

(2001) 06 KAR CK 0082

In the Karnataka High Court

Case No : Civil Revision Petition No's. 3973, 3981 and 3982 of 1999

Bheemasenacharya Srinivasacharya Gudi and Others

APPELLANT

Vs

Gadag Veerananarayana Dev and Others

RESPONDENT

Date of Decision : 07-06-2001

Acts Referred:

Bombay Public Trust Act, 1950 — Section 22
Civil Procedure Code, 1908 (CPC) — Section 115
Specific Relief Act, 1963 — Section 41 (h)

Citation : AIR 2002 Kar 1 : (2002) ILR (Kar) 2377 : (2002) 4 KCCR 311 SN

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Chandrakanth R. Goulay, for the Appellant; Subash B. Adi and R.B. Pasappagol, for the Respondent

Judgement

Mohamed Anwar, J.—All these three civil revisions are filed by the eight plaintiffs in O.S. No. 14/1997 pending on the file of the Court of the III Addl. Civil Judge (Jr. Dn.), Gadag, and the common respondents herein are the defendants in that suit. They are filed against the respective orders of the lower appellate Court by which the plaintiffs' I.A. No. 1 under Order 39, Rules 1 and 2, CPC came to be dismissed and the trial Court's order allowing defendant No. 1's I.A. No. 9 under Order 39, Rules 1 and 2, CPC stands affirmed.

2. The said O.S. No. 14/1997 of the petitioners-plaintiffs was instituted in the trial Court on 6-1-1997 against respondents (hereinafter referred to as "the defendants") for the following main reliefs :

"(20) It is Most Humbly Prayed and Submitted that :

(a) Plaintiffs be declared as hereditary Pricharika and Parupatyagar of Veerananarayan and other temples in the vicinity along with Defendant No. 2.

(b) The notice of termination dated 13-10-1995 and the Resolution of Defendant No. 1 dated 28-9-1995 be declared as void and not binding upon the plaintiffs.

(c) It be declared that there are two turns (Pale) of service of Paricharika and Parupatyagar of Veerananarayan temple commencing from Kartika Sudha Pratipada as per Hindu calendar ending with Aswin Bahula Amavasye of succeeding year and that plaintiffs representing branch of Srinivasachar Pradhyumnachar Gudi have one turn and defendant No. 2 representing branch of Balachar Pradhyumnachar Gudi has another turn.

(d) Consequently the defendants and their men, and servants etc. be restrained permanently from interfering with the plaintiffs right to render service as Parupatyagar and Paricharika of Veerananarayan and other temples during their turn.

(da) Plaintiffs be awarded a compensation of sum of Rs. 45,000/- as claimed in para 17 above.

(e) Such other reliefs deems just be awarded.

(f) Costs of the suit be awarded. Decree be passed accordingly."

3. The plaintiffs' case stated in the plaint in support of the above reliefs, briefly stated, is that :

3.1 Defendant 1 Public Trust, comprises of many temples, and a masjid as shown in the description of this defendant ("D-1" for short) in the plaint cause title. It is registered as a Public Trust under the Bombay Public Trust Act, 1950 ("the BPT Act" in short), Sri Veerananarayana temple being the main item of this Trust. This temple is an ancient temple said to have been built by one Jakkannachari somewhere during 13th or 14th century A.D.

3.2 The plaintiffs and defendant 2 are the hereditary Parupatyagars and Paricharakas of D-1 Trust Temples. The genealogy of their families is as given in paragraph 3 of the plaint. As could be seen from this genealogy, plaintiffs 4 to 8 are the sons of one Madhavachar, who died on 22-10-1983. Plaintiff 1 is his brother, and plaintiffs 2 and 3 are the descendants of late Madhavachar's another brother Vasu-devachar, who died on 19-9-1950. The father of late Vasudevachar, late Madhavachar and plaintiff 1-Bhimasenachar was one Srinivasachar, who died on 17-9-1950. Defendant 2 had a brother by name Narayanachar, who died issueless in 1986. They are the children of Pradyumnachar, who died on 25-7-1970. The common propositus of the parties was one late Govindabhat, who is five generations above plaintiff-1's-father late Srinivasachar and defendant 2 's-grandfather late Balachar --who died in 1949. The correctness of this family pedigree of the parties is not in dispute.

3.3 The rights and duties of Paricharakas are stated in paragraph 4 of the plaint. The rights and duties of Parupatyagar are listed in paragraph 5 thereof. Plaintiffs and defendant 2 and their ancestors were the hereditary Parupatyagar and Paricharakas of D-1's temples. These rights are customary rights. The family members of the plaintiffs' ancestors and after them the plaintiffs are performing the duties of Paricharakas and Parupatyagar of the said temples since the time

immemorial in their own exclusive right. In course of time, a Panchayath Committee was appointed by the Government during the year 1849-50 to collect the income from the lands granted to the deity of the temple and to spend it properly for its affairs. The appointment of the said Committee was without prejudice to the hereditary rights of the servants of the temple. That Committee had no right to appoint Paricharakas and Parupatyagar for the temple nor it had any right to remove them. After the BPT Act came into force, the said Temple Trust was covered by it and, therefore, D-1 Trust was got registered with the concerned authority under the Act, i.e., the Assistant Charity Commissioner, Belgaum ("A.C." for short) by the said Committee by making a formal application for registration in the prescribed form. That Panchayath Committee was also registered as such under the said Act without enlarging its powers in any manner whatever.

3.4 The further case of the plaintiffs in the plaint is that, in 1941, a suit in L.C. No. 15/1941 was filed by the said Panchayath Committee in the Court of IInd Class Sub-Judge, Gadag, against the paternal grandfather of defendant-2 viz., Balachar, wherein it was admitted by it that the family of defendant-2 is the hereditary Parupatyagar and Paricharakas. Besides, the ancestors of plaintiffs and defendant-2 had also filed a representative suit in L.C. Civil Suit No. 92/1948 in the Court of the Civil Judge (Jr. Dn.), Gadag, in which a decree had been passed declaring them as Paricharakas and Parupatyagar of the said temple.

3.5 The rights and duties of Parupatyagar and Paricharakas were being performed by the plaintiffs' family branch and the branch of defendant-2 by respective turns. Each of these turn starts every year from Karthika Suddha Pratipada as per Hindu calendar and ends with Aswin Bahula Amavasye of the succeeding year. According to these turns, defendant-2 and his brother Narayana Gudi's wife Smt. Tulasibai were performing the duties as Parupatyagar and Paricharakas from 4-11-1994 to 24-10-1995. After this, it was the turn of plaintiff-2 to take charge on 25-10-1995 of Parupatyagar and Paricharakas for the ensuing turn. But, during that period i.e., during 4-11-1994 to 24-10-1995, both defendants, colluding together, allowed some unauthorised persons to form an Association named "Daivadaya Samaj Unnatti Sangh, Gadag-Betgeri" for collecting money from the public to light Laksha Deepa at Veeranarayana Temple on 17-11-1995 --which day was the Karthika Bahula Navami, with a view to prevent plaintiffs from acting as Paricharakas and Parupatyagar of the temple from 25-10-1995. Therefore, plaintiffs-1, 2 and 5 had to file suit in O.S. No. 440/1995 against defendants restraining them from interfering with the plaintiffs' functions as such and had obtained an interim order in their favour and against the defendants. On the strength of the said interim order, plaintiff-2 was rendering services of Parupatyagar and Paricharakas for the temple since 25-10-1995. That order when taken in appeal before the lower appellate Court by defendant-1 in M.A. No. 1/ 1996, was set aside by that Court's order dated 6-2-1996. That order dated 6-2-1996 was challenged by the plaintiffs before this Court in C.R.P. No. 1437/1996. Pursuant to the order of this Court passed

disposing it off, plaintiffs rendering the services of Parupatyagar and Paricharakas to the deity from 18-10-1996 up to the end of his turn i.e., 11-11-1996. Further plaintiff allegation is that the defendants are now bent upon preventing the plaintiffs from acting as Parupatyagar and Paricharakas of the temple during the period of their ensuing turns.

3.6 It is further averred in the plaint that in the said O.S. No. 440/1995, defendant-1 had taken the defence plea that Plaintiffs-1, 2 and 5 herein (who were plaintiffs in O.S. No. 440/1995) had been removed from their services as Paricharakas and Parupatyagar by its termination notice dated 13-10-1995 issued to them pursuant to resolution dated 28-9-1995 of defendant-1's-Committee. Hence, their present suit for the aforestated comprehensive reliefs against defendants.

4. During pendency of their present suit i.e. O.S. No. 14/1997, I.A. No. I under Order 39, Rules 1 and 2 of the C.P.C. was filed for the plaintiffs on 27-3-1997 praying for an ad interim injunction against defendants restraining them from interfering with the plaintiffs' rights to perform the duties as Parupatyagar and Paricharakas of the said temple on their turn commencing from Deepavali Padya and ending on Deepavali Amavasye of every year, pending final disposal of the suit.

5. Defendants filed their written statement contesting plaintiffs' suit i.e., O.S. No. 14/1997, on the ground that the jurisdiction of the trial Court to try the suit is barred under Sections 50 and 51 of the Bombay Public Trust Act as the relief claimed by the plaintiffs are in respect of management and administration of the defendant-Trust and that the suit is also hit by Order 2, Rule 2 of the C.P.C. in view of the plaintiffs' filing of the said earlier suit in O.S. No. 440/1995; and also that in view this Court's order passed in the plaintiffs' said C.R.P. No. 1437/1996, the relief claimed would be barred by res judicata. The plaint averments that plaintiffs are hereditary Parupatyagar and Paricharakas of defendant-1, that Parupatyagar and Paricharakas are not the servants of the Committee of defendant-1, that Parupatyagar is the custodian of all the keys and he has to manage the temple, that defendant-2 and their ancestors are the hereditary office-bearers, that the ancestors of plaintiffs and defendant-2 were also acting as such without interruption, are denied in the written statement. It is contended therein that with the coming into force of "the Karnataka Certain Inams Abolition Act, 1977" ("the Act of 1977" in short), all the hereditary rights of plaintiffs are terminated by the statute and the lands so granted are resumed by the Government. Therefore, the plaintiffs cannot any longer contend to be the Parupatyagar and Paricharakas of the temple. However, it is admitted therein that a Panch Committee for defendant-1 was appointed by the Government in the year 1849-50. But, it is contended that the Committee had the full powers of and was the controlling authority for the management and administration of the said temple Including the hereditary Parupatyagar and Paricharakas. The plaintiffs working in the defendant-Trust were its servants and they were not

independent of the control and authority of the said Committee. Since the plaintiffs were found to have been acting to the detriment of the defendant-temple trust, its Committee passed a resolution to take appropriate action against them. Therefore, show cause notice dated 2-8-1995 was sent to them by registered post. The delivery thereof was refused by them deliberately. Thereafter, a resolution terminating them from the services was passed by the Committee and the order of termination was sent to the plaintiffs by registered post as also under certificate of posting on 13-10-1995. The order sent by registered post was received by plaintiffs-2 and 5. Since plaintiffs-1, 2 and 5 represent their respective branches, their termination binds on all the plaintiffs. After removal of plaintiffs from their services, defendant-2 was appointed by defendant-1 to render the said services to the said temple. Since the plaintiffs have started interfering illegally with the management and administration of defendant-1-Trust, this fact was intimated to the Assistant Charity Commissioner, Belgaum, who ordered them by his order dated 18-2-1995 not to interfere therewith. So contending, it was prayed to dismiss the suit.

6. On 19-8-1997, I.A. No. 9 under Order 39, Rules 1 and 2. C.P.C. was filed by defendant-1 also seeking an order of temporary injunction against plaintiffs restraining them from interfering with the administration and management of defendant-Trust, etc.

7. The learned trial Judge disposed of both plaintiffs' I.A. No. 1 and defendants-1's I.A. No. 9 by his considered common order dated 5-8-1999 by which I.A. No. 1 was allowed in part directing defendant-Trust or anybody on its behalf not to interfere with the plaintiffs' function as Paricharakas stated in para 4 of the plaint, and allowing defendant's I.A. No. 9 against plaintiffs restraining them from interfering with the administration of the said Veerananarayana Temple. The trial Court's order allowing plaintiffs' I.A. No. 1 in part permitting them to function as Paricharakas was challenged by defendant-1 before the lower appellate Court in M.A. No. 17/1999. Similarly, the plaintiffs, aggrieved by the trial Court's order rejecting their prayer in I.A. No. 1 in respect of their claim to function as Parupatyagar of the said temple, also filed their appeal in M.A. No. 21/1999 against the same in the lower appellate Court. They also preferred an appeal in the Court below in M.A. No. 20/1999 against the trial Court's order passed allowing defendant's I.A. No. 9 granting temporary injunction against them. All the said three appeals viz., M.A. Nos. 17/ 1999, 21/1999 and 20/1999, came to be disposed of by the learned Judge of the lower appellate Court by his common judgment dated 23-11-1999, whereby plaintiffs' M.A. Nos. 20/1999 and 21/1999 were dismissed and defendant-1's M.A. No. 17/1999 was allowed vacating the temporary injunction partly granted by the trial Court in plaintiffs' favour under Its order dated 5-8-1999. Aggrieved by that judgment dated 23-11-1999 of the lower appellate Court, the plaintiffs have filed their present respective C.R.P. Nos. 3973/1999, 3981/1999 and 3982/ 1999 questioning its legality and correctness.

8. I have heard the arguments of Mr. C. R. Goulay, learned counsel for plaintiffs and of Mr. Vijayashankar, learned senior counsel for defendant-Trust as length.

9. It has to be noticed that on the death of defendant-2 during pendency of the plaintiffs' suit i.e., O.S. No. 14/1997, his legal representatives, defendants-2(a) to 2(g) had been duly brought on record in the trial Court.

10. Mr. C.R. Goulay took me through all the relevant materials made available on record by both parties and citing several authorities, strenuously contended that In the light of these materials, the impugned judgment of the lower appellate Court cannot be sustained, and that plaintiffs' prayer made in I.A. No. 1 under Order 39, Rules 1 and 2 of the C.P.C. is entitled to be allowed in its entirety and, D-1's I.A. No. 9 is liable to be rejected outright.

11. Mr. Vijayashankar, learned senior counsel for defendants, argued per contra in support of the impugned Judgment. He too relied on many authorities in support of his contentions.

12. In view of the pleadings and arguments of both sides, certain material facts which emerge as undisputed and admitted need be adverted to first for proper appreciation of their arguments in the light of the citations relied on by them, keeping in view that we are dealing with the ad interim orders of the Courts below concerning the question of grant or refusal of the remedy of temporary injunction as prayed by plaintiffs in their I.A. No. 1, and by defendant-1 in its I.A. No. 9, at the initial stage of the suit proceeding.

13. Admittedly, the aforesaid L.C. (Long Cause) Suit No. 92/1948 was a representative suit filed in the Court of the Civil Judge (Jr. Dn.), Gadag, by five plaintiffs therein to prevent Harijans from entering into the D-1 Trust temple for puja and other purposes invoking the provisions of the Bombay Harijan Temple Entry Act, 1947. From the photocopy of the certified copy of the judgment dated 23-8-1950 of the trial Court, produced at pages Nos. 201 to 266 of the paper book, it can be gathered that it was a suit filed for declaration that plaintiffs-1 to 4 are the hereditary Paricharakas and Parupatyagar of the suit temple doing the services as such on their turns, and that plaintiff-5 is the Archaka of the temple, who has the exclusive right to enter the Garbhagudi and worship the image by touching it, and that other Hindus, muchless Harijans, have no right to cross the Madhyaranga and enter the Antharala of the Garbhagudi. In that suit, plaintiff-1-Srinivasacharya Pradyumnacharya Gudi was the father of plaintiff-1 in the present suit i.e., O.S. No. 14/1997; plaintiff-2-Madhav Srinivasacharya Gudi therein was the father of plaintiffs-4 to 8 herein, and plaintiff-3-Pradyumnacharya Balacharya and plaintiff-4-Balacharya Pradyumnacharya Gudi in the said suit were the father and grand-father, respectively, of defendant-2 herein. Plaintiff-5-Bhimacharya Venkannacharya Gudi in that case i.e., L.C. No. 92/1948, was the uncle of plaintiff-1-Bhimasenacharya Srinivasacharya Gudi herein, That suit was contested by eight persons, most of them belonging to Harijans. The issues raised in that suit for determination are stated in paragraph

7 of the judgment. For our purpose, issue No. 1 is the relevant issue which is extracted below :

" 1. Do plaintiffs prove that plaintiffs 1 to 4 are the Parapattegars and Paricharakas and that plaintiff No. 5 is the Archaka of Viranarayan temple?"

On Judicious appreciation of the material evidence, the learned trial Judge recorded the affirmative finding on that issue. It further transpires from the discussion of evidence made in that judgment by the learned trial Judge that the representative suit was supported by the Panchas of the Panch Committee of the defendant-Trust, whose Chairman had also given supporting evidence as a witness therein. While discussing Issue No. 1 with reference to the material evidence on record, the learned trial Judge concludes :

"19. All this evidence clearly proves that the plaintiffs Nos. 1 to 4 are the Paricharakas and Parapattegars and the plaintiff No. 5 is the Pujari of the suit temple. I, therefore, answer Issue No. 1 in the affirmative."

Finally, that suit was decreed by the learned trial Judge, the material portion whereof is quoted below :

"46. It is hereby declared that plaintiffs Nos. 1 to 4 are the Paricharakas and Parapattegars and the plaintiff No. 5 is the Pujari of the suit temple and only the Pujaris and the Paricharakas have a right to touch the idol of Shri Viranarayan and worship it by entering the Garbhagudi and Antarala.

The judgment and decree of the trial Court passed in said L.C. No. 92/1948 was not challenged in appeal by any party. Therefore, it has remained binding between the parties as also against the public at large it being a decree passed in the representative suit.

14. The material facts that the plaintiffs and defendant-2 in the present suit are the descendants of the plaintiffs in the said L.C. No. 92/1948, and that the present plaintiffs were also performing the duties of Paricharakas and Parupatyagar, are the admitted facts in the present dispute. At paragraph 11 of the written statement of defendant-1, which was adopted by defendant-2 by filing a memo on 16-7-1997 in the trial Court, it is plainly admitted by them that :

"(11). The plaintiffs were performing the duties of Paricharakas and Parupattegars prior to their removal from service by a resolution passed by the Trust Committee on 28-9-1995."

Even in the affidavit of the Chairman of the defendant-Trust filed in support of I.A. No. 9 in the Court below, this fact is reaffirmed and sworn to as excerpted below :

"4.Formerly there were some hereditary pujaris, parupattegars and paricharakas of the temple. the plaintiff and their ancestors were the servants under the trust, though they were the hereditary paricharakas or parupattegars."

(Emphasis supplied)

The further averment in paragraph 5 of the affidavit affirming this fact is sworn to as under :

"5. Even after the abolition of the hereditary offices, the plaintiff and their ancestors were continuing to work as the servants as parupattegars and paricharakas under the defendants-Trust. The plaintiff being the head of their respective branches were rendering their services."

Thus, one most material fact which prima facie stands proved from the pleadings of the parties and the undisputed material on record is that the plaintiffs had been performing the duties of the offices of both Parupatyagar and Paricharakas of D-1 trust temples in exercise of this right as a hereditary right. The Committee of the defendant-Trust now intends to stop them from performing these duties on the ground that the services of plaintiffs-1, 2 and 5 have been terminated by it by issuing them the termination notice dated 13-10-1995 pursuant to the Committee's resolution dated 28-9-1995. Hence, the present suit by the eight plaintiffs filed on 6-1-1997 to declare the said notice dated 13-10-1995 and the resolution dated 28-9-1995 as void and illegal, and that the plaintiffs are the hereditary Parupatyagar and Paricharakas of the suit temple and for incidental reliefs.

15. The earlier suit in O.S. No. 440/1995 was filed only by present plaintiff Nos. 1, 2 and 5 against defendants for the mere relief of permanent injunction and the same is said to have been withdrawn by them on 10-4-2000 with liberty to file a fresh suit. The said plaintiffs' C.R.P. No. 1437/1996 had been disposed of by me by order dated 30-9-1996 in the following terms :

"9. However, according to defendants, the term of plaintiff No. 2 to function as Parupatyagar and Paricharakas had commenced from 21-10-1995 and it was to last till the ensuing Deepavali Pavarnama. Therefore, in the facts and circumstances of the case, I am of the considered opinion that without prejudice to the defendants' contention in regard to plaintiffs' removal from the said offices, it is just and proper and in the ends of justice that plaintiff No. 2 shall be allowed to continue to function as Parupatyagar and Paricharakas of the suit temple until Deepavali Parthia in 1996 as over and subject to the condition that he shall perform the duties of the said offices personally without delegating it to others."

While so disposing of that revision-petition, the pertinent observations made at paragraph 8 of the order were :

"8. But, what is contended by defendant No. 1 at para 13 of his written statement is that by a resolution passed on 20th August, 1995 the plaintiffs are removed from the said offices and, therefore, they have no right to function as such. The same argument was canvassed before me by learned counsel for respondents. It is not for this Court to pronounce on legality or otherwise of

defendant No. 1's said resolution. This question may or may not arise for decision of the trial Court either since, undisputedly, plaintiffs have not challenged the said resolution in their plaint."

16. Now, before advertng to the impugned judgment of the lower appellate Court as also the impugned order of the trial Court, it is relevant to refer to another judgment dated 29-6-1946 of the trial Court viz., Court of the IInd Class Sub-Judge at Gadag, rendered in L.C. Civil Suit No. 15/1941, decreeing the suit of Panch Committee of the defendant-Trust filed against the then Paricharaka Balacharyabin Pradyumnacharya Handibag, who was the grand-father of defendant-2 herein and was representing one of the three branches of their family --who had been performing the duties of Paricharakas and Parupatyagar on their respective terms. The certified copy of that judgment has been produced by learned counsel for petitioners at page Nos. 1 to 33 of the small paper book. That suit was filed by the Panch Committee of the Trust (represented by its Chairman and other Trustees) against said Balacharya since deceased, praying to grant a decree for permanent injunction (1) directing the defendant to maintain 2. Nanda deeps (lights) one to the right and the other to the left side of Shri veer Narayana Deva, day and night by arranging oil and wick properly without demanding any expenses for the same from plaintiff-1 the Committee, and (2) to restrain the defendant from doing any illegal act of closing the wooden western door in the temple so as to obstruct plaintiffs 2 to 5 and other devotees from taking Darshan of the Deva, and for costs. In the first instance, that suit had been decree against defendant by the trial Court by its judgment dated 29-7-1943, when the latter failed to avail of the opportunity to fully defend the case. When that judgment was challenged by him in appeal, it was set aside and the matter was remitted by the appellate Court to the trial Court with a direction to dispose it of afresh on merits by giving sufficient opportunity to the defendant. Subsequently, it was disposed of and decreed by the learned trial Judge on merits by fresh judgment dated 29-6-1946. It is not in dispute that that judgment was not challenged in appeal or otherwise by either parties. The case of the plaintiff-Panch Committee put forth in its plaint in the said L.C. Civil Suit No. 15/ 1941, as could be gathered from the contents of said judgments of the trial Court dated 29-7-1943 and 29-6-1946, was that the duties of Paricharakas of the said temple were being performed by the ancestors of defendant-2. At the time of filing the suit, the functions of Paricharakas of the defendant-Trust were being performed by defendant-Balacharya and his two brothers viz., Narayanacharya and Srinivasacharya, by their respective turns, each of them representing the separate branch of the family of their ancestors. They were granted inam lands as also being sanctioned some cash amount from the concerned Tahasildar to maintain the temple services as Paricharakas, properly and regularly. When the suit was filed, it was the turn of defend- ant therein to act as Paricharaka and he was acting as such. It was averred in the plaint:

"..... .During his Paricharaki turn defendant properly maintained Nanda Deepes for a month and afterwards he complained to the plaintiff 1-Committee, that if oil

and wicks etc., were not supplied by the said Committee, he would stop maintaining Nanda Deeps and accordingly he stopped lighting the Nanda Deeps."

Then he demanded that plaintiff-Committee should provide him the amount regularly to defray the said expenses of Nanda Deeps at temple which he was not entitled to demand since :

".....Lands mentioned above have been given by Government to do all the Paricharaki duties including that of taking care of oil, wicks, etc., without demanding any amount from the plaintiff 1-Committee.

On merits of the evidence, this contention of plaintiff was accepted by the trial Court and the suit had been ultimately decreed as prayed.

17. In the instant case, as already stated, plaintiffs" I.A. No. 1 was partly allowed by the trial Court granting injunction in their favour only in respect of the functions of Paricharakas and refusing the same as far as their claim to function as Parupatregar was concerned, and that the temporary Injunction as against them and in favour of defendant-1 as prayed by the latter in its I.A. No. 9 was granted by allowing that application. Certain material conclusions reached by the trial Court in the light of the aforestated material on record may be recalled usefully. At page 35 of its order dated 5-8-1999, the learned trial Judge observes, of course, rightly :

"Suffice it to say that the plaintiffs are Parupatyagar and Paricharakas of Veeranarayana Temple as they are hereditary in nature. The defendant-Trust does not seriously dispute the status of the plaintiffs as Parupatyagar and Paricharaka of Veeranarayana Temples, but if taken up a plea that they have been removed from the services. The burden is heavily costed on the defendant No, 1-Trust to prove or establish by preponderance of evidence both oral and documentary that the trust has legal right to do so. Unless and until it is established, it cannot be said with all certainty that the plaintiffs are no more Parupatyagar and Paricharakas of Veeranarayana Temples."

At page 37 of the order, the learned trial Judge stated :

"In view of the admitted position disclosed by the parties in the plaint and written statement, it is manifest that the defendant-trust did recognise the plaintiffs as Parupatyagar and Paricharakas of the Veeranarayana Temples till they passed the resolution and show cause notice referred above.

But then, what dissuaded the learned trial Judge to allow the plaintiffs" prayer in their I.A. No. 1 in respect of the office of the Parupatyagar is that while the duties and functions of Paricharikas as listed in paragraph 4 of the plaint are sufficiently borne out from the material on record, and that of Parupatyagar as shown in paragraph 5 of the plaint have not been satisfactorily substantiated by placing on record the convincing material.

18. As regards the trial Court's order on defendant's I.A. No. 9, the reason given by the learned trial Judge in support of his order made allowing the same is that the defendant's-Trust Committee is the administrator of the trust entrusted with the duties of its supervision and that:

".....Defendant-trust has come into existence by the virtue of the provisions of B.P.T. Act, 1950. It constitutes, a Trust Committee the trust is duly registered under B.P.T. Act. The Trust Committee owes a duties to supervise the activities of the temples. The rights of the trustees to remove the Parupatyagar and Paricharakas is yet to be decided. Therefore, so far as the management and administration of trust, they are answerable to the authority viz., Asstt. Charity Commissioner at Belgaum. If injunction is granted as prayed for by the plaintiff the very object of the trust will be defeated. So it is held that the balance of convenience and hardship is in favour of the defendant-Trust....."

19. Coming to the impugned judgment of the lower appellate Court passed rejecting plaintiffs' I.A.No. 1 by setting aside the trial Court's order -- by which it was partly allowed, and confirming its order made allowing defendant's I.A. No. 9, the learned Judge has been carried away solely by the fact that the plaintiffs' services as Paricharakas and Parupatyagar having been terminated by the defendant's-Trust Committee by issuing the said termination notice dated 13-10-1995 to them, they effectively ceased to be the Parupatyagar and Paricharakas of the temple prior to filing of their suit viz., O.S. No. 14/1997, and, therefore, they are disentitled to the remedy of temporary injunction. The trial Court's order allowing defendant's I.A. No. 9 is affirmed by the learned appellate Judge agreeing with the trial Court's aforequoted reason, while curiously making the below quoted observations at page 45 of its judgment :

"..... .In view of the pleadings, documents and the points that are urged before me the main question to be decided in the suit itself appears to be regarding the scope and ambit of the authority or the power of the trust. And also those of the plaintiffs who claimed to be the hereditary Parupatyagar and Paricharakas of the deity. At this interlocutory stage such a question cannot be decided as it would amount to holding of mini trial and deciding the suit itself....."

(Underlining supplied)

Further, at page 48, it proceeds to observe :

"..... .When the plaintiffs are admittedly not in service as parupatyagar and paricharaka, until and unless their termination is held to be illegal, void and not binding, granting of ad interim injunction at this stage in their favour, as rightly argued by the counsel for defendant 1, amounts to their reinstatement without deciding the legality or otherwise of their termination order. . . .

(Underlining supplied)

Another relevant observation made by the learned Judge of the lower appellate

Court is :

"..... .Since the plaintiffs have claimed a compensation of Rs. 45,000/- for the disturbance of services of plaintiff 2, it is clear that even if the termination order is held to be illegal, the loss or the hardship caused to the plaintiffs can be adequately compensated by a award of compensation. As per Section 41(h) of the Specific Relief Act no injunction to be granted when equal efficacious relief can be certainly obtained by the other usual mode of proceedings except in case of breach of trust."

Another factor which had weighed with him is that in O.S. No. 440/1995, the plaintiffs' application for temporary injunction having been rejected, the same cannot be granted to them In the present suit. Further, relying on the decision of Madras High Court reported in ILR (1912) 35 Mad 631; and of Supreme Court in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, and in His Holiness Shrimad Perarulaka Ethiraja Ramajuna Geeyar Swamy v. State of Tamil Nadu AIR 1976 SC 1586; and a decision reported in 1997 SC 772, he agreed with the contention canvassed for defendant-respondent that the holder of even hereditary office of the temple trust could be terminated from services by the Managing or Trust Committee thereof, although he has observed that the question of power and competence of the defendant-Trust to remove the plaintiffs from the hereditary office of Parupatyagar and Paricharakas is a question which has to be decided at the trial on its merits.

20. It was argued by Mr. C.R. Goulay, learned counsel for plaintiffs that the impugned orders of the Courts below are unsustainable in law, inasmuch as they are not warranted by the facts and circumstances of the case and are in clear breach of well settled legal principles in the matter of grant or refusal of temporary injunction. To substantiate his contention, he argued that the fact the plaintiffs have been functioning as Paricharakas and Parapattegar of the Trust Temple in their own hereditary right is sufficiently borne out by the indisputable dependable material on record especially its admission by defendant-1 at paragraph 11 of his written statement. This undisputed material fact, he rightly maintained, makes out a strong prima facie case in plaintiffs' favour thereby fulfilling one of the essential requirements for grant of temporary injunction in their favour. Further, he also justifiably maintained that the duties of Paricharakas and Parupattegar as listed at paragraphs 4 and 5, respectively, of the plaint have not been specifically denied by the defendants in their written statement except the denial of the right of Parupattegar to be in custody of all the keys Including Garbhagudi of Viranarayana Temple mentioned at paragraph 5(ii), and the same should be taken for granted for the purpose of ad interim injunction, in view of Sub-rule (1) of Order 8, Rule 5 of C.P.C. which enjoins that if a material allegation of fact in the plaint remains specifically not disputed, then the same shall be taken to be admitted except as against a person under disability, although the Court may in its discretion require any such fact to be proved otherwise than by such an admission Badat and Co. Vs. East India

Trading Co., , and ILR 1998 Kar 748 (sic)). Elaborating the plaintiffs' case. Mr. C. R. Goulay submitted that as on the date of filing the present suit i.e., 18-1-1997, the plaintiffs' right to act as Paricharakas and Parupatyagar of the said temple, by their respective turns, was in fact subsisting by force of the interim order of the trial Court in O.S. No. 440/1995 and of this Court's order in C.R.P. No. 1437/1990, as per the respective turns, it was the turn of defendant 2 for the period 1996-97; another turn of plaintiffs during 1997-98, and again it was the turn of defendant-2 during 1998-99, and then it was the plaintiffs' turn during 1999-2000 to perform the same. The fact to this effect is also sworn to by plaintiff-1 in his affidavit filed in support of I.A.No. I and more particularly at paragraph 12 thereof. Since defendant-2 had been rendering the services to the temple as Paricharakas and Parupattegar. during his turn commencing from 12-11-1996 and lasting up to 31 -10-1997, and the plaintiffs' turn for performance of the said duties was to commence from 1-1-1997, there was no urgent need to file I.A. No. I on the date of filing of the suit itself i.e., 18-1-1997 and, therefore, the same had been filed on 27-3-1997 to safeguard and protect their said right during their next turn which was to commence from 1-11-1997. Since by virtue of the interim injunction order dated 21-10-1995 of the trial Court made in plaintiffs' favour in O.S. No. 440/1995 and of the order dated 30-9-1996 of this Court passed disposing of the said C.R.P. No. 1437/1990, the plaintiffs had, in fact, exercising their said right till the Deepavali of 1996 during their regular turn the same continued to exist albeit remained in abeyance during intervening turn of defendant-2. Therefore, as on the date of filing of the suit, the said right was vested with the plaintiffs and as such, they were entitled to temporary injunction as prayed in their I.A.No. 1 for its protection during pendency of the suit and to ensure maintenance of the status quo with respect thereto. It was further contended by Mr. Goulay that the said services of Paricharakas and Parupatyagar are being rendered to the said temple and its deity from generations by the ancestors of the plaintiffs and defendant-2 and down to them, and that after abolition of the inam, the tenure of the Government lands attached to the said offices under Karnataka Certain Inams Abolition Act, 1977 ("the Act of 1997" for short). The said services are being rendered by them meeting its expenditure out of their own pockets. Regard being had to the nature of the said services as also the fact that no fixed salary or determined payment was being made to the plaintiffs by the Temple Trust, it is inconceivable that they could be adequately compensated in terms of money, after Illegal termination by the Trust as contended by its learned senior counsel Mr. Vijaya Shankar, and which contention has found favour with the lower appellate Court. Therefore, Mr. Goulay argued that if the plaintiffs are prevented or obstructed from discharging their functions as hereditary Paricharakas and Parupattegar of the temple and its deity, they would suffer irreparable injury. In that view of the matter, there was no legal justification whatever for the Courts below in refusing the remedy of ad interim injunction in their favour.

21. As regards the impugned resolution dated 28-9-1995 and the termination

notice dated 13-10-1995 of defendant-1-Trust Committee, it was argued by Mr. Goulay that the same are ex facie illegal, in that, they are vitiated by patent illegalities such as they do not furnish any specific instances of plaintiffs' alleged misconduct with necessary particulars thereof which necessitated their removal from the office of Paricharakas and Parupatyagar. It was also submitted that the said resolution and the termination notice are only against plaintiffs 1, 2 and 5 herein and they purport to have been passed terminating them alone from the said offices. Thus, it is not the case of defendant-1 that any such action was taken against plaintiffs Nos. 3, 4, 6 and 8. In that view of the matter, even assuming for a moment that by the said resolution and the termination notice, plaintiffs-1, 2 and 5 are lawfully removed from the service, there was no valid reason whatever for the Courts below for not granting temporary injunction in favour of other plaintiffs viz., plaintiffs 3, 5 and 6 to 8.

22. It was nextly contended by Mr. Goulay that the persons who are said to be the present Trustees of defendant 1 have no legal authority to act as such since their names as its Trustees do not find place in the Register of Public Trust maintained in the Trust Registration Office of the concerned Assistant Charity Commissioner, Belgaum, u/s 17 of the Bombay Public Trust Act, 1950 ("BPT Act" for short) read with Rule 5 of the Bombay Public Trusts Rules, 1951.

23. It is not in dispute that defendant 1 Trust is governed by the provisions of the BPT Act and that that Act came into force on and with effect from 14-8-1950. Section 18 of the Act casts a duty on the part of the Trustees of the Public Trust to which the BPT Act applies, to make an application in the prescribed form for registration of the Trust, to the concerned Assistant Charity Commissioner furnishing the requisite information as detailed in Sub-sections (3) and (5) thereof. Admittedly, that application was given on 17-4-1952 by the then Trustees of D-1 Trust to the Assistant Charity Commissioner, Belgaum, for its formal registration u/s 17 thereof on the basis of which D-1 trust was registered under the Act. Its typed copy is produced at pages 34 to 42 in small paper book filed by learned counsel for petitioners. It is in Kannada. Its genuineness and contents are not in dispute. Its Item No. 2 provides for furnishing the names of the then existing Trustees and the Chairman of the Trust. The names of eight persons are mentioned therein showing the person at Sl. No. (1) viz., Laxmandas Keshavadas Savakar as the Chairman of the Trust. Admittedly, all those Trustees are dead and none of them was alive when the dispute between the parties herein arose. Therefore, as contended by Mr. Goulay, the present so-called Trustees of D-1 are a totally new body of persons other than those mentioned in Item (2) of the said application dated 17-4-1952. Therefore, Mr. Goulay argued that the very authority of the present so-called Trustees of defendant-1 to initiate any action against plaintiffs whomsoever does not enjoy the support of the law for want of entry of their names in the said register in compliance with Section 22 of the BPT Act, Sub-section (1) of which enjoins that :

"(1) Where any change occurs in any of the entries recorded in the register kept

u/s 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in-charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form."

Sub-section (3) of Section 22 makes it obligatory for the Deputy or Assistant Charity Commissioner, as the case may be, that on receipt of change report u/s 22(1), on his satisfaction about the correctness of change mentioned therein, to so make change in the relevant entries in the said register. The change brought out by the present body of the Trust of D-1, was a material information which was required by Section 22 of the BPT Act to be reported to the Assistant Charity Commissioner, Belgaum, and got the same duly entered by him in the register of Public Trust maintained in his office. Undisputedly, it has not been done so. Therefore, Mr. Goulay contended that the present so-called Trustees are incompetent and have no authority to take the impugned action against plaintiffs-1, 2 and 5, even assuming that the plaintiffs are servants of the defendant-Trust who are amenable to the disciplinary action of its Board of Trustees. Such being the case, Mr. Goulay argued, the impugned resolution and the termination notices are patently illegal on this score, besides being vitiated for want of formal enquiry and investigation into the alleged misconduct of any of the plaintiffs. Mr. Goulay, therefore, assailed the legality and correctness of the lower Court's conclusion to the effect that the impugned resolution dated 28-9-1995 and termination notices dated 13-10-1995 of D-1 Trust shall have to be held valid unless it is proved illegal by plaintiffs, and that by the said resolution and the notices, all the plaintiffs stand removed as Parupatyagar and Paricharakas of the temple trust, is legally erroneous and wholly misconceived, more so when the learned Judge of the lower appellate court himself observed at another place in his impugned order that :

"34. At this interlocutory stage such a question cannot be decided as it would amount to holding of mini trial and deciding the suit itself."

The further observation of the Court below at page 48 of its judgment that "when the plaintiffs are admittedly not in service as Parupatyagar and Paricharaka." was also seriously attacked by Mr. Goulay, that this observation is entirely unfounded and runs counter to the case of the plaintiffs.

24. Highlighting these aspects of dispute, Mr. Goulay contended that the order of the trial Court declining to grant temporary injunction for plaintiffs to act as Parupatyagar and the impugned order of the lower appellate Court rejecting the plaintiffs' I.A. No. 1 in its entirety are both legally unsustainable and are passed without properly exercising the jurisdiction vested in them.

25. Assailing the validity of the impugned orders of both the Courts below made allowing D-1's I.A. No. 9 under Order 39, Rules 1 and 2, C.P.C. granting

injunction in its favour and against plaintiffs, Mr. Goulay submitted that this order is entirely an arbitrary and perverse order which does not sustain in law, in that, I.A. No. 9 is not based on the same cause of action on which the plaintiffs' suit was instituted, and that in I.A. No. 9, no any specific instance of any sort of interference by any of the plaintiffs with the administration of the Trust is alleged against them, and that the application is totally bald and baseless. The support for the first proposition was drawn by him from the decisions of this Court in Ramalah Vs. Gowdappa, , and IIM Employees Association Vs. Indian Institute of Management, . Besides, it was also submitted by him that, on the fact of it, I.A. No. 9 filed by D-1 in plaintiffs' suit was vexatious, in that, the defendant deliberately refrained from making any such application for interim injunction against plaintiffs, in its suit for permanent injunction filed against them in O.S. No. 361/1997 pending in the trial Court.

26. Mr. Vijayashankar, learned counsel for D-1 Trust, on the other hand, vehemently canvassed his arguments in support of the impugned judgment of the lower appellate Court by which D-1's I.A. No. 9 for injunction against plaintiffs has been allowed, and plaintiffs' I.A. No. 1 for temporary injunction against defendants is rejected. The first contention highlighted by Mr. Vijayashankar was that it being an undisputed position that as on the date of the present suit i.e., 6-1-1997, the plaintiffs were not acting as Parupatyagar and Paricharakas in present and, therefore, any temporary injunction as prayed by them in I.A. No. 1, if granted, will have the effect of reinstating them to the said offices after they have been terminated by D-1's Trust Committee by its resolution dated 28-9-1995 followed by its termination notices dated 13-10-1995, which were admittedly served on them on 17-10-1995 (vide paragraph 18 of the plaint), and such ad interim mandatory injunction normally cannot be done. Support for this proposition was sought to be drawn by Mr. Vijayashankar from the authorities reported in Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others, ; 1996 AIHC 5609 -- Head Notes (B) and (C) Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, (Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association). As indicated at paragraph 19 hereinabove, this contention for defendants had been raised before the Court below also and it had been accepted by it. Mr. C.R. Goulay, learned counsel for plaintiffs, seriously refuted this contention canvassed for defendants urging that the plaintiffs' case in this regard has been misconceived by the Court below.

27. A Division Bench of the High Court of Calcutta, in Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others, , in regard to grant of mandatory injunction said :

"If a mandatory injunction is granted at all on an interlocutory application, it is granted only to restore the "status quo" and not granted to establish a new state of things, differing from the state which existed at the date when the suit was instituted. the Court grants a mandatory injunction even on an interlocutory application, directing the defendant to undo what he has done with

notice of the plaintiffs suit and the claim therein and thereby compels him to restore the position which existed at the date of the suit."

As a general legal proposition, it is also laid down therein :

"Injunctions are a form of equitable relief and they have to be adjusted in aid of equity and justice to the facts of each particular case."

There cannot be any doubt at all about the above legal propositions. But, the point for consideration is whether the vested legal right of the plaintiffs to discharge the functions of the offices of Parupatyagar and Paricharakas during their respective turn had become extinct and divested in accordance with law as on the date of filing of their suit. This aspect would be considered a little later herein below.

28. As regards the citation reported in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, , the proposition that :

"..... .Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.,"

has no relevance to the facts of the present case.

29. The case of Ganapathi Narayan 1996 AIHC 5609 (Kant) (supra), is relied upon by Mr. Vijayashankar to highlight the general principles which operate in the matter of granting or refusing the equitable relief of temporary injunction. It is stated therein that unless the other two relevant factors, viz., balance of convenience and imminent irreparable injury to the party seeking injunction, are also established, mere existence of plaintiff s prima facie case would not be sufficient to entitle him to the remedy of temporary injunction.

30. Another related submission that was made by Mr. Vijayashankar in support of the impugned order was that the primary object of grant of temporary injunction is to ensure the maintenance of status quo of the matter in dispute as was existing on the date of the suit, and in the instant case, the plaintiffs" services as Parupatyagar and Paricharakas having been terminated by termination notice dated 13-10Mf the suit, they are dissented to any ad interim injunction which disturbs the status quo as it results in their reinstatement into the said positions of Parupatyagar and Paricharakas. Reliance was placed by him on the aforesaid decisions and also on another decision of Mysore High Court in R. Kannaiah v. Bangalore Woollen Cotton and Silk Mills Ltd. Co., Bangalore AIR 1969 Mys 341. This court, in the case of Ganapathi Narayan 1996 AIHC 5609 (supra), reiterated the basic legal principle that :

"As regards the scope of jurisdiction of the Court to grant the temporary injunction, it has to be kept in view regarding temporary injunction order or equitable relief that where the Court has jurisdiction to grant temporary injunction order, it is in order to maintain the status quo between the parties and if the order will aid the final relief that may be granted in the suit Court may exercise that jurisdiction."

31. Another point that was canvassed by Mr. Vijayashankar supporting the impugned decision of the Court below was that the plaintiffs, though holding the office of Parupatyagar and Paricharakas of D-I temple, succeeding to its hereditary right from their ancestors, cannot claim to function as such independently of the control and authority of the D-1 Trust Committee and that they are subject to its disciplinary control in exercise of which power, the Committee has duly initiated the disciplinary action against them and has removed them by its impugned resolution dated 28-9-1995 followed by the impugned termination notices dated 13-10-1995. Therefore, it was argued by him that the presumption of validity runs with the said resolution and the termination order of the Committee and it has to be presumed as a legal and valid order until the contrary is proved by the plaintiffs, as has been done by the Court below. The authorities of Madras High Court in K. Seshadri Aiyangar v. Ranga Bhattar ILR1912 35 Mad 631; Sri Vedantha Sthapana Sabha Vs. The Commissioner, H.R. and C.E. (Admn.) Department and Another, para 26, and of the Supreme Court in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, are cited in support of this argument.

32. Another point that was highlighted and argued by Mr. Vijayashankar in support of the conclusion of the learned Judge of the lower appellate Court was that the services of the plaintiffs as Parupatyagar and Paricharakas of the said temple i.e., Veerananarayana Temple, were "contractual" services and if the defendant is found to have committed breach of the contract, the plaintiffs could well be compensated in terms of Section 14 read with Section 41 of the Specific Relief Act. Two decisions of Supreme Court render in Executive Committee of Vaish Degree College v. Lakshmi Narain AIR 1976 SC 888 and Nandganj Sihori Sugar Co. Ltd., Rae Bareilly and another Vs. Badri Nath Dixit and others, , are cited to support this contention.

33. The material points which, therefore, arise for my determination are :

1. Whether the impugned order rejecting plaintiffs' I.A. No. 1 declining to grant temporary injunction as prayed therein is sustainable in law?
2. Whether the impugned order of the Court below affirming the trial Court's order on D-1's I.A. 9 made allowing the same and granting temporary Injunction against plaintiffs as prayed therein is a valid and sustainable order in law?

Point No. 1

34. Before proceeding to appreciate the rival contentions of both parties, this

Court has to keep in view the scope of and the limitation on its revisional jurisdiction u/s 115, C.P.C. The Privy Council in AIR 1949 156 (Privy Council) laid down :

"Section 115 of the CPC applies to jurisdiction alone, and empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate Court is within its jurisdiction, (b) that the case is one in which the subordinate Court ought to exercise jurisdiction, and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on these three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate Court on questions of fact or law."

In *The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway*, , the above proposition is reaffirmed where it is stated :

"5. It is not the conclusion of the High Court that the first appellate Court had no jurisdiction to make the order that it made. The order of the first appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction u/s 115 of the Civil Procedure Code."

Besides the above, the proviso to Sub-section (1) of Section 115, C.P.C. requires this Court to take note of further restriction on its power of revision that an interim order of the Court below shall not be varied or reversed unless that order, if allowed to stand, would be found to occasion a failure of justice or cause irreparable injury to the party against whom it was made.

35. The order pertaining to the relief of temporary injunction is no doubt an interim discretionary order. Such order cannot be normally interfered with in revision unless it could be termed as perverse, arbitrary, capricious, or having been passed on some extraneous considerations. Furthermore, Since we are dealing with the orders of the Courts below passed in exercise of their power under Order 39, Rules 1 and 2, C.P.C., it is essential to bear in view the scope of these provisions as well, since their jurisdiction in this respect is governed by them. The principles governing exercise of the discretion conferred by the provisions of the Rules 1 and 2 of Order 39, C.P.C. are well settled which the Courts are bound to comply with for proper exercise of this jurisdiction. They are tersely stated by the Supreme Court in *M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others*, as under :

"46. The grant of interlocutory injunction during the pendency of legal

proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court applies the following tests -- (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. . .

xxx xxx xxx xxx xxx xxx xxx 50. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking the relief. His conduct should be fair and honest."

36. This Court in *Mathew Phillips v. P. O. Koshy* AIR 1966 Mys 74 has observed (para 4) :

"The Courts below have not considered. whether the plaintiff has a prima facie case and whether any of his legal rights has been infringed, or that he has suffered any legal injury. In the exercise of the discretionary power of granting a temporary injunction, the non-consideration of the material point, viz., whether the plaintiff has made out a prima facie case of legal injury, vitiates the exercise of jurisdiction vested under Rule 2 of Order 39 of the CPC and, therefore, the order under revision cannot be allowed to remain uncorrected u/s 115 of the Code of Civil Procedure."

(Emphasis laid)

37. In the *State of Karnataka v. S. Venkataraj* AIR 1975 Kar 119, this Court has observed :

"4. The object of an interim injunction is to keep things in status quo, so that if at the hearing the plaintiff obtains a judgment in his favour, the defendants will have been prevented in the meantime from dealing with the property in such a way as to make that judgment ineffectual -- vide *Preston v. Luck* (1884) 27 Ch D 497. A temporary injunction maintaining the status quo

may properly issue whenever the question of law or fact to be ultimately determined in a suit is grave and difficult and injury to the moving party will be immediate, certain and great if denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if granted."

38. The legal principle which flows from the ratio in the aforesaid authoritative pronouncements is that if the trial Court or the lower Appellate Court is found to have passed an order of temporary injunction in exercise of its power either under Order 39, Rule 1, C.P.C. or under Order 39, Rule 2, C.P.C. in clear breach of the said propositions, the same cannot be stated to have been passed in exercise of the jurisdiction vested in it under the said provisions of C.P.C. and, therefore, that order would be liable to interference and will have to be set right by this Court in exercise of its revisional jurisdiction u/s 115, C.P.C.

39. The first basic point which needs to be found for the purpose is if the plaintiffs have made out the prima facie case for the grant of remedy of temporary injunction. In other words, the question is whether the materials on record satisfactorily establish the existence of their legal right to hold the office of Parupatyagar and Paricharakas of the D-1's said temple as on the date of their suit i.e., 6-1-1997. As could be seen from the pleadings of both parties which are adverted to hereinabove, it is not in dispute that the plaintiffs were the holders of the said offices in exercise of their hereditary rights with respect thereto as on 17-10-1995 when the impugned notices dated 13-10-1995 of D-1 Committee were served on them purporting to terminate their services as such, following the impugned resolution dated 28-9-1995 of the Committee. It is also not in dispute that by virtue of the trial Court's interim order in their said earlier suit i.e., O.S. No. 440/1995 and of this Court's order dated 30-9-1996, they continued to act as Parupatyagar and Paricharakas of the temple and have discharged their functions as such during the period of their turn which ended in December, 1996 and, therefore, the impugned resolution dated 28-9-1995 and the termination notices dated 13-10-1995 remained inoperative against them. Further, it is not in dispute that after their said turn i.e., plaintiff 2's turn, it was the turn of defendant-2 to discharge these duties as such during the ensuing period for the relevant year 1996-97. The fact sworn to by plaintiff at paragraph 12 of his affidavit in support of I.A. No. 1 that defendant-2 was rendering services to the deity as Parupatyagar and Paricharaka during his present turn which commenced from 12-11-1996 and was to last till 31-10-1997 is not disputed by the other side. It is during the currency of this turn of defendant-2 which the present suit i.e., O.S. No. 14/1997, was instituted by the plaintiffs on 6-1-1997 for the reliefs stated at paragraph 2 hereinabove. Their I.A. No. 1 dated 27-3-1997 was filed long before the commencement of their next term to perform the duties of Parupatyagar and Paricharakas of the temple, which according to them was to commence from 1-11-1997 -- which was from Deepavali Padya.

40. Thus, it is sufficiently borne out from the dependable material on record that

the plaintiffs performed the duties of Parupatyagar and Paricharakas of the temple till the end of their turn in December, 1996 and before the commencement of the turn of defendant-2 for the ensuing year despite the impugned resolution dated 28-9-1995 and the impugned termination notices dated 13-10-1995 of the D-1 Committee; and they having filed the suit in January, 1997, i.e. on 6-1-1997, it could be safely held at the present stage of the suit proceeding that their vested right to the said offices of Parupatyagar and Paricharakas was very much subsisting as on the date of the suit but was in abeyance in the normal course on account of intervention of defend-ant-2's turn. We find this fact also clearly admitted by D-1 in its written statement filed on 18-1-1997 in the said O.S. No. 440/1995 that was instituted by the present plaintiffs-1, 2 and 5. At paragraph 6 thereof, this defendant has pleaded that : "Furthermore, it is submitted that even if the plaintiffs and the families of Krishtachar and Anant and their predecessors were and are hereditary office holders, they are the servants of the temple," vide page 176 of the big paper book. Thus, the indisputable and dependable material on record ex facie establishes a good prima facie case for the plaintiffs, in that, they were possessing the vested legal right to hold the office of the Parupatyagar and Paricharakas of the temple, as hereditary office holders thereof, as on the date of their suit.

41. Of course, I find sufficient force in the contention of Mr. Vijayashankar that the plaintiffs in their capacity as hereditary office holders cannot claim to function independently of the administrative control of the defendant Trust Committee and that they are subject to its disciplinary action for their any alleged misconduct or activity detrimental to the welfare and interest of the defendant temple which is a public Trust, This position of the plaintiffs vis-a-vis the Trust Committee finds ample support of the law enunciated by the Supreme Court in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, where it is laid down :

"120..... The hereditary right as such is not integral part of the religious practice but a source to secure the services of a priest independent of it. Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not. Therefore, when the hereditary right to perform service in the temple is terminable by an owner for bad conduct, its abolition by sovereign legislature is equally valid and legal..... Though an archaka integrally associates himself with the performance of ceremonial rituals and daily pooja to the Deity, he is an holder of the office of priest (archaka) in the temple.....

121.....He is subject to the disciplinary power of a trustee or an appropriate authority prescribed in the regulations or rules or the Act. He owes his existence to an order of appointment be it in writing or otherwise. He is subject to the discipline at par with other members of the establishment....."

42. Though the decision in A.S. Narayan is rendered by the Hon"ble Supreme

Court while dealing with the constitutionality of the relevant provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act (17 of 1966) abolishing the hereditary office of Archaka. on the analogy of aforequoted propositions, it could be reasonably held that the hereditary Parupatyagar and Paricharakas of a Public Trust Temple, in the absence of any express provisions of the law, rules or conditions of their service, do function as such subject to the administrative control of the Temples" Board of Trustees or Managing Committee or the Panch Committee as the case may be. But then, in the face of plaintiffs" challenge to the competence of the present committee of D-1 Trust to Initiate any disciplinary action against them, its committee has to necessarily, prima facie, establish by believable materials on record that it is a validly constituted committee for D-1 Trust and, therefore, it has the power to exercise disciplinary authority and control over them so as to accord the presumption of validity to its impugned resolution dated 28-9-1995 and the termination notices dated 13-10-1995, this initial presumption of validity, albeit rebuttable.

42A. Let us now examine the position of present D-1"s Committee with this perspective. After the BPT Act came into force, the then members of the Committee of the Trustees of D-1, numbering 8 in all, had made an application in the prescribed form with the concerned Assistant Charity Commissioner, Belgaum, u/s 18 of the BPT Act and got the D-1 Trust duly registered in the Trust Register maintained u/s 17 of the Act read with Rule 5 of the Rules, 1961. Admittedly, all of them have died. Curiously, the relevant columns of the said Trust Register is not shown containing any mention of the change in the Committee or the Board of Trustees of D-1 Trust, brought about in accordance with Section 22 of the Act. Nor any material is brought on record disclosing how and under what circumstances the present committee of D-1 came to be constituted. The absence of the change in the relevant column of the said Public Trust Register maintained under the BPT Act showing the names of the present members of the Committee, and of the failure of D-1 in placing the material on record disclosing the mode and the authority for its formation creates serious doubt as regards it being a lawful body, which, in turn, lends sufficient probability to the contention of plaintiffs" learned counsel that the Committee of D-1 is incompetent to take any disciplinary action against them. This salient lacuna in the formation of the present Committee of D-1 robs its impugned resolution dated 28-9-1995 and militates against attaching any presumptive value of validity to its impugned resolution and the termination notices dated 13-10-1995 issued to the plaintiffs. In that view of the matter, as a logical corollary, it follows that unless it is proved by the defendants that the said Impugned resolution and the termination notices are legally valid and sustainable, the same cannot be taken at this stage as having binding effect on the plaintiffs, thereby depriving them of their vested hereditary right to hold the said offices of Parupatyagar and Paricharakas. The contrary view taken in this regard by the learned Judge of the lower Appellate Court is, therefore, erroneous and unsustainable.

43. Apart from the above, we find from the contents of the impugned resolution dated 28-9-1995 and the impugned termination notices dated 13-10-1995 of D-1 Committee that they purport to remove only plaintiffs-1, 2 and 5 from the said offices of the D-1's temple i.e., Veeranarayana Temple, i.e., as its Parupatyagar and Paricharakas, on the allegations stated therein. For the sake of argument, even if these three plaintiffs viz., plaintiffs-1, 2 and 5 are taken to have validly been terminated as Parupatyagar and Paricharakas of the temple, there is absolutely no reason or justification for D-1 to prevent the other plaintiffs-3, 4 and 6 to 8 from performing their duties as such, they being the hereditary holders of the said offices. The contention of Mr. Vijayashankar that plaintiffs-1, 2 and 5 represent other plaintiffs and, therefore, their termination hold good against all plaintiffs, is a far fetched contention which lacks support of the satisfactory material on record. In that view of the matter, the unassailable vested hereditary right of Plaintiffs- 3, 4 and 6 to 8 to perform the duties of Parupatyagar and Paricharakas of the temple is entitled to be protected from the imminent Injury which the defendants are bent upon causing to their right by taking law into their own hands. It is needless to state that the damage and/or destruction of this right of plaintiffs to perform the duties of the said offices in perpetuity, would be undoubtedly an irreparable injury to which they would be subjected if interlocutory Injunction is declined in their favour. Both the Courts below have singularly lost sight of this significant aspect of the matter and thereby misdirected themselves with the speculative and conjectural observations to the contrary.

44. Adverting to another contention of Mr., Vijayashankar that in view of the said earlier suit of plaintiffs-1, 2 and 5 i.e. O.S. No. 440/1995 filed for the relief of injunction against D-1, the grant of temporary Injunction to plaintiffs in the present suit subsequently filed by them, will not be called for because of laches on their part and because of the mandate of Sub-rule (2) of Order 2 Rule 2 CPC which enjoins that :

"(2) Relinquishment of part of claim.--Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."

This is an untenable contention. Because the earlier suit i.e., O.S. No. 440/1995 was filed before the service of the termination notices dated 13-10-1995 on the plaintiffs 1, 2 and 5 by which the fact of their removal by the impugned resolution dated 28-9-1995 was brought to their notice, and also in view of the fact that suit was filed by them only for the relief to restrain, by a decree of permanent injunction, the defendants from "conducting function of Laksha Deepotsava on 17-11-1995 or any other date, thereby infringing the rights of the plaintiffs to render the services to the said Deity and Temple....."; and also that the said suit had been withdrawn by the plaintiffs therein with permission to file fresh suit for comprehensive reliefs which are sought in the present suit.

45. Another factor which makes the contention of Mr. Vijayashankar

unacceptable is that, as indicated, the said impugned resolution and termination notices of D-1 had been rendered inoperative by reason of the interim orders of the trial Court and of this Court referred to hereinabove with the result, the plaintiffs had been performing their duties in the meantime of Parupatyagar and Paricharikas as usual. Even if we proceed on the assumption that the Committee of the Trustees or the Panch Committee of D-1 was lawfully constituted by its devotees or any other competent authority, then, another material question which looms large for consideration would be the nature and substance of the allegations levelled against plaintiffs-1, 2 and 5 by the D-1's Committee on the basis of which they are alleged to have been removed from their said offices under its impugned resolution dated 28-9-1995 followed by the impugned termination notices dated 13-10-1995, so as to stamp it with the presumption of validity, until such presumption is dislodged by the plaintiffs at the trial. For this purpose, it is necessary to examine the contents of the show cause notice dated 2-8-1995 which was issued by D-1's Committee to plaintiffs-1, 2 and 5, containing the allegations of their so-called prejudicial acts and calling upon them to show cause why they should not be removed from the said offices of D-1's Trust Temple. The said cause notice was in Kannada. Its undisputed true copy in English is produced by the learned counsel for petitioners. The same is reproduced below :

From : Sri S. R. Savkar, Chairman, Sri Veerananarayana & Trikuteshwara Temple Trust, Gadag-582 101. To :

1. Sri Ramesh Madhavachar Gudi & Bros, Gadag.
2. Sri B. S. Gudi & Sons, Gadag.
3. Sri Radhakanth Vasudevachar Gudi & Sons, Gadag.

Sub : Show-Cause Notice. Sirs,

You have been appointed as Paricharika in Sri Veerananarayana Temple, you and other Paricharakas have been rendering service turn by turn. Many associations and institutions conducting activities in the temple, have sent complaints that you are not conducting yourself properly in Sri Veerananarayana Temple. You have been acting as Chief of the Temple. You have been publishing in the news papers matters irrelevant and against the administration of the Trust. You have been objecting, that any activity to be conducted in the temple, should not be undertaken without your permission and thereby you have been causing stoppage of conducting religious and cultural activities in the temple. You have been conducting improperly towards the devotees visiting the temple, that the trust committee has no powers and you have absolute powers. By your conduct, the devotees of Narayana Temple have formed wrong impressions. The devotees visiting the temple are decreasing in number by your conduct. You are not heeding to the trust committee, and you are not performing the duties of paricharikas satisfactorily. In spite of informing you many times not to act in this manner you have not heeded to the words of the Trust Committee. Being tired of

your conduct, the devotees of the Temple, the associations and Institutions, conducting activities in the temple are compelling us to terminate you from services, besides you have not been conducting yourself in a respectful manner with the Committee. You have been discharging the duties of the Trust Committee, therefore this notice is issued to you.

Within seven days from the receipt of this notice, you must give reply that you will conduct yourself here afterwards and as told by the Trustees. You should give proper and satisfactory explanation. In default appropriate legal action will be taken against you please note. Since Registered notices are returned by you, these notices sent by Certificate of posting.

Gadag Sd/- 2-8-1995 Sri S. R. Sawkar, Chairman Sri Veerananarayana & Trikuteshwara Temple Committee, Gadag."

46. The above cause notice was followed by the Committee's impugned resolution dated 28-9-1995 passed removing the said plaintiffs on the said allegations. On a bare perusal of the allegations contained in the cause notice dated 2-8-1995, it becomes abundantly clear that they are wholly vague and evasive in nature. The material particulars such as the date, time and place, the nature or the specific description of the alleged act and the mode and manner in which the same was done by any of the plaintiffs are not at all furnished in the said cause notice. Nor the same are contained in the impugned resolution dated 28-9-1995 of D/-1's Committee passed removing the plaintiffs. The Supreme Court has ruled in *Sawai Singh Vs. State of Rajasthan*, to the effect that any disciplinary action of the disciplinary authority taken against its delinquent employee on the basis of such vague charges would be illegal even if the delinquent has participated in the enquiry held by the authority. At paragraph 16 of its judgment, the law in this regard stated by it is as follows :

"16. It has been observed by this Court in *Surath Chandra Chakrabarty Vs. State of West Bengal*, that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of *State of Andhra Pradesh Vs. Sree Rama Rao*, and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But a departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be fair play in action, in respect of an order involving adverse or penal consequences against an employee, there must be investigation to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation."

D-1's Committee though not a statutory committee or a statutory authority, yet it is bound by the aforesaid law laid down by Supreme Court in the matter of initiating and taking any disciplinary action against any employee or servant of its Trust. It cannot claim to act in an arbitrary and whimsical manner in violation of the principles of natural justice. The allegations of harmful or undesirable acts

in its said cause notice dated 2-8-1995 given to plaintiffs-1, 2 and 5 followed by D-1's Committee's impugned resolution dated 28-9-1995 and its impugned termination notices dated 13-10-1995 removing the said plaintiffs from their hereditary posts of Parupatyagar and Paricharakas, are wholly vague and Vexatious in character. So, the vexatious nature of these allegations take away the ground for the said presumption, even if any, to be attached to the impugned disciplinary action of D-1's Committee against them. Therefore, the Court below is patently erroneous in taking the contrary view that the impugned disciplinary action of D-1's Committee is entitled to be presumed to be legally valid unless it is proved at the trial by the plaintiffs that the said action of the Committee is illegal. The resultant position is that D-1's Committee's so called disciplinary action in question taken to remove plaintiffs-1, 2 and 5 vide its impugned resolution dated 28-9-1995 cannot be presumed as valid action at the present stage of the suit proceeding until the same is proved as a legally valid action by D-1 in course of the trial. In that view of the matter, the status of the plaintiffs as hereditary holders of the offices of Parupatyagar and Paricharakas of D-1's Trust Temple remains intact and their right to exercise the functions attached to the said offices continues to subsist until the same is proved to have been terminated by valid action of any competent body of D-1's Trust or any other competent authority.

47. Mr. Vijayashankar, learned senior counsel representing D-1, seeking to support the impugned orders of the Courts below from another angle, argued that, admittedly the service inam lands granted by the Government to the ancestors of the plaintiffs and defendant-2 by virtue of they being the hereditary holders of the said offices of D-1 Trust Temple have been resumed by the Government of Karnataka long before the present dispute between the parties arose, on abolition of all such service inams by relevant provisions of the Act of 1977. Therefore, he maintained that with the abolition of the said service inams, the hereditary right of the plaintiffs and their ancestors to hold the said offices of Parupatyagar and Paricharakas also stood extinguished automatically and as such, they cannot claim to be the holders of the said offices any longer. On examination of the relevant provisions of the Act of 1977, I find little force in this contention of Mr. Vijayashankar. It is an admitted fact that certain lands had been granted by the Government as "inam lands" to the said offices of Parupatyagar and Paricharakas, and that on coming into force of the Act of 1977, that grant stood abolished by virtue of its Section 4. Section 4 is the material provision whose relevant portion is extracted below :

"4. Abolition, vesting of inams and the consequences thereof.-- (1) Notwithstanding anything contained in any contract, grant or other instrument or in any decree or order of Court or in any other law for the time being in force, with effect from and on the appointed date, the inam tenure of all inams and minor inams to which this Act applies u/s 2 shall stand abolished.

(2) Save as otherwise expressly provided in this Act with effect from and on the

appointed date, the following consequences shall ensue, namely :--

(a) the provisions of the Act relating to inams of alienated holdings shall be deemed to have been repealed in their application to inam or alienated holding and the provisions of the Act and all other enactments applicable to unalienated villages or lands shall apply to the said inams or alienated holding;

(b) all rights, title and interest vesting in the inamdar including those in all communal lands, cultivated lands, uncultivated lands, whether assessed or not, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries, and ferries shall cease and be vested absolutely in the State Government, free from all encumbrances;

(c) the inamdar shall cease to have any interest in the inam other than interests expressly saved by or under the provisions of this Act;

(d) all land revenue including the cesses and royalties accruing in respect of lands comprised in such inam villages or minor inams on or after the date of vesting shall be paid to the State Government and not to the inamdar and any payment made in contravention of this clause shall not be valid;

(e) to (j) xx xxx xxx

(3) xxx xxx xxx"

In Sub-section (2) of Section 4, the legal consequences flowing from abolition of the grant of inam lands pertaining to any of the offices of a religious institution are spelt out. What stands abolished by Sub-section 4(1) is the "inam tenure" of all inams to which the Act applies. It is not in dispute that the Act applies to the inam lands attached to the said offices of Parupatyagar and Paricharakas. Sub-section (1) of Section 4 does not declare that with the abolition of inam tenures of all such inam lands, the right of the inamdar to hold the particular office of the religious institution by hereditary mode of succession also becomes extinguished. Nor do we find any such consequences flowing from abolition of the inam tenure of the inam land so spelt out in any of the clauses of Sub-section (2) of Section 4. There is no any other provision in the Act affecting the right of such an office holder in any manner whatsoever. Therefore, the contention of Mr. Vijayashankar is unacceptable, and that it is so is also borne out by the clear admission on the part of D-1's panch committee itself made in the affidavit filed by it in support of its said I.A. No. 9 dated 18-1-1997. In paragraph 6 of this affidavit, it is averred in clear terms by D-1 :

"(6) Furthermore, it is submitted that even if the plaintiffs and the families of Krishtachar and Anant and their predecessors were and are hereditary office holders, they are the servants of the temple. They are and were doing their services under the Managing Committee of the temple....."

(underlining supplied)

In fact, this position of the plaintiffs continuing to exercise their hereditary right

to perform the functions and duties of Parupatyagar nand Paricharakas of D-1's Trust Temple during their turns is not seriously disputed by the other side.

48. Besides the above, Mr. Vijayashankar also argued in support of the lower Court's observation that even if the plaintiffs are prevented by D-1's Committee from performing the duties of Parupatyagar and Paricharakas in exercise of their said right, they could be adequately compensated and more so when they themselves have claimed a compensation of Rs. 45,000/- from defendants for the alleged disturbance caused to them in performance of their said duties, they are not entitled to the equitable remedy of injunction in view of Section 41(h) of the Specific Relief Act.

49. Clause (h) of Section 41 of the Specific Relief Act, 1963 states that :

"(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;"

The plaintiffs' claim to the relief of compensation of Rs, 45,000/- in the plaint is based on the alleged facts pleaded at paragraph 17 thereof to the effect that on account of unwarranted interference by defendants, their performance and discharge of said functions and duties were disturbed for a particular period indicated therein, with the result they were put to monetary loss to the extent of Rs. 45,000/-. Nothing is further pleaded in the plaint stating how this loss was sustained by them. It is an undisputed fact that the plaintiffs are not paid any salary or payment by D-1's Committee or any of the authority for the services of Parupatyagar and Paricharakas which were being rendered by them. In other words, they had been rendering these services to the temple without any remuneration being given to them by the Temple Trust Committee, Had it been their case or the case of D-1 that the plaintiffs are given any particular monthly salary or the particular amount at regular interval of time by the D-1 Trust Committee for their said services and that the said salary or the amount was not paid to them for the particular periods stated in paragraph 17 of the plaint, then, it would have furnished sure foundation for the plaintiffs' to claim compensation from defendants on the plea of their alleged interference with and disturbance to discharge of their said services, so as to attract applicability of Clause (h) of Section 41 which contemplates that equally efficacious alternate remedy or relief available to the party must be of such probability that it "can certainly be obtained". in which case the equitable remedy of Injunction can be refused to the party. Such is not the situation obtainable in the instant case. This apart, the said right enjoyed by the plaintiffs is their hereditary right which was acquired by them by succession and not under any contract of employment. On their death, the said right would get transmitted to their progeny on succession. Considering this nature of the right which the plaintiffs and their progeny is entitled to enjoy in perpetuity, evidently any breach or injury caused or likely to be caused to such a right would be undoubtedly irreparable and the same cannot be repaired by any measure of compensation or damages.

50. The Supreme Court, in Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., quoted the passage at paragraph 42 of its judgment in M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, , supra, affirming the principles governing the grant of interlocutory injunction, the relevant portion whereof extracted below :

".....The decision whether or not to grant an Interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established, at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved, The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial....."

Again at paragraph 21 of the judgment. Their Lordships have quoted with approval a passage from the decision in series 5 Software v. Clarke (1996) 1 All ER 853, which is reproduced below :

"In many cases before American Cyanamid the prospect of success was one of the important factors taken into account in assessing the balance of convenience. The Courts would be less willing to subject the plaintiff to the risk of irrecoverable loss which would befall him if an interlocutory injunction was refused in those cases where it thought he was likely to win at the trial than in those cases where it thought he was likely to lose. The assessment of the prospects of success therefore was an important factor in deciding whether the Court should exercise its discretion to grant interlocutory relief....."

Having due regard to the nature of plaintiffs' right in question and their claim to the other reliefs in the suit, it cannot be gainsaid that their case for damages or compensation would be on a far weaker and infirm ground than the one for protection of their said right from being violated by defendants during pendency of the suit proceeding.

51. All the aforesaid peculiar circumstances further go to satisfactorily establish that if the remedy of injunction is declined to the plaintiffs, they would certainly suffer irreparable injury and also that the balance of convenience lies in their favour, since the defendants have not been able to place any material showing any specific instance of the plaintiffs having indulged in any definite illegal or unlawful act prejudicial to the interest and welfare of the D-1 Trust Temple. Therefore, there was absolutely no legal justification whatever for both the Courts below to hold otherwise. Their observations contrary to this position are based on surmises and conjectures. In that view of the matter, it cannot be stated that the impugned judgment is passed by the lower Appellate Court in exercise of the jurisdiction vested in it by the provisions of Order 39 Rules 1 and 2 CPC. The same opinion holds good in respect of the impugned order of the trial

Court insofar as it relates to rejection of plaintiffs' prayer in I.A. No. 1 for grant of temporary injunction with respect to their said office of Parupatyagar is concerned.

52. At this juncture, it is relevant to consider the trial Court's observation that the plaintiffs cannot be granted injunction with respect of the office of Parupatyagar because they have not placed any material on record to support their plea that the functions of Parupatyagar are as listed at paragraph 5 of the plaint. This observation of the trial Court is an erroneous observation. As already pointed out, the declaratory decree in the said L.C. No. 92/1948 had been obtained by the ancestors of the plaintiffs and defendant-2 from the competent civil Court declaring that they (excepting plaintiff-5 therein) were the Parupatyagar and Paricharakas of D-1 Trust Temple. It was a representative suit. It was supported by the then Panch Committee of D-1 Trust. Therefore, the present D-1's Panch Committee is also bound by the said decree as at the present stage, since its said impugned resolution and termination notices are found not worthy of presumption that they are valid in law because of the aforestated, inherent defects with which they are shown to suffer. The above state and discussed distinguishable features of this case will not attract applicability of the observations of this Court made in *Ganapathi Narayan v. Shivaram Narayan Bhat* 1996 AIHC 5609 (Kant) supra, to the effect that the termination order of the Managing Committee of the Temple paise against its Archak, has to be presumed as a valid order until the plaintiff Archak therein proves it otherwise, which were pressed into service by Mr. Vijayashankar to uphold the impugned orders. Among the eight functions of Parupatyagar listed at paragraph 5 of the plaint, only two functions are specifically denied by D-1 at paragraph 8 of its written statement, and they are that the Parupatyagar is an officer in charge of the Veeranarayana Temple; and that he is in custody of all the keys including Garbhagudi of Veeranarayana Temple, which are indicated at Sub-clauses (i) and (ii) of paragraph 5 of the plaint. The other functions of Parupatyagar stated at Sub-clauses (iii) to (viii) of plaint paragraph 5 are not so specifically denied. In turn, it is also not stated by the defendants as to what are the specific functions and duties of Parupatyagar, in contrast to his functions stated in Sub-clauses (iii) to (viii) of plaint paragraph 5. Therefore, one position which emerges fairly clear from the pleadings is that these functions listed at Sub-clauses (iii) to (viii) of plaint paragraph 5 are the normal functions of Parupatyagar of D-1 Trust Temple. So, the Court below ought to have safely held that the functions and duties stated at Sub-clauses (iii) to (viii) at paragraph 5 of the plaint are the undisputed functions of the Parupatyagar of the defendant temple.

53. As has been concluded by me for the reasons discussed hereinabove, it is found that the plaintiffs have satisfactorily established all the three essential ingredients for grant of temporary injunction as prayed in their LA. They are : (i) a clear prima facie case; (ii) that they would suffer irreparable injury if injunction is declined to them; and (iii) that the balance of convenience lay in their favour.

Therefore, the trial Court's impugned order refusing to grant them the remedy of T.I. in respect of their right to the office of Parupatyagar, and the impugned order of the lower Appellate Court rejecting their I.A. No. 1 in toto passed against the normal tenor of the materials on record cannot be stated to have been passed in exercise of the jurisdiction vested in them under the provisions of Rules-1 and 2 of Order 39, CPC. On the other hand, I find their impugned orders passed in illegal exercise of their Jurisdiction as they are passed in clear breach of well established legal principles governing the exercise of jurisdiction of the Court in the matter of grant or refusal of remedy of interlocutory order of injunction in favour of a party to the proceeding. As a result, they are liable to be quashed and the C.R.P. Nos. 3973/1999 and 3982/1999 are entitled to succeed.

Point No. 2 :

54. Now, adverting to the impugned orders of both the Courts below passed allowing D- 1's I.A. No. 9 filed under Order 39, Rules 1 and 2, CPC and granting temporary injunction in its favour restraining plaintiffs from interfering with its administration of the temple trust, which is the subject of plaintiffs' C.R.P. No. 3981/1999, I find them totally perverse, arbitrary and opposed to the well settled legal norms for grant or refusal of ad-interim injunction. On I.A. No. 9, the following material points for determination were framed by the trial Court:

"(i) Whether plaintiffs have made out a prima facie case that they are the Parupatyagar and Paricharika of the suit temples?

(ii) Whether plaintiffs have further made out a case that the balance of convenience lies in their favour?

(iii) Whether plaintiffs have made out a case that irreparable loss or hardship in their favour if T.I. is not granted?

The impugned order passed by it disposing of D-1's I.A. No. 9 consists of only one small paragraph at page 42 thereof which is extracted below :

"Points No. II & III in I.A. No. IX Defendant trust has come is to existence by the virtue of the provisions of B.P.T. Act 1950. It constitutes, a trust committee the trust is duly registered under B.P.T. Act. The trust committee owes a duties to supervise the activities of the temples. The rights of the trustee to remove the parupatyagar and paricharika is yet to be decided. Therefore so far as the management and administration of trust, they are answerable to the authority, viz., Asst. Charity Commissioner at Belgaum. If Injunction is granted as prayed for by the plaintiff the very object of the trust will be defeated. So it is held that the balance and convenience and hardship an in favour of the defendant-trust. In the result points II and III are answered in the affirmative."

55. It could be seen from the above quoted order that it is a bald and non-speaking order, since the material points are not at all touched upon and discussed by the trial Court with reference to the relevant pleadings and the well settled legal principles in the matter. On this ground alone, the trial Court's order

was liable to be set aside by the lower Appellate Court since the trial Court failed to exercise the jurisdiction vested in it under the provisions of Rules 1 and 2 of Order 39, CPC. The impugned order of the lower Appellate Court affirming the said order of the trial Court is also in equally perverse order. From the body of its impugned judgment, we find that the plaintiffs' appeal in M.A. No. 21/1999 filed before it against the trial Court's order on I.A. No. 9 has been disposed of by it in a single sweeping sentence at paragraph 53 which runs :

"53..... Since on the merits the trial Court has held that the deft-1/trust has made-out a prima-facie case for grant of temporary Injunction & since such a finding does not suffer from any infirmity, I do not feel it necessary at this stage to go into the aspect whether the order passed by the trial Court is U/O. 39 R-1 & 2 of CPC, or u/s 151 of CPC."

56. As already stated, I.A. No. 9 was filed for D-1 in the trial Court on 19-8-1998 for an order of temporary injunction against plaintiffs and their men and servants "from interfering in the administration of Sri Veeranarayana Temple of Gadag by defendants" Trust in any manner till the disposal of the suit", in the ends of justice and equity. The case in support of this prayer pleaded for D-1 is to be found in paragraphs 5 to 8 of the supporting affidavit of the Chairman of D-1 "s Trust. The sum and substance of the allegations made against plaintiffs in the said affidavit seeking injunction against them is that the latter had filed the said O.S. No. 440/1995 against its trustees to restrain them from conducting the Deepotsava in the temple on a particular day; and that the present suit is filed by them after their removal from the office of Parupatyagar and Paricharakas, and that they (plaintiffs) had been insistently performing the said duties. All other allegations against them in the said affidavit filed in support of I.A. No. 9 are entirely vague and baseless. No fault could be found with the plaintiffs by D-1's Panch Committee for plaintiffs filing the O.S. No. 440/1995 against D-1's Committee for permanent injunction for preventing it and its men from conducting the function of Laksha Deepotsava in the temple on 17-11-1995 or any other day on the ground that it was their exclusive right as Parupatyagar and Paricharakas of the D-1 temple to conduct the said function, as that was the admitted case of the then Panch Committee of D-1 itself in its said L.C, Suit No. 15/1941 vide paragraph 16 hereinabove. Besides, the plaintiffs' insistence to act as Parupatyagar and Paricharakas of the said temple in assertion of their right to so act cannot be stated as an act of interference with the administration of D-1's Panch Committee or Trust Committee in view of my conclusions arrived at hereinabove. Therefore, there does not exist any ground whatever for D-1 to file its I.A. No. 9 seeking temporary Injunction against plaintiffs. Nonetheless, as is rightly submitted by Sri R. C. Goulay, learned counsel for plaintiffs, I.A. No. 9 filed for D-1 in plaintiffs' suit on 19-8-1998 without filing the same in D-1's pending O.S. No. 361/1997 filed for permanent injunction against them is a vexatious application, appears highly probable. Therefore, by any yardstick, I find that the impugned orders on I.A. No. 9 are passed by both the Courts below in illegal exercise of their discretion and, therefore, those orders are liable to be

upset by allowing C.R.P. No. 3981/1999.

57. For the reasons aforesaid, all these revisions viz., C.R.P. Nos. 3973/1999, 3981/ 1999 and 3982/1999 are allowed. The impugned common judgment of the lower Appellate Court passed in M.A. Nos. 17/1999, 21/1999 and 20-1999 is set aside, and the said M.A. Nos. 21/1999 and 20/1999 are allowed, while the said M.A. No. 17/1999 of D-1 is dismissed. Consequently, D-1's I.A. No. 9 filed in the trial Court is rejected and the plaintiffs' I.A. No. 1 under Order 39, Rules 1 and 2, CPC filed before it is allowed excepting their prayer therein with respect to the two functions of Parupatyagar mentioned at Sub-clauses (1) and (ii) at paragraph 5 of the plaint. As a result, the temporary injunction as prayed I.A. No. 1 is granted in plaintiffs' favour and against defendants restraining the latter, their men and servants from interfering with the plaintiffs' rights to perform the duties and functions as Parupatyagar and Paricharakas of D-1's Veeranarayana Temple as listed in para- graphs 4 and 5 of the plaint excepting the functions stated at Sub-clauses (i) and (ii) of paragraph 5 thereof, in any manner, whatsoever, pending final disposal of the suit.

The trial Court shall proceed to dispose of the plaintiffs' suit on its own merit, without being influenced by my conclusions arrived at hereinabove.

In the circumstances, parties shall bear their own costs.