

!ITEM NO.50

Court No.3

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).27393/2008

(From the judgement and order dated 26/09/2008 in SBCSA No. 150/1993
of The HIGH COURT OF RAJASTHAN AT JODHPUR)

PREM DASS (D) BY LRS.

Petitioner(s)

VERSUS

PARSHVANATH JAIN TEMPLE & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 18/01/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Mr. M.R. Callal, Sr. Adv.
Mr. Manish Bohra, Adv.
Mr. B.D. Sharma, Adv.

For Respondent(s) Mr. S.K. Jain, Adv.
Mr. Puneet Jain, Adv.
Ms. Pratibha Jain, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

(Ganga Thakur)
PS to Registrar

(Juginder Kaur)
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2010
(Arising out of SLP(C) No.27393/08)

PREM DAS (D) BY LRS.

.APPELLANT (S)

Versus

PARSHVANATH JAIN TEMPLE & ORS.

..RESPONDENT (S)

O R D E R

Leave granted.

Notice was issued in this matter only to the

extent of the direction given in the impugned order to the appellant herein to pay a consolidated sum of Rs.50,000/- by way of mesne profits to the respondent-Trust on account of the occupation of the suit property from 18th February, 1982, till 26th September, 2008, and further mesne profits provided at the rate of Rs. 2,000/- from October, 2008.

Having heard Mr. M.R. Calla, learned senior counsel, in support of the appeal and Mr. S.K. Jain, learned counsel, appearing for the Trust, one thing appears to be clear and that is the occupation by the predecessor-in-interest of the appellant was on account of performing pooja in the Temple as pujari. It also appears from the materials on record that the predecessor-in-interest of the appellant was also not required to perform his duties as pujari after 4th

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February, 1982, but continued in occupation of the said premises which was claimed to be unauthorised and which appears to have been upheld by the court below.

Appearing in support of the appeal, Mr. Calla submitted that the order in question had been passed without due notice to the legal heirs of the deceased pujari, Prem Das, and the order has been passed in their absence, and accordingly, the same could not be held to be a proper order for the purpose of determining the mesne profits. Considering the facts of the case, we allow the appeal in part, and direct the appellant to pay a consolidated sum of Rs.10,000/- towards occupation of the premises, in question, in discharge of their full liabilities as far as the said directions are concerned.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi,
January 18, 2009.