

(1968) 03 AHC CK 0019
In the Allahabad High Court
Case No : First Appeal No. 340 of 1957

Shanti Sarup

APPELLANT

Vs

Radhaswami Satsang Sabha, Dayalbagh Agra and Others

RESPONDENT

Date of Decision : 22-03-1968

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 9
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 15 Rule 1, Order 15 Rule 4, Order 29 Rule 1, Order 41 Rule 22
Easements Act, 1882 — Section 52
Evidence Act, 1872 — Section 114, 115, 21, 31, 34
Registration Act, 1908 — Section 17, 2(6)
Societies Registration Act, 1860 — Section 1, 13, 19, 2, 20
Specific Relief Act, 1877 — Section 42
Transfer of Property Act, 1882 — Section 105, 122

Citation : AIR 1969 All 248

Hon'ble Judges : Yashoda Nandan, J; S.D. Khare, J

Bench : Division Bench

Advocate : J. Swarup, G.S. Pathak and Shekhar Prasad Singh, for the Appellant; G.D. Srivastava, Swami Dayal, Dojal Saran, Keshav Sahai, V.B. Singh, K.C. Dwevedi, K.C. Saxena, P.N. Katju and Sidheshwari Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Khare, J.—An interesting point of law that arises for consideration in this appeal is whether a gift or dedication of movable property (Rs. 23,038 cash) could be made by a Satsangi of the Radha Swami faith (in the present case the Sant Sad Guru himself) to Radha Swami Dayal, the impersonal deity of Radha Swami Satsangis, and, if so, in whom would that property vest. It is also in dispute whether any such gift or dedication had, in fact, been made.

2. The property in dispute is a residential building, known as "Tej Punj" constructed in the year 1934 inside the Dayal Bagh Colony at Agra. It is the admitted case of the parties that the entire cost of the construction of the building was borne by Sir Anand Swarup (hereinafter described as "Shri Sahabji

Maharaj". The construction became complete in the year 1935, and Shri Sahabji Maharaj along with other members of his family shifted to that building. Shri Sahabji Maharaj departed from this world on 24-6-1937. Thereafter his widow Lady Sohandei and other members of the family lived in that house. In the year 1953, when the suit, giving rise to this appeal was instituted, Lady Sohandei (defendant No. 1) and her son, Shanti Swamp (defendant No. 2), along with other members of the family, were living in that house.

3. The suit was instituted by the Radha Swami Satsang Sabha, Dayal Bagh, Agra (hereinafter referred to as "the Sabha) a society registered under the Societies Registration Act No. 21 of 1860, through its Secretary, Sri Babu Ram Jadon, M.A., and the only two defendants were Lady Sohandei and Shanti Swarup.

The plaintiffs case was that the plaintiff is a society registered under Act No. 21 of 1860, and is a representative body of that section of the followers of Radha Swami faith, which is popularly known as the Dayal Bagh group. The followers of the Radha Swami faith used to make bhents (gifts or dedications) to the impersonal deity, Radha Swami Dayal. Such bhents and the properties acquired therefrom and their income vested in the plaintiff Sabha and was held by it for application wholly to religious and charitable purposes of the Sabha. The bhent, were offered for various purposes, one of them being the construction of houses inside Dayal Bagh Colony. Like every other bhent, the bhent made for the construction of houses also vested in the plaintiff Sabha and the Satsangi offering the bhent retained no interest in the money. The Sabha constructed houses for the temporary stay of pilgrims within Dayal Bagh and the residence of Satsangis residing there including such other persons as are entitled under the rules framed by the Sabha to reside in Dayal Bagh. The persons who offer bhent for the construction of houses are granted rights of occupancy in houses, in law amounting to licence, limited to the lifetime of the offerer, subject to the observance of rules for the time being in force with absolute discretion vesting in the Sabha to grant similar rights after the death of the offerer to a nominee or heir of such, person in case such nominee or heir is considered fit for residence in Dayal Bagh.

Shri Sahabji Maharaj was the founder of the Dayal Bagh Colony and the rules mentioned above and the principles on which such rules were based emanated from him. Shri Sahabji Maharaj was a rigid observer of all rules and regulations of the Sabha and insisted to be bound and governed by the same rules as applied to any common Satsangi. Like every other Satsangi, Shri Sahabji Maharaj offered bhent for the construction of a house and made an application in that connection on 21st April, 1934, and voluntarily undertook to be bound by all the rules and conditions relating to houses and residence in Dayal Bagh then in force or that might thereafter be made and put into force. The building known as "Tej Punj" was constructed in those circumstances for Shri Sahabji Maharaj, and he finally accepted the licence to occupy the same in pursuance of the rules mentioned above.

During his lifetime Shri Sahabji Maharaj voluntarily accepted the position of a licensee for occupation of Tej Punj" like a common Satsangi offering bhent for construction of houses, and nominated his wife, Lady Sohandei (defendant No. 1) for Sabha's consideration for being granted a licence on termination of his own licence at his demise. After the death of Shri Sahabji Maharaj on 24th June, 1937, Lady Sohandei (defendant No. 1) applied for the grant of licence for residence in "Tej Punj", and the same was granted to her by resolution No. 4 (a), dated 8th October, 1937, passed by the Executive Committee of the Sabha. The Sant Sad Guru, who succeeded Shri Sahabji Maharaj, was Mehtaji Maharaj, who was accepted as such by a vast majority of the Satsangis. Shanti Swarup (defendant No. 2), however, did not recognise Mehtaji Maharaj as the Sant Sad Guru. On the other hand, he for sometime declared Rajji Maharaj as the Santsad Guru succeeding Sim Sahabji Maharaj.

Defendant No. 2 and his elder brother, being the sons of Lady Sohandei, continued to live in "Tej Punj", and committed several breaches of the rules of the Society. No action was, however, taken against them because some consideration was shown to them as they were the sons of the late Sant Sad Guru and also because Mehtaji Maharaj, the present Sant Sad Guru pleaded for them in the hope that they would, in future, mend their conduct. Shanti Swarup (defendant No. 2), however, started proceedings u/s 145, Cr.P.C. in respect of the land around "Tej Punj" claiming the same to be appurtenant to "Tej Punj", and on 10th July, 1953, the second officer of Hariparbat police station called the Secretary of the Sabha to sign an incomplete report of attachment of a plot of land lying to the east of "Tej Punj".

Defendant No. 2 alleged during the course of Section 145, Cr.P.C. proceedings that defendant No. 1 was the owner of "Tej Punj". That assertion cast a cloud on the title of the plaintiff to the building known as "Tej Punj", and, therefore, a declaration was sought that the plaintiff Sabha is the owner of "Tej Punj" in which the defendants had no proprietary interest and that defendant No. 1 alone was holding it as licensee for her life. A further declaration was sought that the strip of land to the east of "Tej Punj" and the land on the other three sides of "Tej Punj" was not appurtenant to that building.

4. Both the defendants filed separate but similar written statements. They did not admit any of the material allegations made in the plaint, and pleaded that Shri Sahabji Maharaj had not made a gift of money for the construction of "Tej Punj" but had got that building constructed for his residence and for the residence of the members of his family after the executive committee of the plaintiff Sabha had fixed a reasonable ground rent for the land to be occupied by him.

It was further pleaded that the theory of bhent as propounded in the plaint was entirely false and that the memorandum (Exhibit 8) did not bear the signature of Shri Sahabji Maharaj. It was also pleaded that no gift or bhent could legally be made or presumed to be made by Shri Sahabji Maharaj to himself, he himself

being the Sant Sad Guru and, according to Radha Swami tenets, the manifestation of impersonal deity in human form. It was further pleaded that the intent and purport of the memorandum dated 21st April, 1934 (the genuineness of which was denied), only implied creation of some contractual obligations of purely financial nature.

It was also pleaded that after the death of Shri Sahabji Maharaj the members of his family had temporarily left Dayal Bagh after locking their belongings in the "Tej Punj". It was in the month of December, 1938, that the defendants and Prem Swarup returned to Dayal Bagh, but their entry was blocked. They, however, used force in order to reach up to their residence, namely, "Tei Punj", and on finding that the plaintiff Sabha had put its own locks in place of the locks which had originally been put by the defendants they broke open the locks of the Sabha and occupied their own house, and since then they have been not only in proprietary possession but (in case their ownership was not proved) in adverse possession of that building.

It was also pleaded by them that the plaintiff Sabha could not be registered as a charitable society under Act 21 of 1860 and that it had ceased to function inasmuch as no Sant Sad Guru had reappeared within two years of the death of Shri Sahabji Maharaj. The other pleas raised by them were of bar of limitation and of Section 42, Specific Relief Act. They also contended that the suit was barred by estopped and acquiescence.

5. The learned Civil Judge framed the following issues:--

(1) Whether the defendants are in adverse possession for more than 12 years and the suit is barred by Article 144 of the Limitation Act?

(2) Whether the suit is barred by Article 142 of the Limitation Act?

(3) Whether the plaintiff has been receiving ground rent or licence fee about the land in suit? If so, its effect?

(4) What is the area and situation of the land including the building for which the ground rent or licence fee is realised by the plaintiff?

(5) Whether the house was constructed at the cost of Shri Sahabji Maharaj?

(6) Whether the money out of which the disputed house was constructed was donated by Shri Sahabji Maharaj to the plaintiff Sabha?

(7) Whether Shri Sahabji Maharaj signed and executed the memorandum? If so, what is its effect?

(8) Whether the defendants are mere licensees of the house as well as its site and the land, if any, appurtenant thereto, or whether the defendants were in possession as members of the joint Hindu family along with Shri Sahabji Maharaj in his lifetime and after the death of Shri Sahabji Maharaj are in possession in their own rights as survivors?

- (9) Whether the agreement dated 21-4-34 is a legal, valid and binding document
- (10) Whether the house was constructed at the cost of Shri Sahabji Maharaj through the agency of the plaintiff Sabha in terms of resolution of the executive committee and the rules framed by the Sabha, if any? If so, its effect?
- (11) Whether the plaintiff is entitled to sue or to maintain the suit?
- (12) Whether defendant No. 1 ever applied for the licence of the building or the land in suit to the plaintiff and whether the plaintiff ever treated her as a licensee?
- (13) Whether the suit is barred by Section 42 of the Specific Relief Act?
- (14) Whether the suit is barred by estoppel and acquiescence?
- (15) To what relief, if any, is the plaintiff entitled?
- (16) Whether Bubu Ram Jadon is the duly appointed secretary of the Sabha and is competent to bring the suit on behalf of the Sabha?
- (17) Whether the land marked by ABCD in the plaint as well as the site of "Tej Punj" belongs to the plaintiff?

6. Under issues Nos. 11 and 16 the finding recorded by the learned Civil Judge was that the plaintiff Sabha was a registered society under Act No. 21 of 1860 and that it could be validly registered under that Act, being a religious and charitable society. He also held that Shri Babu Ham Jadon was the duly appointed Secretary of the Sabha.

7. An argument was, however, raised on behalf of the defendants that the plaintiff Sabha was not a duly registered body inasmuch as the plaintiff had failed to establish that seven persons had actually signed the memorandum of association for the registration of the Sabha. The learned Civil Judge held that the defendant had not raised any specific plea to that effect. He further observed that there was sufficient material on the record to show that the Sabha had been duly registered.

8. Issues Nos. 3 to 10, 12, 14 and 17 were considered by the learned Civil Judge at one place and the findings arrived at by him were that the agreement dated 21st April, 1934, bore the signatures of Shri Sahabji Maharaj and was a legal, valid and binding document, that Shri Sahabji Maharaj made bhent for construction of "Tej Punj" on the terms and conditions contained in the memorandum (Ext. 8) and acquired tenancy rights on those terms and conditions in building known as "Tej Punj" and also the land appurtenant to it, to wit, the strip of land lying to the east of "Tej Punj" and also the land on the remaining three sides of the building, that the building known as "Tej Punj" belonged to the plaintiff Sabha and that defendant No. 1 was occupying the same as a tenant on payment of rent on the terms and conditions contained in the memorandum (Ext. 8). It was also held that the suit was not barred by

estopped and acquiescence and that the site of ""Tej Punj" as well as the land appurtenant to it on all the four sides of the building belongs to the Sabha.

9. On the question of adverse possession the finding recorded was that the incident of 15-12-1938, as alleged by the defendants, did not take place and the possession of the defendants was referable to a little (title?) and there could hardly be any question of prescribing title by adverse possession and that the suit was not barred by time. He also held that the plaintiff had all along been receiving the rent for the building from Shri Sahabji Maharaj and also from the defendants,

10. The learned Civil Judge, therefore, decreed the plaintiff's suit with this modification only that the defendants were held to be tenants under the terms and conditions of the memorandum (Ext. 8),

11. Lady Sohandei died before the appeal could be filed and her heirs were impleaded as respondents. The appeal was preferred by Shanti Swarnp (defendant No, 2) alone. All the grounds taken up by the defendants in the original Court were reiterated in appeal, and one more ground taken was that the Sabha was not a duly registered society, as the memorandum and the rules were not signed by the requisite number of persons (ground No. 2).

12. The Sabha (respondent No. 1) filed a cross-objection against the finding of the learned Civil Judge and contended that the status of Lady Sohandei was that of a licensee only and not that of a tenant.

13. A preliminary objection taken by the appellant, that the cross-objection filed by the respondent Sabha is beyond time, is based on the misconception that the appeal was admitted by the Registrar soon after it was filed. In fact, in view of Rule 9, Chapter XI, Rules of Court the appeal could not have been admitted by the Registrar. The order for admission was, therefore, passed by the Court on 23rd October, 1967, and the cross-objection was filed within time in relation to the date of admission of the appeal. There is, therefore, no force in this preliminary objection.

14. Before we proceed to consider the main controversies of fact and law between the parties, it would be proper to consider the question of the right of the Sabha to institute the suit giving rise to this appeal.

15. The plaintiff Sabha had alleged in paragraph 1 of the plaint that it was a society registered under Act No. 21 of 1860. Both the defendants did not admit that the allegation made in the plaint. Both the defendants pleaded that the plaintiff is not a legally constituted body and that it could not validly be registered under Act No. 21 of 1860. The pleas raised by the defendants in the written statements were by no means clear, and, therefore, the plaintiff, by means of an application (paper No. 45-C), dated 12th March, 1954, pressed for their clarification. The reply which was given by defendant No. 1 on 20th March, 1954, was

"that the plaintiff-applicant had no right to call for any further particulars in order to fish out some new case."

On 31st August, 1954, defendant No. 1 sought adjournment to enable her to consult the Solicitor-General. On 3rd May, 1965, the learned counsel for the parties agreed that the pleadings may be clean on the date of issues. Accordingly, 22nd July, 1955, was fixed for clarification of the pleadings and for issues. The pleadings were, however, clean on the next date for issues, i.e., on 24th March, 1956. All that was stated on behalf of the defendants on that date with regard to this particular plea of the defendant was that-

"the Sabha ceased to have its existence as after the death of Sahabji Maharaj, other Sahabji Maharaj was not appointed within two years from his death and in fact the said Sabha could not be registered under the Societies Registration Act".

15-A. It, therefore, became clear from the pleadings of the parties that the grounds on which the right of the Sabha to maintain the suit was challenged were as follows:--

(1) The Sabha was not a registered society.

(2) Sri Babu Ram Jadon was not its Secre-

(3) The Sabha had ceased to exist because no Sant Sad Guru had been elected within two years of the death of Shri Sahabji MaharaJ.

(4) The Sabha could not be registered under the Societies Registration Act, the contention being that it was not a religious and charitable society.

16. The plaintiff Sabha, in order to make sure that the defendants had raised all the pleas which they intended to take in that connection moved application No, 347-C on 16th July, 1956. It was specifically mentioned in that application that unless the defendants made their position clean, the plaintiff would assume that no other plea ad been taken up and that all other conceivable pleas had been given up. No reply was given by the defendants to that application. Again, a similar application (paper No. 412-C) was moved on behalf of the plaintiff on 30th August, 1956, after most of the plaintiff's evidence had been led. The plaintiff made his position clear by stating that he does not want that from any vague or indefinite matter on the record the Sabha may be taken by surprise by the defendants. It was also mentioned that-

"If, however, the defendant insists on pressing those pleas, the plaintiff is prepared to meet them forthwith and prays that issues on the same be framed allowing the plaintiff to file documents relating to them which he is prepared to file at once." Shanti Swarup (appellant), who was defendant No. 2 in the suit, gave a reply to that application on the same day by mentioning that no plea taken in the written statement was intended to be given up and no additional issue was necessary.

17. On 1st October, 1956, the plaintiffs evidence was closed. Such of the

plaintiff's witnesses who could be expected to have seen the memorandum, were asked no question in cross-examination on the point whether or not the memorandum of association had been signed by seven persons. When defendant No. 2 entered the witness-box, he stated in examination-in-chief that the memorandum of association had been signed by seven persons. Even at that stage he did not state that he was certain that it was signed by less than seven persons. When cross-examined, he admitted that he had been informed by his own uncle Shri Brij Basi Lal that the memorandum of association had been signed by seven or eight persons and that he had passed on that information to his counsel.

18. In the circumstances mentioned above the learned Civil Judge rightly arrived at the conclusion that the plea that the memorandum of association had not been signed by at least seven persons was not taken by the defendants. Such a plea was not even in the contemplation of the defendants and could not have been taken by them at any stage of the pleadings.

19. It was not incumbent on the plaintiff to prove specifically that the memorandum of association had been signed by not less than seven persons. The law is well settled that no evidence need be led by any party on a point which is not in issue between the parties (vide AIR 1930 57 (Privy Council) Deoki Nandan Vs. Murlidhar, and Moran Mar Basselios Catholicos v. Thukalan Paulo Avira, AIR 1959 SC 31).

20. A certified copy of the registration certificate (Ext. 2) has been filed. It shows that the plaintiff Sabha was registered as a society under Act No. 21 of 1860 on 17th November, 1921. Sections 1 to 3 of Act No. 21 of 1860 read as follows:--

"1. Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint Stock Companies, form themselves into a society under this Act.

2. The memorandum of association shall contain the following things (that is to say):

The name of the society.

The objects of the society.

The names and addresses, occupations of the governors, council, directors, committee or other governing body to whom by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

3. Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fee as the State Government may from time to time direct; and all fees so paid shall be accounted for to the State Government."

21. Section 1 of Act 21 of 1860 requires that the memorandum of association shall be signed by seven or more persons. Section 2 provides that the rules and regulations of the society shall be certified to be correct copy by not less than three of the members of the governing body, while Section 3 lays down that "upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered. It is, therefore, abundantly clear that the Registrar is not expected to register a society unless the provisions of Sections 1 and 2 of Act 21 of 1860 have prima facie been complied with.

22. It is true that the Registrar is not in a position to know whether the persons whose signatures appear on any memorandum of association have actually signed that memorandum of association, but before registering a society he has to satisfy himself that the memorandum, "as required by law, has been filed. In other words, the memorandum must purport to have been signed by at least seven persons and the copy of the rules and regulations of the society must, on the face of it, bear the signatures of not less than three of the members of the governing body.

23. Section 114 of the Indian Evidence Act, 1872, lays down that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common, course of the natural events, human conduct and public and private business, in relation to the facts of the particular case. Illustration (e) to the section is-

"The Court may presume-

(e) That judicial and official acts have been regularly performed....."

24. Once the registration of a society has been proved, it can safely be assumed, relying on the presumption which can be raised u/s 114 of the Evidence Act, that the necessary formalities which were required to be observed before a society could be registered by the Registrar had prima facie been observed and at least on the face of it the memorandum of association purported to have been signed by seven different persons.

25. That is, however, a rebuttable presumption, and it is always open to a party to plead and to lead evidence to show that what purported to have been done was not, in fact, done and the memorandum of association did not, in fact, contain the signatures of seven or more persons. For example, it could be said that although the memorandum of association purported to have been signed by seven persons, one of them had, in fact, not signed the same and his signatures on the memorandum of association had been forged. Once such plea had been

raised and some evidence led in support of that plea, no presumption could be raised u/s 3 of the Societies Registration Act read with Section 114 of the Indian Evidence Act that any particular person had signed the memorandum of association. Section 19 of Act 21 of 1860, however, provides that where a certified copy of a document filed with the Registrar had been obtained, "such certified copy shall be prima facie evidence of the matters therein contained in all legal proceedings whatever." Where a certified copy of the memorandum of association has been filed, a presumption arises that the persons whose signatures appear on that memorandum had signed the same, and unless that presumption was rebutted by the satisfactory evidence, even the vague denial of one of the signatories to any such memorandum could hardly be of any avail.

26. The case of *Sunder Singh Mallah Singh, Sanatan Dharam High School Trust, Indaura v. Managing Committee, Sunder Singh Mallah Singh Rajput High School, Indaura*, AIR 1938 PC 73, is relied upon by the learned counsel for the appellant for the proposition that the presumption that an association is duly registered arises not on the certificate of registration granted by the Registrar u/s 3 but on the copies of the rules and regulations and memorandum certified u/s 19 of Act No. 21 of 1860 which constitutes them prima facie evidence of the matters therein contained. It has been submitted that it was necessary for the plaintiff to have filed certified copies of the certificate of registration and the rules and regulations and memorandum of association certified u/s 19 to prove valid registration of the society.

27. In our opinion there is no force in that contention. The facts of the case relied upon by the learned counsel for the appellant are very much different from the facts of the present case. In the case of *Sunder Singh Mallah Singh Sanatan Dharam High School Trust, Indaura* AIR 1938 73 (Privy Council) a definite plea had been raised on behalf of the defendant that the plaintiff committee was not a duly registered body and issue No. 3 was framed in the following words:--

"Whether the plaintiff committee is not a duly registered body."

One of the signatories to the memorandum of association (named Kharak Singh) had stated during the course of cross-examination that-

"I did not see the original Articles of Association (nor sign them) sent to Registrar."

Commenting on that statement made by Kharak Singh, one of the signatories, their Lordships of the Privy Council observed:

"Whatever one might think probable, it is left uncertain whether this witness was referring to the Memorandum as the Articles of Association; counsel were unable to inform their Lordships definitely what was the reason of the brackets round the words "nor sign them". If the defendants really desired to displace the presumption in this respect, it was city their duty to seek to recover the original memorandum and to put the signature thereon to the witness. Their Lordships

are, therefore, of opinion that the association was duly registered and, therefore, locus stand to maintain the suit." It was in this context that it was mentioned earlier in the body of the judgment that--"their Lordships are of the opinion that presumption arises, not on the certificate of registration granted by the Registrar u/s 3, but on the copies of the Rules and Regulations and Memorandum certified u/s 19, which constitutes them prima facie evidence of the matters therein contained."

The presumption referred to is regarding the signature of Kharak Singh on the Memorandum of association and not regarding the valid registration of the society.

28. The case of AIR 1938 73 (Privy Council) does not help the appellant's contention that even in cases where valid registration was not questioned in the pleadings and at the stage of evidence, it was incumbent on the plaintiff to file a certified copy of the memorandum of association. Inasmuch as the registration of the society was not specifically admitted, all that was required of the plaintiff was to file a copy of the certificate of registration. It is only a copy of the certificate of registration which could prove the registration (as distinguished from valid registration) of the society. In a case like the present one where the defendants are not even aware whether or not the memorandum of association had been signed by seven or more persons, it is not necessary to prove who the persons who had actually signed the memorandum of association. Nor was it necessary to file a copy of the memorandum of association.

29. Shanti Swamp (defendant No. 2) during the course of his cross-examination stated that the original memorandum of association was missing from the office of the Registrar and was not available for inspection. In such circumstances no copy of the memorandum of association could be filed by the plaintiff.

30. It appears from the record that the defendants had in an earlier litigation admitted the valid registration of the society. The Income Tax Officer Agra, treating all the contributions made by the Dayal Bagh Satsangis and all the properties which had been acquired from those contributions as also of the income which arose out of such properties as the personal property of Shri Sahabji Maharaj started proceedings against him for assessment of income. The Sabha filed suit No. 4 of 1937 against the Secretary of State for India in Council and also impleaded Shri Sahabji Maharaj as a defendant. It was alleged in paragraph 1 of the plaint (Ext. 157) that the plaintiff Sabha was a validly registered society under Act No. 21 of 1860. Shri Sahabji Maharaj filed a written statement (Ext. 19) on 14th April, 1937, admitting paragraphs 1 to 11 of the plaint.

Shri Sahabji Maharaj died during the pendency of the suit, and one Prem Swarup and both the defendants of this suit were impleaded as his heirs. It is clear from the statement made by Shanti Swarup (defendant No. 2) that he and the other heirs of Shri Sahabji Maharaj had adopted the same written statement which had

been filed by Shri Sahabji Maharaj. The defendant's own admission can be regarded as evidence of the fact that the plaintiff Sabha had been duly registered under Act No. 21 of 1860.

31. In view of what has been stated above, we have no hesitation in affirming the finding of the learned Civil Judge that it was also affirmatively proved that the Sabha had been duly registered under Act No. 21 of 1860.

32. The next question which arises for consideration is whether the Sabha is a religious or charitable society and could be registered under the provisions of Act No. 21 of 1860. The objects of the Sabha as set out in the three clauses of Section 2 of the by-laws of the Sabha (1921) read as follows:

(a) To regulate the conduct of business pertaining to the Satsangis, i.e., the followers of the Radhaswami faith and the institutions of the Radha Swami faith in the conduct of religious services, i.e., the Central Satsang and branch Satsangs.

(b) To collect, preserve and administer the properties, movable and immovable, that have been or may hereafter be dedicated to Radha Swami Dayal or that may be acquired for, or presented to, Radha Swami Satsang and to deal with and apply the same to the furtherance of the religious and charitable objects of that Satsang.

(c) To do the above and all such other things as are conducing to the attainment of, or incidental to, the above objects in accordance with the mandates of the Sant Sad Gum at the time, who is recognised as the representative of the Supreme Creator Radha Swami Dayal and whose mandate shall be paramount and absolute in all matters referred to above.

33. The by-laws of the association are 65 in number and lay down rules and regulations for the Sabha itself, for its executive committee, for the Central Assembly of the Satsangis, for the branch Assembly of Satsangis and for the maintenance of the Radha Swami Educational Institute, the Engineering and Industrial Institute, known as Model Industries, a Bhandar Ghar (common Mess) and of a dispensary, known as the Dayal Bagh Dispensary and other miscellaneous institutions. Some of these institutions for which provision is made are distinctly religious, but many of them are city charitable, though some of them may be said to be not directly religious or charitable.

Act 21 of 1860 permits registration of societies for charitable purposes, and charitable purposes are detailed in Section 20 of the said Act. It is not city mentioned in Section 20 that religious societies may also be registered under the Act. But it is mentioned that societies established for the diffusion of useful knowledge may be registered. A religious society can also be called a charitable society. It was held in the case of *Anjuman Islamia v. Nasir Uddin* ILR (1901) All 384, by a Division Bench of this Court that a religious purpose may be a charitable purpose and a religious society might legally be registered under the

provisions of Act No. 21 of 1860. In the case of Mohd. Husain v. Majida Husain Mohd. Managing Committee, ILR (1940) Mad 671 : AIR 1940 Mad 167, it was held that a society some objects of which are charitable and some are religious but the paramount object of which is charitable may be validly registered under the said Act. We respectfully agree with the view in the cases mentioned above and, applying those principles to the case of the plaintiff Sabha, we find that paramount object of the society was charitable. The by-laws of the association provide for the establishment and maintenance of several institutions which are city charitable and even though some of the objects were religious the dominant intention was charitable. In our view, the Sabha could be validly registered under Act No. XXI of 1860.

34. In the case of Radha Swami Satsang Sabha Vs. Tara Chand and Others, , a Division Bench of this Court held with regard to this very Sabha that it was a religious and charitable institution and validly registered under Act No. XXI of 1860.

35. There is ample evidence on the record to establish that Babu Ram Jadon was the Secretary of the Sabha and that within two years of the demise of Shri Sahabji Maliaraj another Santsat Guru (that is to say, Mahtaji Maharaj) had been recognised by a vast majority of Satsangis. That recognition was made in the month of December, 1938. There is no substance whatsoever in the plea raised by the defendant that no Santsat Guru had appeared within two years of the death of Shri Sahabji Maharaj.

36. We might, however, observe that this plea could be of no avail to the defendants in view of the fact that the Sabha was a duly registered body under Act No. XXI of 1860.

37. Section 13 of Act No. XXI of 1860 provides for dissolution of societies registered under that Act. It lays down that -

"Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims, and liabilities, according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite.

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose".

38. The provisions in the by-laws of the society that it shall stand dissolved in case no Santsad Guru reappeared within two years of the death of the last Santsat Guru militates against the provisions of Section 13 of Act No. XXI of 1860, and must, therefore, be deemed to be invalid and inoperative.

39. Section 6 of Act No. XXI of 1860 provides that every society registered under this Act may sue or be sued in the name of the President, Chairman or Principal Secretary or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion.

40. The suit out of which this appeal arises was brought in the name of the Sabha through its Secretary, Sri Babu Ram Jadon. It has, therefore, been contended by the learned counsel for the appellant that the present suit was bad inasmuch as it had been brought in the name of the Sabha itself and not in the name of the Secretary.

41. It was held in the case of *Ganga Sahai Vs. Bharat Bhan and Others*, , by a Division Bench of this Court that a Society registered under the Act No. XXI of 1860 even if it be not a corporation in the full sense is certainly a legal person and letters of administration could be granted to such society. We respectfully agree with that view. The right vests in the society to sue or be sued. The provision in Section 6 of Act No. XXI of 1860 which begins with the words "may sue or be sued" in the name of one of its officers cannot take away the right of the Society itself to sue or be sued in its own name. (Section 6) is merely an enabling provision that the suit be brought by the society or the society itself be sued in the name of the President, Chairman, or Principal Secretary.

It was held by a learned single Judge of the Calcutta High Court in the case of *Sonar Bangla Bank Ltd. Vs. Calcutta Engineering College and Others*, , that Section 6, which is only permissive, does not make a suit against a registered society in its own name incompetent.

The same view was taken by a single Judge of this Court in the case of the Managing Committee of the National English Middle School controlling and running Nehru Rashtriya later College Manglour Town through Dr. Sohan Lal Datta, Manager and Secretary of the Society, Saharanpur v. The District Inspector of Schools, Saharanpur, 1956 All LJ 790 and it was held that a writ petition could be filed by the registered society in its own name through its Secretary. The same view finds support from the case of *Satyavart Sidhantalankar Vs. The Arya Samaj*, decided by a single Judge of the Bombay High Court.

42. The suit giving rise to this appeal was brought in the name of the Sabha through its Secretary. In view of our opinion that a society registered under Act No. XXI of 1860 is a legal person, entitled to sue, and Section 6 of Act No. XXI of 1860 is merely permissive, the form of the suit cannot be said to be defective.

43. The result is that we find that the plaintiff Sabha could be validly registered as a society under the provisions of Act No. XXI of 1860, that it has been so registered, and that it could bring the suit out of which this appeal arises.

44. Before considering the main question of fact arising in this appeal, to wit whether Sri Sahabji Maharaj had made a gift or dedication or the money in favour of Radha Swami Dayal, we shall have to consider the history of the Radha Swami faith and the Dayal Bagh Colony. The intention of the donor and the relevant documents which show that the gift or the dedication was made shall have to be considered in the light of the history of the Radha Swami faith and the institution of Dayal Bagh. It is necessary to state briefly a few facts relating to the tenets of Radha Swami religious faith and its early history and the position which Sri Sahabji Maharaj occupied in relation to the Sabha and the followers of this faith.

45. The Radha Swami faith was founded in the year 1861 by Sheo Dayal Singh, a Khattri, resident of Agra. Radha Swami Dayal, after whom the faith is named, is the name given to the impersonal deity, the Supreme Being, by followers of the faith. According to the tenets of this faith the Deity is represented on this earth by a human being who is called the Santsad Guru. According to this faith, human spirit is tied up to the material world by the chain of minds and matter and it cannot secure emancipation and unity with God, which should be the object of all human endeavour, without the assistance of God's representative on earth, namely, the Santsad Guru. A follower of this faith has to be initiated into certain practices by the Santsad Guru and is enjoined to keep his company as much as possible, and this association is called "Satsang", and the followers of the faith are called "Satsangis". The founder of the faith, Sheo Dayal Singh, popularly known as "Swamiji Maharaj", was its first Santsad Guru. The second Santsat Guru was Rai Bahadur Salig Ram, known, as "Huzur Maharaj". The third Santsad Guru was Pandit Brahma Shankar Misra, known as "Maharaj Sahab". All these three Gurus are regarded as true exponents of the creed by all the followers of this faith.

46. On the death of the third Guru in the year 1907 a schism broke out which split the faith into two sections, one of which is popularly known as "Swami Bagh Satsangis" and the other is known as "Dayal Bagh Satsangis". We are concerned in this appeal only with Dayal Bagh Satsangis. Swami Bagh Satsangis believe that the Divine Current, after the departure of Maharaj Sahab, the third Santsad Guru, from this world came to the sister of Maharaj Sahab, known as "Buaji", who took the place of Santsad Guru from 1907 to 1913. The Dayal Bagh party on the other hand believed that the Divine Current after the departure of Maharaj Sahab from this world came to Kamta Prasad Singh, who became the fourth Santsad Guru, and was known as "Sarkar Sahab". On his death in the year 1913 Sir Anand Swamp became the fifth Santsad Guru, and was called "Shri Sahabji Maharaj". In 1904 a trust deed was executed vesting the properties in certain trustees. After the schism of 1913 the Swami Bagh Party came in possession of religious shrines and the properties which were vested in the trustees under the

trust deed of 1904. A controversy sprang up between the two sections as to the management of the shrines and the administration of trust property, and it brought into forefront the question whether the properties held by the trustees under the deed of 1904 were impressed with a public trust of a religious or charitable nature or it was property free from such a trust and at the absolute disposal of the Santsat Guru. This controversy was taken up to the Privy Council in the case of AIR 1935 97 (Privy Council) and it was held by the Privy Council that the offerings made to the first three Santsat Gurus and the properties which came out of them were not impressed with any public trust of charitable or religious nature. The offerings made to the first three Santsat Gurus, therefore, remained in possession of the Swami Bagh section of the Satsangis.

47. The Dayal Bagh section had, therefore, to start with a clean state, so far as any offerings of any property were concerned under the fourth Santsad Guru, known as "Sarkar Sahab". He was a lawyer by profession and he established an administrative council in the year 1910, which was called the Radha Swami Satsang Sabha, to administer the property and the affairs of the Satsangis. Shri Sahabji Maharaj was the fifth Santsad Guru of the Satsangis. He was a person endowed with gift of leadership, administrative ability and powers of organisations. To a religious mind he also joined practical mind for worldly affairs and he considered it his duty not only to look after the spiritual welfare of his flock but also to its material welfare. He was the founder of the Dayal Bagh Colony. So much progress was made during his time that in the year 1921 necessity was felt of registering the Sabha, which had been functioning since 1910, and whose president was Shri Sahabji Maharaj himself, as a charitable society under Act No. XXI of 1860.

48. Shri Sahabji Maharaj as Santsad Guru occupied a unique position. However, he never considered himself different from an ordinary Satsangi. In order to provide money for the Dayal Bagh Colony he framed rules under which the Satsangis were permitted to offer bhents of a fixed sum of money to Radha Swami Dayal. The amount of bhent represented the cost of the construction of the type of the houses which was intended to be given to the donor for his residence till his death, and after his death to his nominee from amongst his Satsangi heirs. The idea was that only the Satsangis should live in the Dayal Bagh Colony and the houses which were constructed with the money received from the Satsangis as bhent were to be treated as the property of the Sabha. According to the rules for making bhent for the construction of quarters the Satsangi offering the donation was to lose control over that money which was to vest in the Sabha and one of the houses of the type asked for was allotted to the Satsangi for his life. He was also given a right to nominate the person to whom it should be allotted after his death, but, according to the rules, the Sabha was not bound to accept the recommendation of the donor.

49. In this connection the relevant portions of the statements made by Shanri Swarup (appellant) who was examined as a witness for the defendants, read as

follows :--

"The teachings of this faith, given by the first five Sant Sad Gurus, of whom Sahabji Maharaj was the last, are given in the different books written by them..... In all these books it is written that it is the duty of every man to attain salvation. Salvation is necessary to escape pleasures and pains. According to Radha Swami faith five things are necessary, viz., Sumiran, Dhayn, Bhajan, Seva and Satsang (remembrance, meditation, devotion, Service and good company). This very (thing?) is called "Surat Sabda Yoga."A man's mode of living, food, drink, contacts, environments have much effect over "Surat Sabda Yoga and.. .For practice of Yoga it is necessary that one should live away from Such atmosphere as distract the mind. It is correct that the Satsangis began to live more and more near the Guru Maharaj with the passage of time, inasmuch as there is an instruction that one should have the maximum of the Satsang of Guru Maharaj. I have heard that the founder of the faith had commanded that all the Satsangis should take up residence from the bank of the Jamuna river upto the canal..... .The object of Sahabji Maharaj in establishing the colony was that the Satsangis might get jobs and might live conveniently and peacefully and might make spiritual progress. To my knowledge the object of establishing the Colony was that each Satsangi might get the maximum opportunity for remembrance, meditation, devotion, service and good company. It is correct to say that Sahabji Maharaj got the inspiration for establishing the Colony from the Supreme Being. I cannot tell whether or not it was included in that inspiration that no one should be made owner of immovable property of the Colony. In the year 1926 Sahabji Maharaj had said that no Satsangi was owning any immovable property in the Colony.... Sahabji Maharaj had written that he had not given permission to anybody to construct any house as its owner in Dayal Bagh. There is no doubt in it that considerable houses of bhent had also been constructed before the year 1926. Huzur Sahabji Maharaj was a big man in addition to being a religious leader. Whatever he might have said he must have said correctly".

When cross-examined on the question of bhent, Shanti Swarup (defendant-appellant) stated as follows :

"The bhent is offered to the Sant Sad Guru and he gives it to the Sabha. The bhent is offered to him in his capacity as Sant Sad Guru. This bhent is not meant for the personal gain of the Sant Sad Guru; rather the Sant Sad Guru spends it for the benefit of the Sangat. Sant Sad Guru never likes to bring the offering in his personal use. This I concede that the entire bhent except the construction bhent was offered for the benefit of the Satsangis and it was not the property of the Sant Sad Guru; on the other hand it vested in the Sabha, which was formed during the time of Sarkar Sahab. The Sabha, which exists at present and calls itself a registered body, is not a legal entity and it is not the owner of the entire property and amount which has been offered as bhent, though it has continued to manage it".

50. In order to provide funds for the growth of the Colony bhents were made by

the Satsangis and Sri Sahabji Maharaj encouraged them to make such bhents. He did not consider himself to be in any way different from an ordinary Satsangi and offered bhents to Radha Swami Dayal himself. He donated money towards Jeewan Uddhar Fund and made Radha Swami Satsang as the beneficiary in respect of the certificates of the Jeewan Uddhar Fund of the value of Rs. 1,000. He gifted the Bara Estate of the value of Rs. 75,000 to the Sabha. On 29th December, 1926 (vide resolution Ex. 30) the Satsangis intended that Sahabji Maharaj should accept a donation of Rupees 2 lacs from them and secure a personal income of Rs. 1,000 from the funds of the Sabha so that he could live with ease and comfort. Shri Sahabji Maharaj declined that offer. When the proposal for the construction of "Tej Punj" emanated from him the Sabha wanted that he should not make any bhent and the entire cost of construction should be borne by the Sabha. Shri Sahabji Maharaj did not agree to that, but insisted that ground rent should be fixed as in the case of other Satsangis. The Sabha insisted that he should not pay any ground rent but that offer too was not accepted by him, and according to his wishes the ground rent for "Tej Punj" was fixed and after his death, which took place in the year 1937, it was paid either by one of his two sons or by the widow.

51. It is in this background that it shall have to be determined whether Shri Sahabji Maharaj wanted to build a house inside Dayal Bagh Colony as his personal property through the agency of the Sabha or whether, just like an ordinary Satsangi, he had made a gift of the entire cost of construction of "Tej Punj" with full understanding that he will have nothing to do with the money which was given as a gift for Radha Swami Dayal and that the same shall vest in the Sabha for the benefit of the Satsangis and the house which would be constructed and of which he would defray all cost was to be the property of the Sabha in which he will only have a right of residence subject to the rules framed by the Sabha on payment of ground rent, as was usual in the case of all Satsangis.

52-62. (His Lordship proceeded to consider the documentary evidence).

63. In these circumstances we have no hesitation in accepting the signatures of Sir Anand Swarup on the memorandum (Ex. 8) (printed form containing the rules of the bhent and a declaration that the applicant is a Satsangi and the endorsement and nomination admittedly signed by Shri Sahabji Maharaj -- Ed.) as genuine. We further hold that the words "my wife" on the second page of the memorandum are in the handwriting of Sir Anand Swarup (Shri Sahabji Maharaj).

64. It is contended that the memorandum (Ex. 8) is inadmissible in evidence because it required registration. There is no force in this contention. No interest in the house passed or could pass to Shri Sahabji Maharaj as a result of this document. A document making a gift of cash to a Deity does not require registration. The same view was taken in the case of Tangella Narasimhaswami, Dharmakarthi of Sri Kodanda Ramachandra Moorthy Vs. Iamidi Venkatalingam and Others, .

65-69. (After further considering the evidence his Lordship continued).

70. It is clear from the tenets of the faith and the testimony of plaintiff's witnesses Amar Chand (P.W. 3) and Sant Prasad (P.W. 6) that bhent used to be offered for Radha Swami Dayal. There can be no doubt that Shri Sahabji Maharaj, who was the Santsad Guru of the Dayal Bagh group of Satsangis intended to make a bhent to Radha Swami Dayal, the Supreme God of the Satsangis (that is to say, in his name) and had absolutely no intention to construct a residence in Dayal Bagh as his personal property. It has come in the plaintiff's evidence and is not disputed that Shri Sahabji Maharaj himself used to offer bhent. The bhent in this case by the Santsad Guru himself must have been for Radha Swami Dayal, the Supreme God of the Satsangis.

71. The most important evidence in this connection is the memorandum (Ex. 8) itself. Its first paragraph shows that the Satsangis are permitted to offer bhent in respect of residential houses. Paragraph 2 provided that the Sabha should make arrangements for the residence in Dayal Bagh of the Satsangi offering bhent. The bhent no doubt represented the exact estimated cost of construction of the type of house for which an application was made for residence of the Satsangi. However, it was made clear in paragraph 5 of the memorandum that all the houses thus built or given shall be the property of Radha Swami Satsang Sabha and no Satsangi residing in those houses would make any change or alteration in those buildings. If, however, that was permitted by the Sabha, the same could be done but the cost was to be realised from the Satsangi. Then, in paragraph 6 it was made clear that the Satsangi offering bhent and given right of residence in one of the houses of the Sabha was to possess no right of transfer in that property. He could, however, surrender his right of residence to the Sabha but could claim no compensation on that account. It was, however, open to the Sabha to give him compensation in lieu of surrender.

In paragraph 7 of the memorandum it was made clear that the Satsangi making the bhent could have no heritable right in that property. That is to say, even the right of residence given to the Satsangi was not heritable. The Sabha could, however, allot the residence to one of his Satsangi heirs nominated by him. It was made clear in para 9 of the memorandum that after the bhent for residential house had been accepted by the Sabha the person making the bhent or his heir shall have no concern or connection with the same. A close scrutiny of this document clearly indicates that complete bhent (gift or endowment) was intended and that the donor did not retain any interest in the money--the subject of the bhent.

72. That Shri Sahabji Maharaj did intend to make a bhent is also clear from certain other documents. (His Lordship reviewed the evidence in this respect and contended).

73. Shri Sahabji Maharaj was the founder of Dayal Bagh Colony. His policy was not to allow any person to possess any immovable property inside the Dayal

Bagh Colony. That will appear from his statement, (copy Ex. 21) made in suit No. 50 of 1924, in the Court of Additional Judge, Banaras, The purpose of establishing the residential colony at Dayal Bagh was to enable the Satsangis to live there near the Saritsad Guru in an atmosphere which was most helpful to spiritual attainment intended for the salvation of the Satsangis. If people were allowed to have property inside Dayal Bagh it could be inherited by the heirs, who might or might not have been Satsangis. That would have created many problems for the Dayal Bagh group of Satsangis. It must be for that reason alone that it was provided in the memorandum (Ex. 8), which contained rules for the grant of residential right in houses inside the Dayal Bagh Colony, that after the death of a Satsangi the house could be allotted only to one of his Satsangi heirs. That purpose could be attained only if the Satsangi retained no interest either in the bhent which he made to Radha Swami Dayal or in the immovable property which was constructed with the money obtained from that bhent.

74. The plaintiff examined several respectable witnesses to prove that the persons offering quarter bhents possessed no proprietary interest in the houses constructed with the money of bhent. Mukand Behari Lal (P. W. 2), Head of the Zoology Department, Lucknow University, Amar Chand (P. W. 3), Ram Sahai Nigham (P. W. 4), who had been living in the Dayal Bagh Colony from 1932, and Tirath Bam (P. W. 5) had themselves offered quarter bhents and stated that they got no proprietary interest in the houses which were allotted to them.

75. There can be no doubt that Sri Anand Swarup (Shri Sahabji Maharaj) must have known that the bhents made to Radha Swami Dayal would vest in the Sabha for the benefit of the Satsangis. He, therefore, sent the cheques and other remittances to cover the cost of the construction of "Tej Punj" to the plaintiff Sabha which accepted the same, entered in its account as income the money received as bhent from Sri Sahabji Maharaj. It also mentioned "Tej Punj" in the property register of the Sabha showing Shri Sahabji Maharaj having the right of residence in that property on payment of a nominal rent of Rs. 6/13 per year.

76. The learned Civil Judge has placed no reliance on the entries in the property register of the Sabha, as the same did not appear to have been properly maintained. We, however, see no reason to discard the property register on that ground. It may be that entries were made in it not immediately but after some time, but that by itself will not make the document inadmissible or unreliable.

77. The above circumstances lead to the inevitable conclusion that a complete gift of the money was intended. It was, however, contended by the learned counsel for the appellant that there could be no intention of Shri Sahabji Maharaj to offer any bhent to Radha Swami Dayal for the simple reason that no application was forthcoming in Form A of the bye-laws to show that Sir Anand Swarup had made a bhent to Radha Swami Dayal, the Supreme God of the Satsangis. It is true that no application in Form A was made by Sir Anand Swarup, but that was not necessary as it was not a case of a general bhent. Though it is not mentioned specifically in the memorandum (Ex. 8) that the

bhent was being made to Radha Swami Dayal, however, keeping in view the tenets of the faith of the Radha Swami Satsangis and the fact that the bhent was being made by the Santsad Guru himself there can be no doubt that the bhent had been made by Sir Anand Swarup to Radha Swami Dayal. It is also evident from the statement made by Sir Anand Swarup in the year 1926 in original suit No. 50 of 1924 in the Court of the Additional Judge, Banaras (vide Ex. 21) that all bhents are made to Radha Swami Dayal.

78. The conduct of the Sabha in appropriating the money offered by Shri Sahabji Maharaj as bhent in terms of the memorandum (Ex. 8) and the conduct of the heirs of Shri Sahabji Maharaj, to wit, Prem Swarup and Lady Sohanderi, in making an application to the Sabha for the grant of the right of residence to Lady Sohanderi. as recommended by Shri Sahabji Maharaj city revealed that Shri Sahabji Maharaj had agreed that he shall be occupying the house to be built for him on the terms and conditions contained in the memorandum and that he had made the bhent for the cost required for raising that special type of house in the same manner as cost of one of the types of houses mentioned in Paragraph 3 of the memorandum used to be given as bhent by order Satsangis who applied for acquiring the right of residence in such type of dwelling houses.

79. In support of the contention that Shri Sahabji Maharaj did not intend to make any bhent but wanted to acquire proprietary interest in the house which was to be constructed with the money supplied by him, the learned counsel for the appellant has relied on the following circumstances :

(1) The construction department of the Sabha charged supervision charges for the construction in the same manner as the P. W. D. adds supervision charges to a bill.

(2) Shri Sahabji Maharaj desired that ground rent be fixed.

(3) In Dayal Bagh some of the persons offering bhent for the construction of houses were allowed compensation when they transferred their occupancy rights with the permission of the Sabha or surrendered the same to the Sabha. In some cases some of the Satsangis had also been permitted to let Out their residential quarters.

(4) After the death of Shri Sahabji Maharaj bills for ground rent and electricity were sent first in the name of Prem Swarup and thereafter in the name of Shanti Swarup. No bill was sent in the name of Lady Sohanderi till the year 1953.

80. The learned Civil Judge has on the basis of oral and documentary evidence led in the case correctly arrived at the conclusion that the facts which formed the basis of all the arguments contained in grounds Nos. (1) to (4) above are correct. However, he has very correctly attached no importance to them for the simple reason that a limited sub-letting, transfer or surrender with the permission of the Sabha was permissible even under the rules contained in the memorandum. The fact that the bills for ground rent and electricity charges were

sent to one or the other son of Lady Sohandei living with her till the year 1953 and were not addressed to her directly is immaterial. That must have been done out of respect and regard for her.

81. The mere fact that ground rent had been assessed and was being charged from the defendants will not establish, that they owned "Tej Punj".

82. The learned Civil Judge has gone to the extent of holding that the bhent was not unconditional, that the person making the bhent retained some interest in his money, and that he got a right of occupancy in the building allotted to him which he could claim as of right after having made the bhent. In our opinion such inferences flow neither from the terms of the memorandum (Ex. 8) nor from the facts and circumstances of the case. The bhent was of cash and the memorandum (Ex. 8) city recites (vide Paragraph 9) that the person making the bhent or his heirs and successors shall have no interest in the money given away as bhent after the same has been accepted by the Sabha. Paragraph 9 clarified the donor's attitude of mind. In the case of a valid bhent (gift or dedication) the person making the bhent could not retain any interest in the money which was the subject of bhent. It was, therefore, necessary to clarify the intention of the donor. In certain instances the Sabha may have given away some compensation to the persons making the bhent at the time of the surrender of their occupancy rights or may have even permitted some of them to transfer or to let out his house to other Satsangis. Such acts of the Sabha could not confer any right in the Satsangis offering bhents either to claim compensation as of right or to transfer or sublet the houses which had been allotted to them. The memorandum city recited that the act of the payment of compensation depended on the sweet will of the Sabha. The Sabha might have done so under a mistaken notion of law or it might have given compensation to them out of regard for the Satsangis as the Sabha existed for the benefit of all of them and could not be expected to cause hardship of any kind to any of the Satsangis. But the explicit terms of the memorandum (Ex. 8) are that:

- (1) no Satsangi had a right to get back the money which he had offered as bhent,
- (2) the Sabha was not bound to construct new residence for a Satsangi who offered bhent; it could have allotted any other house that already existed in the category for which the bhent was made; and
- (3) the Satsangis offering bhent got neither any heritable nor transferable right in the house allotted to them. It is obvious that the Satsangis offering bhent lost all control over the money which was the subject matter of the bhent. The terms of the memorandum (Ex. 8) are explicit on the point that the Satsangis offering bhent did not acquire any proprietary interest in the houses allotted to them by the Sabha and since their right of residence was neither heritable nor transferable, it could not be a lease. It was open to the Sabha not to allot the right of residence even to a Satsangi heir of the person who had offered bhent. Even after allotment the occupant could be ejected for non-compliance of the

rules of the Sabha.

83. The learned Civil Judge has held that the persons offering bhent became lessees of the properties which were allotted to them for residence. We do not agree with that finding. A lease of immovable property has been defined in the Transfer of Property Act as "a transfer of right to enjoy such property" In the present case no interest in the property was transferred to the allottee under the terms of the memorandum (Ex. 8) and the same will become more explicit by a reading of Paragraphs 8 and 11 of the memorandum. Paragraph 8 provides that the Satsangis should keep, their residential houses neat and clean and must not give any chance of complaint to any of the officers of the Sanitary Department of Dayal Bagh. Paragraph 11 of the memorandum laid down that in case of non-compliance or breach of any of the rules the Executive Committee of the Radha Swami Satsang Sabha shall be empowered to get the houses vacated by the occupant. Thus the right conferred on the allottees was in the nature of a licence to live in the houses. The facts that ground rent or rent was being realised from the allottees or that they were allowed to live in the houses will not show that the position of the allottees was that of lessees. Licence fee can be charged from the licencees and the same may even be described as rent. Even exclusive possession may be given to a licensee. The case of *Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others*, is an authority for the aforesaid propositions. In that case the real difference between a lease and licence was pointed out, and it was observed:

"Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement." The question which arose for consideration in that case was whether the stall-holders in a market, who were in exclusive possession of the stalls and were paying rent, were lessees. It was held that the mere fact that the premises are in exclusive possession of a person would not make him a lessee and that he could be called a lessee only if exclusive possession to which a person is entitled under an agreement with the landlord is coupled with interest in the property. It was also held that the word "rent" was used loosely for "fee".

84. Dayal Bagh was a colony of Satsangis and so many restrictions were placed on the Satsangis in the exercise of their right of residence in the houses allotted to them (vide terms of the memorandum, Ext. 8) without giving them any interest in the property that there can be no doubt that they were mere licensees and not lessees.

85. Lady Sohan Dei, an allottee on the basis of recommendation made by Shri Sahebji Maharaj, the donor, must be held to be a mere licensee.

86. After having arrived at the finding that Shri Sahabji Maharaj did make the bhent of Rs. 23,083 for Radha Swami Dayal, a question arises whether the bhent

of Rs. 23,083 which according to the plaintiffs case was made to (or for) Radha Swami Dayal, the impersonal deity of the Radha Swami Satsangis, was invalid as either being prohibited by any law or being so uncertain as to be void. It is submitted by the learned counsel for the appellant that Radha Swami Dayal or God Almighty is an impersonal deity, that everything belongs to Him, and that He neither owns anything nor is capable of taking anything from any donor nor can enjoy it. The impersonal deity has not been and cannot be recognised as a juristic person under any system of law. Therefore, when any person makes a gift to God Almighty or the Supreme Being as an impersonal deity, the title in the property, which is the subject-matter of gift, remains with the donor as the same will not pass on to God Almighty, who is not a juristic person, and no interest having passed on to the donee, the donor must continue to have his proprietary interest in the property.

87. In order to comprehend the full import of this argument one has to examine the history of the charitable institutions. Religious and charitable trusts are found to exist in some shape or another in almost all civilized countries and their origin can be traced primarily to the instincts of piety and benevolence which are implanted in human nature. In early Roman Law there was no question of the Gods being invested with legal personality and whatever property was given to them would cease to be private property altogether. In early imperial period when Rome had not yet become Christian, some of the popular deities like Capitoline, Jupiter, Ephesian Diana and Gallic Mars were given the status of juristic persons by special *Senatus Consultum* or Imperial Constitution to this extent that they could be instituted as heirs under a testament (vide Rattigan Roman Law of Persons, p. 215). It is difficult to say who was regarded as the actual owner of the property which might be given to those deities by a will. Buckland thinks that it was probably the State as the administration was carried on by Magistrates and not by temple priests (vide Buckland's Textbook on Roman Law, p. 177). There was, however, another, and a different species of juristic persons recognised by Roman Law which went by the name of "Foundation" and by which a property or an object could be given the status of a juridical person. Thus, a hospital, a poor-house or orphanage could rank as an institution or foundation" and the institution itself could be regarded as a juristic person in whom the property dedicated for its use would vest. The strict Roman doctrine was that the privilege of a juristic person could be enjoyed by a State institution and by those private institutions only to whom recognition was accorded by the State. But the rule was revised later on, and an exception was made in respect of property dedicated to "pious uses" so that even a private individual could create a charitable foundation without the sanction of the State. "Pia causa" (pious uses) did not require to have a juristic personality conferred upon it. According to Roman Law, a gift *inter vivos* or testamentary disposition whereby the founder dedicated property to charitable uses was sufficient without more to constitute the "pia causa", a foundation in the legal sense, to make it, in other words, the new object of legal rights (vide Sohm's Institute of Roman Law,

p. 208).

88. The English Law recognises only one class of legal persons, viz., corporations which are personifications either of groups or series of individuals and hence are classified as corporations aggregate and corporations sole. A corporation aggregate is an aggregate or collection of many individuals united into one body under a special denomination having perpetual succession and vested by the policy of law with the capacity of acting in many respects as an individual. The personality in such a corporation is totally distinct from that of the individual members of which it is composed. It is an ideal personality which the law brings into existence and in which all the rights and liabilities of the corporate group are vested. This incorporation of number of human beings into a new juridical person is essentially a function of the State and incorporation can be made in various ways, as for example, by special character or by compliance with the provisions of a general statute.

89. A corporation sole, which is the other kind of corporation known to English Law, is somewhat anomalous in its character. It consists really of one person holding office for the time being, as for example, the King, the Parson or the Postmaster-General, and the ideal personality is supposed to continue from one holder of the office to another, thereby creating a sort of perpetual succession. The idea has no doubt been accepted because it is called for by practical necessity. The only difference between the rights of a Corporation sole and those of an individual lies in the fact that there is a unity of title between successive holders of office so that the property devolves from one to the other without formalities of a transfer. Even under the English system a gift for "worship of God" has been held in England to be charitable and valid (vide Tudor on Charities, 5th Edn., p. 32, citing (1817) 3 Mer 353 : 17 RR 100. The case of Attorney-General v. Parson, 17 RR 100, is an authority for the proposition that if land or money be properly given for maintaining "worship of God" without more the Court will execute the trust in favour of the established religion. But, if it be clearly expressed, that the purpose is that of maintaining dissenting doctrines, so long as they are not contrary to law, the Court will execute the trust according to the express intention. And where the intention clearly appears aliunde, though not expressed in the instrument creating the trust, the Court will also carry the manifest design of the founder into execution so far as it is consistent with law. It was laid down that-

"It is incumbent on persons meaning to create a trust for charitable purposes, to make their intention clear by the deed creating the trust; and if it is not so, the Court has no other means of carrying it into execution than by collecting the intention from inference and fair presumption."

89. The materials to be found in the writings of the Hindu Law-givers on the subject of religious and charitable trusts are extremely scanty. The law on the subject which is found to be administered in India is, to a large extent, the creation of Judges based on the demands of the time, the prevalent social and

moral ideas influenced, to a very great extent, by the notions of English Law (vide Hindu Religious and Charitable Trusts by B. M. Mukherjee, p. 3).

90. According to strict Hindu Juridical notions there can be no gift in favour of the Gods. However, both in the Vedas and Smritis, the idea of making gifts or endowments was considered to be the highest act of piety. When after the Buddhist period sections of the Hindu public started worshipping various deities of the Hindu pantheon, rich donations were made to such deities or the temples where deities were installed or for the maths meant for the residence of ascetics of a particular sect or even for dharamshalas. It, therefore, became necessary to determine in whom the property vested after such dedications had been made, and from the earliest times it was held by the Courts that the endowments in favour of any of the Gods of Hindu Pantheon was valid and such gods or deities were capable of holding property, though only in a secondary sense, and could sue or be sued in their own names through the sarbarkar or the pujari of the temple. The Hindu deities were held to be juristic persons by fiction of law. At one time the notion was that after the Sankalp, Utsava and Prathishtha ceremonies, which were prescribed, the deity became vivified and was capable of holding the property. However, that myth was exploded long ago and it was held in the case of Bhupati Nath v. Ram Lal Maitra, ILR (1910) Cal 128, that in the case of religious endowments it was not at all necessary that any particular ceremony should be performed before the gift or endowment could become valid and inding, and it was also held that the gift would be complete as soon as there is clear evidence to show that the donor intended to make a gift in favour of a charity and that he had divested himself of the property which he intended to make a gift of or to dedicate. The actual installation of the deity in the temple before the gift could become complete was not necessary, so that till the temple was constructed or the deity was installed, the property could remain vested in the trustees for carrying out the purposes of the trust, that is to say, the construction of the temple and the installation of a particular deity. In the case of Deoki Nandan Vs. Murlidhar, , their Lordships of the Supreme Court, while considering the principles governing the determination whether a particular Hindu endowment was a public endowment or a private endowment, observed as follows:--

"Then the question is, who are the beneficiaries when a temple is built, idol installed therein and properties endowed therefore? Under the Hindu Law an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it. But does it follow from this that it is to be regarded as the beneficial owner of the endowment.

Though such a notion had a vogue at one time, and there is an echo of it in these proceedings (vide para 15 of the plaint), it is now established beyond all controversy that this is not the true position. It has been repeatedly held that it is only in an ideal sense that the idol is the owner of the endowed properties. Vide Prosunno Kumari Debya v. Golab Chand Baboo, (1874) 2 I.A. 145 ;

Jagdindra Nath Roy v. Rani Hemanta Kumari Debi, (1904) 31 I. A. 203 (PC); and AIR 1925 139 (Privy Council) It cannot itself make use of them, it cannot enjoy them or dispose of them or even protect them. In short, the idol can have no beneficial interest in the endowment. This was clearly laid down in the Sanskrit text."

91. Then, after quoting two Sanskrit texts, it was observed:

"Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a figurative sense (Gaunartha), and the true purpose of a gift of properties to the idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship. In ILR (1910) Cal 128, it was held on a consideration of these and other texts that a gift to an idol was not to be judged by the rules applicable to a transfer to a "sentient being", and that dedication of properties to an idol consisted in the abandonment by the owner of his dominion over them for the purpose of their being appropriated for the purposes which he intends. Thus, it was observed by Sir Lawrence Jenkins, C. J., at p. 138 that "the pious purpose is still the legatee, the establishment of the image is merely the mode in which the pious purpose is to be effected" and that the dedication to a deity" may be "a compendious expression of the pious purposes for which the dedication is designed". Vide also the observations of Sir Ashutosh Mookerjee at p. 155. In Hindu Religious Endowments Board v. Veeraraghavachari, AIR 1937 Mad 750, Varadachariar, J., dealing with this question, referred to the decision in ILR (1910) Cal 128 and observed:

"As explained in the case, that purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as a public trust,"

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

92. Once it is understood that the "true purpose of gift of properties to the idol is

not to confer any benefit on God but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship" there can be no difficulty in understanding the true nature of the gift to Radha Swami Dayal. The gift did not and could not confer any benefit on Radha Swami Dayal, the impersonal deity of the Radha Swami Satsangis. Being an impersonal deity and not being one of the Gods of the Hindu pantheon, Radha Swami Dayal could not be said to be a juristic person. However, when a Satsangi made a gift of money to Radha Swami Dayal for the construction of a house inside Dayal Bagh Colony, there can be no doubt that there was no uncertainty either in his mind or in the mind of others about the following:--

(a) Although the gift was to Radha Swami Dayal, the Satsangi knew that the gifted property would go to the Sabha as Radha Swami Dayal himself could not hold the property.

(b) The Sabha would utilise the money for the construction of a residence inside Dayal Bagh.

(c) the construction of such residence inside Dayal Bagh was absolutely necessary in view of the tenets of the Radha Swami faith so that the Satsangis could live near their Santsat Guru, practise Yoga, and attain salvation.

(d) The actual beneficiaries will be the Satsangis of the Dayal Bagh group whom the Sabha represented as a juristic person.

(e) The Sabha would maintain that benefit of the Satsangis.

93. In the circumstances the purpose of the endowment was definite and both religious and charitable. The Sabha was a body registered under Act No. 21 of 1860, and as a juristic person could hold the property which had been gifted to Radha Swami Dayal (or in the name of Radha Swami Dayal) for the benefit of the Satsangis of Dayal Bagh group, the real beneficiaries. There appears to be nothing illegal in such a dedication.

94. It is settled law that an endowment can validly be created in favour of an idol or temple without the performance of any particular ceremonies provided the settler has city and unambiguously expressed his intention in that behalf, vide *Deoki Nandan Vs. Murlidhar*, and *Deeplal and Others Vs. Parshwanath Digambar Jain Vidyalaya Mahamantri Shri Gulabchand*, We have already held that the intention of the donor was to make a gift to Radha Swami Dayal for the benefit of the Satsangis of the Dayal Bagh group. By executing the memorandum (Ext. 8) Sad Sahabji Manaraj bad city and unambiguously divested himself of entire interest in the money donated. Both these conditions were satisfied. The purpose was religious and charitable. We, therefore, see no reason why the dedication should not be held to be valid even though it may be said that Radha, Swami Dayal is not a juristic person and, therefore, incapable of accepting the gift. The provisions of the Transfer of Property Act where acceptance is also necessary in the case of gift will not apply to endowments of public nature (vide *Ram Kumar*

Ram Chandra and Co. Vs. Commissioner of Income Tax, and Tangella Narasimhaswami, Dharmakarthha of Sri Kodanda Ramachandra Moorthy Vs. Iamidi Venkatalingam and Others, . Such dedications become complete on the proof of the intention of the donor to donate and his clear intention to divest himself of the property. In our opinion such a gift made to an impersonal deity without any element of uncertainty in any material respect cannot be held to be void merely because Radha Swami Dayal was an impersonal deity and incapable of accepting the gift.

95. The learned counsel for the appellant has submitted that there are two decided cases of this Court which are authority for the proposition that a gift to an impersonal deity could not be made. The first case relied upon is that of Phundan Lal v. Arya Prithi Nidhi Sabha, ILR (1911) All 793, in which the property had been dedicated not to any particular deity but to one which was subsequently to be installed in a temple and described as "Thakurji in his Thakurdwara" without mentioning the particular Thakurji or the particular Thakurdwara. It was held that the dedication was void for uncertainty as neither the Thakurji nor the Thakurdwara could be ascertained with any certainty. The next case relied upon by the learned counsel for the appellant is that of Panchu Lonia Vs. Ram Newaz and Others, , in which the deed of endowment was in favour of "Sri Ram Chanderji Maharaj, the God of the two worlds" and the deity was not associated with any particular idol or shrine. It was held that the dedication was valid as the trust was created in favour of Sri Ram Chanderji Maharaj, who is worshipped as an incarnation of Vishnu. It was held that the decision in the case of ILR (1911) All 793 could not stand in the way because the facts of that case were different and the endowment in that case had been held to be void for uncertainty.

96. Reliance has, however, been placed on the following observation made in the course of the judgment in the case of Panchu Lonia Vs. Ram Newaz and Others,

"It is true that under the Hindu system of jurisprudence a general endowment for the worship of an impersonal God for whom the benefit of an endowment was intended to take effect was void for uncertainty. This has been held in ILR (1911) All 793 and Chandi Charan Mitra Vs. Haribola Das, ."

(In the case of Chandi Charan Mitra Vs. Haribola Das, also the endowment was held to be void for uncertainty.)

97. In our opinion the observations made in the case of Panchu Lonia Vs. Ram Newaz and Others, and quoted above do not help the appellant's case because they speak of a general endowment intended to be for the benefit of the impersonal deity. In such a hypothetical case there can be no doubt that the gift would be void for uncertainty as no ascertained section of the public could be said to be the beneficial owner of the trust meant to be created as a result of the endowment. It has to be seen that all that was observed in the case of Panchu Lonia Vs. Ram Newaz and Others, , was that such gifts would be void for

uncertainty. In cases where the trustee in whom the property would vest, the charitable object of the trust and the beneficiaries of that trust could be ascertained without any difficulty, it cannot be said that the gift would be void for uncertainty.

98. In the case of Veluswami Goundan V. Dandapani AIR 1946 Mad 485, a question arose whether a gift for a temple without specifying the deity to be installed in that temple could be a valid dedication, and Patanjali Sastri, J. (as he then was), speaking for the Division Bench, observed as follows:--

"The notion that Hindus worship only Particular deities and not one Supreme being is not correct. It might seem pedantic to refer at length to Hindu scriptural texts to show that the idea of one God is basic creed of the Hindu faith, but we may, perhaps, be excused under the circumstances referring to the well-known verse in the Vishnusahasranaman, often cited on various ceremonial occasions among Hindus, which says that "Vishnu, the one Supreme Being, the Great Soul and the Ruler of the Universe, pervades the three worlds and protects countless beings of different species". "(Mahabharata, Anusasana Parva, Adhyaya 254, verse 142)." This idea of one Supreme Being can, indeed, be traced back to Vedic times. The Rigveda, the earliest Hindu Scripture extant, refers to the "one Being whom wise men call by diverse names (1--164--46). The same idea of the unity of God is reiterated in numerous other religious texts to which, it is unnecessary to refer. That the conception of the so-called Trinity of the Hindu pantheon is functional in character will be seen from the invocation of Vishnu to Kalidasa's Raghuvamsa: "Thou art the Creator, the Upholder and Destroyer of the Universe. Obeisance to Thee in Thy triple form." (i.e., Brahma, Vishnu and Siva) (10-16). There are doubtless various deities worshipped by Hindus holding different tenets but they are only personifications of what are believed to be the various attributes of the cosmic manifestations of the Supreme Being."

Then it was observed that "a gift for the worship of God has been held in England to be charitable and valid: See Tudor on Charities, Edn. 5, p. 32 citing (1817) 3 Merr. 353, at p. 409, and we are unable to discover anything in the Hindu system of law which renders such a gift invalid". We respectfully agree with that observation.

99. In the case of Sri Gadicherla Venkatanarasimha Rao Garu Vs. Nyapathy Subba Rao Pantulu Garu and Others, a bequest for the spread of the Sanskrit language or for the spread of Hindu religion or for both was held to be valid.

100. Keeping the abovementioned principles of Hindu Law in view, there can be no doubt that the gift for the construction of a house in Dayal Bagh which was made by a Satsangi to (or for) Radha Swami Dayal was for a religious and charitable purpose and the beneficial owners of the gift or dedication were the Satsangis of Dayal Bagh group, who believed in Radha Swami Dayal as the Supreme Being.

101. It was mentioned in the memorandum (Ext. 8) by means of which the gift

was made, that the Satsangis who make the donation will be allowed to reside in the house for which the donation was made. It was also provided therein that such donor could nominate the person to whom among his Satsangi heirs the house should be allotted for residence after his death. It is, therefore, contended that Shri Sahabji Maharaj, when he made that gift, made it a condition that he shall be allowed to live in the house constructed with his money and, therefore, such a conditional gift or dedication could not be valid.

102. People making endowments sometimes reserve for themselves and their heirs the right to manage the dedicated property, without affecting the validity of the endowment. In the case of *Sree Sree Ishwar Sridhar Jew Vs. Sushila Bala Dasi and Others*, , a question arose where by a will certain premises were expressly declared as absolutely dedicated to a deity as its permanent habitation with only the right given to the Sevayats to reside in the said premises for the purposes of carrying on the daily and periodical seva and the festivals, etc., of the deity, the premises were to be registered in the municipal records in the name of the deity, the municipal bills were to be taken also in its name and none of the testator's representatives, heirs, successors, executors, administrators or assigns were to have any manner of interest in or right to the said premises or were to be competent to give away or effect sale, mortgage, etc., of the said premises. It was held that there was a clear indication of the intention of the testator to absolutely dedicate the said premises to the deity and that the right given to the sevayats did not detract from the absolute character of the dedication.

103. It, however, always depends on the facts and circumstances of each case to determine whether or not an absolute dedication was intended to be made. In the present case there can be no doubt that an absolute dedication was intended, as will appear from the following:--

(1) The terms of the memorandum (Ext. 8); what was gifted was money, and it was city mentioned in paragraph 9 of the memorandum that the donor or his heirs shall have no interest whatsoever left in that money.

(2) The donor or his heirs were not given any right to claim back the money in any case whatsoever.

It is no doubt true that compensation used to be paid by the Sabha when anyone surrendered his rights of residence. The rules merely gave that power to the Sabha to exercise that discretion at the same time making it clear that the Satsangi making bhent had no right to claim compensation.

(3) The donor was not given any heritable or transferable interest in the house property constructed with the money of the donor. He merely got a licence to reside in the house.

(4) The right of residence given to a Satsangi only was quite in conformity with the general purpose of the dedication and in no way deviated from the same.

104. The residential right given to the Satsangis, therefore, did not detract from the absolute character of the dedication.

105. It was contended that the Santsat Guru was the representative of the Supreme Being on earth and, therefore, Shri Sahabji Maharaj could not have made a gift of the money to himself. This contention has no force. The very factual basis for such a contention is missing.

106. Reliance has been placed by the learned counsel for the appellant on the case of AIR 1935 97 (Privy Council) which related to the offerings made to the first three Santsat Gurus of Radha Swami Satsangis and to a trust deed of 1904. It was held that the offerings vested in the Santsat Gurus, who are regarded to be incarnation of the Supreme Being. We are told that an offshoot of that matter is still pending before the Court.

107. Whatever might have been the position in the time of the first three Santsat Gurus before the schism of 1907, the position after the creation of Dayal Bagh group of Satsangis, who do not regard the Santsat Guru as an incarnation of the Supreme Being but hold that he is merely His representative on earth and in communion with Him, is very much different. A Sabha was formed as early as the year 1910 to manage the property donated for Radha Swami Dayal and to utilise the same for the benefit of the Dayal Bagh group of Satsangis. A registered society was formed with the same purpose in the year 1921 and it was city understood by all concerned, including the donors, that the gifts made for Radha Swami Dayal would vest in the Sabha for the benefit of the Sat-Sangis. This position was admitted by Shri Sahabji Maharaj himself in his written statement in the Original Suit No. 4 of 1037 started by the Sabha against the Secretary of State for India in Council and Shri Sanabji Maharaj. After the death of Shri Sahabji Maharaj dining the pendency of the suit, his heirs, two of whom were the defendants of the suit out of which this appeal arises, adopted that very written statement. In the present case also Shanti Swarup (appellant), when cross-examined, stated that he was prepared to concede that the entire bhent, except the quarter bhent, was offered for the benefit of the Satsangis and it was not the property of the Santsad Guru. What was true of other bhents was true o? quarter bhent also, and it is clear that no bhent of any kind vested in the Santsad Guru. The bhents vested in the Sabha for the benefit of the Satsangis.

108. There is a force in the grounds of appeal that the suit was barred by-

- 1) limitation,
- 2) Section 42, Specific Relief Act, and
- 3) estopped.

109. Estoppel was pleaded only on the ground that the plaintiff Sabha had been accepting ground rent from the sons of Shri Sahabji Maharaj. Ground rent was being charged under the rules of the Sabha and its realisation from the sons of Shri Sahabji Maharaj docs not make out any case of estopped. It is true that the

licensee was Lady Sohandei and not the sons of Shri Sahabji Maharaj. However, it must be on account of respect for the lady that the bills were being sent only to a male member of the family.

110. The suit for declaration only was competent and the plaintiff Sabha was not bound to sue for ejectment also, particularly when it had not terminated the licence granted to Lady Sohandei. The plea of the bar of Section 42 of the Specific Relief Act is, therefore, not available.

111. The plea that the suit was barred by limitation is now pressed on the ground that the plaintiff Sabha had, u/s 28 of the Limitation Act, lost its right to the property (the residential house known as "Tej Punj") because it did not sue for declaration of its rights within six years of the denial of title by the defendants, nor did it sue for possession of the property within twelve years of such denial.

In the pleadings the denial of the plaintiff's title was alleged to have been made by the defendant on 15th December 1938 (i.e., fifteen years before the institution of the suit) when the defendants claim to have effected their forcible entry into "Tej Punj" overcoming the opposition by the Sabha after breaking open the locks, which had been put by the plaintiff Sabha. At the evidence stage another ground was added by summoning two letters from the widow of Prem Swarup to show that Prem Swarup, a son of defendant No. 1 and a brother of defendant No. 2, had denied the plaintiff's title to "Tej Punj" as early as 29th June, 1938, in a letter addressed to the Secretary of the Sabha.

112. The learned Civil Judge has disbelieved the defendants' witnesses with regard to the incident of 15th December, 1938, and their alleged forcible entry into "Tej Punj" and held that the right of residence in "Tej Punj" of Lady Sohandei (along with her sons) was never questioned nor was involved in any such incident. The letters produced by the widow of Prem Swarup were not held to be genuine.

113-123. We have been taken through the entire evidence on the record, and we agree with the conclusions arrived at by the learned Civil Judge. (His Lordship reviewed the evidence and continued:)

124. For the reasons mentioned above, we confirm the finding arrived at by the learned Civil Judge that the defendants had failed to establish that they had forced their entry into "Tej Punj" on 15th December, 1938, in the teeth of the opposition from the Sabha.

125-126. (His Lordship further considered the evidence and proceeded:)

127. The result is that we find that there is no force in the appellant's contentions that the Sabha had lost its right over "Tej Punj" because of certain denial by the defendants or by Prem Swarup in the year 1938. The suit was not barred by time.

128. There is no force in the ground taken by the appellant that the licence became irrevocable u/s 60 of the Easements Act. That section reads as follows:--.

"A licence may be revoked by the grantor, unless-

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution."

129. In view of our findings recorded earlier none of these conditions applied and, therefore, the plea that the licence had become irrevocable must fail.

130. We might mention that it was also sought to be argued that the licence, if any, must be deemed to have been revoked, because the defendants had not continued to remain Satsangis after the demise of Shri Sahabji Maharaj. There is nothing on the record to show that the defendants had ceased to be Satsangis. It is true that the allegations made in the plaint revealed that for some time only the defendants had recognised Raj-ji Maharaj as Santsat Guru. The defendants do not appear to have recognised up to this time Mehtaji Maharaj as Santsat Guru. However, that will not take away their status as Satsangis. The recognition by a Satsangi of someone as Santsat Guru depends on his own inner voice. He may take any amount of time he may like to satisfy his conscience before recognising any person as Santsat Guru. On this point Shanti Swarup (appellant), when cross-examined, stated:

"According to our faith a Satsangi should recognise one as his Guru only when he becomes sure that he (the Guru) has appeared to him. We should not recognise him Guru at the instance of others. It is correct that after the disappearance of one Gum, some Satsangis at once recognise anyone as their Guru and some recognise after a long time and some never recognise."

In the circumstances it could not be said that the defendants had not continued to remain as Satsangis. The plaintiff Sabha did not terminate the licence of the defendants at any time up to the stage of the institution of the suit, nor from the circumstances of the case any such revocation of the licence granted to Lady Sohanderi could be implied.

131. The Sabha has been declared to be the owner of the building known as "Tej Punj". However, in view of the provisions of Section 5 of Act 21 of 1860 the declaration which should have been granted was that "Tej Punj" is the property of the governing body of the plaintiff Sabha. However, that is a matter of form only and nothing turns on that.

132. In the result the cross-objection is allowed and the appeal is dismissed with costs to respondent No. 1. The decree of the trial Court is affirmed after incorporating the following modifications.

133. The declaration will be that-

(a) "Tej Punj" and the land mentioned in the decree are the property of the governing body of the plaintiff Sabha, and

(b) the possession of defendant No, 1 (till the date of her death) was that of a licensee only.

134. We acknowledge with thanks the assistance rendered by the learned counsel for the parties (Sri Jagdish Swarup for the appellant and Sri K. L. Misra, Advocate-General, for respondent No. 1) who have placed before us the cases of the parties with great ability and clarity.