

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	12.07.2024		<p>SA No.39 of 2024  <u><b>Hon'ble Alok Kumar Verma, J.</b></u></p> <p>An Original Suit (O.S. No.232 of 2017) was filed by the respondents – plaintiffs. The said Original Suit was decreed by the trial court. An Appeal (Civil Appeal No.11 of 2022) was filed against the judgment and decree dated 28.02.2022, passed by learned Civil Judge (Senior Division), Hardwar. The said Appeal has been dismissed by learned District Judge, Haridwar vide judgment and decree dated 05.03.2024.</p> <p><b>2.</b> Heard Mr. Siddhartha Singh, learned counsel for the proposed appellant – defendant and Mr. Arvind Vashistha, learned Senior Advocate assisted by Mr. Nikhil Singhal, (through video conferencing) learned counsel for the respondents – plaintiffs.</p> <p><b>3.</b> Mr. Siddhartha Singh, Advocate, contended that the respondents – plaintiffs had filed the said Original Suit against the appellant – defendant for eviction in form of mandatory injunction <i>inter alia</i> on the grounds of having purchased the suit property through two registered sale deeds</p>

		<p>dated 12.05.2016 asserting the defendant as licensee in two rooms, whereas the trial court had decreed the suit for three rooms. The suit property is known as Mimmi House, which is a public religious trust, which cannot be a subject matter of sale without obtaining the decree under Section 92 of the Code of Civil Procedure, 1908. The appellant – defendant is the manager of suit property and prior to him his father and grandfather were the manager.</p> <p>4. Mr. Siddhartha Singh, Advocate further argued that during the pendency of the First Appeal, appellant had moved an Application to frame the issue regarding the relationship between the licensor and the licensee, which was not framed by the learned trial court. Learned 1<sup>st</sup> Appellate Court vide its order dated 21.07.2023 directed to consider the said application at the time of final hearing, but, the question in regard to framing of the said issue was not considered and the Appeal has been dismissed. Appellant had also filed an Application under Order XLI Rule 27 C.P.C. along with the document dated 08.10.1963 in regard to donation to the trust. Learned 1<sup>st</sup> Appellate Court vide its order dated 18.11.2023 accepted the same on record and granted liberty to the respondents –</p>
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		<p>plaintiffs to file the rebuttal, but, learned 1<sup>st</sup> Appellate Court without considering the additional evidence in regard to the existence of trust has dismissed the Appeal.</p> <p><b>5.</b> On the other hand, Mr. Arvind Vashistha, Senior Advocate, has opposed the said submissions. He contended that the suit property is not a public religious trust. The respondents – plaintiffs are the owner of the suit property through registered sale deeds. Appellant – defendant was the manager of the suit property as a licensee and he was collecting rent from the tenants. Therefore, decree of mandatory injunction and mesne profit has rightly been passed against him.</p> <p><b>6.</b> In support of his submissions, Mr. Siddharth Singh, Advocate, has relied upon the judgments of the Hon'ble Supreme Court in "Dhurandhar Prasad Singh vs. Jai Prakash University and Others", (2001) 6 SCC 534, "Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore and Another vs. Vipin Dhanaitkar and Others", (2022) SCC OnLine SC 900 and judgment dated 27.05.2008, passed by Hon'ble Supreme Court in Appeal (Civil) 4175 of 2008 in "Swami Shankaranand (D) by L.R. vs. Mahant Sri Sadguru Sarnanand and Others".</p> <p><b>7.</b> Mr. Arvind Vashistha, learned Senior</p>
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			<p>Advocate has relied upon a judgment of Hon'ble Supreme Court passed in "Life Insurance Corporation of India and Another vs. Ram Pal Singh Bisen", (2010) 4 SCC 491 and a judgment dated 10.03.2022, passed by Hon'ble Supreme Court in Civil Appeal No.1760 of 2022, "Sanjay Kumar Singh vs. The State of Jharkhand".</p> <p><b>8.</b> The contentions raised by learned counsel for the parties are fairly arguable. Therefore, it would be appropriate to deal with the contentions raised by the parties by framing substantial questions of law.</p> <p><b>9.</b> The Second Appeal is admitted on the following substantial questions of law:-</p> <p>“(i) Whether Learned Trial Court on the basis of rival pleadings and relief sought for in the plaint had erred in law by not framing important issues in regard to relationship of licensors and licensee between the plaintiffs and the defendant and still decreeing the suit for eviction of the defendant by holding the defendant as licensee; without framing an issue in regard to right, title and authority of vendor of plaintiffs to transfer the property?</p> <p>(ii) Whether Learned First Appellate Court has erred in law by overlooking its order dated 21.07.2023 in regard to consideration of application for framing important issues at the time of passing of judgment dated 05.03.2024, while considering the evidence, which in turn vitiates the judgment?</p> <p>(iii) Whether Learned First Appellate Court has erred in law by not considering the additional evidence</p>
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filed by the appellant in light of order dated 15.03.2023 and 18.11.2023 while dismissing the first appeal?"

**10.** List on 21.08.2024 for final hearing.

**11.** Subject to depositing of entire decretal amount within two weeks' from today, as prayed by Mr. Siddhartha Singh, Advocate, the effect and operation of the impugned judgments and decree are stayed till further order.

**12.** Stay Application (IA No.01 of 2024) stands disposed of accordingly.

**(Alok Kumar Verma, J.)**  
12.07.2024

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