanction of the Advocate General under Section 92 of the Code of Civil Procedure. It was stated that through a registered document dated 04th August 1936 (Exhibit-3), the suit property was entrusted to trust to be utilized for the

public, residence of travelers and *sanyasis* and Ramjilal (defendant No.1) and Sundarlal (defendant No.4) were appointed as trustees. The suit property was shown in site-plan (Exhibit X), annexed with the plaint. The suit was instituted alleging *inter alia* that plaintiffs have felt aggrieved by acts of trustees, to grab the trust property for their own use depriving the public at large to utilize the trust property and it was stated that trustees Ramjilal (defendant No.1) had executed a fictitious gift deed dated 04th July, 1953 (Exhibit 18) in favour of his wife Smt. Durga Devi (defendant No.2) and thereafter, also drew a fictitious trust deed dated 25th June 1953 (Exhibit 19) in favour of his son Surajnarain (defendant No.3). In respect of trustee Sundarlal (defendant No.4), it was stated that he had renounced his status as trustee and had left Gangapur City near about ten years ago. Therefore, plaintiffs instituted this civil suit in the public interest in representative capacity, for proper management of trust property and prayed for removal of defendant No.1 Ramjilal, defendant No.3 Surajnarain and defendant No.4 Sudarlal from their office as trustees and for seeking appointment of suitable persons in their place in whom trust property may be ordered to be vest and consequently prayer to declare the gift deed dated 04.07.1953 as null and void was also made. During course of first appeal, two plaintiffs i.e. Gopinath and Ramprasad passed away as well as defendant No.1 Ramjilal also passed away. Legal representatives of defendant No.1 were brought on record.

5. Initially, learned trial court dismissed the suit vide judgment dated 04.03.1960 which was challenged by plaintiff Mangilal by way of S.B. Regular First Appeal No.94/1960 titled Mangilal Vs.

Smt. Durga Devi before the Single Bench of Rajasthan High Court. The first appeal was allowed vide judgment and decree dated 16.12.1967 and the judgment of trial court was set aside. The judgment is reported in *[RLW (1968) Raj. 347]*. In the first appeal, after appreciation of entire on merits, the High Court has recorded a fact finding and in para 22, it has been held; that the whole of Bhagat-Wali-Bagichi and all the suit properties are the properties of a public trust; that defendant Ramjilal was trustee of the whole of that property and not merely for the *dharmshala* and; that the suit was maintainable for all the properties. The conduct of trustees Sunderlal and Suraj Narain was also found against the interest of trust properties and finally, following decree was passed in first appeal:-

“The appeal is allowed, the impugned judgment and decree are set aside and Suraj Narain defendant No.3 and Sunderlal defendant No.4 are removed as trustees. It is ordered that the entire suit property shall vest in a trustee to be appointed by the District Judge and the defendants are directed to deliver the property to the trustee so appointed. Gift deed Ex.18 is declared to be void and illegal and shall not affect the trust property. The appellant is allowed costs here and below.”

(Emphasis Applied)

6. The judgment and decree dated 16.12.1967 was challenged by the defendant No.2 Durga Devi as well as defendant No.3 Suraj Narain, by way of filing two separate D.B Civil Special Appeals No.4 & 5 of 1968 before the Division Bench. Both appeals were heard and decided on merits vide common judgment dated 25.01.1972, affirming the judgment and decree dated 16.12.1967. The judgment of Division Bench is reported in *[RLW*

(1972) Raj. 201] titled Suraj Narain Vs. Mangilal. Thus, the judgment and decree dated 16.12.1967 has attained finality. Counsel for both parties states that the original record of suit is not available hence facts have been gathered as statements in judgments and memo of appeals.

7. In compliance of the judgment and decree dated 16.12.1967, in the execution proceedings, learned Additional District Judge, Gangapur City vide its order dated 12.02.1979 has appointed trustees including Sub Divisional Magistrate (SDM), Gangapur City and other private persons namely Gulab Chand, Moolchand, Ramjilal, Kamaldas and Raghav Das. In the order dated 12.02.1979, it has been observed that the suit property shall henceforth vest in the appointed seven trustees, who will make proper arraignment of the trust property. The SDM, Gangapur City as a managing trustee will act as manager of the property and he is directed to take over charge of the property from defendants. Thus, it is obvious that the SDM, Gangapur City is an ex officio trustee of the trust property. The execution application was ordered to be posted for further order. The execution proceedings being execution No.5/1970 (43/1971) titled Mangilal Vs. Radheshyam were pursued for taking possession of the trust property. In the execution proceedings apart from defendants No.2, 3 & 4 (Durga Devi, Suraj Narain and Sunderlal), two sons and one daughter of deceased defendant No.1 i.e. Radheshyam, Jagdish & Smt. Prem, who had brought on record in the suit, after death of defendant No.1 Ramjilal, were also party. Objections were filed by Smt. Indra Devi, Hanuman & Mohan Lal,

Smt. Sarojani Devi and Girriaj Prasad, which were dismissed vide order dated 01.02.1978.

8. It has been stated that order dated 01.02.1978 has challenged by objectors/appellants by way of filing revision petition before High Court, but either of the counsel is not aware about the final fate of civil revision. Thereafter, warrant for possession was issued and when Court Nazir went at site to execute the warrant for possession, the present appellants-objectors resisted and objected the execution of warrant for possession, therefore, Court Nazir made a report dated 30.04.1978 stating that without assistance of Police, it is not possible to execute the decree for possession dated 16.12.1967.

At this juncture, the appointed trustees along with ex officio trustee SDM, Gangapur City, moved an application dated 19.12.1978 under Order 21 Rule 97 CPC, seeking police assistance in order to execute warrant for possession and take possession of the trust property. The application was registered as Civil Misc. Case No.14/1978 titled Gulab Chand Modi Vs. Durga Devi.

9. In the application, under Order 21 Rule 97 CPC filed by appointed trustees, objector-Indra Devi was impleaded as non-applicant No.3, objectors-Hanuman & Mohan Lal were impleaded as non-applicants No.4 & 5 and objector-Sarojani Devi was impleaded as non-applicant No.2. It may be noticed here that Indra Devi is wife of Radheshyam, who is a son of Ramjilal defendant No.1, it means judgment debtor, objector-Sarojani devi is a wife of Suraj Narain (son of Ramjilal) defendant No.3, it means judgment debtor, and objectors Hanuman & Mohan Lal

have not shown their fundamental status of acquiring possession over part of suit property.

10. The application under Order 21 Rule 97 CPC has resisted by objectors and reply was filed. It appears in their separate replies that all the objectors claimed their possession that of in their independent right as owner taking a plea that suit property is part of land of Khasra No.656, Village Namner, Gangapur City, which had been acquired by the State Government vide notification dated 20.12.1956 and therefore, possession of land was taken by Collector, who has handed over the property at the disposal of UIT, Gangapur City and since objectors were in old possession over their respective portion, therefore, UIT, Gangapur City has regularized their possession after receiving the nazarana and has issued Pattas. All the objectors alleged that property of Khasra No.656 is Nazrul land. The application under Order 21 Rule 97 CPC has opposed on merits by taking such plea as also other objections being barred by limitation and untenable. Learned executing court put objections on trial and as many as seven issues including issue of relief were framed:

Issue No.1, is in respect of the status of applicants as appointed trustees in compliance of the judgment and decree dated 16.12.1967 appointed by Additional District Judge, Gangapur City vide order dated 12.02.1979;

Issue No.2, is in respect of the report of Court Nazir dated 30.11.1978, resisting him by the objectors to execute the warrant for possession;

Issues No.3 & 4, is in respect of objections of objectors in application under Order 21 Rule 97 CPC being barred by limitation;

Issue No.5, is in respect of defence taken by objectors to oppose the application, alleging the suit property to be acquired by the State Government vide notification dated 20.12.1956;

Issue No.6, is in respect of the capacity and status of objectors to claim their possession over portion of the suit property as owner, and

Issue No.7, is in respect of relief.

Opportunity to adduce evidence to both parties were accorded and both parties adduced their evidence, oral and documentary. One of the trustees Guab Chand has deposed his evidence as AW-1. Statements of Court Nazir were recorded as AW-2 and one witness of Nazir report dated 30.11.1978, appeared as AW-3. In rebuttal, from the side of objectors, Joharilal as NAW-1, Ramswaroop as NAW-2, Sarojni Sharma as NAW-3 and Mohan Lal as NAW-4 have appeared.

11. As far as issues No.3 & 4, pertaining to filing the application under Order 22 Rule 97 CPC within limitation or not, are concerned, both the issues were decided by a separate order dated 24.07.1981 and objection of limitation was rejected and application was held to be filed within limitation. Other issues no. 1, 2, 5, 6 & 7 have been decided on merits vide order impugned dated 05.04.1997.

12. In the order dated 05.04.1997, learned executing court has observed that applicants have been appointed as trustees of the

trust property vide order dated 12.02.1969 by the Additional District Judge, Gangapur City pursuant to directions of the High Court in judgment and decree dated 16.12.1967. Report of Court Nazir dated 30.11.1978 (Exhibit-2) in respect of creating obstructions/resistance in execution of the warrant for possession has been proved by Court Nazir Dayal Ram (AW-2) & Prahald Chand, witness of report (AW-3).

13. In respect of issue No.5, pertaining to acquisition of the suit property by the State Government vide notification dated 20.12.1956, it has been held that the suit property was exempted from the acquisition, and its possession was never taken by the Collector, being constructed property of trust and surrounded by the *pakka* four boundaries, in view of the order of Collector dated 03.09.1961 (Exhibit-NAW3). In respect of issue No.6, regarding possession and status of objectors as owner, it has been held that the suit property is trust property and was not acquired by the State Government, and objectors could not prove their independent status having possession as owner over respective portion of the trust property. Finally, objections of objectors were turned down and application under Order 22 Rule 97 CPC has been allowed vide impugned order dated 05.04.1997, providing police assistance to applicants/trustees/decreed holder to execute warrant for possession in order to deliver the vacant possession of trust property to the trustees and the same is under challenge in all three appeals.

14. In all these appeals, objectors have raised a common defence that suit property is part of a land of Khasra No.656 which was acquired by the State Government vide notification dated

20.12.1956 and the Collector had taken possession of the acquired property and same had been entrusted to the UIT, Gangapur City for disposal. Thus, the suit property has taken character of a nazul property and the UIT, Gangapur City has regularized possession of objectors. Appellant/Objector-Indra Devi claimed that she is in possession of a patore, chowk and a WC, within her own rights and her possession has been regularized by the UIT, Gangapur City on 03.11.1970 after receiving regularization charges. Appellants/Objectors Hanuman and Mohan Lal claimed that they are in possession of Patore, tin shed portion and open land of ward No.14, Gangapur City and their possession has been regularized on 07.01.1992 as such they cannot be dispossessed. Appellant/Objector Sarojani Devi claimed that she is in possession over an area of 113 and 33 Sq. Yards and her possession has been regularized. Learned counsel for appellants have argued that the possession of appellants over their respective portions, is in their own capacity as owner being regularized by the UIT, Gangapur City and they are not protecting their possession through the judgment debtors.

15. Advocate Mr. Siddharth Bapna, who is appearing in CFA No.425/2014 for appellant, has raised an argument that when the land of Khasra No.656 in Village Namner has been acquired by the State Government vide notification dated 20.12.1956, de-acquisition could have been declared only by way of an another notification by the government by virtue of Section 48(1) of the Land Acquisition Act, and the order of Collector dated 03.09.1961, keeping properties of temples, mosques and places of worships

where *pakka* constructions are there, out of acquisition has no legal importance.

In support of his contentions, counsel has placed reliance on following judgments:

Pimpri Chinchwad New Township Development Authority Vs. Vishnudev Cooperative Housing Society [(2018) 2 SCC 215];

Shanti Sports Club Vs. Union of India [(2009) 15 SCC 705];

Murari Vs. Union of India [(1997) 1 SCC 15];

State of Maharashtra Vs. Umashankar Rajabhau [(1996) 1 SCC 299] &

Satendra Prasad Jain Vs. State of U.P. [(1993) 4 SCC 369]

16. During course of appeals, it appears that private trustees appointed by the Additional District Judge, Gangapur City vide order dated 12.02.1969, have passed away and appeals have been contested by the SDM, Gangapur City, who is ex officio nominated manager trustee.

17. Learned counsel appearing on behalf of Manger Trustee has argued that appellants/objectors are in unauthorized possession over the part of suit property, which has been held as trust property. Vide notification dated 20.12.1956, properties situated at Village Namner was acquired which has not concerned with the suit properties belonging to the trust and further properties of temples, mosques and other properties of such nature, constructed properties were exempted from acquisition and possession was never taken by the Collector, therefore,

objectors/appellants are not entitled to protect their illegal and unauthorized possession over the trust properties, taking resort of the acquisition of the land of Khasra No.656. The regularization, if any made by the UIT Gangapur City, the same does not confer any independent title upon objectors as at first instance such regularization of objectors is of post period to the judgment and decree dated 16.12.1967 and secondly, they step in the shoes of their predecessors, who are judgment debtors. Hence appellants/objectors filed these appeals just to delay the execution of warrant for possession and the same are devoid of merits and deserve to be dismissed.

18. Heard & considered.

19. Here it may be noticed that order impugned dated 05.04.1997 has been passed by the Court of Additional District Judge, Gangapur City on the application under Order 21 Rule 97 CPC, and all questions arising between the parties have been determined following the procedure of Rule 101, after framing issues and recording evidence of both parties and impugned order is a deemed decree by virtue of Rule 103 of Order 21 CPC, hence amenable to be challenged by way of appeal, before the High Court. The appeal filed by objector Smt. Indra Devi has initially registered as Civil Misc. Case No.364/1997, but later on, after filing application, the same was converted vide order dated 11.08.2014 to be registered as civil first appeal, hence has been registered as civil first appeal No.425/2014. Other two appeals are registered as civil misc. appeals. Though objector Indra Devi filed appeal in the nature of civil (execution) first appeal. In CMA No.399/1997, an application has been filed to convert and register

it as civil first appeal, but this Court is of the opinion that since in all the these appeals, impugned order under challenge is common and same that is dated 05.04.1997 allowing application under Order 21 Rule 97 CPC, therefore, this Court shall consider all these appeals within the scope of appeal, as permissible within scope of Order 21 Rule 103 CPC, irrespective of nomenclature of appeals as civil first appeal or civil misc. appeals.

20. On merits, at the outset, this Court finds that there is no dispute that in the judgment and decree dated 16.12.1967, passed by Single Bench of Rajasthan High Court in regular first appeal No.94/1960 the suit property has been held as trust property and earlier trustee Ramjilal (defendant No.1) has passed away, Suraj Narain (defendant No.3) and Sunderlal (defendant No.4) were removed as trustees of trust property and District Judge was directed to appoint new trustees to maintain and look after the trust property and a clear right was given to the newly appointed trustees to take possession of trust property. This judgment and decree dated 16.12.1967 has been affirmed by the Division Bench while dismissing DB Civil Special Appeal No.4/5 of 1968 vide judgment and decree dated 25.01.1972. This is not in dispute that in compliance of the judgment and decree dated 16.12.1967, the Additional District Judge, Gangapur City vide Order dated 12.02.1969 has appointed new seven trustees including the SDM of Gangapur City as Chief Manager Trustee. As far as findings recorded by the executing court in respect of issues No.1, 2, 3 & 4 vide impugned order dated 05.04.1997 and order dated 24.07.1981 are concerned, same have not been questioned

during course of arguments and therefore, only challenge to the findings of issues No.5 & 6 falls for consideration in these appeals.

21. From the record it appears that in respect of suit property of trust, the civil suit was laid way back on 05.10.1953 for seeking removal of the then trustees as much as for declaration of gift deed executed by trustee Ramjilal (defendant No.1) in favour of his wife as null and void and for appointment of new trustees to manage and use the suit property for the purpose of trust, was initially dismissed by the trial court vide judgment dated 04.03.1960 and thereagainst, S.B. Civil Regular Appeal No.94/1960 titled Mangilal Vs. Durga Devi was instituted before the High Court. The first appeal was allowed and while setting aside the judgment and decree of trial court, suit was decreed vide judgment and decree dated 16.12.1967 and as reflect from the judgment that the trustee Ramjilal has already passed away, other trustees defendant No.2 Suraj Narain, trustee Sundarlal were ordered to be removed and new trustees were ordered to be appointed by the District Judge as well as defendants were directed to deliver the possession of suit property to the newly appointed trustees. The judgment and decree dated 16.12.1967 has attained finality after affirming by the Division Bench vide judgment and decree dated 25.01.1972. It is not in dispute that as far as appointment of new trustees is concerned, in compliance thereof, new trustees have been appointed by the Additional District Judge, Gangapur City vide order dated 12.02.1969. Among the newly appointed trustees, SDM, Gangapur City is ex officio manager trustee who has been entrusted to take charge of the trust property and manage the same in the interest of public

as well as for the residence of travelers and sanyasis. The execution of judgment and decree dated 16.12.1967, to the extent of removal of objectors (present appellants herein) is pending. It is also clear from the record that previously objections as to non-appointment of new trustees by the District Judge and appointment by the Additional District Judge, objections in respect of non-registration of the trust as is required under Section 29 of the Rajasthan Public Trust Act, 1959 and non impleadment of Commissioner Devsthan as party in the present suit in view of Section 44 of the Rajasthan Public Trust Act, 1959 have already been turned down on merits by the Rajasthan High Court, in civil revision petition No.335/1983 titled Sarojni Devi Vs. Gulab Chand vide order dated 31st August, 1987.

22. Appellants-objectors, while opposing the application under Order 21 Rule 97 CPC moved by the newly appointed trustees to seek police assistance in order to take possession of the suit property, have taken a plea that the suit property has been acquired by the State Government vide notification dated 20.12.1956 and thereafter, Collector has taken possession and handed over the property for disposal at the hands of Urban Improvement Trust, Gangapur City. The UIT, thereafter has acknowledged the old possession of the objectors and after receiving the *nazarana shulk*, regularized their possession by issuing the *pattas*. Objector-appellant Indra Devi claimed that regularization of her possession over patore, chowk and WC on 03.11.1970, appellant-objectors Hanuman and Mohan Lal claimed to regularize their possession over tin shaded and open land by UIT on 07.01.1992 and appellant-objector Sarojni Devi also

claimed regularization of her possession over an area of 113 and 33 Sq. yards in her land out of suit property after decreeing suit vide judgment dated 16.12.1967. The suit was instituted way back on 05.10.1953 and if by way of notification dated 20.12.1956 of the State Government, suit property would have been acquired and possession had been taken by the Collector in pursuance of acquisition, there was no occasion to contest suit by the then trustees defendants. The suit was dismissed on merits by the trial court vide judgment dated 04.03.1960 and thereagainst plaintiff filed first appeal No.94/1960. At the stage of first appeal, suit was decreed vide judgment and decree dated 16.12.1967, defendants No.2 and 3, challenged the judgment and decree date 16.12.1967 by way of two separate special appeals before the Division Bench and both appeals were decided on merits vide common judgment dated 25.01.1972, affirming the judgment and decree dated 16.12.1967. From perusal of judgment and decree dated 16.12.1967 as well as judgment dated 25.01.1972, passed by the hon'ble Single Bench and Division Bench of High Court, it appears that there is no whisper that the suit property was at any point of time came under acquisition by the State Government vide notification dated 20.12.1956. Therefore, this Court assumes that defendants never took such defence/plea that the suit property was acquired during course of suit, vide notification dated 20.12.1956 and such plea was neither taken at the stage of first appeal nor at the stage of special appeal before the Division Bench and has been raised by the legal heirs of defendants, to oppose the execution of warrant for possession in execution of the judgment and decree dated 16.12.1967.

23. It is not in dispute that as far as appellant-objector Indra Devi is concerned, her husband Radheshyam was party in the suit being son of the original trustee Ramjilal (defendant No.1) and after his death, Radheshyam was impleaded. As far as appellant-objector Sarojni Devi is concerned, her husband Suraj Narain was original defendant No.3 in the suit and he was removed from the trustee and directed to deliver the possession vide judgment and decree dated 16.12.1967. As far as appellants-objectors Hanuman and Mohan Lal are concerned they could not show their fundamental source of acquiring the possession over the portion of suit property. The present suit has already been instituted on 05.10.1953. It is stated in the suit that original trustee Ramjilal (defendant No.1), in order to grab the property of trust, executed gift deed in favour of his wife and transferred possession of portion of suit property to some persons. In the final judgment and decree dated 16.12.1967 entire suit property has been held property of trust and the gift deed has been declared as null and void. From the record, it appears that few private persons claimed their independent possession over the part of suit property and filed suit for declaration bearing No.5/1971. This suit was rejected holding that persons cannot claim any right on the property of trust in view of the judgment and decree dated 16.12.1967. Having appreciate all such factual aspects, the executing court in the order dated 05.04.1997 has recorded a fact finding that the objectors/appellants do not have any possession over the part of suit property in the capacity of their own as owner, but have stepped in the shoe of judgment debtors. It may also be noticed that the objectors appellants, before opposing the application

under Order 21 Rule 97 CPC, instituted their objections independently taking the same plea of acquisition of the suit property but their objections were dismissed by the executing court as not maintainable vide order dated 01.02.1978. It has been stated that the order dated 01.02.1978 was challenged by the objectors by filing separate several revision petitions before the High Court, but either of the counsel is not in a position to state the final fate of the revision petitions.

24. As discussed hereinabove, the only basis of the objectors appellants to raise the objection that the suit property was acquired by the State Government vide notification dated 20.12.1956, is that the suit property is part of land of Khasra No.656, Village Namner and the same was acquired vide notification date 20.12.1956. First of all, no such defence of acquiring the suit property by the State Government was taken during course of trial or at the stage of first appeal or at the stage of special appeals before Division Bench and secondly, there is no sufficient evidence on record to prove that the suit property which has been held property of trust was acquired by the state government and possession was taken by the Collector, pursuance to the notification dated 20.12.1956. Rather on the contrary, from the order/letter of Collector dated 03.09.1961, it is apparent that the properties of temple, mosques and religious purposes having construction were exempted from acquisition and their possession was never taken by the government. The appellants objectors could not substantiate their plea of acquisition of the suit property by the State Government by adducing sufficient evidence. Plea of acquisition of the suit property of trust has never taken during

trial or in first appeal and at the stage of special appeals before the Division Bench, and has been taken first time during execution proceedings. If the suit property was acquired by the Government, then its compensation should have been assessed and paid, but there is no evidence that any compensation was determined and paid by the State Government against the suit property. Therefore, resistance by the objectors/appellants to the extent of warrant for possession on the plea of acquisition of suit property is baseless and unfounded. Even if the possession of the objector appellant over part of suit property has been regularized by the UIT, Gangapur City, during course of present lis, more particularly after decreeing the present suit, the same is of no consequence and do not affect the merits of judgment dated 16.12.1967. In Such view of facts, the executing court has rightly observed that suit property which is of trust property was never acquired by the State Government vide notification dated 20.12.1956 and even if it is assumed that over part of Khasra No.656, if any acquisition was made then the suit property which comprises a bagichi, a dharmshala, a well and chatri of idol Mahadev Ji, which is surrounded by pakka boundary wall as shown in the site map (Exhibit X) appended with the plaint, the same was exempted from the acquisition and possession was never taken by the Collector, as stated in the order of Collector dated 03.09.1961. For such reasons, arguments raised by the counsel for appellants that once the property was acquired, the same could not have been de-acquisized without following the process under Section 48(1) of the Land Acquisition Act, does not attracted in the facts of present case.

25. For discussions made hereinabove, this Court finds that the executing court has not committed any illegality and perversity in deciding issues No.5 and 6 against appellants-objectors and this Court affirms the fact findings of the executing court recorded in the order impugned dated 05.04.1997.

26. As a result, all three instant appeals are devoid of merits and the same are hereby dismissed. There is no order as to costs.

27. All pending application(s), if any, also stand(s) disposed of.

28. Record of court below be sent back.

(SUDESH BANSAL),J

SACHIN



सत्यमेव जयते