



2026:AHC-LKO:38742

**Reserved On: 4th May, 2026**  
**Pronounced on : 27th May, 2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**FIRST APPEAL No. - 21 of 2023**

Mool Chandra and another

.....Appellant(s)

Versus

Shri Narain

.....Respondent(s)

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**Along with :**

**1. First Appeal No. 22 of 2023:**

Mool Chandra and others

Versus

Shri Ram Laxman Janki Ji Virajman Mandir, Sitapur Thru. Alleged  
Sarvarakar Shri Narain and others

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Counsel for Appellant(s) : Divyanshu Pratap, Meenakshi Singh  
Parihar  
Counsel for Respondent(s) : Avdhesh Kumar Pandey, Rakesh  
Kumar Srivastava, Sudeep Kumar

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**Court No. - 20**

**HON'BLE PRASHANT KUMAR, J.**

1. Heard Mr. H.G.S. Parihar, learned Senior Advocate assisted by Mr. Yogesh Singh and Ms. Meenakshi Singh Parihar, learned counsel for the appellants and Mr. Sudeep Kumar, learned Senior Advocate assisted by Mr. Shreshth Srivastava, Ms. Trisha Singh, Ms. Mahika Pant, Ms. Radhika Verma, learned counsel for the respondents.

2. The First Appeal No.21 of 2023 has been filed against the judgment and decree dated 25.11.2022 passed by Additional District Judge Court No.4/Special Judge (E.C. Act), Sitapur in Civil Suit No.02/1999 (Mool Chandra and another vs. Shiv Gopal) whereby the suit was dismissed.

3. The First Appeal No.22 of 2023 has been filed against the judgment and decree dated 25.11.2022 passed by Additional District Judge Court No.4/Special Judge (E.C. Act), Sitapur in Civil Suit No.120/2006 (Shri

Ram Laxman Janki Ji Virajman Mandir vs. Mool Chandra and others) whereby the suit was decreed in favour of the plaintiffs i.e. respondents herein.

4. Since both the aforesaid appeals are arising out of a common judgment and decree dated 25.11.2022 hence, the same are decided together by this common judgment.

### **Facts of the case**

5. Factual matrix of the matter is that One Mr. Gulzari Lal son of Mr. Mohanlal who belonged to Mali caste was owner of the property in which during his lifetime, he had constructed Shri Ram Laxman Janki Temple inside his residential compound and placed an idol in it. He executed a Will dated 11.01.1973 which was registered on 12.01.1973 by which he created a Trust and had dedicated his property in the temple and he had also vested his entire property for the management of the temple. In his lifetime, he continued to manage the temple as well as the vested property on his own. To Manage the Trust Mr. Gulzari Lal appointed five members namely Shiv Gopal, Shesh Narain, Puttulal, Munnu Lal and Brijmohanlal. Mr. Gulzari Lal passed away on 16.1.1973 and as per the Will his daughter Smt. Paraga became Sarvarhkar of the temple and its properties. The relevant extract of the Will is as under:-

“उपरोक्त पांचों पंच मेरी अर्पित सम्पत्ति से हो उसको मंदिर के सदुपयोग में व्यय करें तथा सरवराहकार द्वारा मंदिर द्वारा सुचारू रूप से प्रबन्ध कराते रहे उपरोक्त सरवराह जो मंदिर की अर्पित सम्पत्ति को नष्ट करने का किसी प्रकार से अधिकार न होगा अगर मंदिर में कोई उत्सव व जीर्णोद्धार की आवश्यकता हेतु कोई रूपया आदि की आवश्यकता पड़े तो उसकी स्वीकृति सरवराहकार जो उपरोक्त पंचों द्वारा लेना होगा तथा उपरोक्त पंच सोच समझकर व्यय करने के वास्ते स्वीकृत देंगे यदि उपरोक्त सरवराहकार मंदिर में अर्पित सम्पत्ति व प्रबन्ध की बाबत कोई गड़बड़ी करे तो उपरोक्त पंचों को अधिकार होगा कि सरवराहकार बदल कर अपनी इच्छानुसार दूसरा सरवराहकार अपनी इच्छा से नियुक्त कर लें। सरवराहकार को अपनी जीवन में दूसरा सरवराहकार नियत करने का अधिकार न होगा अगर सरवराहकार अपने जीवन में दूसरा सरवराहकार नियत करना चाहे तो उसकी भी स्वीकृति पंचों द्वारा लेना आवश्यक होगी बिला पंचों की इच्छा के अनुसार सरवराहकार दूसरा सरवराहकार अपन जीवन में नहीं नियत कर सकती है।”

6. In terms of the said Will, she continued to manage the above property till her lifetime. Mr. Guljari Lal in his Will had further laid down that the Sarvarhkar has no right or authority to destroy the property or the temple in any manner. It also mentions all the five puchas who were appointed by the Will, would have the right, that in case of any mismanagement is found to be committed by Sarvarhkar, the puchas may appoint another Sarvarhkar to run the Trust, however, this newly appointed Sarvarhkar will not have right to appoint another Sarvarhkar without the consent of puchas.

7. Smt. Paraga who was managing the Trust as Sarvarhkar after the death of Mr. Guljari Lal had passed way on 25.02.1977. At that point of time, all the five puchas appointed by Mr. Guljari Lal were alive and out of five, three of them were belonged to Mali caste and two were Brahmins caste. After the death of Smt. Paraga, it is averred that Shiv Gopal was appointed as Sarvarhkar by all the five puchas through a resolution passed in the year 1977. He continued to work as Sarvarhkar and it is in the year 1978 one Mr. Jagdish and Harishankar were found illegally collecting rent from the temple property and offerings. Accordingly, the Trust through its Sarvarhkar Mr. Shiv Gopal filed a suit No.50 of 1978 ( Shri Ram Laxman Janki Ji Virajman Mandir through its Sarvarhkar Shiv Gopal v. Jagdish and Hari Shanker), this was a suit for recovery. After hearing the parties, this suit was decreed vide order dated 06.11.1980 in favour of the Trust. However, the order has been assailed by Jagdish and Hari Shankar by preferring a first appeal before the first appellate court and the same was dismissed vide order dated 12.08.1981. Thereafter, a second appeal was also filed before this Court being Second Appeal No.742 of 1981 and the same was also dismissed vide order dated 18.09.1992 and thereafter, the the order dated 06.11.1980 had attained finality.

8. In the year 1982 another civil suit was filed by Shri Ram Laxman Janki Temple through its Sarvarhkar against the Jagdish and Hari Shankar being Suit No.12/1982 wherein it is averred that Jagdish and Hari Shankar had illegally encroached on the certain trust properties as well as illegally holding the monetary income derived from the temple. This suit was decreed *ex parte* order dated 26.11.1997 whereby the court directed the defendants to hand over all the monetary amount they have received and

if they have occupied any premises, the same should be vacated. Against this order, a recall application was filed on 04.12.1997 wherein an order was passed on 03.04.1998 directing the defendants to deposit Rs.15,050/- by 10.04.1998 and Rs.10,000/- by way of a security at the cost of Rs.200. Instead of depositing the amount, the defendants moved another recall application, this application was allowed vide order dated 16.04.1998 wherein the direction to deposit the amount was recalled however, so far as the possession is concerned, the suit stand decreed.

9. Yet another suit for injunction bearing No.277/1998 (Guari Shankar vs. Ram Laxman Janki Ji Virajman Mandir and another) was also filed in which issue No.2 was specifically framed as to whether Shiv Gopal is the Sarvarhkar of the Ram Laxman Janki Ji Virajman Mandir Trust and it was decided in affirmative. After hearing the parties and perusing the record, the suit was dismissed on 22.07.2004.

10. The appellants herein had filed a suit for removal of the present Sarvarhkar and appointment of new Trustee under Section 92 of CPC. The suit was numbered as Civil Suit No.2 of 1999 (Moolchand and another vs. Shiv Gopal). In this suit the appellant made a following prayer:-

*"If Defendant 1/1 is found to be the Sarvarhkar of the trust created by Gulzari Lal then he must be removed from the position of the trustee and a new scheme of administration of this trust may be formed in which majority must be comprised of person belonging to 'Mali' caste and the provisions to prevent the dominance of Brahmins in that trust must be created."*

11. A written statement had been filed by the defendant wherein they denied the averments made in the plaint. Thereafter, the trial court after perusing the pleadings made by the parties framed the following issues:-

*"I. Whether Late Gulzari Lal, by his will dated 11/1/1973 conferred right over the five panchs to remove Saravahkr in case he is found committing embezzlement in the management?*

*II. Whether no Sarvahakar was appointed for the management of temple after the death of Smt. Paraga on 25/2/1977?*

*III. Whether the power of attorney was got executed by the opponents forcefully in their favour by Gulzari?*

*IV. Whether opponents got executed any power of attorney by Smt. Paraga in favour of his son Shiv Narayan?*

*V. Whether the spirit of the will executed by Gulzari Lal desired that the majority of trust members should be of Mali Caste?*

*VI. Whether the opposite parties are trying to the destroy the property of the temple?*

*VII. Whether the suit is not maintainable under section 92 CPC?*

*VIII. Whether the trust is a private trust and the plaintiffs have no right to sue?*

*IX. Whether Smt. Paraga executed the will dated 17-2-1977?*

*X Whether Smt. Paraga was having authority to executed the aforementioned will?*

*XI. Of what relief is the plaintiff entitled to?"*

12. During pendency of this suit, Mr. Shiv Gopal Sarvarhkar of the trust passed away, who passed a resolution on 08.08.2004 before passing away, wherein Shri Narain son of Shiv Gopal was made Sarvarhkar of the Trust. After the death of Shiv Gopal, the appellants herein impleaded Shiv Narain as a party. Thereafter, Shri Narain the newly impleaded party filed its written statement in which a specific pleading was taken, that the Trust was not been made a party.

13. It is averred that Moolchand and others had started interfering with the trust property and the peaceful possession of the same. A police complaint was also filed by the defendants against the appellants. Aggrieved by which Shri Ram Laxman Janki Temple through Sarvarhkar Shri Narain filed a suit being Suit No.120/2006 wherein the plea was taken to refrain the defendants from interfering the plaintiff's ownership and peaceful possession of the suit properties in which a written statement had been filed by the appellants denying the

averments made in the plaint. After exchange of pleadings the trial court framed the following issues:-

*"I. Whether Shri Narayan the present Sarvarahakar of Shri Ram Laxman Janki Ji Virajman Mandir situated at house Gulzari Mali village Naimisharanya, Pargana Aurangabad, Tahseel Mishrikh, District Sitapur has right to institute this suit under his signature?*

*II. Whether under the influence of original suit no. 2/99 the present suit is liable to be stayed under section 10 CPC.?*

*III. Whether the present suit is hit by the provisions of Order 7 Rule 3 CPC.?*

*IV. Whether the suit is undervalued.?*

*V. Whether the court fee paid is insufficient.?*

*VI. Whether the plaintiff has got cause of action to institute suit.?*

*VII. Of what relief the plaintiff is entitled to.?*

*VIII. Whether the plaintiff is entitled to special costs.?"*

14. The application for temporary injunction filed by the defendant along with the suit was rejected on 16.03.2010 against which the appellant preferred a writ petition under Article 226 of the Constitution of India numbered as Misc. Single No.2015 of 2010, wherein this Court vide order dated 20.04.2010 disposed of the writ petition while passing the following order:-

*"Considering the aforesaid facts and circumstances of the case, I hereby stay the proceeding of Regular Suit no. 120 of 2006 till final adjudication of Suit No. 2 of 1999 pending under Section 1992 of Code of Civil Procedure before the District Judge, Sitapur. The party would be at liberty to move an appropriate application for disposal of the suit for permanent injunction before the trial court after decision of Suit no. 2 of 1999. The petitioner is permitted to move an appropriate application in*

*Suit No. 2 of 1999 for interim injunction, which shall be considered and disposed of after providing opportunity of hearing to the parties concerned. It is further observed that the court shall deal with the application independently without being prejudiced to the order passed by the courts below in Regular Suit No. 120 of 2006 as well as in appeal no. 40 of 2009.*

*In the aforesaid terms, writ petition is disposed of finally."*

15. Against which the defendant preferred an appeal before the Hon'ble Supreme Court being Civil Appeal No.4693 of 2011 (Sri Ram Laxman Jankiji Virajman Mandir vs. Mool Chandra & ors.) and the Hon'ble Supreme court on 17.10.2019 passed the following order:-

*"In view of this order, it is stated by the learned counsel for the parties that the suits are lying pending before the trial court without adjudication.*

*In view of the above, without going into the merits of the matter, we think it appropriate to transfer Civil Suit No.120 of 2006, pending adjudication before the Second Additional Civil Judge (Senior Division), Sitapur, Uttar Pradesh, to the court of District Judge, Sitapur, Uttar Pradesh for being heard along with Civil Suit No.2 of 1999. Ordered accordingly.*

*The District Judge, Sitapur, Uttar Pradesh is directed to dispose of these cases in accordance with law expeditiously, preferably within a period of six months from the date of receipt/production of a copy of this order.*

*The appeal stands disposed of accordingly."*

16. As per the directions passed by the Hon'ble Supreme Court both the suits were clubbed together and heard together. The trial court vide judgment and order dated 25.11.2022 rejected the civil suit No.2/1999 filed by the appellant and decreed the suit No.120 of 2006 filed by the defendant-respondents.

17. Aggrieved by this order, the appellants had preferred the instant appeal.

18. Evidently, the following four points are the points of determination which calls for adjudication in the present appeals:-

- (i). Whether the trust, namely Ram Laxman Janki Ji Trust, is a public trust or a private trust.
- (ii). Whether suit filed under Section 92 CPC is maintainable or not.
- (iii). Whether the appointment of Shri Narain as Sarvarahkar is valid and whether he possesses the authority to institute the suit under his signature.
- (iv). Whether the suit was barred under Section 11 CPC, with regards to issue of Sarvarhkarship.

#### **Argument of the appellant**

19. The first argument raised by learned counsel for the appellants is that the instant Trust, namely Ram Laxman Janki Ji Trust, is a "public trust". He submits that the trust deed dated 11.01.1973 was executed by Late Guljari Lal along with five other persons who were not members of his family, thereby indicating that such persons represented the society at large. He further submits that none of the trustees were the family members of Late Guljari Lal.

20. He further submits that the trust deed nowhere provides that the family members of Late Guljari Lal would derive any personal benefit from the trust property, which clearly shows that the trust was intended to be a public trust and not a private one. It is further argued that merely because the temple was constructed within the residential premises of Late Guljari Lal and idols were installed therein, the character of the trust would not change from a public trust to a private trust.

21. Learned counsel further submits that, mere fact that the author of the trust dedicated his property to the God during his lifetime and subsequently, executed a Will bequeathing all his movable and immovable properties in favour of the idol would not by itself lead to the inference that the trust is a private trust. He submits that persons from all sections of society were permitted to enter the temple and offer prayers, and the right of worship was never restricted to the family members of

Late Guljari Lal. Hence, the temple was open to the public at large, which clearly indicates that the Trust was a public trust.

22. It is also submitted that the trust deed does not contain any provision requiring the appointment of a Sarvarhkar from a particular family or from the family of Late Guljari Lal, which further supports the contention that the trust was public in nature. Learned counsel further submits that the control and management of the trust remained vested in persons who were outside the family of Late Guljari Lal, thereby negating the suggestion that it was either a family trust or a private trust. He lastly submits that since all the public at large were allowed to worship offerings and as such it cannot be said to be a private trust. To buttress his argument, he has placed reliance on a judgment passed in the matter of *Deoki Nandan vs. Murlidhar and others* reported in [1957 AIR (SC) 133] wherein the Hon'ble Supreme Court has held as under:-

*"7. When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers."*

*(emphasis supplied)*

23. He further placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of *Radhakanta Deb and another vs. The Commissioner of Hindu Religious Endowments, Orissa* reported in

*[1981 AIR (SC) 798]* wherein the Hon'ble Supreme Court has held as under :-

*"14. Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:*

*(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;*

*(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance when the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;*

*(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;*

*(4) where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the Private nature of the endowment."*

*(emphasis supplied)*

24. Thereafter, he further placed reliance on a judgment passed by this

Court in the matter of ***Champi @ Sunder Lal vs. ADJ-9, Court Room No.13 Lucknow & ors.*** reported in ***[2023 (160) ALR 573]*** wherein this Court has held as follows:-

*"23. In the first test in order to determine the nature of the trust, it is to be ascertained as to whether the user of the temple by members of public is as of rights. The Trust deed by which the trust in question came into existence nowhere provides that user of temple by the members of the public will be as of right. Even otherwise the public has no say in the user of temple in question as of right*

*24. In the second test, it has to be ascertained as to whether the control and management vests in large body of persons are members of the public or the founder did not retain any control over the management. A perusal of the Trust deed would show that the control and management was retained by the founder in himself and his own family and subsequently the named trustees. Thus in view of the second test the trust in question is only a private trust."*

*(emphasis supplied)*

25. He further submits that as per the ratio laid down by the Hon'ble Supreme Court as well as by this Court in the aforesaid judgments, the Trust created by Late Guljari Lal wherein public at large were allowed to worship and the family had no control over the management. Thus, it would definitely be a public trust.

26. The second argument raised by learned counsel for the appellants is that, since the Trust is a public trust hence, the Suit No.2 of 1990 filed by two public spirited persons under Section 92 of CPC is maintainable. He further submits that the Trust was not properly managed and for the management of the public trust it was in the interest of the Trust a right person should be appointed as Sarvarhkar and anybody who is found mismanaging the Trust ought to be removed.

27. Thirdly, learned counsel for the appellants further submits that the documents relied upon by Shri Narain, who was the defendant in the suit

under Section 92 CPC bearing Civil Suit No.02/1999 as well as the plaintiff in Civil Suit No.120 of 2006 representing the Trust, were insufficient to establish that he was the Sarvarhkar. It is submitted that, in support of his claim, Shri Narain produced only photocopies of the resolution dated 08.08.2004, which are inadmissible in evidence in view of Sections 64 and 65 of the Indian Evidence Act. It is further submitted that the conditions prescribed under Section 65 for admitting secondary evidence were not fulfilled and, therefore, the evidence adduced by Shri Narain to prove his status as Sarvarhkar is founded on inadmissible evidence. To buttress his argument, he has placed reliance on judgment passed by Hon'ble Supreme Court in the matter of *Vijay vs. Union of India and others* reported in [2023 INSC 1030] specially on paragraph 33 which lays down 9 principles relevant for examining the admissibility of secondary evidence, the relevant part of the judgment is quoted as under:-

*"33. After perusing various judgments of this Court, we can deduce the following principles relevant for examining the admissibility of secondary evidence:*

*33.1 Law requires the best evidence to be given first, that is, primary evidence.*

*33.2 Section 63 of the Evidence Act provides a list of the kinds of documents that can be produced as secondary evidence, which is admissible only in the absence of primary evidence.*

*33.3 If the original document is available, it has to be produced and proved in the manner prescribed for primary evidence. So long as the best evidence is within the possession or can be produced or can be reached, no inferior proof could be given.*

*33.4 A party must endeavor to adduce primary evidence of the contents, and only in exceptional cases will secondary evidence be admissible. The exceptions are designed to provide relief when a party is genuinely unable to produce the original*

*through no fault of that party.*

*33.5 When the non-availability of a document is sufficiently and properly explained, then the secondary evidence can be allowed.*

*33.6 Secondary evidence could be given when the party cannot produce the original document for any reason not arising from his default or neglect.*

*33.7 When the copies are produced in the absence of the original document, they become good secondary evidence. Still, there must be foundational evidence that the alleged copy is a true copy of the original.*

*33.8 Before producing secondary evidence of the contents of a document, the non-production of the original must be accounted for in a manner that can bring it within one or other of the cases provided for in the section.*

*33.9 Mere production and marking of a document as an exhibit by the Court cannot be held to be due proof of its contents. It has to be proved in accordance with the law."*

*(emphasis supplied)*

28. Further, it is submitted that the best evidence to prove a fact is primary evidence, and only in exceptional circumstances contemplated under Section 65 of the Indian Evidence Act can secondary evidence, such as photocopies, be adduced and relied upon by the courts. Broadly, such exceptions arise where the original document is not in the possession of the party relying upon it, is in the possession of the opposite party, or has been lost or destroyed. In the present case, the learned trial court, without recording any finding regarding the loss of the original document or as to whose possession the original document was in, directly admitted and relied upon the photocopy evidence. Such reliance is unsustainable in the eyes of law in view of Sections 64 and 65 of the Indian Evidence Act.

29. Fourthly, the argument advanced by learned counsel for the appellants

is that the earlier judgments passed in various suits, wherein it was held that Shiv Gopal was the Sarvarhkar, are not binding upon the present appellants, as those proceedings were between different parties and pertained to suits for recovery of possession or injunction. In the absence of any declaration under Section 92 CPC regarding the Sarvarhkarship of Shiv Gopal, such judgments cannot constitute conclusive proof of the fact that Shiv Gopal was the Sarvarhkar of the trust in question. A conjoint reading of Sections 41 and 42 of the Indian Evidence Act makes it abundantly clear that judgments, orders, or decrees, except those passed in probate, matrimonial, or admiralty jurisdiction, do not amount to conclusive proof of the existence of any fact. At best, under Section 42 of the Indian Evidence Act, previous judgments may only be regarded as relevant facts, which still require independent proof in each individual case. To buttress his argument, he is placing reliance on the judgment passed by Hon'ble Supreme Court in the matter of *K.G. Premshanker vs. Inspector General of Police and another* reported in [2002 AIR (SC) 3372] wherein the Hon'ble Supreme Court has held as under:-

*" In Kharkan and others v. The State of U.P. [(1964) 4 SCR 673], the Court observed thus:*

*".....the earlier judgment can only be relevant if it fulfils the conditions laid down by the Indian Evidence Act in Sections 40 to 43. The earlier judgment is no doubt admissible to show the parties and the decision but it is not admissible for the purpose of relying upon the appreciation of evidence"*

*(emphasis supplied)*

30. He further submits that Suit No.120 of 2006 was instituted by the Trust through its Sarvarhkar, Shri Narain. In the said suit, the Sarvarhkar had filed only a photocopy of the resolution purportedly appointing him as Sarvarhkar. According to him, such photocopy cannot be treated as valid proof in view of the provisions of the Evidence Act. He further submits that the relief sought in Suit No.120 of 2006 was for permanent injunction.

**Arguments of counsel for respondent**

31. *Per contra*, learned counsel for the respondents vociferously opposes the instant appeals and submits that the present trust is a private trust and not a public trust. In support of his contention, he has relied upon the Will of Late Guljari Lal, wherein it has been stated that after the death of the testator, his daughter, Smt. Paraga, would act as the Sarvarhkar. It has further been provided in the said Will that five other members were appointed to supervise and manage the movable and immovable properties of the trust, namely Ram Laxman Janki Ji Trust, and that the income and properties of the trust were to be utilized only for the legitimate purposes of the temple.

32. The testator further provided that the aforesaid five members would have the right to interfere in case of any mismanagement by the Sarvarhkar. However, the appointed Sarvarhkar was not authorised to appoint another Sarvarhkar without the consent of other five members. It is further submitted that the income generated from the temple was not intended to be used for any public purpose, as is evident from the recitals of the Will deed.

33. The respondent submits that the procedure prescribed by the testator clearly indicates that the trust is a private trust and not a public trust. Mere existence of a right to worship does not, by itself, render a private trust to be a public trust inasmuch as the distinguishing factors between a public and a private trust are governed by the intention of the founder and the manner in which the trust is to be administered. It is contended that nowhere in the trust deed has it been provided that the trust property or income is to be utilized for any public purpose. To buttress his argument, he has placed reliance on a judgment passed by this Court in the matter of ***Champi @ Sunder Lal vs. ADJ-9, Court Room No.13 Lucknow & ors.*** reported in [2023 (160) ALR 573], wherein this Court laid down certain tests to determine the nature of the trust.

The relevant paragraph of the judgment in the matter of ***Champi @ Sunder Lal*** (supra) is extracted hereinbelow:-

*"23. In the first test in order to determine the nature of the trust, it is to be ascertained as to whether the user of the temple by members of public is as of rights. The Trust deed by which the trust in question came into existence nowhere provides that user*

*of temple by the members of the public will be as of right. Even otherwise the public has no say in the user of temple in question as of right."*

In the present case, since the Trust deed nowhere provides that the member of the public have a right to use the temple as a matter of right and the public has no role or say in the management or use of the temple and it is also evident that the temple was constructed within the residential premises of late Guljari Lal and idols were installed therein. Hence, the Trust cannot be treated as a public Trust.

This Court in the matter of ***Champi @ Sunder Lal*** (supra) further laid down the second test with regards to the nature of the Trust, the relevant paragraph is extracted hereinbelow:-

*"24. In the second test, it has to be ascertained as to whether the control and management vests in large body of persons are members of the public or the founder did not retain any control over the management. A perusal of the Trust deed would show that the control and management was retained by the founder in himself and his own family and subsequently the named trustees. Thus in view of the second test the trust in question is only a private trust."*

In view of the above, since the control and management of the Trust in the present case are not vested with large bodies of persons or members of the public at large. The control and management of the Trust was also retained by the founder himself or in his own family, and also with the named trustee, hence, in view of both the tests laid down by this Court in the matter of ***Champi @ Sunder Lal*** (supra), the instant Trust cannot be treated as a public Trust, rather it is a private Trust.

34. The counsel for respondents further submits that the suit is not maintainable on the ground that a necessary party has not been impleaded. He further submits that the suit is barred by Order 49 Rule 1 CPC. According to him, the Trust, being a necessary party, was not impleaded in the suit and, therefore, the suit was not maintainable. To buttress his argument, he has placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of ***Sudhir G. Angur and another v. M.***

***Sanjeev and others*** reported in [(2006) 1 SCC 141] wherein the Court has held as under:-

*"12. It must lastly be mentioned that on 18th March, 2002, at the request of the Appellants, the name of Respondent No. 4 was deleted from the array of parties in this Appeal. Respondent No. 4 is the concerned Trust. It is not only a proper party but a necessary party. The whole dispute relates to the management of the trust and the properties of the trust. By deleting Respondent No. 4 the Appellants have deleted a proper and a necessary party. For that reason also, the Appeal is required to be dismissed. "*

*(emphasis supplied)*

35. He further placed reliance on a judgment passed by the Hon'ble Supreme Court in the matter of ***Moreshar Yadaora Mahajan v. Vyankatesh Sitaram Bhedi (D) thr. LRs. and others*** reported in [2022 SCC OnLine SC 1307] wherein the Hon'ble Supreme Court has held as follows:-

*"It could thus be seen that a "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a "necessary party" is not impleaded, the suit itself is liable to be dismissed."*

*(emphasis supplied)*

36. He further submits that the court below has rightly held that the suit ought to have been dismissed for want of necessary party.

37. Secondly, since it is proved that the instant trust is a private trust and qualifies all the tests laid by the court, that the trust was not meant to be used by public as a matter of right and the management also did not vest with the members of the public at large. Hence it is well proved the trust is a private trust. Since the trust is a private trust the provisions of Section 92 CPC will not be applicable.

38. Thirdly, he submits that the present suit is barred by Section 11 CPC, as the issue concerning the Sarvarhkarship of Shiv Gopal falls within the

ambit of Explanations IV and VI to Section 11 CPC. He further submits that defendant Nos.1 to 9 in Suit No.120 of 2006 are related to Harishanker, which has been admitted in paragraph 2 of the written statement wherein it has been stated that they are cousin brothers of Harishanker. It is further submitted that defendant No.6, Gauri Shanker, was also a party in Suit No.277 of 1998 between the same parties, wherein the issue regarding representation, namely whether Shiv Gopal was the Sarvarhkar or not, had already been adjudicated. Since the said judgment was never challenged, it attained finality.

39. With regards to the plea of res judicata, it is further submitted that the persons interested in the matter are litigating under the same title. It is further submitted that Gauri Shanker and Harishanker are related to Moolchand, who is the appellant in the present case, and all of them have previously litigated on the issue of Sarvarhkarship.

40. It is also submitted that although earlier there was no suit instituted under Section 92 CPC, the issue decided in Suit No.277 of 1998, namely whether Shiv Gopal was the Sarvarhkar, was substantially an issue relating to representation. Since Gauri Shanker, who is related to Harishanker, was a party in Suit No.120 of 2006, Explanation VI to Section 11 CPC would be attracted in the present matter. To buttress his argument, he has placed reliance on the judgment of ***Shiromani Gurdwara Parbandhak Committee vs. Mahant Harnam Singh*** reported in [(2013) 11 SCC 377] wherein the Court has held as follows:-

*"19. As observed by this Court in R. Venugopala Naidu and Ors. V. Venkatarayulu Naidu Charities and ors. reported in (AIR 1990 SC 444) a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 CPC and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are in the suit- title are the only parties to the*

*suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust, all such interested persons would be considered in the eyes of law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation VI to Section 11 of CPC constructively bars by res judicata the entire body of interested persons from re-agitating the matters directly and substantially in issue in an earlier suit under Section 92 CPC."*

*(emphasis supplied)*

41. He further submits that the appellants, who are rank outsiders, with wrong intention wants to take over the trust, because of the offerings coming to the trust. Even their family members in the past tried to usurp the property and the offerings of the trust. Having failed in earlier attempts, this litigation has been initiated just to usurp the trust and the trust properties.

42. Fourthly, he submits that under Section 102 of the Indian Evidence Act, the burden of proof lies upon the plaintiff to establish that Shiv Gopal or Shri Narain was not the Sarvarhkar, particularly when the original document was unavailable. He further submits that the finding with regard to the Sarvarhkarship of Shiv Gopal was not based solely upon the photocopy of the resolution appointing him as Sarvarhkar. While deciding issue No.2, the learned trial court also relied upon the judgment passed in Gaurishanker vs. Ram Laxman Janki Ji Virajman and Another, Civil Appeal No.277 of 1998, wherein issue No.2 specifically related to the Sarvarhkarship of Shiv Gopal. In this context, the provisions of Sections 40 and 42 of the Indian Evidence Act are also attracted.

43. He further submits that during his lifetime, Shiv Gopal had placed on record the resolution dated 08.08.2004 appointing Shri Narain as Sarvarhkar on 04.10.2004 and the appellants never challenged the said resolution. After the death of Shiv Gopal, the appellants substituted Shri Narain under the provisions of Order XXII CPC merely on the ground that he was the son of Shiv Gopal. If the appellants intended to challenge

the Sarvarhkarship of Shri Narain, they either ought to have amended the entire pleadings or instituted a fresh suit against Shri Narain. The present suit filed by the appellants was wholly incompetent, as it failed to disclose any specific cause of action against Shri Narain.

### **Rejoinder of appellant**

44. Learned counsel for the appellants submits that as per the pleadings and documents on record and the ratio laid down by the Hon'ble Supreme Court it is clear that the instant Trust is a public trust. As far as the maintainability of the suit is concerned, the suit cannot be rejected on the ground of not impleading the Trust as a party.

45. He further submits that since both suits were tagged together and since the Trust was a party there was no reason for impleading them separately as a party. As far as *res judicata* is concerned, he submits that it was not amongst the same party neither any representative suit was earlier decided hence, the principle of *res judicata* will not be applicable in the present case.

### **Analysis**

46. Heard learned counsel for the parties and perused the record.

47. As far as the first point of determination is concerned whether the trust, namely Ram Laxman Janki Ji Trust, is a public trust or a private trust. The key legislative difference between private and public trusts in India is that private trusts are governed by the Indian Trusts Act, 1882, whereas public trusts are governed by state-specific laws enacted in the state where they are established or incorporated. A private trust is created for the benefit of specific individuals or a defined group and is regulated under the provisions of the 1882 Act, while a public trust is established for charitable, religious, educational, or public welfare purposes and is governed by relevant state legislation. For example, public trusts in Gujarat and Maharashtra are required to be registered under the Bombay Public Trusts Act, 1950. Other laws that may govern public trusts include the Charitable and Religious Trusts Act, 1920, the Religious Endowments Act, 1863, and the Charitable Endowments Act, 1890.

48. Way back in the year 1957, the Hon'ble Supreme Court for the very

first time in the matter of **Deoki Nandan** (supra), had made a clear distinction between a public and a private trust and held that in a private trust the beneficiaries are specific individuals who have either ascertained or capable of being ascertained whereas in a public trust, the beneficiaries comprises the general public, who is a body incapable of ascertainment. The Hon'ble Supreme Court further held that the intention of the founder decides the nature of the trust. If the property is dedicated for the worship of a family idol and family members are only allowed to worship, it is a private trust, but if the beneficiaries are not the members of the family then would be treated as a public trust or where the beneficiaries are neither family members nor specific individuals, the endowment can only be regarded as a public trust.

49. Thereafter, a Five-Judge Constitution Bench of Hon'ble Supreme Court in the matter of *Tilkayat Shri Govindlalji Maharaj vs. State of Rajasthan and others* reported in [AIR 1963 SC 1638] has held that a temple belonging to a family which is a private temple is not unknown to Hindu law. In the case of a private temple it is also not unlikely that the religious reputation of the founder may be of such a high order that the private temple founded by him may attract devotees in large numbers and the mere fact that a large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public temple. On the other hand, a public temple can be built by subscriptions raised by the public and a deity installed to enable all the members of the public to offer worship. In such a case, the temple would clearly be a public temple. The relevant paragraph is as follows:-

*"23. The question as to whether a Hindu temple is private or public has often been considered by judicial decisions. A temple belonging to a family which is a private temple is not 'Unknown to Hindu law. In the case of a private temple it is also not unlikely that the religious reputation of the founder may be of such a high order that the, private temple founded by him may attract devotees in large numbers and the mere fact that A large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public temple. On the other hand, a public temple can be built by subscriptions raised by the public and a deity installed to enable all the members of*

*the public to offer worship. In such a case, the temple would clearly be a public temple. Where evidence in regard to the foundation of the temple is not clearly available, sometimes, judicial decisions rely on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may prima facie appear to be a public temple ? The appearance of the temple of course cannot be a decisive factor; at best it may be a relevant factor. Are the members of the public entitled to an entry in the temple ? Are they entitled to take part in offering service and taking Darshan in the temple ? Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple ? Are their offerings accepted as a matter of right ? The participation of the members of the public in the Darshan in the temple and in the daily Acts of worship or in the celebrations of festival occasions may be a very important factor to consider in determining the character of the temple. In the present proceedings, no such evidence has been led and it is, therefore, not shown that admission to the temple is controlled or regulated or that there are other factors present which indicate clearly that the temple is a private temple. Therefore, the case for the Tilkayat cannot rest on any such considerations which, if proved., may have helped to establish either that the temple is private or is public."*

50. In the instant matter, there is nothing on record to show that the temple was built for the public at large though they were allowed to come and offer prayers. In the instant case, no such evidence had been led to show that the temple was managed and controlled by public at large.

51. The Hon'ble Supreme Court in the matter of ***Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das. (1971) 3 SCR 680***, further clarified and has held that any temple which freely admits devotees cannot mean that it is a public temple. It is laid down that some important test to determine the nature of endowment and in this connection following observations need specific mention, the relevant paragraphs are extracted hereinbelow:-

*"Therefore, evidence that sadhus and other persons visiting the temple are given food and shelter is not by itself indicative of the temple being a public temple or its properties being subject to a public trust.*

*Evidence that the mahants used to celebrate Hindu festivals when members of the public used to attend the temple and give offerings and that the public were admitted to the temple for darshan and worship is also not indicative of the temple being one for the benefit of the public.....The fact that members of the public used to come to the temple without any hindrance also does not necessarily mean that the temple is a public temple, for members of the public do attend private temples. ....Yet, the Privy Council held that the general effect of the evidence was that the family had treated the temple as family property and the mere fact of the members of the public having come to the temple and having made offerings and the mela having been held which gave popularity to the temple and increased its esteem in the eyes of the public and the fact that they were never turned away were not enough to hold the temple and the properties as a public trust.*

.....

*Thus, the mere fact of the public having been freely admitted to that temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right."*

*(emphasis added)*

52. An identical view has been taken by the Hon'ble Supreme Court in the matter of ***Gurpur Guni Venkataraya Narashima Prabhu & Ors. v. B.C. Achia*** reported in [(1977) 3 SCC 17] wherein the Hon'ble Supreme Court has held that the mere fact of the public having been freely admitted to the temple cannot mean that the court could infer that it is a public trust. The relevant paragraph of the judgment is extracted hereinbelow:-

*"The law is now well settled that 'the mere fact of the public having been freely admitted to the temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right.'"*

*(emphasis added)*

53. The Hon'ble Supreme Court in the matter of ***Radhakanta Deb and another vs. The Commissioner of Hindu Religious Endowments, Orissa*** reported in ***[1981 AIR (SC) 798]*** has laid down the principles for determining whether an endowment is of a private or public nature. The Court held that where the origin of the endowment cannot be ascertained, it may be treated as a public endowment. It further observed that where the founder does not retain control over the management and such management vests in a larger body of persons or the general public, the trust would assume the character of a public trust. The Court further held that where the management of the temple remains with the founder and his descendants, and extensive properties are dedicated for the maintenance of a temple belonging to the founder himself, the endowment would be regarded as a private endowment. The relevant paragraphs of the judgment are quoted hereinbelow:-

*"14. Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:*

*(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;*

*(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance when the evidence shows that there is provision for a scheme to be framed by associating*

*the members of the public at large;*

*(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;*

*(4) where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the Private nature of the endowment."*

*(emphasis added)*

54. Thereafter, this Court in the matter of ***Champi @ Sunder Lal vs. ADJ-9, Court Room No.13 Lucknow & ors.*** reported in [2023 (160) ALR 573] has held as under:-

*"23. In the first test in order to determine the nature of the trust, it is to be ascertained as to whether the user of the temple by members of public is as of rights. The Trust deed by which the trust in question came into existence nowhere provides that user of temple by the members of the public will be as of right. Even otherwise the public has no say in the user of temple in question as of right.*

*24. In the second test, it has to be ascertained as to whether the control and management vests in large body of persons are members of the public or the founder did not retain any control over the management. A perusal of the Trust deed would show that the control and management was retained by the founder in himself and his own family and subsequently the named*

*trustees. Thus in view of the second test the trust in question is only a private trust.*

*25. The third test as laid down is to see from the document, the nature and origin of the trust and if the control and management of the temple is retained with the founder and his descendants, and that extensive properties are dedicated for the maintenance of the temple belonging to the founder himself. It will be a conclusive proof to determine that the trust is a private trust. In the present case, a perusal of the Trust deed shows that the control and management of the temple was retained by the founder in himself and after his death his wife and subsequently with the named trustees.*

*26. The fourth test is where the founder of the trust did not make any stipulation for contribution to be made by members of the public. It will be an important circumstance to indicate the private nature of the trust. A perusal of the trust deed by means of which the trust in question came into existence reflects that no stipulation for offering or contributions to be made by the members of the public was made by the founder in the deed."*

*(emphasis added)*

55. To adjudicate the first point of determination, it is also relevant to see the deed which was executed by Guljari Lal on 11.01.1973 for the proper management of the Trust. The relevant portion of the deed is as follows:-

"उपरोक्त पांचों पंच मेरी अर्पित सम्पत्ति से हो उसको मंदिर के सदुपयोग में व्यय करें तथा सरवराहकार द्वारा मंदिर द्वारा सुचारू रूप से प्रबन्ध कराते रहे उपरोक्त सरवराह जो मंदिर की अर्पित सम्पत्ति को नष्ट करने का किसी प्रकार से अधिकार न होगा अगर मंदिर में कोई उत्सव व जीर्णोद्धार की आवश्यकता हेतु कोई रूपया आदि की आवश्यकता पड़े तो उसकी स्वीकृति सरवराहकार जो उपरोक्त पंचों द्वारा लेना होगा तथा उपरोक्त पंच सोच समझकर व्यय करने के वास्ते स्वीकृत देंगे यदि उपरोक्त सरवराहकार मंदिर में अर्पित सम्पत्ति व प्रबन्ध की बाबत कोई गड़बड़ी करे तो उपरोक्त पंचों को अधिकार होगा कि सरवराहकार बदल कर अपनी इच्छानुसार दूसरा सरवराहकार अपनी इच्छा से नियुक्त कर लें। सरवराहकार को अपनी जीवन में दूसरा सरवराहकार नियत करने का अधिकार न होगा अगर सरवराहकार अपने

जीवन में दूसरा सरवराहकार नियत करना चाहे तो उसकी भी स्वीकृति पंचों द्वारा लेना आवश्यक होगी बिला पंचों की इच्छा के अनुसार सरवराहकार दूसरा सरवराहकार अपन जीवन में नहीं नियत कर सकती है।”

56. A plain reading of the aforesaid deed makes it clear that the executor of the deed had made proper arrangements for the management of the temple and the trust and its property and also comprehended that in case of mismanagement how the Sarvarhkar has to be changed.

57. In the present case, the origin of the endowment is clearly established and is not in dispute. It is admitted that the temple was established by Late Guljari Lal within his residential complex, and a deed was executed for the management of the trust. Further, the founder retained control over the management of the trust during his lifetime and, after his death, his daughter Smt. Paraga was appointed as Sarvarhkar under the terms of the deed to manage and maintain the Trust. Moreover, since the temple continued to remain under the control of the founder and his descendants, and the properties were dedicated for the maintenance of the temple belonging to the founder himself, these circumstances sufficiently establish that the present trust is a private trust.

58. As per the various tests laid down by the Hon'ble Apex Court and by this Court in the aforesaid judgments, it can be conclusively held that in this case Ram Laxman Janki Ji Trust is a private trust, as the use of the temple by the public was not as a matter of right. Even the control and management of the trust was not with a large bodies of person or by the members of the public at large. Further since the control and management of the trust was retained by the founder and his descendants and the property dedicated for the management of the temple belonged to the founder.

59. In response of the second point of determination as to whether the suit under Section 92 CPC is maintainable or not. The provisions of Section 92 CPC has to be seen which is as follows:-

*"92. Public charities.-(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such*

*trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree: -*

*(a) removing any trustee;*

*(b) appointing a new trustee;*

*(c) vesting any property in a trustee;*

*(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;*

*(d) directing accounts and inquiries;*

*(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;*

*(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;*

*(g) settling a scheme; or*

*(h) granting such further or other relief as the nature of the case may require.*

*(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.*

*(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious*

*nature and allow the property or income of such trust or any portion thereof to be applied cypres in one or more of the following circumstances, namely : -*

*(a) where the original purposes of the trust, in whole or in part,-*

*(i) have been, as far as may be, fulfilled; or*

*(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or*

*(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or*

*(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or*

*(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or*

*(e) where the original purposes, in whole or in part, have, since they were laid down,-*

*(i) been adequately provided for by other means, or*

*(ii) ceased, as being useless or harmful to the community, of*

*(iii) ceased to be, in law, charitable, or*

*(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust."*

60. On bare reading of the provisions of Section 92 (public charity) of CPC, it is clear that this provision is applicable only to public trust and not applicable to private trust. For the reasons enumerated above, the Trust herein is not a public trust, the provisions of Section 92 CPC would not be applicable and thus, the suit under Section 92 CPC is not maintainable.

61. In response to the third point of determination, it has been argued by learned counsel for the appellants that Shiv Gopal and his successor, Shri Narain, failed to establish that they were duly appointed as Sarvarahkar, as their appointments were allegedly not made by the Committee, and that they are merely self-proclaimed Sarvarahkars. It was further argued that the resolution dated 23.10.1977, filed by Shri Narain in photocopy form, is inadmissible in evidence. The aforesaid submissions have been vehemently opposed by learned counsel for the respondents, who submitted that after the death of Smt. Paraga on 23.10.1977, Shiv Gopal was appointed as Sarvarahkar, and subsequently Shri Narain came to be appointed as Sarvarahkar. Undoubtedly, the copy of the resolution dated 23.10.1977 (Paper No. 32C) is a self-attested photocopy, and since the original has not been brought on record, the same may not be admissible in evidence. However, although the photocopy itself may not be admissible, the larger issue as to whether Shri Narain was the Sarvarahkar of the temple remains to be examined.

In this regard, the judgment dated 22.07.2004 passed in Civil Suit No. 277 of 1998, (Gauri Shanker vs. Ram Laxman Janki Ji Virajman Mandir and Others) which was a suit for injunction wherein issue No.2 was framed as to whether Shiv Gopal was the Sarvarahkar of the Trust or not and the same was decided in affirmative. This order has attained finality and by this judicial order it is clearly affirmed that Shiv Gopal was Sarvarahkar of the temple.

Another suit being Suit No.50 of 1978 was filed by Shri Ram Laxman Janki Ji Virajman Mandir through it Sarvarhkar Shiv Gopal for recovery

of money from Jagdish and Hari Shanker, in this judgment Shiv Gopal was declared as Sarvarhkar of the Trust. The said judgment was challenged in appeal, which was dismissed on 12.08.1981 and the Second Appeal preferred by the appellant was also rejected by the High Court. Further, the order dated 06.01.2018 passed by the Civil Court has also attained finality, wherein Shiv Gopal was declared to be the Sarvarahkar. From the aforesaid judicial pronouncements, it stands established that Shiv Gopal, father of Shri Narain, had already been declared as the Sarvarahkar of the Trust.

Another suit, being Suit No. 12 of 1982 (Shri Ram Laxman Janki Ji Virajman Mandir through its Sarvarahkar Shiv Gopal vs. Jagdish and Hari Shanker) was also instituted by Shiv Gopal in his capacity as Sarvarahkar. In the written statement filed therein, no specific denial regarding the Sarvarahkarship of Shiv Gopal was raised by the defendants. The said suit was also decreed. In view of the aforesaid judicial pronouncements, it is evident that Shiv Gopal was the Sarvarahkar, and after him, his son Shri Narain became the Sarvarahkar of the temple. Moreover, none of the members of the Committee has ever disputed or denied the claim of Shri Narain as Sarvarahkar. A bare perusal of the aforesaid judgments clearly demonstrates that Shiv Gopal was appointed as Sarvarahkar after the death of Smt. Paraga, and thereafter Shri Narain was appointed as Sarvarahkar. Accordingly, this issue is decided in favour of Shri Narain.

62. As far as the fourth point of determination, whether the suit was barred under Section 11 CPC with regards to the issue of Sarvarhkarship is concerned, it has been submitted that earlier judicial pronouncements had already held Shiv Gopal to be the Sarvarhkar of the temple, and those findings had already attained finality. It has further been pointed out that the earlier suits were instituted by relatives of the present appellants, and the present proceedings appear to be an attempt to reopen issues that have already been conclusively decided. The civil court, after considering all the previous judgments regarding the Sarvarhkarship of the same trust, rightly concluded that Shiv Gopal was duly appointed as Sarvarhkar after the death of Smt. Paraga, and thereafter Shri Narain was also appointed as Sarvarhkar by Shiv Gopal.

The term '*res*' means 'subject matter or dispute' and '*judicata*' means

'adjudged, decided or adjudicated'. Thus, the meaning of term '*res judicata*' is 'matter adjudicated or a dispute decided'.

63. It is evident that the issue herein is related to Sarvarhkarship of the Trust namely, Ram Laxman Janki Ji Virajman Mandir Trust and between the same parties as it is brought to the notice of this Court that Gauri Shanker and Hari Shanker are related to Mool Chandra who is the appellant in the present cases and all of them have previously litigated on the same issue of Sarvarhkarship of the Trust. It is a trite law that the principles of *res judicata* is founded on the maxim '*interest reipublicae ut sit finis litium*' which means it is an interest of the State that there should be an end to a litigation.

64. Keeping in view, the meaning of term '*res judicata*' and the known maxim '*res judicata pro veritate occipitur*' i.e. a judicial decision must be accepted as correct and accordingly, the suit in the present case is barred under Section 11 CPC so far as the issue of Sarvarhkarship of the Trust namely, Ram Laxman Janki Ji Virajman Mandir Trust is concerned.

65. It clearly shows from the records that the appellants herein are trying to reopen a *lis* which has already been decided, the past litigation and the evidence on record clearly show that the relatives of the appellants had illegally tried to usurp the property and offerings of the temple/trust, having failed in previous litigation, they got the instant suit filed by their own relatives under Section 92 CPC on the ground the trust being a public trust. Apparently, the appellants are rank outsiders who initiated the take over of the Trust from the obvious reasons.

66. Accordingly, the points of determination are decided as follows:-

- (i) The Trust namely, Ram Laxman Janki Ji Trust is a 'Private Trust'.
- (ii) Since the Trust is a Private Trust a suit under Section 92 CPC is not maintainable.
- (iii) The appointment of Shri Narain as Sarvarhkar is valid.
- (iv) The suit is barred under Section 11 CPC with regard to issue of Sarvarhkarship.

67. In view of the aforesaid, the argument raised by the appellants *sans* merit and both the appeals are accordingly **dismissed**.

68. The lower court record is returned to the trial court concerned forthwith.

**(Prashant Kumar,J.)**

**May 27, 2026**  
Saurabh Yadav/-