

(2004) 12 KAR CK 0005

In the Karnataka High Court

Case No : Regular Second Appeal No. 642 of 1998

Gadigi Mariswamappa (deceased by L.Rs.)

APPELLANT

Vs

Sivamurthy (deceased by L.Rs.) and Others

RESPONDENT

Date of Decision : 13-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 91, 92, 92 (1)

Citation : AIR 2005 Kar 172 : (2005) 3 KarLJ 532 : (2005) 2 KCCR 85 SN

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : Jaya Vittal Rao Kolar, for the Appellant; Raghavendra Rao, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal by the plaintiff is directed against the Judgment and Decree passed by the Civil Judge, Bellary, in RA No. 55/1980, dt. 11-6-1991 confirming the judgment and decree passed by the Principal Munsiff, Bellary in O. S. No. 848/ 1966, dt. 1-8-1980.

2. The essential facts of the case leading up to this appeal with reference to the rank of the parties before the trial Court are as follows :--

The plaintiff filed the suit for declaration that the suit schedule property consisted of a private trust of which plaintiff and his heirs are the trustees and for possession of the suit properties from the Court. The schedule property comprises of the Mutt situated within the municipal area of Bellary, Door No. nil, Ward No. VI, lands situated in Bellary comprising of Sy. Nos. 473-B measuring 1 acre 40 cents; 759-A measuring 14.74 cents and lands situated in Siddapuram Village within the sub-registration of Mulakalmuru comprised in Sy. Nos. 429 measuring 1 acre 27 cents; 436/2 measuring 1 acre 21 cents; 437/1 measuring 2 acres 22 cents; 295/3 measuring 1 acre 35 cents. It is averred in the plaint that about a century ago, the grandfather of the plaintiff Sri Sadaksharappa

having a spiritual bent of mind started construction of the plaint schedule mentioned Mutt and by registered agreement Executed by him on 4-10-1869 in favour of his brother's son Mareppa, he made reference to this Mutt by stating that the construction of the Mutt begun by him at Bandimotu at Bellary must be completed by Mareppa and every year for one month there must be poor feeding and the Mutt started by him should be for Sadwintyoga. It is averred that in the partition between the plaintiff's father Mareppa and his uncle Pompanna in 1873 the above Mutt had been completed and in the registered: partition deed between them on 24-3-1873, it has been stated as per the wish of their uncle Shadaksharappa the Mutt having been completed, every year during the month of Shravana persons coming from outside must be fed and Dakshinam also must be given and for this charitable purpose they made a provision in their partition deed to spend Rs. 200/- annually. Thus, the Mutt called Shadaksharappa Mutt or the Bandi Motu Mutt was started, a private trust, was created. The beneficiaries under the Trust being poor persons coming from outside and the then senior most member of the plaintiffs family being, the trustee, plaintiff is father Mareppa also being of a highly religious bent of mind selected. Sri Kotturswamy of Mannur who was then staying in the plaintiff's family as a Kriyamurthy to occupy the Mutt arranging for his residence there. After partition between Mareppa and his brother Pompanna, assignment of land was made and they prepared a list enumerating monthly expenditure to be incurred for charitable purposes and a provision of Rs. 25/- was made for the swamiji and it was also agreed that necessary utensils must be purchased for the Mutt. One Chenna Basayya, Kotturswamy's younger brother, Mareyya's son, who used to be with the swamiji as his Puja Mari was appointed as agent by the plaintiff's father to look after the Mutt affairs. As such, a private trust was created for the spiritual benefit of the family members of the plaintiff. The samadhis of important persons of the plaintiff's family i.e. Shadaksharappa and Mareppa and Veerabhadrapa are situated in the Mutt and of others around the Mutt and since the date of construction of the Mutt up till now dead persons of the plaintiff's family are buried there only. By about 1879 the father of the plaintiff and his uncle had out of their joint family lands reserved the plaint A schedule mentioned lands for the upkeep and maintenance of the Mutt and in lieu of the annual payment of Rs. 200/-. It is further averred that with the permission of the plaintiff's father Mareppa and the plaintiff, the Mutt premises have been used for many religious and spiritual functions, marriages of poor jangama were performed there, the Ayyacharchar of jangam vatus took place there and once Chara Pattadaka Sammelana was held there and prominent Swamijis and Jagadgurus used to stay in the Mutt during the time of their visit to Bellary. Many a time Purana Pravachanas have been held and the Mutt was a centre of such innumerable religious, cultural and dharmik activities of the Lingayat community. It is further averred that Kotturswamy died and has been cremated inside the Mutt. After the death of the agent Chenna Basayya his son Gajadandayya, husband of defendant No. 5, was appointed as agent for the Mutt. He not only looked after the Mutt affairs, but also acted as clerk under the plaintiffs brother Veerabhadrapa

looking after the family lands and shops at Madras and Beerur. The plaintiff's father celebrated the first marriage of Gajadandayya. When Gajadandayya died his brother Hanumurthy who was living with him in the Mutt was appointed to act as agent by plaintiff's elder brother Muddappa and by about 1950 he also died. For some months the plaintiff looked after the Mutt as there was no proper person to be appointed agent to look after the Mutt. Then the 2nd defendant came and requested the plaintiff to appoint him as agent for the Mutt and he was duly appointed in about 1951. After about six months from the date of appointment of the 2nd defendant his cousin brother Gajadandayya-3rd defendant came to the Mutt with his mother Gangamma and sister Basamma and joined the 2nd defendant. Basamma till her marriage lived in the plaintiff's family. The 1st defendant another cousin brother of the 2nd defendant has come about 5 or 6 years back and joined the 2nd defendant. Defendants 5 and 6 have remained at Manur and have not come to the Mutt. Thus it is seen that the defendants taking advantage of the fact of one of them being appointed as agent have gradually come and remained in the Mutt. It was the duty of the agent to maintain the Mutt by the income of the plaint A schedule mentioned lands after paying taxes and land revenue and render proper accounts to the trustee. The defendants are only agents under the trustee plaintiff and have no manner of proprietary rights over the suit and Mutt property. The defendants have made the Mutt premises dirty, defendant No. 1 having a keep in the Mutt and the purpose for which the Mutt was started has been ignored and portions of the Mutt have been rented for the personal benefit of the defendants and the Mutt premises is being used for all sorts of immoral purposes. The usual annual one month poor feeding of the needy has been stopped and the income from the Mutt lands is being utilised for the personal comforts of the defendants. The plaintiff came to know from reliable sources that the defendants were seriously contemplating alienation of the property Of the Mutt, got issued notices on 3-8-1966 to the defendants and the intending purchasers that the Mutt land cannot be sold and the defendants have not cared to reply. Wherefore, the suit for the aforesaid reliefs.

3. The 1st defendant filed the written statement which has been adopted by defendants 2 to 6. It is averred in the written statement that the Court of Munsiff has no jurisdiction to entertain the "plaint having" regard the allegation made therein. The plaintiff ought to have filed a suit in the District Judge's Court invoking Sections 91 and 92 of the CPC after obtaining necessary sanction from the Advocate General. It is further averred that the plaintiff has never been in enjoyment of the suit properties and has never exercised any right whatsoever over the suit properties directly or constructively and hence, the suit is barred by limitation and has to be dismissed as such. The plaintiff having nourished a dishonest intent of grabbing at the plaint schedule properties has come up with the above false suit for the purpose of prejudicing the interest of defendants 1 to 6. The defendants are respectable citizens and have been leading respectable life. The allegations made in the plaint regarding the conduct of the defendants were denied. The grandfather of the 1st defendant Sri Sri Kotturu Swamigalu had

come down to Bellary and has established himself. Because of the spiritual capacities of the said Sree Sree Kottur Swamigalu, he was assisted by Veerasaiva community at Bellary and the surrounding areas for the purpose of enabling him to emanate the spiritual teachings of the Veerasaiva Dharma, for establishing a Mutt at Bellary, The said Swamigalu was a married man and lead the life of gruhastha and the property which he established for himself by self-acquisition and on account of the gift to him, was in his possession and enjoyment as his personal property. Late Shadaksharappa who was then in affluent circumstances and was a disciple of the Swamigalu, gifted the plaint schedule property including the house property where Swamigalu resided. The gift was in favour of the Swamigalu under the document dt., Margasira Sudaha, Dasami of Salivahana Year 1796. The said property was in possession and enjoyment of the Swamigalu in his own right and neither the plaintiff or his predecessors-in-title continued to have, right whatsoever thereafter. The averment made that the defendants were appointed as agents were denied. It is further averred that the possession and enjoyment of the defendants over the suit schedule property and their forefathers were being uninterrupted over a period of 12 years prior to the date of filing the suit. They have perfected title over the same by adverse possession. The allegations made in the plaint regarding the management of the trust was denied. It is further averred that put of love and affection Sri Kottur Swamigalu had towards the family of Shadaksharappa and his undivided brother Muddappa, the mortal remains of Shadaksharappa and his nephew Mariappa and his grand nephew Veerabhadrapappa were permitted to be placed within the precincts of the property gifted to late Sri Manur Kottur Swamigalu. The plaintiff also urged that the same concession should be extended even to him and wanted permission to have a samadhi constructed for himself where his mortal remains should be placed after his demise and since the defendants refused that said permission, the plaintiff has come up with this false suit and in addition the market value of the properties have considerably increased and the plaintiff having lost large estate, is trying to grab the plaint schedule properties and hence false suit is filed.

4. Having regard to the abovesaid pleadings, the following issues were framed by the trial Court :--

- (1) Whether the plaintiff proves that the suit property is belonging to a private trust of his family?
- (2) Whether the plaintiff also proves that defendants are in permissive possession of the suit property, as alleged?
- (3) Whether defendants prove that suit property was gifted to Kottur Swamigalu by Shadaksharappa, predecessor of the plaintiff as contended?
- (4) Whether such a gift is valid and binding on plaintiff?
- (5) Whether defendants have become owners of suit property by adverse possession, as contended?

(6) Whether suit is barred Under Sections 91 and 92 of CPC as contended?

(7) Is plaintiff entitled to the reliefs sought for?

(8) What decree or order?

On behalf of the plaintiff, plaintiff was examined as PW-1 and he also got examined PWs 2 to 5 and got marked Exs. P1 To P8. On behalf of the defendants, Shivamurthy-2nd defendant was examined as DW-1. He got marked Exhibits D1 to 50. The trial Court after considering the contentions of the parties and the material on record answered the above- said issues as follows :--

Issue No. 1 Negative Issue No. 2 Affirmative Issue No. 3 Negative Issue No. 4 Negative Issue No. 5 Negative Issue No. 6 Affirmative Issue No. 7 Negative< Issue No. 8 Suit dismissed.

Accordingly, the suit of the plaintiff was dismissed by judgment and decree dt. 1-8-1980. Being aggrieved by the said judgment and decree the plaintiff preferred RA 55/80 on the file of the Civil Judge, Bellary and the First Appellate Court by judgment dt. 11-6-1991 dismissed the appeal and confirmed the judgment and decree passed by the trial Court dismissing the suit of the plaintiff. Being aggrieved by the said judgment and decree, the plaintiff is before this Court in this second appeal u/s 100, CPC. The appeal was admitted on 24-3-1999 for consideration of the following substantial question of law "Whether the trust in question is a private or a public trust?

5. I have heard the learned counsel for the parties. The learned counsel for the plaintiff-appellant submitted that the First Appellate Court has rightly held that the provisions of Section 92 of CPC would not be applicable to the facts of this case as the relief sought for would not fall within the provisions of Section 92(1) of CPC. However, the First Appellate Court was not justified in confirming the finding of the trial Court to the effect that the plaintiff has failed to prove that the suit property consists of a private trust and wherefore not entitled to possession of the suit properties. The learned counsel for the plaintiff appellant submitted that it is well settled that the trust or the endowment made by a Hindu may be a private or public trust and if it is a private trust, the provisions of Section 92 of CPC would not be applicable. Learned counsel submitted that the principles laid down by the Hon"ble Supreme Court for determining the question as to whether the trust or the endowment is a public or a private trust has not been considered by the Courts below in the light of the decisions of the Supreme Court and further, submitted that the mere fact that the object of creation of endowment was not only to enable feeding of the poor for a period of one month in the Hindu calendar year and this would not itself make the trust into a public trust as the averment made in the plaint and the material on record clearly prove that the suit property is a private trust. The learned counsel for the appellant has relied upon the decisions of the Supreme Court in Smt. Marua Dei Alias Maku and Others Vs. Muralidhar Nanda and Others, and the decision of the Privy Council in the case of Gopal Lal Sett v. Purna Chandra Basak reported in (1922)43 Mad LJ

116 : AIR 1922 PC 253; and Kuldip Chand and Another Vs. Advocate General to Government of Himachal Pradesh and Others, and submitted that having regard to the principles laid down by the Hon'ble Supreme Court in the abovesaid decisions, the Court below ought to have held that the suit schedule trust is a private trust and not a public trust.

6. On the other hand the learned counsel for the respondents-defendants submitted that both the Courts below have rightly held that the schedule properties is a public trust and not a private trust as averred in the plaint and the plaintiff has miserably failed to prove that the schedule property is a private trust. The learned counsel submitted that in view of the judgment of the Supreme Court in the case of Deoki Nandan Vs. Murlidhar, , the test to be applied to find out as to whether an endowment or a trust is a public or private trust is with reference to the beneficiaries and if the beneficiaries are the members of the public and not the members of the family or private persons, the trust would be a public trust and wherefore, the finding arrived at by the Courts below concurrently that the trust or an endowment is a public trust is justified based upon the averment made in the plaint and the oral and documentary evidence on record and wherefore, the appeal is liable to be dismissed by confirming the judgment and decree passed by the Court below. Having regard to the contentions urged, it is clear that the substantial question of law that is framed by this Court on 24-3-1999 to the effect as to whether the trust in question is a private or a public trust, is required to be modified as agreed by the learned counsel for the parties as the question as to whether the trust in question is a private or public would be a question of fact and in the present case both the Courts below have held that the plaintiff has failed, and not proved that the trust in question is a private trust and that it is a public trust and wherefore, the substantial question of law that arise for determination among the parties in this appeal is as follows :--

Whether the finding of the Courts below that the plaintiff has failed to prove that the trust in question is a private trust and that the finding that the trust in question is a public trust is perverse and arbitrary being contrary to the material on record and the principles laid down by the Supreme Court to be applied for consideration as to whether the trust is a public or a private trust and calls for interference in this appeal.

7. I have given anxious consideration to the contentions of the learned counsel for the parties and perused the judgment and decree passed by the Courts below as also the oral and documentary evidence adduced by the parties. It is clear from the judgment and decree passed by the trial Court that the trial Court has negatived the contention of the defendants to the effect that the property had been gifted to Sri Sri. Kottur Swamigalu and Defendant No. 1 is the descendent of the said Swamy and wherefore, the Swamy was in possession of the schedule property in his own right and thereafter, defendants have been in possession of the property in their own right. The trial Court has also negatived the contentions

of the defendants that they have perfected their title by adverse possession. Issue No. 3 has been answered in the negative by holding that the defendants have failed to prove that the suit property were gifted to Kottur Swamy by Shadaksharappa, predecessor of the plaintiff and that the gift is valid and binding on the plaintiff and that the defendants have failed to prove that they became the owners of the suit property by adverse possession by answering issues 3 to 5 in the negative. Further, the trial Court held that the plaintiff has failed to prove that the trust in question or the endowment is a private trust as alleged in the plaint and further held that having regard to the averment made in the plaint and the averments of the witnesses, the endowment or the trust in question is a public trust and wherefore, the provisions of Sections 91 and 92 of CPC would apply and accordingly, dismissed the suit of the plaintiff. It is clear from the perusal of the judgment and decree passed by the First Appellate Court that the defendants gave up their contention and accepted the finding of the trial Court on issues 3 to 5 as it is clear from the judgment passed by the First Appellate Court that the learned counsel for the defendants contended before the First Appellate Court that they do not pursue the contentions taken before the trial Court regarding the gift by Shadaksharappa in favour of Kottur Swamigalu and that the defendants have perfected their title for adverse possession as the said issues have been answered against the defendants by the trial Court. It is clear from the averment made in the plaint that according to the plaintiff the trust in question is a private trust and the defendants who are in possession of the schedule property are in possession of the property as agents of the plaintiff which is managed by the plaintiff and his heirs and wherefore, the plaintiff is entitled to possession of the schedule property. The First Appellate Court has rightly held that the provisions of Sections 91 and 92 CPC would not apply to the facts of the present case as it is clear from the provisions of Section 92 of CPC that Section 92 would apply only in case of alleged breach of any property used for public purposes or charitable or religious nature or where the direction to the Court is deemed necessary for administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree. In the present case, the case of the plaintiff is defendants are in possession of the suit schedule properties as agents of the plaintiff which is a private trust and wherefore, the First Appellate Court has rightly held that the trial Court was not justified in holding that Section 92 CPC was not applicable and the suit was instituted without leave of the Court and wherefore, the only question that remained for consideration by the First Appellate Court having regard to the abovesaid contentions of the parties was as to whether the trust in question is a private or a public trust and the First Appellate Court has held that the plaintiff has failed to prove that the trust in question is a private trust and the material shows that it is a public trust and wherefore when the plaintiff has

failed to prove his title to the property as a trustee of the private trust, he is not entitled to possession of the schedule properties and the First Appellate Court has confirmed the judgment & decree passed by the Trial Court dismissing the suit of the plaintiff.

8. The principles to be applied to determine as to whether the trust or endowment is a public or a private trust has been laid down by the decisions relied upon by the learned counsel appearing for the parties. In the case of *Deoki Nandan Vs. Murlidhar*, , the Hon"ble Supreme Court was considering the question as to whether the Thakurdwara of Sri. Radhakrishnaji in the village of Bhadesia in the District of Sitapur is a private temple or a public one in which all the Hindus are entitled to workshop. After considering the material on record and the decision in that behalf, the Hon"ble Supreme Court comprising of a four judges of Hon"ble Supreme Court has held as follows :-- (Para 7 of AIR)

"When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

In the case of *Smt. Marua Dei Alias Maku and Others Vs. Muralidhar Nanda and Others*, , the Hon"ble Supreme Court while considering the findings given by the Courts below holding that the trust in question was a public trust as considered in the earlier decisions of the Supreme Court regarding the principle to be applied to consider as to whether the trust or an endowment is a private or a public trust, has referred to the decision in *Pratapsinhji N. Desai Vs. Deputy Charity Commissioner, Gujarat and Others*, .

"It would be advantageous to bear in mind the principles /tests laid down by this Court and other High Courts in the matter of finding out whether an institution is a private temple or a public temple. The decisions brought to our notice at the Bar may now be noted. As early as in 1924, the Privy Council in *Pujari Lakshmana Goundan v. Subramanla Ayyar* AIR 1924 PC 44 took the view that even in a case where at the initial state the temple is a private one by reason of the founder holding it out by representing to the Hindu public that the temple was public temple at which all Hindus might workshop, then the inference will be that he had dedicated the temple to the public. This judgment of the Privy Council was noted and cited with approval by this Court in *Pratapsinhji N. Desai*

Vs. Deputy Charity Commissioner, Gujarat and Others, . This Court observed as follows :

"12. We do not think that it would serve any purpose to refer to all the well known decisions except a few. In Pujari Lakshmana Goundan v. Subramania Ayyar AIR 1924 PC 44 the temple was not an ancient one and there was no deed of endowment. The question was whether the temple was a public temple or a private temple, Although the temple was a private temple, the evidence disclosed that the Pujari Lakshmana Goundan, the founder of the temple had held out and represented to the Hindu public in general that the temple was a public temple at which all Hindus might worship. Sir John Edge, in delivering the judgment of the Privy Council held that on that evidence the Judicial Committee had no hesitation in drawing the inference that the founder had dedicated the temple to the public, as it was found that he had held out the temple as a public temple. Another Privy Council decision to which we need refer is that of AIR 1940 7 (Privy Council) where the grant was made to one Daryao Gir and his heirs in perpetuity and the evidence showed that the temple and the properties attached thereto had throughout been treated by the members of the family as their private property appropriating to themselves the rents and profits thereof. Sir George Ranking delivering the judgment of the Privy Council held that the fact that the grant was made to an individual and his heirs in perpetuity was not reconcilable with the view that the grantor was in effect making a wakf for a Hindu religious purpose. That very distinguished Judge referred to the earlier decision in Pujari Lakshmana Goundan ease and observed :"

In para 13 of the above said decision Pratapsinhji N. Desai Vs. Deputy Charity Commissioner, Gujarat and Others, , the decision rendered in Deoki Nandan Vs. Murlidhar, has been considered and the observations culled out above has been culled out by the Supreme Court. The Supreme Court has also referred to the decision in Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others,

"Though most of the present day Hindu public temples have been founded as pub-lie temples, there are instances of private temples becoming public temple in course of time. Some of the private temples have acquired great deal of religious reputation either because of the eminence of its founder or because of other circumstances. They have attracted large number of devotees. Gradually in course of time they have become public temples. Public temples are generally built or raised by the public and the deity installed to enable the members of the public or a section thereof to offer worship. In such a case, the temple would clearly be a public temple. If a temple is proved to have originated as a public temple, nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple. In such cases, the true character of the particular temple is decided on the basis of various circumstances. In those cases, the Courts have to address themselves to various questions such as :

- (1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple?
- (2) Are the members of the public entitled to worship in that temple as of right?
- (3) Are the temple expenses met from the contributions made by the public?
- (4) Whether the Sevas and Utsavas conducted in the temple are those usually conducted in public temples?
- (5) Have the management as well as the Devotees been treating that temple as a public temple?

The Supreme Court in this case by applying the principles laid down and also the factors taken into consideration held that the High Court, was right in holding that the institution in question was a public temple within the meaning of the Act.

In the case of *Gopal Lal Sett v. Purna Chandra Basak* reported in (1922)43 Mad LJ 116 : AIR 1922 PC 253, relied upon by the learned counsel for the plaintiff, has observed as follows :--

"The first question that arises is whether the gift is a gift to the Idols, or whether there was a gift to any other person or persons charged with the maintenance of the Idols. The Will is most obscure, but their Lordships think that there is certainly no direct gift of the whole property to the Idols, nor in the circumstances ought one to be implied. It is consequently necessary to see in what capacity and by virtue of what right the worship of the Idols is to be carried out. The person on whom the duty was cast was undoubtedly Udoy Chand, and the conclusion which their Lordships have reached is, that if, as they think, there is no gift to the Idols, it is only possible to give effect to the provisions of the Will by treating it as conferring the property upon Udoy Chand. The Will is addressed to him; upon him throughout all the burdens of performing different duties are cast, and this necessarily involves the ownership of the property".

In the case of *Kuldip Chand and Another Vs. Advocate General to Government of Himachal Pradesh and Others*, , the Supreme Court has considered the question as to whether the dedication of the property for religious and charitable purpose was a private or public trust and after referring to the earlier decision has observed as follows :--

"49. This Court laid down the following tests as sufficient guidelines to determine on the facts of each case whether an endowment is of a public or private nature.

- (1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;
- (2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance which the evidence shows that there is provision for a scheme to be framed by associating

the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."

9. It is well settled in view of the abovesaid decisions, the Supreme Court has laid down the principles to be applied to find out whether the endowment is a private or a public trust. It is also well settled in view of the decisions of the Supreme Court that the decisions are not to be treated as statutes and has to be applied by reading the same in the context of the factual matrix of the case and it is also well settled that unlike the law in England, a private endowment or a trust in India can be public or private trust and what would be important to consider as to whether the endowment or trust is a private or public trust is; the intention of the person making the endowment; the purpose for which it is made & the beneficiaries of the endowment. The question as to whether the public could enter the premises as a matter of right or require the permission of the user, persons of the family who created the trust and ultimately no universal rule can be laid down to find out as to whether the trust is a public or a private and each case has to be considered having regard to the facts and circumstances. In the present case, it is clear that there is no Idol and there is no temple in the schedule property. It is also not the case of the plaintiff that the dedication has been made in favour of any idol and even according to the plaintiff the Mutt was constructed by Shadakshrappa for the spiritual benefit of the family and to see that during a particular month in the Hindu Calendar Year (Shravana) poor persons coming to the Mutt are fed and dakshina is given and wherefore, the principles laid by the Hon''ble Supreme Court in the abovesaid cases has to be considered and applied to the facts of the present case having regard to the abovesaid facts. Admittedly, there is a document executed by Shadakshappa in favour of his brother's son Mareppa which is marked as Ex. P.1. There is also a document evidencing partition between Mareppa and his brother Pompanna. There is also a reference to the creation of the endowment by Shadaksharappa. It is well settled that the intention of the person creating the endowment can best be ascertained by the contents of the deed and the recitals made therein. Ex. P.1 is dated 4-10-1869. It is clear from the contents of the said document that Shadaksharappa had no male issues, though he had three wives and he had two daughters one daughter Chennamma was aged 2 yrs. and another daughter Sugamma. The contents of the document Ex. P. 1 would clearly show that the

intention of Shadaksharappa to put up a Mutt was that during one month of the Hindu Calendar Year, the persons who come there can be fed and they can be given dakshina and that the property should be utilised for the said purpose. It is clear from the recital in Ex. P.1 that Ex. P.1 is in the nature of document executed in favour of Mareppa, the brother's son of Shadaksharappa, and it is stated therein that a provision has to be made for his daughters by performing their marriage and it is open for Mareppa and his brothers to partition the, property as per the contents of the said document, Further, so far as the endowment in question is concerned, it is stated that he has started religious work of construction of the Mutt in Bandimotu of Bellary and he has to complete construction of the said Mutt and during one month in the Hindu Calendar year, persons who come there should be fed and dakshina should be given and they should be for Sadviniyoga. In the document executed on 24-4-1873 between Mareppa and his brother Pompanna partitioning the property between his brother, there is reference in the endowment created by Shadaksharappa and it is recited in the said document that Shadaksharappa though had three wives had no male issues and he had started the religious work of constructing the mutt in Bandimotu in Bellary and he intended for poor feeding, as stated earlier, and approximately Rs. 200/- annually may be required for meeting the said expenses and wherefore, the brothers thought it fit that the lands as mentioned in the schedule should be assigned for the purpose of carrying out the religious intention of Shadaksharappa. So the income which is derived from the said land could be utilised as per the intention of Shadaksharappa for feeding the people coming to the Mutt for one month and the lands that were assigned for the said purpose were not partitioned between the brothers though other properties were partitioned. It is clear from the averment made in the plaint itself that though it is stated in para 3 of the plaint that the Mutt called Shadaksharappa Mutt or Bandimotu Mutt was started, a private trust was created, beneficiaries under the trust were the poor persons coming from outside and the seniormost member of the plaintiff's family being the trustee. It is further averred in para 5 of the plaint that with the permission of the plaintiffs father Mareppa and the plaintiff, the Mutt premises has been used for many religious and spiritual functions, marriages of poor jangama were performed there, the Ayyacharchar of jangam vatus took place there and once Chara Pattadaka Sammelana was held there and prominent Swamijis and Jagadgurus used to stay in the mutt during the time of their visit to Bellary. Many a time Purana Pravachanas have been held and the mutt was a centre of such innumerable religious, cultural and dharmik activities of the Lingayat community. The plaintiff is examined as PW-1. It is clear from the evidence of the plaintiff that he has spoken to about the execution of Ex. P1 and P2 and the contents of the same and has further, stated that his father Mareppa had appointed Chennabasaiah as agent to manage the affairs of the Mutt and instead of spending Rs. 200/- a year Mareppa and Pompanna agreed and donate the plaint A schedule land of their use. It is stated by PW-1 in his evidence that the Mutt was established and properties were endorsed in its favour by Shadaksharappa for the benefit of Veerasaiva community. Poor and deserving

persons belonging" to the other communities could also make use of the mutt. It is not true to say that the mutt was not constituted for the benefit of their family. It was established for the benefit of all communities but his family was to have control over the suit properties. He was not born when it was constructed. PW-2 in his cross-examination has stated that everybody can go to the mutt to offer puja. Whenever he goes to the mutt he used to offer puja to the gaddige. Bandimotu is the place where carts used to be parked. It is elicited in the cross-examination of PW-3 that it is not true to say that it is tailed as Kotur swami mutt. Veerasaiva people used to come to the mutt for puja purpose. It is a sarvajanika mutt. It is elicited in the cross examination of PW-4 that accounts were maintained and this is a sarvajanika mutt. PW-5 was aged 57 years as on the date of his deposition i.e. on 15-9-1970 and his evidence would only show that he was staying in the mutt when Ujjaini Swamy had come there and mutt arrangement for the said swamiji was made by requesting the family of the plaintiff in the year 1934 and wherefore, it is clear that even according to the averments made in the plaint and the evidence of the plaintiff as PW-1 and his witnesses PWs 2 to 4 that the beneficiaries of the mutt were the persons belonging to the lingayath community and the beneficiaries were not the members of the family of the plaintiff. The learned counsel appearing for the appellant plaintiff submitted that the control of the mutt is always been with the plaintiffs family. Apart from the fact that there is Samadhi of Kottur Swamigalu, the Samadhi of other persons is of the ancestors of the plaintiff and no pooja as such is performed in the mutt and people were fed during one month of the Hindu calendar year and functions were being held only with the permission of the members of the plaintiffs family and the material on record also shows that the mutt was closed after the death of Hanumurthy and wherefore, it cannot be said that people could visit the mutt as of right and it was not a Sarvajanika mutt. The said contentions overlooks the evidence of the plaintiff himself as PW-1 and his witnesses PWs 2 to 4 who have clearly stated that it is sarvajanika mutt and it was established for the benefit of lingayath community and the evidence of PW-1 itself would show as stated above, that the mutt was established and properties were endorsed in his favour for sadvinlyoga for the benefit, of the Veerasaiva community. The averments made in the plaint would also show the same thing. The mere fact that there is no idol in the mutt and that the samadhis in the mutt were all of the ancestors of the plaintiff except the Samadhi of Kotur Swamigalu would not by itself make the trust a private trust. PW-1 has clearly stated in his evidence that the intention of creation of the endowment and assigning the land was for the benefit of the persons belonging to the Lingayath community and that the intention was to manage the trust by the family. He has clearly stated that without looking to the document that the trust is a family trust and the document referred to above as per Ex. P1 and 2 would also clearly show that Shadaksharappa though had three wives had no male issues and he had only two daughters. When Ex. P.1 was executed on 4-10-1869 and his intention was constructing the mutt was in discharge of his religious duty to feed the persons who come to the Mutt during the Samvatsara

of Hindu Calendar year and to give them dakshina and it is clearly stated in the deed that Mareppa and his brothers should perform the marriage of the daughters by making necessary provisions in the document for the said purpose. So far as the construction of the Mutt is concerned, there is a clear direction that the religious work of construction of the Mutt for feeding the needy during a particular month in the Samvatsara should be done and the same feeding should also be done during the lifetime of Mareppa and this intention of Shadaksharappa in creating the endowment for the benefit of persons who come there during the particular Samvatsara of the Hindu Calendar year was recognised and honoured and nourished by Mareppa and his brother and it is clear from the document Ex. P2 executed on 24-4-1873 that having regard to the religious intention of Shadaksharappa, mutt building should be completed and further endorsed the land mentioned in the schedule so that the income derived from the said land would be made use of for meeting the expenses of feeding the persons who come to the mutt and the material on record shows that the beneficiaries of the mutt were the persons belonging to the Lingayath community and the members of the public and not to the members of the family of the plaintiff. However, what is clear from the contents of Ex. P1 and P2 as also the evidence of PW-1 and the material on record is that the management of the trust vest with the family of the plaintiffs i.e. Gadige family and that they have been managing the said mutt and wherefore, having regard to the abovesaid material on record, it is clear that the concurrent findings arrived at by the Courts below that the trust in question is not a private trust and that the plaintiff has failed to prove that the trust in question is a private trust is justified having regard to the material on record and on application of the principles laid down by the Supreme Court in the abovesaid decisions and the said decisions, the findings cannot be said to be perverse or arbitrary. It is well settled that once the plaintiff has come to the Court by filing a suit seeking for declaration that the schedule property is a private trust and seeking possession from the defendants, it is for the plaintiff to prove that the schedule property is a private trust and if he fails to prove the same notwithstanding that the defendants may not have any right to continue in the property having regard to the findings given by the trial Court which has become final referred to above, the plaintiff cannot succeed in the suit and wherefore, it is clear that once it is held that the plaintiff has failed to prove that the suit trust or endowment is a private trust, he would not be entitled for possession as sought for in the suit. On the basis of the finding that endowment is a public trust, the Courts below were justified in dismissing the suit of the plaintiff. However, it is clear that the Courts below have pointed out that it is always open for the plaintiff to work out his rights having regard to the fact that it is a public trust and no relief could be granted in the present suit. Accordingly, I answer the substantial question of law against the appellant in the negative and pass the following order :--

The appeal is dismissed. However, having regard to the facts and circumstances, the parties are directed to pay and bear their own costs in the appeal.