

(1948) 12 CAL CK 0010
In the Calcutta High Court
Case No : A.F.O.D. No. 36 of 1942

Anath Nath Banerjee and others

APPELLANT

Vs

Sree Sree Iswar Kali Mata and others

RESPONDENT

Date of Decision : 22-12-1948

Acts Referred:

Citation : (1948) 12 CAL CK 0010

Judgement

1. A large number of persons, who for brevity's sake may be called the Haldars of Kalighat, are the shebaita of the famous deity Sri Sri Iswar Kalimata of Kalighat (hereafter called the deity). Most of those persons are members of the Halidar family but others are cognates of the members of the said family, who have succeeded to the shebaiti right by inheritance. One Harendra Nath Halidar, a member of the said Halidar family, who at the time was a prospective shebait of the deity instituted the suit, in which this appeal arises, as next friend of the deity. The suit was brought against thirteen persons, who were some of the shebaita of the deity and were the members of the "shebait committee"-a committee set up some years back by consent of the shebaita for looking after the seva and puja of the deity. As the shebaita were very large in number the plaintiff made the said thirteen persons defendants in their individual capacities and also as representing the remaining shebaita of the deity. He obtained the requisite permission to sue them in their representative character under the provision of O. 1, R. 8, Civil P.C., and the necessary advertisement was published in an issue of a Bengalee daily newspaper, the Ananda Bazar Patrika. In pursuance of that advertisement seventy-one other shebaita of the deity appeared and were added as defendants at their request.

2. The allegations made in Para. 1 of the plaint are that there are four Shiva temples, the temple of Sri Sri Sham Rai, the Natmandir, Dolemancha and about 15 or 20 bhog-ghars near about the temple of the deity and within its compound, and the temple of Sri Sri Nakuleswar Shiva and of many other Gods and Goddesses outside the compound were adjuncts of and were connected with the temple of the deity, Sri Sri Kalimata. Three temples outside the said compound

not specifically mentioned in para. 1, but mentioned in schedule Ka annexed to the plaint are the temples of Sri Sri Bhubaneswari, of Ganesh and of Kal Bhairab. In that schedule are also included a shop which is in between the temples of Bhubaneswari and of Ganesh and a tank called the Kali Kundu. The plaintiff claims all that is mentioned in that schedule to be the debuttar properties of the deity. Schedule Kha describes the movables which are also claimed to be the debuttar properties of the deity. In para. 2 of the plaint the plaintiff states that if it transpired that the deity had properties other than those described in schedule Ka he craves for leave to include them in the plaint, and for the preparation of an inventory of all movables and immovable debuttar properties and of valuable ornaments and other articles belonging to the deity. The compound of the temple of the deity is enclosed within walls and covers an area of 1 bigha 16 cottas odd land.

3. Some time after the institution of the suit the plaintiff made an application for the appointment of a receiver. In that application he stated that the deity had an area of 595 bighas odd land in mouza Kalighat, and to support his prayer for receiver alleged that the shebait had misappropriated those lands, save and except the area of 1 bigha 16 cottas which was in the compound of the temple of the deity. In spite of that statement, the area of 595 bighas odd save and except what had been mentioned in schedule Ka of the plaint, was not included in the plaint. In fact not even an application for amendment of the plaint was made for that purpose.

4. The plaint proceeded on to allege various acts of mismanagement of the affairs of the temple by the shebait, their acts of oppression on the pilgrims, acts of misappropriation of the deity's property, and the income of the temple etc. On the basis of those allegations, the plaintiff prayed for the framing of a scheme for management, for accounts against the defendants and a personal decree against these defendants who may be found to have appropriated the income of the debuttar properties or any movable or immovable property belonging to the deity, and for a decree directing the preparation of an inventory of all the movable and immovable debuttar properties. A prayer for injunction was made in the plaint as originally filed but by an amendment that prayer was given up. The plaint is silent on the point as to whether the debuttar is a public or a private one.

5. A number of written statements were filed. Only defendants 81 to 85 supported the plaintiff. None of the other defendants admitted in their written statements the title of the deity to the properties described in schedule Ka of the plaint. They admitted one of the bhog-ghars to the ejmali bhog-ghar. Defendants 1 to 4 and 6 to 13, who were the members of the shebait committee stated that they were not aware as to whether the four Shiva temples, the other bhog-ghars, the temples of Bhubaneswari, Kal Bhairab and the shop adjoining Bhubaneswari's temple were the debuttar properties of deity or not, or whether they were being possessed by particular shebait of the deity as their personal

properties. Defendant 5 Upendra Nath Mukherjee, in his written statement claimed the Bhubaneswari's temple and the shop adjoining it to be his personal property. He did not lay any claim to the other temples and bhog-ghars referred to in the plaint but stated they were the personal properties of some of the other defendants. Some of the other defendants claimed the other temples, e.g. the temples of Shiva and of Kal Bhairab and the lands adjacent thereto and the other bhog-ghars, save and except the one mentioned above, to be their personal properties. They made a common cause that these terms were not the debuttar properties of the deity Kalimata. In view of what transpired in this Court we need not specify the details of their respective claims in this respect. All those defendants denied the allegation of mismanagement, misuse and misappropriation etc., made in the plaint and set up a case of long established usage in support of what would prima facie appear to be misappropriation of the deity's moveable properties or the income of the temple. The learned Subordinate Judge went into those matters and recorded findings. Before him the plaintiff contended that the temple and the debuttar properties constituted a public religious endowment but the defendants contended that it was a private one. On this point evidence was led by the contending parties and on a review of the same the learned Subordinate Judge came to the finding that the institution was a public one. He further held that though the religious endowment was a public one S.92, Civil P.C., was inapplicable, and so the plaintiff was entitled in law to get a decree in respect of all the prayers made in the plaint which remained after its amendment. After entering into the merits of the charges levelled by the plaintiff against the shebait he passed a decree in the following terms: (1) he declared the items mentioned in the schedule to the plaint together with the aforesaid 595 odd bighas of mouza. Kalighat to be the absolute debuttar properties of the deity; (2) he directed the shebait of the deity to make inventory of all the debuttar properties, moveable and immoveable which were with them within a month; (3) he directed defendants 1 to 13 to render accounts of the deity's property under their management from after 14th July 1936; (4) he directed the defendant 5 to render account of the temple of Bhubaneswari and the shop adjoining thereto; (5) he gave similar directions to the some of the other defendants in regard to Siva temples, Kal Bhairab's temple, the bhog-ghars and Dali shops on their ledges; and (6) he directed the framing of a scheme for the proper management of the institution in consultation with the parties

after the ascertainment of the entire debuttar properties by inventories and by taking the accounts as directed above.

He dismissed the prayer for removal of the shebait or any one of them, and postponed the passing of personal decree against such defendants as may be found to be personally liable for misappropriations etc., to the final stage of the suit. He further directed the next friend of the deity to take legal advice in the matter of recovery for the deity of the balance of the said area of 595 odd bighas.

6. Most of the defendants, not all, have preferred this appeal. The learned Advocate General argued the points common to all. Mr. Maity appeared for the legal representatives of defendant 5 and argued in support of their claims to the temple of Bhubaneswari and the shop adjoining it.

7. The Advocate General also urged the claims of his clients in respect of the temple of Kal Bhairab and of some bhog-ghars. Mr. Maity, who also appeared for defendants 37 to 46 urged the claims of his clients to the Jora Shiva temple and Naubatkhana, which is within the compound of the main temple.

8. The common points urged on behalf of the appellants are: (1) That the said 595 odd bighas of mouza Kalighat, save and except the area of 1 bigha 16 cottas, which is the enclosure of the temple of the deity, are not debuttar properties of the deity, but are the personal properties of the shebait. (2) That in any event the learned Subordinate Judge was not right in passing a decree declaring the title of the deity to the same. (3) That the temple and its endowment is not a public one. It is the private debuttar of the Haldar family. (4) That if the institution is a public religious institution S. 92, Civil P.C., prevents Court from making a decree for a scheme and from granting any relief which is incidental to the framing of scheme; and that no decree for account or for money for this alleged individual misappropriation can be passed, and so the reservation made by the learned Subordinate Judge in this respect in his decree cannot stand.

9. The point as to whether the plaintiff could maintain the suit either in his capacity of next friend or of a prospective shebait of the deity was raised by the learned Advocate General in his opening but was in the end abandoned by him.

10. Besides the aforesaid points the three sets of appellants urged three other points, which we have already indicated. They are (5): Whether the temple of Bhubaneswari and the shop adjoining it belong to the deity Sri Sri Kalimata or are the personal properties of the legal representatives of defendant 5, Upendra Nath Mukherjee. (6) Whether the temple of Kal Bhairab including its compound and the bhog-ghars are the personal properties of some of the shebait. (7) Whether the jora Shiva Mandir and Nahabatkhana are the personal properties of defendants 37 to 46. No other point was pressed before us by the appellants. We will take up points Nos. 1, 2, 5, 6 and 7 together.

11. The facts relating to the said 595 odd bighas odd of mouza Kalighat which is in pargana Khaspore, are as follows:

12. On 12th Jaistha 1204 B.S. corresponding to 26th May 1797, Guru Prosad Haldar, Kunja Behari Haldar and others, who were then the shebait of the deity, filed a claim of revenue free grant in respect of an area of land in mouza Kalighat pergana Khaspore in pursuance of the provisions of Regulations 19 of 1793. The certified copy of the Taidad could not be produced in the lower Court but was produced in this Court by the plaintiff-respondent with an application to take it in as an additional evidence. By consent of parties we received it in evidence and

marked it as exhibit 49(a). With the consent of the parties we had the original Taidad Register brought up from the Collectorate and after its inspection by us and by the learned Advocates it was returned. The parties did not wish to keep a copy of the relevant entry on the record as the entry in the Taidad Register gave no further details than what appears in the certified copy of the Taidad itself. The relevant entries in both are the same. In the year 1859 the Government started proceedings to assess revenue on an area of 595 bighas 9 cottas odd of land in mouza Kalighat in pargana Khaspore under Regulation II of 1819. A Deputy Collector, Mr. Heysham, prepared a chitta of the said area, which was measured in 393 plots in Division 6, sub-divisions E, F, M, P and Q of Panchannagram. The details of possession of the several holdings are mentioned by him in his chitta Ex. 6(a). The resumption proceedings started related to the lands shown in this document. One Deputy Collector, Babu Gobinda Prosad Pandit, recommended release on the ground that the lands were the debuttar properties of Sri Sri Kalimata. Mr. Heysham, however, was of the opinion that the lands were liable to be assessed to revenue. The Revenue Collector, Mr. Bright, agreed with Mr. Heysham, and issued notices on the shebait's of the deity in terms of S. 20 of that Regulation. The persons whose names appear in the proceeding started in pursuance of S. 21 of that Regulation appeared before the Revenue Commissioner and claimed the lands to be revenue-free as being included in an ancient grant said to have been made to the deity. The Taidad which was not before the Deputy Collectors or the Collector was filed by the claimants. The Revenue Commissioner released the lands stating in support of his orders that they were not included in Pargana Panchannagram, but were in Perguna Khaspore and that the said lands had

from a very long time been given away as debutter land and its income has been spent without interruption for sheba and puja etc. and for religions and charitable purposes and it is well known to one and all throughout India that Kalighat is the public Divine Peethasthan, one of the 51 places where the limbs of Sati fall.

This Robakari was made on 31st May 1861. It has been marked as Ex. 6.

13. Two questions were raised by the learned Advocate General in his opening namely (1) that the Taidad on its correct construction would show that the property was the personal property of the shebait's of the deity. At most it would lead to the conclusions that the property was secular property but charged with Debsheba, and (2) the final Robakari is admissible in evidence for the purpose of showing that the land is revenue-free but the reason given for holding it to be revenue-free is not admissible in evidence. If we could have supported the decree made by the learned Subordinate Judge by which he declared the deity's title to this area of 595 bighas odd it would have been necessary to consider these contentions and other documents on the record which are material to the question as to whether fee property is the deity's or not. But for reasons hereafter appearing we do not feel the necessity of going into the question of title to this large area of land. Normally it would have been necessary to go into

this question, even if the declaratory decree made by the Court below in respect of the whole of the said area of 595 bighas odd were held to be a wrong decree for the purpose of deciding the question of title to the temples and other lands which are outside the enclosed compound of the deity, namely, the temples of Bhubaneswari, Kal Bhairab, Ganesh, Nakuleswar Shiva, the Kali Kundu and the shop site adjoining Bhubaneswari's temple and other properties mentioned in schedule Ka of the plaint. But it is not absolutely necessary to go into that larger question as all the parties to this suit, save and except the legal representative of defendant 5. Upendra Nath Mukherjee, have filed petitions before us admitting in unqualified terms the title of the deity (Sri Sri Kalimata) in all the properties mentioned in that schedule and have moreover admitted that the income derived from those properties belong to the deity. We have directed these petitions to be kept on the record. Admissions so made do not, however, affect the legal representatives of defendant 5; in fact they are not admissible in evidence as against them, either in respect of the items of property in schedule Ka which they claim to be their personal properties or in respect of the other properties mentioned therein. All the parties except the legal representatives of defendant 5 ask us in these circumstances not to go into the general question as to whether the whole of the said 595 odd bighas is deity's property, when he indicated in the course of the argument that it was difficult to sustain the declaratory decree as made by the learned Subordinate Judge in respect of the whole of that area of 595 bighas. We have thought it fit to accede to that request, as there are important admissions made by Upendra Nath Mukherjee to the effect that items Nos. (1), (2), (3) and (5) of Sch. Ka are the debuttar properties of the deity. There is or was no controversy regarding the deity's title to items Nos. 4 and 6. They are admittedly debuttar properties having been bought under the directions of Mr. Chotzner, the District Judge of 24-Parganas for the deity out of the compensation money for some acquired land belonging to the deity, (Ex. 17). After Mr. Chotzner's order Upendra Nath Mukherjee issued a pamphlet exhorting the shebait to mend their ways, which they had been following in the past, and appealed to them to be pious (Ex. 17). In unambiguous terms he admitted therein that the whole of the said 595 bighas was the deity's property. He made the same statement in his "History of Kalighat" Ex. 29. He made a frantic effort to get rid of these important admissions by making in his deposition an incredible story that those parts of Exs. 17 and 29 had not been written by him but by another person without his knowledge. His deposition shows to what extent he can be mendacious when his self-interest is concerned. The sites of items Nos. 1, 2, 3 and 5 are mentioned in Heysham's list of Debuttar properties (Ex. 6a). As the whole of that document has not been printed we mention the relevant items of that document. Item No. 1-the compound of the main temple-that is, of Sree Sree Kalimata wherein the other temples and bhogghars are situate, is holding No. 96 of division 6, sub-division F of Sheysham's list. Its area was then 1 bigha 11 cottas odd. The area of compound as at present is 1 bigha 16 cottas, the increase being due to lands added when the Corporation of Calcutta made improvements by making broad roads on the sides of the temple compound.

Item No. 2-Kali Kundu is division 6 sub-division F, holding No. 92. Item No. 2-Temple of Kal Bhairab and adjoining lands is division 6, sub-division F, holding No. 91. Item No. 3-Temple of Bhubaneswari etc., division 6, sub-division F, holding Nos. 110 and 111.

14. The evidence is that the temple was built after Heysham's measurement. Present holding No. is 132. Item 5 is division 6, sub-division E holding No. 123.

15. Defendant 5's legal representatives claim the temple of Bhubaneswari and the adjoining shop on the basis of three documents Exs. Z24, Z25 and Z26. The first document is a mokarari mourashi patta taken by defendant 5 from Biswamayee Devi (mother of Pran Krishna Haldar) on 20th July 1894. That document relates to Bhubaneswari temple. There is a misprint, "Division B" is a slip for division 6. The document recites that a Sanyasi named Dev Giri had made the temple and that at his death the said Sanyasi had made a gift to the grantor. The other document is a similar lease given by that lady on the same date to one Chandra Kanta Bhattacharjya. It relates to the shop adjoining the temple. In this document there is also a misprint. The number of the sub-division is printed as 7. It should be F. Defendant 5 purchased the interest of Chandra Kanta by Ex. Z26 dated 19th July 1899. In our opinion a shebait of a deity and who had accepted the shebaitship cannot acquire title to the deity's property by prescriptions. The case of Surendrakrishna Roy Vs. Shree Shree Ishwar Bhubaneshwari Thakurani, affirmed on this point in AIR 1937 185 (Privy Council) , is distinguishable, as in that case a person who would in law be a shebait had not accepted the office or trust. But apart from this question defendant 5 made it clear in his book, "The History of Kalighat temple" ("Kalighat Itibritta," Ex. 29) that he as a pious shebait of the deity had redeemed a lost property for the deity. The relevant passage in his history, Ex. 29, has to be read with the pious sentiments and exhortations which he made in his pamphlet Ex. 17, which he had published nine years before he wrote his history of Kalighat. We accordingly hold the properties described in items 1, 2, 3 and 5 to be the properties of the Deity Sree Sree Kalimata so far as the defendants other than the legal representatives of defendant 5 are concerned on their admissions made in the petitions filed before us and so far as the legal representatives of defendant 5 are concerned on our finding based on the materials discussed above. We accordingly make a decree declaring that those items are the properties of the Deity Sri Sri Kalimata Thakurani of Kalighat and the Goddess is entitled to all the profits accruing therefrom including the profits from the offerings, pranamis etc., made to the deities installed in those temples; the Shivas, Bhubaneswari, Kal Bhairab etc. As the deity's rights in respect of the temples of Nakuleswar Shiva and of Ganesh and to the lands appertaining to or adjoining the same were not challenged before us and her title to the other terms of Sch. Ka and to the items described in Sch. Kha were not challenged before a decree declaring her title to the same is made.

16. We have already stated that we cannot support the decree of the learned

Subordinate Judge declaring the deity's title to the whole of the 595 bighas 9 cottas odd, land in mouza Kalighat which were released from assessment of revenue in. the resumption proceedings started in 1859 (Case No. 1 of 1859 under Regulation II [2] 1819). We will now shortly state our reasons. We would not have set aside that part of the decree simply because that area was not included in Sch. Ka of the plaint by an amendment. The parties had led evidence bearing upon the question of title to that area. That defect could have been removed even now by allowing the plaint to be amended at this stage. But the plaintiff cannot have the declaration because all persons who would have been affected by the declaration are not before the Court, not being made parties at all. It is the common case of the parties that most part of that area has been sold to outsiders. Those transferees are not parties to the suit, and defendants 1 to 13 cannot represent in the suit those outsiders, for according to the plaintiff they were sued on the footing that they were to represent only the shebait of the deity and none else. It is of fundamental importance that a Court should not make a declaratory decree which would be useless. We accordingly discharge that part of the decree by which he declared the title of the Deity Sri Sri Kalimata to the whole of the said area of 595 bighas 9 cottas odd of land.

17. The next important point is whether the temple and the debuttar is a public one.

17a. We have already said that the plaint is silent regarding the character of the institution. At the time of opening the case, and before evidence was led the plaintiff's senior Advocate stated that his case was that the temple of the deity is a public one and so the religious endowment was a public one. As the defendants contested that case the Subordinate Judge framed a specific issue and then the parties led evidence. The point depends upon the effect of the documentary evidence led by the parties. In addition to the documentary evidence some authoritative books are relevant. The parties admitted in their written statements that the place is a Peetasthan, as the toe of sati who committed suicide at the Joggya of his father Raja Daksha, fell there and the temple is so famous and is regarded so sacred that persons from all parts of India and even places outside India flock to the place for pilgrimage. It is one of the fifty-one Peetasthans in India. These admissions are well supported by authoritative books. We will refer to some of them. In the Pitamala of Nigama Kalpa the following passage occurs with regard to Kalighat and the temple of the deity Sri Kalimata:

That site is the most sacred and rarest place of pilgrimage even for the other Gods and Goddess. Kalikshetra is equal in all respects to Kashikshetra (Banares), as Maheswara presides at both places. Even insects get salvation by death at this place, not to speak of mankind and other higher creatures. That place is the seat of eight Saktis, Bhairabi (Bagala, Vidya Kali) Matangi, Kamala, Brahmi, Maheswari and Chhandi.

Two of the many passages in the Sabdakakalpdrum are worth quoting. They are as follows. In answer to Iswar (God) the Debi said:

O Child, Kind and affectionate to persons devoted to deities. I am going to tell you; hear I am telling you about the Peets without the help of which success through repetition of mantras, concentration for the realisations of the Divine and pious acts cannot be obtained. I am telling you about the fifty one Peets and the Bhairab's (Shivas) and deities presiding over each of them Deb, those Peets came into existence in consequence of the fall of the limb of my other body which was cut into pieces by Bishnu Chakra. These things are said for the welfare of mankind.... Kalipeet came into existence by the fall of the right toes. Nakuleswar is the Bhairab there and Kalika (Kalimata) Devi who grants success of all sorts is the deity presiding there.

18. The next passage runs thus:

To Janmajoy Vyas (the ancient saint said:

O King, at present I am narrating all about Devi Peets on the very hearing of which man is freed from all sins. I am narrating those Peets with connotation thereof in which she (Debi) is worshipped by those who desire to attain success and is the subject of meditation of those who desire to have spiritual amelioration of the soul.... Whoever thinks over or hears the names of one hundred and one Peets, he being liberated from all sins, goes up to Debiloka which is spiritually higher place. One should visit these Peets in accordance with the directions laid down in connection with pilgrimage... All those reside at that place even Chandals (depressed classes) being different manifestations of the deity are fit to be adored.

It is not necessary to refer to other books e.g., Viswakosh (see pages 38, 39 and 466) and other books of authority. They all dilate upon the theme of great spiritual merit that can be acquired by pilgrims visiting those places, and thereby hold out inducements to all to visit those places. A text of Devi Bhagabat quoted in the Kali Kshetra Dipika (Exhibit 33-this part not printed) is significant. The sloka is as follows:

The limb when it touched earth became at once converted into stone for the welfare of the public in general.

19. Such being the concept of a Peetasthan the tenets of Hindu religion require a temple built on the site of Peetasthan to be open to all Hindus and so very strong evidence would be required to make such a temple a private temple of an individual or of a particular family and the deity the family deity of any body. The weight of evidence on the record is in favour of the temple and the endowment being a public one. There were in the past four main entrances to the compound. In recent times a fifth gate has been opened. It is admitted that the public have a free entrance into the compound and can have darshan of the deity without let or hindrance from the Natmandir and from the passage in between the temple and the Natmandir. Only an entry fee or dar dakhina, as it is called, is levied on the steps of the staircase leading to the western door of the temple or for entering the sanctum of the temple, but that practice cannot in our opinion be

cogent evidence in support of the case that the temple is a private one. If the weight of evidence establishes the temple to be a public one the levy of such gate-money would be hard to justify, and any usage to support it that may be set up to support such a levy would be an illegal one, being inconsistent with the right of free access which the Hindu public has to a public Hindu temple. Admissions to the sanctum and other parts of the temple may be controlled or regulated for the purpose of preventing overcrowding or for the facility of worship or for purposes of like nature, but to refuse a person entrance to any portion of the temple to which access is reasonable and not forbidden by Shastras unless he pays a fee is quite unjustifiable and so we affirm the finding of the learned Subordinate Judge in this respect. None of the shebait can do on the plea of usage a thing which brings money but which at the same time is inherently bad as being either revolting to the sentiments of a pious Hindu or which may be considered by him to be an act of sacrilege. Such an usage has also been set up in this case. The usage pleaded that a shebait can take away the tongue, the arms, the Mundamala, the Mundu and the Khara in certain contingencies is an abhorrent one. This observation is necessary for the purpose of totally repelling the claim of the shebait, though of a limited nature, to the moveables mentioned in schedule Kha of the plaint. These things cannot be taken to be ornaments simply because they are made of precious metals. They are not of the nature of ornaments but are essential parts of the body of the deity. In our opinion incapacity of the shebait cannot make a temple a private one, if it is otherwise established to be a public one.

20. The next thing to be noticed is that there is a long and well-established reputation that the temple is a public temple of great sanctity and of India wide reputation. The Taidad of 1797 mentions the grant of lands for the upkeep of the worship by an ancient Khatriya King and Mr. Lushington's Robakary of 1861 (Ex. 6) states that "Kalighat is a public Divine Peetasthan". The existing temple of the deity has been constructed at the expenses of the public and the bhog-ghars and all the other important appendages to the temple have been constructed at the expenses of the members of the public (Ex. 8).

21. A complaint book is maintained for entering complaints made by members of the public (Ex. M). Responsible persons like Mr. Ramaprosad Mookerjee (now Mookerjee J.) and responsible public bodies like the British Indian Associations have in the past made complaints about the mismanagement of the affairs of the temple (Ex. 29 etc.). The last mentioned Association intervened on the footing that it is a public one (Ex. 2). The Secretary to the Shebait Sabha, who himself was a shebait of the deity, in answer to the representation of the said Association said that the only feasible way of preventing acts of oppression to the public and for removing mismanagement would be to take the aid of the Court under S. 92, Civil P.C. and to have a scheme framed. This is an admission on his part that the institution is a public one (Ex. 34). As late as 15th May 1936 - a few months before the institution of this suit - the shebait committee adopted a resolution on the same lines (Ex. G. 1.). The case cited by the learned Advocate General,

namely *Pujari Lakshmana Goudan v. Subramania Ayyar*, 29 Cal. W.N. 112 : (AIR 1924 PC 44), is of no help to him. That was a case where a temple had been established in comparatively recent times by a private person. The question was whether it was a private or a public temple. It was held that a representation by the founder to the Hindu public that it was a public temple in which they may worship would be cogent evidence of the temple being a public one. But the fact of such representation being made cannot, in our opinion, be the sole test to go upon. The fact that the Government had not taken possession of the temple may be a good reason for holding a temple in Madras to be a private one but that fact would be of slight importance in respect of a temple situated in Bengal or in Upper India for, it is well known that the Government did not exercise such control over the public religious endowments in these parts of India as it did in Madras, may be because large public religious endowments were many in Madras and comparatively few in Bengal or other parts of India. The other two cases cited by the learned Advocate-General, namely AIR 1934 230 (Privy Council) and AIR 1940 7 (Privy Council), lay down the proposition that if the other evidence on the record establishes a temple to be a private one, the mere fact that the public are freely admitted would not convert it into a public temple. In the case before us, access of the public is not the only item of evidence on which the case of the temple Sri Sri Kalimata being a public temple is sought to be supported. Where other elements are present, as in the case before us which would reasonably lead to the inference that the temple at its origin was not or could not have been a private one, the fact that the public have had free access from time immemorial would be almost a settler. In conclusion the learned Advocate-General relied strongly upon the fact that the division of worship by the shebais by palas would be absolutely inconsistent with the temple being a public one. The fact that the shebais of Sri Sri Kalimata have palas has been proved conclusively and the Pala Punji (Ex. 38 extract only printed) give details of the palas from 1925 to 1945. For supporting his argument he had relied upon a passage in the judgment of the Judicial Committee of the Privy Council *Sethuramaswamiar v. Meruswamiar*, 45 I.A. 1 at p. 7 : (AIR 1917 P.C. 190), in which it was stated that

their Lordships' attention was not drawn to any case in which these decisions about management (in turn) have been applied to lands which constitute the endowment of such a character (public endowment).

Their Lordships were considering a different question. They did not lay down the proposition that worship of the deity by turns and management of the endowed properties by turns are so inconsistent with the religious or charitable endowment being of a public character, that its presence would totally outweigh all the other evidence, however weighty, which would support the case of the endowment being a public one. In fact the temple in the case of *Ramanathan Chetti v. Murugappa Chetti*, 33 I.A. 139 : (29 Mad. 283 P.C.), to which reference was made in *Sethuramaswamiar's* case : (45 I.A. 1 : AIR 1917 P.C. 190) where the shebais exercised their functions by turns was a case of a public temple. The

judgment of the Board begins by saying the temple was

dedicated to the public worship of the deity in whose honour it was founded, and endowed with the income of three villages,

and that the office of the manager (shebait) was hereditary and confined to the family of one Mayandi Chetti and on his death the management by his descendants was conducted in turns. We have examined the broad features, without going into minute details. The evidence on the record very much preponderates in favour of the view that the religious institution is a public one, that is to say, the temple of Sri Kalimata with its adjuncts, the other temples, bhog ghars and all which we have found to be the property of the deity Sri Sri Kalimata, is a public one.

22. This religious institution being a public one, we do not see how the provisions of S. 92(2) , Civil P.C., could be got round in respect of the reliefs which fall within sub-s. (1) of that section. The prayer for framing a scheme of management must go out, inasmuch as the suit has not been instituted in terms of S. 92 read with S. 93 of the Code. Prayer Kha does not fall within sub-s. (1) of S. 92 and so is admissible, but prayer Ga is not. Prayer Gha has been removed by an amendment of the plaint. Prayers Gha and Una need not be considered as they relate to the appointment of a Receiver pendente lite and to costs. Prayer Ja is incidental to the framing of a scheme and it was so taken by the learned Subordinate Judge. That prayer must be disallowed. Prayer Chha would have been admissible only in aid of the scheme of the management, and that must be refused. If the prayer be regarded as a prayer by the Goddess for recovery of her properties wrongly appropriated by her shebait and for account the prayer cannot be granted for weighty reasons. In the first place the suit is brought against some only of the shebait in their personal and in their representative character as well. Secondly, no specific shebait or set of shebait have been charged in the plaint. Thirdly no details of what had been misappropriated are given. Fourthly even if none of these defects had been present the suit would have been bad for misjoinder of parties and causes of action for one shebait would not have been concerned in a particular item of property misappropriated by another or for its account; lastly a roving enquiry about the acts of misappropriation cannot be permitted.

23. We accordingly allow the appeal in part. The plaintiff goddess, Sri Sri Kalimata Thakurani will have a declaration that the religious endowment is a public one and a further declaration that the items described in schedules Ka and Kha of the plaint are her properties. The decree for cost as made by the second Subordinate Judge will stand. The rest of his decree is vacated. The appellants must pay the costs of this appeal to the respondent. In accordance with the orders of this Court, the shebait Sabha has financed the plaintiff in defending the appeal. [Any part of that amount so sanctioned if unspent by the plaintiff is to be refunded to the shebait sabha and would be held by it in trust of the deity.] The costs of this appeal as decreed by us, if recovered would also be made over to

the said Sabha to be also held in trust for the Deity.

24. In conclusion we may say that the affairs of the temple, though somewhat improved after the formation of the shebait Sabha are still in a deplorable state, and it is highly desirable that either all the shebaites should agree and frame a proper scheme for management in the interest of the deity or if that is not possible, a scheme should be put through in a properly framed suit under S. 92, Civil P.C. The matter from the public point of view seems to us to be of great urgency.

25. The cross-objection is not pressed. It is dismissed but without costs.

26. The 18th January 1949.-Substitute for what has been shown within square brackets in the original judgment the following:

If, after paying out the sanctioned amount of fees to the Deputy Registrar's Advocate and meeting other costs, any money is left out of the amount deposited, the same will be refunded to the shebait Sabha to be held in trust by it for the deity.

And add at the end of the judgment the following:

The costs of the appeal including the hearing fee which we assess at Rs. 1,020 are to be paid jointly and severally by the appellants in their personal capacity to the respondent deity.