
(1998) 09 CAL CK 0044
In the Calcutta High Court
Case No : APD No. 66 of 1997 and etc.

Samit Pani Brahmachary and Others	Vs	APPELLANT
Mayapur Chaitanya Math and Others		RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 92
Constitution of India, 1950 — Article 25

Citation : AIR 1999 Cal 132 : 2 CWN 64

Hon'ble Judges : Sujit Barman Roy, J; Gitesh Ranjan Bhattacharjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gitesh Ranjan Bhattacharjee, J.—This appeal is directed against the judgment and decree dated the 10th December, 1996 passed by a learned Judge of this Court in Extraordinary Suit No, 60 of 1987. Some of the defendants of the suit, namely, the defendant Nos. 3(a), 3(b), 4 and 6 are the appellants in this appeal.

2. The respondent No. 1, Mayapur Sree Chaitanya Math was the plaintiff No. 1 in the suit. That is a society registered on 16th May, 1978 under the West Bengal Societies Registration Act, 1961. The other plaintiffs of the suit were the office bearers and members of the said society and they also claimed to be the worshippers of the deities Sri Sri Guru Gouranga Gandharbika Giridhari Jew installed at Sree Chaitanya Math at Mayapur and also at various other places and some of them are disciples of late Bhakti Siddhanta Saraswati, the founder of Sree Chaitanya Math and its various branches. The plaintiffs filed the suit for declaration that the plaintiffs Nos. 2 to 11 and the defendants Nos. 7 to 11 were the only members of the lawfully constituted governing body of the plaintiff No. 1 and as such were solely and exclusively entitled to remain in control, possession, custody, management and administration of the said society, all its temples, maths, lands, buildings and other properties and affairs including Sree Chaitanya Research Institute at 70B, Rash Behari Avenue, Calcutta. The plaintiffs also

prayed for further declaration in the suit that the defendants Nos. 1 to 6 had no right, title or interest in respect of the plaintiff No. 1 or its temples, maths, lands and buildings or in the said Sree Chaitanya Research Institute and had no right to manage, administer, control or possess the same. The plaintiffs also prayed for a permanent injunction restraining the defendant Nos. 1 to 6 from interfering with the rights, powers and functions of the governing body of the plaintiff No. 1 in connection with the management, control etc. of the plaintiff No. 1 and its movable and immovable properties and of the said Sree Chaitanya Research Institute. The plaintiffs further prayed in the suit for a declarationand that became the main battle ground of fight between the contesting parties in the suit that the two deeds of appointment dated the 7th July, 1976 allegedly executed by Bhakti Bilash Tirtha Maharaj who was in control of the Sree Chaitanya Math at Mayapur, other Gaudiya Maths and Sree Chaitanya Research Institute till his death, were forged deeds and void, inoperative, ineffective and not binding on the plaintiffs including the Mayapur Sree Chitanya Math and Sree Chaitanya Research Institute. The suit was hotly contested by the contesting defendants.

3. The learned trial Judge in his impugned judgment held that both the said deeds of settlements dated the 7th July, 1976 (Exbs. B + C) were forged and fabricated and were also inoperative. While dealing with the issue No. 9 relating to the question as to what relief the plaintiffs were entitled to the learned trial Judge recorded that Mr. Bachawat (the learned Advocate for the plaintiffs) while concluding his argument submitted that as the plaintiffs' main grievance was in respect of the forgery and fabrication as alleged in the plaint, he was not pressing for any decree save in terms of prayer (f) for cancellation of the alleged deeds of appointment and for costs and other reliefs as prayed for in prayers (k) and (l) of the plaint. It may be noted here that the prayer (k) was for costs and prayer (l) was for further or other reliefs. The learned Judge in disposing of the suit by his impugned judgment declared that the deeds of appointment dated the 7th July, 1976 (Exbs. B and C) allegedly executed by Bhakti Bilash Tirtha Maharaj were forged and fabricated documents and were void, inoperative, ineffective and not binding upon the plaintiffs including Mayapur Chaitanya Math and the Sree Chaitanya Research Institute. The learned trial Judge also permanently restrained the defendants from interfering with the affairs of Mayapur Sree Chaitanya Math as also Sree Chaitanya Research Institute on the basis of the said deeds of appointment. He however directed that there would be no order as to costs. The learned trial Judge further directed status quo in respect of the administration, management and control of the two institutions Mayapur Chaitanya Math and Sree Chaitanya Research Institute which was a part of the former like Gaudiya Math, until a board of management was formed in accordance with the will of Prabhu Pad Bhakti Saraswati dated the 18th May, 1923 read with the resolution passed by his disciples on 14th April, 1978 (Exb. F/3). However the learned Judge appointed Sri Anil Kr. Sen, a retired Chief Justice of this Court as special officer with peremptory power to call a meeting of

the surviving Sanyasi" s disciples of Prabhupad Bhakti Siddhanta Saraswati as also the Sanyasi disciples of Bhakti Bilash Tirtha Maharaj, etc. to form a governing body to act as joint trustees for running the administration, management and control of the Maths and temples, etc.

4. It may be mentioned here that the suit was originally filed by the plaintiffs in this High Court on 22-12-78 which was registered as suit No. 939 of 1978. In connection with that suit there was an appeal before a Division Bench of this Court against an order dated 11-12-79 of the learned trial Judge refusing to revoke the leave under Clause 12 of the Letters Patent and also u/s 92, C.P.C. The Division Bench in that appeal set aside the order of the learned trial Judge and also revoked the leave under Clause 12 of the Letters Patent and u/s 92, C.P.C. and directed for returning the plaint to the Advocate-on-record of the plaintiffs for presentation before proper Court. That decision of the Division Bench in Tridandeeswami Bhakti Kusum Sraman Maharaj and Others Vs. Mayapore Sree Chaitanya Math and Others, . In the said decision the Division Bench made certain observations which it may be necessary for us to consider in this appeal in connection with the question relating to the maintainability of the suit. The observations are quoted below :--

" 16. In the instant case, the impugned deeds of appointment purport to affect and/or interfere with the alleged title of the plaintiff No. 1 Mayapur Sree Chaitanya Math to the temples, maths and buildings including the said premises No. 70B, Rash Behari Avenue, Calcutta and also the alleged right of the members of the governing body of the plaintiff No. 1 relating to the management, control, possession and administration, thereof, as claimed in the plaint. Unless, therefore, the plaintiffs are able to prove the title of the plaintiff No. 1 to the disputed properties and the right of the members of the governing body of the plaintiff No. 1 to the management, control, possession, custody and administration of the disputed properties the plaintiffs will not be entitled to claim the cancellation or setting aside the impugned deeds. It has been already noticed that in one of the impugned deeds absolute title to premises No. 70B, Rash Behari Avenue, Calcutta known as Sree Chaitanya Research Institute has been claimed by the settler thereof which the plaintiffs have denied. The plaintiffs have claimed title of the plaintiff No. 1 to the said premises as also to the other disputed properties, namely, temples, maths, buildings etc. There can, therefore, be no doubt that the Court will have to adjudicate on the question of title, possession etc. in respect of the disputed properties. The success of the plaintiffs in getting the impugned deeds set aside will depend upon their proving title of the plaintiff No. 1 to the disputed properties and the right of its governing body to manage, control and possess the same. Indeed, if there had been no averment of title of the plaintiff No. 1 to the disputed properties or of the right of management, possession, control etc. of the members of its governing body, the plaintiffs would not have any locus standi to claim the setting aside of the impugned deeds. In the circumstances, it is difficult for us to hold that the primary object of the suit is the setting aside of the impugned deeds of

appointment, and that the suit is not a suit for land or other immovable property. Accordingly, disagreeing with the learned Judge, we hold that the suit is a suit for land and all the properties being situated outside the local limits of the ordinary original jurisdiction of this Court, this Court has no jurisdiction to try the suit."

After the plaint of the said suit was returned for presentation before the proper Court the suit was filed in the Court of a subordinate Judge at Alipore where it was registered as T.S. 60 of 1983 and subsequently it was transferred to the High Court where it was registered as extraordinary suit No. 60 of 1987 and was tried and disposed of by the judgment and decree impugned in this appeal.

5. In the present appeal we are called upon to decide whether the learned trial Judge was justified in passing the impugned judgment and decree and whether any interference with the same is warranted in this appeal. Here it may be necessary to take a look at certain broad features of the case relating to its factual aspect. One Kedar Nath Dutta who was a Deputy Magistrate claimed to have discovered the birth site of Sree Chaitanya Mahaprabhu at Mayapur in the district of Nadia in 1892. He then formed an association Sree Nabadeep Dham Pracharani Sabha and became its Secretary. He purchased land at Mayapur, constructed hut, installed deity Sree Gour Bishnu Priya in 1893 and continued the seba puja of that deity till he died on 23rd June, 1914. By that time he came to be known as Bhakti Binode Thakur. His son Bimala Prosad Dutta who later came to be known as Srila Bhakti Siddhanta Saraswati assisted his father and also himself took up the task after the demise of his father. He took Sanyas (Ascetic life) in 1918 and established seba puja of the deities Sree Sree Guru Gouranga Gondharbika Giridhari Jew. It is he who established Sree Chaitanya Math at Mayapur. One Kunja Behari Das Adhikary Bidya Bhusan who later came to be known as Bhakti Bilash Tirtha was a disciple of said Srila Bhakti Siddhanta Saraswati. In 1919 said Kunja Behari rented a house at 1, Ultadanga Junction Road, Calcutta in his own name and established his Guru Bhakti Siddhanta Saraswati. That was the first Gaudiya Math. During the lifetime of Bhakti Siddhanta Saraswati as many as 64 maths were established in India and abroad between 1919 and 1936.

6. Although Bhakti Siddhanta Saraswati died on 1st January, 1937, he executed his last Will on 18-5-1923 (Exb. 19) whereby he dedicated all his existing and future properties to Sree Sree Guru Gouranga Gondharbika Giridhari Jew installed at Sree Chaitanya Math, Mayapur and appointed his three disciples as executors of the said Will, namely, (1) Paramananda Brahmachari (2) Kunja Behari Das Adhikari (later Bhakti Bilash Tirtha Maharaj) and (3) Ananta Basudev Brahmachari. It was provided in the will that "if none of the executors takes out the probate and if all of them die then he who will be appointed shebait or manager of my said Math by the consent of the majority of the Sishyas (disciples) Meeting together shall be competent to preserve and look after as the shebait, the said Math and the properties (to be) left by me according to the aforesaid provisions but if that shebait be (found) unfit on any ground my

Sishyas shall be competent to discharge him and appoint another shebait in the manner above." It is the case of the plaintiffs that on the day before his death, i.e., on 31st December, 1936 Prabhupad Srila Bhakti Siddhanta Saraswati Thakur expressed his desire that a governing body consisting of 10 to 12 members from amongst his disciples was to be formed for management of mission work of the Gaudiya Math. Soon after the death of Srila Bhakti Siddhanta Saraswati Thakur, in pursuance of his said desire, a governing body consisting of 12 of his disciples was formed as an unincorporated body called Gaudiya Math on 10th January, 1937 and said Kunja Behari Das Adhikari was elected and/or appointed as the general secretary of the said Gaudiya Math. Thereafter between March and June 1937, eight out of the said twelve members of the, said governing body and some other persons separated themselves from the others and formed a body under the name of Gaudiya Mission. After the formation of the Gaudiya Mission the governing body thereof including Ananta Basudev asked Sri Kunja Behari Das Adhikari for accounts, of all Gaudiya Maths but Kunja Behari refused to comply. Thereafter a misc. case was filed in June 1937 being misc. case No. 39 of 1937 u/s 3 of the Charitable and Religious Trusts Act (Act XIV of 1920) in the Krishnanagar District Court against the said Kunja Behari. Kunja Behari appeared in that case and raised objection that the said Act of 1920 was not applicable to the case, as that did not involve any public trust. The District Judge in the said misc. case directed, as provided in the said Act, that Kunja Behari should within three months bring a suit for obtaining a declaration that the "Trust" in question known to and called by the public by the name of Gaudiya Math alias Gaudiya Mission was not a trust to which the said Act of 1920 would apply.

7. Pursuant to that order of the District Judge Kunja Behari brought title suit No. 28 of 1937 in the Court of the Subordinate Judge of Nadia. That suit was disposed of by the Subordinate Judge of Nadia by his judgment dated 23-5-1939. It was inter alia held in that judgment that the Gaudiya Math/Mission was a public trust and the dedication had been made for public and charitable purposes and thereby a public charitable and religious endowment/trust had been created. It was further held that the trust properties consisted of the properties belonging to the gaudiya Math/Mission of which the Chaitanya Math was the original Math. It was also held in that judgment, as it appears from the copy of the judgment, that the beneficiaries of the trust were that section of the public which professed Vaishnavism and followed Baishbab religion (including the disciples of Prabhupad, that is, Srila Bhakti Siddhanta Saraswati Thakur). In March, 1940 the said Gaudiya Mission was registered under the Societies Registration Act and thereafter the said Kunja Behari Das Adhikari severed his connection with the said Gaudiya Mission. Probate of the will of Bhakti Siddhanta Saraswati was granted by this Court on 9-4-1940 (Exb. 19) in favour of the three executors, namely, Kunja Behari Das Adhikari, Paramananda Brahmachari and also Ananta Basudev Brahmachari. It may be mentioned here that Ananta Basudev Brahmachari was the President and Acharya of the said Gaudiya Mission. As an executor of the said probated will he however refuse to place all

the properties in the possession of the said two executors jointly with him as an executor. Consequently, on or about 2nd December, 1940 the said two executors Paramananda Brahmachari and Kunja Behari Das Adhikari instituted a suit under Order 1, Rule 8, C.P.C. being suit No. 2159 of 1940 in this Court claiming various reliefs against said Ananta Basudev Brahmachari and others. The said suit No. 2159 of 1940 was however disposed of by a consent decree dated the 17th February, 1948 (Exb. A). The terms of settlement on the basis of which the said compromise decree was passed provided that the properties described in Part I of the schedule to the said terms of settlement were the absolute debuttar properties belonging to the deities Sree Sree Guru Gouranga Gondharbika and Giridhari Jew founded by late Prabhupad Srila Bhakti Siddhanta Saraswati Thakur. It was also stipulated inter alia that the plaintiffs, namely, Paramananda and Kunja Behari as shebaites of the said deities would be the managers of the said debuttar properties and custodians of the deities and their duplicate images installed in the various branches mentioned in Part I of the said schedule. It was declared and decreed that the religious institution organised by the said Prabhupad developed into the religious foundation known as Sree Chaitanya Math and also as Gaudiya Math or Gaudiya Mission which body had since been registered under the Indian Societies Registration Act, 1860 as Gaudiya Mission. It was also declared and decreed by that compromise decree that the maths, temples and properties described in Part II of the schedule belonged absolutely to the defendant Gaudiya Mission (Registered). It is thus seen that by that compromise decree the properties of the Sree Chaitanya Math and its off-shoots Gaudiya Math and Gaudiya Mission were divided into two allotments included in Part I and Part II and the properties in Part I were declared to be the absolute debuttar properties of the said deities and were allotted to the management and control of Paramananda and Kunja Behari who were shebaites. The properties in Part II were left to the control and management of Gaudiya Mission of which Ananta Basudev was the President who was also one of the three executors of the will of Srila Bhakti Siddhanta Saraswati. The suit out of which the present appeal arises concerns matters alleged to be flowing from the allotment and entrustment made in favour of Paramananda and Kunja Behari in respect of Part I of the schedule of the terms of the settlement and this suit has got nothing to do with Part II of the said terms of settlement.

8. It is not in dispute that in course of time a Gaudiya Math, branch of Sree Chaitanya Math, was shifted to premises No. 113, Rakhal Das Auddy Road, Chetla, Calcutta which was donated by one Srimati Subarnamayee Dasi. At about the same time, in March 1958 a plot of land being premises No. 70B, Rash Behari Avenue, Calcutta-26 was also acquired and an institution was established thereby the name of Sree Chaitanya Research Institute which was inaugurated on the 29th June, 1964 by Dr. Sarbapalli Radhakrishnan, the then President of India. It may also be noted here that earlier sometime in 1959 Dr. Radhakrishnan who was the Vice-President of India at that time laid the foundation of the said institution. Bhakti Bilash Tirtha Maharaj (Kunja Behari) who, till his death, was in

control and management of Sree Chaitanya Math at Mayapur and also its various branches Gaudiya Maths and Sree Chaitanya Research Institute expired on 10th September, 1976. Paramananda Brahmachari, it may be noted here, died earlier. It is the case of the appellants-defendants that Tirtha Maharaj executed two deeds of appointment (Exbs. B & C) on the 7th July, 1976 making provisions for appointment of shebait and management of properties of Sree Chaitanya Math, Mayapur and other Gaudiya Maths describing them as the absolute debuttar properties of the deities Sree Guru Gouranga Gandharbika Giridhari Jew and also in respect of other properties, such as, Sree Chaitanya Research Institute at 70B, Rash Behari Avenue, Calcutta and properties at Guntur Town and at Kulingram (in the district of Burdwan). The plaintiffs have challenged the said two deeds of appointment on the dual grounds that such deeds were forged and fabricated documents, not executed by Tirtha Maharaj and also that Tirtha Maharaj did not have the power or authority to execute such deeds making appointment of shebait. They also prayed for, as we have seen, certain other reliefs in the suit and we have seen how the suit was decreed by the trial Court after trial.

9. Exb. C is purportedly a deed of appointment alleged to have been executed by Bhakti Bilash Tirtha on 7-7-1976. This relates to Sree Chaitanya Math at Mayapur and its branch maths at different places. It is recited in that deed inter alia that after the demise of Paramananda Bidyaratna, Bhakti Bilash Tirtha has been acting as the sole shebait and performing the seba puja of the deities Sree Sree Guru Gouranga Gandharbika Girdhari Jew located at Sree Chaitanya Math at Mayapur and duplicates of the said deities located at all branch maths of the said Sree Chaitanya Math situated at different parts of India. It is also stated in the said deed of appointment that due to his failing health and old age he (Bhakti Bilash Tirtha) desires to constitute and appoint the following persons, namely, Sri Bhakti Kusum Sraman Maharaj, Bhakti Baivab Gobinda Maharaj, Sambidananda Das, Sachhidananda Brahmachari (all disciples of Bhakti Siddhanta Saraswati Maharaj) and Bhakti Bikash Sajjan Maharaj, Bhakti Pragya Jyoti Maharaj, Sri Kula Sekhar Brahmachari and Bhakti Prakash Hrishikesh Maharaj (all his own disciples) as shebait of the said deities to perform the seba puja of the said deities in accordance with the principles laid down by Srila Bhakti Siddhanta Saraswati Maharaj, since deceased. Accordingly in that deed it is purportedly recorded by Srila Bhakti Bilash Tirtha that "I do hereby constitute, nominate and appoint" the above named persons as shebait of the said deities located at Sree Chaitanya Math, Mayapur of which the duplicate images are located in different branch maths of the said Sree Chaitanya Math situated in different parts of India. It is also stated in that deed that the said shebait shall carry on and perform the seba puja of the said deities. It is further provided in the said deed that in case of death of one or more of the said shebait the survivors shall act as shebait and the said shebait shall constitute the board of shebait which shall consist of not less than three and not more than eight persons as shebait. It is also provided in the said deed that Satchidananda Brahmachari, Jyoti Maharaj and Sajjan Maharaj shall act as Secretaries to the said board of shebait and the said

Secretaries shall manage the properties of the said deities, perform the daily and periodical seba puja and festivals of the said deities and carry on the administration of the debuttar estate subject to the general control and superintendence of the board of shebaites and that the said Secretaries shall act jointly but in case of dispute between them the decision of the majority shall prevail and be binding. However Satchidananda Brahmachari was specifically empowered and authorised by that deed to nominate, constitute and appoint future shebaites of the said deities and failing him Sajjan Maharaj would be entitled to appoint future shebaites and failing that Jyoti Maharaj would exercise similar power to appoint future shebaites. It may be noted here that Satchidananda Brahmachari, since deceased, the original defendant No. 3 in the suit was the son of Bhakti Bilash Tirtha and he was a solicitor of the Calcutta High Court. He was a family man and it seems he adopted Brahmachari as his surname. The substituted defendants 3(a), 3(b) and 3(c) are his sons of whom the defendant No. 3(a) Sri Samitpani Brahmachari, the appellant No. 1 is also an Advocate of this High Court. Sambindhananda Das, since deceased, the original defendant No. 2 in the suit was the brother of Bhakti Bilash Tirtha Maharaj and he was also an Advocate of this High Court.

10. The other deed of appointment Exb. B was also purportedly executed by Bhakti Bilash Tirtha on the same day, namely, the 7th July, 1976. The said deed relates to Sree Chaitanya Research Institute at 70B, Rash Behari Avenue, Calcutta and also properties and deities at Guntur (Andhra Pradesh) and Kulingram in the district of Burdwan. In that deed also it is purportedly recorded by Bhakti Bilash Tirtha that because of his old age and failing health he intended to appoint shebaites of all the deities in those places for seva puja and also for managing all debuttar properties of the said deities and accordingly by that deed, he purportedly constituted, nominated and appointed Sri Bhakti Kusum Sraman Maharaj, Bhakti Baivab Gobinda Maharaj, Sri Sarbidhananda Das, Satchidananda Brahmachari and Sri Bhakti Bilash Sajjan Maharaj as shebaites of the concerned deities. The deed however provided that Satchidananda Brahmachari and Bhakti Bilash Sajjan Maharaj would act as Secretaries to the said board of shebaites and the said Secretaries would perform the daily seba puja and periodical festivals of the said deities and manage the said Sree Chitanya Research Institute and carry on administration of all Debuttar estate subject to the general control and superintendence of the board of Shebaites. The deed however provided that in case of dispute between them the decision of Satchidananda Brahmachari would be Final. Satchidananda Brahmachari was also empowered and authorised by that deed to nominate, constitute and appoint future shebaites of the deities and failing him Bhakti Bikash Sajjan Maharaj was empowered in that respect. In that deed it had been inter alia purportedly recited thus by Bhakti Bilash Tirtha :

"..... Whereas after retiring from Government service in 19481 became a Vaisnava Sanyasi and whereas the premises No. 70B, Rash Behari Avenue, Calcutta belongs to me absolutely and whereas I have established and founded the deities Sree Guru Sree Gour Sunder Sree Radha Dayita Kunja Behari Jew at

the said premises No. 70B, Rash Behari Avenue, Calcutta sometime in June 1964 and whereas I have been acting as the sole shebait of the said deities since their establishment and performing their daily seba puja and periodical festivals in my own way and whereas I have dedicated the said premises No. 70B, Rash Behari Avenue, Calcutta to the said deities Sree Guru Sree Gour Sunder Sree Radha Dayita Kunja Behari Jew absolutely and the said property has been treated as the absolute Pebuttor property since the establishment of the said deities and whereas the said premises No. 70B, Rash Behari Avenue, Calcutta is commonly known as Sree Chaitanya Research Institute and whereas I am also the absolute owner of the land and building situate at Guntur town Old Ward 8, New Ward 13 Town Survey No. 785 and whereas I have also established and founded deities at my said Guntur property and whereas I have been also acting as the shebait of the properties situate at Kulingram in the district of Burdwan commonly known as Haridas Thakur Adkara and whereas"

The above recitals seemingly contain inconsistent and contradictory propositions. Bhakti Bilash Tirtha Maharaj is reciting in one breath that premises No. 70B, Rash Behari Avenue, Calcutta belongs to him absolutely and in the next breath he is saying that he has dedicated absolutely the premises No. 70B, Rash Behari Avenue to the deities installed by him therein and the said property has been treated as the absolute debutter property since the establishment of the said deities. Now if 70B, Rash Behari Avenue, Calcutta, that is, Sree Chitanya Research Institute is an absolute debuttar property as recited in the said deed of appointment the same could not, on the date of execution of the said deed of appointment, yet belong to Bhakti Bilash Tirtha Maharaj absolutely as recited in the deed. If the property had been absolutely dedicated and it had become absolute debutter property the same could not yet continue to belong thereafter to the person who made the absolute dedication, because on being dedicated absolutely as debuttar property the property belongs to the deities in whose favour the dedication has been made and thereafter the person dedicating the same cannot claim yet to be the absolute owner of the same. It cannot be imagined that a man of the statute of Bhakti Bilash Tirtha Maharaj would even after making absolute dedication of properties as debutter properties would yet be claiming the same to belong to him absolutely (in the present tense) as has been done in the said deed of appointment which contradiction is apt legitimately to raise a question as to whether the said deed was really prepared at the instance of Bhakti Bilash Tirtha Maharaj and executed by him. It has also been contended on behalf of the respondents that in both the deeds of appointment Exbs. B and C Satchidananda Brahmachari, the son of Bhakti Bilash Tirtha Maharaj has been given the absolute authority to appoint the future shebait which is an attempt to privatise the debutter properties. This is indeed an important aspect which deserves attention for consideration. It is true that in both the deeds a board of shebait has been constituted, but the actual management was left to a few of them including Satchidananda Brahmachari and in the deed relating to Sree Chaitanya Research Institute, Exb. C. Satchidananda

Brahmachari was given the final authority to take decision in case of any dispute between them.

11. Now let us have a look at the two deeds of appointment, both dated the 7th July, 1976 Exbs. B and C purportedly executed by Bhakti Bilash Tirtha Maharaj which are challenged by the plaintiffs as forged and fabricated documents manufactured by Satchidananda Brahmachari in collusion with others after the death of Bhakti Bilash Tirtha Maharaj by using blank sheets containing signature of Bhakti Bilash Tirtha made long back and kept in the Sree Chaitanya Research Institute for purpose of use in connection with matters of the institute and maths. The deed Exb. C consists of six pages including the front three pages of stamp papers. The signature of Bhakti Bilash Tirtha Maharaj is appearing above the middle position of the last page. The margin left blank at top of pages four and five is visibly much wider than the margin left blank at the top of page six, the last page which bears the signature of Bhakti Bilash Tirtha somewhere above the middle position of that page. The difference in the width of the top margins in these pages, namely, pages four and five on the one hand and page six on the other indicates that the typist typing the document had to adjust the contents in such a manner that the typing is concluded above the signature which was already there on a blank sheet used as the last page of the document. This is also the position in respect of the other deed of appointment Exb. B where also the typist had to adjust the contents by keeping smaller top margin at the last page, being the page No. 5, compared to the margin kept at page 4. That the typist was not a novice will however be evident from the fact that except at the last page he could maintain parity in respect of the other comparable pages in the matter of keeping top margin, namely, at pages 4 and 5 and pages 2 and 3 of the deed Exb. C and also pages 2 and 3 of the deed Exb. B. The learned trial Judge has also made comments about the difference of age between the dummy papers and the stamp papers used in preparing the respective deeds and also about the pin marks at the top left hand corner of the concerned deeds which would indicate that the dummy papers were chosen from old bulks compared to the age of the newly purchased stamp papers, so as to fit in with the age of the blank signed sheets. In our opinion also these factors definitely deserve consideration in the context of determining the question whether the deeds were manufactured by using the blank sheets containing signature of Bhakti Bilash Tirtha Maharaj. It is also the case of the plaintiffs that Bhakti Bilash Tirtha Maharaj was ill for a very long time and was suffering from parkinsons disease and other ailments as a result of which on the purported date of execution of the deeds he was not in a position to sign. It is the case of the defendants on the other hand that both the deeds Exbs. B and C were executed by Bhakti Bilash Tirtha Maharaj on the same date and at the same sitting and he was physically and mentally fit to execute the deeds. The learned trial Judge has also noticed difference between the two signatures of Bhakti Bilash Tirtha Maharaj appearing in the deeds Exbs. B and C in respect of visible tremors. We cannot say that the learned trial Judge was unjustified in his observation in this respect. It has also

to be noticed that while the signature of Bhakti Bilash Tirtha on Exb. C is deeper in its black complexion, the signature in the deed Exb. B is rather different in its complexion, being slightly bluish. This difference between the colour shades of the two signatures appearing in the two deeds also indicates that the two signatures were not made on the same day at the same sitting with the same pen. It has also to be noticed that in both the deeds one Mohini Mohan Das and one Ajit Kr. Banerjee signed as witnesses. While Mohini Mohan Das was examined on behalf of the defendants in the suit Ajit Kr. Banerjee however had not been examined. He was a Court clerk of the solicitor Satchidananda Brahmachari. It is also to be noticed that while in the deed Exb. B Ajit Kr. Banerjee has signed and recorded his address as 1B, Old Post Office Street, Calcutta, in the deed, Exb. C he has recorded his address as 4/ 1, Dharani Dhar Mallick Lane, Howrah-1. The fact that Ajit Kr. Banerjee has given two different addresses in the two deeds although allegedly he signed both the deeds on the same date and at the same sitting also indicates that the two deeds were not prepared and signed in the same sitting else Ajit Kr. Banerjee would not have given two different addresses. That apart there is also a difference in the spelling of "Kumar" of Ajit Kr. Banerjee as recorded in the two deeds. In one deed it has been signed as Ajit Kumar whereas in the other deed it has been signed as Ajit Kumer. That Ajit Kumar Banerjee is giving two different spellings in his signature in the two deeds and also two different addresses indicates that he did not sign on the same date and at the same sitting else there would not have been such difference in respect of these matters. The same rather indicates that he signed and wrote his address on the two deeds on different occasions which is not consistent with the defence case of genuine execution of the two deeds.

12. It is in evidence that on 13th July, 1976 Bhakti Bilash Tirtha Maharaj left Calcutta and went to Kavur Math in South India and there he fell ill and he came back to Calcutta on 21st July, 1976. According to the defence case the stamp papers for the deed Exb. B were purchased on 2-7-76 and stamp papers for the deed Exb. C were purchased on 5-7-76. The defendants have led evidence to the effect that Bhakti Bilash Tirtha Maharaj gave instruction on the same day for preparing the said deeds before the stamp papers were purchased. If that be so, it is not understood why the stamp papers of the two deeds were purchased on two different dates and not on the same date. It is rather the case of the plaintiffs that the stamp papers were purchased much later and by manipulation it has been shown that the stamp papers were purchased on 2-7-76 and 5-7-76 respectively. It is also pointed out that the date of purchase of the stamp papers in respect of the deed Exb. C as has been recorded on the back side of the first stamp paper contains visible interpolation in respect of the month of purchase so as to make it appear as 7 (that is, July) whereas the look of the interpolation indicates that the month was perhaps 9 (that is, September). There is no doubt that some interpolation is appearing in that figure relating to the month of purchase. It is also to be noticed that while the stamp papers used in the deed Exb. B were purchased in the name of S. Brahmachari (that is, Satchidananda

Brahmachari) purportedly on 2-7-76 the stamp papers used for the deed Exb. C were purchased in the name of Sri Bhakti Bilash Tirtha Maharaj purportedly on 5th day of the month. Expectingly both the stamp papers should have been purchased in the name of Tirtha Maharaj, instead of the first one being purchased in the name of Satchidananda Brahmachari. It is quite surprising that the two sets of stamp papers were purchased not in the name of the same person, namely, Bhakti Bilash Tirtha Maharaj, but were purchased one set in the name of Satchidananda Brahmachari and the other in the name of Bhakti Bilash Tirtha Maharaj. This prevarication in the matter of using the name in connection with the purchase of the stamp papers is also not indicative of a straightforward approach in the matter on the part of the persons preparing the deeds although allegedly the instruction to prepare two sets of deeds was given on the same date. The defendants also obtained a certificate from the stamp vendor relating to the date of purchase of the stamps, but the plaintiffs got the original sale register of the non-judicial stamps marked as Exb. N. On a visual scrutiny of the relevant entries in the sale register of stamps also the things do not appear to be straightforward. The serial number assigned to the stamps sold on 2-7-76 to Satchidananda Brahmachari is 15523 whereas the serial number assigned to the stamps sold purportedly on 5-7-76 to Sri Bhakti Bilash Tirtha is 16694. The sale register of stamps Exb. N. contains entries to show that stamps under serial Nos. 15522 and 15523 were entered in the name of Satchidananda Brahmachari in between the serial Nos. 15504 and 15524 which stamps were however sold to some other persons. It is not understood why the two sets of stamps under serial Nos. 15522 and 15523 were sold on the same day to S. Brahmachari as shown in the said register of stamps. The said register also contains entries relating to 16693 and 16694 in the name of Bhakti Bilash Tirtha Maharaj in between the entries under serial Nos. 16690 and 16695. The entries relating to 16693 and 16694 in the said register also seem to have been squeezed between the other numbers above and below the same. Then again from the said register it appears that stamp Nos. 16695, 16794, 16796 were also sold to Bhakti Bilash Tirtha as is indicated from the word "do" appearing against those serial numbers immediately below the name of Bhakti Bilash Tirtha. It is however not the case of the defendants that on that date so many other stamp papers were purchased in the name of Bhakti Bilash Tirtha Maharaj for any other purpose. Rather the said word "do" entered in the columns above and below the name of Bhakti Bilash Tirtha Maharaj in the said sale register indicates that the name of Bhakti Bilash Tirtha Maharaj was entered by manipulation in the sale register to make it appear that the stamps were purchased on that date.

13. Mohini Mohan Das was examined as a defence witness. He claims to be a witness to the execution of the impugned deeds Exbs. B and C. His close association with Satchidananda Brahmachari has been acknowledged by him in his evidence (Q. 48). According to his evidence besides Tirtha Maharaj and himself, Satchidananda Brahmachari and Ajit were also present when the deeds Exbs. B and C were signed (Qs. 540-544 and 608). From his answer to Q. 729 it

is also evident that Tirtha Maharaj used to keep blank papers with his signature. His attention was also drawn to a pamphlet circulated by the Institute referring to a speech of Tirtha Maharaj delivered at Kavur on 15-7-76 wherein he stated that in future administration of the Math and the Institution would be left to Sanyasis and Brahmacharis to be selected from amongst the Sanyasis and Brahmacharis (Q. 712, 718 and 721, etc.). It is the plaintiffs' case that the fact that the Tirtha Maharaj on 15-7-76 delivered such a speech regarding the future administration of the Maths and the Institute will readily show that the alleged deeds of appointment Exbs. B and C were not in existence at that time and were not even in the contemplation of Tirtha Maharaj and this shows that the deeds were subsequently manufactured. A cassette of that speech was also played to the witness while in witness box for identifying the voice of Tirtha Maharaj in that speech recorded in the cassette and he initially identified that voice as the voice of Tirtha Maharaj although later denied the same (Q. 826, 827 etc.). The attention of this witness in cross-examination was also drawn to a letter dated 14-9-76 Exb. D purportedly signed by Satchidananda Brahmachari and addressed to Sajjan Maharaj. The said letter was purportedly written four days after the death of Tirtha Maharaj. That the letter bears the signature of Satchidananda Brahmachari has been acknowledged by Mohini Mohan (Q. 678, 679 etc.). From him we get that Satchidananda Brahmachari was also known as Nanda Babu (Q. 284). From this witness we also get that Tirtha Maharaj was aged about 81 years at the time of his death in 1976 (Q. 242-244). In answer to Qs. 666 and 667 he says that Tirtha Maharaj was critically ill for one month in the month of August before his death and none was formally in charge of Sree Chaitanya Research Institute during August-September 1976 and immediately after the death of Tirtha Maharaj. He also identifies two signatures of Bhakti Bilash Tirtha Maharaj on blank papers marked Exbs. AA (Qs. 131 and 132). He however denies the plaintiffs' suggestion that Exbs. B and C were forged by using papers kept signed in blank by Tirtha Maharaj (Q. 699).

14. Samit Pani Brahmachari who is the defendant No. 3(a) and son of late Satchidananda Brahmachari has examined himself as a defence witness in this case. He is a practising Advocate of this Court and Dr. Sambidananda Das who was a practising Counsel (Bar-at-law) of this Court was his senior. We have already noted that Dr. Sambidananda Das was the brother of Tirtha Maharaj. In the very examination-in-chief Samitpani was asked (Q. 7) as to who used to look after the administration and management of the affairs of Mayapur Sree Chaitanya Math and its branches. To that question Samit Pani answered that during the lifetime of Bhakti Bilash Tirtha Maharaj he himself used to look after the maths and research institute at Calcutta and all other maths throughout India. This question and answer in the very examination-in-chief indicate that the Sree Chaitanya Research Institute was also treated as a branch of Mayapur Sree Chaitanya Math. However on this point there is also other evidence which we will point out later. The evidence of Sarhit Pani Brahmachari also shows and, indeed it is not in dispute, that the Maths including Research Institute were under the

management and control of Tirtha Maharaj till his death. The purported deeds of appointment Exbs. B and C, as the language used in the deeds indicate, were however intended to be operative from the time of its execution and not after the death of Tirtha Maharaj. These deeds were not wills. On the other hand the deeds were purportedly executed because of "old age and failing health" of Tirtha Maharaj and the language of the deeds was such that it was to be and also intended to be operative from the time of its execution. But as a matter of fact and admittedly these deeds were not put to operation during the lifetime of Tirtha Maharaj. This is also an indication that these deeds were not executed by Tirtha Maharaj else they would have been put to effect immediately after their execution instead of deferring the implementation of the same till sometime after the death of Tirtha Maharaj. Even in his examination-in-chief a question was put to Samitpani (Q. 10) as to whether any arrangement was made by Tirtha Maharaj regarding administration and management of the Math "after his death", to which Samitpani replied by referring to the two concerned deeds. As we have seen the deeds however purported to be effective not after his death but even during his lifetime from the time of their execution. It can be expected that if the deeds were really executed during the lifetime of Tirtha Maharaj they would not have been left to slumber till after the death of Tirtha Maharaj.

15. The two deeds Exbs. B and C being deeds of appointment were not required under law to be registered compulsorily but inspite of that these deeds were presented for registration and registered on two different dates quite some times after the death of Tirtha Maharaj. It is submitted on behalf of the respondents that after fabrication the deeds were registered with a view to giving them a colour of authenticity. The deed Exb. C relating to Chaitanya Math, Mayapur and other branch maths was presented for registration by Satchidananda Brahmachari on 5-10-76 while the other deed Exb. B was presented by him for registration on 28-10-76. No plausible explanation from the defendants is forthcoming as to why these two deeds purportedly executed on the same date, namely, 7-7-76 were presented for registration on two different dates, namely, 5-10-76 and 28-10-76 respectively. It is the submission on behalf of the respondents/plaintiffs that the delay in presenting the deed Exb. B relating to Sree Chaitanya Research Institute and Guntur property compared to the date of presentation of the other deed Exb. C is perniciously self-explanatory. The deed Exb. B contains description of property at Guntur. It is submitted on behalf of the respondents that the deed relating to Guntur property which was lying at Guntur Math had to be obtained and consulted before finalising the purported deed of appointment Exb. B relating to Guntur Math. It is also submitted on behalf of respondents that a letter was written to Guntur Math (vide, Exb. I) on 5-10-76 asking to send the deed relating to Guntur Math immediately. It is further submitted on behalf of the respondents that since it was necessary to procure and ascertain the description of the property of the Guntur Math for the purpose of including the same in the deed Exb. B, the same could not be prepared and presented for registration along with the other deed Exb. C. This seems to be a

quite likely reason why the two deeds could not be presented for registration at or about the same time. In fact the presentation of the two deeds for registration, not simultaneously but on different dates, one on 5-10-76 and the other on 28-10-76 by Satchidananda Brahmachari is seemingly a highly suspicious feature which remains unexplained so far as the defence is concerned. If both the deeds were really executed by Tirtha Maharaj on 7-7-76 and if for any reason it was considered fit to get both the deeds registered although registration was not compulsory, in that event both the deeds could have been registered during the lifetime of Tirtha Maharaj himself which was not done at all. Then again nearly one month after the death of Tirtha Maharaj, or to be precise about 25 days after his death only one of the two deeds, namely, the deed relating to Mayapur Chaitanya Math was presented for registration by Satchidananda Brahmachari on 5-10-76 leaving aside the other deed relating to Sree Chaitanya Research Institute and Guntur Math to be presented for registration much later on 28-10-76. The presentation of the deed relating to Sree Chaitanya Research Institute and Guntur Math on 28-10-76 instead of presenting the same along with the other deed on 5-10-76, in the absence of any plausible explanation from the defence is a definite pointer to the fact that the things were not all straightforward. What is surprising is that in para 31 of the written statement originally filed by the defendants Nos. 1-6 including Satchidananda Brahmachari it is stated that both the deeds were tendered for registration on 5-10-76 which is factually incorrect.

16. Samitpani in his evidence also acknowledges the signature of his father Satchidananda Brahmachari on the deed purporting to be a letter to Sajjan Maharaj from Satchidananda Brahmachari written on 14-9-76 (Q. 51 in examination-in-chief and Qs. 633, 634, 635 in cross-exam.). While acknowledging the signature of Satchidananda Brahmachari in English in the said Bengali letter Exb. D Samitpani however says that the body of this letter was not written by Satchidananda Brahmachari and the date was also not put by him. He says that the body of the letter is in different ink than that of the signature and this was a forged and fabricated document manufactured on behalf of the plaintiffs. In this connection it is also to be pointed out that this letter Exb. D was disclosed by the plaintiffs subsequent to the filing of the plaint and the plaintiffs amended the plaint by inserting a separate paragraph, namely, paragraph 49C. This letter dated the 14th September, 1976 has been specifically mentioned in paragraph 49C(iii) of the amended plaint and a copy of the same was also annexed to the amended plaint. It is stated therein in paragraph 49C(iii) of the plaint that the fact that Bhakti Bilash Tirtha Maharaj did not execute any such deed of appointment was admitted by the defendant No. 3 (Satchidananda Brahmachari) in his letter dated the 14th September, 1976 a copy whereof is annexed therewith (plaint) and marked with the letter "B". In this connection it is to be noted that Satchidananda Brahmachari in an affidavit affirmed by him on 5-2-80, Exb. 27, however totally denied his signature on the said letter dated the 14th September, 1976 and Samitpani's attention was also drawn to the said

affidavit of his father in examination-in-chief. It is quite surprising that in his affidavit Satchidananda Brahmachari even disowned his signature on the purported letter dated the 14th September, 1976 although his signature, as we have seen, on the said purported letter has been acknowledged by his son in evidence and also by the defence witness Mohini Mohan Das. What is more surprising is that Samitpani in his written statement, while dealing with paragraph 49C of the plaint in 40 B of his written statement does not deny the genuineness of the letter dated 14-9-76 purportingly signed by his father and addressed to Sajjan Maharaj although the letter has been specifically pleaded, as we have seen, in paragraph 49C(iii) of the plaint and a copy of the same was also annexed to the amended plaint. It is specifically stated in the said paragraph 49C(iii) of the plaint that Satchidananda in his said letter dated 14-9-76 admitted that Tirtha Maharaj did not execute any deed of appointment. In dealing with the allegation in paragraph 49C of the plaint Samitpani in paragraph 40B of his written statement only makes a vague and omnibus denial that they deny each and every allegation contained in paragraph 49C of the plaint and they state that the said deeds were duly executed by Bhakti Bilash Tirtha Maharaj and duly and lawfully registered as provided under the Registration Act. It is also stated therein that they reiterate the statement, made in paragraph 35 of the written statement. Now in paragraph 35 of the written statement it is stated that in any event if the said deeds are cancelled on any ground whatsoever, in that case the defendants would be entitled to become the Shebaites of the concerned deities as heirs of Sree Kunja Behari Vidya Bhusan alias Bhakti Bilash Tirtha Maharaj, the defendant No. 3(a) being a disciple of and grandson and defendant No. 3(b) being a grandson of said Kunja Behari Vidya Bhusan who is the shebait of the said deities. Therefore under the rule of pleading the existence and genuineness of the said letter dated 14-9-76 stands admitted. Order 8, Rule 3, C.P.C. provides that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages" Order 8, Rule 4 contains provisions disapproving evasive denial in written statement and provides inter alia that where a defendant denies an allegation of fact pleaded in the plaint, he must not do so evasively but answer the point of substance. Order 8, Rule 5 provides that every allegation in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. Therefore in the absence of specific denial of the genuineness of the alleged letter dated 14-9-76 which has been specifically pleaded in paragraph 49C(iii) of the plaint the same has to be taken to be admitted by the defendants under the rule of pleading and that being so the defendant cannot now turn round and deny in evidence the genuineness of the said letter. Samitpani in his evidence says that after 1980 Jyoti Maharaj took possession of Sree Chaitanya Research Institute and converted the temple into a Sradh Ceremony Hall and the institute has been converted into a commercial business centre from the religious institution (Qs. 158, 159). We also get it from

Samitpani that in exercise of the power of nomination of the shebait conferred by the deeds Exbs. B and C Satchidananda Brahmachari appointed his son Samitpani and one Prajatak Maharaj shebait of the Math (Q. 343). It is evidence of Samitpani that sometime in the last week of June 1976 Tirtha Maharaj gave instruction to his brother Dr. Sambidananda Das to prepare two draft deeds of shebait, one in respect of Sree Chaitanya Math and its branches and the other in respect of Sree Chitanya Research Institute, and this instruction was given by Tirtha Maharaj at 70B, Rash Behari Avenue, Calcutta in presence of Satchidananda Brahmachari and the witness Samitpani (Qs. 194-212). We get it from his answer to Qs. 216 and 217 that Tirtha Maharaj gave instruction to Dr. Sambidananda Das and Satchidananda Brahmachari as to the nature of the deeds to be prepared and Tirtha Maharaj told them to sit together and prepare the deeds. He however cannot say as to where are the drafts of Exb. B and C which were prepared by Dr. Sambidananda Das (Q. 244). In answer to Q. 259 he says that Dr. Das took 2/3 days to prepare the drafts after discussion. It was put to Samitpani in cross-examination that Sree Guru Gouranga Gandharbika Giridhari was the idol installed at Chetla Math and this idol was taken to Rash Behari Avenue Math. But he denies the same and says that the deities of Chaitanya Research Institute are separate and they are Sree Sree Gour Sudha Sree Radha Dwaita Kunja Behari Jew (Qs. 679 and 680) but in answer to the question No. 684 as to when was the idol taken from Chetla Math to Rash Behari Avenue Math he says that it was perhaps in 1964. We get from the evidence of Samitpani (Q. 359) that Sree Chaitanya Math and the Research Institute used to publish monthly magazines and the Bengali magazine Gaudiya used to be published either from Calcutta or Mayapur and English Gaudiya used to be published from Madras Math. It was suggested to Samitpani in cross-examination (Q. 682) that Guru Gouranga Gandharbika Giridhari deities after being taken to Rash Behari Avenue Math were renamed as Guru Chaitanya Radha Kunja Behari which however he denied.

17. Dinabandhu Brahmachari was originally one of the plaintiffs, being plaintiff No. 9. He was however examined as a defence witness. He disowned the plaintiffs' camp and joined the defendants' camp later, as it appears. It also appears that although originally he was a Brahmachari he has since abandoned celibacy and has married in 1986 after leaving the Math. He testifies to the signature of Satchidananda Brahmachari in Exb. D which is a letter dated 14-9-76 purporting to be addressed by Satchidananda Brahmachari to Sajjan Maharaj (Q. 56). He however cannot say who wrote the body of that letter nor can identify the handwriting (Q.59). During his cross-examination he however suddenly volunteered (Q.239) to say in substance that Bodhan Maharaj took him to the house of one Sajal Bhattacharjee at Nawadeep and after going there a blank paper was brought out by Bodhan Maharaj containing the signature of Nanda Babu (Satchidananda Brahmachari) and he asked why he it was necessary to write something on that paper already signed by Nanda Babu to which Bodhan Maharaj replied that the same was needed for the purpose of the suit pending in

the High Court. He also named Suresh Majumder. This part of the defence story that Bodhan Maharaj took him to the house of one Sajal Bhattacharjee at Nawadeep and brought out a blank paper already signed by Satchidananda Brahmachari (Nanda Babu) is an episode divulged by him for the first time by way of voluntary statement which was not there in the written statement of the defendants. We have already seen that in the written statement the genuineness of the letter Exh.D purportingly written by Satchidananda Brahmachari was not specifically denied or disputed.

18. Tarit Krishna Brahmachari who is defendant No. 14 also testifies to the signature of Satchidananda Brahmachari on the letter Exh.D. He claims that the body of the letter Exh.D was written in his presence by a boy of Nawadeep named Suresh Majumder in the house of Sajal Bhattacharjee at Nawadeep in presence of himself, Sajal Bhattacharjee, Bodhan Maharaj and Dinabandhu (Qs.53 to 57). What he wants to say is that he, Bodhan Maharaj and Dinabandhu went to Sajal Bhattacharjee's house and Bodhan Maharaj took out the paper which was already signed by Satchidananda Brahmachari and gave to Suresh Majumder and according to a draft already sent to Bodhan Maharaj the letter on that blank paper was to be written by that boy Suresh Majumder within the space above the signature of Satchidananda Brahmachari. According to his evidence that was in September, 1979 (Q.60). Sajal Bhattacharjee or Suresh Majumder has however not been examined in this case by the defendants. Tarit Krishna however wants to say that he protested to the act of getting a letter written by the boy Suresh Majmuder on a blank sheet signed by Satchidananda Brahmachari. In his cross-examination he says that Suresh Majumder was a boy aged about 15/16 years reading in Class-VIII and the boy copied out the letter from the draft given by Bodhan Maharaj. He also says that the piece of paper was a paper from an exercise book. What the defences sought to project at the time of trial (not in the written statement), was that the Satchidananda used to keep blank signed papers in the Sree Chaitanya Math at Mayapur for being used in connection with the affairs with the Math. This explanation does not seem to be convincing because Satchidananda Brahmachari himself being a Solicitor was not expected to have left or kept blank signed papers at Mayapur Math and that too not on any paper of normal size which can be used in any Court proceeding or for the purpose of making application anywhere but on a half size exercise book sheet. It is significant to note here that Tarit Krishna has come to depose to prove that the letter dt. 14-9-76 Exh.D is a fabricated document manufactured in his presence in September, 1979. But surprisingly in the written statement filed by the defendants Nos. 12 to 26, he being defendant No. 14, there is not a whisper about the said letter dt. 14-9-76 or about its fabrication although their written statement was filed in July, 1992 long after the said letter was disclosed by the plaintiffs in para 49C of the amended plaint. In the background of his own written statement the evidence of Tarit Krishna, the defendant No. 14, regarding fabrication of the letter dt. 14-9-76 in his presence cannot inspire any confidence. The appellants of course have offered criticism that the letter was

written in Bengali whereas Satchidananda Brahmachari's signature appears in English and there are two dates one in Bengali and one in English in that letter. It has been further criticised on behalf of the appellants that the letter was not disclosed earlier and it was only disclosed subsequently after change of Advocate of the plaintiffs. It is however to be pointed out, as has been done already, that even if this letter was disclosed subsequently by amending the plaint and enclosing a copy of the same there with yet the fact remains that the genuineness or existence of this letter has not been specifically challenged by the defendants in their written statement while they were dealing with the particular paragraph of the plaint containing the averment relating to the said letter. In his cross-examination (Q. 277) the attention of Tarit Krishna was specifically drawn to the fact that even in the written statement filed by him and others this letter was not challenged, not to speak of disclosing that it was manufactured in his presence in the house of Sajal Bhattacharjee at Nawadeep. He however could not offer any explanation as to his silence in his written statement in this respect. His evidence (Q. 280) in cross-examination shows that Dinabandhu was not present in the house of Sajal Bhattacharjee when the said Exb. D was written by Suresh Majumder. What he says is that they had started from the Math together and as there was a case Dinabandhu went to the Court. We have however seen from the evidence of Dinabandhu that what Dinabandhu wanted to say was that he went to the house of Sajal Bhattacharjee which is contradictory to the evidence of Tarit Krishna Brahmachari. Having regard to the pleadings in the case and the evidence adduced we must note that the evidence of Dinabandhu and Tarit Krishna so far as the same purport to relate to the letter Exb. D do not inspire any confidence. As we have seen, Satchidananda Brahmachari even denied his signature in the purported letter Exb. D, although the defence witnesses including his son Samitpani had to acknowledge his signature on the said letter.

19. In the purported letter dated 14-9-76 Exb. D Satchidananda Brahmachari is inter alia writing to Sajjan Maharaj the defendant No. 4 who was staying in Sree Chaitanya Research Institute that for sometime now he would not go to the math, and Satchidananda is requesting Sajjan Maharaj to come to his house daily once at night. It is also mentioned in that letter that the carrier of the letter was Ajit who was a man of his confidence. It is to be mentioned here that this Ajit was the Court clerk of Satchidananda Brahmachari and he also signed as a witness in the two impugned deeds of appointment exbs. B and C. In the said letter exb. D Satchidananda is asking for the bundle of the original deeds relating to Chaitanya Math and requesting Sajjan Maharaj to send the said deeds to him through Ajit, the carrier of the letter. In that letter Satchidananda is also asking Sajjan Maharaj to remove all the deeds and important documents from the room of the Maharaj (meaning late Tirtha Maharaj) and to keep the room under lock and key and not to allow anybody to enter inside. It is also instructed in the said letter that the cassettes of the lecture delivered at Kavur also should not be parted with and nobody should be allowed to understand that Maharaj did not execute any deed before his death. Now this letter, if accepted as genuine,

will readily show that Tirtha Maharaj did not execute and deed before his death. That being so the impugned deeds of appointment exbs. B and C obviously could not be genuine documents and they must have been manufactured subsequent to the demise of Tirtha Maharaj by using blank signed sheets bearing the signature of Tirtha Maharaj which were kept in the institute. It is an admitted fact that there were blank sheets of paper signed by Bhakti Bilash Tirtha and in fact some such blank sheets were marked as exhibits in this case. We have seen that at the time of adducing evidence the defendants challenged the genuineness of this letter dated 14-9-76 signed by Satchidananda Brahmachari. We have seen that in an affidavit Satchidananda even denied his signature in that letter exb. D. But neither Samitpani, the defendant No. 3(a) nor any other defendant denied or challenged the existence and genuineness of this letter dated 14-9-76 in written statement although the same was specifically pleaded in the amended plaint. We have also seen how the evidence of Tarit Krishna, the defendant No. 14 about the fabrication of the said letter exb. D was found to be unreliable, he not having raised any whisper against the authenticity or genuineness of the said letter in the written statement. It is also very significant to note that the defendants have not examined the carrier of the said letter Ajit to deny that he did not carry that letter from Satchidananda Brahmachari to Sajjan Maharaj. Worse yet is that Sajjan Maharaj who himself is defendant No. 4 also has not come to depose and deny that any such letter was received by him. We have also seen that the signature of Satchidananda Brahmachari on the said letter has been admitted by his son Samitpani as well as by the defence witnesses Dinabandhu and Tarit Krishna although Satchidananda Brahmachari in an affidavit sworn by him even denied his signature in that letter. If really the letter exb. D were a forged and fabricated document manufactured by using blank signed half size exercise book paper, Satchidananda in all fairness would have acknowledged his signature on the said letter exb. D in a straight forward way and come forward with a case that the said letter was manufactured by using blank sheet containing his signature. He did not do that. He even denied and disowned his own signature which has been subsequently expressly admitted by his son and other defence witnesses as the signature of Satchidananda. Satchidananda's role in vainly denying his own signature goes a long way in indicating that the letter was really issued by him under his signature. Non-examination of Ajit and Sajjan Maharaj on behalf of the defendants to deny their purported association with that letter also goes against the defendants. The evidence the defendants have led to show that the letter was written by a boy of Class-VIII Suresh Majumder in the house of Sajal Bhattacharjee at Nawadeep without disclosing such fact in written statement and without examining Suresh Majumder and Sajal Bhattacharjee is also not worthy of credence. The existence and genuineness of this letter not having been specifically challenged or denied in written statement, the admission of this letter in evidence without objection and the evidence adduced by the defendants about the fabrication of the document having been found not reliable, we have no hesitation in accepting the said letter as a genuine one issued by Satchidananda to Sajjan Maharaj through Ajit on 14-9-76. And if the existence

and genuineness of this letter exb. D is accepted -- and in view of the discussion above there is no reason not to accept the same as such -- it is evident that the impugned deeds of appointment exbs. B and C are manufactured documents because it has been expressly stated in the said letter dated 14-9-76 by Satchidananda that Tirtha Maharaj did not execute any deed before his death. But even if this letter dated 14-9-76 is totally excluded from consideration in favour of the plaintiffs' case yet, there are other facts, circumstance and evidence on record which would also lead to the same conclusion that the deeds exbs. B and C are manufactured documents. We have already discussed in detail about the deeds exbs. B and C including their contents and some noticeable relevant features. We will now discuss certain other relevant aspects also.

20. The defendant No. 3(a) Samitpani in paragraph 20 of his written statement admits and says that Tirtha Maharaj enormously extended the activities of the math and constructed or caused to be constructed many guest houses, temples, buildings, gardens at Sree Mayapur and developed Sree Mayapur from a tiny village to a beautiful religious colony attracting thousands of visitors etc. and he also established new maths, published many publications and he was considered a great Vaisnava leader of all India fame. In paragraph 22 of his written statement it is stated that by a deed of gift on 2nd June, 1959 one of his disciples named Sri Ram Ratan Gupta made a gift of land being premises No. 70B, Rash Behari Avenue, Calcutta to Tirtha Maharaj for his use and benefit. In paragraph 23 of the written statement it is inter alia stated that Tirtha Maharaj added many maths, temples, buildings and properties at enormous costs and expenses and the Sree Chaitanya Math accepted the new properties. It is also asserted in the said paragraph that Bhakti Bilash Tirtha Maharaj has thus power to nominate and appoint further shebais. However even according to the defendant it is thus an accepted position that Tirtha Maharaj added many maths, temples, buildings and properties to the original Sree Chaitanya Math and the new properties were also accepted by Sree Chaitanya Math. That being so there is no reason to suppose that Sree Chaitanya Research Institute which was established by Tirtha Maharaj like many other maths also should not be treated as a part of the Sree Chaitanya Math like other maths which were subsequently established. But in paragraph 24 of his written statement Samitpani says that Sree Chaitanya Research Institute was founded and established by Bhakti Bilash Tirtha Maharaj and he also installed and established the deities named therein for personal devotion which he named as Sree Chaitanya Research Institute. It is then stated in the said paragraph that the Sree Chaitanya Research Institute was not a branch of Sree Chaitanya Math and/or not belonging to the deities of the Sree Chaitanya Math. In paragraph 27 of the written statement filed by the defendants 1 to 6 including Satchidananda Brahmachari also it is stated inter alia that Tirtha Maharaj added many maths, temples, buildings and properties to the original math established by Sree Prabhupad and Chaitanya Math accepted the new properties and accordingly Tirtha Maharaj has power to nominate and appoint further shebais. In paragraph 28 of that written statement however it is stated that Tirtha Maharaj

installed and established the deiteis named therein at 70B, Rash Behari Avenue for his personal devotion which is named as Sree Chaitanya Research Institute and that the said research institute was or is not a branch of Sree Chaitanya Math. It is further stated inter alia in the said paragraph that Tirtha Maharaj established Sree Chaitanya Research Institute for his own benefit and that of his own disciples if the pending suit No. 250 of 1963 against Tirtha Maharaj for his removal was decided against him. It may be mentioned here that the said suit was not decided against Tirtha Maharaj. It is beyond reason to suppose that Tirtha Maharaj who has devoted his whole life for the benefit and expansion of Sree Chaitanya Math by raising different maths at different places and also by acquiring properties for the benefit and extension of Sree Chaitanya Math and for adding to the same as accretion thereto would suddenly think of making the Sree Chaitanya Research Institute his personal property for his personal benefit. The defendants have come up with such case regarding research institute in their written statement to lend support to the story of execution of two deeds of appointment by Tirtha Maharaj. In paragraph 25 of the written statement of the defendant Nos. 1 to 6 it is stated that by adeed of gift dated the 2nd June, 1959 one of his disciples named Ram Ratan Gupta made a gift of the land at 70B, Rash Behari Avenue to his Guru Bhakti Bilash Tirtha Maharaj for his use and benefit. That by itself however does not clinch the issue. May be that the land was gifted by a disciple to Tirtha Maharaj and it appears from the deed Exh. 28 that the gift was made to Tirtha Maharaj, a preacher of Vaisnabism. But the core question is how Tirtha Maharaj dealt with the same and whether Tirtha Maharaj himself by his subsequent conduct and dealings treated the same as an accretion to the Sree Chaitanya Math or kept it as a secluded personal property.

21. Exb. R is a letter written by Tirtha Maharaj to the Commissioner of Income Tax, Calcutta on 24th January, 1963 stating that Sree Chaitanya Research Institute at 70B, Rash Behari Avernue will be a place of a public assembly as well as wroship where people of all religious faith and culture will find a meeding place for exchanging their thoughts. It is further stated in that letter that the Institute is a public one to be grown and maintained by public charity and that as the building of the institute is already under construction, benevolent organisation and individuals are coming up with their mighty and generous contributions, and public donations will be the only source of income for running the institute. It is also stated in that letter that the institute will provide public lecture hall, reading room, library accommodation for research students and outside scholars, temple of Sree Radha Gobinda and Sree Chaitanya Mahaprabhu. Tirtha Maharaj accordingly requested the Commissioner of Income Tax in the said letter to exempt the donations to the institute u/s 15B of the Income Tax Act. Exb. S is a letter written by Tirtha Maharaj to the Corporation of Calcutta on 5th January, 1963 for exemption of rates in respect of 70B, Rash Behari Avenue. In that letter it is also stated that the Research Institute is a public organisation and the premises will be used for public cause providing every facilities to them for exchange of their spiritual and cultural ideas. It is also

stated in that letter that the institute may also be called a preaching centre for moral, educational and spiritual upliftment of the public. Exbs. T and U are also some correspondence in the same line. Exb. V is a letter dated 9-12-64 written by Tirtha Maharaj to the Corporation of Calcutta for exemption from consolidated rates in respect of the premises No. 70B, Rash Behari Avenue, Calcutta. In that letter also while seeking exemption of taxes Tirtha Maharaj is expressly stating that premises No. 70B, Rash Behari Avenue is exclusively used as a public place of worship and charity and it should be exempted from consolidated rates. Exb. W is a letter dated 8-4-65 from the Corporation of Calcutta informing the President, Sree Chaitanya Research Institute that the premises has been exempted from consolidated rates under the Calcutta Municipal Act, 1951 on the ground of it's being used as a place of public worship. The Deputy Secretary to the Local Self-Government and Panchayat Department, Government of West Bengal is also writing to the President of Sree Chaitanya Research Institute on 12-11 -64 (exb. Y) that it appears that the premises in question are used exclusively for purposes of public worship and if that be so the premises would be exempted from the consolidated rates and no declaration by Government would be necessary. It is therefore clear that Tirtha Maharaj dedicated the institute and the math at 70B, Rash Behari Avenue exclusively for public purpose of public worship, etc and obtained benefit from the Calcutta Corporation in respect of payment of tax etc and there is therefore no scope of now telling that the institute was a personal property of Tirtha Maharaj and he treated the same as such by dedicating the same to certain deities for his own purpose of worship. Therefore there is no reason to hold that the research institute was not a part of Sree Chaitanya Math or that Tirtha Maharaj wanted to keep it as a separate entity unconnected with the original Sree Chaitanya Math.

22. We have already noted that the foundation stone of Sree Chaitanya Research Institute was laid by Dr. Sarbapalli Radha-Krishnan in December 1958. Exb. K is a copy of Gaudiya Special Issue 1959. Gaudiya was the official journal of Sree Chaitanya Math of which the editor was Tirtha Maharaj himself. In the said Special Issue the description of the foundation ceremony of Sree Chaitanya Research Institute has been published. The very caption of the publication item in the said Special Issue of Gaudiya is "Foundation ceremony of Sree Chaitanya Research Institute and Sree Gaudiya Math". The first line under that caption says that Dr. Sarbapalli Radhakrishnan, Vice-President of India laid the foundation stone of Sree Chaitanya Research Institute and Sree Gaudiya Math at 70B, Rash Behari Avenue, South Calcutta at a very distinguished gathering on the 28th December, 1958. So it is evident that what was intended to be established and was established there was not only Research Institute but also Gaudiya Math or in other words what was established was a composite establishment of Research Institute and Gaudiya Math. All Gaudiya Maths are parts of Sree Chaitanya Math, and that being so there is no scope of contending now that Bhakti Bilash Tirtha Maharaj intended to establish the research institute as entirely a separate organisation unconnected with Sree Ghaitanya Math or Gaudiya Math. On the

other hand it is evident from the said publication itself that Tirtha Maharaj established the institution as a part of and accretion to Sree Chaitanya Math. In the welcome address of Tirtha Maharaj which has been published in that Special Issue of Gaudiya (Exb. K) also Tirtha Maharaj says that when he requested Dr. Sarbapalli Radhakrishnan to lay the foundation stone of the proposed Research Institute and the Math he readily accepted his request. In another place of his said speech Tirtha Maharaj says that the founder of Sree Chaitanya Math, Bhakti Siddhanta Saraswati Thakur felt the necessity of such a centre of study of Vaisnava literature and philosophy and he started an academy at Sree Mayapur and secured the services of accredited philosophers but unfortunately with his demise in 1937 the said study centre ceased to flourish and now therefore they (including Tirtha Maharaj) have felt an acute necessity of such a study centre at Calcutta. This also clearly shows that Tirtha Maharaj contemplated the establishment of the Research Centre at Calcutta to fulfil the object with which his Guru Bhakti Siddhanta Saraswati Maharaj earlier started a study centre at Mayapur. Dr. Radhakrishnan also in his inaugural address, as published, says that he is greatly honoured by the invitation to lay the foundation stone of the Research Institute which would be associated with Sree Chaitanya and Gaudiya Math. It is therefore now too late to contend that Sree Chaitanya Research Institute has nothing to do with Gaudiya Math or Sree Chaitanya Math. Exb. L is a copy of the relevant portions of the Gaudiya Special Issue 1964. It is recorded therein that in connection with the inauguration ceremony of Sree Chaitanya Research Institute a procession was arranged for taking the deities Sree Radha Krishna and Sree Chaitanya Mahaprabhu to the Institute from Chetla Gaudiya Math, the South Calcutta branch of Sree Chaitanya Math of Sree Mayapur. It is also recorded therein that the deities Sree Radha Krishna and Sree Chaitanya Mahaprabhu were duly installed in the temple room of the Institute on the first floor and with due ceremonial worship the doors of the temple were declared open by Sreela Acharya Dev at about 8 p.m. So it is seen from the publication in Gaudiya itself that the deities of the Chetla Gaudiya Math, a branch of Sree Chaitanya Math were taken in a procession from the Chetla Gaudiya Math to Sree Chaitanya Research Institute on the date of inauguration of the institute, and the deities were installed therein in the institute. The very fact that the deities from a branch Gaudiya Math at Chetla (a branch of Sree Chaitanya Math) were ceremonially carried in a colourful procession and installed at the Research Institute at 70-B, Rash Behari Avenue on the very date of the inauguration clearly indicates that the institute was also intended to be a part of the Sree Chaitanya Math or Gaudiya Math. Had it been a totally different institute having no connection with Sree Chaitanya Math, in that event there would have been no question of shifting the deities from Chetla Gaudiya Math, a branch of Sree Chaitanya Math to the Research Institute on the very date of its inauguration in 1964. In his inaugural address, as reported in Gaudiya (Exb. L), on the occasion of the inauguration of the institute by Dr. Radhakrishnan, President in India, on the 29th June, 1964 Tirtha Maharaj is saying that the necessity and importance "of this institute" was first felt by his Gurudev Bhakti Siddhanta Saraswati

Thakur, the founder of Sree Chaitanya Math at Mayapur and the Gaudiya Maths established by him throughout India and abroad for preaching and disseminating Vaisnavism in general and the teachings of Sree Chaitanya Mahaprabhu in particular. This also clearly shows that Tirtha Maharaj in establishing the Research Institute at 70-B, Rash Behari Avenue was only implementing the idea of his Gurudev Bhakti Siddhanta Saraswati Thakur in this respect and therefore there is no scope for contending now by the defendants that this institute was not at all connected in any way with Sree Chaitanya Math. In his inaugural address Tirtha Maharaj also mentioned the names of the persons who contributed materially in the making of the construction at 70-B, Rash Behari Avenue by supplying bricks and bearing the cost of electrification of the building and making donations. We have also seen that the deed of appointment Exb. B besides the Sree Chaitanya Research Institute at Calcutta, also purports to cover the Guntur Math in Andhra Pradesh and Kulingram property in the District of Burdwan as if those properties were also separate properties of Tirtha Maharaj not connected with Sree Chaitanya Math. In the Gaudiya Special Issue Exb. K we will also find a report about the tours of Acharya Bhakti Bilash Tirtha in Andhra Pradesh and Orissa. In that report also the Gaudiya Maths have been described as branches of Sree Chaitanya Math. Indeed to that extent there is no dispute. In the said report in Gaudiya about the tour of Tirtha Maharaj to Andhra Pradesh it is stated that Tirtha Maharaj, the President Acharya of Sree Chaitanya Math and its branches Sree Gaudiya Maths arrived at Kavur. It is also stated therein that this branch (Kavur Branch) of Sree Chaitanya Math is one of the oldest Gaudiya Maths situated on the bank of holy river Godavari in South India. As regards Guntur also it is stated in that report that this is his second visit to Guntur, the first one being in the month of September 1958 when he came there to inaugurate the opening ceremony of the local Gaudiya Math. Therefore evidently the Guntur Math was also a local Gaudiya Math and a branch of Sree Chaitanya Math. There is therefore no question of contending that Guntur Math was a separate property of Tirtha Maharaj and was not a branch of Sree Chaitanya Math. Exb, PP is a relevant portion of the publication of the Gaudiya Special Issue -- 1976. At page 30 of that Gaudiya Special Issue publication it is stated inter alia that Sreela Tirtha Maharaj established a new branch math at Puri. It is also stated there that his holiness Sreela Maharaj (Tirtha Maharaj) started a new branch in Guntur in Andhra Pradesh in the year 1958 which has become very popular in Andhra Pradesh and that he also started a branch Ramananda Gaudiya Math at Kavur in Andhra. So in the Gaudiya Special Issue 1976, the official publication of the math, it is being acknowledged that Tirtha Maharaj started a new branch at Guntur and also at Kavur in Andhra Pradesh. What further evidence could be necessary to show that Tirtha Maharaj not only started the maths at Guntur and Kavur as branch maths but also he himself during his life-time treated those maths as branch maths of the original establishment. It is unthinkable that Tirtha Maharaj will only a few days before his death claim that the Guntur Math is his personal property unconnected with the Gaudiya Math or the Sree Chaitanya Math. But unfortunately we find that in the impugned deed of

appointed exb. B the Guntur property has been treated as his separate property which itself indicates that Tirtha Maharaj could not have executed such a deed contrary to his life-time mission. It is also stated in the said 1976 Gaudiya Special Issue publication at page 31 in continuation of the narration as to the establishment of new branch maths that subsequently Tirtha Maharaj established magnificent Sree Chaitanya Research Institute which was inaugurated by Dr. Radhakrishnan, the then President of India. Had Tirtha Maharaj intended to treat Sree Chaitanya Research Institute as his personal property unconnected with the Gaudiya Math or the Sree Chaitanya Math it would have certainly not been mentioned in the context in which we find it in the said Gaudiya Special Issue 1976 publication. Then again at the same page of that publication and in continuation of the said narration it is stated that this Holiness took the charge of Haridas Thakur Sripath at Kulingram of Burdwan Dist. and converted it as a branch of Sree Chaitanya Math. Therefore Tirtha Maharaj himself during his lifetime converted Kulingram established as a branch of Sree Chaitanya Math. It is unthinkable that at the fag end of his life a few months before his demise Tirtha Maharaj would have claimed the Kulingram establishment as his separate property unconnected with Sree Chaitanya Math. In view of such authentic past publications which were made in the very official journal of the Sree Chaitanya Math of which Tirtha Maharaj himself was the editor, there is now little scope for contending that all those properties, namely, Guntur Math, Kulingram establishment and Sree Chaitanya Research Institute were all personal properties of Tirtha Maharaj wholly unconnected with the Sree Chaitanya Math or Gaudiya Math.

23. It has been contended on behalf of the appellants-defendants that after the death of Tirtha Maharaj some of the plaintiffs attended the meetings of the Board of Shebaitis and accepted the deed of appointment executed by Tirtha Maharaj and that being so they cannot now deny or challenge the deed of appointment. On the other hand it is the contention of the plaintiffs that even in such meetings the deed was not produced and it was only mentioned and only on a later occasion a deed was produced but the plaintiffs had no opportunity to peruse the same at that time and that is why initially they could not understand that the deeds were manufactured documents. The explanation of the plaintiffs does not seem improbable. The concerned deeds indeed contain the signature of Tirtha Maharaj and therefore at the initial stage it might not have been possible to detect or suspect any fowl play in the matter. That however does not debar the plaintiffs from challenging the deeds subsequently at a later stage on being convinced that the deeds were manufactured documents. It as a matter of fact a document is found to be forged then any amount of initial acceptance of the same by any person will not validate or legalise the deed that may be ultimately found to be a manufactured document. Exb. 1 consists of several proceedings of the different meetings of the purported Board of Shebaitis of Sree Guru Gouranga Gandharbika Giridhari Jew, presiding deities of Sree Chaitanya Math. All these proceedings obviously refer to the deed of appointment Exb. C relating to Sree

Chaitanya Math, Mayapur and not to the deed relating to Sree Chaitanya Research Institute. The proceedings of the meeting of the Board of Shebaites dated the 25th October, 1976 show that the plaintiffs Nos. 5, 7 and 9 attended that meeting. It however appears that the minute book containing the proceedings of the first meeting of the shebaites held on 14-10-76 was reported in the meeting of the 25th October, 1976 as missing. In the said proceedings dated the 25th October, 1976, it is recorded and confirmed, that the Board of Shebaites and disciples of Sreela Prabhupad and Sree Tirtha Maharaj who were present at the meeting held on the 14th October, 1976 had unconditionally accepted the deed of appointment dated the 7th July, 1976 executed by Tirtha Maharaj and expressed their determination to act in terms of the said deed of appointment. In the last paragraph of that proceedings of the meeting dated 25-10-76 it is recorded that copies of the relevant resolutions be sent to Gaudiya Math at Madras and Guntur, etc. Now if the Guntur Math were not a branch of Sree Chaitanya Math, Mayapur it was not necessary to send the copy of the resolution of the said meetings to Guntur Math also because the purported meeting was the meeting of the Board of Shebaites relating to the deed of appointment ext. C and not relating to the other deed of appointment. Even in the next meeting of the Board of Shebaites relating to Sree Chaitanya Math held on 31-11-76 a resolution was taken relating to Gaudiya Math, Guntur which was however purportedly corrected by the resolution of the next meeting of the Board of Shebaites held on the 2nd November, 1976 stating that the earlier resolution concerning Guntur Math dated 31-10-76 be deleted and cancelled as the said Math was not a branch of Sree Chaitanya Math. In the next meeting held on 29-11-76 the plaintiff No. 2 Jyoti Maharaj was also present. A resolution was taken in the said meeting reaffirming and reiterating the unequivocal acceptance of the deed of appointment dated 7-7-76 executed by Tirtha Maharaj. It is however clearly recorded in the proceedings of the said meeting that Sri Satchidananda Brahmachari undertook to produce a certified copy of the deed of appointment dated the 7th July, 1976 in course of the week. It is therefore evident that no certified copy of the deed was yet produced in the meeting, not to speak of production of the original deed and consequently the concerned persons had no opportunity to have any first-hand appraisal of the concerned deed. In the proceedings of the meeting of the 10th July, 1977 it is recorded that the original deed of appointment dated the 7th July, 1976 executed by Tirtha Maharaj was produced by Satchidananda Brahmachari which was kept with Sripath Gobinda Maharaj for safe custody and would be produced as and when necessary. Be that as it may, the mere fact that at the initial stage the plaintiffs or some of them subscribed to any resolution along with others to act upon the deed does not forbid them from challenging the deed later after being convinced about its falsity.

24. We have elaborately discussed the facts, circumstances and evidence relating to all relevant aspects of the matter having bearing upon the question of the genuineness or otherwise of the two deeds of appointment dated 7-7-76 exhs. B and C and we are convinced that the said deeds exhs. B and C were not

executed by Tirtha Maharaj before his death and the said deeds were manufactured by using blank sheets containing the signature of Tirtha Maharaj. Our aforesaid finding is sustained by the letter of Sarchidanand Brahmachari dated 14-9-76, exb. D. alone. The said finding is also sustained and warranted by the other facts, circumstances and evidence on record which we have elaborately discussed, even if we altogether exclude the said letter dated 14-9-76 exb. D from consideration. We thus hold that the learned trial Judge was justified in his finding that the impugned deeds of appointment dated 7-7-76 exbs. B and C were manufactured documents and not genuine.

25. It is however to be recorded here that even if the impugned deeds of appointment dated 7-7-76 exbs. B and C were genuine documents, yet in the eye of law they would have been inoperative and void for the simple reason that the executant of the deed, namely, Tirtha Maharaj had no authority to appoint shebait for functioning as shebait during his lifetime or after his death. We have already pointed out that the deeds of appointment have been couched in such language that they were required to be operative from the date of their execution and not after the death of Tirtha Maharaj, but no effort was made to give effect to the deeds during the life-time of Tirtha Maharaj. Now, we have seen that Tirtha Maharaj was acting as shebait in terms of the will of Bhakti Siddhanta Saraswati. Para 7 of that will provides that if none of the executors takes out the probate or all of them die then he who will be appointed shebait or manager of the math by the consent of the majority of Siswas (disciples) meeting together shall be competent to preserve and look after as the shebait the said math and the properties to be left by the executant, but if that shebait is found unfit on any ground the Siswas of the executant would be competent to discharge him and appoint another shebait in the same manner as indicates above. We have also seen that Tirtha Maharaj was the last surviving executor of the will of Bhakti Siddhanta Saraswati. In terms of the provisions of the will, as we have seen, the executors or any executor had no right to appoint shebait for the management of the affairs either during the life-time of the executors or after their death. On the other hand it is clearly stated in the will that in the event of death of all the executors it will be the disciples, or for that matter the majority of the disciples of the executant Bhakti Siddhanta Saraswati who could appoint shebait or manager of the math. It has been sought to be contended on behalf of the appellants-defendants that the said clause in the will only speaks of and envisages a situation where all the executors die during the life of Bhakti Siddhartha Saraswati, the executant of the will and this clause was not applicable after the death of said Bhakti Siddhartha Saraswati Maharaj. In our considered opinion this is an absurd interpretation. It is absurd to suppose that Bhakti Siddhanta Saraswati will execute a will that if the executors die during his life-time then the next shebait or manager will be appointed by the majority of his disciples and not by him while he would be yet alive. Moreover the will itself could become effective, on being probated, only after the death of Bhakti Siddhanta Saraswati and not during his life-time. Therefore the question of the

said clause in the will being operative only during the life-time of Bhakti Siddhanta Saraswati does not arise at all. If it had to be effective it could become so only after the death of Bhakti Siddhanta Saraswati and not during his life-time by any stretch of imagination or by rational thinking. Therefore Tirtha Maharaj as the last executor of the will of Bhakti Siddhanta Saraswati was not, in terms of the provisions of the will itself, entitled to appoint any shebait either for the rest of his life-time or for the time subsequent to his death. In terms of the provisions of the will, on the demise of Tirtha Maharaj, the last executor of even if he would have relinquished the shebaitship during his life-time for being unable to carry out his responsibility due to old age or ill health it was only the disciples of Bhakti Siddhanta Saraswati who were authorised to appoint the shebaitor manager and not Tirtha Maharaj. Therefore even if the impugned deeds of appointment exb. B and C were found to be genuine documents yet they would have been inoperative, ineffective, null and void in the eye of law for the simple reason discussed that Tirtha Maharaj as the last surviving executor of the will of Bhakti Siddhanta Saraswati had no authority to appoint the successor shebait or manager which power was reserved by the will in favour of the disciples of Bhakti Siddhanta Saraswati to be exercised after the death of all the executors.

26. Now that we have found that the deeds of appointment exbs. B and C are not only manufactured documents but are also otherwise ineffective, inoperative and null and void in the eye of law, the next question that we are required to examine is regarding the locus standi of the plaintiffs to bring the suit. It has been contended very forcefully on behalf of the appellants/defendants that the plaintiffs have no locus standi to bring the suit and that being so the suit is liable to be dismissed for that reason alone. Plaintiffs No. 1, Mayapur Sree Chaitanya Math is a society registered under the West Bengal Societies Registration Act, 1961 and the other plaintiffs are office bearers and members of the governing body of the said registered society. The defendant Nos. 7 to 11 are also office bearers and members of the governing body of the said society. In paragraph 44 of the plaint it is stated inter alia that the plaintiffs Nos. 1 to 11 and defendant Nos. 7 to 11 are the members of the lawfully constituted governing body of the Mayapur Sree Chaitanya Math which is a registered society. In paragraph 49 of the plaint it is stated that the said Sree Chaitanya Math with its all branches was registered as a society under the West Bengal Societies Registration Act, 1961 and the plaintiff Nos. 2 to 11 and the defendant Nos. 7 to 11 are lawfully/elected members of the governing body of the said registered society, being the plaintiff No. 1, in terms of its rules, regulations and bylaws which are in conformity with the last wishes of the founder of the math. In para 40 of the written statement of Samitpani Brahmachari, defendant No. 3(a) it is stated that the alleged society was secretly formed with ulterior motive as admitted by the plaintiff No. 5 Bhakti Kankan Tapas in his letter. Be that as it may, the formation of the society and its registration cannot be brushed aside. Exb. F(3) is a document which purports to be a resolution dated the 14th April, 1978 taken by the existing disciples of Bhakti Siddhanta Saraswati Goswami Prabhupad regarding the formation of a

governing body for the management of the math in terms of the will of Bhakti Siddhanta Saraswati and the last desire expressed by him immediately before his death. It is the case of the plaintiffs, as submitted, that this resolution of the disciples of Bhakti Siddhanta Saraswati and the formation and registration of the society, the plaintiff No. 1 in consonance with the will of Bhakti Siddhanta Saraswati and his last desire expressed immediately before his death, gives the society and the members of its governing body the locus standi to file the suit for protecting Sree Chaitanya Math and for ensuring its proper management including preservation of properties and carrying on of the seba pujas of the deities. The formation of the society for the purpose of proper management of the math and its properties including proper looking after of the deities is in substantial compliance with the will of Bhakti Siddhanta Saraswati, even if there is any deficiency in respect of literal compliance of same which in the facts and circumstances seems to be inconsequential. In paragraph 49-A of the plaint it is pleaded that each of the plaintiffs is a worshipper of the deities Sree Guru Gouranga Gandharbika Giridhari jew installed at Sree Chaitanya Math at Sree Mayapur and also at various places in India and all members of the plaintiffs No. 1 are worshippers of the said deities and are disciples either of the said Bhakti Siddhanta Saraswati Maharaj or of Bhakti Bilash Tirth Maharaj. In paragraph 49-B of the plaint it is stated that the plaintiffs Nos. 2, 3, 4 and 6 to 11 are the disciples of Tirtha Maharaj and the plaintiff No. 5 is a disciple of Bhakti Siddhanta Saraswati Thakur. These two paragraphs of the plaint have been dealt with in paragraph 40-A of the written statement of Samitpani Brahmachari, the defendant No. 3(a). It is stated therein that apart from what are matters of record the defendants deny the allegations contained in paragraph 49-A and 49-B of the plaint. This is only a general denial. The only specific denial as recorded in para 40-A of the said written statement is that the defendants deny that the plaintiff No. 1 is a worshipper or can be worshipper of the deities as alleged. So, it is not denied that the other plaintiffs are worshippers of the deities and they are disciples of Bhakti Bilash Tirtha Maharaj or of Bhakti Siddhanta Saraswati Thakur as mentioned in the concerned paragraphs of the plaint. Obviously it can be said that the plaintiff No. 1 being a registered society cannot be a worshipper of deities. This is only one way of looking at things. But since this registered society and its governing body have been formed by the worshippers themselves for purposes connected with the worshipping of the deities and matters related therewith the plaintiff No. 1 although a registered society can also have an identification of worshipper. However, the other plaintiffs are indeed worshippers of the concerned deities and there is no dispute about that.

27. That being so, the question is whether the worshippers can maintain such a suit as the present one. It is now a settled law that a worshipper has his own right to institute a suit to protect his right to worship and for that purpose to protect the debuttar property and that he can do so in his personal capacity as worshipper and not as a next friend of the deity Sri Iswar Radha Kanta Jew Thakur and Others Vs. Gopinath Das and Others, . The law is also settled that in

such circumstances the deity is not a necessary party. B.K. Mukherjea in his Tagore Law Lectures on Hindu Law of Religious and Charitable Trusts which has been unreservedly accepted as a high authority on the subject says on the basis of judicial pronouncements that it cannot be denied that a worshipper or a prospective shebait has an interest of his own quite apart from that of the deity and his right to worship and the maintenance of the object of worship (para 6.22, p. 262, 4th Edition). It has also been stated that the deity is not a necessary party in all suits relating to Debuttar and that if a worshipper brings a suit in his own name for declaring certain properties as debuttar, he need not make the deity a party to such suit apart from the shebait (para 6.28, p. 269, *ibid*). In summing up the law it has been stated that once it is found that the plaintiffs, whether they be shebaites or the founder or the members of his family, or the worshippers and members of the public interested in the endowment, are entitled to maintain the suit -- and that is a matter of substantive law -- the further question whether an idol should be impleaded as a party to it or whether the action should be brought in its name is one purely of procedure and such a suit is really the suit of the idol instituted by persons whom the law recognises as competent to act for it, and the joinder of the idol is unnecessary (para 6.29 (4) Pp. 270-271, *ibid*). Therefore it is crystal clear that the plaintiffs as worshippers including the plaintiff No. 1 as a registered society of such worshippers are entitled to bring a suit of this nature to ensure their right-to worship and also the proper maintenance and management of the math and its properties. Such right of the worshippers may not be the same thing as an absolute title to the math or property of the deities in the sense in which it is understood in the context of an absolute right to private property, yet this right of the worshippers evidently gives to the worshippers a right, title and interest in the properties of the math and the deities to the extent of ensuring that they are properly looked after and managed to serve the interest of the deities and also to subserve the interest of the worshippers and are not grabbed or meddled with by unauthorised persons.

28. It has been contended on behalf of the appellants that in view of the earlier decision of the Division Bench in this case which has been reported in *Tridandeeswami Bhakti Kusum Sraman Maharaj and Others Vs. Mayapore Sree Chaitanya Math and Others*, the plaintiff, having no right, title and interest in the property are not entitled to maintain the suit. The learned Advocate for the appellants attracts our attention to paragraph 16 of the said decision wherein it is stated that unless the plaintiffs are able to prove the title of the plaintiff No. 1 to the disputed properties and the right of the members of the governing body of the plaintiff No. 1 to the management, control, possession, custody and administration of the disputed properties, the plaintiffs will not be entitled to claim the cancellation or setting aside of the impugned deeds. In the said paragraph it is also noted that the success of the plaintiffs in getting the impugned deeds set aside will depend upon their proving title of the plaintiff No. 1 to the disputed properties and the right of its governing body to manage, control and possess the same and that if there had been no averment of title of

the plaintiff No. 1 to the disputed properties or of the right of management, possession, control etc of the members of its governing body the plaintiffs would not have any locus standi to claim the setting aside of the impugned deeds. In our considered opinion the observations made in the said decision of this Court do not envisage a title in the plaintiffs in respect of the disputed properties in the absolute sense in which it is understood in the context of private individual properties. In the present case the plaintiffs are worshippers of the concerned deities -- and they are also disciples of the founder of the Math or of the last executor of the will of the founder -- and therefore they are persons interested in the proper management of the properties of the deities. They have a legitimate interest to see that the deities and their properties are properly maintained and looked after and no unauthorised persons, on the basis of some manufactured and void deeds, take possession, control and management of the deities and their properties. This itself is a sufficient interest which constitutes a title pro tanto in the plaintiffs authorising them to bring a suit of the instant type for the purpose of protecting the deities and their properties from the onslaught of any unauthorised interlopers and such right, title and interest of the worshippers may legitimately operate in this respect at least so long the same is not superseded by the claim of any other claimant or claimants having a better or higher title in his respect. In the present case there is no question of the defendants having a better title in this respect on the failure of the deeds of appointment exbs. B and C.

29. It is of course claimed in paragraph 35 of the written statement of the defendant No. 3(a) Samitpani Brahmachari that even if the deeds of appointment are cancelled on any ground whatsoever in that event the defendants become the shebaites of the deities as heirs of Bhakti Bilash Tirtha Maharaj, being his grandsons and one being his disciple also. In our opinion the defendants cannot inherit the debuttar property or the shebaitship as grandsons of Tirtha Maharaj. Tirtha Maharaj took Sanyas (an ascetic order of life) in 1948 (para 29 of the plaint and para 20 of the w.s.). It is however contended on behalf of the defendants that Tirtha Maharaj being a Sudra by birth could not have, under the orthodox scriptural law of Hindu religion become a Sanyasi and therefore the properties acquired by him after embracing Sanyas would be governed by the general Hindu law of Succession and those properties would devolve on his death upon his son and then grandsons. This we must say is a desperate argument. The rigour of the orthodox view is, now relaxed by the practice all over India, and where the usage is established, according to which the property of a Sudra ascetic devolves in the same way as the property of ascetics of the twice born classes, such usages should be given effect to Shri Krishna Singh Vs. Mathura Ahir and Others, B.K. Mukherjea says in his Tagore Law Lectures while discussing the school of Sri Chaitanya of Nabadwip that caste distinctions are not followed in Sri Chaitanna Mutts and people even of the lowest classes are admitted into them (para 7.11, p. 328, 4th Edition).

30. But the question of Sudra usucetism is inconsequential in the present case. We

have already seen that all the concerned properties were treated by Tirtha Maharaj as part of the debuttar estate of Sree Chaitanya Math, Mayapur by his conduct and dealings consistent with the high mission preached, professed and practised by him to the end of his life. In the circumstances the question of mere acquisition of properties by Tirtha Maharaj is not decisive. If he had by his acts, conduct and dealings dedicated and treated those properties as part of the original debuttar estate--which he did--such properties become inseparable accretion to the original debuttar estate created by the founder (Bhakti Siddhanta Saraswati) and did not remain as separate entity on which subsequently the secular heirs of Tirtha Maharaj could lay any claim on the basis of the ordinary rule of succession. That such properties by reason of dedication, express or implied, become an accretion to the original debuttar estate is now a settled law (see, *Idol Baldaui of Dabri Pittha Vs. Medh Rajput Association and Others*, B.K. Mukherjia on Hindu Law of Religious and Charitable Trusts, para 5.18, p. 215, 4th Edition, Mulla's Hindu Law, para 421, p. 540, 5th Edition). Since Bhakti Siddhanta Saraswati was the original founder of the deities and of the debuttar estate of Sree Chaitanya Math, Mayapur and the subsequent acquisition of the properties were also, as found accretion to the said debuttar estate the defendants as the secular heirs of Tirtha Maharaj cannot claim to inherit the debuttar estate or the shebaitship after the demise of Tirtha Maharaj. That being so the defendants cannot claim any right, title and interest in the shebaitship of the debuttar estate by inheritance or otherwise. The plaintiffs as worshippers of the concerned deities and having formed a registered society for the purpose of proper management of the affairs of the deities and debuttar properties have a better claim than the claim of the defendants as secular heirs of Tirtha Maharaj which is not tenable at all. That being so, we find that the plaintiffs have locus standi to bring the suit. We also find, as recorded, that the deities are not necessary parties in this suit. It was contended on behalf of appellants that Gaudiya Mission was also a necessary party in the suit. We however do not think so because Gaudiya Mission is not concerned now with the math and the properties involved in the present suit. We also find that in view of the reliefs sought for by the plaintiffs in the suit this cannot be treated as a suit u/s 92 of the Civil Procedure Code.

31. It has however been contended on behalf of the appellants that the learned trial Judge has by his order virtually directed for framing a scheme by appointing Sri Anil Kr. Sen, a retired Chief Justice of this Court a Special Officer for the purpose. We are also of the opinion that in view of the nature of the present suit it was not necessary to appoint a Special Officer for the purpose of working out a scheme for the management of the debuttar properties. The worshippers and the disciples of the Bhakti Siddhanta Saraswati and also of Tirtha Maharaj have formed a registered society for the purpose and in the absence of any one having a better title in the debuttar property this registered society of worshippers are entitled to manage the debuttar properties and no further direction in the present suit for formation of any other body was consequently necessary or

warranted by law, this suit not being a suit u/s 92 CPC for framing of a scheme for this public religious endowment. Accordingly while we hold that the learned trial Judge was justified in declaring the two deeds of appointment dated 7-7-76 exbs B and C to be void, inoperative, ineffective and also in restraining the defendants from interfering with the affairs of the Mayapur Sree Chaitanya Math as also Sree Chaitanya Research Institute on the basis of the said deeds of appointment, he was however not justified, in our opinion, in passing the further direction for maintaining status quo in respect of administration, management and control of the said two institutions untill a Board of Management was formed and also in appointing Hon"ble Anil Kr. Sen, retired Chief Justice of this Court a Special Officer to form a Governing Body to act as the joint trustees, etc. Accordingly, we set aside the direction of the learned trial Judge regarding the appointment of Hon"ble Anil Kr. Sen, as a Special Officer and regarding formation of Governing Body through his effort. Subject to this modification of the order of the learned trial Judge we affirm that part of his judgment and decree by which he has declared the two deeds exbs. B and C as void, ineffective and inoperative etc. and has also restrained the defendants from interfering with the affairs of the Mayapur Sree Chaitanya Math as also of the Sree Chaitanya Research Institute on the basis of the said two deeds. Subject to the above modification of the impugned judgment and decree of the learned trial Judge this appeal is dismissed with cost.

The cross-objection also stands disposed of accordingly. The Special Officer appointed during the pendency of this appeal will cease to function.

32. Prayer for stay of operation of the order is considered and rejected.

33. All parties to act on a signed copy of the operative part of this judgment on usual undertaking.

Sujit Barman Roy, J.

34. I agree.