Supreme Court of India
Pt. Shamboo Nath Tikoo And Others vs Sardar Gian Singh And Others on 30 June, 1995
Author: J.
Bench: K. Ramaswamy, N. Venkatachala

CASE NO.:
Appeal (civil) 865 of 1973

PETITIONER:
PT. SHAMBOO NATH TIKOO AND OTHERS

RESPONDENT:
SARDAR GIAN SINGH AND OTHERS

DATE OF JUDGMENT: 30/06/1995

BENCH:
K. RAMASWAMY & N. VENKATACHALA

JUDGMENT:

JUDGMENT 1995 (1) Suppl. SCR 692 The Judgment of the Court was delivered by VENKATACHALA, J. Appellants were the plaintiffs while respondents were defendants in Civil Original Suit No. 20 of 1958 filed in the High Court of Jammu and Kashmir in respect of Martand Shrine in Anantnag District. Decree sought for in the suit was for grant of permanent injunction to restrain the defendants, from interfering with plaintiffs' possession of lands measuring 19 Kanals 12 Marlas in Survy Plots 1424/4, 1962/1424/4 and 2304/1143/1 measuring (19 Kanals 6 Marlas, 6 Marlas) and 9 Kanals 18 Marlas respectively and Dharamshallas, temples and springs at Tirath Martand, Village Macha Bhawan, Tehsil Anantnag; from obstructing Hindus, of their worship of gods in the Temples or of their performance of religious ceremonies at the springs and putting up any constructions on the disputed lands; and for ejectment of the defendants from two rooms (converted into three rooms) out of six room of the Dharamshalla on the southern side of the springs of Martand. Decree so sought for in the suit was granted limited to the extent of restraining defendants by permanent injunction from interfering in any way with the performance of religious ceremonies by Hindus at the three springs (Kamal Kuad, Bimal Kund and Gauri Kund), or their conducting of pujas in the temples and of holding Dewans in the open space north of the springs towards Pahalgam side on the occasions of Mal Mas, Ban Mas, Suraj Grahan, Chand Grahan, Soma Wad Amawas (Amawas Falling on Mon-day), Amar Nath Jee Yatara Period and Vijay Saptami (7th day of Hindus month falling on Sunday), and of plaintiffs' possession of the building situated to the north of Dharamshalla towards Pahalgam Road and from erecting any Gurudwara at the Martand premises. But, decree was refused as regards ejectment of defendants from the two rooms (converted into three rooms) of Dharamshalla in their possession as also of permanent injunction sought for in respect of four marlas of the land in Plot No. 2304/1143/1.

The said decree in the suit was questioned by the plaintiffs in the First Appeal No. 83/67 filed by them in the same High Court to the extent it did not grant certain reliefs while the same was questioned by the defendants insofar it has granted certain reliefs against them by filing Civil First Appeal No. 87/67. A Division Bench comprised of Mian Jalal-ud-Din and Anant Singh, JJ, heard the

said two appeals having clubbed them together. Since the learned Judges who rendered separate judgments in those appeals failed to reach an agreement on two of the points that arose for their consideration therein, they requested the Hon'ble Chief Justice, to refer the two points on which they had not agreed, to a third Judge for his opinion thereon by making the following order:

"As may learned brother Anant Singh J, and myself have not agreed in our respective judgments to the points relating to questions of adverse possession and the right of holding Dewans by the defendants, the matter may, therefore, be placed before my Lord Hon'ble the Chief Justice for referring these points to a third Judge to be nominated by his Lordships."

Mufti Baha-ud-din Farooqik, J. being the third Judge to whom the said two points were referred for his opinion, adverts to those points in his judgment thus:

Anant Singh, J. held that the possession of the defendants over the two rooms in the southern Dharamshalla was permissive and could be revoked by the plaintiffs as successors of Dharmarth. As regards holding of Dewans on the open space he held that the use could be based on custom but in the absence of any reliable evidence showing that the Dewans were held every year on the specified occasion and were so held as of right from times immemorial no right could be found in favour of the defendants. On this view he held that the finding of the learned Single Judge on these two items should be set aside.

Mian Jalal-ud-Din, J., however, expressed a contrary opinion, he held that the defendants were in possession of the two rooms in the southern Dharamshalla in their own right and in the alternative by adverse possession, As regards the holding of Dewans on the open space he held that the Sikhs have been holding the same for the last over fifty years to the knowledge of the plaintiffs and without any objection from them on there specified occasions namely Baisakhi, Daswi and Chatti Padshahi and that this was sufficient to disentitle the plaintiffs from claiming a relief for permanent injunction as would be derogatory to the holding of Dewans by Sikhs on these occasions."

What, therefore, according to Farooqi, J. the third Judge, the points in the appeal on which Anant Singh, J. and Mian.Jalal-ud- Din, J. had not agreed upon and which were referred for his opinion as that relating to adverse possession and as that relating to right to adverse possession and as that relating to right of holding Dewans by defendants, were these:

1. Whether the possession of defendants of the two rooms in the southern Dharamshalla was permissive and hence revokable by the plaintiffs as successors of Dharmarth, as held by Anant Singh, J. or whether the possession of defendants of the two rooms in the southern Dharamsalla was that held in their own right or in the alternative by adverse possession as held by Mian. Jalal-ud-Din, J.

2. Whether the defendants had no right to hold Dewans in open space to the north the springs towards Pahalgam side on the basis of custom, since no reliable evidence was adduced for showing that Dewans were held every year on specific occasions and from times immemorial, as held by Anant Singh, J, or whether the plaintiffs were disentitled to claim permanent injunction against

defendants for holding Dewans on that open space OB three specific occasions, Baisakhi, Daswi and Chatti Padshahi as such Dewans had been held for over SO years to the knowledge of the plaintiffs and without any objection from them as held by Mian Jalal-ud-Din, J.

Opinion of Farooqi, J., the third Judge on Point-1 above, was stated thus:

The Maharaja Pratap Singh, a sovereign ruler, who was entitled to deal with Dharamshalla in any manner he liked, dedicated two rooms of the Dharamshalla to Sikhs, Such dedication was not withdrawn by the Maharaja at any time. The mere fact that receipt, Ext, PW. 3/1 includes the entire Dharamshalla as one of the properties transferred to Prohit Sabha by Dharmarth would not affect the legal position of dedication in favour of Sikhs. The claim of the plaintiffs for two rooms based on permissive possession was false. The plaintiffs cannot succeed in getting possession of the rooms even if it is assumed they had title to the same, in as much as, the suit for possession of rooms not having been filed within 12 years from the date of dispossession was barred by Article 142 of the Limitation Act, 1908, Even otherwise, the defendants had proved that they had acquired title to the property by adverse possession by the time of filing of the suit.

Opinion of Farooqi, J., the third Judge, on Point-2, above, was stated thus:

The defendants had shown that the Sikhs had a right of easement over the vacant space to its user for religious congregation on three specific occasions, namely, Baisakhi, Daswi and Chatti Padshahi, and a such defendants' right to use the space for conducting Dewans should be limited to those three occasions.

Concurring opinions of the two Judges expressed on several points in their separate judgments rendered in the appeals and the third Judge's opinion expressed in this judgment on the aforesaid two points referred for his opinion, not only led to the dismissal of the plaintiffs first appeal except to the extent of confining the holding of Dewans in the vacant space by defendants to three specified occasions of Baisakhi, Daswi and Chatti Padshahi, but also to the dismissal of defendants* First Appeal, as a whole.

As against the said decree in the First appeals made by the High Court allowing the plaintiffs' First Appeal partly and dismissing the defendants' Firs Appeal as a whole, although the plaintiffs have filed the present appeal by special leave in this Court the defendants have not chosen to file any such appeal. In other words, the decree made in the suit as affirmed in appeals which stands unquestioned is the decree made against the defendants restraining them by permanent injunction from interfering in any way with the performance of religious ceremonies by Hindus at three springs (Kamal Kund, Bimal Kund and Gauri Kund) in an ' area of two kanals or of pujas by Hindus at the three temples to the extreme west of the springs one of which is known as Suraj Mandir or of possession and enjoyment of four rooms out of six rooms of Dharamshalla building in one Kanal five marlas in plot No. 1424/4 and of possession and enjoyment of the bath rooms and of the building used for Pathshalla purposes and of possession and enjoyment of open space to the north of springs towards Pahalgam Road which cover an area of 16 kanals and 6 marlas except when used by defendants for Dewans on those occasions of Baisakhi, Daswi and chatti Padshahi, all of the

Shrine of Martand, Village Macha Bhawan, Tehsil Anantnag, Hence, the decree in the suit as affirmed in First Appeals before the High Court which is under challenge before this Court in the present appeal filed by plaintiffs is limited to the following:

(1) Refusing to direct the ejectment of defendants from two rooms (converted into three rooms) out of six rooms of Dharamshalla in one Kanal five marlas of land in Plot No, 1424/4 by holding that the defendants have acquired ownership in respect of it either because of their possession being given by Maharaja Pratap Singh by way of grant or because of acquisition on of title to the same by adverse possession; and (2) Refusing to restrain defendants from holding Dewans in open space to the north of the springs towards Pahalgam side on special occasion of Baisakhi, Daswi and Chatti Padshahi, by recognising their easementary right to hold such Dewans.

Therefore, what is questioned by the plaintiffs-appellants in this appeal is the refusal of the Courts below to grant the decree in their suit against the defendants for their ejectment from two rooms (converted into three rooms) of the Dharamshalla and of non grant of permanent injunction against the defendants in respect of holding of Dewans in open space on Pahalgam side on three occasions of Baisakhi, Daswi and Chatti Padshahi, recognising their easementary right thereto.

Before, we deal with the questions raised in the present appeal on behalf of the plaintiffs in the suit, we may state how our attempt to bring about an amicable settlement among contesting parties, could not succeed.

Plaintiffs expressed their willingness to forego their claim to the two rooms (converted into three rooms) in Dharamshalla, which were in occupation of defendants, if the defendants gave an undertaking to enter the open space from Pahalgam side to hold their Dewans on three occasions of Baisakhi, Daswi and Chatti Padshahi directly from Pahalgam Road and not to seek to enter that open space through the premises of the shrine of Martand where the springs are found. But, the plaintiffs did not agree for the holding of Dewans in the open space by entering into the said open space directly from Pahalgam road on the plea that the two rooms (now converted into three rooms) of Dharamshalla are opened towards the Shrine and the springs, and therefore they must be allowed to hold Dewans in the open space crossing the premises of Martand Shrine. As the claim of the defendants that the rooms in Dharamshalla were opened towards the shrine was disputed by the plaintiffs, we appointed a Commissioner to hold a local inspection and make a report. However, as it as reported to us by learned counsel for parties that the atmosphere that prevailed at the spot was not safe for the Commissioner to make a local inspection and that there was no possibility of parties arriving at an amicable settlement, we had no option but to hear the appeal on merits and decide the same.

We have, therefore, heard arguments of learned counsel appearing for the contesting parties in the appeal, carefully gone through the written submissions filed by them and are proceeding to decide the appeal on merits by this judgment.

The points which need to be considered and answered for deciding the plaintiffs appeals in the light of the said oral arguments and written submissions of learned counsel for contesting parties could

be formulated, for purposes of proper and effective consideration, thus:

1. Is the finding that the defendant in the suit had acquired title-in respect of two rooms (converted into three rooms) of Southern Dharamshatla of the Martand Shrine because of a specific grant made thereto by Maharaja Pratap Singh while he was the sovereign Ruler of Jammu State, recorded by the learned third Judge of the High Court (Farooqi, J.) for whose decision the two questions - one relating to adverse possession and another relating to holding of Dewans, on which two Judges of the Division Bench deciding the appeals, had not agreed upon, unsustainable?

2. Was the possession of two rooms (converted into three rooms) in Southern Dharamshalla of Martand Shrine given in the year 1913 A.D. by Maharaja Partap Singh to the Sikh Community (since represented by the defendants) was in the nature of merely permissive possession, as claimed by the plaintiffs?

3. It the finding that the defendants had acquired title to two rooms (converted into three rooms) out of six rooms of Southern Dharamshalla of Martand Shrine by adverse pos-session, of the learned third Judge of the High Court (Farooqi, J.) for whose decision the question relating to such adverse possession arising in the appeal was referred, unsustainable?

4. Is finding that the defendants had acquired easementary right to hold their Dewans in the open space of Martand Shrine towards Pahalgam Road, on three occasions - Baisakhi, Daswi and Chatti Padshahi, of the teamed third Judge of the High Court (Farooqi, J.) for whose decision the question relating to such holding of Dewans arising in the appeal was referred, unsustainable ?

5. If it is found that the defendants (Sikhs) have not acquired title in respect of two rooms (converted into three rooms) out of six rooms in the Southern Dharamshalla of Martand Shrine because of either grant made by Maharaja Partap Singh or of Adverse possession, are the defendants liable to be ejected from the two rooms (converted into three rooms) of the Southern Dharamshalla, when two of the converted rooms are used for keeping their sacred 'Granth Sahib' and one of the converted room is used as kitchen or Langer Room for preparing food to feed the poor or could the defendants be allowed to continue in permissive possession subject to imposition of reasonable restrictions ?

6. If it is found that the defendants (Sikhs) had not acquired easementary right of conducting dewans on three occasions of every year Baisakhi, Daswi and Chatti Padshahi, in the open space of Martand and Shrine towards Pahalgam Road, are the defendants liable to be restrained by a permanent injunction from holding the said Dewans in that open space or could the defendants (sikhs) be allowed to hold such Dewans subject to imposition of reasonable restrictions on its user?

The said points shall now be taken up seriatim for consideration and answered.

Point-1:

The point relates to sustainability of the finding on acquisition of title by Sikh Community - the defendants in respect of two rooms (converted into three rooms) in the Southern Dharamshalla of the Martand Shrine under a grant, recorded by Farooqi, J.

The case of the plaintiffs for ejectment of the defendants from the two rooms (converted into three rooms) of Southern Dharamshalla of Martand Shrine, as pleaded in paras 2, 4, 5, 10, 12 and 14 of their suit-plaint, reads :

"2. That there is a Tirath namely Martand Tirath situate in Village Macha Bhawan, Tehsil Anantnag, of the Hindus existing from olden times.

3. .....

4. That the possession of the Hindus has duly been recorded in the revenue record and the Settlement Record from olden times and it is in possession and under the ownership of the Hindus,.....

5. That since the Dharamshalla Deptt. came into existence it is watching, managing and taking care of Dharamshallas and the temple.

6.....

7.....

8.....

9.....

10. That the Dharmarth department had permitted Sikhs to place Granth Sahib temporarily in two rooms, when their Dharamshalla had demolished which was at a very long distance from Martand Tirath and the permission was granted temporarily to place Granth Sahib there till reconstruction of the Dharamshalla. The Sikhs evaded constructing their own Gurudwara and Dharmarth department pressed the defendants to vacate the said rooms. In consequence of this a dispute arose between Sikhs and Dharmarth department and it took a grave shape. Due to this dispute the Government intervened and on the intervention of the Government of J&K the Sikhs nominated Sardar Kanya Singh, Sardar Gulab Singh, Sardar Nirmal Singh and Dr. Jaswant Singh as their representatives and attorneys and it was decided with the Dharmarth department alongwith the then Hon'ble Finance Minister, that both the rooms would be got vacated and Granth Sahib will be placed in the New Dharamshalla and these two rooms shall be used temporarily for Granth Sahib, till new Dharamshalla is constructed On the Government expenses. This compromise deed was executed on 4th Assuj, 1992 jointly by the aforesaid representatives and Dharmarth department in presence of the then Wazir Wazarat Anantnag and Hon'ble Finance Minister by which dispute between Dharmarth department and the defendants (Sikhs) ended. At the time the deed dated 4 Assuj 1992 was executed Sikhs had converted these two rooms into four rooms and at present these four rooms

have again been converted into two rooms and one kitchen.

11, ...,.....

12. That the plaintiffs have been old Purohits from generation to generation of this Tirath. Prior to the existence of Dharmarth department the management of this Tirath was with the elders of the plaintiffs. The Dharmarth department gave up the management to the plaintiffs by order of His Highness on 22 Sawan 2007 and handed over its management to the plaintiffs instead of the Dharmarth department which was hitherto before in old times. To facilitate the disposal of the case, the Dharmarth Council has been arrayed as proforma defendant. The plaintiffs were demanding of the defendant to vacate these rooms and to take out the Granth Sahib from the existing rooms and make their arrangements but the defendants continued evading. At the plaintiffs persistency the defendants started creating disturbance and to grab these rooms by oppression and taking out their daggers overawed the plaintiffs attempting to take possession of the springs and tried to put obstruction to the Hindus in performing their religious rites and tried to show that the Tirath is of Guru Nanak Ji. They were creating the disturbances from time to time for about two years. Gradually the disturbance prolonged till the Government itself took the possession of this sacred Martand Tirath, detailed a police guard,.....

13,

14. That two rooms are in possession of the defendants on temporary basis which are existing at present in the shape of three rooms. The plaintiffs are entitled to the possession of these rooms and the defendants are bound to take out Granth Sahib from these rooms as has been decided and agreed to by the representatives of the defendants in the year 1992, The Government of Jammu and Kashmir and the Dharmarth department which was managing body of the Martand Tirath have consented that permission to keep Granth Sahib for some time be given and Granth Sahib be placed somewhere else which the defendants did not do. Therefore, the plaintiffs are desirous to get them ejected from these rooms and are entitled to possession....."

In the two written statements filed by the defendants, the whole defence set up by them in respect of two rooms (converted into three rooms)of the Southern Dharamshalla of Martand Shrine, from which defendants' ejectment was sought, is contained in para 10 of the written statement of defendants-3, 7 and 8, and paras 5 and 10 of the written statement of all the defendants including defendants-3,7 and 8. Para 10 of written statement of defendants-3, 7 and 8 reads:

PARA 10 OF WRITTEN STATEMENT OF DEFENDANTS-3, 7 AND 8.

"10. Para No. 10 is contrary to the fact and incorrect. Hence its entire contents are denied. The Sikh Community has been the owner and in possession of the suit land for more than 12 years as is known to "Hindu Community" and they have many historical documents, compromise deeds, and other witnesses and proof in their favour, which have proved that the owners, occupants and the usufructory of the disputed property are Sikhs."

PARA 5 AND 10 OF THE WRITTEN STATEMENT OF ALL THE DEFENDANTS.

"5. Para 5 of the plaint is denied. The property in dispute was never managed or supervised by the Dharmarth department at any time."

10. That Para No. 10 is incorrect and hence is denied. The Dharmarth had no connection with the rooms in possession of the Sikhs and used as Gurudawara, nor did they give rooms to the Sikhs for any purpose. The historic Gurudawara of the Sikhs is at spring No. 2 known as Macha Bbawan. In fact on the three sides of the spring No. 2 there were 7 Gurudwaras wherein seven Bira (Volumes) of Guru Granth Sahib were installed, one in each Gurudawara. Besides, there were 45 rooms for the use of the pilgrims to the historic Sikh Gurudawara Mattan Sabib. Those buildings were demolished under the orders of Maharaja Partap Singh on account of their being too old and with a view to erect new building in these place. But due to the first great war the new proposed construction by the Government could not be undertaken and only the present line of 7 rooms been used as the building of the Gurudawara. Four rooms are actually used for the worship of the Guru Granth Sahib therein and the remaining three rooms are used for the use of pilgrims. There was no dispute between the Sikh and the Government in 1942 or there about regarding the Gurudawara as alleged in this para of the plaint nor Sardar Kanahaya Singh and others mentioned in this para were ever appointed as representatives of the Sikh Community and the Sikh Community is not bound by any undertaking of theirs even if there is any."

However, even the additional plea taken by way of defence in the written statement filed by all the defendants against their ejectment from the said two rooms, in para 17(i) thereof, was merely, the following:

"(i) That the Gurudawara Mattan Sahib is a historic Sikh Shrine founded in memory of the first Sikh lord Guru Nanak Dev Jee. According to the historians he visited this spot before 1657 and since then this sacred shrine remained connected with the Sikhs and the Sikh history. After the conquest of Kashmir the Gurudawara was built by the orders of Maharaja Ranjit Singh and a Muafi and a jagir was given which continues till today."

The defence put-forth by the defendants as seen from their written statements, against the plea of ejectment putforth against them by the plaintiffs in their suit, does not show that they were not liable to ejectment from the two rooms (converted into three rooms) in the Southern Dharamshalla of the Martand Shrine, for the reason that those rooms were given away to the Sikh Community by Maharaja Partap Singh by way of grant, while he was the sovereign Ruler of the Jammu State. Even if the averments contained in the aforesaid paragraphs of the written statement of the defendants are read as a whole, it is impossible either to infer or imagine that the defendants wanted to resist the suit of the plaintiffs filed against them for ejectment from the two rooms (converted into three rooms) in the Southern Dharamshalla, as granted of the said rooms under a grant made by Maharaja Partap Singh in favour of the Sikh Community for placing 'Granth Sahib' in those rooms and as such they had become owners by grant of two rooms made by the then sovereign Ruler of Jammu State, Maharaja Partap Singh.

No doubt, the finding recorded by the learned third Judge (Farooqi, J.) that tow rooms of Dharamshalla had been granted by Maharaja Partap Singh in favour of the Sikh Community-defendants, accords with the finding of another learned Judge (Jalal-ud-Din, J.) But, that finding in our view, becomes wholly unsustainable being altogether a new case made out for the defendants by him, in that, such case is not in any way traceable to the pleas of defence of the defendants set out in their written statement against their ejectment from the said two rooms.

Moreover, the learned third Judge (Farooqi, J.) could not have recorded the finding that the two rooms (Converted into three rooms) in Southern Dharamshalla of Martand Shrine were given, by way of grant by Maharaja Partap Singh to the Sikh Community- defendants when the defence pleaded by the defendants in their written statements that DharamshaUa consisting of seven rooms was erected by Maharaja Partap Singh in lieu of seven gurudawara which were said to have been existing before, had been negatived by the second learned Judge (Jalal-ud-Din, J.) agreeing with the other learned judge of the Division Bench (Anant Singh, J.) by holding thus:

"After an appraisal of the evidence of the record 1 am not prepared to accept the contention of the defendants that the Dharamshalla consisting of seven rooms was erected by the Maharaja Partap Singh in lieu of seven Gurudawara that are said to have existed before. There is no evidence on the record to this effect. However, this is evidence on the record to show that a Dharamshalla existed on the southern side which was in a dilapidated condition which was demolished and a new Dharamshalla was constructed. It is difficult to believe the story put up by the defendants in the case that their Gurudawaras existed within the Mattan Shrine....."

Beside, when Farooqi, J. was, according to the reference order, required to decide on two specific questions one relating to acquisition of title to two rooms (converted into three rooms) in Southern Dharamshalla by adverse possession and another relating to holding of Dewans by the defendants in the open space towards Pahalgam road, because of the differing opinions of two learned judges of the Division Bench deciding the appeal, the finding recorded by him that the defendants had acquired tide two room (converted into three rooms) in Southern Dharamshalla by reason of grant made by Maharaja Partap Singh in their favour, calls to be disregarded as that made by him beyond the terms of reference requiring his opinion.

Hence, the finding of the learned Judge (Farooqi, J.) that the defendants acquired title of the two rooms (converted into three rooms) in the Southern Dharamshalla by reason of a grant made in their favour (Sikh Community) by Maharaja Partap Singh, becomes wholly unsustainable in law. We answer point-1, accordingly.

Point- 2:

When the possession of two room (converted into three rooms) of Southern Dharamshalla was given in the year 1913 to Sikh Community -the defendants at the behest of Maharaja Partap Singh for keeping the 'Granth Sahib'; was such possession in the nature of permissive possession, is the point requiring our consideration here. The plaintiffs' case in respect of the two rooms (converted into three rooms), from which ejectment of the defendants as sought, in their suit, is that specifically set

out in their plaint to which we have already referred to while dealing with Point-1 and particularised in their evidence at the trial of the suit. That case of the plaintiffs put in a nut- shell, is the following:

That there was an old Gurudawara of Sikhs situated at a place which was far away from the precincts of Martand Shrine, When that old Gurudawara of Sikh fell down, the Sikh did not like their 'Granth Sahib' which had been kept there, to be shifted and kept in a private building. Consequently, in the year 1913, they approached Maharaja Partap Singh with a request to get two rooms of the Southern Dharamshalla of Martand Shrine, which had after its re-construction at Government expense, continued to be in the management of Dharmarth Department, for Keeping their 'Granth Sahib' till their (Sikhs) Dharamshalla was re-built. Maharaja Partap Singh, who found the said request of Sikhs to be just and genuine, conceded to the same and directed the Dharamshalla Department to allow Sikhs to keep their 'Granth Sahib', in two room of the Southern Dharamshalla of Martand Shrine until their (Sikhs) own Dharamshalla was re-built either by themselves or at the expense of the State. Accordingly, possession of two rooms in Southern Dharamshalla was given by Dharmarth Department to Sikhs for keeping their sacred 'Granth Sahib'. Dharmarth Department at the time of giving possession of two rooms (converted into three rooms) of Southern Dharamshalla to Sikhs for keeping their 'Granth Sahib' was managing the affairs of Martand Shrine including its Southern Dharamshalla on behalf of Hindus to whom the shrine and Dharamshalla belonged since Dharmarth Department itself had been created by Govern' meat to take over management of Hindu temples and Dharamshalla and manage the same for the benefit of Hindus. Since Southern Dharamshalla of Martand Shrine was reconstructed in the place of dilapidated Dharamshalla, belonging to Hindus it did not cease to belong to Hindus even if such reconstruction was funded by Government. Indeed, neither the Maharaja nor his Government either acquired or intended to acquired Martand Shrine's or it Dharmshalla's ownership rights. Thus, when the Maharaja or his Government had not acquired any ownership rights of the Martand Shrine or its properties including Southern re-constructed Dharamshalla neither the Maharaja nor his Dharmarth department could give away to the Sikhs any rooms in the Dharamshalla by way of grant as would transfer the ownership rights in them. The possession of the two rooms (converted into three rooms) in the Southern Dharamshalla given by Dharmarth Department of the Government at the behest of the Maharaja to Sikhs for keeping their 'Granth Sahib' was on behalf of Hindus, the owners of the Martand Shrine and its Dharamshalla and the same could not be anything but permissive in nature.

The Trial Judge discarded the said case of the plaintiffs as to permissive possession of the defendants put-forth in respect of two rooms (converted into three rooms) in Southern Dharamshalla of Martand Shrine by recording his finding in that behalf thus:

1 might also mention that if the plaintiffs fail to establish the existence of the old Sikh Gurudawara, then the very basis of their case of permissive possession of the defendants over the present Dharamshalla disappears. Furthermore if it is found that there was no such sikh Gunidawara at Sangam then the conclusion is inescapable that the various grants, and Maufies which have been proved by the defendants would referable to Gunidawara at Mattan and at Mattan alone because it is not the case of the plaintiffs that the grants could be referable to some other Gurudawaras at a different place"

Since the sustainability of the said finding of the Trial Judge had been impugned in appeal filed by the plaintiffs before a Division Bench of the High Court, Anant Singh, J. who was a member of that Division Bench reversed that finding on consideration of the evidence in the suit, thus:

"The Southern Dharamshalla was eventually reconstructed in about 1913 as is the admitted case of the parties, It will appear from the above document (Ex.P.W. 38/1) that the reconstructed Dharamshalla was constructed on the old Dharamshalla which, in its turn, had been constructed by the Dharmarth department of the State of the Maharaja. The Dharmarth was as it has been seen more than once, only for the Hindus alone. Now there will be a presumption that when the Dharamshalla was reconstructed by the Dharmarth aided by the State, it was reconstructed for the Hindus alone. The Dharmarth was not the personal property of the Maharaja. This the Maharaja obviously did not construct this Dharamshalla as his personal property, but it continued to be the property of the Hindus under the control, and Management of the Dharamshalla."

The defendants have not disclosed in any of their written statements nor in the evidence of any of their witnesses that they came to occupy the two rooms by force, or ever asserted their hostile possession before any dispute between the Hindus and the Sikhs arose in about four to five years before the suit. In these circumstances it is difficult to disbelieve the plaintiffs case that the defendants were given permissive possession over the two rooms, since converted into three by the Dharmarth department under the order of the Maharaja who was its head for all practical purposes. It will not however be correct to say as the learned Trial Judge has observed on page 43 of his Judgment that the present Dharamshalla was constructed by the Govt. under the orders of Maharaja Partap Singh who was the owner of the building'. There is no evidence to warrant such a conclusion that Maharaja Partap Singh was the owner of this building in this personal capacity or as the Sovereign of the State. The Dharmarth department reconstructed this Dharamshalla on the old Dharamshalla of course under the orders of the Maharaja and certain officers of his government and may be even with Government fund. The Dharmarth department was a wing of the Maharaja Government and the Dharmarth department existed for Hindus alone. The building was not the personal property of the Maharaja as owner bat it was reconstructed by the Dharmarth for the benefit of the Hindus to whom the whole Shrine has belonged from time immemorial The Maharaja and his Government has only helped in its maintenance and reconstruction as an act of generosity. The Maharaja never acquired it for the State. He could not, therefore, give any portion of it to the Sikhs on behalf of his State. Evidently, in ordering the giving of the two rooms of this Dharamshalla to the Sikhs he seems to have acted only as the over all in charge of the Dharmarth by virtue of his position as the Maharaja who was the sovereign of the State. The only correct conclusion is that it was the Dharmarth who gave only permissive possession of the two rooms to Sikhs as a manager of the Shrine holding it on behalf of the Hindus."

(Emphasis supplied by us) Then dealing with the reconstructed Dharamshalla, Jalal-ud-Din, J, another member, of the Division Bench deciding the appeal, did not in his separate Judgment, disagree with the Judgment of Anant Singh, J. That the Dharamshalla of Martand Shrine was constructed in the place of its dilapidated old Dharamshalla by stating thus:

"After an appraisal of the evidence of the record I am not prepared to accept the contention of the defendants that the Dharamshalla consisting of seven rooms was erected by the Maharaja Partap Singh in lieu of seven Gurudawaras that are said to have existed before. There is no evidence on the record to this effect. However, there is evidence on the record to show that a Dharamshalla existed on the southern side which was in a dilapidated condition which was demolished and a new Dharamshalla was constructed It is difficult to believe the story put up by the defendants in the case that their Gurudawaras existed within the Mattan Shrine.' (Emphasis supplied by us) But, according to him, the possession of the two rooms (converted into three rooms) in the Southern Dharamshalla given by the Dharmarth Department at the behest of Maharaja Partap Singh, had to be regarded as ordering the giving of Government property by Maharaja Partap Singh as a sovereign Ruler of Jammu State, although it was not the personal property of the Maharaja.

As pointed out by us while dealing with Point-1, it was not open to make out a case of grant by Maharaja Partap Singh of the two rooms (converted into three rooms) in the Southern Dharamshalla in favour of Sikh community

- the defendants, when there was absolutely no plea put forward in the defence of the defendants in their written statements of such grant by Maharaja Partap Singh, The finding of the learned Judge in the said regard, therefore, becomes wholly unsustainable. For the same reason, the finding of the third Judge, Farooqi, J. that Maharaja Partap Singh must be regarded as having made a grant of the two rooms (converted into three rooms) in the Southern Dharamshalla in favour of Sikh community - the defendants, cannot also be sustained, as is held by us while dealing with Point-1.

When the findings of the learned trial Judge and the learned appellate Judges as regards nature of the possession of the two rooms (converted into three rooms) in the Southern Dharamshalla of Martand Shrine given by Dharmarth Department of Government to the Sikh community in the year 1913 at the behest of Maharaja Partap Singh for keeping their Granth Sahib, are examined by us with reference to the evidence on which each of such findings are based, we are of the considered view that the finding of Anant Singh, J. deserves to be upheld as that based on a correct appreciation of evidence in the suit rendered taking into consideration all the facts and circumstances attending the act of giving possession of the said two rooms by Dharmarth Department to Sikh Community now represented by the defendants. We accordingly uphold the finding of Anant Singh, J. that the possession of two rooms (converted into three rooms) in Southern Dharamshalla of Martand Shrine given by Dharmarth Department to Sikh community in the year 1913 was merely permissive possession and reject the findings of other learned trial and appellate Judges, to the contrary since the latter are based either on no relevant evidence or on surmises and conjectures.

We, therefore, conclude that the possession of two rooms (converted into three rooms) in Southern Dharamshalla of Martand shrine given in the year 1913 to Sikhs - the defendants to keep their Granth Sahib was clearly and obviously nothing but permissive possession, and answer Point-2 accordingly. Point-3:

The proposition of law that permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the

knowledge of the true owners for a period of 12 years or more, cannot be disputed, when it is so held by the three-Judge Bench of this Court in State Bank of Travancore v. Arvindn Kunju Panicker and Others, AIR (1971) SC 996 (998). Therefore, unless Sikhs - the defendants in the suit who were put in permissive possession of the two rooms (converted into three rooms) of the Southern Dharamshalla of Martand shrine in the year 1913, could succeed in establishing that the character of their permissive possession of the said rooms was turned into the character of adverse possession to the knowledge of the true owners for a period of 12 years or more, before the institution of the suit by the plaintiffs, they cannot claim to have acquired title to the said rooms by adverse possession. When the plaintiffs pleaded in their plaint that Sikhs - the defendants, who were in permissive possession of the two rooms (converted into three rooms) of the Southern Dharamshalla of Martand shrine were required to be ejected therefrom, the suit was resisted by the defendants by filing two written statements. The plea of adverse possession taken by defendants-3, 7 and 8 in para 12 of Preliminary Objections therein reads, thus:

That the property in dispute has been in the possession of the Sikhs as owners in the capacity of representatives and in their personal capacity for a period of more than 12 years by way of adverse possession and they are the owners of the property in possession."

Again in para 10 of the parawise written statement, it is stated, thus:

10, Para No. 10 is contrary to the facts and incorrect. Hence its entire contents are denied. The Sikh Community has been the owner and in possession of the suit land for more than 12 years as is known to 'Hindu Community' and they have many historical documents, compromise deeds, and other witnesses and proofs in their favour, which have proved that the owners, occupants and the usufructory of the disputed property are Sikhs."

In the latter written statement filed by all the defendants what has been stated is that the Dharmarth Department had no connection with the rooms in possession of Sikhs used as Gurudawara nor did Dharmarth Department give rooms to Sikhs for any purpose. Thus, Sikhs - the defendants in their written statements though have stated that they were in possession of not only the rooms in Southern Dharamshalla, but also in possession of the whole shrine and its precincts for over a period of 12 years by way of adverse possession, they have nowhere in their written statements mentioned that they had made known to the Dharmarth Department which was in management of the shrine and Dharamshalla on behalf of Hindus, that they had converted their permissive possession of two rooms of Southern Dharamshalla of Martand shrine into adverse possession. There is also no issue raised in the suit to the effect as to whether the defendants had perfected their title to the two rooms (converted into three rooms) of the Southern Dharamshalla of Martand shrine, by adverse possession.

Admittedly, no evidence, documentary or oral, is produced by the Sikhs- defendants to establish the fact that they had converted their permissive possession of the two rooms (converted into three rooms) of Southern Dharamshalla of Martand shrine into adverse possession and they had perfected their title by such adverse possession. Although there are large number of witnesses examined for the defendants in the suit, admittedly none of them have even uttered a word about the perfecting of

title to the said two rooms by defendants, by adverse possession.

According to the trial Judge, since the plaintiffs had failed to prove that the possession of the two rooms (converted into three rooms) of Southern Dharamshalla of Martand shrine given to Sikhs-the defendants and some of the plaintiffs witnesses had stated in their evidence that the defendants took forcible possession of the said rooms in the Dharamshalla in 1935 and some other witnesses of plaintiffs had referred to forcible possession of the rooms held by the defendants on certain occasions, and the Dharmarth Department itself had stated in its plaint of the suit filed in 1944 A.D. Ex.27/B, that the defendants started asserting adverse title to the two rooms in their possession, 15 days before the date when the plaint was filed namely 25,7,2002 (1944 A.D.), it had to be held that the defendants had perfected their title to the said two rooms by adverse possession, The sustainability of the said finding relating to adverse possession was impugned in the appeal by the plaintiffs, Jalal-ud-Din, and Farooqi, JJ. for the very reasons stated by the trial Judge, recorded a finding that the defendants had perfected their title to the two rooms (converted into three rooms) in Southern Dharamshalla by adverse possession. One of the learned Judges Anant Singh, J. who dealt with the appeals, reversed the finding of the trial Judge that the defendants had perfected their title by adverse possession in respect of two rooms (converted into three rooms) in the Southern Dharamshalla, for the reasons which we shall advert to presently.

According to him (Anant Singh, J.) the learned trial Judge was not right in proceeding to decide the question of adverse possession on the basis that the plaintiffs had not proved that the defendants were put in permissive possession of the two rooms (converted into three rooms) of Southern Dharamshalla, in that, Maharaja Partap Singh could not have given away the rooms in Dharamshalla in favour of Sikhs, for neither the State nor he had acquired any title in it. On the other hand, he pointed out that when the Dharmarth Department took over the Martand shrine and Dharamshalla, it was taken over merely for purposes of proper management of the same 6n behalf of Hindus to whom they belonged, and hot by way of acquisition Hence, according to him, when Dharmarth Department, at the behest of the Maharaja, gave two rooms to Sikhs-the defendants, as managers of the Martand shrine and Us Dharamshallas on behalf of Hindus to whom they belonged, the possession of two rooms so given can have only the characteristic of permissive possession. la fact, we have specifically considered this matter earlier while dealing with Point-2 and have come to the conclusion that the possession of two rooms (converted into three rooms) of Southern Dharamshalla given to Sikhs-the defendants for keeping their Granth Sahib, by Dharmarth Department at the instance of Maharaja Partap Singh, was merely permissive possession.

It is pointed out by Anant Singh, 3, that the defendants' possession since started with the permissive possession from 1913, it should be presumed to have continued as such until the defendants, any time there-after, succeeded in asserting their hostile possession for the requisite period of 12 years. Indeed, this reasoning so given, calls to be upheld, as the same accords with the decision of this Court in State Bank of Travancore case (supra). Forcible possession said to have been taken in the year 1915 according to some witnesses of the plaintiffs which were relied upon by the trial court as an admission on the part of the plaintiffs of assertion of hostile possession in respect of two rooms by defendants is shown to be not correct having regarded to the year 1935 referred to by them as the date of taking forcible possession, when, the actual possession of the two rooms was given in the

year 1913 to the defendants at their request. He has also referred to the so- called admissions made by witnesses for the plaintiffs that the defendants being in forcible possession of the said two rooms during certain periods. According to him, that evidence could not have been of any value in deciding upon the question of adverse possession of the two rooms claimed by the defendants, in that, such statements which are not founded on pleadings could not have been of any avail to the defendants to assert their case of adverse possession of the two rooms. The main document on which reliance was placed by the trial Judge was the plaint in suit filed in 1944 A.D, Ex.P.W, 27/B dated 25 Kartik 2002 by the Dharmarth Department which, subsequently handed back the possession Of the entire shrine including Dharamshalla to the plaintiffs in the year 1948, at the instance of Maharaja Hari Singh, as per Ex.P,W./3/2. According to the learned trial Judge, that plaint contained a statement made by Dharmarth Department which amounted to admission of adverse possession claimed by the defendants. With a view to show what could be the nature of the statement made by the Dharmarth Department in the plaint, it is pointed out by Anant Singh, J. that the suit-plaint had been rejected by the trial Judge on a preliminary objection and Dharmarth Council went up in appeal against the rejection of the plaint and that appeal was disposed of by the appellate Judge on a joint application Ex.P.W. 27/B filed before him by both the parties. That application, it is stated, showed that Dharmarth Council-the plaintiff in that suit had withdrawn the suit and the defendants had no objection for such withdrawal. The learned Judge has found that what was contained in the plaint of a withdrawn suit, could not have formed the basis for the trial Judge to hold that the Dharmarth Council had admitted that the defendants had asserted their adverse title to the two rooms in their possession 15 days earlier to the filing of the suit. That apart, the learned Judge has pointed out that the plaint relied upon by the trial Judge did not refer to any statement to the effect that the defendants had committed any overact for asserting their hostile title to the rooms and it merely adverted to what was in contemplation in the minds of the defendants as regards proposed construction of a Gurudawara at the site of the rooms. If that be so, it is difficult to think that the trial judge was right in his view that the statement of Dharmarth Department contained in the plaint as to the activities of the defendants in relation to two rooms did in any way support the claim of the defendants that they had perfected their title to two rooms by adverse possession, as rightly reasoned by Aanant, Singh, J.

In conclusion, the learned judge has stated on the question of adverse possession pleaded by the defendants la respect of the two rooms of Southern Dharamshalla in their possession, thus:

"Now to sum up my findings on this item I may recapitulate that the Southern Dharamshalla was from the very beginning the property of the Hindus. It was built on the old Dharamshalla of the Hindus. If the Maharaja Partap Singh had this Dharamshalla reconstructed by his Government he had done it with the funds of the Dharmarth department which was a separate wing of his Government The Dharmarth department was meant for the Hindus. It had only the control and Management of the shrine. If the Dharamshalla had been the property of the Maharaja Govt. he gave it back along with the whole shrine in 1948 to the Hindus -------- ."

The said reasons given by the learned Judge (Anant Singh, j.) who reversed the finding relating to the adverse possession given by the learned trial Judge in respect of two rooms (converted into three rooms) of Southern Dharamshalla of Martand shrine, in our view, are well founded and sound and

require to be upheld. Since the finding of Farooqi, J. which accords with the finding of Jalal-ud-Din, J. on the question of title by adverse possession in respect of the two rooms (converted into' three rooms) of the Southern Dharamshalla, has since been founded on the very reasons given by the trial judge in support of his finding on adverse possession of the defendants relating to two rooms of the Dharamshalla the same becomes unsustainable for the reasons on which Anant Singh, J. his reversed the finding relating to adverse possession of two rooms (converted into three rooms) given by the trial judge, which we have found to be correct in every respect and upheld.

Thus the finding of Farooqi, J. that the defendants had acquired title to two rooms (converted into three rooms) of Southern Dharamshala of Martand shrine, by adverse possession, becomes wholly unsustainable, and we answer Point-3, accordingly.

Point-4:

We are here concerned with the sustainability of the finding of Farooqi J. which accords with the finding of Jalal-ud-Din, J. that the defendants had acquired easement rights to hold their Dewans in the open space of Martand shrine towards Pahalgam Road on three occasions, namely, Baisakhi, Daswi and Chatti Padshahi. The open space concerned is to the north of the springs towards Pahalgam Road covering an area of 19kanals and 6 Marias. The plaintiffs in their suit sought to obtain a permanent injunction against Sikhs - the defendants from holding their Dewans or congregation on the plea that the open space was part and parcel of the Martand shrine belonging to Hindus and that space was in possession of Hindus from times immemorial and was being used for performing their various religious ceremonies. The claim of Hindus made in the suit for restraining by permanent injunction the defendants from using the open space was resisted by the defendants on the plea put forth by the defendants in Para 9 of their written statement filed in the suit, which read thus:

"9. ....The land covered by Khasra No. 1424/4 measuring 19 Kanals and 6 Marias is in the exclusive possession of the Sikhs since the times immemorial as a part and parcel of Gurudawara Shri Mattan Sahib where they hold congregations, meetings, and Diwans of the Sikh Community...,"

Unfortunately for the defendants the claim made in their written statement that the land covered by Khasra No, 1424/4 measuring 19 Kanals 6 Marias is in the exclusive possession of Sikhs as part of Gurudawara Shri Mattan Sahib has been disbelieved not only by the trial Judge, but also by the Judges of the High Court who dealt with the appeals arising from the Judgment of the trial Judge. Indeed the categorical finding of all the learned Judges given in their judgments is that the defendants' case that they were in possession of the Martand shrine and the lands covered by Survey No. 1424/4 since the time immemorial as a part of Gurudawara Shri Mattan Sahib is held to be utterly false. Anant Singh, J., who was a member of the Division Bench which heard the appeal, has stated with reference to the said open space, as follows:

This open space is situated in the midst of all the structures, buildings and the springs located in the shrine. They are all a continuous whole surrounded by compound walls and buildings, on three sides and a high up land on the East. In ordinary course possession over the open space would go

with the possession over the material structure buildings and the springs within the midst of which it lies. This big chunck of the open space lies north of the Dharamshalla building on the West, a room on the north temples on the east, and three springs on its south. The approach to the temples lies across this open space. The Dharamshalla and other buildings on the north west is approachable only across this open space. It has been seen that all the other items situate within the premises of the shrine, have been in possession of the Hindus. One of the temples has been found to be an ancient one. The springs have also been found to have been ancient ones. They have been found to have been in possession of the Hindus from time immemorial. It has been found that the Hindus have been per- forming various ceremonies like Mundan, Saradh etc. on different occasions all round the year at the springs. This open space is the only place where the Hindus used to congregate for performing their ceremonies..... The whole shrine including the vacant space as it has been seen earlier, has been recorded in the revenue records in possession of the Hindus, this space having been described as a 'Banjar Quadeem', The defendants have conceded even with respect to this open space the possession of the plaintiffs since long but they have claimed over it now only a joint possession along with the Hindus having given up their original case of exclusive possession. The manner of their joint possession was advanced at the time of arguments before the Trial Court, as holding of Dewans, on three specified occasions during every year by them since long."

Then, on a thorough consideration of the evidence of the plaintiffs and the defendants in relation to the above space, the same learned Judge concludes thus:

"This land has been a part and parcel of the plaintiffs shrine from time immemorial. They are undoubtedly the owners of the whole property including the open space in question."

Thereafter, dealing with the defendants claim to hold Dewans on three specific occasions of user by customs, the learned Judge has stated that right of user of another's land by custom cannot be sustained unless it is proved by party claiming such right whether the right is ancient, peaceful, reasonable and specific and such right was being exercised as of right and continuously without interference placing reliance on this Court's decision in Raja Braja Sundar Deb and Another v. Moni Beharu and Others, AIR (1951) SC 247, He was of the view that the said claim to hold Dewans was unsustainable for want of production of sufficient evidence on the part of the defendants and the defendants who had indeed, claimed ownership rights in respect of the open space should not be allowed to turn round and claim the right to hold Dewans on the lands on the basis of acquisition of such rights as easement or long user in the absence of alternative plea taken in that regard in their written statement Thus, he negatives the claim of the defendants to hold Dewans in the open space as a matter of right, Jalal-ud- Din, J., another member of the Division Bench, since took the view that the defendants were entitled to use the open space, having established their easementary right in that regard, the question of the defendants acquiring right to use the space for their Dewans by acquisition of right by easement in that regard came to be referred, for decision thereon by the third Judge. The third Judge, Farooqi, J. though came to the conclusion that the entry in Record of Rights and Jamabandi when was to the effect "as Kabzaahl Hindus", it meant that the possession of the open space was of the followers of Hinduism, he took the view that the property being treated as 'Banjar Quadeem' in the Records of Rights and Jamabandi it implied that the property was not put to cultivation, and hence such entries cannot be treated as conclusive proof of the land dedicated

exclusively to the Sanatini Hindus or to Martand shrine of Hindus. We find that the view so taken by Farooqi, J. in the matter on the basis of entry 'Banjar Quadeem' was not justifiable when he himself has referred to the Record of Rights and Jamabandi entries which show that the above space along with other lands of the Shrine were showed to be in exclusive possession of Hindus. Therefore, the contrary view of Anant Singh, J. in the matter of acquisition of right by easement on the open space by defendants, according to us, prevail over the view of Farooqi, J. expressed thereon. The learned Judge Farooqi, J. was again, in our view, wrong when he reached the conclusion that the defendants had taken a plea of acquisition of right to conduct Dewans as an easementary right by referring to Para 9 of the written statement, which read thus;

"The land covered by Khasra No. 1424/4 measuring 19 Kanals 6 Marias is in the exclusive possession of the Sikhs since the times immemorial as a part of Gurudawara Shri Mattan Sahib where they held congregations, meetings and Dewans of the Sikh Community."

The plea taken in Para 9 of the written statement above as becomes obvious from its plain reading is that Sikhs had acquired right to land covered by Khasra No. 1424/4 as the same being in their possession from time immemorial as a part of Gurudawara Shri Mattan Sahib and not that they had acquired the right of easement to hold Dewans or congregation in that land which belonged to Hindus, Therefore, the view of the learned Judge that the plea of the defendants contained in Para 9 of the written statement could be regarded as a plea of right of easement becomes wholly unsustainable. If that be so, the finding of Farooqi, J,, the learned third Judge deciding the appeals, that Sikhs had established their right of easement over the open space in the matter of holding religious ceremonies or Dewans on three specific occasions, namely, Baisakhi, Daswi and Chatti Padshahi, becomes wholly unsustainable. We answer Point-4, accordingly.

Point-5:

The point here is whether Sikhs are liable to be ejected from the two rooms (converted into three rooms) in the Southern Dharamshalla of Martand shrine where they are keeping their Granth Sahib because of the finding of Farooqi, .I. that Sikhs - the defendants had acquired title to the two rooms (converted into three rooms) by either grant made by Maharaja Partap Singh of the same in their favour or because of their perfecting tide thereto by adverse possession, is found to be unsustainable.

Interest of justice, in our view, does not warrant ordering of ejectment of Sikhs - the defendants from the two rooms (converted into three rooms) of Southern Dharamshalla of Martand shrine where they are keeping their Granth Sahib, in the over all facts and circumstances of the case and in particular having regard to the case put forward by the plaintiffs in respect of giving of permissive possession of the said two rooms (converted into three rooms) to Sikhs - the defendants, which is accepted by us to be true. What is said in Para 10 of the plaint is that the Dharmarth Department had permitted Sikhs to place Granth Sahib temporarily in the two rooms (converted into three rooms) of the Southern Dharmshalla of Martand shrine till their (Sikhs) fallen Dharamshalla, which was away from the Martand Tirath was reconstructed for enabling them to place their 'Granth Sahib' there. In the same paragraph it is stated that it was decided with the Dharmarlh Department along

with the Hon'ble Minister that both the rooms would be got vacated and Granth Sahib will be placed in new Dharamshalla and these two rooms will be used for keeping Granth Sahib till new Dharamshalla was constructed at the Government expense. It is also stated therein that the compromise deed was executed on 4 Assuj 1992 jointly by the representatives of the Sikhs and Dharmarth Department in the presence of the Wazir Wazarath Ananlnag and the Hon'ble Finance Minister resolving the dispute in relation to the said rooms between the Dharmarth Department and Sikhs - the defendants. Admittedly, no new Dharamshalla which was to be built either by Sikhs or by the Government has yet been built to enable Sikhs - the defendants to shift their Granth Sahib from the two rooms (converted into three rooms) of Southern Dharamshalla of the Martand shrine and vacate those rooms. When the possession of the two rooms (converted into three rooms) in the Southern Dharamshalla was given to Sikhs - the defendants, for keeping their Granth Sahib by the Dharmarth Department at the instance of Maharaja Partap Singh, the Dharmarth Department of the Government which was in the management of the Southern Dharamshalla of the Martand shrine gave two rooms of it to Sikhs for keeping their Granth Sabib, till a new Dharamshalla was built by Sikhs themselves or by the Government for them for shifting the sacred Granth Sahib. Hindus, the plaintiffs, in our view, cannot wriggle out of the situation created by action of Dharmarth Department, as manager of Martand shrine and its Dharamshallas, for them. Moreover, there is a realisation on the part of the defendants that the claim of ownership made by them in respect of Martand shrine and its precincts on behalf of Sikhs was wholly unjustified as seen for what is stated in paras 39 and 40 of their written submissions which read, thus:

"39, Ever since the judgment of the learned third Judge after filing of the appeal before this Hon'ble Court, the parties have reconciled to the position as settled by the Division Bench and there has not been any conflict worth mentioning rather peace and harmony have ever since prevailed. The respondents have not filed any appeal before this Hon'ble Court even though the final judgment is partially against them. They did not file an appeal with the intention that peace and harmony prevails in the locality amongst the two communities."

"40. The appellants have also reconciled to the position and also informed this Hon'ble Court that they have no grievance against the continuance in possession by the respondents in respect of the three rooms and the celebration of the three festivals: Dasmi, Chhatipatshahi and Baisakhi which is the subject matter of the appeal."

Hence, in our view, it would not be in the interest of justice to order ejection of the defendants from the said two rooms (now converted into three rooms) of Southern Dharamshalla of Martand shrine, as sought by the plaintiffs in the suit. However, their right to continue in the possession of the said two rooms (converted into three rooms) where they have placed their Granth Sahib since has to be regarded as permissive possession, any act which may be committed by Sikhs - the defendants by taking advantage of the permissive possession held by them of the said rooms which could result in obstruction of the performance of poojas in the shrine or religious ceremonies at the springs or the open spaces of the shrine by Hindus, it has to be made clear, gives Hindus - the plaintiffs a cause of action for the defendants' ejectment from the two rooms (converted into three rooms) by having recourse to appropriate legal proceedings. We answer the point under consideration accordingly taking recourse to Article 142(1) of the Constitution empowering this Court to make such order as is

necessary, to do complete justice in any matter or cause before it.

Point-6:

The point here concerns the rights of Sikhs - the defendants to hold Dewans on three specific occasion of the year, namely, Baisakhi, Daswi and Chatti Padshahi in the open space of the Martand shrine towards Pahalgam Road. No doubt, we have come to the conclusion that the defendants have failed to establish easementary right to hold such Dewans in the open space. Even then, when the plaintiffs have allowed the defendants - Sikhs to have two rooms (converted into three rooms) of Southern Dharamshalla of Martand shrine for placing their Granth Sahib and when as of necessity Sikhs - the defendants are compelled to hold Dewans in a. convenient place close to those two rooms (converted into three rooms), it cannot be in the interest of justice to restrain Sikhs - the defendants from holding Dewans in the above open space of the Martand shrine towards Pahalgam Road on three occasions when permission to hold such Dewans is granted by jalal-ud-Din, J. and Farooqi, J. while deciding the appeals even though we have not found favour with the reasons given therefor. However, the permission so granted shall cease when the defendants' permissive possession of two rooms (converted into three rooms) in Southern Dharamshalla of Martand Shrine comes to an end. It is made clear in the interest of justice itself that Sikhs - the defendants whenever decide to hold Dewans in the open space of Martand shrine towards Pahalgam Road on any of the three occasions in a year adverted to by the said learned Judges, the same ought to be held by requiring the people interested in attending such Dewans to reach the open space concerned directly from Pahalgam Road and not by crossing the other Martand shrine premises or the springs where the Hindus would be performing their poojas or holding religious ceremonies or rites. If the holding of the said Dewans, it is made clear, is sought to be done or is done by allowing the people to congregate for Dewans in the open space crossing the other Martand shrine premises, or springs that would give a cause of action for Hindus - there plaintiffs to take legal proceedings against the defendants to prevent them from holding Dewans or congregations in the open space of Martand shrine towards Pahalgam Road, as is permitted by the learned Judges Jalal-ud-Din & Farooqi, .JJ. in their judgments in the present appeal, we answer the point under consideration accordingly in exercise of our jurisdiction under Article 142 (1) of the Constitution for doing complete justice in the cause or matter before us, because of its extra-ordinary nature.

Having regard to the total effect of the answers given by us on the points formulated as arising for our consideration in this appeal, the appeal is liable to be dismissed, subject to the liability of the defendants for ejectment from the two rooms (converted into three rooms) of Southern Dharamshalla of Martand shrine, if they misuse their permissive possession under which they are allowed continue in those rooms and of the liability of the defendants to be restrained from using the open space of Martand shrine towards Pahalgam Road, to hold Dewans on three occasions every year, if they or their men misuse the permission to hold such Dewans now granted by indulging in acts that would cause obstruction or annoyance to Hindus in performance of their poojas or conducting religious ceremonies in the precincts of their own Martand shrine and springs therein.

In the result the appeal is dismissed. However, Sikhs' (the defendants') continuance in permissive possession of two rooms (converted into three rooms) of Southern Dharamshalla of Martand Shrine,

and their user of the open space of Martand shrine towards Pahalgam Road on three occasions of the year, namely, Baisakhi, Daswi and Chatti Padshahi, shall be subject to the fulfilment of the conditions imposed by us in recording our answers on the points considered by us in this appeal.

Having regard to the nature of dispute in this appeal, (here shall be no order as to costs.

Appeal dismissed.