

(1980) 09 MP CK 0033

In the Madhya Pradesh High Court

Case No : First Appeal No. 260 of 1973

Swami Harbansa Chari Ji and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 18-09-1980

Acts Referred:

Constitution of India, 1950 — Article 25(1), 26
Evidence Act, 1872 — Section 57, 60

Citation : AIR 1981 MP 82 : (1981) JLJ 617 : (1981) 26 MPLJ 429

Hon'ble Judges : M.L. Malik, J;B.C. Verma, J

Bench : Division Bench

Advocate : R.P. Verma, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Varma, J.

This appeal by the plaintiff is directed against dismissal of his suit for declaration that he is the successor Mahant of the Institution known as Laxmanbag, Rewa, and for other consequential reliefs.

Rewa was a princely State. In or about the year 1858, His Highness the Maharaja Vishwanathsing Ju Dec was the Ruler. From time immemorial, Laxmanji was being worshipped as a God in that Region. A temple of Laxmanji was built in Rewa. Yuvraj Raghurajsingh felt seriously ill. Then a saint by name Laxmi Prapanna came to Rewa. He was a Vaish-nav and belonged to Bamanuj group. He was introduced to the Maharaja. He treated Raghurajsingh and cured him. Raghu-rajsingh then expressed his desire to become his disciple. Laxmi Prapanna, however, suggested that his Guru, Swami Mukundacharya alone could induct him into his sect and make him his disciple. Thereupon Swami Mukundacharya was brought from Brahmashila and Raghu-rajsingh became his disciple. Swami Mukundhcharya was taken as Raj-Guru. Laxmanbag temple then was just a small temple and was surrounded by forest-Raghurajsingh dedicated

certain villages and huge properties to Laxmanbag and Swami Mukundacharya was installed as the Head of that Institution. Thereafter Laxmanbag developed as a Math and Swamiji came out as its spiritual head. Swamiji started living in that Math.

On the death of Swami Mukunda-charya, Laxmi Prapanna succeeded him. Next followed Swami Janardancharya. By a Will dated 6-8-1919 (Ex. P-5), Swami Janardanacharya nominated Swami Badri Prapannacharya as his successor. This nomination of Swami Badri Prapannacharya was approved by the Darbar (Regency), vide resolution of the Council, dated 27-10-1920 (Ex. D-25). A sum of Rs. 5,000/- was provisionally sanctioned for routine daily expenses. The report, dated 26-3-1923 (Ex. D. 26), shows that Swami Badri Prapannacharya acted as an "Adhikari" for about 3 1/2 years. His management was found satisfactory. It was, therefore, recommended that the Darbar might appoint him as Raj-Guru as also the Swami of Laxmanbag. It was suggested that such an appointment would be in keeping with the wishes of the late Swamiji. Accordingly Swami Badri Prapannacharya was appointed as the Raj-Guru and also the Swami of Laxmanbag.

It appears that later it was found that Swami Badri Prapannacharya did not conduct himself in keeping with the practice of the high spiritual office he held, both as Swami of the Institution and also as Raj-Guru and dissatisfaction was expressed at different quarters. Report of the Dharmarth Department (Ex. P-31) shows that Swami Badri Prapannacharya himself left Rewa. Then by order of the Ruler, Swami Badri Prapannacharya was removed from his office and ceased to be the Raj-Guru. He was not even permitted to stay in any of the temples of that Institution without the permission of the Darbar. He, however, returned to Rewa in the year 1945 and was reinstated as the religious head and Guru as also the Administrative Head of Laxmanbag (Vide Ex. D. 7 dated 30-6-1945). This reinstatement was approved by the then Ruler Gulabsingh, vide his Note dated 6-7-1945. This reinstatement of Swami Badri Prapannacharya was on conditions that he would manage the Institution for which purpose he would be granted an allowance of Rs. 2,000.00 p. m. and that he shall have a right to appoint another Manager with consultation of the Minister-in-Charge Dharmarth but shall have no right to suggest any person as his successor who was not the bona fide subject of the State. Upon such reinstatement, management of the property of Laxmanbag was again handed over to Swami Badri Prapannacharya. On 4-7-1957, Swami Badri Prapannacharya executed a Will (Ex. P-1) whereby he nominated the plaintiff Harbanschari as his successor. On 12-7-1957, some rituals were performed installing the plaintiff as the successor of Swami Badri Prapannacharya and the Maharaja of Rewa was accordingly informed. Swami Badri Prapannacharya then died on 2-8-1957.

When in the year 1920 Swami Badri Prapannacharya was appointed as the religious head of Laxmanbag, the management of the Institution was in the hands of the Committee appointed by the Darbar. Swami Badri Prapannacharya

was one of its members (See Ex. D-22). The report, dated 12-12-1919 (Ex. D-24), made by the Home Minister shows that even then the villages dedicated to the Institution were to be managed by the Court of Wards and a Committee was to manage the other affairs of the Institution. It appears that even when Swami Badri Prapannacharya was reinstated to his office in the year 1945 (vide Exs. D-6 and D-7), the management of the Institution continued with the Committee. Ultimately, when Rewa became Part "C" State, an agreement dated 30-3-1954 was arrived at between the President of India and the Chairman and Members of the Committee constituted by that State for the management of Laxmanbag Institution. The Swamiji of Laxmanbag was to be the Chairman of that Committee. The management of the Institution then vested in this Committee which is still functioning.

Trouble started when the plaintiff on the death of Swami Badri Prapannacharya, started asserting his right over the Laxmanbag styling himself as the Mahant and describing the Institution as a Math. The Maharaja of Rewa through his Personal Secretary expressed, vide letter dated 19-7-1957 (Ex. D-2), that he never consented either orally or in writing to the appointment of the plaintiff as Mahant of Laxmanbag. On the other hand, the Committee appointed by the State invited applications for filling that office. Certain applications were received and opinion of the Maharaja of Rewa was solicited. The Government issued a communication, dated 20-10-58 (Ex. D-4) to the Commissioner, Rewa, containing decision to appoint Shri Raghavacharya as Mahant of Laxmanbag. This led to the filing of the suit giving rise to this appeal. The plaintiff-appellant styling himself as Mahant of Laxmanbag alleged that Laxmanbag is a Math and that it was established by Swami Mukundacharya. The disciples of this Math are Vaishnav and belong to Ramanuj group. The succession to the office of Mahant was governed by custom as prevailed in other Maths in India belonging to Vaishnav cult. According to this custom, the existing Mahant during his lifetime either by an instrument/will or even verbally would nominate his successor who had to be from among the senior disciples. The person so nominated would be installed as a Mahant in a formal ceremony and would succeed as Mahant on the death of the existing Mahant. The appellant alleges that, according to the custom of the Math, Swami Badri Prapannacharya by a Will, dated 4-7-1957 (Ex. P-1), appointed him as his successor-Mahant of Laxmanbag and on 12-7-1957 he was installed as such in a formal ceremony. This was intimated to the Maharaja of Rewa and was widely published. On the death of Swami Badri Prapannacharya, the plaintiff performed his last rites and then assumed the office of Mahant. He claimed that the Maharajas of Rewa, members of their families and other disciples made gifts of properties to the Institution (per Schedule "A" to the plaint). Certain properties were given to Mahant himself over which he had complete domain (per Schedule "B" to the plaint). The Mahant alone has power to manage these properties and the temples of Laxmanbag. He also claimed Rs. 7,200/-per month which the respondent had agreed to give in lieu of compensation for the vesting of the villages in the State after the abolition of Jagirs. Challenging that the

Government has no power to appoint the Mahant, the plaintiff claimed a declaration that he is the duly appointed Mahant of Laxmanbag and as such is the owner of all the properties detailed in Schedules A and B annexed to the plaint. Injunction was also claimed directing the respondent-State not to remove him and appoint any other person as Mahant. The possession of the properties and mesne profits at Rs. 20,000/- per year were also claimed. It may be mentioned that the plaintiff was permitted to sue as a pauper and this appeal is also filed by him as pauper. Shri Raghwacharya has since been appointed the Mahant, but he was not impleaded in the lower Court nor is a party before us.

The defence of the respondent-State was that the institution, Laxmanbag was established by the Maharaja of Rewa and not by Swami Mukundacharya, that it was not a Math but was a group of temples and that the properties vested in the deities to whom dedications were made and the head or the Mahant never owned the properties of Laxmanbag. The head of the institution who had to be the follower of Vaishnav cult, was to be appointed by the Ruler. The custom alleged relating to the succession to that office was denied. It was asserted that only celibates are competent to hold that office. It was pleaded that the appellant is not a virakt, he has wife and children and enjoys family life and, therefore, is not competent to hold that office. All the properties are Debuttar and vest in Laxmanbag and not in the Mahant who was only to manage the affairs of Laxmanbag and was also to be the Raj-Guru. It was further pleaded that since the year 1911, the plaintiff's predecessor had been out of possession of the properties and the suit was barred by limitation. The properties are being managed by a Committee since 1954 and Rs. 7,200/- p. m. were sanctioned by the Government of Vindhya Pradesh as grant for the management of the institution. The State had ever since approved the appointment of Shri Raghwacharya as Mahant. On all these counts, the plaintiff-appellant was sought to be non-suited.

The trial Court has found that Swami Mukundacharya was not the founder of Laxmanbag but was declared by the Maharaja Vishwanathsingh Ju Deo as the owner of Laxmanbag. The proper-tries are debuttar and have been dedicated to the idols for promoting Vaishnav cult. The nominated heir could not succeed to the office and even to the personal properties of the Mahant unless the Will of the last Mahant was approved by the Maharaja of Rewa. The Will, dated 4-7-1957 (Ex. P-I), has been held to be duly executed. But it has been held that although Swami Badri Prapannacharya had a right to appoint his heir, he had no right to appoint Mahant of Laxmanbag and that such appointment needed approval of the Maharaja of Rewa. It has been found that the appellant is a family-man and not a Virakt or celibate. But it is held that he can renounce the world before his appointment is approved by the Maharaja. On these findings, the suit has been dismissed as premature and the plaintiff-appellant is held entitled to no relief.

In this appeal, the appellant has confined his claim only to the relief of

declaration of his status as Mahant of Laxmanbag. Other reliefs claimed in the suit were not pressed at the hearing. The appellant has also declared in writing that henceforth he shall observe complete celibacy and that he has completely renounced the world. The learned Government Advocate appearing for the State, while supporting dismissal of the suit, has challenged all the adverse findings recorded by the trial Court.

The character of the institution (Laxmanbag) and how it came into being are the questions which must be answered before determining the status of the appellant vis-a-vis that institution. The parties have not, and indeed they could not have, tendered any oral evidence in support of their rival claims as to the origin of Laxmanbag. One has, therefore, to resort to documents including historical works. Some books and writings have been produced throwing light on the evolution of the institution. Paragraph 2 of Section 57 of the Evidence Act permits resort to appropriate books or documents of reference on all matters of public history, science or art. In order to prove ancient facts of a public nature, public histories of repute are receivable in evidence as public documents. The opinion of standard authors may be referred to. The Court, however, can dispense with the evidence of what may be regarded as notorious facts of public history. Section 60 of the Evidence Act makes provision for treating the opinion of experts as expressed in treatises of persons who are dead as evidence in proper cases. The authors of such learned treatises must be shown to be properly qualified to make statements upon the subject. One of such works relied on by both the parties is Ex. P-4. It is a book of history titled as 'Laxmanbag ka Itihas'. Its author is Shri Maharaj Kumar Colonel Lal Balwant Singh. Chapters IV and V of this book reveal the history of Laxmanbag. According to the author, deity of Laxmanji was installed by the Ruler of Rewa in quite ancient days. When Maharaja Vishwanathsingh Ju Deo was the Ruler of Rewa, his son Raghurajsingh Ju Deo fell seriously ill. Swami Mukundacharya was requested to come to Rewa. He came and chose to live in a lonely place away from the worldly affairs. He stayed in Laxmanbag. He was installed as the Guru of the Maharaja. Properties were dedicated to Laxmanbag. It developed into a Math. Swamiji became the spiritual head as also the Raj-Guru. At pages 14-15 of this book, the author says:

"The deity of Laxmanji was installed by the Ruler of Rewa in quite ancient days. When Maharaja Vishwanathsingh Ju Deo was the Ruler of Rewa, his son Raghurajsingh Ju Deo fell seriously ill. Swami Mukundacharya was requested to come to Rewa. He came and chose to live in a lonely place away from the worldly affairs. He stayed in Laxmanbag. He was installed as the Guru of the Maharaja. Properties were dedicated to Laxmanbag. It developed into a Math. Swamiji became the spiritual head as also the Raj-Guru. At pages 14-15 of this book, the author says:

Then we have the evidence of Shri Ram-pyare Agnihotri (D. W. 2). He is a historian of repute and has written history of Rulers of Rewa. He is also a member of Historical Records Commission, and has produced

Rojnamcha of the then Ruler, Gulab Singh (Ex. D-12) and other historical works, the extracts from which are Exs. D-13 to D-17. This witness is the author of the book out of which Ex. D-17 is extracted. Ex. P-43 is written by Maharaja Raghuraj Singh himself. Shri Agnihotri's inference from all these documents is that Laxmanbag was established by Maharaja Vishwanathsingh in the year 1898. This witness did say that there is some confusion about the year of its establishment, but his definite opinion is that it was established by Maharaja Vishwanathsingh when Swami Mukundacharya was installed as Raj-Guru and the spiritual head of that institution. The various documents referred to above also give like indication. The appellant has examined Shri Pitambardas (P. W. 5). He is the follower of Vaishnav cult and belongs to Ramanuj group. In Paragraph 25 of his deposition, he admits that when Swami Mukundacharya came to Rewa, temple of Laxmanji was his existence. It was built in the year 1898. He deposes not to have seen any document evidencing establishment of Laxmanbag by Swami Mukundacharya. His source of knowledge is Ex. P-4. The appellant strongly relies upon the Rewa State Gazetteer. At page 193 is the list of persons enjoying grants of land. The entry (Ex. P-3) relates to Swami Janar-danacharya. In its last column "Brief history of the "family" it is recited that the founder of this Sthan (Lax-manbag) was Swami Mukundacharya. The preceptor is said to be late Maharaj Raghuraj Singh who made grant of land mainly for the maintenance of several temples. When read in the context in which it is expressed, this only means that the first Swami was Mukundacharya. From all this evidence, our conclusion is that the founder of Laxmanbag was Maharaja Vishwanathsingh Ju Deo. Swami Mukundacharya was the first Raj-Guru and the spiritual head of the institution and was called Mahant, Properties were dedicated by the Ruler to the deity of Laxmanji and a fixed amount was to be given to Mahant for worship etc.

Math in ordinary language signifies an abode and residence of ascetics. In legal terminology, it connotes a monastic institution established for the use and benefit of ascetics belonging to a particular order. It is presided over by a superior. The Hindu Maths were for the first time established by Shankar. Math is clearly distinct from the other religious trust known as Debuttar, the essential element of which is a deity or an idol. The presiding element in a Math is an ascetic or religious teacher. With his disciples and co-disciples, he forms a spiritual family. Both these institutions owe their existence to grants of property made by pious benefactors. In the case of Debuttar, the grantee is an idol. In the case of Math, the beneficiary of fraternity of religious men headed by superior or Mahant represents the entire institution. The primary object of Debuttar is to perpetuate the worship of a deity. It may, however, have provisions for feeding the poor as an adjunct to the worship of the deity. But that is not essential. The primary purpose of the Math is to encourage and foster spiritual learning. Competent teacher imparts religious instructions to the disciples who are followers of the particular school or order. Since the preceptors of this monastic institution (Math) combined only high standard of spiritual knowledge with moral purity, large grants of land were made in their favour by princes and noblemen. The worship

of God was not excluded if it was essential as a part of the religious teachings of a particular Math. It cannot, however, be said that there cannot be a Math without an idol. In case of a temple or a shrine of deity, a property vests in the idol as a juristic person. In case of a Math, a property does not vest in the Mahant as it vests in the idol. The true legal position regarding vesting of a property in a Math was expressed by the Judicial Committee of the Privy Council in *Vidyavaruthi v. Baluswami* 48 Ind App 302 : AIR 1922 PC 1231 under these terms:

"Call by whatever name, he is the manager and custodian of the institution and the property which he holds is not vested in him; it is vested in the institution and is held by him as a manager on behalf of the same."

In yet another decision *hi Ram Parakash Das v. Anand Das* AIR 1916 PC 256 it was observed:

"It is, however, the rule that this property is held by the Mahant as its owner, and the succession to him in such property follows with the succession to the office. The nature of the ownership is, as has been said, an ownership in trust for the Math or institution itself, and it must not be forgotten that although large administrative powers are undoubtedly vested in the reigning Mahant, this trust does exist, and that it must be respected." The Supreme Court in *Shri Kalanka Devi Sansthan Vs. The Maharashtra Revenue Tribunal, Nagpur and Others*, pointed out the distinction between a manager or a shebait of an idol and a trustee. It was observed that the properties of the trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. Only possession and management vest in the manager. The Mahant, according to usage, has wide discretion in the application of the funds of the institution subject to obligations and duties equally prescribed by such custom and usage.

After having thus noticed the salient features of a Math as distinct from a temple, we proceed to examine the evidence on record tendered by the parties supporting their rival contentions as to the nature of the institution we have earlier shown that the institution of Lax-manbag came into existence by installing deity of Laxmanji. Certain temples were erected. When Swami Mukundacharya was brought to Rewa by the then Ruler, villages and other property were dedicated by him to the deity (see Ex. P-4, at pages 14 and 15). A sum of Rs. 540/- per year was set apart out of regard for the Swamiji for his personal expenses. Swamiji was enjoined with a duty to perform the pooja of the deity out of the income of the villages dedicated to it. There is no evidence to the contrary to indicate that either the Maharaja or Swami Mukundacharya brought about a monastic institution for the purpose of imparting, encouraging or fostering spiritual learning to the disciples or followers of any particular school or order. Learned counsel for the appellant relied upon the evidence of Kirmalacharya (P. W. 2) and Pitambardas (P. W. 5). In our opinion there is nothing in the depositions of either of these witnesses to indicate that Laxmanbag was initiated

as a Math. Although Kirmalacharya (P. W. 2) has stated that Laxmanbag is a branch of Ramanuj sect of Vaishnav cult, he could not say whether the Laxmanbag existed before Swami Mukundacharya came to Rewa from Brahmashila. All that he said was that Maharaja Raghuraj Singh brought Swami Mukundacharya from Brahmashila and that the Laxmanbag temple may then have been erected and dedicated to Swamiji. This is just his surmise. He had not seen Swami Mukundacharya and admitted that he has no personal knowledge about it. Although Pitambardas (P. W. 5) at first stated that the Laxmanbag was a Math and was initiated by Swami Mukundacharya in the year 1898, he had admitted in Paragraph 24 of his cross-examination that he only has learnt about the creation of the institution from history and has no personal knowledge about it. In our opinion, the evidence so relied upon does not support the contention that Laxmanbag was a Math. What appears is that because the Yuvaraj was cured, the Swamiji was held by the Maharaja in very high esteem and out of regard for him he recognised him as the Raj-Guru and permitted him to live in Laxmanbag and also set apart a fund for his personal expenses. Our conclusion, therefore, is that Laxmanbag was never a Math in the sense the term is known to Hindu law.

In case of endowments, be it a Math or debuttar, it is for the founder to prescribe the rule according to which the succeeding managers are to be appointed. These rules would be given effect to if they are not in conflict with any provision of law. If, however, the founder does not lay down any such rule regarding the devolution of rights of management, the rights of shebait devolve like any other property according to the law of inheritance. Succession to Mahantship 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: See *Sital Das Vs. Sant Ram and Others*, . This custom or practice is referable to the particular institution in regard to which the questions arise and by appeal to which these questions have to be decided. Shri B. K. Mukherjea in his treatise on the Hindu law of Religious and Charitable Trusts, Fourth Edition, at page 345. has quoted the following passage from the judgment of Sir Barnes Peacock of the Calcutta High Court:

"Numerous cases have been cited to show what is the usage; but the law as to be laid down by this Court must be as to what is the usage of each Mohuntee. We apprehend that if a person endows a College or Religious institution, the endower has a right to lay down the rule of succession. But when no such rule has been laid down, it must be proved by evidence what is the usage, in order to carry out the intention of the original endower. Each case must be governed by the usage of the particular Mohuntee"

This judgment of the Calcutta High Court was approved by the Privy Council in *Greedhari Doss v. Nundokishore Doss* (1866) 11 Moo I A 405. In AIR 1938 216 (Privy Council) , it is pointed out that the succession to the office of Mahant and the ownership of a Math property limited by the period of tenure of the office,

are to be regulated by the custom of the particular Math and the plaintiff in the suit is bound to allege and prove what the custom or practice of the particular Math is and that his acquisition of Mahantship was according to that custom. The rule has been reiterated by the Supreme Court in *Sri Mahalinga Thambiran Swamigal Vs. His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamigal*, . There it has further been observed that in most cases the successor is ordained and appointed by the Head of the Math in his own lifetime and in default of such appointment, the successor may be appointed by election by the disciples or in the last instance by the Court as representing the Sovereign. Where the Head of the religious institution is bound by celibacy, it is frequently the usage that he nominates his successor during his own lifetime or by a Will. Such power of nomination must be exercised bona fide and not corruptly or for ulterior reasons. The nomination confers upon the person so nominated a status and the capacity to succeed in the institution in that status. According to the different ways in which the heads or superiors are appointed, the Maths can be classified into three categories. These are Mourashi, Panchayati and Hakimi. In the first, the office of the Chief Mahant is hereditary and devolves upon the Chief disciple of the existing Mahant who usually nominates his successor; in the second, the office is elective, the presiding Mahant is selected by an assembly of Mahants; and in the third, the appointment of the presiding Mahant is vested in the ruling power or in the party who endowed the temple [See *Ram Parkash Das v. Anand Das* AIR 1916 PC 256 and *Hindu Law* by Raghavachariar, at p. 660, 7th Edition]. Shri B. K. Mukherjea at page 357 of his work *Hindu Law of Religious and Charitable Trusts*, 4th Edition, points out that ever since the Act 20 of 1863 was passed, the ruling power in India divested itself of the right of nominating any Mahant. The power can, however, still be exercised by families who originally endowed the institution, if that is the custom which governs the Math; and at page 348, the learned author says that in a Mourashi Math the chief disciple of the last Mahant succeeds to the office, but a junior chela may succeed if he is found more capable and if he is selected by the last Mahant as his successor.

We now proceed to consider the appellant's claim to a declaration of his status as a Mahant of Laxmanbag on the assumption that the institution is a Math. What is pleaded by him in Paragraphs 6 and 9 of his plaint is that according to the custom prevailing in Vaishnav Maths, the Mahant by a Will or otherwise would nominate his successor who would succeed to that office on the death of the Mahant. This was also the custom of Laxmanbag and the plaintiff was so nominated by Swami Badri Prapannacharya by his Will, dated 4-5-1957 (Ex. P-1). It is also pleaded that a formal ceremony was performed installing the appellant as such on 12th July 1957. The institution is thus sought to be classified as a Mourashi Math. On the other hand, the respondent's case is that the head of this institution was nominated by the Ruler who had founded it and that the Head of Laxmanbag could never be appointed without the approval of the Ruler. It is common ground that the person entitled to hold that office must be a Vaishnav belonging to Rama-nuja sect and should be a celibate (Virakt).

The question of plaintiff's eligibility may be taken up first. That the plaintiff was one of the disciples of Swami Badri Prapannacharya and belonged to Ramanuja School of Vaishnav cult is evident from the deposition of the plaintiff himself as P. W. 4 and also from the depositions of Kirmalacharya (P. W. 2), Swami Baldevacharya (P. W. 3) and Pitambardas (P. W. 5), The contents of the Will (Ex. P-1) executed by Swami Badri Prapannacharya also show that the plaintiff was his disciple and followed the doctrine of Ramanuja School of Vaishnav cult which the institution professed. The respondent-defendant has, however, seriously challenged the competency of the plaintiff to be the manager of Laxmanbag on the ground that he is a married man, is not a celibate, is still leading a family life and had never renounced the world. Since the presiding element in a Math is an ascetic or religious teacher who together with his disciples forms a spiritual family, it is of utmost importance that the head of a Math should be a celibate and devote himself to religion. A nomination may be void if the person chosen suffers from bodily infirmity, bodily disease or leads a life which is immoral or is inconsistent with the religious vows of the brotherhood; See *Ram Parkash Das v. Anand Das* AIR 1916 PC 256. Marriage by itself is not a disqualification, but the initiation of a married man must be preceded by the entire and permanent separation from his wife and by giving up of all worldly ties. This is the rule in all ascetic foundations where the members have to take vow of celibacy [see *Mukherjea on Hindu Law of Religious and Charitable Trusts*, 4th Edition, page 354]. In the present case, it was not disputed that the Head of Laxmanbag had to be a celibate, that is, Virakt. In *Thiruyambala Desikar v. Chinna Panda-ram*. ILR 1940 Mad 177: (AIR 1917 Mad 578), Seshagiri Ayyar, J. held:

"Celibacy and a scrupulous avoidance of sexual indulgences are of the essence of the position held by these persons. Devotees of both sexes resort for initiation to them and it would cut at the root of the whole system if the heads of the mutts are permitted to live profligate lives."

Following the decision of the Privy Council in *Ram Parkash Das v. Anand Das* AIR 1916 PC 256, the Karnataka High Court in *Neelakantashivacharya Pattadeverguru Virupakshadevaru Muttinakanthi Hiremath Vs. Virupakashayya Shankarayya Muthina Kenthi Hiremath and Others*, , held that the Pattadhikaris of a Math are to be celibates and if the Pattadhikari gets married, he ceases to be a Pattadhikari and the marriage shall make the nomination as Pattadhikari (Mahant) invalid. That the appellant was married when he was nominated as Mahant by the Will, dated 4-7-1957 (Ex. P-I) has been amply proved. Even the plaintiff as P. W. 4 deposes in Paragraph 9 of his deposition that before the declaration made by the Will (Ex. P-I). he was living a family life. He also admitted that it is necessary for a Mahant to be a Virakt. He has further deposed that he was married when he was a student. His daughter was aged about 14 or 15 years in 1970. In Paragraph 35 of his deposition, he has made a very strange statement when he deposed that he does not know that besides that daughter he had any other issue from his wife. This is what he has stated:

^^eq>s ugha ekyqe fd eq>s vkSj dksbZ lUrku yM+dh ds vykok gqbZ ;k ughaA
eq>s ugha ekyqe fd lky Hkj igys dksbZ yM+dk mRi? gqvk gSa ;k ughaA**

Guru Rampyare (D. W. 2) has deposed that he saw the appellant living with his wife at Govindgarh in the year 1969. Keshvacharya (D. W. 3) has deposed that the appellant has a son besides a daughter. According to this witness, the son was born only a month or two prior to his deposition which was recorded on 8-11-1971. There is no reason to disbelieve these statements of Rampyare (D. W. 2) and Keshvacharya (D. W. 3). In fact, the plaintiff also could not deny what these witnesses have deposed. We are, therefore, of opinion that at least up to the year 1971 the appellant used to live with his family. He was a Grihastha and not a Virakt. We have shown that even according to the appellant the Mahant of Laxmanbag has to be a celibate (Virakt). That being so, on the finding that the appellant was not a Virakt, he could not be lawfully nominated as a Mahant of Laxmanbag. At any rate, his subsequent conduct of living a family life incapacitates him from performing his spiritual duties and tantamount to a disqualification to permit him to continue to hold that office. The appointment itself thus being invalid, the subsequent undertaking made by the appellant before this Court that he is a Virakt now and will continue to be so in future is of little consequence. In *Ram Prakash Das v. Anand Das* (Supra), the superior in that office appointed his own nephew as his successor. The grantor then gave up his office and the nephew was installed as Mahant. In the suit by a senior Chela claiming that office it was held that whether or not the senior Chela could succeed as a matter of right under the custom of the Math, as the appointment of the successor was invalid, a vacancy has occurred by reason of the original Mahant abdicating his office. In the present case also, the appointment of the appellant by the Will has been held by us to be invalid on account of his being a married man leading a family life and his not being a Virakt. It cannot be gainsaid that the superior, Swami Badri Prapannacharya did not have the knowledge of the appellant being a Grihastha. The appellant on his own showing was also too young when the Will was executed. His appointment being initially invalid, his declaration that he would henceforth be a Virakt will not validate that appointment. Our conclusion is that the appellant was not eligible to be appointed as Head of Laxmanbag. On this finding the plaintiff has to be denied the relief of declaration of his alleged status as Mahant of Laxmanbag.

There is yet another reason why the appointment has to be held invalid. And it is this. We have earlier shown that Swami Badri Prapannacharya for some reason did not continue to enjoy the regard which he had when he was installed as the Head of Laxmanbag. The report (Ex. D-31) of the Dharmarth Department of the then Rewa State shows that he had started favouring his relatives and also started misusing the property of the institution. Some time was given to him to behave in accordance with the prestige of the high office which he held. However, ultimately he himself quitted the office and left Rewa. It was then taken as if the Swamiji had vacated that office and had no right to hold it. It was directed that he should not even be permitted to stay in any of the temples of Laxmanbag.

This was the order of the Dharmarth Department of the State (Ex. D-31). Swami Badri Prapannacharya, however, came back in 1945. Extract of the report, dated 30th June 1945, of the Home Ministry (Ex. D-6) shows that he was reinstated as religious head and Guru as also the administrative head of Laxmanbag with certain limited rights by the State. He was only supposed to manage the temples of Laxmanbag at Rewa for which he was to be given a sum of Rs. 2,000/- as monthly allowance. He could appoint an Adhikari or manager of the Laxmanbag with the approval of the Minister-in-Charge, Dharmarth. This report, which was ultimately approved by the Secretary concerned, specifically provides that in future Swami of Laxmanbag shall have no right to suggest men as their successors who are not bona fide subject of the State. The accounts were subjected to scrutiny of the State Accounts Office and administration was to be supervised through the Minister-in-Charge, Dharmarth. All this recommendation of the Secretary of the Dharmarth Department was ultimately approved by Maharaja Gulab Singh on 6-7-1945, as appears from Ex. D-7. Thus, Swami Badri Prapannacharya held the office as manager only under the conditions specified in Exs. D-6 and D-7. His power in regard to the appointment of his successor was limited by Exts. D-6 and D-7 to just suggest a name of a person who was the bona fide resident of the State. For this reason also, Swami Badri Prapannacharya could not appoint the appellant as his successor to that office. The Will fix. P-I, therefore, does not confer upon the plaintiff the status of the Head of Laxmanbag called by whatever name. For this reason also, the plaintiff's suit must fail.

In view of our finding that the appellant was not eligible to be appointed Mahant of Laxmanbag, it is not necessary to dwell upon the question of State interference in the matter of that appointment. However, since the learned counsel have addressed the Court at considerable length, we deem it just to express our opinion in that behalf also. For the appellant, it was sought to be argued on the strength of depositions of Kirmalacharya (P. W. 2; para 6), Harbansacharya (plaintiff P. W. 4 para 9) and Pitambardas (P. W. 5: paras 4 and 5) that Laxmanbag is more or less a branch of Ramanuja School of Vaishnavas eight main seats in India. It was, therefore, submitted that the custom prevailing in those seats would be deemed to be the custom of Laxmanbag. In our opinion, this is not so. We have noticed the law that in the absence of any rule laid down by the founder, it is the custom of each particular Math that matters. Kirty, J. of the Allahabad High Court in Krishna Singh Vs. Mathura Ahir and Others, , Para .35 has very correctly pointed out that if the followers of a particular Math adopted a practice in accordance with the prevailing custom and usage generally obtaining in various other Maths, it may not be necessary to prove such custom or usage independently by adducing evidence of numerous instances. But then this only relates to the mode of proof of custom of any particular Math. The custom nevertheless has to be of that particular institution.

Learned counsel for the appellant argued that there is no document or any other kind of evidence to show that the founder prescribed any mode of succession to

the office of the head of Laxmanbag. That being so, submitted the learned counsel, ordinarily the custom of the particular institution must prevail. On the other hand, the learned Government Advocate for the respondent took up through the various documents in his attempt to establish that the appointments of head of Laxmanbag so far had the approval of the Maharaja who was then the Sovereign, and that the Raj-Guru and the head of Laxmanbag were to be one person. The oral evidence adduced by the appellant (P. W. 2, P. W. 3, P. W. 4 and P. W. 5) is not sufficient to establish the custom pleaded. They all speak of the custom of other Maths belonging to Rama-nuj School of the Vaishnavas. It is not the case of the appellant as pleaded in the plaint (paragraphs 6 and 9) that the custom prevailing in other institutions propagating the same faith has been adopted as the custom of Laxmanbag. The oral evidence, therefore, does not help the appellant. His documentary evidence consists of Will Ex. P. 5, dated 6-8-1919 whereby Swami Janardancharya, the then Head of Laxmanbag, nominated his disciple Badri Prapannacharya to be the head of the institution on his death. This Will does indicate that the Head of Laxmanbag had appointed his successor.

Ex. P-6 is a Patta granted by the Political Agent, Rewa. It recites that the Agent to the Governor General had consented to the installation of Swami Janar-dandas as Head of Laxmanbag. Certain properties including the villages, which were settled with the earlier Head, were entrusted to him. This document is dated 3-9-1881. Ex. D-29, dated 24-12-1915/8-1-1916, is the Darbar order issued by the Dharmarth Department on the subject of appointment of competent Mahants. In this order, it was made clear that the disciples need not think that they were necessarily to be appointed successors even though they may not have the requisite qualifications. It was made clear that only competent disciples were to be preferred. Ex. P-44, dated 23-8-1919, is a communication made to the then Ruler by the then Superior of Laxmanbag apprising him that Swami Badri Prapannacharya was his Chela. A document proposing Badri Prapannacharya to be his successor was also annexed with that letter. It was expressly requested that the Maharaja may appoint him as his successor-Mahant. The order, dated 27-10-1920 (Ex. D-25), shows that the Regent, Rewa Raj, approved the appointment of Badri Prapannacharya as the Adhikari (Head) of Laxman-bag. It further indicates that financial control rested with the administration and committees were to manage the institution. The order of the Darbar, Rewa, dated 26-3-1923, (Ex. D-26), shows that Swami Janardanacharya had expressed that the appointment of a successor was within the jurisdiction of the Darbar. This order shows that due regard for late Swamiji and considering the past conduct of Badri Prapannacharya, it was reported to the Ruler that Badri Prapannacharya be appointed as successor to late Mahant. Ex.D-27. dated 29-7-1923, shows that by order of the Ruler, dated 27-3-1923, Badri Prapannacharya was appointed the head of Laxmanbag. Pursuant to this appointment, the Ruler directed by another order, dated 30-9-1923 (Ex. P-28), that Rs. 6,000/- per month be given to

Swami Prapannacharya from the Dharmarth Department of the State. We have already seen (Exs. D-30, D-31 and D-6) that Badri Prapannacharya had to withdraw himself but was later reinstated as head of Laxmanbag on certain condition and with very limited rights by the Ruler. 20. Another feature to be noticed is that right from the year 1919, a Committee was appointed for management of the affairs of Laxmanbag. Ex. D-24, dated 12-12-1919, which is a report of the Regency Council, Rewa, shows that a Committee was appointed for the management of Laxmanbag. This Committee included as its members the Head of Laxmanbag; the Superintendent, Dharmarth Department; Cashier, Accountant and another member Captain Gopalsingh. Ex. D-25, dated 27-10-1920, shows that Committees were appointed and they were expected to manage the affairs of Laxmanbag. It appears that in the absence of Swami Badri Prapannacharya, the institution was managed by the Darbar through these Committees. Even after the reinstatement of Swami Badri Prapannacharya, there is nothing on the record to show that these Committees ceased to function. On the other hand, the various documents filed by the parties show that even after the formation of the State of Vindhya Pradesh and after the Vindhya Pradesh became a Part-C State, the institution was being managed through a Committee of which one of the members was Swami Badri Prapannacharya. We have on record an agreement, dated 30-3-1954 (Ex. D-32), entered into between the President of India on the one hand and Chairman and Members of the Committee constituted by the State Government on the other. This document shows that the Committee was in existence and was managing the affairs of the institution before this date. The recitals in this agreement show that at one tune Maharaja Gulab Singh took over possession of the properties of Laxmanbag and since then they were treated as Government properties. Temples were also taken under the State management and the State allowed a grant of Rs. 6,000/-per month for the maintenance of Laxmanbag. The agreement shows that from 1-4-1954, the management of Laxmanbag was to be handed over to the Committee. The members of this Committee were to be the Mahant of Laxmanbag as Chairman and the Deputy Commissioner as one of its members. The Committee took over possession and management of the properties of Laxmanbag. The general superintendence of the institution was to vest in the Divisional Commissioner. It was specifically provided that in case of mismanagement, the Government shall have the power to depute an officer to enquire and recommend a scheme of administration for the management of the institution. The term of the first Committee was to be for five years and the Mahant of the institution was always to be its Chairman. Any vacancy was to be filled in by the Government in consultation with the Swamiji of Laxmanbag. In religious and spiritual matters and also in respect of traditions and Sect (Sampradaya), the Committee was to give due regard to the views of the Mahant. This volume of evidence on record points out that it was the Maharaja of Rewa who founded the institution of Laxmanbag, installed its Head who was also to be the Raj-Guru and then had been appointing successors. The State at all times exercised through the Maharaja the control over the appointment of the Head of that institution and

through its Dhar-marth Department had control over the management of its affairs and properties. Grants were made to the institution. The evidence also discloses that at least from the year 1919, the Committee was appointed by the Raj/State for the management of the institution. The evidence further discloses that in the matter of appointment of Head of the institution, the Raj/ State and the Maharaja were to give due regard to the recommendations made by the Swamiji, the spiritual head of the institution. This only shows that the head of the institution, styled as Mahant/Swamiji, could at best suggest and recommend his successor and had/has no further say in the matter. It is common ground that neither the Maharaja of Rewa nor the State ever either appointed or sanctioned or approved the nomination of the plaintiff as head of Laxmanbag. The deposition of Shri Martand Singh and the various documents, Exs. D-2, D-4 and D-34, show that despite the Will Ex. P-1, the State and the Maharaja of Rewa never agreed to the appointment of the plaintiff as the head of Laxmanbag and instead ultimately the State appointed Shri Raghvacharya. Our conclusion, therefore, is that although the Will Ex. P-1 names the appellant-plaintiff as the successor of Swami Badri Pra-pannacharya, he never acquired that status for want of approval of the State and the Maharaja of Rewa.

A further argument was advanced on behalf of the appellant that after the enforcement of the Constitution, the State had no power to interfere with the religious practice of the institution of Laxmanbag. The appointment of Mahant, says the learned counsel, is the religious practice of the institution and the State interference in that behalf offends Articles 25 and 26(b) of the Constitution. Our Constitution is neither anti-God nor anti-religion, but treats all religions with respect. It does not interfere with or seek to encroach upon the liberty either of those who are religious-minded or of those who do not believe in religion one way or the other. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , Mukherjea, J. while considering the meaning of the expression "affairs of religion" appearing in Article 26 of the Constitution characterised the following observation of Latham, C. J. of the High Court of Australia in *Adelaide Company v. The Commonwealth* 67 CLR 116 at p. 127 as "very weighty":

"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil government should not interfere with religious "opinions" it nevertheless may deal as it pleases with any "acts" which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of Section 116. The section refers in express terms to the "exercise" of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion."

The learned Judge said that these observations apply fully to the protection of

religion as guaranteed by the Indian Constitution. According to the learned Judge, the religion may not only lay down a Code of ethical rules for its followers to accept but it might also prescribe rituals and observances ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress. Thus what is protected under Articles. 25(1) and 26(b) are the religious practices and the right to manage affairs in matters of religion. A practice, which is purely secular, would not offend Article 25(1) or Article 26(b) of the Constitution. Similarly, affairs which are controlled by statutes, if secular in character, will also be outside the scope of these Articles. It is only when a particular practice is a religious practice or the affairs are the affairs in matters of religion that protection under Articles 25(1) and 26(b) can be claimed. At page 404 of his Book , "Hindu Law of Religious and Charitable Trusts", Shri Mukherjea points out that a decision on the question as to whether a certain practice is a religious practice or not as well as the question as to whether an affair in question is an affair in matters of religion or not may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. The Supreme Court in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, has also expressed a similar view. It has further been observed that in cases of doubt, the Court should take a common sense view and be actuated by considerations of practical necessity. If an obviously secular matter is claimed to be matter of religion or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection guaranteed by Articles 25 (1) and 26 (b) cannot be extended to secular practices and affairs in regard to denominational matters which are not matters of religion. It cannot be denied that temples and Maths are religious denominations and are entitled to protection under Article 26(b) of the Constitution.

Any discussion on this topic will always remain incomplete without reference to the celebrated judgment of the Supreme Court in *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, . Quoting the observations of Mukherjea, J. in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, Gaiendra-gadkar, J. (as he then was) said that religious practice to which Article 25(1) refers and affairs in matters of religion to which Article 26(b) refers, include practices which are an integral part of the religion itself and the protection guaranteed by Articles 25(1) and 26(b) extends to such practices. It has further been laid down in that case that in deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. This question will always have to be decided by the Court and in doing so. the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its

religion. The Court has cautioned that a distinction may always be made between practice which is religious and practice in regard to a matter which is purely secular and has no element of religion associated with it. In *Ratilal's case* (supra), a similar view was taken where it was said that in regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it had undoubtedly the right to administer such property, but only in accordance with law. Reference may also be made to a decision of the Supreme Court in *Seshammal and Others, Vs. State of Tamil Nadu*, . In this case, by an amendment made in certain provisions of the Tamil Nadu Hindu, Religious and Charitable Endowments Act, the choice of the trustee in the matter of appointment of an Archaka is no longer limited by operation of rule of next-in-line of succession in temple where the usage was to appoint the Archaka on hereditary principle. The question before the Supreme Court was whether this piece of legislation amounted to interference with any religious practice or matters of religion. As a fact, it was found that in Tamil Nadu there are several temples where the appointment of an Archaka is governed by the usage of hereditary succession and that such Archaka had never been regarded as spiritual head of any institution. The functions to be performed by him include religious functions and the Archaka may be well versed in necessary rituals to be performed in the temple. It was held that the appointment of Archaka is a secular function and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointment anything but secular. The following passage from the decision in *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, was quoted and applied:

".....The second is that what constitutes an essential part of a religion or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."

Judged in the light of these decisions of the Supreme Court and the views expressed by Mukherjea in his treatise "Hindu Law of Religious and Charitable Trusts", the history of the institution and the facts stated by us above show that holy saint (Swami Mukundacharya) was accepted by the then Maharaja of princely State of Rewa as the Raj-Guru and was persuaded to stay in the premises of Laxmanbag group of temples to which were dedicated large properties. The Ruler, his family and the subjects always has a very high regard for the Swamiji who was given from the State funds a fixed sum for worship and maintenance of the institution as also for his own maintenance. The Dhar-martha Department of the State always had a control over the financial as also other managerial aspects of the institution. The succeeding "Swamijis" used to be from among the disciples (Chelas) of Swamiji and was a person belonging to Ramanuj School of Vaishnava cult. But he had only a right to suggest the successor and the Maha-raj, while accepting the nominations would give due regard to his

recommendations. On all these facts, even if it is to be held that the Laxmanbag is a Math, that Swamiji is a spiritual head of the institution and, therefore, "Mahant" and that the appointment of such superior is religious matter as opposed to secular, then too, according to the particular practice prevailing in that institution, it has to be held that the head of the institution cannot be appointed except with the approval of the State and ex-Maharaja of Rewa as the person so appointed has also to be the Guru of the ex-Maharaja and his family. If for any reason it is held that the appointment being a religious practice, any interference in that behalf may be protected under Articles 25 and 26, even then on our finding that the appellant/plaintiff is not a celibate (Virakt) and that his predecessor, Badri Prapannacharya had no right to choose or appoint his successor, the appellant's appointment as the head/Mahant of Laxmanbag cannot be upheld and he has to be non-suited because as a plaintiff he has to fall or stand on his own strength.

The appellant has made a categorical statement before us in writing, dated 5-9-1980, that he shall have no objection to the functioning of the Committee as envisaged in the agreement, dated 30-3-1954 (Ex. D-2). That Committee shall, therefore, continue to function according to the terms of that agreement. Further, in view of the appellant restricting his claim only to the relief of declaration of his status as Mahant/Head of Laxmanbag, it is also not necessary for us to decide whether the entire properties included in Schedules "A" and "B1" of the plaint belong exclusively to the institution or that those detailed in Schedule "B" are properties gifted to Swamiji/Mahant personally over which the plaintiff has absolute domain. It may, however, be pointed out that although there is no legal bar to a Mahant or even to a Sannyasi acquiring or holding personal properties which on his death shall pass not to his natural relations but to his spiritual heirs, yet since Mahant is a person free from all worldly connections and is a celibate having no family of his own, the presumption is that what he holds or acquires is held or acquired by him on behalf of the Math to which his life is devoted. (See Mukherjea's Hindu Law of Religious and Charitable Trusts, pages 356-9). In the present case, the plaint contains no averments as to how and from whom the properties in Schedule "B" were acquired. Further there is hardly any proof of the alleged acquisition.

The appeal fails and is dismissed with costs. Hearing fee as per schedule. Since the appeal was permitted to be filed in forma pauperis, the amount of court-fee payable on the memorandum of appeal be recovered from the appellant.