APPELLATE CIVIL.

Before Khosla and Harnam Singh, JJ.

1952

May 1st

PANNA LAL AND ANOTHER,—*Plaintiffs-Appellants*

versus

PUJ HARSH RISHI,—*Defendant-Respondent*

Regular First Appeal No. 228 of 1947.

Religious and Charitable Endowment—Proof of—No evidence of dedication—User—Requirements of—Property acquired and held by Puj *Jains of Amritsar and known as Upasra, whether endowed property.*

Held, that in the absence of any evidence of dedication in order to prove that the Upasra is a religious and charitable endowment of the Jain community, it has to be established that the Jain community or the Jain monks have been using the same as of right for public purposes. The circumstances, namely that the property was acquired and always held by Jain *Pujs*, is known as an Upasra, has devolved from *Guru* to *Chela* and has been used for the recitation of *Katha* do not singly or collectively furnish sufficient evidence of user of the Upasra as religious and charitable endowment.

Puj *Maya Rishi* alias *Multani Ram* v. *Ram Chand* (1), *Raghbir Lal and others* v. *Mohammad Said and others* (2), relied on.

Regular First Appeal from the decree of Shri Ram Lal, Sub-Judge, 1st Class, Amritsar, dated the 2nd April, 1947, dismissing the plaintiffs' suit and leaving the parties to bear their own costs.

S. D. BAHRI, for Appellants.

A. N. GROVER, for Respondent.

(1) 1945 P.L.R. 404.
(2) A.I.R. 1948 P.C. page 7.

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JUDGMENT

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HARNAM SINGH, J. Panna Lal and Piara Lal appeal from the decree passed on the 2nd of April, 1947, in civil suit No. 326 of 1943, whereby the Court of first instance dismissed that suit leaving the parties to bear their own costs.

On the 12th of April, 1943, Panna Lal and Piara Lal instituted civil suit No. 326 of 1943 under section 92 of the Code of Civil Procedure to obtain a decree removing *Puj* Harsh Rishi from the office of trustee of the trust known as Upasra Pujan situate in Kucha Tewarian, Amritsar City, for appointing a committee of management of trust, vesting the trust property in the committee of management and directing accounts. In the plaint the plaintiffs maintained that the building bearing *Khana Shumari* Nos. 3619|11 and 3620|11 is a public religious institution of Swetamber Moorti Pujak Jains of Amritsar, that shop bearing *Khana Shumari* No. 8|11, shop bearing *Khana Shumari* No. 3986|11 and house bearing *Khana Shumari* No. 3667|11 are attached to the institution and that the defendant was a trustee of that institution. In paragraph 9 of the plaint grounds for the removal of the defendant from the office of trustee are given.

Puj Harsh Rishi, defendant, resisted the suit pleading that there was no public religious trust known as Upasra Pujan in Kucha Tewarian, that *Puj* Kesho Rikh was the sole and full owner of the property mentioned in paragraphs Nos. 1 and 2 and 4 (*b*) and (*c*) of the plaint and that the property described in sub-clause (*a*) of para 4 of the plaint was acquired by the defendant from his personal income and had been sold by him. In the written statement it was stated that the property described in paragraph 4 (*c*) of the plaint had been sold in execution of the mortgage decree passed against the defendant in civil suit No. 17 of 1942.

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On the 15th of June, 1943, the Court of first instance stayed the suit pending the decision of civil appeal No. 37 of 1943 by the District Judge. That appeal was decided on the 15th of May 1944, but the plaintiffs preferred an appeal in that case in the High Court and the proceedings in civil suit No. 326 of 1943 were stayed pending the decision of Regular Second appeal No. 1169 of 1944. Copies of judgments, Exhs. D. C. and D. B., show that the suit out of which Regular Second Appeal No. 1169 of 1944 arose was for declaration that the house described in paragraph No. 4 (*c*) of the plaint belongs to the Upasran Pujan and being *wakf* was not liable to sale in execution of the decree of Nand Lal and *Mst.* Ram Rakhi against *Puj* Harsh Rishi. Panna Lal and Piara Lal, plaintiffs-appellants, in these proceedings, were the plaintiffs in civil suit No. 17 of 1942 and Puj Harsh Rishi was defendant No. 3 in that suit.

Proceedings in civil suit No. 326 of 1943 were revived on the 22nd of February 1946. On the last-mentioned date counsel for the plaintiffs stated that inasmuch as the plaintiffs' suit with regard to house No. 4667|11 has been dismissed, civil suit No. 326 of 1943 should be deemed to be dismissed with regard to the house described in paragraph No. 4 (*c*) of the plaint.

On the pleadings of the parties the Court of first instance fixed the following issues :—

(1) Is there an Upasra Pujan in Amritsar in Kucha Tewarian ?

(2) Is it a public religious trust of Swetambar Moorti Pujak Jains of Amritsar ?

(3) Is the defendant a trustee of that trust ?

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(4) Is the property in suit trust property?

(5) If issues Nos. 1 to 4 be proved, is the defendant not liable to removal from the possession of the property?

(6) Relief.

In deciding civil suit No. 326 of 1943 the Court of first instance has found that the house bearing *Khana Shumari* Nos. 3619|11 and 3620|11 is known as the Upasra Pujan, that the defendant and his predecessors were Jain *Pujs*, that the defendant and his predecessors were not ascetics and earned their livelihood by the practice of medicine and money-lending business, that the property described in paragraph No. 4 of the plaint was not endowed property and that house bearing *Khana Shumari* Nos. 3619|11 and 3620|11 was not public *wakf* either by user or by dedication. Finding against the plaintiffs on issues Nos. 1 to 4 the Court of first instance has dismissed the suit leaving the parties to bear their own costs.

From the decree passed by the Court of first instance on the 2nd of April. 1947, plaintiffs appeal.

By the judgment passed on the 29th of November. 1945, Exh. D. B., the Court came to the conclusion that the house bearing *Khana Shumari* Nos. 3637|11 described in paragraph No. 4 (*c*) of the plaint was not endowed property and on the 22nd of February 1946, counsel for the plaintiff stated that the plaintiffs' suit with regard to house No. 3637|11 may be deemed to be dismissed. Indisputably, house No. 3637|11 was not endowed property.

In paragraph No. 4 of the written statement the defendant pleaded that he purchased with his own funds the shop bearing *Khana Shumari* No. .8|11 described in paragraph No.4 (*a*) of the plaint and

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that he had sold that shop for consideration and necessity. In paragraph No. 2 of the replication the plaintiffs maintained that the shop described in paragraph No. 4 (*a*) of the plaint had not been purchased by the defendant. Panna Lal, plaintiff, gave evidence that one of the shops in suit was purchased by the defendant. *Puj* Harsh Rishi, stated :—

> "I had purchased one of the shops in suit in 1939, which I have now sold off. I had purchased that shop from my income as a vaid and business."

Puj Harsh Rishi was not cross-examined on the point and there is no rebuttal. Clearly, the shop described in paragraph No. 4 (*a*) of the plaint was not endowed property but was the property of the defendant.

In paragraph No. 4 (*c*) of the written statement the defendant maintained that the property described in paragraph No. 4 (*b*) of the plaint was not endowed property. By sale deed, Exh. D. 20, Kanahaya Rikh purchased the property described in paragraph No. 4 (b) of the plaint from *Mst.* Kesra Devi on the 10th of January, 1865. No attempt was made to show that Kanahaya Rikh purchased the shop with public funds or had treated the shop as *wakf* property. That Kanahaya Rikh was a physician of repute and did money-lending business is established by the documents, Exhs. D. 25 and D. 14. *Lala* Utam Chand, P. W. 22, admitted that Kesho Rikh practised medicine and used to charge fees for his attendance on patients.

From what I have said above it is plain that the Court of first instance came to a correct decision on issue No. 4. That being so, the questions that remain for consideration are, (*1*) whether there is an Upasran Pujan in Amritsar in Kucha Tewarian and (*2*) whether the Upasran is a public religious trust of

Swetambar Murti Pujak Jains of Amritsar with *Puj* Harsh Rishi, defendant, a trustee of that trust?

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Plaintiffs maintained in paragraphs 1 and 2 of the plaint that the house bearing *Khana Shumari* Nos. 3619|11 and 3620|11 is a public religious trust of the Jain community, used for the residence and abode of the *Pujs* and for the purpose of public worship and for the purpose of recitation of religious books. *Puj* Harsh Rishi, defendant, does not admit the averments contained in paragraphs Nos. 1 and 2 of the plaint and maintains in the evidence given by him that the house was purchased in *Sambat* Bikrimi 1891. Plaintiffs who have examined no evidence to show who purchased the property described in paragraphs Nos. 1 and 2 of the plaint based their claim on the following facts:—

(1) that the property was acquired by Jain *Pujs*;

(2) that the property has always been held by the *Pujs* and is known to be an Upasra:

(3) that the property has devolved from *Guru* to *Chela* from the time of Kanahaya Rikh; and

(4) that the Upasra had been used for the recitation of *Katha* from the time of Kanahaya Rikh.

As stated above, Kanahaya Rikh who purchased the property in dispute practised medicine and did money-lending business. On this point the evidence given by *Lala* Mohan Lal, P. W. 2, *Lala* Harbhagwan Das, P. W. 3, and *Lala* Bisakhi Ram, P. W. 4 and Exh. D. 14 may be seen. Sale deed, Exh. D. 15, shows that Sham Singh and Sawan Singh sold the house in suit to Dip Chand, Harnam Rikh and Kanahaya Rikh for

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Rs. 300. In the sale deed there is no indication that Dip Chand, Harnam Rikh and Kanahaya Rikh acquired the house in suit with public funds. Indeed, there is no evidence as to the source of the purchase money paid by Dip Chand, Harnam Rikh and Kanahaya Rikh, vendees, to Sham Singh and Sawan Singh, vendors. That being so, the plaintiffs have failed to show that the purchase price was the money of the Swetamber Jains of Amritsar Town. As already mentioned, plaintiffs based their claim not on dedication but on the facts set out at Nos. 1 to 4 in the preceding paragraph.

That Kanahaya Rikh, Harkishan Rikh and Kesho Rikh were Jain *Pujs* is amply established by documents, Exhs. P. 15|4, D. 1, D. 4, D. 10, D.26 and D. 28. In Exhs. P. 1, D. 11|A, D. 12|A, D. 5, D. 6 and D. 9, the defendant is described to be *Puj*. Again, it is not disputed in these proceedings that Jain *Pujs* are normally persons who have renounced the world and have given up all their worldly belongings. In Exh. P. 2|1 the house in question is referred to be an Upasra and the Court of first instance has found that the house is known as Upasra and Kanahaya Rikh, Harkishan Rikh, Kesho Rikh and Harsh Rishi belonged to that class of Jains known as *Pujs*.

In the Court of first instance the plaintiffs examined evidence that because the defendant and his predecessors were *Pujs* and the building was known as an Upasra there was Public trust. In the evidence given by the witnesses examined by the plaintiffs it was stated that an Upasra is *wakf*. In cross-examination Doctor Benarsi Das, P. W. 1, admitted that even the house of non-Jain can be an Upasra and if a *Puj* takes a house on rent and begins to live in it the house will be an Upasra.

Now, the house in suit is a four-storeyed building with paintings of Lord Krishna, Lord Vishnu, Guru Nanak Dev Ji and Shiv Ji. In this connection the evi-

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dence given by Lala Mohan Lal, P. W. 2, and *Puj* Harsh Rishi, defendant, may be seen. No witness has, however, given evidence that he ever saw painting of any Jain god and there is no satisfactory evidence that there was at any time any idol in this house which is claimed to be a temple of *Murti* Pujak Jains.

In Regular First Appeal No. 1169 of 1944 the plaintiffs contended that the parties were Swetamber Jains, that the property had been held by *Pujs*, that the property was acquired by the *Pujs* and that the property had devolved from *Guru* to *Chela*. On those facts Sir Abdur Rehman, J., said :—

> "The first circumstance was that the parties were Swetambar Jains and that the property had always been held by the *Pujs*, i.e., Jain ascetics. That by itself cannot lead me to any conclusion particularly when it is admitted that the property in suit had never been used for any religious purpose. The fact that the *Pujs* had been living in this house could not show that the property was dedicated.
>
> The next circumstance on which reliance was placed was that the property was acquired by *Pujs*. There is first of all no evidence on the record as to when and by whom it had been acquired ; but even assuming, without conceding that the property was acquired by *Pujs*, its mere acquisition by one of them would not make it a dedicated property. It has been so held by their Lordships of the Privy Council in a number of decisions to which reference was made by Division Bench of this Court in *Puj Maya Rishi* alias *Multani Ram* v. *Ram Chand* (1). It is unnecessary to refer to those decisions in this case. The third circumstance was that the property had

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devolved from *Guru* to *Chela* on four occasions at least. That again has been held by their Lordships of the Privy Council to be inconclusive. It may have some importance but it cannot lead one necessarily to the conclusion in favour of the appellants. Circumstances to be of any value must be unambiguous."

In Regular Second Appeal No. 1169 of 1944 the question that arose for determination was whether the house described in paragraph No. 4 (*c*) of the plaint in Civil Suit No. 326 of 1943 was endowed property. In these circumstances I am clear that the circumstances set out at Nos. 1, 2 and 3 above are wholly inconclusive and do not show the religious character of the property.

In Puj *Maya Rishi* alias *Multani Ram* v. *Ram Chand* (1), Harries C.J. (Mahajan, J., concurring) said :—

"The mere fact that the person acquiring property in dispute is an ascetic does not establish that he acquired the property for religious purposes, though it is a circumsance that ought to be taken into consideration in determining whether it is religious or secular. The reason is, a man's religious opinions or professions do not make him incapable in law of holding property."

In the same judgment it was said that the descent of property from *Guru* to *Chela* does not warrant the presumption that it is religious property and that in considering whether the property acquired by a Jain *Puj* is religious or secular, in the absence of any direct evidence of dedication, the nature of the user of the property by the Jain community or Jain monks and

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whether such user, if any, was as of right or by permission and the length of time during which the user is suggested, have to be considered. Clearly, the house in question called Upasra would not be a public religious trust unless there was evidence of dedication or of user by the public as of right. In the present case *Puj* Harsh Rishi was not the *chela* of *Puj* Kesho Rikh and succeeded to him on the basis of the will, Exhibit D. 1.

Admittedly, there is no evidence of dedication and the case of the plaintiffs-appellants rests mainly on the evidence of user.

In order to prove that the Upasra is a religious public trust of the Jain community the plaintiffs have to establish that the Jain community or the Jain monks have been using the Upasra *as of right for public purposes.* In the present case there is not a syllable in the evidence given by the witnesses for the plaintiffs about the user of the Upasra by the Jain community or Jain monks *as of right.*

Lala Bisakhi Ram stated when the *Puj* went out the house was locked from outside and that he did not know whether there was any restriction on any *Puj* for the period he could stay out. To similar effect is the evidence given by other witnesses. Hans Raj, P. W. 20, said—

> " I cannot say whether the property purchased by a *Puj* belongs to him or to the Upasra. There is no Jain text on that point. An Upasra is *dharamarth.* A *Puj* cannot restrain a Jaini from going into an Upasra."

Hans Raj, P. W. 20, has given no evidence that the members of the Jain community perform *Katha* and offer prayers in the Upasra in question as of right. The evidence that a *Puj* cannot restrain a Jaini from going into an Upasra does not prove that the

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members of the Jain community performed *Katha* and offered prayers in the Upasra in suit as of right.

Lala Mohan Lal Jain, *Lala* Harbhagwan Das and *Lala* Bisakhi Ram stated that *Puj* Hari Kishan and *Puj* Kesho Rikh practised medicine. *Lala* Uttam Chand, P. W. 22, gave evidence that Kesho Rikh used to charge fees for his attendance on patients. Exh. D. 25 shows that *Puj* Kanahaya Rikh, *Puj* Harkishan Rikh and *Puj* Kesho Rikh did money-lending business. Inside the Upasra in suit there are paintings of Lord Krishna, Lord Vishnu, Guru Nanak Dev Ji and Shiv Ji but no painting of a Jain god or idol for Jain worship. Harikishan Rikh kept *Mst.* Har Kaur in the Upasra as his mistress and *Puj* Kanahaya Rikh made a gift of one house to *Mst.* Ganga Devi on the 13th of October 1868, by deed of gift, Exh. D. 4. In these circumstances the mass of evidence examined by the plaintiffs showing that ever since the time of Kanahaya Rikh the house had been known to be an Upasra, and that it had been resorted to by the Jain community for religious instructions and worship is wholly insufficient to prove the existence of a public trust. In *Raghbir Lal & others* v. *Mohammad Said and others* (1), Sir George Rankin, said :—

> "But it is out of the question to suppose that a man's religious opinions or professions can make him incapable in law of holding property. He may fail to act up to them or take heretical and inconsistent views without incurring any penalty or disability at law."

Clearly, Kanahaya Rikh did not live like an ascetic. That Harikishan Rikh and Kesho Rikh acted like house-holders is apparent on the facts on the record. In such circumstances professions of complete asceticism as a religious doctrine or philoso-

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phical position would seem to go but a little way to show that Kanahaya Rikh, Harikishan Rikh and Kesho Rikh were ascetics.

Now, the plaintiffs examined evidence to show that *Katha* was recited in the house in suit known as Upasra by Kesho Rikh and Harikishan Rikh and the occupants of the Upasra were known as *Pujs*. From the record I am not satisfied that *Katha* was recited in the house in suit. As stated above, the *Pujs* went out locking the house and came back to the place after some time. Wali Ram, P. W. 7, stated that the ground-floor used to be closed and *Katha* was performed in the first storey while *Lala* Bisakhi Ram, P. W. 4, stated that *Katha* was usually performed in the groundfloor. That Harikishan Rikh kept *Mst.* Har Kaur as a keep is proved beyond doubt by copy of the judgment, Exh. P. 14. From the evidence of Bhagwan Das it appears that the plaintiffs have a separate *Mandir* and Jain *Sadhus* stay in the library opposite to that *Mandir*. No evidence has been examined to show that any Jain monk stayed in the house in suit. Clearly, the oral evidence examined in the case is insufficient to prove that the house in question called *Upasra* is a public religious trust.

But it is said that the documents on the record put it beyond dispute that the house in dispute is a public religious trust and that the defendant is a trustee. In this connection reliance is placed upon documents, Exh. P. 8, P. 2|1, P. 3, P. 1 and D. 1.

Exh. P. 3 is a copy of the written statement filed by *Puj* Harsh Rishi in Civil Suit No. 931 of 1933. Paragraph No. 4 of the written statement reads :—

> "The *kothri* bearing house enumeration No. 3619 is not separate from house No. 3620. Moreover, it is wrong that the house was owned by the *gaddi*."

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In *Raghbir Lal & others* v. *Mohammad Said & others* (1), Sir George Rankin, said :—

> "The word *gaddi* is used very loosely and in different senses ; in one use of the word a *gaddi* appears to be a necessary part of the dignity of a religious ascetic of the highest class. The words here are 'of his own *gaddi*' and the phrase is wholly insufficient to raise against him any kind of trust or to show that the money was not his own."

In evidence Harsh Rishi maintained that he meant by the word '*gaddi*' in paragraph No. 4 of the written statement a *gaddi* of *Hikmat*, and there is ample evidence, oral and documentary, that Kanahaya Rikh, Harikishan Rikh and Kesho Rikh practised medicine.

Exh. P. 2|1, copy of an agreement, executed by *Puj* Harsh Rishi, reads :—

> "I am the *chela* of *Puj* Raj Rishiji of Jandiala. *Puj* Kesho Rikh of Amritsar made me the heir to and owner of his property in the presence of *Pujs* and Jain brotherhood on May 2nd, 1931. There is a window in the fourth storey of our house. That is very old. No one can close that window forcibly. I closed the said window with my own consent (after having entered into an agreement with Gian Chand, Diwan Chand, Bhabras, sons of Harbhagwan Das). After the closing of the said window, no one, i.e., any one from our *gaddi*, will have any objection. The house situate in Kucha Tewarian is known as *Upasra* or the house of *Puj*. It bears house enumeration No. 3620|11. * * * * *"

In the agreement, Exh. P. 2|1, *Puj* Harsh Rishi, defendant, maintained that he was the owner of the

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house bearing *Khana Shumari* No. 3620|11 and that the house had come to him from *Puj* Kesho Rikh. Clearly, the agreement, Exh. P. 2|1, does not show that the house in suit was a public religious trust of the Jain community.

Exh. P. 8 is a copy of the registered will of *Puj* Kesho Rikh made on the 27th of April, 1931. In that will *Puj* Kesho Rikh maintained that he owned and possessed without the partnership of anybody house bearing *Khana Shumari* Nos. 3619|11 and 3620|11. Clearly, the will, Exh. P. 8, supports the plea that *Puj* Kesho Rikh was the sole owner and possessor of the house which is claimed to be a public religious trust of the Jain community.

Exh. D. 1|A is translation of transliteration of the last will and testament of *Puj* Kesho Rikh. Reliance is placed upon the opening lines of Exh. D. 1|A which read—

> "I am *chela* of *Puj* Harikishan Rikh. I have since long been owner in possession of property, etc., *attached to the institution, etc.,* situate at Kasur, Lahore and Amritsar."

On a perusal of the original will I find that the opening lines read :—

> "I am *chela* of *Puj* Harikishen Rikh. I have since long been owner in possession of property situate at Kasur, Lahore and Amritsar."

Clearly, there is no reference to an institution in that will. No reliance was placed upon any other document.

Section 4 (*1*) (*f*) of Punjab Act No. XVII of 1940, provides that the tax shall not be leviable in respect of buildings used exclusively for public worship or public charity including temples. Exh. D. 13 shows that tax is levied on the house in suit under section 3 of that Act.

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For the reasons given above, I am of the opinion that the cumulative effect of the evidence referred to by the learned counsel for the plaintiffs-appellants cannot lead me to the conclusion that the plaintiffs have discharged the onus of issues Nos. 2 and 3.

Finding as I do that the *Upasra* is not a public religious trust of the Jain community, that the defendant is not a trustee and that the properties described in paragraph No. 4 of the plaint are not endowed properties. I maintain the decision of the Court of first instance on issues Nos. 1 to 4 set out above.

In the result, I dismiss with costs Regular First Appeal No. 228 of 1947.

Khosla J.

KHOSLA, J. I agree.