# Radhakanta Deb & Anr vs Commissioner Of Hindu Religious ... on 13 February, 1981

## Equivalent citations: 1981 AIR 798, 1981 SCR (2) 826, AIR 1981 SUPREME COURT 798, (1981) 94 MAD LW 85, 1981 UJ (SC) 671, (1981) 51 CUT LT 495, 1981 (2) SCC 226

## Author: Syed Murtaza Fazalali

## Bench: Syed Murtaza Fazalali, A. Varadarajan, Amarendra Nath Sen

PETITIONER:
RADHAKANTA DEB & ANR.

Vs.

RESPONDENT:
COMMISSIONER OF HINDU RELIGIOUS ENDOWMENTS, ORISSA

DATE OF JUDGMENT13/02/1981

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)
SEN, AMARENDRA NATH (J)

CITATION:
1981 AIR 798 1981 SCR (2) 826
1981 SCC (2) 226 1981 SCALE (1)304
CITATOR INFO :
R 1987 SC2064 (5,15)

ACT:
Private v. Public endowments-Tests to determine on the facts of each case whether an endowment is of a private or of a public nature, explained.

HEADNOTE:
Allowing the appeal by certificate, the Court
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HELD: The tests which provide sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature are: (1) Where the origin of the endowment cannot be ascertained, the question whether

the user of the temple by members of the public is as of right; (2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large; (3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature; (4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment. [833 A-E]

Deoki Nandan v. Murlidhar, [1956] SCR 756; Mahant Ram Saroop Dasji v. S.P. Sahi, Special Officer-in-Charge of the Hindu Religious Trusts & Ors., [1959] 2 Supp. SCR 583; Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi & Ors., [1960] 1 SCR 773; Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das, [1971] 3 SCR 680, Dhaneshwarbuwa Guru Purshottambuwa Owner of Shri Vithal Rukhamai Sansthan v. The Charity Commissioner, State of Bombay, [1976] 3 SCR 518; Gurpur Guni Venkataraya Narashima Prabhu & Ors. v. B.G. Achia, Asistant Commissioner, Hindu Endowment Mangalore & Anr., [1977] 3 SCC 17, followed.

In the instant case: (i) Ex. A, an ancient document executed as for back as February 18, 1895, the authenticity and the genuineness of which is beyond question, clearly and conclusively show that the endowment was of a private nature and the intention of the founder was merely to instal a family deity in the temple. (ii) The fact that the temple was of a massive structure of about 25 yards in height, by itself, divorced from other things, could not prove that the temple was a public one. (iii) The Shebaits or the Marfatdars were appointed by the founders of the endowment and the entire management and control of the temple was retained by the family. (iv) The fact that bhogs
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were offered during the day which was in consonance with the rules observed by the public is not of much consequence because bhogs are offered even in private temples. (v) Clause 15 merely provides that if in future the family becomes extinct and no fit person could be found then any of the Baisnab Sampraday or any reputed Hindu of the village could take action, namely, to perform the work of the deity. This was a contingent provision and here also the founders did not confer the duty of performing all the work on the

members of the public but they chose or selected only a particular person belonging to a particular community which also shows that even if the family was to become extinct, the private nature of the endowment was not to be changed. Indeed if the intention was to instal the idol in the temple by way of a public endowment, clause 14 would have clearly provided that in case the family become extinct the members of the public or of the brotherhood or the Government could have taken over the management. On the other hand, the interpretation of the various clauses of the documents clearly shows that sufficient care has been taken by the Pani family to see that the dedication to the family deity is not changed even if the family becomes extinct. [833 H, 834 A, 838 G-H, 839 C, E-H, 840 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 318 of 1970.

From the Judgment and Decree dated 31-7-1969 of the Orissa High Court in Appeal from Original Decree No. 78/58.

P.K. Chatterjee and Rathin Dass for the Appellant. G.S. Chatterjee for the Respondent.

The Judgment of the Court was delivered by FAZAL ALI, J. This appeal by certificate granted under Art. 133 of the Constitution is directed against a Division Bench judgment dated July 31, 1969 of the Orissa High Court and arises in the following circumstances.

The appellants-plaintiffs had instituted a suit under s. 62(2) of the Orissa Religious Endowment Act, 1939 (Act No. 4 of 1939) (hereinafter referred to as the 'Act') (this Act applies only to public endowments) to set aside the order dated 4-8-1950 of the respondent defendant by which the temple of the appellants, whose deity was Radhakanta Deb, was declared to be a public temple and a trust and the endowment was held to be of a public nature and, therefore, was to be governed by the Act. The Subordinate Judge decreed the appellants-plaintiffs suit holding that the deity installed in the temple was a family deity of the Pani family and the endowment being of a private nature, the Act had no application and the Order passed by the respondent regarding the management was set aside.

The Respondent (Commissioner of Hindu Religious Endowments, Orissa) filed an appeal in the High Court against the decision of the Subordinate Judge which was heard by the Division Bench referred to above. The High Court reversed the decision of the Subordinate Judge and held that the temple and the deity installed therein being a public endowment fell within the four corners of the Act and the respondent was fully entitled to pass orders for its management. Hence, this appeal by certificate before us.

The sole question that falls for determination in this appeal is as to whether or not the appellant-temple was a public endowment as alleged by the respondent or a family deity as alleged by the appellant.

The learned counsel for the appellants, P.K. Chatterjee, has submitted that the approach made by the High Court was wholly incorrect and it has misconstrued the evidence and documents produced in the case to show that the endowment was a private one and the deity installed in the temple was purely a family deity having nothing to do with the public. The learned counsel for the respondent. however, supported the judgment of the High Court that the endowment was of a public nature The concept of a private endowment or a private trust is unknown to English law where all trusts are public trusts of a purely charitable and religious nature. Thus, under the English law what is a public trust is only a form of Charitable Trust. Dr. Mukherjee in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts (1952 Edition) has pointed out that in English law the Crown is the constitutional protector of all properties subject to charitable trusts as these trusts are essentially matters of public concern. The learned author has further pointed out that one fundamental distinction between English and Indian law lies in the fact that there can be religious trust of a private character under the Hindu law which is not possible in English law. It is well settled that under the Hindu law, however, it is not only permissible but also very common to have private endowments which though are meant for charitable purposes yet the dominant intention of the founder is to instal a family deity in the temple and worship the same in order to effectuate the spiritual benefit to the family of the founders and his descendants and to perpetuate the memory of the founder. In such cases, the property does not vest in God but in the beneficiaries who have installed the deity. In other words, the beneficiaries in a public trust are the general public or a section of the same and not a determinate body of individuals as a result of which the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. The members of the public may not be debarred from entering the temple and worshipping the deity but their entry into the temple is not as of right. This is one of the cardinal tests of a private endowment. Similarly, even the Mahomedan law recognises the existence of a private trust which is also of a charitable nature and which is generally called Waqf-allal-Aulad, where the ultimate benefit is reserved to God but the property vests in the beneficiaries and the income from the property is used for the maintenance and support of the family of the founder and his descendants. In case the family becomes extinct then the Waqf becomes a public waqf, the property vesting in God. A public Waqf under the Mahomedan law is called Waqf-fi-sabi- lil-lah.

The question as to whether the religious endowment is of a private nature or of a public nature has to be decided with reference to the facts proved in each case and it is difficult to lay down any test or tests which may be of universal application. It is manifest that where the endowment is lost in antiquity or shrouded in mystery, there being no document or revenue entry to prove its origin, the task of the court becomes difficult and it has to rely merely on circumstantial evidence regarding the nature of the user of the temple. In the instant case, however, as there are two documents which clearly show the nature of the endowment, our task is rendered easier. It is well settled that the issue whether a religious endowment is a public or a private one must depend on the application of legal concept of a deity and private endowment, as may appear from the facts proved in each case. The essential distinction between a private and a public endowment is that whereas in the former the

beneficiaries are specified individuals, in the latter they are the general public or class of unascertained people. This doctrine is well-known and has been accepted by the Privy Council as also by this Court in a large catena of authorities. This being the essential distinction between the nature of a public or a private endowment, it follows that one of the crucial tests to determine the nature of the endowment would be to find out if the management of the property dedicated is in the hands of the strangers or members of the public or in the hands of the founders or their descendants. Other factors that may be considered would be the nature of right of the worshippers, that is to say, whether the right to worship in the temple is exercised as of right and not as a matter of concession. This will be the strongest possible circumstance to indicate that the endowment was a public one and the beneficiaries; are the worshippers and not particular family. After all, an idol is a juristic person capable of holding property and the property dedicated to the temple vests in the deity. If the main worshippers are the members of the public who worship as a matter of right then the real purpose is to confer benefit on God.

Some of the circumstances from which a public endowment can be inferred may be whether an endowment is made by a person who has no, issue and who after installing the deity entrusts the management to members of the public or strangers which is a clear proof of the intention to dedicate the temple to public and not to the members of the family. Where, however, it is proved that the intention of the testator or the founder was to dedicate the temple merely for the benefit of the members of the family or their descendants, the endowment would be of a private nature.

The mere fact that members of the public are allowed to worship by itself would not make an endowment public unless it is proved that the members of the public had a right to worship in the temple. In Deoki Nandan v. Murlidhar this Court observed as follows:-

> "The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment.
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> The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers."

(Emphasis supplied) This view was reiterated in a later decision of this Court in Mahant Ram Saroop Dasji v. S.P. Sahi, Special Officer-In-Charge of the Hindu Religious Trusts & Ors. where S.K. Das, J. as he then was, speaking for the Court clarified the law thus:

> "But the most usual and commonest form of a private religious trust is one created for the worship of a family idol in which the public are not interested. Dealing with the distinction between public and private endowments in Hindu law, Sir Dinshah Mulla has said at p. 529 of his principles of Hindu Law (11th edition) 'Religious endowments are either public or private. In a public endowment the dedication is for the use or benefit of the public. When property is set apart for the worship of a family god in which the public are not interested the endowments is a private one'."

In Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi & Ors. the same principles were reiterated and it was pointed out that the entries made in the Inam Register showing the nature of the endowment were entitled to great weight and taken with the vastness of the temple, the mode of its construction, the long user by the public as of right and grants by Rulers and other persons were clear pointers to the fact that the endowment was of a public nature.

In the case of Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das,(2) this Court laid down some important tests to determine the nature of the endowment. In this connection, the fol lowing observations need specific mention:-

> "Therefore, evidence that sadhus and other persons visiting the temple are given food and shelter is not by itself indicative of the temple being a public temple or its proper ties being subject to a public trust.
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> Evidence that the mahants used to celebrate Hindu festivals when members of the public used to attend the temple and give offerings and that the public were admitted to the temple for darshan and worship is also not indicative of the temple being one for the benefit of the public....The fact that members of the public used to come to the temple with out any hindrance also does not necessarily mean that the temple is a public temple, for members of the public do attend private temples...Yet, the Privy Council held that the general effect of the evidence was that the family had treated the temple as family property and the mere fact of the members of the public having come to the temple and having made offerings and the mela having been held which gave popularity to the temple and increased its esteem in the eyes of the public and the fact that they were never turned away were not enough to hold the temple and the properties as a public trust.
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> Thus, the mere fact of the public having been freely admitted to that temple cannot mean that courtbs should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which

give strength to the inference that the user was as of right."

It may thus be noticed that this Court has invariably held that the mere fact that the members of the public used to visit the temple for the purpose of worship without any hindrance or freely admitted therein would not be a clear indication of the nature of the endowment. It is manifest that whenever a dedication is made for religious purposes and a deity installed in a temple, the worship of the deity is a necessary concomitant of the installation of the deity, and therefore, the mere factum of worship would not determine the nature of the endowment. Indeed if it is proved that the worship by the members of the public is as of right that may be a circumstance which may in some cases conclusively establish that the endowment was of a public nature. In Dhaneshwarbuwa Guru Purshottambuwa Owner of Shri Vithal Rukhamai Sansthan v. The Charity Commissioner State of Bombay all the aforesaid cases were summarised and the principles indicated above were reiterated.

In Gurpur Guni Venkataraya Narashima Prabhu & Ors. v. B.G. Achia, Assistant Commissioner, Hindu Endowment, Mangalore & Anr. Krishna Iyer, J., reiterated these very principles in the following words:

> "The law is now well settled that 'the mere fact of the public having been freely admitted to the temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right'. (See Bihar State Board Religious Trust, Patna v. Mahant Sri Biseshwar Das-[1971] 3 SCR 680,
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> 689)."

Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:

> (1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right; (2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;
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> (3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature. (4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by

> members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment.

Fortunately, in this case there are two important documents Ext. A and Ext. 1-from which the nature of the endowment can be clearly spelt out and we would examine these documents in the light of the tests and the principles enunciated above because after going through the judgment of the High Court we are satisfied that the High Court has not properly construed some of the important features contained in the documents and the evidence and has in fact overlooked certain important aspects which completely negative the fact that the endowment was of a public nature.

Ext. A is an ancient document executed as far back as February 18, 1895. The authenticity and the genuineness of this document is beyond question and the High Court itself has described this document as a document which has created the present endowment. Even though the document may not be treated as having itself.

created the endowment but it gives clear indication that the endowment was created near about the date when this document was executed. Some of the extracts of this document which are undisputed, in our opinion, clearly and conclusively show that the endowment was of a private nature and the intention of the founder was merely to instal a family deity in the temple. In order to fortify our conclusions, it may be necessary to give certain important recitals from this document which may be extracted thus:-

> "That I Gopinath Pani, my father Bhagyarathi Pani, Alekha Pani, father of Dinabandhu Pani and father's brother of Basudeo Pani and Narsinha Pani father of Balabhadra Pani-minor, having made the image of our family deity Sri Padhakanta Deb installed it in a temple which was built by them in Depur Sasan in Pipli Division and they endowed the Tanki Bajyapati, Tanki Baheli and Kharida Swata properties given below from the usufruct of which day-to-day Sibapuja and Janijatra of the deity was managed by them as the Sebait and Marfatdar and we are also managing in the same way. For the proper management of the deity's property and the Sebapuja of the deity in future, we lay down the following directions out of our own accord.
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> 1.... we hereby appoint the said Adwait Charan Das Babaji, Sutradhari Gaudeswar Sampraday Baisnab by caste, worship and Sebapuja of the deity by profession as the Tatwabadharak and Sebait and hereby (appoint) him by this trust deed and we become aloof from those duties vesting in him the following properties of the deity...
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> 2. From this day the said Babaji will manage all the immovable and movable properties of the deity as the Sebait and Tatwabadharak. He will realise the usufructs of the property and after giving the rent of the lands, he will manage the day-to-day Bhog and the festivities of the deity well according to the previous customs and rules and in the way we were doing and will keep the surplus amount in the store of the

deity.

3. The day-to-day Bhoga and the festivities of the deity will be done according to the income of the properties of the deity and will never exceed the said income.

4. The said Babaji cannot incur any loan on behalf of he deity nor can he sell, mortgage, keep as surety or trust any of the immovable or movable properties nor can he misappropriate any cash kind ornament or utensils of the deity.

.. .. ..

6. If the said Babaji does anything contrary to the conditions laid down in items 4 & 5 written above he will be removed from his right of Sebaitship and Tatwabadharakship by us or cur heirs who will appoint another fit man in his place and take the charge of all the properties in the store of the deity .. .. ..

9. As the properties maintained herein have been endowed to the deity before, we or our successors had or will have no claim on this and any such claim made, shall be void.

.. .. ..

11. Now or in future the man appointed as Tatwabadharak will work according to rules and directions mentioned herein and for the Sebapuja of the deity the directions and the menus are determined here for all days to come.

12. .... All other necessary expenses of the Jatra (festivals) repairing of the temple, utensils and the ornaments of the deity, etc. will be done according to the income.

.. .. ..

14. Any pious man of our family at present and in future will see whether the work of the deity is being performed according to the direction as aforesaid by the appointed Tatwabadharak and will take proper action as mentioned above.

14. If in future there be no fit man in our family, any of the Baisnab Sampraday and any Hindu of reputation of the village and of the locality is entitled to take such action, we have no objection to this."

(Emphasis supplied) The intention which can be gathered from this document is placed beyond doubt by a later document Ext. 1 which was executed on 17-11-1932 and is in the nature of a settlement Deed, the relevant portions of which may be quoted thus:-

"Our forefathers for the good of our family by making the family deity Sri Radhakanta Deb Thakur, erecting a temple befitting. His installation, installing Him therein and endowing the landed properties as described in the schedule below, used to carry out all the Sebapuja work of the deity in orderly manner by meeting the expenses from out of the income and yield of the said properties.. As the said Lalit Charan Das and Raghunath Pani a person of our family together misappropriated by utilising the income and yield of the properties of the deity in illegal expenditures and without carrying on the Sebapuja work in proper manner caused heavy damage to the movable and immovable properties of the deity in different unfair means, we have removed them from Sebapuja work of the deity and also from management and custody of the deity's properties. . . If the work of the deity is carried on for some time more in the manner in which the work is being managed now then the temple established by our forefathers as a mark of pride of our family and all the Debuttor properties of the deity will be destroyed in toto and the noble glory of the forefathers will perish .. We by this deed of trustee order determination appointed you as trustee for the Sebapuja work of our family deity Shri Radhakanta Deb Thakur and for the work of looking after His properties, according to the following conditions and terms, so that from today onwards on the strength of this deed of trustee order determination you from Chela to Bara chela by carrying on the Sebapuja, offerings, religious ceremonies and festivals and by preserving and looking after all the debuttor properties, realise the income and yield therefrom according to convenience.

.. .. ..

10. If we or any body amongst us misappropriate any money or property by taking secretly from the tenants or borrowers, we and our successors will be liable for punishment according to criminal law and you can realise any compensation you intend to take either mutually or with the help of the court. We and our sons and grandsons shall be bound and liable to pay.

.. .. ..

22. But if you might have obtained, any amount on loan against the income of the debuttor property and anything that you might have spent from your own pocket for the improvement of the deity of the muth and to save the property, we will be bound and liable to repay the said amount alongwith just and prescribed rate of interest, and we shall repay. If we do not repay voluntarily you and your successors will realise from us and from our and from our son's and grandsons existing and to be acquired movable and immovable properties and from the existing and to be acquired debuttor properties of the deity according to law."

(Emphasis supplied) Considering the two documents together the fundamental features, which now from the recitals extracted above, may be summarised as follows:-

(1) That the deity was installed in the temple purely as a family deity and the dedication WAS made only for a group of individuals who may be connected with the family of the Panis who were the founders of the deity. This clearly establishes that the intention of the founders was to dedicate their properties and instal the deity in the temple only for purposes of the Pani family, and their descendants. A perusal of the recitals extracted above would unmistakably show that there can be no two opinions on this question.

(2) Extensive private properties belonging to the Pani family alone were dedicated for the maintenance Of the temple and the deity and there is nothing to show that any contribution was called for from members of the public nor is there any averment in the deed to show that there was any stipulation for taking offerings from the members of the public to worship in the temple.

(3) There was no provision for framing any scheme by associating the members of the public or consulting them. In fact, Ext. 1 shows that even after the descendants of the founders had fallen on evil days and were not in a position to provide sufficient funds for the maintenance. Of the temple yet they appointed Udayanath Pattanayak to manage the affairs of the deity and bound themselves personally to reimburse the Manager for any out-of-pocket expenses incurred in connection with the maintenance of the temple. This circumstance manifestly proves that the endowment was of a purely private nature right from the time it was created till 1932 when the management was changed and continued to be of the same nature. Indeed, the personal undertaking contained in Ext. 1 clearly shows that there was never any intention to treat the temple as a public one but the intention was, if at all, to continue it in the name of the family so long as the family continued.

(4) There is no recital in any of the documents to show that the members of the public or the vil lagers of the place where the temple was situated were entitled to worship as of right. On the other hand, PWs 1 to 6 who were examined by the appellants-plaintiffs have categorically stated that members of the public were not allowed to worship in the temple as of right. In this connection PW 1 stated as follows:-

"Members of the public have no right to have Darsan of, or to offer bhog to the deity. The villagers do not make Kirtan before the deity or take any part in any festivity of the deity. The deity has no Bahari Jatra. No member of the public made any gift to the deity. No khairat is ever given. The properties of the Thakur are all (sic) with rent."

PW. 5 stated that the disputed deity was installed by the family of the other Panis and not by his ancestors and that the deity was not their family deity and was not dedicated to the public. As against this oral evidence, the defence examined DW 1, Raghunath Pani, whose evidence has been rejected both by the Trial court and the High Court. Thus, apart from the unimpeachable

documentary evidence discussed above, even the oral evidence to prove that the endowment was of a private nature is clear and has not been rebutted by the defence. In this state of the evidence we are indeed surprised to find how the High Court could hold that the endowment was of a public nature.

The High Court seems to have been carried away by factors or considerations which are of a very minor nature and by themselves do not prove that the endowment was of a public nature. For instance, one of the circumstances that weighed with the High Court was that the temple was a massive structure of about 25 yards in height. That by itself, divorced from other things, could not prove that the temple was a public one. So far as the oral evidence is concerned. the High Court observed thus:

> "Apart from the above features disclosed by the oral evidence which are indicative of the institution having been treated as a public one. the recitals in some of the clauses of the two documents.-(Exts. A & 1) also unequivocally indicate an intention of dedication in favour of public."

These observations are not at all borne out by the evidence of PWs 1 to 5 which is the only oral evidence led in the case, the evidence of DW 1 having been rejected by the trial court as also the High Court. The High Court took into consideration the fact that certain properties were needed for the maintenance of the temple and Seba-puja and other ceremonies were being performed by the Shebaits and Marfatdars. The High Court overlooked the fact that Shebait or the Marfatdars were appointed by the founders of the endowment and the entire management and control of the temple was retained by the family. We are unable to agree as to how in these circumstances could it be said that the endowment was of a public nature.

Another circumstance that weighed with the High Court was that bhogs were offered during the day which, according to the High Court, was in consonance with the rules observed by the public. This circumstance also is not of much consequence because bhogs are offered even in private temples. The High Court also seems to have relied on clause 15 of Ext. A to come to its decision that the endowment was of a public nature. The High Court was of the view that under this clause in certain contingencies any member of the Vaishnav sect or Hindu resident of the village was authorised to exercise the powers and functions mentioned in clause 7 of the deed. We are, however, unable to agree with the interpretation placed by the High Court on clause 15 of Ext. A. Clause 15 merely provides that if in future the family becomes extinct and no fit person could be found then any of the Baisnab Sampraday or any reputed Hindu of the village could take action, namely, to perform the work of the deity. This was a contingent provision and here also the founders did not confer the duty of performing all the work on the members of the public but they chose or selected only a particular person belonging to a particular community which also shows that even if the family was to become extinct, the private nature of the endowment was not to be changed. Indeed if the intention was to instal the idol in the temple by way of a public endowment, clause 15 would have clearly provided that in cast the family became extinct the members of the public or of the brotherhood or the Government could have taken over the management. On the other hand, the interpretation of the various clauses of the documents clearly shows that sufficient care has been taken by the Pani family

to see that the dedication to the family deity is not changed even if the family becomes extinct.

Having, therefore, carefully perused the oral and the documentary evidence in the case we are satisfied that the conclusions arrived at by the High Court are wrong and are based on misinterpretation of Ext. A and Ext. 1 and misreading of the oral evidence led in the case, which, as we have shown, runs counter to the conclusions arrived at by the High Court. For the reasons given above, we allow this appeal, set aside the judgment of the High Court, decree the plaintiffs-appellants suit and restore the judgment of the trial court. In the peculiar circumstances of this case, the appellants will be entitled to costs of the appeal in this Court quantified at Rs. 4,000/- (Rupees four thousand only) S.R. Appeal allowed.