Goswami Shri Mahalaxmi Vahuji vs Rannchhoddas Kalidas And Ors on 9 September, 1969

Equivalent citations: 1970 AIR 2025, 1970 SCR (2) 275, AIR 1970 SUPREME COURT 2025

Author: K.S. Hegde

Bench: K.S. Hegde, Vishishtha Bhargava, A.N. Ray

PETITIONER:
GOSWAMI SHRI MAHALAXMI VAHUJI

Vs.

RESPONDENT:
RANNCHHODDAS KALIDAS AND ORS.

DATE OF JUDGMENT:
09/09/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
BHARGAVA, VISHISHTHA
RAY, A.N.

CITATION:
1970 AIR 2025 1970 SCR (2) 275
1969 SCC (2) 853
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RF 1972 SC1716 (11)
R 1976 SC 871 (36)
R 1986 SC2094 (10,12,14)
R 1986 SC2139 (10)
RF 1987 SC2064 (7,15,16)

ACT:
Temples--Tests for determining whether the Temple is public or private--Vallabh Sampradayees--If followers of the school must worship in a private Temple.

HEADNOTE:
In deciding whether a temple is private or public, Courts have to address themselves to various questions such as:-

(1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple ?

(2) Are the members of the public entitled to worship in that temple as of right ?

(3) Are the temple expenses met from the. contributions made by the public ?

(4) Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples ?

(5) Have the management as well as the devotees been treating the temple as a public temple.

Though the appearance of a temple is a relevant circumstance, it is by no means 'a decisive one. The architecture of temples differs from place to place. The circumstance that the public or a section thereof have been regularly worshiping in the. temple as a matter of course and they can take part in the festivals 'and ceremonies conducted in that temple apparently as a matter of right is a strong piece of evidence to establish the public character of the temple. If votive offerings are being made by the public in the usual course and if the expenses of the temple are met by public contribution, it is safe to presume that the temple question is a public temple. In brief the origin of the temple., the manner in which its affairs are managed, the nature and extent of gifts received by it, rights exercised by the devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple are factors that go to establish whether a temple is public temple or a private temple. [286 H-H]

Tilkayat Shri Govindlalji Mahraj v. The State of Rajasthan and Ors.,[1964] 1 S.C.R. 561; Lakshmana v. Subramania, (1923) A.I.R. 1924 P.C. 44; Mundancheri Koman v. Achutan Nair (1934) 61 I.A. 405; Deoki Nandan v. Murlidar, [1956] S.C.R. 756; Narayan Bhagwant Rao Gosavi Balajiwle v. Gopal Vinayak Gosavi and Ors. [1960] I S.C.R. 773; referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Of 1966. Civil Appeal No. 1784 of 1966.

Appeal from the judgment and decree dated March 17, 1952 of the Bombay High Court in Appeal No. 385 of 1948 from original decree.

D. Narsaraju, .4. K. Sen, Balkrishan Acharya and S.S. Shukla, for respondents Nos. 3 and 4.

K. K, Jain, M.K. Garg and H.K. Puri, for respondents Nos. 13(a) to 13(f).

The judgment of the Court was delivered by Hegde J. The main question for decision in this appeal is whether the Haveli at Nadiad in which the idol of Shree Gokulnathji is installed as well as the other properties detailed in plaint schedules A & B are the properties of a public religious trust created by the followers of Vallabh cult, residing at Nadiad.

The history of the suit institution and its management as also the various pleas taken by the parties have been elaborately set out by the High Court in a well considered judgment. Hence we shall refer only to such pleas as are necessary to decide the contentions advanced before us. The plaintiffs are the residents of Nadiad. They are Vaishnavites. They belong to the Vallabh Sampradaya. They sued for a declaration that the properties mentioned in S.chs. A & B of the plaint are properties oF the ownership of the trust ,mentioned earlier. They are suing on behalf of the Vallabha Sampradayees residing at Nadiad. According to their case as finally evolved that even during the last quarter of the 18th century, the Mandir of the Gokulnathji existed at Nagarwad in Nadiad Prant but in about 1821 a new Mandir was constructed by the followers of the Vallabha School at Santh Pipli, Nadiad and the idol of Gokulnathji which was previously worshiped at Nagarwad was taken and consecrated there. In about 1831 they invited Goswami Mathuranathji, a direct descendant of Shree Vallabhacharya to come over to Nadiad and take up the management of the Mandir as its Maha Prabhu. According to the plaintiffs the Mandir in question was constructed by the Vallabha Sampradayees and the expenses of the sevas as well as the utsavas performed in the Mandir were contributed by them. They ,further say that the properties belonging to the trust were purchased from the contributions made by the devotees of that temple. They assert that the persons belonging to the Vallabha Sampradaya have a right to have darshan of the deities in the Mandir, according to usage, as of right. In short their case is that the Mandir in question is a place of public religious worship by the persons belonging to Vallabh Sampradaya and the Maha 'Prabhuji is' only a trustee. He has a right to reside in the upstair portion of the Mandir and further he can utilise a reasonable portion of the income of the trust, after meeting the requirements of the trust for his maintenance as well as the maintenance of the members of his family. They contend that the suit properties were dedicated to Shri Gokulgathji and the Maha Prabhu has no independent right of his own in those properties. It is further said that the management of the temple was carried on efficiently by Mathuranathji and his descendants till about the time Annirudhalalji became the Maha Prabhu in Samy 1955. Annirudhalalji under evil advice sought to. secure the Jamnagar Gadi and for that purpose spent enormous sums of money from out of the funds belonging to the suit temple. He also incurred considerable debts in that connection. He died in Samy. 1992. Thereafter defendant No. 1, his widow took over the management of the suit temple and its properties. During her management she began to. assert that she was the absolute owner of the suit properties including the suit temple. She alienated several items out of the suit properties. Hence they were constrained to bring the suit under appeal for the declaration mentioned earlier and also for a further declaration that the alienations effected by her are illegal, improper and unauthorised and not binding on the deity. They also sought a mandatory injunction against defendants Nos. 2, 7 to 14 to restore lot No. 2 property in Sch. A to defendant No. 1 for the benefit of the deity Shree Gokulnathji after declaring that the sale deed dated 19th April 1953 passed by defendant No.. 1 to defendant No. 2 in respect of it is illegal, improper, unauthorised and without consideration and the same is not binding on the deity. They have also asked for a permanent injunction against defendants 3, 4, 5 and 6 restraining them from enforcing the mortgages dated 4-3-1939, 27-1-1942, 12-1-1942 and 17-12- 1941 passed by

defendant No. 1 in their favour. The suit was mainly contested by defendant No. 1 According to her Goswami Mathuranathji Maharaj was the owner of the idol Shri Gokulnathji. It is he who established the Haveli at Nadiad and rounded his Gadi there; he was not only the owner of the Haveli but he. was also the owner of the deities that were being worshiped in that Haveli. She further pleaded that as per the tenets ,and usages of the Vallabha school, it is not possible for the members of that cult to found a temple. They can only worship through the Acharya (Maha Prabhu) in his house known as Haveli. According to. their cult the Goswami Maharaj otherwise known as Maha Prabhu is the emblem of God head and the living representative of divinity. She went further and took up the plea that according to the. Vallabha Sampradaya no deity can own any property. She further averred that Mathuranathji Maharaj and his descendants received from time to time presents and gifts made by his followers. Those presents were made to them as a mark of reverence and respect to them and with a view to receive their grace. They were the absolute owners of the idols they worshiped, the presents and gifts made to them and of the properties acquired by them. She denied that the Haveli in which Shree Gokulnathji is worshiped is a public temple. She also denied that the Vallabh Sampradayees were entitled L2Sup. CI/70--6 to have the Darshana of that deity in that Haveli as of right. She denied the plaint averments that all or any portion of the suit properties were acquired from the funds raised by the devotees or that the sevas or festivals were conducted from out of the contributions made by them. She justified the impugned alienations mainly on the ground that she had absolute right to deal with the suit properties as she pleased. The other defendants supported the defence taken by the Ist defendant. They further pleaded that the alienations effected in their favour were supported by consideration and they were bona fide alienees and therefore those alienations they are not open to challenge. The trial court dismissed the plaintiffs' suit principally on the ground that as per the tenets and usages of Vallabha School it is impermissible for Vallabh Sampradayees to found a public temple and therefore, it is not possible to uphold the pleas advanced on behalf of the plaintiffs. In appeal the High Court reversed the judgment and decree of the trial court. It accepted the plaintiffs case that suit properties were the properties of a public religious trust and the alienations impeached were not valid and binding on the trust. This appeal has been brought by the I st defendant. The alienees have not appealed against the decree of the High Court. In this Court they merely supported the pleas taken by the Ist defendant. In this case voluminous evidence both oral and documentary has been led by the parties. Fiftyone witnesses were examined in court and two on commission. The oral evidence mainly relates to the tenets and beliefs of the devotees of the Vallabh Cult and the usages that prevail in their places of worship.

Before proceeding to examine the issues arising for decision in the case it is necessary to mention certain circumstances which have a bearing on those issues. At the stage of pleadings it was common ground between the parties that Mathuranathji was the first person to be recognised as their Mahraj by the Vallabh Sampradayees of Nadiad. The plaintiffs' case as mentioned earlier, was that there was a temple of Shree Gokulnathji at Nagarwad in Nadiad even before Mathuranathji arrived ,at that place and according to them Mathuranathji had in fact been invited by the Vallabh Sampradayees of Nadiad to take over the manage- ment of the temple that was already existing. In her written statement defendant No.1 admitted that Mathuranathji was the first descendant of Vallabha to settle down in Nadiad. According to her he brought with him the idol of Shree Gokulnathji and started worshiping that idol in his Haveli. At a later stage the 1st defendant changed her version and put

forward the theory that the ancestors of Mathuranathji had brought the idol of Shree Gokulnathji to Nadiad and installed the same there long before Mathuranathji came to that place. This significant deviation in the Ist defendant's case has evidently been introduced to meet the evidence led on behalf of the plaintiffs about the existence of Gokulnathji temple even before Mathuranathji was born in 1806.

Yet another circumstance that has to be borne in mind in appreciating the evidence adduced by the parties is about the manner in which Mathuranathji and his descendants were managing the Haveli. They had maintained regular and systematic accounts. It is obvious they were maintaining two sets of accounts, one relating to. the income and expenses of the deity and another relating to the personal income 'and expenses of the Maharaj. But when the I st defendant was summoned to produce those accounts, the accounts relating to certain important periods were not produced and no satisfactory explanation is forthcoming for their non-production. From this omission the High Court has drawn the inference that those account-books have been kept back as the evidence which those books would have afforded was not favorable to the 1st defendant's case. We agree with that conclusion. Similarly certain important documents have been kept back by the 1st defendant. Some of those documents were available at the time of the inventory but when the I st defendant was summoned to produce them she failed to do so. This circumstance has again led the High Court to infer that those documents were deliberately kept back in order to suppress material evidence supporting the plaintiffs' case. Two of the important documents produced into court namely Exhs. 501 and 503 were found to have been tampered with. Exh. 501 appears to be a register of the temple properties but the title page of that book has been mutilated. The top portion of that page had been clearly cut and removed. It is reasonable to assume that the portion that has been removed contained the title of the register. Possibly it mentioned that it is the property register of Shree Gokulnathji's temple. It is reasonable to draw this inference from the surrounding circumstances. Exh. 503 is the register relating to the expenses incurred for repairs of Shree Gokulnathji's temple. That register was also tampered with. The original book was not made available to us for examination but the High Court which had the opportunity of examining that book has made the following remarks. in its judgment:

> "a new slip was affixed to this document, and the heading which showed that the properties belonged to Shree Gokulnathji's temple was torn out."

The High Court has also held that Exh. 633, which evidences the sale of S. No. 1840, was torn in such a way as to justify the plaintiffs complaint that in the torn portion was the description of the Maharaj as the Vahiwatdar of the temple. The High Court observed:

> "We have looked at all these three documents (Exhs. 501,503 and 633) and we are satisfied that the complaint made by the plaintiffs against the advisers of defendant No.. 1 cannot be said to be without substance.
>
> It seems to us clear, on examining these have unscrupulously tampered with the documents. This conduct naturally raises suspicion against the defence, and we would be justified in drawing an inference against defendant No. 1 by holding that, if

the books of account which have been kept back by her had been produced they would have supported the plaintiffs' case.

We agree with these observations.

We may now proceed to examine the material on record for finding out 'the true character of the suit properties viz. whether they are properties of a public trust arising from their dedication of those properties in favour of the deity Shree Gokulnathji or whether the deity as well as the suit properties are the private properties of Goswami Maharaj. In her written statement as noticed, earlier, the Ist defendant took up the specific plea that the idol of Shree Gokulnathji is the private property of the Maharaj the Vallabh Cult does not permit any dedication in favour of an idol and in fact there was no dedication in favour of that idol. She emphatically denied that the suit properties were the properties of the deity Gokulnathji but in this Court evidently because of the enormity of evidence adduced by the plaintiffs, a totally new plea was taken namely that several items of the suit properties had been dedicated to Gokulnathii but the deity being the family deity of the Maharaj, the resulting trust is only a private trust. In other words the plea taken in the written statement is that the suit properties were the private properties of the Maharaj and that there was no trust, private or public. But the case argued before this Court is a wholly different one viz. the suit properties were partly the properties of a private trust and partly the private properties of the Maharaj. The Ist defendant cannot be permitted to take up a case which is wholly inconsistent with that pleaded. This belated attempt to bypass the evidence adduced appears to be more a manor than a genuine explanation of the documentary evidence adduced. It is amply proved that ever since Mathuranathji took over the management of the shrine, two sets of account books have been maintained, one relating to the income and expenses of the shrine and the other relating to that of the Maharaj. These account books and other documents show that presents and gifts used to. be made to the deity as well as to the Maharaj. The two were quite separate and distinct. Maharaj himself has been making gifts to the deity. He has been, at times utilising the funds belonging to. the deity and thereafter reimbursing the same. The account books which have been produced clearly go. to show that the deity and the Maharaj were treated as two different and distinct legal entities. The evidence afforded "by the account books is tell-tale. In the trial court it was contended on behalf of the I st defendant that none of the account books produced relate exclusively to the affairs of the temple. They all record the transactions of the Maharaj, whether pertaining to. his personal dealings or dealings in connection with the deity. This is an obviously untenable contention. That contention was given up in the High Court. In the High Court it was urged that two sets of account books were kept, one relating to the income and expenditure of the deity and the other of the Maharai, so. that the Maharai could easily find out-his financial commitments relating to the affairs of the deity. But in this Court Mr. Narasaraju, learned Counsel for the appellant realising the untenability of the contention advanced in the courts below presented for our consideration a totally

new case and that is that Gokulnathji undoubtly is a legal personality; in the past the properties had been dedicated in favour of that deity; those properties are the properties of a private trust of which the Maharaj was the trustee. On the basis of this newly evolved theory he wanted to explain away the effect of the evidence afforded by the account books and the documents. We are unable to accept this new plea. It runs counter to the case pleaded in the written statement. This is not a purely legal contention. The I st defendant must have known whether there was any dedication in favour of Shri Gokulnathji and whether any portion of the suit properties were the properties of a private trust. She and her adviser's must have known at all relevant times the true nature of the accounts maintained. Mr. Narasaraju is not right in his contention that the plea taken by him in this Court is a purely legal plea. It essentially relates to questions of fact. Hence we informed Mr. Narasaraju that we will not entertain the plea in question.

We shall now proceed to assess the evidence adduced in this case to find whether the plaintiffs have succeeded in establishing that the suit temple and the properties annexed thereto constitute a public trust. Before doing so, it is necessary to examine certain basic contentions advanced on behalf of the appellant. It is the case of the appellant that Vallabh Sampardaees cannot worship in a public temple; according to their cult they can have the Darshan of one or the other swaroops of Lord Krishna in the house of their Maharaj. In Other words their cult prohibits public worship. They can only worship through their Maharaj and that too in his Haveli. In support of this contention great deal of reliance was placed in the High Court and the trial court on the views expressed by Dr. Bhandarkar in his Works on 'Vaishnavism, S'aivism and Minor Religous systems'. The views expressed by Dr. Bhandarkar had greatly weighed with the trial court and it is mainly o.n the basis of those views, the trial court rejected the plaintiff's suit. The High Court after examining the doctrines of Vallabha School, its tenants and usages as well as the views expressed by eminent writers like Dr. Radhakrishanan and Dasgupta came to. the conclusion that it would not be correct to. say that worship. in public temple is prohibited by the Vallabh cult though in the absence of any positive evidence it may be taken that the place where the Vallabha Sampardaees worship is a private temple. It is not necessary for us to go into that controversy in view of the decision of this Court in Tilkavat Shri Govindlalji Maharaj v. The State of Rajasthan and ors.(1) In that case this Court was. called upon to consider whether Nathdwara Temple in Udaipur, a temple rounded by the Vallabha Sampardaees is a public temple or not. After examining the various treatises on the subject including Dr. Bhandarkar's book on 'Vaishnavism, S'aivism and Minor Religious Systems', this Court observed (at p.585):

"Therefore, we are satisfied that neither the tenets nor the religious practices of the Vallabha school necessarily postulate that the followers of the school must worship in a private temple. Some temples of this cult may have been private even today. Whether or not a particular temple is a public temple must necessarily be considered in the light of the relevant facts relating to it. There can be no. general rule that a

public temple is prohibited in Vallabha School."

In view of this decision Mr. Narasaraju, learned Counsel for the appellant did not press forward the contention that the Vallabha School prohibits worship in public temple.

Yet another contention taken on behalf of the appellant is that the architecture of the building in which Gokulnathji is housed and the nature of that building is such as to show that it is not a public temple. It was urged that building does not possess any of the characteristics of a Hindu temple. It has not even a dome. This contention again has lost much of its force in view of the decision of this Court referred to earlier. Evidence establishes that Ballabha's son and his immediate successor Vithaleshwar had laid down a plan for the construction of temples (1) [1964] 1 S.C.R. 561.

by the Vallabha Sampardaees. He did not approve the idea of constructing rich and costly buildings. for temples. Evidently he realised that religious temple buildings were not safe under the Mohommedan rule. For this reason he advised his followers to construct temples of extremely simple type.. The external view of those temples gave the appearance of dwelling houses. It appears to be a common feature of the temples belonging to the Vallabha Sampardaees that the ground-floor is used as the place of worship and the first floor as the residence of Goswami Maharaj, therefore the fact that Gokulnathji temple at Nadiad had the appearance of a residential house does not in 'any manner militate against the contention that the temple in question is a public temple.

It was said that according to the usage prevailing in that temple, the public are asked to enter the temple only after the Maharaj had finished his worship. This circumstance again is of no consequence. Each sect nay each temple has its own customs. The usage pleaded by the appellant is not inconsistent with that temple being a public temple. The appellant attempted to prove that on two occasions certain individuals were forbidden from entering the temple. In the first place this plea has not been satisfactorily established. Further according to the evidence adduced on behalf of the appellant those individuals were kept out of the temple because of some act of indiscipline on their part. The power to manage a temple includes within itself the power to maintain discipline within the precincts of that temple. The only other circumstance relied on by the appellant to establish that the temple in question is not a public temple is that the sale proceeds of Nagarwad Haveli were credited to the account of the Maharaj. The learned judges of the High Court have carefully looked into that aspect. After examining the relevant evidence on record they arrived at the conclusion that though initially the amount in question was credited to the account of the Maharaj, at a subsequent stage it was transferred to the account of the temple by means of adjustment entries. The learned Counsel for the appellant was unable to satisfy us that this conclusion of the High Court was incorrect. We shall now see how far the plaintiffs have succeeded in establishing that Gokulnathji Mandir is a public Mandir. The burden of establishing that fact is undoubtedly on them.

Though most of the present day Hindu public temples have been found as public temples, there are instances of private temples becoming public temples in course of time. Some of the private temples have acquired great deal of religious reputation either because of the eminence of its founder or because of other circumstances. They have attracted large number of devotees. Gradually in course of time they have become public temples. Public temples are generally built or raised by the public

and the deity installed to enable the members of the public or a section thereof to. offer Worship. In such a case the temple would clearly be a public temple. If a temple is proved to have originated as a .public temple, nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple. In such cases the true character of the particular temple is decided on the basis of various circumstances. In those cases the courts have to. address themselves to various questions such as :--

(1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple?

(2) Are the members of the public entitled to worship in that temple as of right ?

(3) Are the temple expenses met from the contributions made by the public ?

(4) Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples ?

(5) Have the management as well as the devotees been treating that temple as a public temple ?

Though the appearance of a temple is a relevant circum- stance, it is by no means. a decisive one. The architecture of temples differs from place to place. The circumstance that the public or a section thereof have been regularly worshiping in the temple as a matter of course and they can take part in the festivals and ceremonies conducted in that temple apparently as a matter of fight is a strong piece of evidence to establish the public character of the temple. If votive offerings are being made by the public in the usual course and if the expenses of the temple are met by public contribution, it is safe to presume that the temple in question is a public temple. In brief the origin of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, rights exercised by the devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple are factors that go to establish whether a temple is a public temple or a private temple. In Lakshmana v. Subramania(1) the Judicial Committee was dealing with a temple which was initially a private temple. The Mahant of this, temple opened it on certain days in each week to the Hindu public free to worship in the greater part of the temple, and on payment of fees in one part only. The income thus received by the Mahant was utilised by him primarily to meet the expenses of the temple and the balance went to support the Mahant and his family. The Privy Council held that the conduct of the Mahant showed that he had held out and represented to the Hindu public that the temple was a public temple at which all Hindus might worship and the inference was, therefore, that he had dedicated it to the public. In Mundancheri Koman v. Achutan Nair,(2) the Judicial Committee again observed that the decision of the case would depend on the inferences to be derived from the evidence as to the way in which the temple endowments had been dealt with and from the evidence as to the public user of the temples. Their Lordships were satisfied that the documentary evidence in the case conclusively showed that the properties standing in the name of the temples belonged to the temples and that the

position of the manager of the temples was that of a trustee. Their Lordships further, added that if it had been shown that the temples had originally been private temples they would have been slow to hold that the admission of the public in later times possibly owing to altered conditions would affect the private character of the trusts. In Deoki Nandan v. Murlidar(3), this Court observed that the issue whether a religious endowment is a public. or a private one is a mixed question of law and fact, the decision of which must depend on the application of legal concepts of a public and private endowment to the facts found. Therein it was further observed that the distinction between a public and private endowment is that whereas in the former the beneficiaries, which means the worshipers are specific individuals and in the later the general public or class thereof. In that case the plaintiff sought to establish the true scope of the dedication from the user of the temple by the public. In Narayan Bhagwant Rao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors.(4), this Court held that the vastness of the temple, the mode of its construction, the long user of the public as of right, grant of land and cash by the Rulers taken along with other relevant factors in that case were consistent only with the public nature of the temple.

In examining the evidence adduced by the plaintiffs in proof of the fact that the temple in question is a public. temple we have to bear in mind the tests laid down by the courts for determining whether a given temple is a public temple or not.

(1) [1923] A.I.R. 1924 PC. 44 (2) [1934] 61 G.A. 405 (3) [1956] S.C.R. 756. (4) [1960] 1 S.C.R. 773.

The case for the plaintiffs is that this temple originated as a public temple. According to them it was rounded long before Mathuranathji was born; the idol of Gokulnathji was originally worshiped at Nagarwad and later on the suit temple was built and that idol installed therein. We have earlier seen that the case of the I st defendant on this point was that the idol of Gokulnathji was the private property of Mathuranathiji. Mathuranathji brought that idol alongwith him when he came to Nadiad and worshiped the same as his private deity. This part of her case was given up at a later stage, and she put forward a new case to the effect that the idol Gokulnathji was brought by the ancestors of Mathuranathii to: Nadiad and it is they who started worshiping that idol at Nadiad. From this it is clear that the appellant has no consistent case as to the origin of the worship of Gokulnathji at Nadiad. The new plea put forward by her was evidently intended to meet the evidence adduced to show that the idol of Gokulnathji was being worshiped at Nadiad even before Mathuranathji was born. In order to show that the idol of Gokulnathji was being worshiped in Nadiad even in the 18th century, oral evidence of local repute has been adduced by the plaintiffs. In the very nature of things that evidence cannot, but be inconclusive. In this connection the plaintiffs have also placed reliance on Exh.791, an extract showing the list of Devasthans in the Pargana of Nadiad to. which the former Baroda State was making contributions, one of such Devasthan is the "Shree Gokulnathji". This extract relates to Fasli Samvat 1833 (i.e. 1781-82 A.D.). On the basis of this exhibit, we are asked to conclude that the suit temple was in existence even before 1781-82 A.D. The. evidence afforded by this document undoubtedly probabilises the version of the plaintiffs but it cannot be said with any definiteness that the entry in question relates to the suit temple. Therefore it is not possible to come to a positive conclusion that the suit temple originated as a public temple nor there is any conclusive evidence before us to determine the date of its origin. All that we can say is that the origin of this temple is lost in antiquity. Therefore for determining whether it is a public

temple or not we must depend on other circumstances.

It is established by the evidence on record that Gokulnathji is neither the Nidhi Swaroop nor Seva Swaroop of Mathuranathji's branch. Therefore it is unlikely that Mathuranathji branch would have installed the idol of Shree Gokulnathji for their private worship though the idol of Shree Gokulnathji is one of the Swaroops of Lord Krishna. The plea taken by the appellant that Gokulnathji was one of the Nidhi Swaroop given to the branch of Mamuranathji by Vallabha is opposed to the documentary evidence produced by herself. That plea has not been pressed before us for our acceptance.

From the account books produced in this case, it is clear that ever since 1965 two sets of accounts had been maintained by the Maharai, one relating to the temple and another relating to him. The temple accounts are referred to as "Nichena Khata" and Maharaj's accounts as "Uparna Khata". At this stage we may emphasize that the evidence discloses that the entire ground floor is being used as the place of worship of Gokulnathji and upstairs portion as the residence of the Maharaj. For the years 187'7 to 1892, no books of account have been produced. The appellant has stated that these books are not with her. But this is not a satisfactory explanation for their disappearance. The temple accounts for the years 1892 to 1894 have been produced but the personal accounts of the Maharaj for those years have not been produced. Again for the years 1900 to 1907, only the temple accounts have been produced but for the period from 1908 and 1934 both the sets have been produced. Again for the period 1935 to 1943, only the temple account books have been produced and not the personal account books of the Maharaj. This pick and choose method adopted in the matter of producing account books unmistakably indicate that the appellant was deliberately keeping back unfavorable evidence. Evidence on record establishes that some of the documents. which were there at the time of the inventory were not produced when summoned. Under those circumstances the High Court was justified in drawing an adverse inference against the appellant. The existence of two sets of accounts' clearly goes to indicate that the Maharajas had always considered the temple as an entity different from themselves. That circumstance goes to negative the contention of the appellant that the deity was owned by the Maharaj and therefore the deity as well as the suit properties are his private properties. Right back in 1861 under a gift deed executed by a devotee by name Bai Jasubai, two fields and a house were gifted in favour of the temple of Gokulnathji Maharaj at Nadiad. The properties gifted by Jasubai were sold in 1865 and the sale proceeds credited in the 'Nichen Khata'. In 1865 when Sri Vrairatna Maharaj left Nadiad he made a present of Rs. 5 to the idol of Shree Gokulnathii. This was also. credited in the 'Nichen Khata'.

Then we come to Exh. 593, an application made by several merchants and other residents of Nadiad to the Collector of Kaira in the year 1866. That application recites that the ancestors of the applicants had voluntarily levied a cess known as Laga on several articles four the benefit of the suit temple. Originally this Laga was separately recovered from the devotees by the Maharaj but later on at the request of the merchants the same used to be recovered by the Government alongwith the custom duty and made over to Maharaj for the benefit of the temple. Therein it was prayed that the newly established municipality should be directed to collect the Laga alongwith its dues and make up over to the Maharaj. That application was signed by a large number of persons. That application inter alia states :--

> "There is a temple of Shree Gokulnathji at Nadiad. A son of our preceptor, Shree Goswami Mathuranathji performs the seva in the said temple. Our ancestors have granted for his expenses from the town a laga on several articles which may be received, a list whereof is enclosed herewith."

The signatories to that application must have been familiar with the history of the suit temple. We can reasonably assume that the facts stated therein are correct. Those facts support the case ,of the plaintiffs.

We next go to the entries in the account books. In the temple accounts for the year 1870, there is a credit entry of Rs. 27/4/It is in respect of the fine imposed by the Mahajan on three persons who appear to have played mischief at the time of darshan. This entry clearly shows that the supervision of the 'temple, in a general sense, vested in the Mahajan of the place. It appears from the accounts that in 1874, the Mahajan examined the account books of the temple--see Exh. 308. This conduct on the part of the Mahajan would be inconsistent with the appellant's claim that Gokulnath's shrine is her private property. In 1881 one Bai Harkore under her will made certain bequests in the name of the Gokulnathji Maharaj at Nadiad for providing Samagri for Shree Gokulnathii. This is a bequest to. the idol. 'Therein the.there is no refere.nce to the Maharaj. Then we come to Exh. 534, under which a substantial portion of lot No. 1 of the :suit properties wherein the temple is situated was purchased on April 4, 1885. The sale deed was taken in the name of Pari Pranvallabh Vrajlal and others on behalf of Shree Gokulnathji of Nadiad. This is a clear indication that the deity of Gokulnathji was treated by the devotees as an independent legal entity. Further the importance of this document is that it is taken in the name of the representatives of the public and not in the name of the Maharaj. Under Exh. 691, a gift was made in 1888 in the name of Vrajratnalalji for and on behalf of Shree Gokulnathji temple. The donor paid Rs. 1,200 and desired that a meal of six breads every day should be given till the temple exists to the person whom the Mabaraj would name and if the person named by the Maharai does not come to take the meal the same should be given to any visitor to the temple. Still more significant is the bequest contained in Exh. 512, the will executed by one Bai Vasant. Under this will two bequests were made, one in favour of the temple of Shree Gokulnathji and the other in favour of the Maharani Vahuji who was then the Maharani of .the temple. This will was executed on September 20, 1897. Under a prior will executed by the same devotee (Exh.

189), the same distinction between the Maharaj and the temple is to. be found. That document was executed in 1888. Similarly when bhets (presents) were made by .the devotees to the idol as well as to the Maharaj, they were separately credited in the respective account books. As an illustration, we may refer to entries in the accounts books for the year 1896. Therein Rs. 22 was credited to the temple accounts and Rs. 5 to the Maharaj's personal account. The account books clearly show the various presents made to the temple as well as to the Maharaj.

It is established by evidence that in 1896 when the question of taxing the income of the Maharaj came up for consideration, the Maharaj pleaded that the income of the temple cannot be treated as his income. The balance sheets prepared in that connection showed the income of the temple separately from that of the Maharaj. The correspondence that passed between the Maharaj and the

authorities in that connection establishes beyond doubt that the Maharaj did not treat the income of the temple as his income. The contention that the admission in question was made under wrong advice receives no. support from the evidence on record. Similarly with regard to the payment of the municipal tax, the properties of the Maharaj had been treated separately from that of the temple. In 1907 one Shah Chaganlal made a gift of some property to the temple. That property was subject to a mortgage. The donor directed that the Maharaj of the temple should divide the annual income of the mortgaged property into nine shares, out of which one share should be given for the samagri of Shree Gokulnathji Maharaj on posh vad 3rd of every year and eight shares of the income should be given for the samagri of the said Gokulnathji every year on Vaishakh Sud 8th. In that document the Maharai was shown as the agent of the temple. This. property was subsequently sold and the sale proceeds were credited to. the temple accounts. The: accounts show numerous other instances of receipts and expenses relating to the temple as distinguished from that of the Maharaj. The High Court has enumerated those receipts and expenses with elaborate fullness. It would be superfluous to. refer to them. The above-mentioned instances go to falsify the contension of the appellant that the idol of Shree Gokulnathji was the private property of the. Maharaj. On the other hand they establish that the temple in question was treated by all concerned as a public temple.

In proof of her case that the suit temple and the properties are individual properties of the Maharaj, the appellant relied on the wills executed by Vrajratanlalji in 1882 and Maharani Vahuji in 1898. Under the former the testator provided for the management of the properties mentioned therein after Iris death. Therein he asserted his right to make vahivat according to his pleasure of movable and immovable properties shown in the will during his. life time. One of the stipulations in the will was that if he dies leaving no son, natural or adopted, those properties should go to his wife, as owner subject to the condition that the expenses of worship of "his Shree Thakorji"

> according to usage should come out of its income. There are similar assertion in the will executed by Maharani Vahuji .in 1898. These statements are at best self serving statements. They have little evidentiary value. They are likely to. have been made by the executants of those wills under a misconception as to their rights. If the account books for the years 1877 to 1892 had been produced we would have been able to find out how Vrajratanlalji himself dealt with the properties of the temple. There is clear, consistent and reliable evidence to show that Vallabha Sampardaees have been worshiping in the suit temple as of right. There is also evidence to show that the temple has all along been primarily maintained from the contributions made by the devotees belonging to the Vallabha School. The suit temple appears to be an important temple attracting a large number of devotees. Utsavas and other festivals are performed in that temple in a reasonably grand scale. The devotees as well as the Maharaj were treating that temple as a public temple. From the facts proved we have no hesitation in agreeing with the High Court that the temple in question is a public. temple.
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> This takes us to the question whether all or any of the properties detailed in the plaint schedule are proved to. be that of the temple. We have earlier come to the conclusion that the temple has been getting substantial contributions from its devotees in

diverse ways.. It was also. the recipient of several gifts. It had adequate resources to make the acquisitions with which we are concerned in this case. The temple is exclusively managed by the Goswamiji Maharaj. It maintains regular accounts. Maharaj also maintains his separate accounts. Therefore it was easy for the appellant to. prove the source from which the acquisitions in question were made and how their income was treated. The appellant has led no evidence to show that they were her own properties. She has failed to produce some of the accounts relating to the relevant periods. In this background let us proceed to examine the title to the suit properties.

Lot No. 1 is. the site in which the suit temple is situate. It was conceded on behalf of the appellant that if we come to the conclusion that the suit temple is a public temple that item of property will have to. be considered as the property of the temple. Lot No. 2 is. the garden land in Survey No. 2031. It is used for raising flowers for worship in the temple. That land appears to have been granted to Mathuranathji but the appellant admitted in her deposition that that item of property was at all time managed by the Haveli and whoever is the owner of the Haveli is the owner of the garden. This admission is corroborated by considerable other evidence. Vaishnav merchants of Nadiad contributed for the expenses of installation of an electric pump in that garden and for its subsequent repairs. All expenses incurred for that garden have always been debited and all income received therefrom credited to the temple accounts. That garden is included in the Patriks of the temple property, prepared long before the present dispute arose. When a part of that property was compulsorily acquired on three different occasions, the compensation received was credited to. the temple account. These circumstances. conclusively establish that lot No. 2 is temple property.

Lot No. 3 is the building known as Goshala. Its Survay survey No. is 994. It is used for the purpose of tethering the cows reared for supplying milk and butter for the worship of Balkrishnalalji, one of the deities installed in the temple. This property is included in Exh. 500 and

501. It is shown in the property register as the property belonging to the Devasthan Charity. The balance sheet prepared in 1896 treats the rent of the shops and houses in that site as the income from temple properties-- see Exh. 1048. We think the High Court was right in concluding on the basis of this evidence that that item belongs to the temple.

Lot No. 4 is a shop bearing city survey No. 720. This property was gifted by Kuber Jetha Vashram as per his will Exh. 673 for the samagri of the temple. The bequest is made in favour of Shree Gokulnathji Maharai. Hence this is clearly an item of property belonging to the suit temple. Lot No. 5 is survey No. 121. It is gifted under Exh. 610 dated June 29, 1868. The gift is purported to have been made in favour of the Maharaj but the income from this property has always been credited to the

temple accounts, the earliest entry being that of the year 1870. In the property register, this property is shown as temple property and the rent note Exh. 535 is taken in the name of the Vahivatdar of Shree Gokulnathji. Hence this item of the property should also be held to be that of the temple.

Lot No. 6 consists of 14 small items. of property. They are all agricultural fields. They have been shown in the property register as the properties of the temple. Out of 14 items in this lot, items No.s. 6, 9, 11, 12 and 14 originally belonged to the Maharaj but they have been all along dealt with by the Maharaj as temple property. Item No. 1 in lot No. 6 belongs to the temple. The mortgage Exh. 608 relates to this item and the same was executed in favour of the, temple on May 17, 1897. A rent note in respect of this property was taken on April 22, 1915 in the name of the Vahivatdar of the temple. Items 2, 3 and 4 of that lot are shown in the record of rights in the name of the Maharaj but the income from those properties and the expenses incurred for the same have always been entered in the temple accounts. Item 5 of this lot had been gifted to the temple under Exh. 1049. Item 8 of this lot had bee.n purchased in the name of the Maharani Vahuji on June; 2, 1897 for Rs. 1150. The income of this property has been shown in the temple accounts. So. far as item 10 is. concerned though the record of rights stands in the name of the. Maharaj personally, its sale p.rice (Rs. 800-0-

6) has been credited to the temple accounts. From all this it is clear that the temple is the owner of lot No.. 6.

Now coming to. lot No. 7, the entries in the account books clearly show that this is temple property. The consideration for the purchase of a portion of it was paid from the temple funds. A portion of that property had been gifted to the temple under Exh. 461.

Lot No. 8 was purchased in 1877 from the temple funds and lot No. 13 was gifted to the temple. Lo.t No. 9 was received by the temple under will Exh. 512 and lot No. 10 was always treated as temple property in the account books. So also lot Nos. 11 and 12. Similarly lots Nos. 13 and 14 were always being treated as temple properties. We are in agreement with the learned judges of the High Court that the properties detailed in the plaint schedule are all temple properties.

For the reasons mentioned above this appeal must fail. But before we conclude we should like to clarify one aspect which undoubtedly is implicit in the judgment of the High Court. The Goswami Maharais o.r Maharanis are not mere managers. In the temples belonging to the Vallabha School they have an important place. The Maharaj is the Maha Prabhu. The Vallabh devotees worship their deity through him. It is true that the income from temple properties. has to be primarily used for the expenses of the sevas and utsavas in the temple, the upkeep renovation and improvements of the temple premises but subject to these demands, the Maharaj has a right to utilise the temple income in maintaining himself and his family in a reasonably comfortable manner. The learned Counsel for the plaintiffs conceded this position. This suit has been brought by the plaintiffs with the sole purpose of preserving the temples assets and maintaining its dignity. They do not want to

undermine the position or prestige of their Maha Prabhu. In the circumstances of the case we see no useful purpose in directing the: appellant to pay the costs of the plaintiffs in this appeal. She can only pay the same from temple funds. The alienees have not appealed against the judgment of the High Court. When we mentioned this aspect to Mr. S.T. Desai, learned Counsel for the plaintiffs he indicated that the parties may be left to bear their own costs in this appeal.

For the reasons mentioned above this appeal is dismissed but we make no order as to costs.

R.K.P.S. Appeal dismissed
L2 Sup C1/70--7