



2026:CGHC:385

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 41 of 2010

Judgment reserved on 18/11/2025

Judgment delivered on 05/01/2026

Harishanker Gupta S/o Shri Maniklal Gupta, Aged About 49 Years Opposite Of Jagannath Mandir, Near Saddani Chowk, Manik Metal Stores, Raipur, District Raipur, ChhattisgarhPlaintiff

... Appellant

versus

1 - State Of Chhattisgarh Through Collector Raipur, District Raipur, Chhattisgarh

2 - Mehtaruram Dead Through Lrs

2.a - Smt. Tekan Bai W/o Late Mehtaruram Dewangan, Aged About 62 Years R/o Village- Devgaon, Post- Khauna, Thana- Kharora, Tahsil- Tilda, District- Raipur, Chhattisgarh

2.b - Kuleshwar Dewangan S/o Late Mehtaruram Dewangan, Aged About 55 Years R/o Village- Devgaon, Post- Khauna, Thana- Kharora, Tahsil- Tilda, District- Raipur, Chhattisgarh

2.c - Tarachand Dewangan S/o Late Mehtaruram Dewangan, Aged About 53 Years R/o Village- Devgaon, Post- Khauna, Thana- Kharora, Tahsil- Tilda, District- Raipur, Chhattisgarh

2.d - Kumar Dewangan S/o Late Mehtaruram Dewangan, Aged About 44 Years R/o Village- Devgaon, Post- Khauna, Thana- Kharora, Tahsil- Tilda, District- Raipur, Chhattisgarh

2.e - Chunaman S/o Late Mehtaruram Dewangan, Aged About 42 Years R/o Village- Devgaon, Post- Khauna, Thana- Kharora, Tahsil- Tilda, District- Raipur, Chhattisgarh

2.f - Lukeshwar Dewangan S/o Mehtaruram Dewangan, Aged About 32

Years R/o Village- Devgaon, Post- Khauna, Thana- Kharora, Tahsil- Tilda,
District- Raipur, Chhattisgarh

3 - Smt. Janki Bai W/o Late Roop Singh Dewagan, R/o Sitla Chowl,
Mathpara Raipur, District : Raipur, Chhattisgarh

4 - Kapil Dewagan S/o Late Roop Singh Dewagan, R/o Sitla Chowl,
Mathpara Raipur, District : Raipur, Chhattisgarh

5 - Mahant Shri Ramsunder Das Guru Shri Rajeyshri Mahant Late Shri
Vishnav Das Dudhdhri Meth, Mathpara, Raipur, Distt. Raipur,
ChhattisgarhDefendants

... Respondents

(Cause Title taken from Case Information System)

For Appellant	:	Mr. Ashish Shrivastava, Senior Advocate along with Mr. Anurag Verma, Mr. Rohishek Verma and Mr. Ishan Rathore, Advocates
For Respondent No.1/State	:	Mr. Arvind Dubey, Govt. Advocate
For Respondent No.5	:	Mr. Vineet Kumar Pandey, Advocate
For other Respondents	:	None

Hon'ble Shri Ravindra Kumar Agrawal, Judge

C.A.V. Judgment

1. The present Second Appeal under Section 100 of the Code of Civil Procedure has been filed by the plaintiff against the impugned judgment and decree dated 24-10-2009, passed by the learned 10th Additional District Judge, Raipur, in Civil Appeal No. 06-A/2008, whereby the first appeal filed by the plaintiff is dismissed and the judgment and decree dated 04-02-2008, passed by learned 12th Civil Judge Class-II, Raipur, in Civil Suit No. 24-A/2006 is affirmed.
2. For the sake of convenience, the status of the parties before the learned trial court is referred to hereinafter in the present appeal.

3. The Second Appeal is admitted on 09-02-2021 on the following substantial question of law:-

“Whether both the Courts below are justified in holding that Rajshi Vishnavdas has no right to alienate the suit land in favour of Gayaram and Roop Singh, therefore, the plaintiff/purchaser has no title over the suit land, by recording a finding which is perverse to the record?”

4. The plaintiff filed a suit for declaration of title and permanent injunction over the suit land Kh. No. 419, area 2.00 acres and 5.53 acres of the same khasra number, situated at the village Mathpurena, P.H. No. 105, Tahsil and District Raipur. It is pleaded by the plaintiff in the plaint that he purchased the suit lands through two different registered sale deeds dated 10-06-1965 from its owner, Gaya Ram Dewangan and Roop Singh, and came into possession thereof. He is still in possession of the suit lands. He gave the documents to the concerned Patwari for mutation of his name in the revenue records, and the concerned Patwari has entered the correction in the records also at Sr. No. 320 and 322. In the year 2001-02, when the plaintiff approached the Patwari to obtain a copy of the revenue records, he informed him that the suit lands are recorded in the name of Defendant No. 6, Guru Rajshri Vaishnav Das Ji, and the Collector is the manager of the lands. Thereafter, he filed his application for mutation of his name in the revenue records before the Tahsildar, Raipur, on 08-10-2001, but due to his ill health, he could not pursue his application and could not contact his counsel. When they searched about the status of the case, they came to know that the

mutation application of the plaintiff was dismissed for want of prosecution on 17-02-2004. The plaintiff had filed an application on 15-03-2005, under Section 35(3) of the Chhattisgarh Land Revenue Code, 1959, but the same has been returned by saying that, after such a long time, it would not be proper to reopen the case for mutation. Thereafter, he filed the present Civil Suit.

5. After service of summons, the defendants have not contested the suit and have remained *ex parte* throughout the proceedings of the case before the learned trial court.
6. The learned trial Court, on the basis of the pleading of the plaint and documents annexed to the case, framed the following point for determination:-

“In support of his case, the plaintiff Harishankar Gupta, examined himself as P.W. 1, and relied upon the documents of the Sale deeds dated 10-06-1965 as Ex. P-1 and P-2, Adhikar Abhilekh of the year 1976, as Ex. P-3, order sheet dated 17-02-2004 as Ex. P-4, application of Section 35(3) of the C.G. Land Revenue Code as Ex. P-5, copy of the sale deed dated executed in favour of Gaya Ram Koshta and Roop Singh Ex. P-6 and P-7.”

7. The learned trial Court, after hearing the plaintiff, passed its judgment and decree on 04-02-2008 and dismissed the suit, holding that the plaintiff could not prove that from the document Ex. P-3, the lands were recorded as the land belongs to the Mandir trust, and the Collector is the manager, and the land was sold by Mahant Vaishna Das Ji without permission of the Collector, and he had no right to sell the land to Gaya Ram and Roop Singh. Thus, Mahant Rajshri

Vaishnav Das Ji had sold the land without any right, and the purchaser has also not got any right or title over the suit lands.

8. The judgment and decree dated 04-02-2008 was challenged by the plaintiff in the first appeal before the learned First Appellate Court, which has also been dismissed vide its judgment and decree dated 24-10-2009, affirming the findings of the learned trial Court. Against which the present second appeal has been filed. The second appeal is admitted on 09-02-2021, which is set out in the earlier paragraph of this judgment.
9. In the present second appeal, on 06-10-2020, the appellant has filed an application under Order 41 Rule 27 read with Section 151 of the C.P.C. (I.A. No. 06/2020), for taking additional evidence on record. Along with the application, the appellant/plaintiff filed a copy of the register maintained by the Registrar, Public Trust, Raipur, to show that the Shri Balaji Swami Shri Dudhadhari Math Trust, Raipur, is declared as a Public Trust on 19-04-1979, and therefore, the permission of the Collector to alienate the property was not required. At the same time, another application under Section 100 read with Section 151 of the C.P.C. (I.A. No. 07/2020), for framing the additional substantial question of law, and proposed the same.
10. Learned counsel for the appellant/plaintiff would submit on the application for framing the additional substantial question of law (I.A. No. 07/2020) that the case involved two additional substantial questions of law, which are proposed in the application. These substantial questions of law relate to the issue that the sale deed

executed by Rajshi Vaishnav Das in favour of Gaya Ram and Roop Singh on 29-01-1953, which is much before the registration of the Trust, i.e. on 19-04-1979, has been ignored by the learned Courts below, and not considering that the plaintiff is a *bona fide* purchaser of the land, who purchased the land through two registered sale deeds dated 10-06-1965 (Ex. P-1 and P-2) and is in possession of the same since then. Therefore, the case involves the additional substantial questions of law which ought to have been framed and determined in the case.

11. He would further submit that the appellant/plaintiff has filed another application under Order 41 Rule 27 of C.P.C., along with a copy of the register maintained by the Registrar, Public Trust, Raipur, as additional evidence, which clearly shows that the Temple Trust is registered on 19-04-1979, which is much prior to the sale deed registered in favour of Gaya Ram and Roop Singh. Therefore, there was no requirement to obtain permission from the Collector. The learned Trial Court as well as the first appellate Court have dismissed the suit of the plaintiff on the ground that the suit lands belonged to the Temple Trust and were alienated without permission of the Collector, and thus, Rajshi Vaishnav Das was not competent to alienate the same to Gaya Ram and Roop Singh. The additional evidence is very relevant and vital document to establish that the date on which the lands were sold to Gaya Das and Roop Singh by Rajshi Vaishnav Das, the Trust was not registered and therefore, the permission of Collector was not required and the sale deeds duly

transferred the title of the suit lands to Gaya Ram and Roop Singh, and they sold the suit lands to the plaintiff, which does not suffers from any infirmity. Therefore, the application may be allowed, and the additional evidence may be taken on record.

12. With respect to the substantial question of law framed on 09-02-2021, he would submit that the plaintiff is the *bona fide* purchaser of the suit lands, who purchased it through two registered sale deeds. He is in possession of the same from the date of its purchase. It is only in the year 2001-02, when he came to know that the name of the defendant No. 5 is mutated in the revenue records, he filed the suit. The pleadings and evidence of the plaintiff are unrebutted, and a decree should have been passed in his favour. The sale deeds have not been challenged by the defendant No. 5, and the possession of the plaintiff over the suit lands is also not challenged by the defendants. At the time when the sale deed was executed in favour of Gaya Ram and Roop Singh, it was recorded in the name of Rajshi Vaishnav Das. Only on the basis of an entry made in Adhikar Abhilekh of the year 1976, that the suit land is the property of Temple Trust and sold without permission of the Collector, the suit of the plaintiff is dismissed. In the sale deeds, Ex. P-6 and P-7, there is no mention that it was the property of Temple Trust. Therefore, the consideration of the learned Trial Court and First Appellate Court is without any basis and without any evidence from the defendants. The additional evidence produced by the appellant/plaintiff is sufficient to hold that the suit lands were not the property of Temple Trust, and the Temple

Trust was registered later on. The inaction of the defendants to claim their lands for such a long time entitled the plaintiff to a decree in his favour. Therefore, the appeal may be allowed, and the decree may be passed in favour of the plaintiff by setting aside the judgment and decree passed by the learned Courts below.

13. Per contra, learned counsel for the Respondent/Defendant No. 5 opposes the submissions of the learned counsel for the appellant and submits that although the Temple Trust is registered on 19-04-1979, the proceeding for registration of the Temple Trust was initiated in the year 1953-54 itself, as reflected from its case number, which is 12/33-9/1953-54. Therefore, it cannot be said that the Temple Trust is registered on 19-04-1979, and all the transactions prior to the date of its registration are valid transactions. The sale deeds in favour of Gaya Ram and Roop Singh were said to have been executed by Rajshi Vaishnav Das on 04-02-1963 (Ex. P-6 and P-7), during the period when the registration of Temple Trust was under consideration. The plaintiff has not proved by producing clear evidence with respect to the ownership of the land with Rajshi Vaishnav Das. He would further submit that the additional evidence is also not relevant in the case with respect to ownership of the land with Rajshi Vaishnav Das, but it is with respect to the date of registration of Temple Trust, including the initiation of the proceeding in the year 1953-54. Despite having the opportunity to file it before the learned trial Court, it has not been filed. When the suit of the plaintiff is dismissed, then also the said document has not been filed,

and now it is filed in the second appellate stage, which cannot be taken into consideration. He would further submit that the vendor of the suit land, Rajshi Vaishnav Das, did not have a valid title with him and therefore, the alienation by him does not transfer a valid title to its purchaser and the plaintiff, who is the ultimate purchaser, cannot hold that he is the title holder of the suit lands. The learned trial Court, as well as the first appellate Court, has rightly dismissed the suit of the plaintiff, and the appeal is also liable to be dismissed.

14. Learned counsel appearing for the State also supported the judgment and decree passed by the learned Courts below and submitted that the plaintiff has failed to prove the title of Rajshi Vaishnav Das to alienate the suit lands to Gaya Ram and Roop Singh, as the same was the property of Temple Trust and Rajshi Vaishnav Das was only a Mahant of the Trust. He was only a manager of the Trust property, and without the permission of the Collector, he could not alienate the property belonging to the Trust. The purchaser could not get the title from such transaction. The plaintiff has failed to produce sufficient documentary evidence with respect to the title of Rajshi Vaishnav Das over the suit land, and therefore, the learned Courts below have rightly dismissed the suit of the plaintiff, which does not suffer from any perversity or illegality.
15. I have heard learned counsel for the parties and perused the record of the trial Court as well as the first appellate Court and applications/ documents produced in the present appeal as additional evidence.

Consideration with respect to the application of Section 100 read with Section 151 of the C.P.C. (I.A. No. 07/2020) filed by the appellant/plaintiff.

16. Under Section 100 (4) of the C.P.C., the appellant can argue only on the substantial question of law formulated in the second appeal. However, the proviso to Section 100 (5) of the C.P.C. empowers the Court to hear the appeal in any other substantial question of law, not formulated by the Court at the time of admission of appeal, subject to two conditions, i.e. (1) that the Court should be satisfied that the case involves other substantial question of law and (2) the Court must record reason for hearing of appeal on any other substantial question of law not formulated by the Court at the time of admission. The proviso of sub-section (5) of Section 100 of C.P.C. is a repository of judicial discretion. The powers, although not unbridled, are yet enough to impress all such questions which deserve consideration to subserve the ends of justice.
17. These two additional substantial questions of law proposed by the plaintiff/appellant in his application (I.A. No. 07/2020) are as under:-

“(i) Whether learned Courts below were justified in rejecting the civil suit as well as civil appeal merely taking into consideration the noting of Patwari Halka in register (Ex. P/3) ignoring the fact that the transaction in respect of land in question in between Rajshi Vishnavdas and Gayaram and Roop Singh was held vide registered sale deed executed on 29/01/1953 (Ex. P/6 & Ex. P/7), much before the declaration and establishment of Temple Trust, vide order dated 19/04/1979 issued by the Registrar, Public Trust, Raipur?”

(ii) Whether learned Courts below were justified by not granting decree in favour of the appellant/plaintiff in respect of the land in question whereas, appellant/plaintiff is a bonafide purchaser pursuant to execution of registered sale deed vide dated 10/06/1965 (Ex. P/1 & Ex. P/2) and the appellant/plaintiff was in peaceful possession since 1965 and the transaction was held much before the declaration and establishment of Temple Trust, vide order dated 19/04/1979 issued by the Registrar, Public Trust, Raipur?”

18. From perusal of the record of the learned trial Court, it transpires that neither was there any pleading nor evidence as to when the Temple Trust was registered. There was no pleading in the plaint that Rajshi Vaishna Das had sold the land to Gaya Das and Roop Singh on 29-01-1953 (the documents Ex. P-3 bear the date of 29-01-1963, and the documents Ex. P-6 and P-7 mentioned the date of 04-02-1963). In the absence of any material on record to show that the Trust of the Temple was registered on 19-04-1979, the learned Courts below had no occasion to consider the same, and therefore, the same cannot be held to be the substantial question of law involved in the appeal. The second proposed substantial question of law is with respect to the *bona fide* purchaser of the plaintiff, which covers the substantial question of law framed in the appeal, for the reason that if, it is held in the appeal that Rajshi Vaishnavdas was having right to alienate the land to Gaya Das and Roop Singh, then the alienation made by Gaya Das and Roop Singh also comes to its validation and the right and title of the plaintiff would arise. The substantial question of law formulated in the case on 09-02-2021 involves the issue “*whether*

Rajshi Vishnavdas has no right to alienate the suit land in favour of Gayaram and Roop Singh", which inherently includes the date of declaration of the temple Trust, subject to evidence available on record. Further, the application was filed on 06-10-2020, and after hearing the parties on 09-02-2021, i.e. after filing the application of I.A. No. 07/2020, the coordinate bench of this Court has framed a substantial question of law, which amounts to consideration of the issue involved in the appeal. Therefore, the application filed by the appellant/plaintiff under Section 100 read with Section 151 of the C.P.C. (I.A. No. 07/2020) is rejected.

Consideration on the substantial question of law

19. The issue involved in the present case is the competency of Rajshi Vaishnav Das to alienate the lands of Kh. No. 419 area 2.00 acres and 5.53 acres, to Gaya Ram and Roop Singh. The said alienation by Rajshi Vaishnav Das was made through the sale deed Ex. P-6 and P-7 registered on 04-02-1963. Thereafter, vide sale deeds dated 10-06-1965 (Ex. P-1 and P-2), the suit lands were sold by Gaya Ram and Roop Singh to the plaintiff. In the Adhikar Abhilekh of the year 1976 (Ex. P-3), it is mentioned that "यह भूमि मंदिर की है। कलेक्टर की मंजूरी के बिना बिक्री की है। तहसीलदार सा० को भेजें।" When the document Ex. P-3 relied by the plaintiff himself and the Revenue Authority stated that the suit land is of Temple's property, which has been alienated without permission of the Collector, then the plaintiff, who is claiming title over the suit land, should have produced sufficient evidence that the suit land comes to Gaya Ram and Roop Singh from Rajshi Vaishnav Das,

who owned the same. He should have produced the relevant revenue records or any deed of title of Rajshi Vaishnav Das, by which he acquired title over the property. The plaintiff was well within the knowledge of the issue of alienable title of Rajshi Vaishnav Das over the suit land to alienate in favour of Gaya Ram and Roop Singh. If the title of Rajshi Vaishnav Das is not established, no title can be passed in favour of the purchaser, Gaya Ram and Roop Singh, and in turn, the purchaser/plaintiff would also not get any title over it through the alienation made by Gaya Ram and Roop Singh in his favour.

20. It is settled law that no one can transfer a better interest than what he has over the property. In the matter of **“Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese”**, 2022 (7) SCC 90, the Hon’ble Supreme Court has held that:-

“19. It is a fundamental principle of the law of transfer of property that “no one can confer a better title than what he himself has” (Nemo dat quod non habet). The appellant’s sister did not have the power to sell the property to the vendors of the respondent. Therefore, the vendors of the respondent could not have derived any valid title to the property. If the vendors of the respondent themselves did not have any title, they had nothing to convey to the respondent, except perhaps the litigation. ”

21. In view of the entry made in Adhikar Abhilekh (Ex. P-3), the learned trial Court examined the evidence produced by the plaintiff with respect to the alienable title of Rajshi Vaishnav Das. It is also the case of the plaintiff that in the year 2001-02, he came to know that

the suit land is recorded in the name of Rajshi Vaishnav Das, and the Collector is the manager of the property. There is no evidence about the source of the title of Rajshi Vaishnav Das to alienate the suit land to Gaya Ram and Roop Singh. Even the plaintiff has not filed any document of his possession over the suit land. If the plaintiff is continuously in possession and cultivating the same, there should be some documents with respect to payment of its land revenue, irrigation taxes, revenue entry or any crop details. There is also no evidence to show that the suit land was in the exclusive ownership of Rajshi Vaishnav Das, or that he was the title and possession holder of the suit land in his individual capacity and not under the capacity of Mahant of the Math.

22. From the evidence produced by the plaintiff, it could not be established that Rajshi Vaishnav Das had an alienable title with him to execute the sale deeds of the suit land in favour of Gaya Ram and Roop Singh, and therefore, the sale made by an unauthorized person cannot convey title to its purchaser and the ultimate purchaser, i.e. the plaintiff, would also not get any title over the suit land. Until the title of Rajshi Vaishnav Das is established, the plaintiff also could not get any title over the same. The evidence produced by the plaintiff is not sufficient to properly adjudicate the issue as to whether Rajshi Vaishnav Das had an alienable title with him to sell the suit land to Gaya Ram and Roop Singh or not. In the absence of sufficient evidence, the judgment and decree passed by the learned Courts below do not suffer from any illegality or perversity, subject to

consideration of additional evidence produced by the plaintiff in the second appeal.

Consideration with respect to the application of Order 41 Rule 27 read with Section 151 of the C.P.C. (I.A. No. 06/2020) filed by the appellant/plaintiff.

23. In the second appeal, the plaintiff filed an application for taking additional evidence on record, which is a copy of the register of the Registrar, Public Trust, Raipur, in which the details of the “Shri Balaji Swami Shri Dudhadhari Math Trust, Raipur” are given. It is the submission of the plaintiff with respect to the additional evidence that the Trust itself was registered on 19-04-1979 and therefore, the alienation made 04-02-1963 in favour of Gaya Ram and Roop Singh through two registered sale deeds (Ex. P-6 and P-7) does not require permission of the Collector, because at that time there was no trust, and the sale made by him is valid and conveyed title upon the purchasers. Therefore, he prayed for taking additional evidence on record and to pass a decree in his favour.
24. Production of additional evidence in the appellate Court is provided under Order 41 Rule 27 of the C.P.C., which says that a party to the appeal shall not be permitted to produce additional evidence, either oral or documentary, but under certain conditions, it may be permitted. It is necessary to notice here the provisions of Order 41 Rule 27 of the C.P.C., which reads as under:-

“27. Production of additional evidence in Appellate Court.— (1) The parties to an appeal shall not be entitled

to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

25. In the matter of **“Wadi v. Amilal and others”**, 2015 (1) SCC 677, the Hon’ble Supreme Court has held that the requirement of additional evidence by the Court in order to do justice and if the document in question would throw light on the germane issue and is necessary for pronouncing judgment, it can be taken on record. In para 5, it has been held that:-

“5. Now it is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in Sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in Clauses (a), (a) and (b). We are concerned here with

Clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, Clause (b) enables it to adopt that course. Invocation of Clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case. ”

26. The document, which is sought to be produced as additional evidence, is a copy of the register of the Registrar, Public Trust, Raipur, in which certain details of the “Shri Balaji Swami Shri Dudhadhari Math Trust, Raipur” are given. In column No. 3, the name of Mahant Vaishnav Das, Guru Mahant, is mentioned, and in column No. 4, “ट्रस्ट डीड 12-11-63 के अनुसार” is mentioned. In column No. 9, the details of properties are mentioned, and in column No. 10, the details of the order and case number are mentioned. In column No. 10, it is mentioned that “श्री आई. एन. स्वामी अतिरिक्त कलेक्टर एवं रजिस्ट्रार पब्लिक ट्रस्ट, रायपुर का राजस्व प्रकरण क्रमांक 12/33-9/वर्ष 1953-54 में पारित आदेश दिनांक 19-04-1979 के अनुसार ट्रस्ट घोषित किया गया।”. It further transpires from the case number that the said proceeding was started in the year 1953-54, but from column No. 4, it transpires that the trust deed was prepared on 12-11-1963; however, the order was passed on 19-04-1979. Though

this document is also not sufficient to determine the issue involved in the case, but has some bearing to throw light on the issue as to when the trust was registered and under what capacity, the sale deed was executed by Rajshi Vaishnav Das, in favour of Gaya Ram and Roop Singh, and whether the suit land were hold by the Trust or by Rajshi Vaishnav Das in his individual capacity or as the Mahant of the Math. The position of Mahant of a Math is just a manager of the Math, with wider powers than those possessed by a manager or trustee of the Temple. He has a dual capacity as he is the manager of the properties and the spiritual head of the Math. The Mahant holds the properties of the Math for a certain specific purpose as laid down by the founder or by usage. Although the Mahant is the head of the Math, the property dedicated to a Math doesn't vest in him, but it vests in the Math itself as a juristic person. The "Math" is defined under Section 2(2) of the Chhattisgarh Public Trust Act, 1951, and according to which Math means an institution for the promotion of the Hindu religion presided over by a person whose duty is to engage himself in imparting religious instructions or rendering spiritual services to a body or discipline and includes places of religious worship or instructions which are appurtenant to the institution.

27. Thus, this court is of the opinion that the document produced by the plaintiff as additional evidence is relevant and vital for deciding the substantial question of law involved in the case, which sheds some light on the controversy between the parties. Accordingly, the application filed by the plaintiff under Order 41 Rule 27 read with

Section 151 of C.P.C. (I.A. No. 06/2020) is allowed, and additional evidence is taken on record.

28. Now, another question arises about the mode of taking additional evidence on record after allowing the application of Order 41 Rule 27 of C.P.C. When the additional evidence is taken on record, the provision of Order 41 Rule 28 of C.P.C. has to be followed. In view of the provision of Order 41 Rule 27 of C.P.C., it is clear that the appellate Court, once allowed the application filed under Order 41 Rule 27 CPC, it should have either recorded the statements of the parties or should have directed the trial Court to record the statement from whose decree the Appeal is preferred or of any other subordinate Court, who in turn, after recording the evidence, as the appellate Court may have directed, could have proceeded to record the statement of the parties and send the same to the concerned appellate Court. This is the procedure that should have been followed under such circumstances by the lower appellate Court.
29. While considering such a situation, it was observed by the Hon'ble Supreme Court in the matter of **"H.P. Vedavyasachar vs. Shivashankara and Another"**, 2009 (8) SCC 231 at para 7 as under:-

"7.....When an application for adducing additional evidence is allowed the appellate court has two options open to it. It may record the evidence itself or it may direct the trial court to do so."

30. Similar is the view taken by the Hon'ble Supreme Court in the matter of **"Uttaradi Mutt vs. Raghavendra Swamy Mutt"** (2018) 10 SCC 484, wherein it has been observed at para 19 as under:-

"19. The High Court could have issued directions to the first appellate court to determine any question of fact including the existence and genuineness of the additional evidence or for that matter, whether the contents of the said documents had been duly proved by the party relying thereon. After recording the evidence in support of such relevant matters as the High Court may have directed, the first appellate court could proceed to try such issues and return the evidence to the High Court together with its findings thereon within the prescribed time. Such a course was permissible in terms of Rule 28 of Order 41 of CPC. And on receipt of the report, the High Court could then consider the substantial questions of law already framed while admitting the second appeal and finally decide the same on all issues."

31. In light of the principles laid down in the above-mentioned judgments, and the issue involved in the case, and also in view of the additional evidence produced by the plaintiff, it would be appropriate to remit the case to the learned trial court to decide the case afresh, who shall proceed to record evidence of the parties based upon the additional documentary evidence produced before this Court, and to provide proper opportunity of hearing to the parties and to lead their evidence, in accordance with law. The opposite party are also entitled to cross-examination of the witnesses produced by either party.
32. Accordingly, the substantial question of law is answered that presently, there is no sufficient evidence that demonstrates the alienable title of the suit land with Rajshi Vaishnav Das; however, the

matter is remitted back to the trial Court to decide the case afresh in view of the additional evidence produced by the plaintiff.

33. The additional documentary evidence produced before this court shall also be transmitted to the learned trial Court for taking it on record. The parties are directed to appear before the concerned Trial Court on **20-01-2026**, and the Trial Court shall decide the case in accordance with law.
34. As a result, the judgment and decree passed by the learned trial Court as well as the First Appellate Court are **set aside** and the appeal is **allowed** to the extent indicated hereinabove.
35. Parties shall bear their own cost(s).

Sd/-
(Ravindra Kumar Agrawal)
Judge

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