

Ugamsingh & Mishrimal vs Kesrimal & Ors on 26 November, 1970

Equivalent citations: 1971 AIR 2540, 1971 SCR (2) 836

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy, J.M. Shelat, C.A. Vaidyalingam

PETITIONER:
UGAMSINGH & MISHRIMAL

Vs.

RESPONDENT:
KESRIMAL & ORS,

DATE OF JUDGMENT:
26/11/1970

BENCH:
REDDY, P. JAGANMOHAN
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REDDY, P. JAGANMOHAN
SHELAT, J.M.
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 2540 1971 SCR (2) 836

ACT:
Worship-Right of-If of a civil nature for which suit maintainable--Idol of Adeshwarji in temple at Paroli-If idol of Digambri or Swetambri Jain sect idol.

HEADNOTE:
Respondents 1 to 9 filed a suit against the Appellants and some of the other respondents for a declaration that they had been carrying on, and were entitled to the worship without interference of the idol of Adeshwarji in the temple named after him at Paroli according to the tenets observed by the Digambri Sect of the Jain religion. They further alleged : that the temple was constructed and the idol consecrated according to and by the followers of their sect; that in December, 1949, the defendants had attempted to convert the said idol into the idol of the Swetambri Sect by putting Chakshus (artificial eyes) thereon, but were

prevented due to strong opposition of the followers of Digambri Sect. It was claimed that although a temporary settlement was reached between the two sects while the rights in the temple were to be adjudicated upon by a Civil Court, the defendants had made arrangements to alter the temple according to their tenets and that they were intending to enclose the idol by doors and locks with the object of interfering with the free exercise of a Digambri's right to worship the idol. It was therefore prayed that the defendants be restrained by a permanent injunction from altering the nature and shape and appearance of the idol in any manner or from doing any act which would interfere with the right of worship of the followers of the Digambri Sect. The defendants denied that the Digambri Sect had any right of worship of the idol or had ever exercised such a right and contended that the idol and the temple is in all respects a temple of the Jain Svetambri Sect.

The Trial Court decreed the suit and the District Judge in appeal as well as the High Court confirmed the decree. The High Court also fixed three hours a day when the Digambri may use the temple for worship-

In appeal to this Court, it was contended inter alia on behalf of the appellant that the reliefs claimed made it clear that the dispute was not of a civil nature; and that the judgment of the Trial Court was wholly vitiated because the Trial Judge not having accepted the evidence produced before him, based his findings on his own inspection. It was also contended that unless the ownership of the temple, was established or that the idol belonged to the Digambri Sect, no injunction could be given nor could the respondents be permitted to worship there; in the plaint the respondents had averred that the idol is a Digambri idol and as they had failed to prove this, their right to worship also failed.

HELD: Dismissing the appeal,

(i) From the pleadings and the controversy between the parties it was clear that the issue was not one which was confined merely to rites and rituals but one which effected the rights of worship. If the Digambri have a right to worship at the temple, the attempt of the Svetam-

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belies to put Chakshus or to place Dhvajadand or Kalash in accordance with their tenets and to claim that the idol is a Svetamברי idol was to preclude the Digambri from exercising their right to worship at the temple, with respect to which a civil suit is maintainable under Section 9 of the Civil Procedure Code. This position is well established. [843 B]

Sir Seth Hakam Chand & Ors. vs. Maharaj Bahadur Singh & Ors., 60 I.A. 313 and Nar Hari Sastri and Ors. vs. Shri Badrinath Temple Committee, [1952] S.C.R. 849, referred to.

(ii) While, giving his findings the Trial Judge remarked that the evidence led by the Plaintiffs appeared to be correct. These observations themselves show that the

evidence on record was an element in the formulation of the Trial Court's judgment buttressed by the observations of the learned Judge during the site inspection. it was clear that the description given by the learned Judge of the idols in the Adeshwarji Temple and the Temple of the Svetamberies were observations made during an inspection at which both the Plaintiffs and Defendants Advocates were present and that there must have been notes also in respect of the inspection made on both the occasions. There was therefore no validity in the contention that the finding of the Trial Judge was based entirely on the result of his inspection. [844 G-845 C]

(iii)The concurrent findings of the Courts below that the idol was Nirker' (naked), that there were no Chakshus, no Mukat, no Armlet, no Dhvajadand or no Kalash, would show that the idol was consecrated by the Digamberies. It was also clear that it was an ancient temple and that both the Digamberies and the Svetamberies worship the idol. It was not denied that while the Digamberies will not worship an idol which has Chakshus or which has clothes or Mukat, the Svetamberies would worship a Digamberi idol without these and hence the right to worship a Digamberi idol by both the sects is possible and it has been rightly so held by all the courts. [846 E]

Once the right of worship of Digamberies was established they would be entitled to the injunction sought for by them against the Appellants from preventing them from worshipping or from interfering with that right by placing Chakshus in the idol, Dhvajadand, Kalash on the Temple..

The directions of the High Court extending the time for worship by Digamberi Sect from one hour to three hours was not unreasonable. [848 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 158 of 1967. Appeal by special leave from the judgment and order dated August 5, 1966 of the Rajasthan High Court. in S. P. Civil Regular Second Appeal No. 222 of 1964.

S. T. Desai, P. C. Bhartari, J. B. Dadachanji and Pukhraj Singh, for the appellant.

S.V. Gupte, K. K. Jain and H. K. Puri, for respondents Nos. 1 to 9.

That Judgment of the Court was delivered by P.Jaganmohan, Reddy, J. This Appeal by Special Leave of this Court is against the Judgment of a Single Judge of the Rajas-

than High Court affirming the Judgment and decree of the, District Court with certain variations.

Respondents 1 to 9 filed a suit against the Appellants and Respondents 10 and 11 and two others for a declaration that they have been carrying on and are entitled to carry on Darshan, Prakshal and Poojan etc. of the idol of Adeshwarji, the first Tirthankar in the Temple named after him at Paroli without interference according to the tenets observed by the Digambri Sect of the Jain religion.' The said Temple of Shri Adeshwarji is said to have been in existence for 200 years while, the Respondents aver that the inscriptions on it bear Vikram Samvat 1510 (1454 AD).

The Plaintiffs further alleged that the Temple was constructed and the idol, was consecrated according to and by the followers of the tenets of the Digamber sect; that the Plaintiffs and the other followers of the Digamber Sect have been performing Darshan, Prakshal and Poojan of the said idol according to their tenets every since the Temple was founded; that on the 23rd of December 1949 the Defendants attempted to convert the said idol into the idol of Swetambri Sect by putting Chakshus (artificial eyes) thereon, but were prevented from doing so by a strong opposition of the followers of the Digamber Sect; that thereafter some temporary arrangements were made between the followers of the two Sects who agreed to maintain the status-quo until a decision of the Civil Court on the rival claims of the parties was given; that in disregard of the temporary settlement and without getting the rights in the Temple adjudicated upon by the Civil Court, the Defendants made arrangements to put Dhwadand and Kalash on the said Temple according to their tenets,, and that they also further learnt that the Defendants were intending to enclose the said idol by putting up doors and locks with the. object of interfering with and obstructing the free exercise by the Digamberies of their unfettered rights to perform Poojan, Prakshal and worship of the said ideal according to their tenets. On these allegations it was prayed that the Defendants be restrained by a permanent injunction from (i) erecting the Dhwadand, and putting up Kalash; (ii) enclosing the idols by putting up doors and locks; or in any manner altering the nature and shape and appearance of the idols installed in the said Temple; or directly or indirectly doing any act or thing which may have the effect of wounding the religious susceptibilities and sentiments of the followers of the Digamberi-Jain Sect; and (iii) from interfering with the free and unfettered rights of the Plaintiffs of performing Darshan. Prakshal and Poojan and other rites according to the tenets of Digamber Jain Sect.

The Defendants did not deny that they,intended to put the Netras' but said that they did so because the Netras which the idol had even before the said date having been damaged and fallen out, new Netras were put up. They further claimed that since its existence the Temple of Adeshwarji has been in the possession of the Defendants who have been in exclusive management of the Temple and its property; that the Plaintiffs never used to do Poojan or Prakshal in the Temple nor had they any Tight thereto, and that when in 1949 there was a dispute between the parties a temporary arrangement was made but the Defendants did not admit any right of Plaintiffs to Poojan. It, was further averred that the said- idol and the Temple is in all respects Jain Swetambri Sect, that it has been so used and described in all the historic records from time to time and that the Civil Court had no jurisdiction to decide the religious rights of the parties nor is it a dispute of a civil nature. On these pleadings issues were framed on 3-12-55 but subse- quently after the evidence in the case was recorded and having regard thereto fresh issues were framed in substitution of the former ones on 4-6-57 but thereafter no evidence was led by either party. The controversy between the parties as is evident from these issues was, as to which Sect of the Jains the main idol of Adeshwarji belongs,

which Sect has constructed the upper portion of the idol referred to and the nearby portion of the temple; under what tenets have the followers of the Sects, Digamber and Swetamber, performed Darshan, Prakshal and Poojan of the idol of the temple referred to and can any Sect change those previous tenets-, whether the Notras (artificial eyes) of the idol, Bhujband and Dhvajadand over the temple existed before and if not, can they be placed and inserted now; and whether the Temple is in possession and under the management of the Defendants alone from the time it came into existence. The Civil Judge of Bhilwara decreed the suit of the Plain- tiffs, against which the Defendants appealed. The District Judge, however, allowed the appeal and dismissed the suit on the ground that in his opinion no question of any right to property or office was involved in the suit' and consequently the plaintiffs suit was dismissed with costs. On an appeal from this Judgment the High Court allowed the Appeal holding that inasmuch as the allegations in the plaint relate to an assertion of a right of worship and an interference with that right, a dispute of civil nature arises which is, clearly cognizable by a Civil Court. In this view the case was, remanded to the District Judge for determining the appeal on merits. Leave to Appeal was also refused.

After remand the District Judge confirmed the Judgment and decree of the Trial Court with certain variations. Against this Judgment the Appellants filed an appeal to the High Court and the Respondents filed cross objections. The High Court affirmed the Judgment of the District Judge except for that part of the decree directing the Appellants to keep open the doors of the Temple between 8.30 and 9.30 each morning to enable the Respondents to worship without interference, which, however, was modified to enable Respondents to worship at the Temple between 6 a.m. to 9 a.m. every morning, during which time the Temple was not to be locked. It further directed that if the Swetambaries wanted also to worship during this period without disturbing the Digambaries they had the liberty to do so. The learned Advocate for the Appellants Shri S. T. Desai urged several contention before us namely; (i) the High Court was in error in not deciding the ownership of the Temple or of the idol; (ii) that it should have held that a presumption of ownership would arise having regard to the concurrent findings that the Swetambaries were in management and possession of the Temple; (iii) that the reliefs claimed make it clear that the dispute is not of a civil nature for in any view of the matter the Courts were in error that placing of the Dhvajadand and Kalash on the Temple changes the nature of the temple; (iv) that the High Court should not have accepted the cross appeal fixing 3 hours time for the worship of the Digambaries Sect; (v) that the Judgment of the Trial Court is wholly vitiated because the Trial Judge not having accepted the evidence based his findings on his own inspection.

Before as deal with these contentions, it is necessary to detail the findings of the Courts below The Trial Court while decreeing the Plaintiff's suit held that though it was not proved as to who built the Temple of Adeshwarji initially, both Digambaries and Swetambaries worshipped in the said Temple; that the management and the possession of the Temple was with the Defendants Swetambaries for a long time, that the Swetambaries were not entitled to put artificial eyes or to put Dhvajadand or Kalash on the Temple; and that the Defendants were trying to interfere with the rights of the Plaintiffs' and were making alterations to transform the character of the Temple. In this view the Trial Judge gave a declaration in favour of the Plaintiffs against Defendants in their personal capacity as well as representatives of the Jain Swetambaries Sect that the Plaintiffs or the followers of the Digamberi Sect have been performing Prakshal, Poojan and Darshan and are also entitled to

do so in future. He also issued a permanent injunction against the Defendants in their personal capacity as well as representatives of the Jain Swetamberi Sect restraining them from changing the shape and appearance of the idol by putting Netras (artificial eyes), Armlets, and Mukat, from erecting Dhvajadand and putting Kalash on the Temple and putting locks on the shutters of the Temple. The Appellants were further directed not to restrain the followers of the Jain Digamber Sect from performing Darshan, Poojan and Prakshal according to their tenets. After the remand Appellants urged before the District Judge the following contentions :

- (1) That the Temple belongs to Swetamber Sect and the Plaintiffs are entitled to have Darshan only of the idol, otherwise they have got no right to worship it according to their tenets;
- (2) That the idol being Swetamberi, the Defendants are entitled to put artificial eyes in the idol, Dhvajadand and Kalash on them Temple;
- (3) That the Defendants having been managing the Temple for the last so many years, their management cannot be interfered with it for the betterment of the idol, it is kept under lock, it cannot be said to wound the sentiments and religious feelings of the Plaintiffs.

The District Judge held on the first contention that though the Temple is admittedly an old one there is not an iota of evidence as to who constructed the Temple originally; that the Appellants have been in management- and possession of the Temple, which fact was not really challenged by the Respondents, though this by itself does not imply that the Temple is a Swetamberi Temple. It was also contended that the Respondents had no right to worship the idol but can only have Darshan. This contention was also rejected on a review of the evidence led by both parties, and also, by relying on Exh. 1 which embodied a compromise between the two Sects under which the right of the Respondents to worship the idol was specifically admitted. On the second point urged before him the District Judge held that the Appellants case that there were eyes already in the idol, but as they got damaged they wanted to replace them is not substantiated by the evidence led on behalf of the Appellants themselves. It also held that an attempt was made by, the Swetamberies in 1949 to install the eyes in the idol and that as most of the Appellant's witnesses admitted that though Dhvajadand was offered on certain occasions which were retained by the Oswals (Swetamberies) there was no Dhvajadand and Kalash on the temple itself. On the third point it was held that the Appellants, who were in management and possession of the Temple for the last so many-

years, have a right to lock the main Temple, to prevent it from being defiled, which does. not in any way interfere with the right of worship of the Respondents or any other person on their behalf. This being so' the Trial Courts decree excepting for restraining the Appellants to lock the Temple was affirmed subject to the further, direction as already noticed keeping the Temple open for worship of the Respondents and the Digambaries Sect between 8.30 and 9.30 a.m. When the appeal and cross objections were pending before the High Court the Appellants filed an application under Order 41, Rule 27 of the Civil Procedure Code for recording the evidence of Shri Satya Prakash Srivastava, Director of Archaeology and Museum, Rajasthan to establish the denominational identity of. the

idol in the Temple. It was stated in that, application that since he District Judge had remarked that the parties had not produced sufficient evidence and it was not possible to come to any conclusions regarding the nature of the idol as to whether it is Swetamberi or Digamberi, the petitioner had moved the Director of Archeology who after a thorough examination came to the conclusion that the idol was Swetamberi. In view of this Report it was prayed that the said Director be called in evidence and be examined. In the alternative it was prayed that the case be remanded to the Trial Court for allowing the parties to lead additional evidence so that effective adjudication can be made. The High Court however, - did not feel the need for any additional evidence as the case could be disposed of on the material on record. In this view it dismissed the application. Even before us the learned Advocate for the Appellant tried to persuade us to look into that Report and urged that the evidence of the Director was necessary and ought to have been allowed to be adduced. In view of the concurrent findings of all the Courts on certain material aspects of the case to which we shall presently refer, it is possible to determine the controversy between the parties, as such we agree with the High Court that no additional evidence is required at this stage, though the parties could have led better evidence in the initial stages itself.

It was further contended on behalf of the Appellants that the Respondents suit was not maintainable because it did not involve a dispute of a Civil nature. Respondents' learned Advocate though he first indicated that he would raise a preliminary objection to this contention being urged because when the High Court set aside the Judgment of the District Judge and remanded the case to be decided on merits holding that the suit was maintainable as it raised a dispute of a civil nature, the Appellants ought to have appealed to the Supreme Court. The learned Advocate for the Appellants however contends that the remand order of the High Court did not finally dispose of the rights of the parties as such it is open to him to urge in this appeal that the suit was not maintainable on the ground that it does not raise any dispute of a civil nature. Though the preliminary objection was not subsequently pressed even on the merits, the learned Advocate for the Appellant is unable to satisfy us that the suit is not of a civil nature. From the pleadings and the controversy between the parties it is clear that the issue is not one which is confined merely to rites and rituals but one which effects the rights of worship namely whether the Swetamberies by placing Chakshus, Dhvajadand and Kalash according to their tenets or by locking the temple could preclude the Digamberies from worshipping in accordance with their tenets. It is admitted that the Digamberies will not worship the idol which is not Nirakar' or which has Chakshus. If the Digamberies have a right to worship at the temple the attempt of the Swetamberies to put Chakshus or to place Dhvajadand or Kalash in accordance with their tenets and to claim that the idol is a Swetamberi idol was to preclude the Digamberies from exercising their right to worship at the temple. These findings clearly establish that the Appellants interfered with the rights of Digamberies to worship with respect to which a civil suit is maintainable under Section 9 of the Civil Procedure Code. This position is well established. If authority was needed we may refer only to two cases. The Privy Council in *Sir Seth Hukam Chand & Ors. v. Maharaj Bahadur Singh & Ors.*(1), had to deal with the practices observed by Digamberies and Swetamberies on the Parasnath Hill which is considered to be sacred by both the Sects but in respect of which the Digamberies objected to the continuous employment of human beings on the Hill and against building thereon of Dwellings necessarily involving according to their tenets of a sacrilegious pollution and desecration of the sacred hill, while the Swetamberies had no such belief. Sir John Wallace delivering the opinion of the Board observed : "These are matters for the Jain

themselves and the Civil Courts are only concerned with them in so far as they are relevant to questions of civil right such as an alleged interference with the Plaintiffs rights to worship on the hill, and in that case the issue must be not whether the acts complained of are in accordance with orthodoxy or with previous practice, but whether they do in fact interfere with the plaintiff's rights of worship". Again this Court in *Nar Hari Sastri and Others v. Shri Badrinath Temple Committee* (2) was concerned with the rights of the Deoprayagi Pandas to enter the Badrinath Temple alongwith their Yajmans or clients, which it was claimed the Pawal or the Trustee denied and threaten to obstruct the said Deoprayagi (1) 60 LA. 313.

(2) [1952] S.C.R. 849.

Pandas from entering the precincts of the Temple along with their Yajmans or from assisting the pilgrims in the matter of Darshans etc. inside the Temple. The Defendant however, asserted that it was neither necessary nor desirable that the plaintiffs should be allowed to accompany their Yajmans or clients into the Temple, as he had himself made adequate arrangements for the Darshan and worship of the pilgrims and that as the sole Trustee and manager of the Temple he had the right to regulate entry into the Temple so the over- crowding might be avoided and order maintained inside it. Mukerjea J, (as he then was) speaking for the Court dealt with this contention in the following passage "The true position therefore is that the Plaintiffs' right of entering the temple along with their Yajmans is not a precarious or permissive right depending for its existence upon the arbitrary discretion of the Temple authorities; it is a legal right in the true sense of the expression but it can be exercised subject to the restrictions which the Temple Committee may impose in good faith for maintenance of order and decorum within the Temple and for ensuring proper performance of customary worship. In our opinion, the Plaintiffs are entitled to a declaration in this form."

It is clear therefore that a right to worship is a civil right, interference with which raises a dispute of a civil nature though as noticed earlier dispute which are in respect of rituals or ceremonies alone cannot be adjudicated by Civil Courts if they are not essentially connected with Civil rights of an individual or a sect on behalf of whom a suit is filed. In our view the contention of the learned Advocate for the Appellant to the maintainability of the suit is not well founded.

One other objection which the learned Advocate for the Appellants urged at the outset is that the findings of the Trial Judge are vitiated because he did not rely on the evidence on record but decided to which Sect the idol in dispute belongs, only on what he found on his inspection of the idol and the Temple which cannot be evidence in the case, without his being subjected to cross-examination. It is further contended that even if what has been stated in the Judgment is what the Trial Judge had observed in his inspection there is nothing to show that he had drawn up inspection notes and made them part of the record as required under the law. The contention that the Trial Judge had given his findings mainly on the observations made during his inspection in the first place is based on insufficient appreciation of what was really observed when dealing with the question as to which Sect the idol in dispute belongs. It was observed in the Judgment that most of the witnesses produced were non- Jains and therefore, their evidence does not carry much weight to establish to which Sect the idol belongs. After stating that the remaining witnesses of the parties have given

statements in favour of their party the Trial Judge said that these statements also cannot be much relied upon. The decision of his case is based mostly on the site inspection and the evidence on record. Even while giving the findings the Trial Judge remarked that the evidence led by the Plaintiff appears to be correct. These observations themselves show that the evidence on record was an element in the formulation of the Trial Courts Judgment buttressed by the observations of the learned Judge during the site inspection. There is therefore, no validity in the contention that the finding of the Trial Judge was based entirely on the result of his inspection. It is also evident from a narrative given in the Judgment of what was noticed during the inspection that the Judge had inspected the site on two occasions once on 24-3-1956 and again a year and two months thereafter on 23-5-1957. The details given by him could not have been given if he had not made some inspection notes. It would also appear that at the time of the inspection Council for the Plaintiffs- and Defendants were present because when giving a description of the idol of Neminathji in the Swetemberi Jain Temple when it was noticed that some portion of the idol under the waist and navel is raised and is like a line, the Council for the Plaintiffs pointed out to him that mark denoted the wearing of a loin cloth while the Counsel for the Defendants said it was the mark of an Artist. Again in respect of the observation that on the back-side and at the lower portion of the navel some portion is raised, the Counsel for the Plaintiffs had pointed out to the loin cloth, while the Counsel for the Defendants said that it has been engraved by an Artist without any sense. We are satisfied that the description given by the learned Judge of the idols in the Adeshvarji Temple and the Temple of the Swetambaries were observations made during an inspection at which both the Plaintiffs' and Defendants' Advocates were present and that there must have been notes also in respect of the inspection made on both the occasions. The Appellants had at no time made a grievance either to the District Judge or to the High Court or even before this Court except during the stage of arguments that there were no inspection notes nor that the inspection was made by the Judge behind the back of the parties. If these objections had been raised earlier the Respondents would have had an opportunity of showing that there were inspection notes. The Judgment in our view is not based solely on the result of personal inspection made by the Trial Judge, which inspection was for the purposes of understanding the evidence in the case and has been so used by the Trial Judge. We must, therefore, reject the contention of the learned Advocate for the Appellants that the finding in respect of the idol is vitiated. In this view it is not necessary to deal with any of the decisions referred to before us.

It was contended by Shri Desai that unless the ownership of the Temple is established or that the idol belongs to the Digambaries no injunction can be given nor the Plaintiffs permitted to worship. It is argued that in the plaint the Respondents averred that the idol is a Digamברי idol and if they have failed to prove it then their right to worship fails. At any rate the argument proceeds that the High Court was in error in not deciding the ownership of the Temple or of the idol. We have earlier indicated the plaint averments in which there is no mention of the ownership of the Temple or of the idol but that paragraphs 2 and 3 of the plaint merely gave a description of the Temple and the idol when it is averred that the idol was constructed and consecrated according to and by the followers of the Digamברי Sect and that the Plaintiffs and the other followers of the Digamברי sect have been performing Darshan, Prakshal and Poojan of the said deity in the said Temple for a considerable number of years past and really ever since the Temple was founded. There is therefore, force in the contention of Shri Gupte, learned Advocate for the Respondents that having regard to the concurrent findings of the Courts below that the idol was Nirakar' (naked) that there were no

Chakshus, no Mukat, no Armlet, no Dhvajadand or no Kalash, would show that the idol was consecrated by the Digambaries. It was also held as had already been noticed that though- it is not possible to say when the Temple was constructed and the idol consecrated it was an ancient Temple and that both the Digambaries and the Svetambaries worship the idol. It is not denied that while the Digambaries will not worship an idol which has Chakshus or which has clothes or Mukat(the Svetambaries would worship a Digamberi idol without these and hence the right to worship a Digamberi idol by both the sects is possible and indeed has been so held by all the Courts. Even the Defendants' witnesses substantiate these findings. We would refer to only two of these witnesses. Shri Suwa Lal D.W. 4 even though he says that the Temple belonged to the Oswals in which he and his father has been performing Sewa for the last 30 or 35 years on behalf of the Oswals (Svetambaries) admitted that since he attained the age of discretion and upto the time of giving evidence he had never seen Adinathji wearing clothes, never saw the idol with eyes and had never seen Dhvajadand or Kalash on the Temple and does not know whether the idol belongs to Oswals or Saravagis (Digambaries). D.W. 3-Shri Pokhar a barber of Oswals also supports this witness. That the Digambaries had a right to worship is also borne out by Ex. 1 dated 23-12-49 which was a compromise entered into between Svetam-beries and Digambaries at the time when the Svetambaries attempted to put Chakshus in the idol. No doubt this was an interim arrangement till the decision of a Civil Court adjudicating the respective rights, but there was never any question of either Sect not having the right to worship the idol. The dispute had arisen only as to whether Svetambaries can fix Chakshus in the idol. Exh. 1 states as follows:

"We Panchas give this award that a dispute had arisen between the Svetambaries and Digambaries as Svetambaries recently fixed eyes on the idol. This new thing should not continue. These eyes should be removed. Digambaries have a right to perform Poojan so they can mark saffron Tiki' and have Darshan and come back. Digambries will not performs Prakshal, Poojan. Svetambaries will continue incurring expenses as usual. The idol shall remain backed (Nirakar)".

The representatives of both Sects have signed this award, as a temporary measure agreeable to both the Sects, who indicated that they would press their rights in a Civil Court. Once the right of worship of the Digambaries is established there is little doubt that they are entitled to the injunction sought for by them against the Defendants Appellants from preventing them from worshipping or from interfering with that right by placing Chakshus in the idol, Dhvajadand, Kalash on the Temple. In view of these findings the further question that when once it has been found that the Svetambaries have the right of management and possession of the Temple there is a presumption of ownership under Sec. 110 of the Evidence Act does not arise nor is it relevant. It is no doubt contended by the Respondents Advocate that when consecration of an idol takes place the ownerships of the Temple is in the idol and therefore, the question, of presumption under Sec. 110 does not arise. It is again contended by Shri Desai that the moment it is held that it is not possible to, come to a conclusion as to which Sect the idol belongs, as has been held by the Court below, the Respondents cannot be allowed to object to the Appellants worshipping the idol according to their tenets. This contention, however, in our view ignores the rights of the Digambaries to worship in accordance with their tenets. If the contention of the learned Advocate for the Appellants is accepted it will be tantamount to holding that Digambaries have no right to worship as there would denomination change in the

idol if the Swetamberies are held to have the right to worship it according to their tenets by placing Chakshus in the idol or by erecting their Dhwadand or Kalash over the Temple.

Lastly it is urged that the High Court ought not to have entertained the cross objection by extending the time for worship from 1 hour to 3 hours. In our view the directions of the High Court are not unreasonable nor do they in any way affect the right of the Respondents to worship because the directions clearly enable the Swetamberies who wish to worship the deity within that period without disturbing the Digamberies to be at liberty to do so and likewise it will be open to Digamberies to go and worship in the temple during the period it is kept open. In view of the acute controversy between these 2 sects and their reluctance to arrive at an amicable settlement the directions given by the High Court are manifestly reasonable just and proper. In this view the appeal fails and is dismissed with costs.

R.K.P.S.

Appeal dismissed.