
(2015) 06 AP CK 0003

In the Andhra Pradesh High Court

Case No : Appeal Suit Nos. 90 and 91 of 2009

Shri Kashi Math Samsthan

APPELLANT

Vs

Srimad Sudhindra Thirtha Swami Shri Vyasashrama

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Income Tax Act, 1961 — Section 10

Citation : (2016) 1 ALD 409

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Matta Purushotham Reddy for P. Hemachandra, for the Appellant; B. Adinarayana Rao, Senior Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—A disciple of the Matadhipathi of a Mutt having hoary past dragged his own mentor to a seamless litigation claiming the letters gaddi. Being unsuccessful in the suit, he has landed up before this Court to chance his arm. The manner in which the supposedly ascetic and purported renouncer of the world is fighting legal battle against his own guru leaves every bystander wondering whether such persons are also not free from the cravings for positions like ordinary mortals. The background leading to this unsavory litigation, reflected from the pleadings of the parties is recounted hereunder.

2. Gowda Saraswatha Brahmana Community, which was believed to have lived near Saraswathi River, came to inhabit predominantly in the west coast of India, extending from Bombay in the north to Kerala in the south, through Goa and Kanara districts (North and South), though a sizeable number of the members reside in other places like Bangalore, Mysore, Coimbatore, Ahmedabad, Chennai, Baroda, New Delhi etc. The community had a glorious past with distinct culture of its own. The members of this community owe allegiance to one or the other of the following Mathas:

(i) Shri Kashi Matha Samsthan

(ii) Shri Gokarna Parthagali Jeevottama Matha Samsthan, and

(iii) Shri Kaivalya Matha Samsthan

3. This case is concerned with Shri Kashi Matha Samsthan (for short, the Mutt). The Mutt was founded with its headquarters at Varanasi having various branches all over the country. As per the History of Shri Kashi Matha Samsthan authored by Professor V.A. Shenai, portions of which have been marked as Ex. A. 186 to A. 189, Shrimad Yadavendra Thirtha was the first Swamiji of Shri Kashi Matha Samsthan. The Mutt Bhavan was built by the Kochi Gowda Sarasvata Brahmanas around A.D. 1540. The contents of this book show that the Mutt was founded in the 16th century. As per this book, defendant No. 1 is the 20th head of Shri Kashi Matha Samsthan. Before his initiation into sanyasa, he was known as Shri Sadashiva Shenoy, son of Shri Ramadasa Shenoy, a trustee of Shri Venkataramana temple in Ernakulam. He was born at Ernakulam on 31st March, 1926. He completed his Pre-University education in Maharajas College, Ernakulam and selected Natural Science, Physics and Chemistry as the main subjects. He was initiated into sanyasa by Shri Shukritheendra Swamiji on 24.5.1944 when the Swamiji was camping at Ernakulam. Defendant No. 1 was made Master of Sanskrit, Bhagavadgeeta, Upanishads and other Dharma Shastras and he has taken the reigns of Shri Kashi Matha Samsthan after its Matadhipathi Shri Sukriteendra Swamiji passed away in 1949.

4. With the above background of the Mutt, let me consider the pleadings in O.S. No. 34 of 2000 out of which these two appeals arise. Plaintiff No. 2 (Shrimad Raghavendra Thirtha Swami), who claimed to have succeeded defendant No. 1 (Shrimad Sudhindra Thirtha Swami), filed the above mentioned suit for declaring him as Matadhipathi of plaintiff No. 1 Mutt and for permanent injunction restraining Shrimad Sudhindra Thirtha Swamiji and Shri Tirumala Kashi Math, represented by its Manager, presently holding his office at Ring Road, Tirumala, Chittoor District, Andhra Pradesh, and persons claiming through them, for permanent injunction restraining the defendants, their men or anybody on behalf of the defendants from in any way interfering with exercise of powers, duties and privileges as the 21st Pontiff and for costs. He inter alia pleaded that defendant No. 1 fell ill in 1988 and therefore plaintiff No. 2 was ordained as a sanyasi by the former in 1989 after choosing him to be the successor Matadhipathi of plaintiff No. 1 Mutt. Plaintiff No. 2 was assisting defendant No. 1 in conducting of the affairs of the Mutt after attaining knowledge and learning in proficiency in the scriptures besides achieving a very high degree of mental equanimity and mental powers. On being satisfied that plaintiff No. 2 was fully competent and qualified to assume powers as Matadhipathi and having felt that the affairs of the Mutt would be carried out by plaintiff No. 2 in consonance with the time honoured practice and conforming to the hoary traditions of the Mutt, defendant No. 1 has abdicated his powers and privileges as the 20th Pontiff and head of the plaintiff No. 1 Mutt in respect of all the religious, dharmic and social activities of the Mutt,

except those of Shri Vyasashram at Haridwar, in favour of plaintiff No. 2 with effect from 12.12.1994 and that by solemn proclamation made by defendant No. 1, plaintiff No. 2 was named as Matadhipathi of the Mutt conferring on him all the powers and duties of the next Pontiff of the Mutt except those relating to Shri Vyasashram at Haridwar. The plaint has copiously quoted a book called SEVAMRIT (Commemoration Volume), marked as Ex. A. 91, wherein the purported succession of plaintiff No. 2 as Matadhipathi has been described.

5. Plaintiff No. 2 further pleaded that ever since the entrustment of the Mutt to him, he has been performing Thrikala Poojas to the deities of the Mutt. It is averred that performance of Thrikala Poojas is an essential ritual by a Matadhipathi and that as plaintiff No. 2 has been performing this pooja, he alone could be deemed, treated or held to be the Matadhipathi of the Mutt, and that in view of the purported proclamation made by defendant No. 1, plaintiff No. 2 has become 21st Pontiff of the Mutt and he is presently exercising all and every powers, privileges and performing duties pertaining to the Mutt, except those relating to Vyasashram at Haridwar. In consonance with the prevailing tradition of the Mutt, as a spiritual head, plaintiff No. 2 has been issuing the religious edicts in respect of religious matters and as head of the Mutt he has been discharging several dharmic, religious and social duties not only of the Mutt, but also Gowda Saraswatha Brahmin Samaj (for short, the Samaj) all over the country. Plaintiff No. 2 is also performing Chaturmasa Vrata at Tirumala Mutt premises of which defendant No. 2 is the Manager of the Mutt building at Tirumala Hills.

6. Plaintiff No. 2 has further averred that a coterie of people who seemed to be envious of him and to aggrandize themselves at the expense of the Mutt have been carrying on an insidious vilification campaign against his continuance in office as the 21st Pontiff by plaintiff No. 2, that they have been raising wild, baseless and unfounded allegations against him and that they have prevailed upon defendant No. 1 to issue directions to the devotees to revolt against him as the head of the plaintiff No. 1 Mutt against discharge of duties on dharmic matters. Immediately on coming to know of the same, plaintiff No. 2 with utmost reverence to defendant No. 1, on account of his being the 20th Senior Pontiff, has requested the latter not to involve himself in the dharmic issues of the Mutt and that he has tried to meet defendant No. 1 personally to persuade him to put an end to all the controversies to keep the high traditions of the Samsthan but under the influence of certain quarters defendant No. 1 refused to entertain plaintiff No. 2. Plaintiff No. 2 under letter dated 17.2.2000 explained the circumstances under which he does not want to get himself involved in controversies in response to the letter dt. 16.2.2000 of defendant No. 1. Plaintiff No. 2 has further averred that defendant No. 1 having renounced his Matadhipathiship of the Mutt in his favour, is not justified in interfering with the affairs of plaintiff No. 1 - Mutt and plaintiff No. 2 being the present Head and Matadhipathi of the Mutt, cannot therefore be prevented from the exercising of his powers and discharging his duties. That as a result of abdication of his

powers and privileges as Matadhipathi, defendant No. 1 is incompetent to assume, contend or behave that he continued to be the Matadhipathi of the Mutt.

7. Defendant No. 1 filed a written statement. While conceding that Shri Kashi Matha Samsthan has a hoary history of 500 years in guiding the disciples in all the religious, dharmic and social activities and propagating the Dwaitha philosophy, defendant No. 1 has averred that the ascendancy to the position of the Matadhipathi is governed by the age-old tradition, custom and usages by which the sishya succeeds the Guru after the Guru attains Samadhi. It was further averred that defendant No. 1 became the 20th Matadhipathi of the Mutt following the tradition, custom and usage on the Samadhi of his Guru Shrimad Sukritheendra Thirtha Swami in the year 1949 after having been initiated defendant No. 1 to Sanyasasrama in the year 1944. Defendant No. 1 denied the claim of plaintiff No. 2 that he has abdicated his position as Matadhipathi on 12.12.1994 and asserted that he still continues to be the Matadhipathi even after 12.12.1994. He has averred that he has only entrusted certain duties to plaintiff No. 2 to discharge the same on his behalf as sishya and never abdicated his position as Matadhipathi at any point of time, nor intended or could have intended to do so against the age old tradition, custom and usage of the Mutt. The position of Matadhipathis is not transferable and the Mutt is an institution and the sanctum is to be presided over by a superior who combines in himself the dual offices of being the spiritual head of the religious fraternity as well as the manager of the properties and finances of the Mutt. Plaintiff No. 2 was at no point of time ordained as Matadhipathi of the Mutt by defendant No. 1 and that position of the Matadhipathi is not linked with the ritualistic part of performing poojas alone; that it is the bounden duty of the Matadhipathi to facilitate spiritual instructions and also acquisition of religious knowledge by the disciples at large, that the said position cannot be claimed as a matter of right consequent on the entrustment of certain duties by a Guru to a sishya and that defendant No. 1 continued to represent the Mutt even after 12.12.1994 as its Matadhipathi, conducted extensive tours to propagate the dharmic values to the disciples and to guide establishment of institutions in many places like Delhi and Kalpi, where a Vyasa Temple is constructed under his direction.

8. Defendant No. 1 further averred that while it is true that plaintiff No. 2 was initiated to Sanyasram in 1989 as his sishya, the ascendancy to the position of Matadhipathi is not automatic and that as per the age-old tradition, custom and usage, the living Matadhipathi is exclusively vested with the right to choose a competent person to pass on the said position on his attaining Samadhi. The living Matadhipathi has therefore an opportunity to assess the competency, acceptability and worthiness or otherwise of a sishya to hold the position of Mathadhipathi after his death and that it is perfectly within the powers of the Matadhipathi that some or all the rituals and functioning of the Mutt are being carried on by himself or through his sishya under his instructions and entrustment with any such duties would not automatically convey the sishya the position of Matadhipathi during the lifetime of Guru. By Proclamation dated

4.11.1994 plaintiff No. 2 was only entrusted with certain duties under defendant No. 1 and that the same cannot be termed as an appointment. Defendant No. 1 termed the claim of plaintiff No. 2 that he has attained great knowledge and learning in proficiency in the scriptures besides achieving a very high degree of mental equanimity and mental powers, as manifestation of ones ego and that such claims are found incorrect by virtue of subsequent events and conduct of plaintiff No. 2, which include confronting his own Guru with litigation, defiance of directions earlier conveyed to him by the Guru to keep up the tradition, even by refusal to meet the Guru in spite of a specific demand etc.

9. Defendant No. 1 has put plaintiff No. 2 to strict proof of his allegation that the former has abdicated his power and privileges as the 20th Pontiff with effect from 12.12.1994. He has reiterated the stand that the tradition, usage and rites of the Mutt will not permit abdication of the position of Matadhipathi during the lifetime of holder of the said office and defendant No. 1 was not at any point of time incapacitated due to ill-health either in 1994 or thereafter till date and that defendant No. 1 intended to provide plaintiff No. 2 opportunities for training by entrusting certain duties to him from 12.12.1994. He has further averred that the fact that Haridwar Ahsram was kept away from plaintiff No. 2 is a proof that he was only entrusted with certain duties and that the office of the Matadhipathi is unitary in character and there can be no dichotomy of giving one part to one Matadhipathi and the other part to another. Defendant No. 1 continued to exercise the powers as the Matadhipathi, appointed and/or reconstituted many a managing committee of Mutt branches/establishments and file statutory Tax returns to the Income Tax Department continuously even after 1994 till date and that he also continued to involve himself in propagating the dharmic values among the disciples, establishing institutions, attending several religious functions including the Mudra dharana to the disciples, apart from the daily poojas, japas and parayanas. Defendant No. 1 has not divested himself from any of the larger responsibilities enjoined to the position of the Matadhipathi.

10. Defendant No. 1 has denied that under the influence of the coterie he was trying to discontinue plaintiff No. 2. He has referred to letter dt. 4.11.1999 addressed by plaintiff No. 2 that he has finally decided not to involve himself in any authoritative activities of the Mutt and also in the dharmic matters of the Samaj and sought to be relieved. When plaintiff No. 2 has shown his insubordination by declining to meet defendant No. 1 at Tirupati to sort out the differences, the latter had issued a Rayasapathram (notification) dt. 1.12.1999 for information of all the disciples conveying to them the stand taken by plaintiff No. 2 and further notifying to them that defendant No. 1 was contemplating an appropriate decision on the request of plaintiff No. 2 for relieving him of all the responsibilities and the same was published in all the temples, institutions and establishments of the Mutt. Plaintiff No. 2 has not repented nor retraced from his resolve not to discharge the duties of the Mutt. After waiting for a reasonably long time, defendant No. 1 addressed a letter to plaintiff No. 2 not to meet or visit him thereafter. Defendant No. 1 has also filed an additional written

statement the contents of which need not be specifically referred to.

11. Defendant No. 1 has also made a counter claim wherein he has prayed for a decree for permanent prohibitory injunction restraining plaintiff No. 2 from interfering in any manner in the affairs of the Mutt/Samsthan and its administration by defendant No. 1 and for a decree for mandatory injunction directing plaintiff No. 2 to handover all the deities and other articles retained by plaintiff No. 2 belonging to the Mutt within a time frame and for an ad interim order to safeguard the invaluable properties of the Samsthan which are illegally held by plaintiff No. 2 after 19.7.2000.

12. Having regard to the respective pleadings, the following issues and additional issues were framed.

ISSUES

1. Whether the 1st defendant selected the 2nd plaintiff as his successor and Matadhipathi of the 1st plaintiff Mutt, except Vyasashram at Haridwar with effect from 12.12.1994 and abdicated his Matadhipathiship?
2. Whether the entrustment of deities, paraphernalia and insignia of the 1st plaintiff Mutt to the 2nd plaintiff was made only for performing Trikala Pujas or whether such entrustment amounts to passing of Matadhipathiship to the 2nd plaintiff?
3. Whether the 2nd plaintiff is guilty of misdeeds, misbehavior and defiance towards 1st defendant and if so, whether 1st defendant has authority to issue any proclamation of the nature dt. 19.7.2001 to bind the 2nd plaintiff?
4. Whether this Court has no jurisdiction to try this suit?
5. Whether the suit is bad for misjoinder of parties?
6. Whether the suit is property valued?
7. Whether the plaintiff is entitled to declaration and injunction as prayed for?
8. Whether the 1st defendant is entitled to prohibitory and mandatory injunctions as prayed for in the counter claim?
9. To what relief?

ADDITIONAL ISSUES

1. Whether the letter dt. 4.11.99 was addressed by the 2nd plaintiff intending to give up Matadhipathiship?
2. Whether the counter claim is properly valued?
13. On behalf of the plaintiffs, plaintiff No. 2 was examined as P.W. 7 and he has also examined P.Ws. 1 to 6 and 8 to 13. He has got Exs. A. 1 to A. 565 marked on his side. On behalf of the defendants, defendant No. 1 examined himself as

D.W. 1 and has also examined D.Ws. 2 and 3. He has got Exs. B. 1 to B. 308 marked on his side. Exs. X. 1 to X. 65-A were marked by the Court under X-series.

14. On appreciation of oral and documentary evidence, the lower Court has dismissed the suit and decreed the counter claim. Feeling aggrieved by the decree in the suit filed by them, the plaintiffs have filed A.S. No. 90 of 2009 and they have also filed A.S. No. 91 of 2009 against the decree in the counter claim.

15. I have extensively heard Mr. M. Purushotham Reddy, learned counsel appearing for the appellants and Sri B. Adinarayana Rao, learned Senior Counsel, for respondent No. 1 and perused the record. Learned counsel for the appellants has confined his submissions to the main issue as to whether respondent No. 1 defendant No. 1 has abdicated his position as Matadhipathi in favour of appellant No. 2 plaintiff No. 2.

16. The following is the gist of the submissions of the learned counsel for the appellants plaintiffs:-

The entrustment of the activities, namely, Thrikala pooja, Mudhra dharana, Kumbhabhishekam, and handing over of Insignia of the Mutt to plaintiff No. 2 proves that defendant No. 1 has abdicated his position as Matadhipathi and plaintiff No. 2 was installed as Matadhipathi with effect from 12.12.1994.

Under Ex. B. 27 dated 4.11.1994 issued by defendant No. 1 he has entrusted all religious, dharmic and social activities of Shri Kashi Math Samsthan except those of Shri Vyasasram, Haridwar, to plaintiff No. 2 from 12.12.1994. While normal tradition of the Samsthan is that succession to the office of the Matadhipathi takes place after the lifetime of the reigning Matadhipathi, the succession in favour of plaintiff No. 2 has taken place due to abdication/relinquishment of the position by defendant No. 1.

The book titled The Sage of Shambhavi (A Pen Sketch) is authored by K.G. Mallya, which contains blessings of defendant No. 1. A portion of the chapter titled Long March is marked as Ex. A. 194. This chapter contains a statement of defendant No. 1 wherein he has declared that he is eagerly waiting to pass on everything to plaintiff No. 2 and retire peacefully to the banks of the sacred River Bhagirathi at Haridwar and spend the rest of his life at the feet of Shri Vyasa worshipping him and also composing a kavya a literary composition in verses in the classical style, on Shri Vyasa.

The statements of defendant No. 1 extracted in paras 22 and 23 of the written statement filed in the counter claim clearly prove the relinquishment of his office. (The learned counsel has also relied on a certain passage from Hindu Law, by B.K. Mukherjea, and also the judgment in Ram Parkash Das v. Anand Das).

Ex. A. 46 dated 18.5.1989 was issued by defendant No. 1 informing the disciples that he has decided to adopt plaintiff No. 2 as sishya and that ceremonials connected therewith will be performed on 7th July, 1989.

Ex. A. 15 is a Rayasapathram (Notification) issued in the name of defendant No. 1 wherein it was inter alia mentioned that Sishya Sweekar Ceremony was performed at Varanasi Math in a befitting manner. If a person coming from Gruhasthashram was to be appointed as Matadhipathi, ceremonies are required for initiation as Sanyasi, but as plaintiff No. 2 was already initiated as Sanyasi, no formal ceremonies were required to be held to be installed as Matadhipathi.

Ex. A. 384 is Rayasapathram issued by defendant No. 1 wherein the disciples were informed that from 12.12.1994 onwards for all the matters concerned with the management of the Mutt they should approach his capable and beloved successor, plaintiff No. 2. Ex. A. 253(a) is a letter of one of the Branches acknowledging the same.

Ex. A. 77 is a book authored by P.W. 9 and Ex. A. 553, its translation, contains the acknowledgement by defendant No. 1 that plaintiff No. 2 is now Matadhipathi.

Ex. A. 284 is a letter from one of the Branches of the Mutt addressing plaintiff No. 2 as Matadhipathi.

Through Ex. A. 192, as translated under Ex. A. 193, defendant No. 1 has referred appointment of plaintiff No. 2 as Matadhipathi.

Ex. A. 36-tour programme shows that plaintiff No. 2 has toured different places in the country to propagate as Matadhipathi.

In his cross-examination as D.W. 1, defendant No. 1 has clearly admitted that since 12.12.1994 he was not informed about tour programmes of plaintiff No. 2, that tour programme of plaintiff No. 2 from Nasik to Vasanthotsava at Kota in Dakshina Kannada was prepared by respondent No. 1 at Bombay and that the Mutt deities and paraphernalia were entrusted to plaintiff No. 2 for performance of poojas and vrathas.

P.W. 4 in his chief affidavit has categorically deposed that respondent No. 1 has disclosed to him that his health did not permit him to carry on Matadhipathya and he was also finding it difficult to perform trikala poojas and therefore he has felt necessary to adopt a successor to the Mutt. Defendant No. 1 has observed Chaturmasa of 1994 jointly with plaintiff No. 2 and that it is during that period that defendant No. 1 has declared his inability to continue and hand over the Matadhipathyam to plaintiff No. 2 and accordingly on 12.12.1994 he has made over Matadhipathyam to plaintiff No. 2. P.W. 4 further deposed that after handing over of Matadhipathyam to plaintiff No. 2, defendant No. 1 has been spending his retired life at Haridwar and that plaintiff No. 2 is in possession of the Insignia, Paraphernalia and all the assets of the Mutt and the Community has referred him as Matadhipathi ever since 12.12.1994.

The evidence of D.W. 1 clearly shows that from 12.12.1994 plaintiff No. 2 started using Birudavali and as evident from Exs. A. 27, 29, 31 and 33, plaintiff No. 2 has been issuing Rayasams (Rayasapathrams/Notifications) and the last Rayasam issued by defendant No. 1 was Ex. A. 25 on 27.7.1994 and that

thereafter it was only plaintiff No. 2 who was issuing Rayasams as evident from Exs. A. 20, A. 21, A. 22, A. 23 and A. 24.

Based on the above oral and documentary evidence, learned counsel for the appellants - plaintiffs has made a strong bid to convince the Court that respondent No. 1 has abdicated his office as Matadhipathi in favour of plaintiff No. 2.

17. Strongly countering the submissions of the learned counsel for the appellants - plaintiffs, Sri B. Adinarayana Rao, learned Senior Counsel appearing for respondent No. 1/defendant No. 1, has made the following submissions:-

As per the traditions and tenets of the Mutt, sishya becomes Matadhipathi on Samadhi of the Matadhipathi and therefore the question of abdication of Matadhipathi by defendant No. 1 in favour of plaintiff No. 2 during his life time does not arise. The Mutt was registered under Section 10 of the Income Tax Act and as evident from Ex. B. 30, exemption from income tax for the years 1994-95 to 1996-97 was claimed in the name of defendant No. 1 as Matadhipathi and the Income Tax Department has finalized the returns vide Exs. B. 48 to B. 52 showing respondent No. 1 as Matadhipathi, for the period 1995-96 to 1998-99.

Various documents marked in X-series show that defendant No. 1 is discharging both spiritual and secular duties even after 1994.

In his cross-examination, plaintiff No. 2, who was examined as P.W. 7, categorically admitted that as his education was not fully completed upto 12.12.1994, he had to make arrangement to continue his education, that after 12-12-1994, he has studied matters relating to Upanishads, Grammar, Logic etc., that during 1995 Chaturmasa at Ernakulam, Sri Vishwanath Sharma, A Sanskrit Scholar from Triupunithura taught him Upanishads, Grammar, Logic etc., that during Vasanth Masa at Kota, Sri Kadri Srinivas Shenoy taught him Astrology, Mathematics for astrological calculations (Drig-ganith) etc.

This categorical admission on the part of plaintiff No. 2 falsifies his averment in the plaint that on being satisfied that plaintiff No. 2 has acquired knowledge in Sanskrit, Vedas, Upanishads etc., he was appointed as Matadhipathi. As plaintiff No. 2 has not completed his education by 1994, the question of his being appointed as Matadhipathi did not arise.

P.Ws. 1 to 3, who were based in Bombay, Ernakulam and Kasargod respectively, set up by plaintiff No. 2, spoke about appointment of plaintiff No. 2 as Matadhipathi and their evidence does not inspire any confidence at all. All the other witnesses were also set up to support the false claim of plaintiff No. 2. P.W. 10 has mischievously distorted Ex. A. 130 letter dated 24.4.1990 addressed by defendant No. 1 to plaintiff No. 2. He has relied upon Exs. B. 105, B. 106, B. 107, B. 108, B. 109, B. 159 and B. 166, various letters addressed by defendant No. 1 to plaintiff No. 2 to discredit the translation of Exs. A. 130.

Ex. B. 27, on which reliance is heavily placed by plaintiff No. 2, shows that the

Mutt of Haridwar is not included therein and that the position of Matadhipathi is not partible.

In conclusion, the learned Senior Counsel submitted that there was mere entrustment of religious and dharmic duties to plaintiff No. 2 by defendant No. 1 and such entrustment does not constitute abdication/relinquishment of the office of the Matadhipathi by defendant No. 1 in favour of plaintiff No. 2 and that in the absence of any evidence of such abdication/entrustment, in the face of denial by a person no other than defendant No. 1 himself of such abdication/relinquishment, the burden lies heavily on plaintiff No. 2 to prove his case and that he has miserably failed in this regard.

18. In reply, learned counsel for the appellants - plaintiffs relied upon Exs. A. 20 and A. 21, Rayasapathrams showing that plaintiff No. 2 was discharging the functions as Matadhipathi by using Birudavali.

He has also relied upon Exs. A. 3 to A. 42, A. 74 to A. 91, A. 185, A. 186, A. 189, A. 194, A. 196, A. 198 and Ex. A. 200 to show that respondent No. 1 has relinquished his position as Matadhipathi.

The learned counsel has also relied upon Ex. A. 228 [Ex. 228(a) is translation of Ex. A. 228], letter of D.W. 2 and Ex. A. 282, the letter addressed by a Branch Mutt recognizing plaintiff No. 2 as Matadhipathi.

He submitted that except P.W. 7, all other witnesses examined by plaintiff No. 2 were neutral and their evidence clearly proves that defendant No. 1 has relinquished the office of Matadhipathi in favour of plaintiff No. 2.

The learned counsel has also relied upon Ex. B. 32 (Ex. B. 33 is translation of Ex. B. 32), a letter dt. 31.10.1999 addressed by defendant No. 1 asking plaintiff No. 2 to continue to discharge his functions of accepting Vinathies from sishyaganas in different Gramas and to continue to conduct his visits to different places for the purpose of Swadharma Pracharanam and Anushtanam.

The learned counsel has accordingly submitted that the lower Court has committed a serious error in dismissing the suit.

19. As regards the counter claim, the learned counsel for the appellants submitted that as the amendment of schedule is subject matter of a Civil Revision Petition, which is pending before this Court, he is not addressing his submissions in A.S. No. 91 of 2009.

20. I have carefully considered the respective submissions of the learned counsel for the parties with reference to the evidence on record.

21. The fact that as per the conventions and traditions of the Mutt, the disciple chosen as the successor succeeds as the Matadipathi on the passing of (Samadhi) the reigning Matadhipathi is not in dispute. However, plaintiff No. 2 has claimed an exception to this practice by pleading that defendant No. 1 has voluntarily relinquished the office of the Matadipathi in his favour with effect from

12.12.1994. Ex. B. 27 Rayasapatram (Notification) issued by defendant No. 1 constitutes a pivotal evidence in the case. This document reads as under:

Hearty Blessings

To

The beloved Disciples of

In the name of Sri Narayana

It is hereby informed that we are pleased to entrust All the Religious, Dharmic and Social Activities of our Kashi Math Samsthan except those of Sri Vyasasram Haridwar, to our capable and beloved successor Sri Raghavendra Thirtha from 12-12-1994.

Happy to acknowledge your devoted service to our Samsthan all these years for which we pray Sri Vyas Raghupathi for the welfare and prosperity of you all forever.

The contents of the above reproduced notification of defendant No. 1 would show that all the religious, dharmic and social activities of Shri Kashi Matha Samsthan were entrusted to plaintiff No. 2 with effect from 12.12.1994. However, the activities relating to Shri Vyasasram, Haridwar, were exempted from such entrustment.

22. The word entrust in Ex. B. 27 reveals the intention of defendant No. 1. The Oxford Dictionary Thesaurus and Wordpower Guide, Indian edition, explained the meaning entrust as (i) assign a responsibility to (ii) put (something) into someones care. In contrast, the word relinquish means willingly cease to keep or claim; give up. Thesaurus of the said dictionary explained the word relinquish as under:

i. He relinquished control of the company; RENOUNCE, give up/away, hand over, let go of.

ii. He relinquished his post LEAVE, resign from, stand down from, bow out of, give up; informal quit, chuck.

From the very meaning of the two words, there can be no doubt that entrustment is temporary while relinquishment is permanent in nature.

23. Ex. B. 27 does not contain any word which even remotely suggests that defendant No. 1 has given up the office of Matadhipathi in favour of plaintiff No. 2. On the contrary, defendant No. 1 has guardedly used the word entrust which indicates that plaintiff No. 2 was kept in charge of the religious, dharmic and social activities of Shri Kashi Math Samsthan, excluding Sri Vyasasram, Haridwar.

24. I shall now consider whether the subsequent conduct of defendant No. 1 referred to by the learned counsel for the plaintiffs constituted implied relinquishment of the office of the Matadhipathi by defendant No. 1. I would like

to analyse each of the aspects argued by the learned counsel for the plaintiffs as noted hereinabove.

Re: Entrustment of Thrikala Pooja, Mudra Dharana, Chaturmasa Vrata, Kumbhabhisekam, Paraphernalia and handing over Insignia.

25. The learned counsel for the plaintiffs submitted that Performance of Thrikala Pooja, Mudra Dharana, Kumbabhisekha and using Insignia of the Mutt are exclusive functions and privileges of the Matadhipathi and that entrustment of these functions to plaintiff No. 2 clearly proves relinquishment of the office of the Matadhipathi by defendant No. 1 in favour of plaintiff No. 2. He has sought to derive support to this submission that performance of the Thrikala Pooja is the exclusive function of a Matadhipathi by relying upon the following portion of the evidence of D.W. 1 in his cross-examination.

We know Dr. R.K. Shenoy of Alleppey. We know Dr. R.H.N. Shenoy. Those two doctors along with other doctors have performed operation on me for Hernia at Walkeshwar Sri Kashi Math, Bombay, converting one room as an operation theatre. We underwent Ayurvedic treatment for Henia from 1960 onwards and we were operated upon in 1982 by the aforesaid doctors. Even during the said operation, we have been performing Thrikala Pooja according to the tradition. We could perform the pooja. All the Thrikala Poojas on the date of operation were done together in the morning itself. On the succeeding day, all the Thrikala Poojas were performed together in the morning itself by us. For about 10 to 15 days, subsequent to operation, we had performed Thrikala Poojas in the said manner. During our journey and other exigencies, we performed Thrikala Poojas cumulatively at one time or twice a day.

Mr. B. Adinarayana Rao, learned Senior Counsel appearing for defendant No. 1, submitted that plaintiff No. 2 was initiated as a sishya in the year 1989 and admittedly at the time when operation was performed in 1982 defendant No. 1 did not accept anyone as sishya and that therefore there was no option to defendant No. 1 other than himself performing Thrikala Pooja. I find merit in this submission. No evidence is placed by the plaintiffs to show that as per the traditions of the Mutt, except the Matadhipathi no one else can perform the Thrikala Poojas. Therefore, in the absence of any prohibition, entrustment of an important religious ritual, such as Thrikala Pooja does not by itself constitute relinquishment of office of the Matadhipathi by defendant No. 1. Defendant No. 1 has only entrusted the said function to plaintiff No. 2.

26. As regards Kumbhabhisekam, defendant No. 1 in his cross-examination deposed:

It is true that we and the 2nd plaintiff attended the Kumbabhishekam of the temple at Alleppey on 20.01.1997. It is true that we and the 2nd plaintiff attended the Kumbabhishekam of the temple at Ernakulam on 15.01.1997. It is true that during both the said functions, we camped at Ambalamedu of our Branch Math, 2nd plaintiff was not with us at Ambalamedu. If we recollect

correctly, the 2nd plaintiff was at Ernakulam during that period. We are not in a position to recollect the exact time which we spent with the 2nd plaintiff during the said functions but the 2nd plaintiff was with us during the period of Abhishekam and we left for Ambalamedu after the Abhishekam. There was not much time for our discussion with the 2nd plaintiff regarding the affairs of our Samsthan. It is true that we and the 2nd plaintiff attended the Kumbabhisheka of temples at Mulki and Moodabidri. During those two occasions, we and the 2nd plaintiff were not staying together.

No suggestion was put to defendant No. 1 that Kumbhabhisekam should be performed exclusively by Matadhipathi himself. If that were so, and if defendant No. 1 has relinquished the Matadhipathiship, he would not have participated in the Kumbhabhisekam along with plaintiff No. 2, both at Ernakulam on 15.1.1997 and at Aleppey on 20.1.1997. Thus, nothing turns out of plaintiff No. 2 participating in Kumbhabhisekam. On the contrary, having been entrusted with the religious activities, it was quite natural for plaintiff No. 2 to participate in Kumbhabhisekam.

27. With regard to the entrustment of Mudradharana etc., D.W. 1 deposed that the performance of rituals such as taking the Mruthika, performing pooja, Mruthika Visarjana at the end of the Vratha, Parayana, Poojas, taking and giving Tapta Mudradharana etc. are according to the traditions and prescriptions of the Mutt and not as necessary adjuncts of a sanyasi. He further deposed that the Mutt deities and the Paraphernalia were entrusted to plaintiff No. 2 for performance of poojas and Vratas as ordained by him as they are necessary for the performance of Digvijaya.

28. Coming to Chaturmasa Vrata, defendant No. 1 deposed that the same is performed by plaintiff No. 2 as per the tradition and rituals. He has further stated that as sanyasis are expected to perform Chaturmasa Vrata and as he was observing, plaintiff No. 2 was also observing Chaturmasa Vrata.

29. It is discernible from the above referred evidence of D.W. 1 that the activities such as Thrikala pooja, Kumbhabhisekam, Chaturmasa Vrata and Mudradharana are part of religious and dharmic activities which are entrusted to plaintiff No. 2. As rightly pleaded by defendant No. 1, mere entrustment of his duties and activities to a disciple does not amount to his relinquishment of office of Matadhipathi. In the absence of any evidence to show that no person other than Matadhipathi alone can perform these activities, by such delegation, plaintiff No. 2 cannot claim to have been appointed as the Matadhipathi.

Re: Birudavali

30. There is some ambiguity as to the meaning and purport of the phrase Birudavali. Much reliance was placed by the learned counsel for the appellants - plaintiffs on the fact that from 12.12.1994 defendant No. 1 stopped using Birudavali. In Kannada Birudavali means title. A title is conferred on a person in recognition of his eminence or position. But the evidence of D.W. 1 which is

reproduced infra indicates that in the context of the case, this phrase is used to describe paraphernalia such as Mutt deities and other essential articles used on tours by Matadhipathi or his shishyas. In this regard, the evidence of D.W. 1 is relevant to the question whether after 12.12.1994 he was not using Birudavali and the same is answered as under:

We are not using the Birudavalis because of the following reasons:-

We had directed the 2nd plaintiff to perform certain duties, for the efficient and effective performance of which, we gave him whatever was required. For effective Dharmaprachara (propagation of Dharma) during tours, it is necessary to go with the Samsthan deities and perform pooja with all paraphernalia. We have directed him as to how this is to be done and all that needs to be done and we gave directions on all these matters. We are called Dharma Guru. We adhere to and practice Dharma Shastra and do not do anything opposed to it. We have the parampara (lineage) and things have to be done according to parampara, sampradaya and tradition. We have our own sampradaya and samskara which cannot be given up. We thus directed him to perform tours and gave him the deities and the paraphernalia. We perform our pooja to the saligrama and deities which were in the Samsthan. Therefore, the paraphernalia is not required by us. We can and we do Dharma Prachara in a befitting manner.

This evidence of defendant No. 1 satisfactorily explains as to why he has not only entrusted paraphernalia to plaintiff No. 2 but also allowed him to go on tours to propagate dharma.

Re: Purported statements in Ex. A. 194

31. In Chapter 11 named Long March of the book The Sage of Shambhavi, defendant No. 1 has allegedly stated as under:

Shishya Swamiji is now undergoing training to shoulder the responsibilities besides working hard to acquire the spiritual knowledge. It is heartening to note that he has shown very good signs of continuing the glorious traditions of Shri Kashi Math Samsthan literally following Shri Swamiji both in offering pujas and prayers to the deities and also in treating the followers with care, courtesy and affection.

Once our beloved shishya acquires the requisite knowledge and knack, we would like to pass on to him the Samsthan to look after and deities to worship and we (Shri Swamiji pauses for a while very much to our anxiety and bewilderment. We would then suddenly become inquisitive to know what plans does Shri Swamiji have for himself.

Shri Swamiji will then slowly and seriously continue to narrate: We are tired and exhausted. We are really tired. Presently we work and worship purely out of will-power and not out of our physical strength. By the grace of God, so far, no indifference has overtaken our mind and heart at least while offering pujas to our deities of daily worship. Once our shishya gets ready, for which we are eagerly

waiting, we shall happily pass on to him everything and retire peacefully to the banks of the sacred River Bhagirathi at Haridwar and spend the rest of our life at the feet of Shri Vyasa worshipping him and also composing a kavya a literary composition in verses in the classical style, on Shri Vyasa.

Similarly we would like to compile the history of our Samsthan and now this is the only ambition we have to fulfil.

Even if the statement attributed to defendant No. 1 in the above exhibit is taken on its face value, it could be only interpreted to the effect that he was mentally prepared to entrust the responsibilities of the Mutt to plaintiff No. 2. The statement Once our beloved Sishya acquires the requisite knowledge and knack, we would like to pass on to him the Samsthan to look after and deities to worship clearly indicates that defendant No. 1 was only waiting for plaintiff No. 2 to attain eligibility by acquiring knowledge and requisite skills for entrustment of the responsibilities of the Mutt to him. The statement in the above paragraph at best would suggest that he would like to live a peaceful life at Haridwar after such entrustment. Nothing could be culled out from these statements that he wanted to relinquish the office of Matadhipathi during his life time.

32. While entrustment of all his duties and responsibilities by a Matadhipathi to a sishya is one thing, relinquishment of his office is quite another thing. A Matadhipathi, even after entrustment of his functions to his sishya, could still continue as the figure head of the Mutt till his Samadhi. Unless the Matadhipathi has expressly or by necessary implication abdicated or relinquished his position, his disciple nominated as successor cannot usurp the office by an assumption that the Matadhipathi has relinquished his office. Where as per the custom and usage of the Mutt, a person chosen as the successor to the Matadhipathi can succeed to that office only after the life time of the Matadhipathi, the successor cannot claim the office of the Matadhipathi unless there is an express relinquishment.

33. In Ram Parkash Das (supra) the Privy Council held:

The mahant is the head of the institution. He sits upon the gaddi; he initiates candidates into the mysteries of the cult; he superintends the worship of the idol and the accustomed spiritual rites; he manages the property of the institution; he administers its affairs; and the whole assets are vested in him as the owner thereof in trust for the institution itself.

Upon his death or abdication he is succeeded by one of the bairagi chelas. These bairagi chelas are, as stated, celibates; or if they have ever been married they must, prior to their initiation as bairagi chelas, have renounced their wives and families and have conformed to the practice of the muth. This practice is ascetic: it involves a separation from all worldly wealth and ties, and a self-dedication to the services and rites of the asthal (See, e.g., Wilsons Religious Sects of the Hindus, pp. 51 etc.)

The Court further held:

The question as to who has the right to the office of mahant is one, in their Lordships opinion, which, according to the well-known rule in India, must depend upon the custom and usage of the particular muth or asthal. Such questions in India are not settled by an appeal to general customary law; the usage of the particular muth stands as the law therefor.

34. In *Sital Das v. Sant Ram* and in *Sri Mahalinga Thambiram Swamigal v. His Holiness Sri La Sri Kasivasi Arulnandi Thambiram Swamigal* the Supreme Court held in a Math, it is the custom or practice of a particular institution which determines as to how successor is to be appointed.

35. In *Krishna Singh v. Mathura Ahir*, the Supreme Court held:

The law is well settled that succession to mohantship of a math or religious institution is regulated by custom or usage of the particular institution except where a rule of succession is laid down by the founder himself who created the endowment.

36. In the present case, as noted above, there is no dispute about the fact that as per the custom and usage, the disciple of the Mutt nominated as the successor will succeed to the office of the Matadhipathi only on the Samadhi of previous Matadhipathi. Therefore, unless plaintiff No. 2 adduces unimpeachable evidence to show that defendant No. 1 has relinquished his office in his lifetime, he will not be entitled to be declared as the Matadhipathi. In his chief examination as D.W. 1, defendant No. 1 has categorically stated as under:

Sri Vyasashram of Haridwar is an important part of Shri Kashi Math Samsthan. We established and inaugurated it in 1988 and further developed it later. It contains, besides a first of its kind sprawling temple dedicated to Maharshi Vedavyasa, along with Shukamuni, Vedacharyas and other Maharshis, also a Ganga Matha Mandir, Veda Matha Saraswati Mandir, Shiva Mandir, Navagraha Mandir, a vast Goshala and two big modern Guest Houses to accommodate pilgrims. There is also a charitable hospital and a big auditorium known as Vishwanatha Sabhagraha. All these are situated in the tranquil environs of a sprawling Ashram in about nine acres of land on the banks of the holy Ganga. This project has been our life long dream. With the development of this Asram and more objectives of deeper studies, meditation, tranquility and Atma sadhana besides writing kavyas were also the reasons which prompted us to take the step of entrusting some day to day responsibilities and functions to the 2nd plaintiff. We never contemplated abdication or renunciation of any position of the Matadhipathiship and the duties and responsibilities that go with it.

(Emphasis added)

That even after entrustment of certain responsibilities to plaintiff No. 2, defendant No. 1 has continued his activities as the Matadhipathi is evident from the statement contained in paragraph 15 of the chief affidavit, which is extracted

hereunder:

As Matadhipathi we have been continuously receiving Vinanthi Pathrams from branch maths, temples, institutions and individuals of Gouda Saraswath Brahmin Community from all over the country. Even after entrusting certain activities to the 2nd plaintiff, we have continued to perform our traditional duties as Matadhipathi and spiritual head. We performed Chaturmas Vritham at Hardwar in 1995, at Badrinath in 1996, at Mumbai in 1997, at Kalpi in U.P. in 1998, at Cochin in 1999, at Dwaraka, Gujarat in 2000, at Kalpi again in 2001 and at Hardwar in 2002. Our Chaturmas Vritham of 2003 is scheduled in July 2003 at Bangalore Sri Kashi Math. Our schedule of tour programme has been filed in this Court at SL. No. 25 in the list of documents.

37. It is not the pleaded case of plaintiff No. 2 that any ritual was performed to install him as the Matadhipathi nor any Rayasapatram (Notification) was issued by defendant No. 1 to recognize him as Matadhipathi after 4.11.1994 when defendant No. 1 issued Ex. B. 27 entrusting religious, dharmic and social activities of the Samsthan other than Vyasasram at Hardwar to plaintiff No. 2. In this context, the submission of Sri B. Adinarayana Rao, learned Senior Counsel for defendant No. 1, that office of the Matadhipathi is not partible, needs to be considered.

38. In Sethu Ramaswamiar v. Meruswamiar the Judicial Committee of the Privy Council held that the headship of a Math is not a matter of partition. Referring to this judgment and the Judgment of the Calcutta High Court in Govind Ramanuj v. Ram Charan, Justice B.K. Mukherjea, in his celebrated book on Hindu Law, wrote that neither the office of a Mohunt nor the property of a Math can be a subject of partition. The relevant portion reads as under:

Office of Mohunt not partible. - It was observed by the Judicial Committee in Sethu Ramaswamiar v. Meruswamiar [(1918) LR 45 IA 1 , 9], that the headship of a Math is not a matter of partition. As has been said already, all authorities point to the supreme head of a Math being of single person. He is administrator of the whole foundation and has got to perform in person certain religious duties. As Mohuntship does not devolve like shebaiti rights upon all the natural heirs, there cannot be any question of having a quasi division of the office by creating what are known as Palas or turns of worship. It was held by a Division Bench of the Calcutta High Court in Gobinda Ramanuj Das Mohanta Vs. Ram Charan Das, (1925) ILR (Cal) 748 that according to Hindu Law neither the office of a Mohunt nor the property of a Math can be a subject of partition. To hold otherwise would be to open the door to fraud and illegality and would result in a rapid disintegration of religious foundation and dissipation of property settled in favour of Mutts and kindred institutions.

39. As could be seen from Ex. B. 27, Vyasashram at Hardwar was excluded from the entrustment of duties to plaintiff No. 2. Even assuming that defendant No. 1 had the intention to relinquish his office as Matadhipathi, his part relinquishment

in respect of the Mutt at Varanasi cannot be treated as valid relinquishment as per the settled legal principles referred to above.

Re: Exs. A. 46, A. 15, A. 384, and A. 253

40. Under Ex. A. 46, dated 18.5.1989 defendant No. 1 informed the disciples that he has decided to adopt plaintiff No. 2 as sishya and that ceremonials connected therewith will be performed on 7th July, 1989. Ex. A. 15, issued in the name of defendant No. 1 referred to the performance of Sishya Sweekar ceremony at Varanasi Mutt. These two documents would only show adoption of plaintiff No. 2 as sishya and nothing more and therefore they do not in any manner prove the claim of plaintiff No. 2 to Matadhipathiship.

Ex. A. 384 is Rayasapathram issued by defendant No. 1 informing the disciples of the Mutt that from 12.12.1994 onwards, for all the matters concerned with the management of the Mutt they should approach plaintiff No. 2. Ex. A. 253 is a letter of one of the Branches acknowledging Ex. A. 384. These two documents also do not lend support to the claim of plaintiff No. 2 that he was appointed as the Matadhipathi.

Re: Ex. A. 77

41. This is an interesting document, which is in the nature of a book with the title Sri Gurucharitamruta. This book was authored by P.W. 9. Ex. A. 553 is the purported translation of Ex. A. 77. This book contains stanzas in Kannada, some of which were allegedly spoken to by defendant No. 1. Stanza Nos. 1295, 1298 and 1314 are relevant and the translation of the same is as under:

Now you are the Dharmacharya of this great Throne

You have right to Dharma karya, and you are free

Now you are the Mathadhipathi we are an ordinary Sanyasi

Will always pray to God for your good.

World knew the news Elder Swami the Guru is leaving for Haridwar will never return

No doubt, defendant No. 1 in his evidence given as D.W. 1 has admitted that he has blessed the book Gurucharitamruta by writing a message. The cross-examination of P.W. 9, who is the author of the book, completely explodes the myth created by the book. The witness described Ex. A. 77 as kavya and explained the aspects of kavya. He has further deposed:

Ex. A. 77 being a kavya contains a lot of imaginations. It is not historical truth. This book contains lots of events and situations which we have not seen or known. In trying to get prasa (rhyme) we used words which many not mean for understanding for common man. This is written with an intention of encouraging the common man to believe in God and to respect Gurus and lead a good life. We bring it within the stipulated number of lines and trying to get rhymes at times

some material is discarded and some other material is included. Therefore, I say which is contained in Ex. A. 77 is not what is seen or known by me...

(emphasis added)

The witness further admitted that the 7th Chapter (which obviously contains the above mentioned stanzas) was written when he was in hospital for two or three days after surgery and his mind was highly disturbed at that time.

In the face of P.W. 9s admissions that Ex. A. 77 contains lot of imaginations and that it does not contain what is seen or known by him, no credence whatsoever can be given to this document.

Re: Exs. A. 228 and A. 228(a); A. 282 and A. 282(a); and Exs. 284 and 284(a):

42. Ex. A. 228 is a purported Vinati (submission) made by the Managing Committee of the Cochin Tirumala Devaswom addressed to plaintiff No. 2. This was pressed into service by the plaintiffs in order to show that all the Branch Mutts have recognized plaintiff No. 2 as Matadhipathi. Ex. A. 228(a) is a purported translation of Ex. A. 228. This document was marked subject to objection.

D.W. 2, who is the President of Cochin Tirumala Devaswom, the President Kerala GSB Devaswom Board and also an Advocate by profession, has admitted in his cross-examination that Ex. A. 228 is a Vinati addressed by the Committee to plaintiff No. 2.

Similarly Ex. A. 282 is a letter addressed by a Branch Mutt recognizing plaintiff No. 2 as Matadhipathi and Ex. A. 282(a) is a purported translation of Ex. A. 282.

43. Ex. A. 284(a) is a translation of Ex. A. 284. This letter is addressed by Shri Tirumala Kashimath, defendant No. 2, wherein plaintiff No. 2 was addressed as Kashi Mathadeesh. If one or a few branch Mutts address plaintiff No. 2 as Matadhipathi, that by itself could not elevate his status as Matadhipathi. The perception of some of the Branch Mutts regarding the status of plaintiff No. 2 can neither have relevance nor the same legally confers the status of Matadhipathi on plaintiff No. 2.

Re: Exs. A. 192 and A. 193

44. Ex. A. 193 is translation of Ex. A. 192 which is written in Malayalam language. The translation version of Ex. A. 192 inter alia reads:

By the grace of Hari Guru everything is fine here. Received letter of 15-09-1995 and noted the contents.

Hereafter, it will not be considered proper if both of us Swamijis stay at one place because Matadhipathis of the same Math and who are Guru Shishyas perform two poojas and perform japatapadis and bikshas in two different ways will give room for unnecessary talks. However after performing Rathri Pooja in the afternoon if you come to the place of our stay and return after overnight stay

that will have no problem. Likewise if we come to your place of stay after bikshadi and return the next morning after overnight stay that also will not be improper.

P.W. 10 has translated Ex. A. 192. In his cross-examination he has explained the meaning of the word ore as one. However, he has denied the suggestion that ore matadheesaram means only one Matadhipathi. He has however admitted that in Malayalam ore kodadhi means one court. He has further deposed:

It is true while translating the word ore matadheesaram in Ex. A. 192 into English language in Ex. A. 193 I have mentioned the meaning matadhipathis of same mutt. It is not true to suggest that this distortion was carried out at the instance of 2nd plaintiff. It is true the Swamijis of Kasi Mutt Samsthan will be represented as Matadhipathis in plural sense.

The above cross-examination of P.W. 10 has exposed the distorted nature of the translation of Ex. A. 192. The witness clearly admitted that Ex. A. 192 contained the words ore matadhdheesaram and he has further admitted that the said words mean only one Matadhipathi. He has further admitted that while translating the said words he has used the plural by mentioning as mathadipathis of the same Mutt. It is evident from Ex. A. 193 as suggested to the witness, the distorted translation was indulged in by P.W. 10 at the instance of plaintiff No. 2 to make it appear as if defendant No. 1 has recognized plaintiff No. 2 as the Matadhipathi. At any rate, there could be only one Matadhipathi for a Mutt and if defendant No. 1 has recognized plaintiff No. 2 as the Matadhipathi he would not have described himself as the Matadhipathi and referred to the existence of two Matadhipathis in Ex. A. 192. Therefore, I have no doubt in my mind that Ex. A. 193 is a self-serving document containing false translation.

Re: Exs. A. 36 and 37

45. Exs. A. 36 and 37 are tour programmes of defendant No. 2 and plaintiff No. 1 respectively. They disclose that prior to 12.12.1994 defendant No. 1 was undertaking tours and after 12.12.1994 plaintiff was undertaking tours. It is not in dispute that one of the main functions of a Hindu Mutt is propagation of the Hindu religion. Therefore, it is not unusual for a Matadhipathi or Sishyas authorized by him to undertake tours for such propagation. Indeed, if defendant No. 1 has ceased to be the Matadhipathi, he would not have undertaken such tours. Ex. B. 54 is a tour programme of defendant No. 1 from 11.1.1997 to 21.1.1997 as per which he visited many places from Ambalamedu to Mysore. Similarly, he has undertaken tour from 19.3.1999 to 25.7.1999 visiting many places such as Haridwar, New Delhi, Bombay, Goa, Alleppey, Kozikode, Ernakulam etc. In another tour programme from 24.10.1999 to 27.4.2000, defendant No. 1 has visited many places. Starting from Kochi he has visited several places in Kerala, Tamilnadu, Karnataka and Delhi. This evidence would establish that defendant No. 1 has never ceased to be the Matadhipathi.

46. Ex. B. 30 is the claim for exemption from the income tax for the years

1994-95 to 1996-97 and Exs. B. 48 to 52 are the finalized income tax returns for the period from 1995-96 to 1998-99 which were in the name of defendant No. 1 as Matadhipathi. If defendant No. 1 relinquished his office these documents would not have been issued in the name of defendant No. 1. These documents clearly establish that defendant No. 1 continued as the Matadhipathi without relinquishment.

Re: Exs. A. 130 and Ex. A. 131

47. The learned counsel for the appellants - plaintiffs has referred to Ex. A. 131, which is the purported translation of Ex. A. 130. He also referred to a part of the cross-examination of plaintiff No. 2, examined as P.W. 7.

As regards Ex. A. 131, the purported translation, if accepted as it is, it casts a slur on the character of defendant No. 1. In this regard, P.W. 10, who translated Ex. A. 130 was subjected to serious cross-examination. The meaning of the word moghu (in Malayalam), mentioned in Ex. A. 130 letter addressed by defendant No. 1 to plaintiff No. 2, was explained by P.W. 10 in his cross-examination. He has stated that the said word means love and that one of the meanings of the said word would be the parents love towards the children. However, in Ex. A. 131, P.W. 10 has translated the word moghu as making love. In his cross-examination, P.W. 10 has conceded that there is a lot of difference between love and making love and that in our society the phrase making love is not usually used. He has also admitted that if the words moghu kanikkanadana were used instead of moghu chayyunadana as used in Ex. A. 130, he would have translated the words as showering of affection. A suggestion was put to P.W. 10 that the type of translation of Ex. A. 130 made by him shows his low level of thinking and inclination to help plaintiff No. 2 at any cost.

48. Terming Ex. A. 131 as a highly distorted translation, Sri B. Adinarayana Rao, learned Senior Counsel for defendant No. 1, has referred to Exs. A. 105, B. 106, B. 107, B. 108, B. 159 and B. 166 and submitted that the tenor of those letters reveals the fatherly affection of defendant No. 1 towards plaintiff No. 2 and that if he had sinister feelings towards plaintiff No. 2, defendant No. 1 would not have written such letters. He has also submitted that the wild allegation made by plaintiff No. 2 as P.W. 7 while denying the suggestion put to him that he indulged in Guru droha is not only false, but a pure after thought. This Court feels that it is unnecessary to dilate on these aspects as they do not in any manner have a bearing on the outcome of the case.

49. The correspondence emanating from defendant No. 1 marked as Exs. X. 8 to X. 63, except Ex. X. 13, addressed to various disciples of the Mutt would also prove without any doubt that defendant No. 1 continued to be at the helm of the affairs as the Matadhipathi even after 12.12.1994. The most clinching evidence in this regard is the letter, Ex. B. 35, dt. 4.11.1999, addressed by plaintiff No. 2 and the same reads as under:

IN VIEW OF THE RECENT EVENTS, WE HAVE FIRMLY DECIDED NOT TO INVOLVE

IN THE MATTERS CONCERNING THE AUTHORITY OF SHREE SAMSTHAN (ADHIKARIKAVISHAYAS) AS WELL AS THE DHARMIC ACTIVITIES (DHARMIC VISHAYAS) OF THE SAMAJ. THEREFORE WITH PRANAMS AGAIN AND AGAIN WE PRAY AND REQUEST TO RELIEVE US AS EARLY AS POSSIBLE.

A careful reading of the above document shows that plaintiff No. 2 has taken a firm decision not to involve himself in the matters of the Mutt both in respect of Adhikara Vishayas (administrative affairs) and Dharmika Vishayas (Affairs connected with Hindu religion and Hindu Dharma). As rightly submitted by Sri B. Adinarayana Rao, learned Senior counsel for the defendant No. 1, if defendant No. 1 ceased to be the Matadhipathi, the question of plaintiff No. 2 addressing the letter to him and requesting him to be relieved from the affairs of the Mutt does not arise.

50. I have also scanned through the entire evidence on both sides. Nothing of significance could come out of the evidence to prove relinquishment of office of the Matadhipathi by defendant No. 1. While plaintiff No. 2 has miserably failed to establish his plea of relinquishment of office by defendant No. 1, the evidence produced by defendant No. 1 positively proved his plea that he has never relinquished his office of the Matadhipathi.

51. The learned counsel for the appellants - plaintiffs has not advanced arguments on the correctness or otherwise of the decree in connection with the counter claim out of which A.S. No. 91 of 2009 has arisen for the reason that the main plea based on which the decree was questioned is subject matter of a civil revision petition. Therefore, it is needless to observe that confirmation of the decree in the counter claim will be subject to the result of the said civil revision petition.

52. On the analysis of the above, both the appeals fail and the same are dismissed with costs.